Human Rights and Human Development

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Abstract and Keywords
This chapter uses Sen's capability approach to explore whether there are inherent contradictions between human rights and development. The 'human rights based approach' has gained momentum yet many development practitioners and economists remain skeptical. The chapter reviews diverse critiques of the approach and assesses its application in government policy by reviewing Poverty Reduction Strategy Papers for fifty-five countries. It finds that only a few governments have incorporated the approach in policy priorities and concludes that the obstacles to further implementation do not lie with inherent contradictions between human rights principles and development, but with gaps in practical methods and tools. In particular, the absolutist interpretation of the principle of indivisibility is a major obstacle, and more work is needed to analyse norms of human rights that relate to the duty bearer to promote human rights in development in economic, social, and governance policies.
Keywords: human rights based approach, poverty, economic rights, social rights, capability approach, Poverty Reduction Strategy Papers, development cooperation
I. Introduction
ONE of the important contributions of Amartya Sen has been to highlight the significance of human rights in development (Sen 1981, 1984, 2005). Human rights is one of the key concepts, along with capabilities and functionings, entitlements and fundamental freedom, that Sen has used in defining the ultimate ends of development as expansion of capabilities and human freedom. The contribution of these ideas to economics and to the theory and practice of development is well known and well documented, and has given rise to a vibrant body of new research and policy debates.

However, less well known among development economists is the significance of these same ideas to the field of human rights, particularly to the new and growing work on the role of human rights in poverty reduction and development. This is a new area of work for both theorists and practitioners. Sen's capability and human development approach provides a useful conceptual framework within which human rights principles can be incorporated, because his approach defines the ultimate purpose of development as the expansion of human freedom (Donnelly 2003; OHCHR 2004; Alston 2005). Human development (and the capability approach) and human rights thus share a common motivation (UNDP 2000). The purpose of this chapter is to draw on Sen's work to address current issues surrounding the concept and implementation of the “human rights-based approach to development” (HRBA), and to encourage further research and policy debates in this area.

HRBA is widespread among the key stakeholders in the development field (Maher and Marks 2007). It is being adopted by increasing numbers of development agents, including local and international NGOs, civil society groups, bilateral and multilateral donors, and think tanks. Increasing numbers of human rights scholars are interested in poverty reduction and development questions. Yet the implementation of HRBA remains uneven, and is still at the margins of both development and human rights. As most writers on the issue observe, the “integration” of development and human rights has proven partial and difficult (Sano 2000; Uvin 2004; Alston and Robinson 2005; Gasper 2007). Uvin’s analysis of development cooperation programmes (Uvin 2004) shows that the adoption of HRBA by development cooperation agencies has been largely rhetorical and only a few have introduced
new approaches to program priorities and implementation. Other evaluations of the HRBA point to mixed experiences (ODI 2006; Darrow 2007).

The truth is that many development practitioners remain highly skeptical of the idea of human rights as a central issue of development ends and means (Ingram and Freestone 2006). As Alston and Robinson (2004) point out, they continually ask “what is the value added?” (as does, for example, Kanbur 2007), to which the reply from the human rights community is that there is a need for “value change” in development economics (Eide 2006). Rights and development have been characterized by Alston in his recent article (2005) as “ships passing in the night” even though they are heading in the same direction.

These difficulties may be due to lack of communication, as Alston suggests, or disagreement about the importance of human rights. This chapter reviews the critiques to explore whether the problems are due instead to certain limitations in the concept and practice of HRBA, with the aim of identifying ways in which contradictions can be resolved and gaps filled.

II. Human Rights-Based Development: The Concept and Policy Agenda
In the late 1990s, human rights scholars and activists began to focus on global poverty. Concerned that the evolving global order was not adequately protecting and fulfilling human rights, they began to argue that human rights are central to both the ends and means of the development process. This new attention grew out of the end of the Cold War, which opened the way for the human rights community in the West to give more attention to economic and social rights. The rapid rise of civil society and their global networks throughout the world during this time was also a major factor. This activism took place within the UN system and the UN human rights machinery as Mary Robinson, then UN High Commissioner for Human Rights, played a leading role, often singling out global poverty as the “biggest human rights challenge” of the day (UNDP 2003; Robinson 2005). Her successor, Louise Arbour, continues to take this position, characterizing “inequalities within and between countries” as the “gravest human rights challenge” (2007: p. iii).
A discourse on development emerged, launched by a 1995 publication by the Human Rights Council of Australia, *The Right Way to Development: The Human Rights Approach to Development Assistance* (HRCA 1995). While previously, human rights and development communities worked on joint agendas such as the passage of the Convention to Eliminate All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child (CRC), or had tried to use development cooperation to put pressure on governments to stop human rights abuses, this initiative attempted to combine these two fields of endeavour, which had previously developed in parallel with little interaction. The human rights-based approach to development sees development and human rights as pursuing the same objectives—defined as the realization of human rights and the respect of human rights principles in the process of development. In doing so, HRBA aims to reorient development theory and practice. HRBA often refers to program approaches adopted by development cooperation agencies that have introduced new priorities and activities. But these approaches are embedded in a broader discourse. I shall use the term HRBA broadly, synonymous with “human rights in development”, to refer to that discourse.

**II.1 Social Origins and Motivations of HRBA**

By their very nature, human rights are ethical norms that are a product of “social ethics and public reasoning”, according to Sen (2006), or the history of “social learning” according to Donnelly (2001). Norms of human rights develop because people claim that certain conditions of human life are entitlements and demand that they become recognized as human rights. These norms also develop because people confront various threats to their survival as human beings (Shue 1996). The recent emergence of HRBA must be understood as a demand driven by a concern with global poverty as an affront to human freedom and dignity, but also as a matter of injustice. Unlike the economic analysis of poverty, which looks to poor economic performance, inadequate resources or inadequate policies as the cause (p. 79) of the poverty of countries, HRBA is concerned with the unequal distribution of power and wealth within and between countries.
HRBA holds duty-bearers to account, demanding action to reverse these trends. It is thus a demand for alternative social arrangements, including alternative institutions of governance and economic-social policy regimes. More specifically, it is a challenge to globalization led by market liberalization and global trade regimes, and to national policies of liberalization and reforms of social protection. Additionally, HRBA endorses and supports democratization processes that enhance the accountability of government and give citizens a greater voice in governance. According to Darrow and Tomas, “ushered in during the 1990s in response to development failures of the structural adjustment era, human rights based approaches to development have proliferated in recent years” (Darrow and Tomas 2005: 471). Similarly, Nelson and Dorsay note that “The growing prominence of human rights in development discussions raises the first fundamental challenge to a market-dominated view of development that has prevailed since the 1980s” (Nelson and Dorsay 2003: 2014).

II.2 Key Elements of HRBA and its Distinctiveness

According to the OHCHR (2006: 15), HRBA is “a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed at promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.”

The key elements of this concept can be summed up in four points:

1. The overriding concern is human freedom and dignity.
2. The realization of human rights—all rights, including economic, social, cultural, civil and political rights—by all individuals is a central objective of development.
3. Human rights principles should be part of the process of development. These include:
   a. equality and non-discrimination;
   b. participation of individuals in activities and decisions that affect their lives, and the empowerment of people;
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c. accountability of duty-bearers to promote, protect and fulfill human rights;
d. the indivisibility and interdependence of all human rights;¹

e. obligations of progressive realization and non-retrogression, and immediate realization of core minimum standards.

4. International human rights norms and standards should be applied in the development process, and governments are accountable for their obligations arising from their commitment to international laws to which they are signatories.

All four of the above key elements are consistent with the priorities of the human development and capability approach to development. Human rights and human development (or capabilities) share a common motivation and commitment to human dignity and freedom (UNDP 2000). The relationship between the two is explored by both Sen (1984, 2004, 2005) and Nussbaum (1997). They are different concepts, but overlap considerably. In fact, Nussbaum argues that the two are closely related and occupy the same terrain, being concerned with improving human welfare and quality of life as objectives of public policy. Human rights and human development are not competing concepts, however; rather, they are complementary because they perform different functions. The fields of human rights and human development (and capabilities) have developed complementary sets of analytical tools and action approaches that can be deployed to meet the common goal of securing human dignity and freedom. Later sections of this chapter will return to the different functionalities of capabilities and human rights.

HRBA's policy agenda thus overlaps with the human development agenda. It places a high priority on achieving equity, meeting basic needs for survival and security but also for participation, and promoting human agency. However, HRBA brings distinct new features to the overall framework of human development, and emphasizes others more strongly.

First, HRBA is much more explicit about accountability: because human rights are explicit entitlements, they impose claims on social institutions. So HRBA draws attention to the
need for institutional reforms to secure human rights, and the accountability of duty-bearers. Provisions such as education become a matter of accountability rather than charity. Second, HRBA brings in the legitimacy of universal values and the clarity of internationally legislated norms, standards and obligations. Human rights are institutionally embedded in national and international legal instruments. HRBA brings legislation and litigation together as development policy tools. The third new feature is the emphasis on equality, with attention to discrimination and to unequal power structures as a source of inequality and poverty. The fourth is the emphasis on participation and the process of development, of people being agents of change and making improvements in their own lives. This is a related notion of “indivisibility and interdependence”; the enjoyment of some rights is necessary for the realization of others. For example, the rights to information, to freedom of speech, to association, and other civil and political rights are essential to people demanding their rights to other rights, such as education, health care and so on (Darrow and Tomas 2005).

HRBA's methods are quite distinct from those of conventional development practice. They include the conventional tools of human rights practice and new tools of development cooperation. The conventional tools mobilize the power of law and the power of ideas and include: litigation to secure remedies to individuals for violations; stronger legislation; social mobilization to demand accountability and put pressure on governments and other powerful actors such as corporations; and naming and shaming to expose violations of human rights and hold violators (duty-bearers) to account. The new tools, such as human rights education, aim to empower people to demand their rights, and to strengthen the institutions that protect human rights, such as the ombudsman's office, the justice system and the media.

III. HRBA as Development Practice: Mapping its Spread and the Resistance to it
Since the mid-1990s, when HRBA began to spread, it has become a strong discourse in international development. In the development community, many civil society groups and NGOs (including some leading national and international NGOs such as Oxfam, Care International, Save the Children and ActionAid) have started working with HRBA, some adopting it explicitly as a framework for their poverty work and emphasizing rights to social justice as their core mission. For example, Oxfam International states: “Our mission is a just world without poverty and our goal is to enable people to exercise their rights and manage their own lives” (Oxfam International 2007). Similarly, ActionAid states, “We work with local partners to fight poverty and injustice worldwide, reaching over 13 million of the poorest and most vulnerable people over the last year alone, helping them fight for and gain their rights to food, shelter, work, education, healthcare and a voice in the decisions that affect their lives” (ActionAid 2007).

Among bilateral development agencies, adoption of HRBA has varied: some are strongly committed to it in their policy and program priorities, such as the UK Department for International Development, the Swedish International Development Agency, and the Norwegian Agency for Development, all of whom have prepared elaborate policies and guidelines; other agencies have scarcely engaged with HRBA. But all have endorsed the principle of the importance of human rights under the OECD DAC policy of 1994, while the latest consensus policy document on HRBA, adopted in January 2007—“Action-Oriented Policy Paper on Human Rights and Development”—recognizes human rights norms as “an accepted normative framework reflecting global moral and political values”. It notes that “there is growing consensus on the value of human rights principles—such as participation, non-discrimination and accountability—for good and sustainable development practice. The application of these principles builds on and strengthens good and sustainable development practice, with equal attention to process and outcomes” (OECD DAC 2007: 2, 3).

Among the UN agencies, UNICEF has been a pioneer in this approach, building on their commitment to children’s human rights in their involvement with the formulation and passage of the Convention on the Rights of the Child (CRC). UNICEF and other agencies, such as the United Nations Development
Programme (UNDP), have been developing policy positions and program approaches since the 1990s. In the context of coordinated programming strategy at the country level, the UN system as a whole has officially incorporated HRBA as one of the “five inter-related principles that must be applied at the country level” along with gender equality, environmental sustainability, results-based management, and capacity development (UNDG 2003), and has developed a “common understanding” of how this is to be implemented.

Implementation approaches can range from: (1) adoption of the language and “rhetoric” as important ends; (2) an agenda reflecting HRBA priorities; and (3) use of human rights-specific tools and methods. According to recent reviews of development agency experience (Uvin 2004; Piron 2005; OECD DAC 2007) the adoption of the language of rights is widespread, but many have also shifted program priorities, particularly in governance areas, to strengthen civil and political rights such as access to justice. HRBA has been particularly relevant in raising issues of state-citizen linkages through use of the duty bearer-right holder and accountability perspectives, and a focus on the structural roots of poverty and exclusion as an obstacle (OECD DAC 2005). The use of human rights instruments has been relevant in the areas of women's rights (drawing on CEDAW), children's rights (drawing on CRC), and indigenous peoples' rights. The DAC study concludes that there is a real danger of agencies claiming to use HRBA when all they are doing is “rhetorical repackaging” of the same programs with the same methods and agendas. This is one way of looking at the position that the World Bank took (p.83) over many years: stating that their programs were in fact promoting human rights without using those terms.4

Within the human rights community, there has been increasing engagement in civil society organizations of all categories with poverty and development. While issues of poverty and social and economic rights have long been a concern for human rights organizations in the South, northern NGOs not only had neglected them but were actively hostile (Roth 2001; Neier 2003). But this has been changing gradually. Amnesty International, for example, began to look at economic and social rights in 2001, and their decision to focus on poverty for the 2008 global campaign marks a watershed in this new engagement. As for the UN machinery, a wealth of important
new initiatives have been taken since the 1990s. For example, Special Rapporteurs have been appointed on Extreme Poverty, on the Right to Development, the Right to Health, the Right to Food and other relevant issues; the UN High Commission has been an active advocate; and the secretariat of the OHCHR in this area has begun important work in areas such as developing guidelines for the HRBA approach to poverty reduction.

These are important innovations and show that HRBA is widely used in development practice. But HRBA is limited and has remained at the margins of both human rights and development practice. HRBA has had little impact on some of the major actors, most notably the Bretton Woods institutions and the other multilateral economic agencies, including UNCTAD, the WTO and even UNDESA. Its reach has not extended to most national governments of the Global South, with some notable exceptions such as Brazil and South Africa. And it has had little impact on the main program work of governments supported by the international community, namely the Millennium Development Goals (MDGs) and the Poverty Reduction Strategy Papers (PRSPs).
III.1 Human Rights Agendas in the Millennium Development Goals

In an article on the MDGs and human rights, Alston surveys in detail the integration of human rights into MDG processes (Alston 2005). Despite the fact that MDGs and HRBA have substantially overlapping objectives, employ similar approaches, and involve some of the same actors, human rights agendas are barely integrated into key MDG initiatives, such as the MDG monitoring reports prepared at the country level.

(p.84) As for the human rights community, the importance of MDGs has been amply recognized in a number of resolutions and reports; according to Alston, “at the superficial level, the Commission has been assiduous, even admirable, in relation to the Millennium Declaration and the MDG’s” (2005: 816). Yet these were only passing references, even in resolutions that dealt with issues such as housing, the right to food, and education. MDGs have not been included in the substantive work of the experts, nor of the work of the Special Rapporteurs on a variety of themes and countries. There have been only a few exceptions to this trend, including the 2004 report of the Special Rapporteur on Health, and the working group on the right to development. Alston concludes that “MDGs have not been taken on board in any sustained way” (2005: 819).
III.2 Human Rights Agendas in Poverty Reduction Strategy Papers

Similar trends are apparent in the 55 Poverty Reduction Strategy Papers I have surveyed for this chapter (23 in Asia, 24 in Africa, seven in Latin America and one in the Middle East). PRSPs set out national policy frameworks for poverty reduction prepared by countries international support for mobilizing. Thus these documents request the policy priorities of national governments which are supported by official donors.5

Like the human rights commission resolutions, PRSPs make ample mention of the term “human rights”, and if not human rights, at least “rights”. Only a handful of PRSPs (Eritrea, Ethiopia, Grenada, Guinea Bissau, Haiti, Pakistan and Tajikistan) make no mention of either term. However, in many of them, mention is scant—in 28 PRSPs it is mentioned fewer than ten times, often not appearing until well into a document totalling some 200 to 300 pages. In most, the references are general and in passing, often in the context of a general statement of a development vision, without any sections devoted to human rights or human rights institutions. In some, only civil and political rights are mentioned. In most, there is scant reference to the nature of human rights violations and challenges such as discrimination against minorities or ethnic majorities, and little analysis of poverty from the human rights perspective, such as tracing the roots of poverty to institutionalized discrimination and lack of power.

The term “participation” is used a number of times in almost all the PRSPs reviewed, mostly to refer to participation in the PRSP formulation process, a mandated methodological feature. Participation has been the focus of pressure by (p.85) advocates and supporters of HRBA in shaping PRSPs, and it is one of the aspects of PRSPs that have been scrutinized and criticized (UNDP 2003; Piron and Evans 2004; Stewart 2005). While guidelines recommend that national strategies be based on broad consultation, many of the consultation processes have been criticized as being pro forma meetings with NGOs, often international NGOs. Or there may be no reference to any substantive analysis or program. From the human rights perspective, real participation is about people having a say in decisions that are made and being able to hold authorities to account. Processes such as this need to be institutionalized and go beyond ad hoc meetings, and also require a carefully designed system of voice with accountability, not just voice...
without response. There is little reference to the broad concept of government accountability for human rights. But transparency and sometimes accountability appear in many PRSPs in relation to good governance.

Equality and equity are consistently mentioned in PRSPs, but most often only in relation to gender equality. Indeed, several countries (Pakistan, Guinea Bissau, Central African Republic, Chad) omit this issue altogether, with not even a single mention of the terms “equality”, “inequality” or “equity”. What is more, the terms “discrimination” and “non-discrimination”—distinctive to HRBA—are rarely used.

HRBA agendas are absent in countries where they are clearly serious issues. For example, only some countries that have experienced civil war with serious civil rights violations refer to human rights. For example, Afghanistan, Angola and Cambodia emphasize human rights as a priority in relation to national reconciliation, stability and social order, democracy and peace. No mention is made of such issues in Eritrea, Ethiopia or Haiti—countries still facing civil strife, and where lack of accountability for past abuses and ethnic discrimination is still a live issue.

Only a handful of countries have prepared PRSPs that go beyond the rhetorical use of the term “human rights” and its associated principles of equality, participation and accountability. But these exceptional cases are especially interesting documents that incorporate some elements of the human rights perspective on poverty and development. Rwanda's PRSP is framed in the HRBA perspective, starting in the introduction, which states that the fulfilment of human rights is the overriding objective of development: “The Government of Rwanda strongly believes in the right of all its people to live a life free from poverty, hardship, oppression and insecurity. Rwanda's government is committed to securing for all its citizens a full range of social, economic and political rights and to working with its people to reduce poverty and exclusion.” Elements and principles of HRBA are a central factor in several strategy areas, such as good governance (the point of which is to ensure accountability and transparency), gender equality and innovative participatory methods for identifying the poor and monitoring the poverty reduction process. Inequality is defined for income and non-income spaces and receives careful attention in the analysis of poverty
and as a consequence of policy options. Uganda's (p.86) PRSP also focuses more explicitly on aspects of the HRBA agenda, particularly inequality and accountability. However, it does not give much attention to inequalities related to the ethnic strife in the north of the country. Another country that has prepared its PRSP from the HRBA perspective is East Timor. This PRSP looks at the relationship between human rights and poverty and goes beyond the conventional PRSP issues and emphasizes the need for a culture of respect for human rights, especially for women, children and vulnerable groups, and the important role of the media.

These are not the only countries that have incorporated human rights into their PRSPs. Human rights are one of the three main pillars of the government in Afghanistan. Burkina Faso develops a specific approach to promoting human rights as part of the democratic governance pillar of the program. A few other countries, such as Ghana, Angola (draft PRSP) and Liberia (interim PRSP), pay significant attention to human rights in different ways.

It is not surprising that some of the PRSPs most committed to adopting HRBA are from countries emerging from war, including Rwanda, Liberia, East Timor and Cambodia. Yet it is surprising that HRBA is not an element of the strategy of post-conflict countries such as Haiti and Sierra Leone. Further research is needed on such differences in adopting HRBA, so that greater insights may be gained into the obstacles to the adoption of this approach.

IV. HRBA as Practice: Critiques, Gaps, Contradictions
Why has HRBA remained at the margins of development policy? Are the reasons political? HRBA is being championed by the international community and sometimes by national civil society, but rarely by developing country governments. As already emphasized, human rights are tools of social pressure applied by people to challenge authority structures. It is therefore not surprising that “official” government programs such as PRSPs and MDGs do not incorporate human rights agendas. Moreover, in the international context, the motion of human rights has been used to damage the reputation of developing country governments or to sanction them. So developing country governments prefer to keep the topic out of their discussion with the international community. HRBA is
therefore intrinsically inconsistent with international cooperation, since it challenges the power of nation states (Darrow and Tomas 2005).

Is the resistance to HRBA due to a mindset, a legacy of Cold War thinking combined with libertarian ideology, that rejects the principle of social and economic (p.87) rights, insisting that only civil and political rights are “real”? This view is still widely held, along with the common (and misguided) understanding of human rights as divided into two categories, civil and political rights on the one hand and economic and social rights on the other, with sharp differences, such as that civil and political rights are “negative rights” and social and economic rights are “positive rights”, the latter supposedly invalid because there is no legal basis for identifying violations and responsibilities. For example, Ingram and Freestone note,

many development practitioners—including World Bank staff—typically think of human rights abuses in terms of violations of civil or political rights, actions not necessarily associated with economic development and often perceived as neutral in terms of their impact on economic growth. Many would even argue that the provision of civil and political liberties would generally follow from sustained economic growth or is even a by-product of growing prosperity, a view that has tended to dominate the World Bank’s own institutional thinking about human rights. (Ingram and Freestone 2006)

This position is rooted in the writings of Bentham, who held that “natural rights” are “nonsense upon stilts”, and persists in the writings of many influential philosophers and legal scholars. It is also reflected in the popular press: for example, a recent leader in The Economist commenting on Amnesty’s campaign against global poverty was titled “Stand up for your rights: the old stuffy ones, that is; newer ones are distractions” (Economist 2007).

Or has communication been inadequate between the human rights and development communities? These two fields have evolved in parallel until now, and, while each has a well-established literature of conceptual, empirical, and policy work, these have rarely been shared. Human rights and development have operated through the two separate disciplines of law on the one hand and economics on the other.
Is the lack of effective integration of their agendas due to failures of understanding? The literature on critiques of HRBA is limited and difficult to pin down: Uvin (2004), Darrow and Tomas (2005), Robinson (2005) and Gasper (2007) provide useful reviews. Most often, development practitioners do not challenge the claim that human rights offers normative guidance and a framework for development. But they frequently express puzzlement over whether HRBA “adds value” to the process of development, or to the analysis of policy choices. Mary Robinson (2005) lists the major criticisms of HRBA expressed by development practitioners: it is too political and adversarial; it is unrealistic, expecting reform to be effective overnight, ignoring the underlying weaknesses of state capacity and social structures that are the reasons for major human rights concerns; it is too abstract, appealing to high principle but not concerned with policy choices where trade-offs are required; it ignores time and sequence, and does not take into account the realities of the development process, which takes a long time and sometimes needs to regress in order to progress; and it is too legalistic, relying on law that does not work in the context of weak institutional frameworks.

(p.88) These critiques are both conceptual and methodological. Do they arise from tensions or fundamental contradictions between human rights and development? Are there limitations to HRBA? Or are its methods underdeveloped since it is a new approach still in the making?
IV.1 Methodology: Legislation and Litigation

The promotion of human rights has historically used the power of law and ideas that are inherent in human rights. Stronger legislation and litigation have been effective instruments for defending and enforcing human rights in many countries. The fact that human rights are backed by law and so can be rigorously defined and enforced is in fact the distinctive strength of human rights, and gives it unique instrumental value. Since human rights are subject to binding legal obligations that can support legal claims by citizens, and to processes of accountability in international treaty bodies, they have a unique instrumental power.

One critique of HRBA is that the legal instruments are ineffective, and thus irrelevant, in developing country contexts. The use of these instruments assumes that the state is both able and willing to protect the rights of all citizens, including the poor and marginalized (Robinson 2005; Gasper 2007). The reality is that the court system everywhere (not just in developing countries) is often tipped in favor of the rich and powerful, who have greater access to it and greater means to influence and use it effectively.

Courts are admittedly particularly ineffective in developing country contexts where institutional capacities tend to be weak. Yet there is increasing use of legal instruments and the courts to defend the rights and interests of poor people is one of the new and effective ways in which human rights—and poverty reduction—is being advanced. For example, in a series of celebrated cases in India, the courts have established that housing is a necessary means to the constitutionally guaranteed right to life, giving people protection from forced evictions if no alternative housing is arranged. In many countries, international human rights law and processes are used effectively, for example in slum eviction cases in the Dominican Republic, where more than 70,000 slum dwellers were allowed to remain in their homes in defiance of a presidential decree after the UN Committee on Economic, Social and Cultural Rights condemned a planned eviction (UNDP 2000: 22). It is true that constitutional guarantees for human rights are often a dead letter, but bringing these to a test has been a means of defending human rights. In Argentina, for example, constitutional guarantees for citizens'
rights to seek state protection was put to the test when patients with HIV/AIDS were denied access to health care and medication (UNDP 2000: 22).

Hence the problem of court systems that favor the rich can be overcome when poor people make alliances with public defenders, or with human rights defenders in civil society. And in the longer term, when reforms are strengthened, the judicial (p.89) system can have important consequences for the security rights of poor people, which in turn have multiple implications for poverty reduction and development. Poor people can defend their rights to land, for example, and save themselves from falling into destitution. Poor women can defend themselves from trafficking. Such actions can have positive implications not only for the well-being of the person affected, but also for economic growth through productivity gains. Thus one of the major thrusts of HRBA as development practice has been to provide resources and other means to support programs to strengthen access to justice. The instrumental value of the legal tools of human rights for development has been demonstrated, for example, by Agarwal, who has shown that the position of women is related to land rights, and more recently to legally enforceable urban property rights to a house (Agarwal 1994; Agarwal and Panda 2007).

Nonetheless, the critique of the legal instrumentality of HRBA also reveals the need for much better understanding of the instrumentality of human rights as law. Under what conditions and in what ways does it empower poor people, and what multiplier effects does it have on society in expanding opportunities and economic growth? Under what conditions could legal enforcement of rights be counterproductive? A common critique of human rights is its pursuit of one specific right without regard to its consequences. Glendon (1991), in her critique of “rights talk” in the US, argues that excessive demands for individual rights without regard to the social context and to community has come to impoverish American political debates. In the same way, individual pursuit of rights at the expense of community can work against development goals. Disputes over resettlement—for example, over individual rights to livelihood versus the “development objectives” of expanding power supply and irrigation—reflect
such tensions between individual rights and development. These points will be taken up in section IV.3.

IV.2 Methodology: Naming and Shaming

Investigating abuses and using public exposure to shame the offender and effect behavior change has historically been the principal tool of human rights activism. However, naming and shaming can be counterproductive in the context of development cooperation. Naming and shaming assumes that the realization of rights is a matter of will and can be achieved overnight. It does not take account of the fact that realizing rights requires institutions, capacity and resources (UNDP 2000: 7). For example, the right to education cannot be achieved overnight, but requires the building of schools and the training of teachers. This applies not only to economic and social rights but also to civil and political rights. Access to justice requires the building of courts, as well as the training of lawyers and judges.

Naming and shaming by international governments and NGOs also ignores the role of geopolitics in international dialog on human rights. The use of human rights finger-pointing is selective, most often targeted against developing countries (p.90) and their governments by the powerful industrialized countries, led by the US and Western Europe, and often motivated by political or economic interests. Well-meaning international human rights activism in civil society can become a tool of geopolitical maneuvers. Naming and shaming is more likely to be effective when civil society targets their own governments, or corporations (UNDP 2000: 90, 113).

Naming and shaming is directly contrary to the methodology of development cooperation and is quintessentially about going beyond finding problems to finding solutions. While human rights successes have been built on mobilization of social movements, changes in law, and legal remedies for individual cases, development builds on policy change, building institutions and building infrastructure which opens up economic, social and political opportunities. The professional, analytical work of development is based on empirical analysis and assessment of policy options.

In a well-known article, Kenneth Roth, the president of Human Rights Watch, argues that the strength of international human rights organizations like his own is in the methodology of
naming and shaming to effect behavior change (Roth 2004), although this methodology is only appropriate in cases of arbitrary discrimination and disregard for human rights, where there is a clear violation, violated, and violator. He also argues that many of the human rights issues related to poverty, and to social and economic rights, do not fall into this category, because they are “social justice” issues, often related to economic policy issues, where the “right” policy is a matter of debate. It is hard to argue, for instance, that a person's right to education or food has been compromised or violated as a result of a particular economic policy. He therefore concludes that engagement of international human rights organizations with these issues should remain limited. He rightly argues that advocacy needs to go beyond exposing the denial of rights, and that unless an effective remedy can be advocated, public outrage at widespread poverty is mere “sloganeering”. He further argues that while the public might be outraged by widespread poverty—such as when a child dies from lack of health care—they would have “no idea whom to blame”, or that “the blame is dispersed among a wide variety of actors. In such cases of diffuse responsibility, the stigma attached to any person, government, or institution is lessened, and with it the power that international human rights organizations can have to effect change. Similarly, stigma weakens even in the case of a single violator if the remedy to a violation—what the government should do to correct it—is unclear” (Roth 2004: 67).

Persuasive as Roth's arguments are, they also pinpoint a major weakness in current human rights methodology. The problem is not that it is impossible to identify the violator and remedy, but that HRBA has not yet developed the tools to do so. For example, in the case of a child who dies from a lack of health care, it is true that human rights specialists—mostly lawyers, political scientists, philosophers and social activists—do not know much about alternative approaches to expanding health care. But they can work with other specialists to identify key policy variables (p.91) and alternatives, and hold to account those who could do more, and exert pressure for policy reform. In fact, strong international protection of intellectual property has kept prices of life-saving medicines such as AIDS retrovirals inaccessibly high. Pressure from some governments of the Global South and from development NGOs and think tanks, using a combination of solid technical analysis of policy
alternatives and targeted name-and-shame tactics, quite successfully forced governments and pharmaceutical companies to shift policy on the TRIPS agreement on intellectual property and drug pricing.

Some human rights organizations are beginning to engage with policy analysis and alternatives but this practice remains limited. So HRBA naming and shaming too often exposes the denial of a human right—“child dies of treatable illness”—but stops short of identifying the real violation and the violator, which is inadequate action on the part of of the duty-bearer to respect, protect and fulfil its obligations regarding the child’s right to health care and to life.

International NGOs such as Human Rights Watch and Amnesty International are powerful forces in global governance. If they are to play a role in addressing what the UN High Commissioner calls the “gravest challenge” to human rights, they need to invest in new partnerships with the development community’s policy analysts to advocate reforms in the economic, social and governance practices that constitute violations.

IV.3 Conceptual Issues: The Indivisibility of Rights

The principles of the indivisibility and interrelatedness of human rights are a cornerstone of HRBA, but are also the most problematic. They are a source of the major critique that HRBA is unrealistic and abstract and therefore offers little practical value in development planning for the practitioner. The principle of indivisibility holds that all human rights are necessary for a life of freedom and dignity, each one being individually valuable and none being more important than another. It rejects the notion of hierarchy among rights, and any basis for considering economic and social rights as less important than civil and political rights. Furthermore, it is argued that human rights are “interdependent”, meaning that these rights are consistent and enjoyment of one right facilitates—or makes possible—the enjoyment of another right. For example, without the enjoyment of the right to life, no other rights can be accessible; without the enjoyment of the right to education, the right to work will be curtailed. From the point of view of human development practice, it means that the promotion of human rights should not be subject to
hierarchy, but should be pursued simultaneously, in a “holistic” manner.

(p.92) For the development practitioner, particularly economists, this immediately raises the question of priorities in allocating resources and effort, since not all problems can be tackled at once. It has long been recognized among human rights theorists that the realization of economic and social human rights is subject to resource constraints. It is increasingly acknowledged that civil and political rights are also subject to resource constraints. For example, adequate institutions and infrastructure are required to vote as much as to access health care. In both cases, financial, human and other material resources are required for investment in these facilities as well as for running them. The central task of development planning and policy-making is allocating resources among competing priorities. The HRBA's principles of indivisibility would thus seem to close off all possibility for such allocation, particularly when combined with an absolutist adherence to human rights norms for each and every right of each and every individual as non-negotiable. HRBA becomes abstract and unrealistic.

Human rights theorists and institutions have responded to this issue with the principle of “progressive realization”—that state parties' obligation to realize economic and social rights must take account of historical reality and institutional and resource constraints. But this is hardly a solution, since more recently the Committee on Economic, Social and Cultural Rights specified that states have the obligation to realize immediately, rather than progressively, essential minimum standards and to remove discrimination, as well as an obligation of non-retrogression. All of these three obligations ignore the same institutional and resource constraints.

Another, related proposal has been to develop a concept of certain development activities as entitlements (Andreassen 1997; Sano 2000). But this faces the same problem as minimum standards.

The difference between essential minimum standards and human rights norms is difficult to interpret. The reality is that in most of the sixty or so low-human-development countries of the world, large proportions of people are in poverty, measured either by the monetary measure of $1 a day or by capability deprivation as in the Human Poverty Index. The HPI
values range from 30 to 65% for countries (UNDP 2005), with available data showing that a third to two-thirds of the population do not enjoy basic subsistence rights (Shue 1980). In many of these countries recent progress has been very slow, in part because economic growth has been stagnant (UNDP 2003; World Bank 2007), demonstrating that immediate realization of minimum standards is not a realistic goal. The fact that at the global level the world is far from achieving the Millennium Development Goals also shows that meeting essential minimum standards immediately is unrealistic.

Even the removal of discrimination requires resources and institutional reforms; for example, removing discrimination against girls’ education in many contexts requires training female teachers, installing adequate toilets for girls, and public debates about the value of girls’ education and equal rights of women to shift the (p.93) mindsets of community leaders and parents. And the principle of non-retrogression denies any justification for leaving individuals worse off.

In fact, as reviews by Uvin (2004) and Gasper (2007) show, the human rights community has been “averse to admitting conflicts of rights”, and has not done enough to address this issue. Leading scholars and practitioners such as Alston and Robinson urge the community to engage more in addressing the issue (2005). If this were to be pursued, it would be useful to make two kinds of distinctions. The first would be to distinguish between prioritizing resource use rather than prioritizing rights, and the second would be to distinguish between conflicting rights and their consequences.

Prioritizing Rights or Resource Use
The principle of indivisibility and interdependence contradicts prioritizing of the rights of individuals, but it does not contradict the need to prioritize resource use. As Darrow and Tomas emphasize, the indivisibility of rights “does not mean that all rights must be elevated to the same level of priority in programmatic terms. Resource and institutional constraints will often require the prioritization and realization of different rights for the purposes of policy choice” (Darrow and Tomas 2005: 503).

The attention of HRBA should therefore focus on empirical analysis of resource allocations in national budgets, in donor budgets, in NGO budgets, and so on. This analysis will need to
use the tools and information base of development economics to analyze and criticize government policy positions. The work currently being done on critical analysis of budgets from the point of view of children's rights, or of women's rights (gender budgeting) is an example of how HRBA can address resource issues. But such approaches can be expanded and applied to other areas that are relevant to the promotion of human rights. For the economist seeking the “added value” of HRBA, such exercises will show that HRBA raises new questions that policy-makers will need to answer.

Yet another path would be to work further on the state-citizen relationship and the state's capacity to meet its human rights obligations. Human rights are interdependent not only from the rights-holder perspective but also from the duty-bearer perspective. Just as an individual cannot enjoy a life of dignity and freedom with only a piecemeal realization of rights, a state is unlikely to commit itself to its human rights obligations piecemeal. The nature of the state and the state-citizen relationship is therefore fundamental to the realization of rights. But the institutional and financial capacity of a state is another condition of being able to protect, respect and fulfill the rights of citizens. HRBA needs to focus more on expanding the capacity of the state to meet its obligations, and expanding the resource base of the state. Here again, economic analysis will be needed, for example on choices in taxation policy.

However, another view sees human rights not as inherently a tool for resource allocation but as a tool for political action to challenge “elite capture” in an environment of power asymmetries (Darrow and Tomas 2005: 471–2). Ultimately, there are no “technocratic” answers to priorities that societies might set. Economics helps analyze the efficiency of resource use, but the ultimate decision depends on how the benefits are evaluated. Human rights bring ethical values into evaluating the benefits. The instrumentality of human rights is to resolve competing claims through the courts (Darrow and Tomas 2005). Another way would be through democratic, participatory consultation processes (Sen 2004; Osmani 2005).
**Conflicting Rights or Consequences of Policy**

The principle of indivisibility and interdependence is consistent with recognizing that action to fulfill one right can conflict with the enjoyment of another right or the rights of other individuals. For example, as Basu (1999) and others have argued, a policy to prohibit child labor, such as trade sanctions on export products manufactured with child labor, would drive out children from, say, carpet weaving for exports, but the consequence would be that the child and family suffer hunger and other privations, or that the child is sent to even more exploitative work such as prostitution. Critics say that HRBA does not recognize the need for sequencing. In fact, such policy positions are never a simple matter of trade-offs, but policy choices may be found that would achieve the most protection of the child's human rights.

The principle of indivisibility and interdependence would see all enjoyment of human rights as having a positive impact for the duty-bearer. But from the duty-bearer's perspective, policy action to protect and fulfill one right may have negative consequences for other rights. Precisely because of the complex interrelatedness of human rights in human lives, the repercussions are important. Investigating consequences, then, is critical to the further strengthening of HRBA. In such cases, it is also important to clarify and distinguish between what can be ethically acceptable to “trade away” and what cannot (see Basu 2007).

V. Human Rights and Development: The Way Forward

This chapter has shown that there are no inherent contradictions between human rights principles and development. Human rights principles, for example, do not contradict the demands of prioritization.

**p.95** The absolutist interpretation of human rights principles of indivisibility is simplistic and does not recognize the complexity of the concept nor of the contexts in which the principle is applied. This leads to a blind adherence to principles that amounts to little more than sloganeering, and when combined with the passionate zeal of the human rights defender, detracts from rather than adds to the credibility of HRBA. Indivisibility does reject the ranking of rights in a hierarchy of importance. But that is not inconsistent with prioritization of resources. The concrete challenge is to
develop the tools of analysis and advocacy that challenge resource use which is inconsistent with human rights priorities.

There are major limitations in the toolkit of HRBA, which stops short of identifying violations that lie in policies—economic, social and governance—which reflect the shortcomings of human rights obligations. The human rights field, dominated by law, philosophy and political science, has not engaged with real options for policy. The development field, on the other hand, dominated by economists and technical specialists, focuses on the analysis of policy options. Studies and debates are lively and ongoing. But these studies and debates are not connected to the normative priorities that human rights frameworks identify. It is often thought that economists have the “right answers” to policy choice and that human rights has little to add. In fact, there are no “right policy choices”. Economic and technical analysis can evaluate policy alternatives, pointing out which ones are most economically efficient, or technically effective. But the choice of policy depends on ethical choices over such trade-offs as that between disincentives to pharmaceutical companies to invest in innovation and the expansion of access to life-saving drugs today. It is the role of human rights to guide such policy choices.

But conventional analysis of policy options is not being done with human rights norms in mind. Yet all development policies—economic, social, governance—have huge implications for the fulfillment of human rights. Macroeconomic policies such as taxation have an enormous impact on human rights outcomes, and the choices that governments make in this area determine whether government is doing enough to respect, protect and fulfill human rights (Balakrishnan 2005). Recent work, such as the analysis of budgets and their impact on child rights, and an analysis of economic policies and state obligations under CEDAW (Elson 2006), are important examples of policy analysis for human rights. These are important beginnings in developing new tools.

Naming and shaming, and social mobilization, are distinctive tools of human rights. Human rights have a unique capacity for empowerment. But unless human rights advocacy is combined with a more careful analysis of the policy options
and the identification of the real violation, it will be merely rhetorical.

HRBA and the project to integrate human rights and development into a single undertaking, with common motivations and objectives, complementary and coherent methods and strategies, is still in the making. While critics from within the human rights field such as Roth (2004) propose a highly selective approach to invoking human rights concepts and to activism on poverty issues, others, such as Alston (2004) and Alston and Robinson (2005), call for greater engagement. Still others, such as Sano (2001), have pointed out that the two fields cannot be fully integrated. The shortcomings of HRBA identified in this chapter point to a need for greater integration. As Nussbaum explains, in comparing capabilities with human rights, we need the concept of capabilities and functionings to evaluate how societies are faring, to be able to make comparisons between the past and the present, between countries, and so on. The role of human rights, on the other hand, has a different focus: to help develop ethical norms that guide designs on institutional arrangements.7

The merger of human development and human rights as concepts is not a question but a fact. The idea of entitlement and human rights is an integral part of the concept of capabilities (Sen 1984). While the two concepts are not the same, their interconnection goes deeper than simply the sharing of broad visions. As noted in the 2000 Human Development Report, “Human rights and human development are close enough in motivation and concern to be congruous and compatible, and they are different enough in strategy and design to supplement each other fruitfully. A more integrated approach can thus bring significant rewards, and facilitate in practical ways the shared attempts to advance the dignity, well-being and freedom of individuals in general” (UNDP 2000: 19).

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(1) Meaning that each and every human right is individually important and should not be traded off for another, and that the different types of rights are mutually constitutive of one another.
(2) The universality of values is disputed by some on the grounds of cultural relativism. It is argued that international human rights regimes are based on Western values and that the Universal Declaration on Human Rights was drafted and adopted when many Asian and African countries were not independent. An extensive literature on cultural relativism has now emerged that accommodates cultural differences, including works of leading human rights scholars such as Jack Donnelly, Abdullahi Ahmed An-Na’im and Amartya Sen.

(3) This in itself can be subdivided into human rights-based approaches, human rights mainstreaming, human rights projects, implicit human rights work, and human rights dialog.

(4) This was a consistent line, for instance, in World Bank statements to the human rights community in the 1990s. See statements by World Bank representative Alfredo Sfeir-Younis to UN meetings in Geneva in the 1990s (Sfeir-Younis 2001). See also Wolfensohn (2005).


(6) The Universal Declaration of Human Rights makes clear that all rights are equally important. The concept of “indivisibility” is affirmed in the 1986 Declaration of the Right to Development and the 1993 Vienna Declaration and Programme of Action.