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## ■ A Human Rights Framework for Development Assistance

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The human rights obligations of states when they engage in development assistance are the focus of this paper. As well as outlining the application of the normative framework of human rights standards to development assistance, some opportunities, challenges and ways that human rights principles and standards can enhance the process and the outcomes of development assistance will be considered.

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### ■ THE COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**Article 2(1), of the International Covenant on ESCR states that “Each Party to the present Covenant undertakes steps, individually *and through international assistance and cooperation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” [emphasis added]**

The main legal basis for a consideration of the human rights obligations of states in development assistance is found in Art. 2(1) of the International Covenant on Economic, Social and Cultural Rights (ESCR), and the body of work of the United Nations Committee on ESCR (responsible for monitoring its application by states), including the General Comments that apply to the Covenant’s implementation.

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The UN Committee on ESCR has clarified that “in accordance with Article 55 and 56 of the Charter of the UN, with well-established principles of international law, and with the provisions of the Charter itself, international cooperation...for the realization of economic, social and cultural rights is an obligation of all States”.<sup>1</sup> International human rights standards give rise to a set of obligations of states regarding development assistance, both when acting bilaterally and also when acting through multilateral institutions.

The Committee on ESCR has consistently held that the obligations of states extend to state action as part of inter-governmental organizations, including international financial institutions such as the World Bank<sup>2</sup>, and has required that all state Parties take due account of their obligations under the Covenant when acting as members of such institutions.

The Committee's interpretation of the role of international assistance in the Covenant, and the body of work of Special Rapporteurs and independent experts on ESCR, point to the obligation of both donor states and developing countries that receive development assistance to respect, protect and fulfil the human rights in the Covenant. As such, both have mutual obligations for the protection and promotion of ESCR in the context of development assistance.

According to the Committee, states that are not able to provide at least minimum essential levels of economic, social and cultural rights – such as access to essential primary health care, essential medicines, the prevention and alleviation of hunger and essential levels of safe drinking water and of sanitation, shelter and housing for all – have an obligation to seek assistance (either financial or technical, bilateral or multilateral). For donors, this is taken to mean an obligation to facilitate the realization of ESCR wherever possible and provide assistance when in a position to do so, especially where this is necessary for the fulfillment of minimum essential levels of ESCR.

While the legal obligation to provide international financial and technical assistance remains contested, the status of an obligation to “do no harm” – to respect and protect rights in the provision of development assistance – has been consistently reaffirmed by the UN treaty bodies and independent experts and is increasingly widely accepted. As the UN Committee on the Rights of the Child has stated, “State Parties must respect and protect economic, social and cultural rights of children in all countries with no exceptions.”<sup>3</sup> The “do no harm” approach has also been recognized by the donors coming together in the OECD Development Assistance Committee.<sup>4</sup>



## ■ THE OPPORTUNITIES AND CHALLENGES IN APPLYING HUMAN RIGHTS STANDARDS IN INTERNATIONAL ASSISTANCE

So how can human rights standards contribute to more effective and human rights-based development assistance? What are the opportunities and the challenges?

Human rights standards provide an invaluable legal and policy framework that should underpin both the process and the intended outcomes of development assistance. The human rights principles of non-discrimination, participation, accountability, equality, a focus on the most vulnerable and marginalized sections of the population, and adequate prioritization of essential levels of economic, social and cultural rights, provide a normative and legal framework that is shared by donors and partner countries alike – by virtue of their human rights Treaty obligations. Human rights standards should inform policy dialogue and choices, poverty reduction strategies and the identification of priorities in aid policy and practice and ensure a focus on addressing poverty and discrimination in development assistance efforts.

Human rights standards also demand that there is effective participation of affected communities (including by the most vulnerable and marginalized or their representatives) in national development plans and poverty reduction strategies and processes. These standards offer a framework for ensuring that development policies and strategies are informed by the views and participation of people living in poverty. Participation also requires transparency and access to information on the purpose, amount and terms of development assistance, and how it is used, monitored and accounted for. Such transparency is critical to increase mutual accountability for the use of aid resources, between donors and partner governments, between the latter and their people and between donors and taxpayers.

But the application of human rights standards also present challenges to donors and developing country governments. Among these we can point to several that are relevant to donors:

- How can the human rights framework effectively guide donor choices among competing priority sectors, and inform aid allocation choices, especially when donor coordination and harmonization is still problematic?

- What tools and expertise is needed among donor agencies to integrate human rights principles and standards into their assistance programs at all levels?
- How can developing country governments and donors deal with competing priorities in a context of insufficient resources and capacity and how can human rights standards underpin the relationship between donors and partner countries? Some of this thinking and practice is already happening and some donors and partner countries are already integrating human rights in their development assistance<sup>5</sup>. Bodies such as the OECD DAC and the Office of the High Commissioner for Human Rights are developing tools and guidance to help donors in these efforts. The Accra Agenda for Action also includes the commitment that: “Developing countries and donors will ensure that their respective development policies and programs are designed and implemented in ways consistent with their agreed international commitments on gender equality, human rights, disability and environmental sustainability”<sup>6</sup>.

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While not framing its principles in terms of human rights obligations under international law, the DAC Action-Oriented Policy Paper on Human Rights and Development promotes a “do no harm” approach. In the paper, the DAC invites donor agencies to use 10 principles to inform the design of human rights policies and programming. Principle 8 – Do no harm – states that “Donors’ actions may affect human rights outcomes in developing countries in positive and negative ways. They can inadvertently reinforce societal divisions, worsen corruption, exacerbate violent conflict, and damage fragile political coalitions if issues of faith, ethnicity and gender are not fully taken into consideration. Donors should promote fundamental human rights, equity and social inclusion, respect human rights principles in their policies and programming, identify potential harmful practices and develop short, medium and long-term strategies for mitigating the potential for harm.”<sup>7</sup> Principle 1 goes further and states that “The link between human rights obligations and development priorities should be a regular feature of dialogue with partner governments at the political level as well as the development level. Donor countries should work with partner governments on ways to fulfil their obligations under international human rights law. Each country context will differ, and dialogue will need to take the partner government’s existing obligations as its starting point.”<sup>8</sup>

The inter-connected nature of development assistance and human rights – including economic, social and cultural rights – is increasingly being recognized. The mutually reinforcing links



between aid effectiveness and human rights are receiving increased attention, with human rights standards seen to provide a framework to strengthen current efforts to improve development results. While human rights standards, in themselves, necessarily cannot provide all the answers, they do provide a framework that places the human rights of people at the heart of choices in development cooperation. They place mutual obligations on both donors and partners to use development assistance, with focus on the marginalized and neglected, for the promotion and protection of human rights. Human rights standards provide a shared normative framework that should underpin policies and strategies for tackling poverty, discrimination and exclusion.

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## ■ ■ THE OFFICIAL DEVELOPMENT ASSISTANCE ACCOUNTABILITY ACT: GOOD FOR HUMAN RIGHTS

EXCERPTS FROM A SPEECH BY ALEX NEVE, SECRETARY GENERAL OF AMNESTY INTERNATIONAL – CANADA.

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Making the link between human rights and development assistance is good for development. That is certainly the fundamental premise of the Official Development Assistance (ODA) Accountability Act. But it is also important to look at the other side of this equation: making the link between human rights and development is also very good for human rights.

It is not just good for rights in the obvious sense that development assistance in the health sector, for example, which is well grounded in a human rights framework, will boost protection of the right of access to health care. It goes far beyond those direct connections. Pursuing development assistance with full regard for human rights standards has tremendous implications for two fundamentally important human rights concepts that, to date, have remained somewhat elusive and often contested.

The first of these is the indivisible and interconnected nature of all human rights – that is don't categorize rights, don't rank some higher over others. Indivisibility is a very powerful

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and important message, but it is often one that is very hard to make tangible and concrete. Pursuing a human rights approach to development may truly offer a way forward. In thinking of the human rights imperatives that must be addressed in launching a solid development initiative for a particular community, it is impossible, and now under the terms of the Act likely unlawful, not to address the full range of rights that are at stake.

Boosting the enrolment of children in primary education, for example, will involve the right to education of course, but also women's equality right, the protection of minorities, the freedom of expression, association and assembly, religious freedom, and perhaps protection for child soldiers and many others. The indivisibility of rights through this lens becomes evident in ways that often end up being disguised and overlooked in human rights advocacy. This is very important.

The second reason arises from the fundamentally important notion that the right to have your human rights protected is universal – i.e. all rights protected for all people, but also that the obligation to protect human rights is also universal – i.e. all rights protected by all governments.

This struggle to secure recognition of the principle that governments do indeed have obligations to protect human rights beyond their own borders has been so important and in so many contexts. It arises with respect to the foreign actions by government officials, by law enforcement personnel, or even by soldiers or private companies, when they go abroad.

The ODA Accountability Act is remarkable as a notable advance on this front. Its very premise is that human rights obligations do extend beyond our borders. Securing legal recognition of the extra-territorial reach of human rights obligations is not just essential to better development; it goes far in shoring-up the strength and integrity of the international human rights system in its entirety. And that is another reason why this Act is very welcome from a human rights perspective.

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