



The Human Rights-Based Approach in German Development Cooperation

Short version



gtz | Realising Human Rights
in Development Cooperation

On behalf of
 Federal Ministry
for Economic Cooperation
and Development

In cooperation with
 German Institute
for Human Rights



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Realising Human Rights in Development Cooperation

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What is the Human Rights-Based Approach (HRBA)?

The HRBA is a conceptual framework that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. An HRBA integrates the norms, standards and principles of international human rights law into the plans, policies and processes of development.

Both the Federal Republic of Germany and the partner countries have ratified the major human rights treaties and are thus obliged to implement them. The link between human rights and development has been reinforced by the UN Millennium Declaration from 2000. With the declaration, the international community has committed to reduce poverty through the fulfilment of all human rights for all people. In line with this commitment, the German Federal Ministry for Economic Cooperation and Development (BMZ) adopted the first Development Policy Action Plan on Human Rights in 2004, and its continuation in March 2008. This plan requires all German governmental development agencies to apply an HRBA across all sectors and levels of intervention.

What does the HRBA offer to development cooperation?

An HRBA helps to deliver equitable and sustainable development results. It links development efforts in all areas of work to universal and legally binding human rights standards. This enhances legitimacy of pro-poor and equity-oriented development cooperation and creates an added lever in policy dialogue. It supports aid effectiveness by providing an agreed platform of objectives and norms shared by donors and partner countries alike, on which to build development processes.

An HRBA provides tools for understanding and addressing the multi-dimensional root causes of poverty and violent conflict, including discrimination, powerlessness, lack of political participation and lack of access to basic resources and services. It ensures that development addresses the most

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vulnerable by focusing on the promotion of the rights of women and marginalised groups, including, children, ethnic minorities, migrants and people with disabilities. It thus complements and reinforces other development agendas such as poverty reduction, gender equality, crisis prevention, good governance and sustainable development.

An HRBA supports strategic management of development cooperation by defining minimum standards which help to define development priorities and provide a basis for equitable resource allocation.

The nine core UN human rights treaties with year of adoption

	Ratifications
International Covenant on Civil and Political Rights (ICCPR), 1966	164
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	160
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965	173
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979	185
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984	146
Convention on the Rights of the Child (CRC), 1989	193
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 1990	40
Convention on the Rights of Persons with Disabilities (CRPD), 2006	50
International Convention for the Protection of All Persons from Enforced Disappearance (ICPED), 2006 (not yet in force)	9

Source: Office of the UN High Commissioner for Human Rights <http://www.ohchr.org>, ratifications as of 1 March 2009

What are human rights?

Human rights are the civil, political, economic, social and cultural rights codified in international human rights treaties. They define what humans need for a life in

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dignity and freedom. Today, all UN member states have ratified at least one of the following nine core international human rights treaties, and 80% have ratified four or more (See box above).

Human rights are:

- Universal – they belong to all people.
- Indivisible – there is no hierarchy between different rights.
- Interdependent – the improvement of one right facilitates advancement of the others. For example, fulfilment of the right to education enables people to use their rights to political participation and to freedom of opinion.

States assume obligations under international law to respect, protect and fulfil human rights:

- The obligation to respect requires that states refrain from directly or indirectly interfering with the enjoyment of human rights.
- The obligation to protect means that states must prevent third parties (e.g. individuals or companies) from interfering, directly or indirectly, with the enjoyment of human rights. For example, states should enact legislation that prevents employers from discriminating on grounds of gender.
- The obligation to fulfil obliges states to adopt legislative, administrative, budgetary, judicial and other necessary measures to achieve the full realisation of human rights.

Some human rights have to be fulfilled immediately, such as the right to non discrimination. Others, such as the right to education or social security, may be achieved progressively, taking into account existing resource constraints.

Progressive realisation requires concrete, measured, time bound action towards full realisation of all rights.

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Frequent misunderstandings

False

The HRBA is only relevant to the good governance agenda.

Realising economic, social and cultural rights means that provision of services like water, health care and education must not be privatised and that these services need to be provided cost-free.

Economic, social and cultural rights are meaningless because they are non-justiciable.

True

The indivisibility of human rights means that human rights encompass economic, social and cultural rights as well as civil and political rights. Consequently, the HRBA applies to all sectors of development cooperation including, for example, water and sanitation, health care and food security.

Human rights law leaves it to the state how to organise the provision of these services, including through private service providers. However, the state as the primary duty-bearer has to regulate to assure compliance with human rights provisions such as non-discrimination, universal access, acceptable quality etc. Fees can be charged but must be affordable to avoid de facto exclusion. Primary education should always be free of charge.

Although litigation can be costly and complex, there is an increasing number of cases in which court action has led to substantial changes in the allocation of public resources and the concrete realisation of economic, social and cultural rights.

What does the HRBA mean in practice?

The minimum requirement of an HRBA in practice is that development cooperation does no harm to the human rights of any population. Human rights should also be integrated across all sectors and at all stages of the programme cycle through

- Capacity development of both right-holders to claim their rights and duty-bearers to fulfil their obligations.

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- Systematic orientation towards human rights standards and reference documents.
- Adherence to and promotion of human rights principles: Non-discrimination and equality, participation and empowerment, and transparency and accountability.

Furthermore, a HRBA requires support for specific human rights projects and programmes, such as initiatives that address human rights violations affecting particular groups.

Working with right-holders and duty-bearers

The HRBA works from both the 'demand' and the 'supply' side of rights, because the fulfilment of rights depends upon the meeting of obligations.

Supply-side capacity requires support to partner countries to translate human rights standards and principles into national law, policies and practice. Actions include support to governmental institutions to:

- Create the necessary conditions and space for meaningful and broad stakeholder participation in relevant processes at micro, meso and macro level.
- Establish complaint and redress mechanisms ranging from health watch committees in local clinics to measures to improve the independence and effectiveness of national courts.
- Undertake situation analysis of human rights and discrimination and translate human rights standards into concrete entitlements to services and appropriate budget allocations.

Demand-side capacity requires support right-holders to claim and realise their rights through human rights education, awareness, monitoring and action.

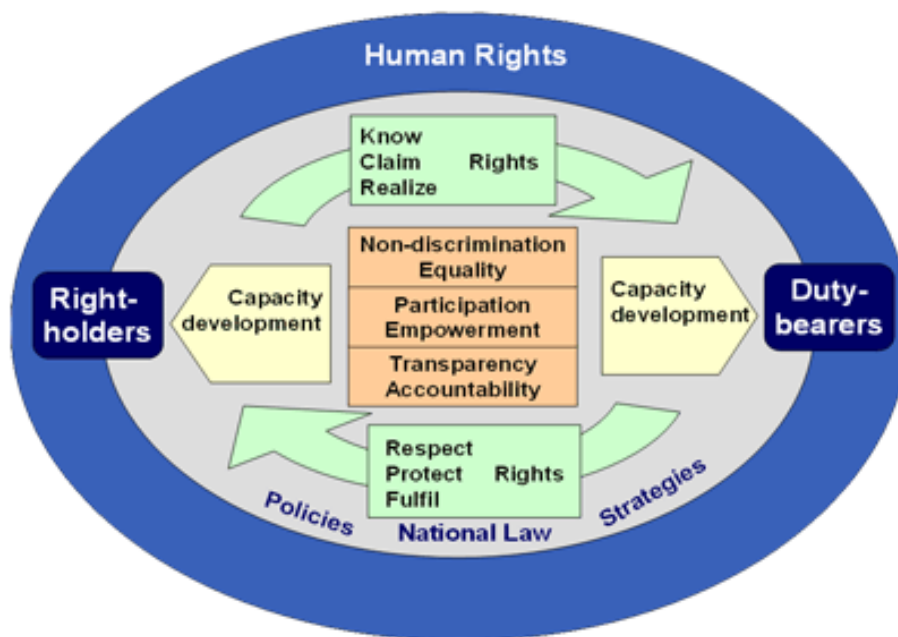
Actions include:

- Enabling individuals and groups to claim their rights in court through litigation.
- Supporting civil society monitoring of public policies, budgets and services.

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- Developing organisational capacities so that groups are better equipped to mobilise, gather information and undertake advocacy campaigns.

Figure 1: Model of the human rights-based approach



Using human rights standards and reference documents

The HRBA means that the international human rights framework should guide our interventions. In addition to the nine core treaties, other human rights are codified in the regional human treaties, such as the European Convention on Human Rights (1950), the American Convention on Human Rights (1969), and the African Charter on Human and Peoples' Rights (1981). Other international instruments containing human rights include the labour conventions of the International Labour Organization (ILO).

Human rights reference documents, which provide information relevant for development cooperation, include:

- **General Comments** issued by the UN treaty bodies interpret human rights standards and make them operational for development cooperation. The General Comments issued by the UN Committee on Economic, Social and

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Cultural Rights outline the core elements of the rights enshrined in the Covenant such as the right to housing, food, or education. For example, the core elements of the right to the highest attainable standard of health includes that basic health care services must be available, accessible, acceptable and of sufficient quality.

- **Human rights monitoring information:** Ratifying states need to submit regular reports to the UN treaty bodies, who publish Concluding Observations on states' progress. Civil society organisations can submit complementary parallel reports. In addition, states undergo examinations under the Universal Periodic Review (UPR) mechanism of the Human Rights Council.
- **Reports by UN Special Rapporteurs** on specific human rights topics serve to clarify human rights standards. For example, the UN Special Rapporteur on the right to health devised human rights indicators for monitoring child mortality.
- **Statistical information:** The Office of the UN High Commissioner for Human Rights has developed human rights indicators for the realisation of selected human rights at structural, process and outcome level.
- **Jurisprudence** in response to individual complaints by the UN treaty bodies, regional human rights courts, and national courts.
- In addition, various UN bodies and agencies have produced guidelines, toolkits, and fact sheets that provide further guidance on human rights issues.

The extent to which an explicit reference to human rights can be made in policy dialogue will vary from country to country, depending on the political context. However, even in countries where it is more difficult to talk about human rights explicitly, human rights standards and principles can be used implicitly as a basis for practical work through defining objectives, indicators and strategies (see Further Reading)

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Promoting human rights principles

The HRBA recognises that the process of achieving results is as important as outcomes. The HRBA therefore requires promotion of the following human rights principles in all development processes:

Non-discrimination and equality requires states to respect, protect and fulfil the rights of all, regardless of their origin, age, sex, mental or physical health, ethnic or religious affiliation, or any other status. Government and development cooperation resources must be used in ways that reduce discrimination and improve equal access to all essential services and resources. This may require time-bound measures, such as quotas or subsidies that favour a discriminated group of people. It also requires support for the collection and use of data disaggregated by sex and any other relevant social categories such as ethnicity, age or socio-economic status.

Participation and empowerment requires a shift from consultation and engagement of relevant stakeholders in the programme cycle to strengthening and deepening civic and political participation. The HRBA supports structures, institutions, policies and legal frameworks that sustainably widen spaces for participation and democratic engagement. It enables relevant groups, including the most marginalised, to participate in decision-making processes at local, regional and national level in a meaningful way.

Accountability and transparency requires support for inclusive and participatory monitoring, adequate accountability mechanisms and remedies. Accountability mechanisms are fora of explanation and justification. The HRBA supports engagement with, and strengthening of, a range of formal and informal accountability mechanisms:

- Judicial e.g. judicial review of executive acts and omissions, constitutional redress, public interest litigation;
- Quasi-judicial e.g. national human rights institutions, regional and international human rights treaty bodies;

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- Administrative e.g. opposition proceedings, complaints desks at public services, ombudspersons;
- Political e.g. parliamentary committees, elected health or education councils; and
- Social e.g. the involvement of civil society in policy or budget monitoring, public hearings, social audits.

Further reading

BMZ (2008), Development Policy Action Plan on Human Rights, Bonn.
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<http://www.ohchr.org/Documents/Publications/FAQen.pdf>

OHCHR (2008), Claiming the MDGs: A human rights approach, Geneva
http://www2.ohchr.org/SPdocs/Claiming_MDGs_en.pdf

Website of the OHCHR <http://www.ohchr.org>: texts of human rights conventions, ratifications, general comments, concluding observations and other treaty-body related documents.



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