

**Addis Ababa University  
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Faculty of Law**

**Relevance and Challenges of Human Rights-Based Approach to  
Development: A Case Study on the Ethiopian Education Sector**

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Sidist Killo, Addis Ababa

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# APPROVAL SHEET

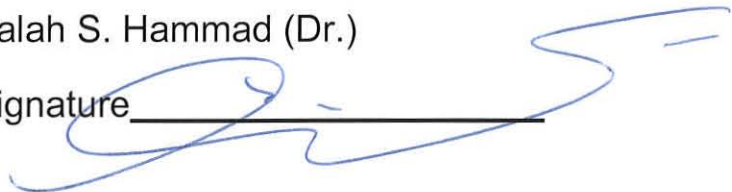
Topic: Relevance and Challenges of Human Rights-Based Approach to Development: A Case Study on the Ethiopian Education Sector

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## Acronyms

AU	The African Union
CEDAW	Convention on Elimination of all Forms of Discrimination Women
CIDA	Canadian International Development Agency
CRC	Convention on the Rights of the Child
EFA	Education for All
EPRDF	Ethiopian Peoples' Republic Democratic Front
ESDPs	Education Sector Development Programs
ETP	Education and Training Policy
EU	European Union
FDRE	Federal Democratic Republic Ethiopia
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade
GDP	Gross National Product
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IMF	International Monetary Fund
MDGs	Millennium Development Goals
NGO	Non –Governmental Organization
IGO	Inter-governmental Organizations
MoFED	Ministry of Finance and Economic Development
NHRI	National Human Rights Institutions
NZAID	The New Zealand's Agency for International Development program
OAU	Organization of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
PASDEP	Plan for Accelerated and Sustained Development to End Poverty
TTI	Teachers Training Institutes
UNDP	United Nations Development Program
UNESCO	United Nations Educational, Scientific and Cultural Organization
WB	World Bank



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**References**

**Declaration**





## CHAPTER ONE: INTRODUCTION TO THE RESEARCH PROPOSAL

### 1.1 Background to the problem

The human rights-based approach to development is a newcomer among development policies, although it has historical analogies. Human rights were on the agenda as early as the colonial era, especially in connection with the slave trade.<sup>1</sup> 'Developmentalism' or the 'civilizing mission' was an essential part of the colonial period.<sup>2</sup> As always, historical analogies can be found even further back in time: thinkers from Locke to Lenin wrote on social development.<sup>3</sup>

Modern development policies are usually thought to have begun in the 1940s with the establishment of the Britton Woods institutions: the IMF, the World Bank and the General Agreement on Tariffs and Trade (GATT). The 1940s marked the beginning of the decolonization process and, with the 1948 Universal Declaration of Human Rights, the beginning of the human rights era, modernization and growth were the buzzwords of early development policies. The hypothesis was that the industrialization process could be triggered off by capital investments. Traditional society stood, it was assumed, in the way of modernization and development.<sup>4</sup> To enable the 'take-off' of economy, traditional aspects of society were to be done away with.<sup>5</sup>

The relationship between law and development has long been disputed. The so-called 'law and development' discourse within the American academy sought to define the role of legal institutions in the development process. The conclusions were somewhat pessimistic: law, according to Professor Thomas Franck, was neutral on development; to focus on law instead of political, economic and social factors was a mistake.<sup>6</sup> Professor David Trubeck identified paradoxes between legal autonomy and legal instrumentalism: legal education was promoted to enforce the rule of law without acknowledging that law could also be used instrumentally to curb democratic reforms. Trubeck's case study on legal reforms in Brazil in the 1960s demonstrated

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<sup>1</sup> Sammuli Seppanen, Possibilities and Challenges of the Human Rights-Based Approach to Development, 2005, at 11

<sup>2</sup> *Ibid*

<sup>3</sup> *Ibid*

<sup>4</sup> *Ibid*

<sup>5</sup> Walt Whitman Rostow, The Stages of Economic Growth: a Non Communist Manifesto, 1967, at. 64

<sup>6</sup> Seppanen, *Supra* note 1

that the then authoritarian Brazilian government was more interested in enforcing its control over the economy than promoting free market economy as had been intended by the rule of law reformers.<sup>7</sup> Moreover, a rights-centered legal system was not particularly relevant to the Brazilian markets where a few powerful groups were actively supported by the government's economic policies.

In the 1970s, structuralism, Latin American dependency theories and Marxism permeated the development studies. Researchers turned to examine the structures of global economy and its centre-periphery relations.<sup>8</sup> At the policy level, the focus was on the redistribution of wealth and the New International Economic Order -a political initiative intended to reform unequal global trade relations. Within the law and development discourse researchers began to analyze the mechanisms through which law was employed in colonial and post-colonial relationships.<sup>9</sup> The modernist instrumentalist conception of law holds that law and development are related causally as in law shaping economics. Especially in the process of large scale institutional transitions to capitalism (total economic realignment instead of partial liberalization) the experience of post-communist reform suggested that law has become a tool for the implementation of economic theory.<sup>10</sup> This, however, was, according to Greenberg, one 'especially suited to American corporate penetration of the economies of the least developed countries.'<sup>11</sup> David F. Greenberg also saw that law played a role in the economic exploitation of developing countries. He argued within the modernist discourse 'alternative models of development (e.g., Chinese, Russian, and Cuban) in which legal development would have played a different role ...were given little consideration for political reasons and because they did not provide opportunities for foreign investment'.<sup>12</sup>

Another concept of development, which began to be used in the 1980s to describe development policies which had their theoretical background in classical economics, was 'neo-liberalism'<sup>13</sup>

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<sup>7</sup> *Ibid*

<sup>8</sup> P.W. Preston, *Development Theory: An Introduction*, 1996, at 179

<sup>9</sup> Seppanen, *Supra* note 1, at 12

<sup>10</sup> Ioannis Glinavos, 'Neoliberal Law: Unintended Consequences of Market-Friendly Law Reforms', *Third World Quarterly*, 29:6 (2008) at 1087

<sup>11</sup> Seppanen, *Supra* note 1, at 12

<sup>12</sup> *Ibid*

<sup>13</sup> *Ibid*

Development was, for this concept, not to be achieved through social engineering but by setting the economy free. The connection between law and development in the neoclassical economics has influenced the design of policies for the promotion of development and led to the world-wide expansion of market liberalization and stabilization packages.<sup>14</sup> One of the milestones of the neo-liberalist agenda, a ten-point program for the development of Latin American economies put up in 1989 by John Williamson, called for fiscal discipline, the reordering of public expenditure priorities from subsidies to infrastructure, tax reductions, liberalization of interest rates, lower currency exchange rates, trade liberalization and liberalization of foreign direct investments, privatization of state property, deregulation and the effective enforcement of property rights.<sup>15</sup> Those policies came to be crystallized in the Washington consensus, which became the main policy package promoted in Latin America in the 1980s and in Eastern Europe after the collapse of communism. The Washington Consensus carried within the range of economic reform measures it promoted a conception of the role of law as the guarantor of private property. Reforms based on that model promoted a minimalist version of law solely concerned with the definition, protection and exchange of property rights. These types of reforms are referred to as neo-liberalism.<sup>16</sup> The neo-liberal development policies also began to run towards the wall as structural adjustment programs led to economic disasters in the developing world. Its policies' cons and prones shall be discussed in the next Chapter.

The emergence of the human rights-based approach coincided with the coming to an end of neo-liberal policies. The approach built upon the rights-based development discourse which had taken off during the 1970s and the early 1980s. At the time, the HRBA was intended as radical break from the neo-liberal development paradigm. In 1998, Mary Robinson, the then UN High Commissioner for Human Rights, stated;

'For too long the objectives and the success or failure of interventions had been measured narrowly -according to the criteria of macroeconomics.'<sup>17</sup>  
Human rights had been off the development agenda also as a result of

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<sup>14</sup> Glinavos, *Supra* note 10 at 1087

<sup>15</sup> Seppanen, *Supra* note 1, at 13

<sup>16</sup> Glinavos, *Supra* note 10, at. 1087-1088

<sup>17</sup>The Rights Way to Development: A Human Rights Approach to Development Assistance: Policy and Practice, 1995 at 24

international politics. Until the 1980s, developing countries opposed human rights clauses in negotiations with Western countries. Human rights had been introduced into the European Communities' development agenda before the end of the Cold War, but only in terms of unilateral conditionality of development aid.<sup>18</sup>

On the other hand, human rights were concern to some political actions undertaken by politicians. During the atrocities of the Idi Amin regime in Uganda, human rights emerged as a natural device with which to sanction strongly objectionable regimes.<sup>19</sup> In the last three decades, the political momentum for promoting human rights in development cooperation gathered pace. The developing world lost its main argumentative devices, socialism and Marxist theory in their various forms, which it had previously employed against human rights universalism.<sup>20</sup>

In 1995, the Australian Human Rights Council published an influential guidebook on the HRBA, *The Rights Way to Development*.<sup>21</sup> The Council's policy paper was directed against the economic growth model which, the writers maintained, equated development with economic growth and usually called for the establishment of a free market economy. The Policy Paper saw that development should be seen as a subset of human rights.<sup>22</sup>

During the 1990s, development agencies adopted the human rights-based approach. UN agencies, such as UNICEF, adopted the approach to their mission statements. UNICEF produced a policy guideline on the human rights-based approach to development in 1999.<sup>23</sup> In the 1980s, UNICEF's policy guidelines had focused on tangible goals such as the reduction of infant mortality through water well drilling; now the organization formulated its policies on the basis of human rights conventions.<sup>24</sup>

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<sup>18</sup> Karin Arts, *Integrating Human Rights into Development Cooperation*, 2000, at 168

<sup>19</sup> Seppanen, *Supra* note 1, at 14

<sup>20</sup> *Ibid*

<sup>21</sup> Jorge Daniel Taillant, *A Rights Based Approach to Development Presentation to the World Social Forum Seminar on Globalization and Human Dignity March 2, 2002* <http://www.cedha.org.ar/docs/doc78.htm>, last visited on 5 Jan. 2009

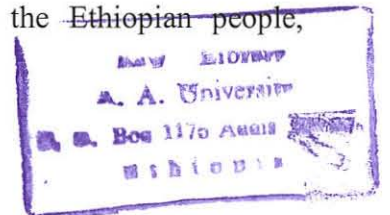
<sup>22</sup> *Ibid*

<sup>23</sup> Seppanen, *Supra* note 1, at 14-15

<sup>24</sup> *Ibid.*, at 15

The human rights-based approach turned out a development mainstreaming with the publication of UNDP's 2000 *Human Development Report*, titled *Human Rights and Human Development*, which presented a systematic analysis of the HRBA. According to the authors of the report, human rights were to be taken as development objectives in themselves, rather than as instruments for economic growth. Human rights brought policy changes also for the UNDP. In a report published in 1949, the UNDP's guidelines were defined almost in terms opposite to the present HRBA approach: support for self-determination, self-reliance, neutrality and respect for sovereignty.

The human rights-based approach to development (HRBA) is a methodology, a process and a goal in development work. It works together with development approaches to provide more effective outcomes for human beings living in poverty towards a life in dignity. Throughout the 1990s the debates about human rights and development have increasingly converged. This thesis with the title: "Relevance and Challenges of Human Rights Based Approach to Development: A Case Study on the Ethiopian Education Sector" asks whether the emerging human rights-based approach to development can deliver meaningful improvements to the Ethiopian people, particularly in their life of education.



## 1.2 Objectives of the Study

Though it has its foundations in the international human rights instruments, the HRBA as an approach to development is a new concept. The main objective of this research is to assess the working legal and political documents which are developed and in force in the education sector of Ethiopia and see them against this approach.

### Specific Objectives include:

- to discuss the HRBA to development by examining the difference in perspectives and the debates surrounding the concept
- to assess the laws, international, regional and domestic, which are in force to day on education and relevant domestic political policies designed by the Ethiopian government

- to examine indicators and indexes, by which the realization of human rights may be measured
- to see what place does human rights have in our government's endeavor to attain development in general, and provide and expand education in particular by looking into the policies it designed and the laws it enacted (or ratified).
- to relate and contrast the HRBA to other development approaches and international law concepts
- to make recommendations and suggestions on mainstreaming human rights in development projects

### **1.3 Statement of the Problem**

In the pre-human rights era development industry, when growth was the central concern, the objectives of development policies had not been the wellbeing of the individual but economic growth. Such policies were predominant in the 1980s for the developed nations and it, to some extent, still subsists to date in developing nations. The policies has reduced human beings to capital instruments or to just means of production, and regarded them as obstacles to the development process rather than its beneficiaries. This economically centered development has, consequently, caused problems such as economic and social untenability, hypocrisies, and injustices.

Argument is made by some in favor of the economically-centered development approach. The argument attributes some instances of economic growth to oppressive, non-democratic forms of governance. Perhaps most notably this was the case with South Korea's development into a modern state.<sup>25</sup> In China, as well, one-party control remains tight amid economic vibrancy than China have seen at any time since the communists took power six decades ago.<sup>26</sup>

From a utilitarian point of view, non-democratic forms of governance have been seen as instruments for achieving development for the good of the great number of citizens at least the

<sup>25</sup> McColm, R. Bruce, "the Comparative Survey of Freedom 1992-1993: Our Clouded Hour." in McColm, ed., *Freedom in the World, the Annual Survey of Political Rights and Civil Liberties, 1992-1993* (New York, 1993) at 295

<sup>26</sup> Roland Rich and Lynne Reinne, 'Pacific Asia in Quest of Democracy,' *Journal of Democracy*, Vol. 41:3 (2007) at 170

first stages of economic development. Some scholars, and, of course, policy designers, hold that the central question for many third world countries continues to be whether or not change will in the foreseeable future bring them economic development.<sup>27</sup> This would include projects to the effect that many people are to evacuate their own area for the sake of building a bridge, or not able to attend primary education because a government may allot significant amount of its budget to build infrastructure like roads at the expense of establishing primary schools. Such projects or decisions do not focus on the individual.

What is to be underlined here is that no body's human rights can be compromised by economic objectives no matter what their effect to the Gross Domestic Product or their contribution to poverty reduction. Human rights represent the 'hope' for the development community. They are seen as the final guarantees of the benevolence, sustainability, and sanity of development projects.

It is evident that ratifying international human rights instruments and having detailed human rights provisions in constitution, which Ethiopia is good at, do not by themselves guarantee a human rights-based development. Thus, though bringing the international human right laws into the domestic system is commendable, a lot remains to be done by the Ethiopian government in mainstreaming those human rights concepts in the development and education policies when designed as well as enforcing same in practice when implemented.

#### **1.4 Research Questions**

This research primarily sees the extent of human rights relevance in development process and is looking for answers to the following questions:

- Can human rights transform the underpinnings of development industry?
- What would be the practical implication of HRBA to Education in Ethiopia?
- Is the HRBA itself an adequate policy tool?
- Have the important problems of education been solved in international human rights law?
- To what extent does our government progress to education? To what extent do Ethiopian children have access to educational services? Is the quality of education improving?

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<sup>27</sup> Mahmood Monshipouri, *Democratization, Liberalization and Human Rights in the Third World*, 1995 at 18

## **1.5 Methodology of the Study**

A combination of historical, comparative and critical analysis methods of research have been used to arrive at the final conclusion reached. The sources from which information analyzed in the course of the research were drawn from international and regional human rights instruments, domestic legislations, policy documents, statistical figures (that represent the quantitative languages), books, journals and magazines. An extensive library work has been undertaken to collect background information on the subject under consideration. The author also toured to governmental institutions to collect relevant policy documents and statistical data from which the relevance of human rights in Ethiopian situation is judged. The statistical data may not be made with a view to measure human rights in development. But this author does use the data to make conclusion to the problem at hand. Numbers and percentages are also available from internet sites of non-governmental and inter-governmental institutions which undertake study on Ethiopian reality.

In general, the following methodologies were employed:

### **A. Historical Method**

In this study attempt was made, as seen in the background of the problem, to trace back the genesis and historical analogies and further developments of the human rights-based approach to development. Such an approach would certainly help the reader appreciate the role being played by human rights in development.

### **B. Comparative Method**

Although comparison is not the primary method of this research work - as this work does not have the intention to place Ethiopia in the pecking order of the global human rights protection and promotion - the method's relevance in some part of the thesis is still apparent. The definition of HRBA on the part of different development agencies is compared and contrasted. Comparison with Ethiopia is also made with respect to human rights as enjoyed by an African state or two. The other relevance of this method is manifested in the relationship of HRBA to other development policies and concepts of international law.

## **C. Critical Method**

As one of the objectives of this paper work is to see the relevance of the HRBA to Ethiopian situation, critical analysis of the domestic policy documents and laws as well as statistical data from different sectors of the government was made with the view to see if the approach has been Ethiopianized (or adapted in Ethiopia) and make recommendations therefrom.

### **1.6 Scope of the Study**

This work focuses on education and development policies of the country that are based on human rights, specifically, the human rights-based approach to education. The paper does not provide step-to-step guidelines for making human rights a reality in the sector, though. This is because the human rights-based approach functions at the meta level of development policies.

Even though the focus of the study is on policies, they are examined by large in the international legal context. This is necessitated by the human rights/based approach itself, which derives its legitimacy from human rights and, thus, from international law. The relevant internal laws with respect to the educational sector Ethiopia will also be examined. Hence, it should be mentioned that the study examined focus, in the theoretical framework part, only the social right of education.

### **1.7 Significance of the Study**

The paper work will focus mainly on the planning of development programs and projects mainstreaming human rights and concentrates on indicators used in the context of human rights laws. While the indicators can be used for different purposes such as assessing the human rights situation in a country or for the purpose of diagnosing appropriate strategies, the thesis discusses how indicators can be used to design and implement development projects. It would help readers as it provides not only methodological tools for the definition of human rights indicators, but also to inspire more consistent practices as regards assessment of the human rights impact of development program.

There has not been any research work on HRBA in the Ethiopian context. As this work aims to address certain pragmatic needs, the thesis is significant in providing policy designers, especially education policy designers, with tools by which to plan and test policies/projects with human rights indicators.

### **1.8 Limitations of the Study**

This research makes connection between human rights and economic development and raises human rights indicators expressed or reduced in numbers. Indicator and statistics works mostly in natural science study, though not totally irrelevant to social sciences. When employed in social science study, indexes and indicators are the products of someone's interpretive work - of his political views, preferences, and whims - and that there will always be somebody opposing these views and discrediting whatever has been built upon them. This is true to human rights which are an infinitely complex matter and it would seem banal to reduce human rights situation of a country to number. Also, at times, it can be impossible for a lawyer to evaluate the accuracy and compatibility of the statistics.

Statistics, with its various purposes, are made available by many development agencies, governmental and non-governmental. The statistics, nonetheless, differ in relation to their reliability, methods and areas of research. Considering the fact that the source of domestic data is predominantly the government, reliability remains to be this paper's concern. Their compatibility in terms of time is also the other limitations given the fact that the figures are not updated continually.

### **1.9 Organization of the Thesis**

1. **Preliminary part-** This part of the study mainly includes, cover page, preface, acknowledgment and acronyms.
2. **Chapter One** – This is an introductory part of the thesis and includes background of the problem, objective of the research, statement of the problem, research questions, methodology, and the scope, significance and limitation of the research.

3. **Chapter Two** –This Chapter presents first an overview of the HRBA to development: how the human rights-based approach is defined and understood and the surrounding argument in defining the concept and its relationship and difference with related international law concepts are sorted out.
4. **Chapter Three** – This Chapter examines means to measure human rights impacts, particularly the ways in which indicators and indexes are employed to evaluate human rights conditions.
5. **Chapter Four** – This one presents a case study of the human rights application in the Ethiopian educational sector. In so doing, it assesses the legal and policy regime governing the sector to see how bad or well human rights are protected and promoted in the process.
6. **Chapter Five** – This final chapter forwards the recommendations and conclusions of the research.

## CHAPTER TWO: CONCEPTUAL FRAMEWORK

### 2.1 Definitions

#### 2.1.1 Different Perspectives of the Concept Human Rights-Based Approach to Development

The human rights-based approach is discussed differently in different frameworks. In particular, there is a substantial difference between 'legal' and the 'non-legal' approaches to HRBA. The distinction between law and non law is essential for the legal discourse. As legal concepts, human rights obligations must be found in accordance with the doctrine of sources of international law. In which case, the content of right, and therefore the strategies to realize it, the right-holders and the duty-bearers can be seen from the international, regional and national levels.<sup>1</sup>

Non-lawyers are likely to find the direct correlation between law and the human rights-based approach and the discussion that necessarily follows that connection somewhat irrelevant for development issues. They are to treat human rights as 'political' concepts. Yet, international law, and human rights law as a branch of it, distinguishes itself from other fields of human behavior such as international politics. The distinction is based on legal normatively.<sup>2</sup> The question is whether HRBA to development is a right of its own.

In the international plane, to qualify as a legal argument, the claim must be based on the sources of international law derived from article 38(1) of the Statute of the International Court of Justice which are, principal sources; international conventions, international custom, and the general principles of law, and subsidiary sources; judicial decisions and the teachings of the most highly qualified publicists of the various nations. Everything that either falls short of these norms or goes beyond them is not law. Major international human rights instruments include the Universal Declaration of Human Rights<sup>3</sup>, the two covenants of 1966 - the International Covenant on Civil

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<sup>1</sup>Orest Nowosad, A Human Rights Based Approach to Development: Strategies and Challenges, National Institutions Team Office of the High Commissioner for Human Rights, <http://www.nhri.net/pdf/African4thNhri/Novosad%20Development.pdf> last visited on 5 Jan. 2009

<sup>2</sup>, Sammulu Seppanen, Possibilities and Challenges of the Human Rights-Based Approach to Development, 2005 at 27

<sup>3</sup> The Universal Declaration of Human Rights, UN GA Res. 217A (III), 10 December 1948, UN Doc. N810 (1948),71

and Political Rights (ICCPR)<sup>4</sup> and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>5</sup> -and other international treaties such as the Convention on the Elimination of all Forms of Racial Discrimination<sup>6</sup>, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>7</sup> and Convention on the Rights of the Child.<sup>8</sup> Regional human rights regimes such as African (Banjul) Charter on Human and Peoples' Rights<sup>9</sup> have also been significant for the enforcement of human rights obligations.

There should exist a specific international legal being called 'the right to HRBA' in a treaty. Yet we could not find such a right in any of those international treaties. Thus it is certainly not a treaty and it is probably not a 'teaching' either, even though it has been researched by the 'most highly qualified publicists of the various nations.'<sup>10</sup>

To say it is a customary international rule is not less clear. What is customary law is, of course, a matter of debate. Whether the HRBA qualifies as customary law depends on one's assessment on the establishment of settled practice and *opinion juris* and one's definition of HRBA.<sup>11</sup> Had the approach been based on international legal obligations, it would have been part of any of these sources of international law. Unfortunately enough, the approach is not a human right in its own right and cannot make international human right obligation. The concept is developed and defined out side of the binding international human rights regime. However, the contents of its definition, some of which examined below, vary a lot.

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<sup>4</sup> International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), adopted 16 December 1966, entered into force 23 March 1976, United Nations Treaty Series (UNTS) No. 14668, 6 International Legal Materials (1967), 368.

<sup>5</sup> International Covenant on Economic, Social and Cultural Rights, GA Res. 2200A (XXI), adopted 16 December 1966, entered into force 3 January 1976, UNTS No. 14531, 6 International Legal Materials (1967), 360.

<sup>6</sup> Convention on the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, UNTS No. 9464, 5 International Legal Materials, 352

<sup>7</sup> Convention on the Elimination of All Forms of Discrimination against Women, adopted 18 December 1979, entered into force 3 September 1981, GA Res. 34/180, UN Doc. A/34/46 (1979), 19 International Legal Materials (1980), 33

<sup>8</sup> Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, UNTS No. 2753

<sup>9</sup> African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force Oct. 21, 1986

<sup>10</sup> Seppanen, *Supra* note 2 at 29

<sup>11</sup> *Ibid*

### 2.1.2 Some Definitions Examined

If the international human rights system does not offer the 'right', and consequently the definition, of HRBA, then where could we get the concept and its definition? Partly because the international human rights system is silent about the approach, no universally accepted legal definition exists on it. The HRBA, however, builds on previously agreed human rights conventions. In principle, the most important reason for its legitimacy is those conventions. The approach is, therefore, restatement of existing international legal obligations.

Nonetheless, various organizations provide definitions on the HRBA which depart from the legal human rights framework. The approach is often discussed under terms that cannot be directly attributed to human rights law. The United Kingdom's Department for International Development, for instance, lists 'making budgets transparent and participatory' and 'supporting the move within civil society away from solely a service delivery role towards building local capacity' under its human rights policy instruments.<sup>12</sup> The objectives are not incompatible with human rights law but they hardly fall within the wording of any individual hard-law treaty provision.<sup>13</sup>

In 2003, the Swedish parliament passed a bill titled *Shared Responsibility: Sweden Policy for Global Development*, which made the human rights-based approach to development a possibility for alliance-building among donor states. The bill lays down Sweden's development policies, in which human rights play a prominent role. Respect for human rights is the first-mentioned element among the elements of Swedish development policy. The bill does not provide an explicit definition for the human rights-based approach but lists some of its attributes. Human rights are, according to the bill, based on the idea that individuals have rights and states have obligations. Human rights 'represent a minimum level of rules for any society that aspires to fulfill the vision of a dignified life for all'.<sup>14</sup> In so doing the bill made cross-reference to human rights that should be respected in the affairs of the state.

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<sup>12</sup> United Kingdom, Department for International Development, *DFID Human Rights Review: A review of how DFID has integrated human rights into its work*, (DFID: London, 2004), [http://www.dfid.gov.uk1/pubs/files/hum rights rev full. PDF](http://www.dfid.gov.uk1/pubs/files/hum%20rights%20rev%20full.pdf) last visited on 5 Jan., 2009 Also See Seppanen, *Supra* note 2 at 16

<sup>13</sup> Seppanen, *Supra* note 2 at 16

<sup>14</sup> *Ibid.*, at 19

The other European country with a developmental program referring the wording and idea of HRBA is New Zealand. The New Zealand's Agency for International Development program (NZAID) has as its central focus of poverty elimination through sustainable and equitable development.<sup>15</sup> As per the program poverty and inequality are not simply development issues and New Zealand, together with other members of the international community, is obliged under international law to address these as human rights issues. Integrating human rights and development requires bringing together the standards and principles of international human rights with the plans, policies and processes of development.<sup>16</sup> Hence, the NZAID's approach towards the HRBA seems to be that it is the restatement of the existing international human rights obligations.

The Canadian CIDA has produced an internal memorandum which defines its position in relation to the concept ('the promotion of human rights has been a fundamental element of Canadian foreign policy') and provides examples of its human rights policy papers for integrating human rights into development programming. The memorandum identifies the following key features in the human rights approaches to development:

- 'the fulfillment of human rights as an objective of development and a means to achieving development goals;
- a holistic approach that connects aspects of peoples' lives e.g. health outcomes-educational achievement-full citizenship;
- the accountability of states and other duty-bearers;
- a direct link between programming and the international human rights framework;
- integration of principles underlying international human rights instruments into all development policy and programming e. g. non-discrimination and

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<sup>15</sup> Human Rights Policy Statement, New Zealand Agency for International Development Ministry of Foreign Affairs and Trade, Wellington <http://www.nzaid.govt.nz/library/docs/nzaid-human-rights-policy.pdf> last visited on 5 Jan. 2009

<sup>16</sup> *Ibid*

participation a move from charity to empowerment, sometimes described as a move from need-based approach to a rights-based approach.<sup>17</sup>



CIDA's view to HRBA is comprehensive. It requires integration of principles underlying international human rights instruments into all development. It upholds not only a direct link between programming and the international human rights framework; it also says that the fulfillment of human rights as an objective of development by making human rights a goal for development. It also holds against hierarchical relationships among rights by taking a holistic approach of human rights as a guide.

The concept of human rights based approach is also contained in European Union (EU) development policies in five legal principles, namely: express application of the international human rights framework; empowerment of rights-holders; participation in one's own development); non-discrimination and prioritization of vulnerable groups; as well as accountability of duty-bearers to rights-holders.<sup>18</sup> The Development policies thereby raise human right principles and bring up alien concepts such as 'empowerment'.

Looking into the above definitions of HRBA indicates the differing perspectives of the organizations towards the approach. While those domestic and regional development organizations have varied in their approaches, there have been attempts made at coordinating the use of development policy concepts at the international level. Specifically, there is consensus among UN agencies on the main components of a HRBA to their Development Cooperation.

The common understanding on the definition of the human rights-based approach to development, which was agreed into at an Inter UN Agency workshop in Stamford, USA, 2003, remains at a very general level regarding the approach's actual significance.<sup>19</sup> The common understanding lays down the following elements in the UN's human rights-based approach:

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<sup>17</sup> CIDA, Human Rights Approaches to Development (HRAD), Also see Seppanen, *Supra* note 2, at 19-20

<sup>18</sup> Human rights based approaches in EU development policies; Research was led by International Human Rights Network (IHRN). See at [http://www.ihrnetwork.org/eu-development-policies\\_215.htm](http://www.ihrnetwork.org/eu-development-policies_215.htm) last visited on 5 Jan. 2009

<sup>19</sup> Human Rights and the Millennium Development Goal, Making the Link United Nations Development Programme, Oslo Governance Centre Oslo, Norway <http://hurilink.org/Primer-HR-MDGs.pdf> last visited on 5 March, 2009

- All programs of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the UDHR and other international human rights instruments.
- Human rights standards contained in, and principles derived from, the UDHR and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.<sup>20</sup>

Hence, the UN's Human Rights-Based Approach to Development Cooperation is based on the principles of human rights. The human rights principles guiding development corporations are, according to the statement, 'universality and inalienability, indivisibility, inter-dependence and inter-relatedness, non-discrimination and equality, participation and inclusion, accountability and the rule of law'.<sup>21</sup> And these principles together with the international human rights standards guide every step of the way in the development cooperation and programming undertaken by UN agencies.

In a more detailed policy document, one of the UN agency, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has defined HRBA to development as 'a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights'.<sup>22</sup> The OHCHR identifies five elements in the concept. These are an 'express linkage to rights, accountability, empowerment, participation, non-discrimination, and attention to vulnerable groups.'

The Office discussed what it meant by those elements. For OHCHR, the express linkage to rights means that development objectives should be defined in terms of particular rights, that is, 'an essential ingredient of human rights approaches'.<sup>23</sup> Accountability signifies the identification of

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<sup>20</sup> *Ibid*

<sup>21</sup> *Ibid.*, see, also, Commission on Human Rights, The right to development: study on existing bilateral and multilateral program and policies for development partnership, E/CN.4/Sub.2/2004/15, August 2004, P. 21-25.

<sup>22</sup> *Ibid.*, See also UN OHCHR, *Rights-based approaches*, <http://www.unhcr.ch/development/approaches-04.html>, last visited on 8 Jan 2009.

<sup>23</sup> *Ibid*

'claim-holders (and their entitlements) and corresponding duty-bearers (and their obligations)'. Accountability also calls for 'the development of adequate laws, policies, institutions, administrative procedures and practices, and mechanisms of redress, and accountability that can deliver on entitlements, respond to denial and violations, and ensure accountability'.<sup>24</sup> The OHCHR sees empowerment as means for putting the human being at 'the centre of the development process directly, through their advocates and through organizations of civil society'.<sup>25</sup> Participation is not defined in any more detail: 'rights-based approaches require a high degree of participation, including from communities, civil society, minorities, indigenous peoples, women and others'.<sup>26</sup> In the OHCHR's understanding of the HRBA, 'particular attention is given to discrimination, equality, equity and vulnerable groups'. Vulnerable groups include groups such as 'women, minorities and prisoners'.<sup>27</sup>

Many of the definitions discussed so far have similar phenomenon towards the HRBA. On the one hand, the legitimacy of the concept is derived from human rights law but on the other hand the definitions are supplemented by concepts that are not part of the human rights regime. This is true especially to the OHCHR and EU perspectives towards the approach. Even if the OHCHR states that all development objectives need to be based on human rights objectives, it departs from them when it elaborates the elements of the human rights-based approach. Are 'empowerment' and 'participation' guaranteed by human rights? If they are, why does not the OHCHR refer to human rights law to justify them? Part of the wording and concept in the approach of the OHCHR's human based development guidelines is alien to human rights covenants. The definitions supplement, rearrange and reinterpret human rights with additional criteria, with concepts such as 'empowerment'. Such definitions on the human rights-based approach can be seen as evidence of the limits of human rights' relevancy to development.

### **2.1.3 Conceptual Arguments on HRBA**

In the phraseology of the HRBA to development we find two words, human rights and development. As to the relationship between the two, controvertible ideas or preferred statements

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<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

<sup>26</sup> *Ibid*

<sup>27</sup> *Ibid*

have been made with which definitions of the HRBA to development portray different-level of arguments. The different levels are treated here in below with the view to better understand the approach by considering the arguments for and against development the objective of which is attaining human rights standards.

A first-level argument is to claim that when development policies are concerned, human rights as contained in the international, regional human rights instruments, need to be, to recall the standard formulation, 'respected, protected and fulfilled' in all government actions, as that benefits citizens. Human rights, therefore, can support development goals, among other things by identifying which obligations states and other actors have in relation to members of society, including the most vulnerable and marginalized groups who are beneficiaries to the development.

This argument implies that development policies need to be in conformity with human rights obligations. It would seem that a development policy which aims at decreasing the political freedoms of a certain society would be contrary to the donor country's human rights obligations and, therefore, also to the HRBA. On the other hand, a development policy which conforms or is not incompatible with human rights obligations would be in line with this version of the human rights-based approach. This would be the case even if the development policy in question did not make use of human rights.<sup>28</sup>

Human rights-based approach to be realized should get the back up of leadership and institutions. These will include the judiciary, effective parliamentary mechanisms, national human rights institutions, and a vibrant civil society all under the duty of enforcing the rights in the international human rights system.<sup>29</sup> This will lead to the second-level of argument which takes citizens not just as beneficiaries of development but the ones entitled to it.

A statement that development 'objects' should be regarded as right-bearers rather than as beneficiaries of development is stronger than the first-level HRBA argument. If this argument is meant to be taken as a concrete strategy rather than as a moral statement individuals should be

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<sup>28</sup> Seppanen, *Supra* note at 23

<sup>29</sup> Orest Nowosad, *Supra* 1

awarded an enforceable legal right to the development objectives in questions, such as a free primary education.<sup>30</sup> The human person is at the centre of the development process either directly, through his/her advocate, national institutions or civil society and should be entitled to get remedied for possible deviations from that.

The third-level argument is even more arguable and goes saying that rights are fundamental to development.<sup>31</sup> This is the instrumentalist HRBA argument which claims that development flows from human rights. In this line of argument, human rights should be placed at the centre of development policies, not only because human rights are international obligations, but because they are thought to be instrumental for the achievement of development objectives. Such a statement is included in the CIDA's memorandum according to which the fulfillment of human rights, as pointed out previously, is a means to achieving development goals. For instance, foreign investors, appealed by a regime known to possess good human rights record, are thought to be instrumental for 'augmenting and enhancing the efficiency of domestic managers, professionals, and perhaps skilled workers.'<sup>32</sup> And these investors, it is claimed, are not drawn to countries with poor human rights situations regarding, for instance, labor relations and safety at work.<sup>33</sup>

However, the instrumentalist HRBA argument does not go without opposing argument. In some instances, indigenously generated economic growth has been attributed to oppressive, non-democratic forms of governance. As pointed out already, this is the case with China's and South Korea's development history. This argument takes utilitarianism in its form.

From a utilitarian point of view, non-democratic forms of governance have been seen as instruments for achieving at least the first stages of economic development. This is reinforced by

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<sup>30</sup>Seppanen, *Supra* note 1 at 23. Also, see, UN OHCHR, Rights-based approaches, available a <http://www.unhcr.ch/development/approaches-04.html>, last visited on 8 Jan 2009.

<sup>31</sup>B.C. Smith, *Good Governance and Development*, in Palgrave Macmillan, ed., *Proceedings of the Conference on Democracy, Sustainable Development and Poverty Reduction: Are they Compatible?* (Hampshire and New York, 2007) at 46

<sup>32</sup>James M. Cypher and James L. Dietz, *The Process of Economic Development*, 2004, at 414.

<sup>33</sup>Seppanen, *Supra* note 1 at 24

the fact that the central question for many third world countries continues to be whether or not change within the foreseeable future bring them economic development.<sup>34</sup>

However, what lags a country not to grow economically or attract FDI may depend on other factors: political instability can be one of them. In order for sustainable development to be achieved, peace and security are “non-negotiable”; a sustainable balance between democracy, development, peace and security can only thrive in a democratic state.<sup>35</sup> This is true to African states. African continent has not enjoyed adequate peace and security that is so necessary for sustained economic development to take place.<sup>36</sup> For NEPAD it is self-evident that without peace and stability, there can be no hope of development. The other determinant factor impacting development is the presence of corruption, which is a tax on the poor. Corruption saps energy out of society and only heightens disparities and divisions within society.<sup>37</sup>

Attracting FDI may also depend on factors such as lucrative markets and future expectations. Looking at the Pacific Asia here can be good example. The common unifying feature of Pacific Asia is “commitment to market.”<sup>38</sup> Korea and Taiwan initially cut their competitive teeth via export promotion but then gradually, via the export processing zone device evolving into bonded warehouses and a gradual erosion of complementary domestic controls, especially in financial markets, increasingly exposed their domestic economies to competitive pressures.<sup>39</sup>

Besides, some authoritarian regimes may have achieved remarkable economic growth, yet many others have been disastrous, especially in Africa. Consequently human rights have not prevented India from achieving, albeit belatedly, remarkable rates of economic growth - 8.2% in 2003, making it the second-fastest-growing economy after China.<sup>40</sup>

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<sup>34</sup> Mahmood Monshipouri, *Democratization, Liberalization and Human Rights in the Third World*, 1995, at 18

<sup>35</sup> Norman Mlambo, ‘Development through Knowledge’, *African Insight*, Vol. 37:4 (March 2008), at 259

<sup>36</sup> *Ibid.*, at 257

<sup>37</sup> Orest, *Supra* note 1

<sup>38</sup> Roland Rich and Lynne Reinne, ‘Pacific Asia in Quest of Democracy,’ *Journal of Democracy*, Vol. 41:3 (2007) at 172

<sup>39</sup> Chu Park, *Economic Liberalization and Integration in East Asia: A Post-Crisis Paradigm*, 2006, at 922

<sup>40</sup> Smith, *Supra* note 31, at 273

Regardless of all arguments (for or against), the approach does not, fortunately enough, need empirical proof in order to be valid. Human rights are binding as normative statements. They are values in themselves even if they do not contribute to the economic development of society. From the human rights perspective, it can be claimed that economic growth that is achieved through dictatorship is not worth having.<sup>41</sup> In this connection the African Human Development Report states that developing country governments are to prioritize spending on the basic services that poor people need most: primary schools, not universities; rural clinics, not technologically advanced hospitals in big cities; poor countries cannot afford to wait until they are wealthy before they invest in their people.<sup>42</sup>

The logic that human rights-based approach is normative and is to be operative regardless of their impact on the economy leads to the last but the most ambitious HRBA argument, which is that the human rights-based approach to development (rather than only human rights) is an international legal obligation of donors and states alike. This is a collateral argument to the second-level of argument that the approach should underpin the fulfillment and protection of the right-holders, but with an extended implication. This argument goes saying the objectives of development and aid are to be defined in terms of particular, legally enforceable rights with express links to international, regional and national human rights instruments.<sup>43</sup> Human rights-based approaches are comprehensive in their consideration of the full range of indivisible, interdependent and interrelated rights: civil, political, economic, social and cultural. This reflects a development framework with sectors mirroring internationally guaranteed rights covering a whole host of rights relating to health, education, housing, the administration of justice, and so on.

This argument goes beyond the truism that human rights need to be observed in development cooperation.<sup>44</sup> When the argument is followed to its conclusion, it appears that the HRBA is the only legally plausible development policy: other development policies such as poverty reduction strategies and good governance schemes need to be subjected to the HRBA.<sup>45</sup> Governments, donor

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<sup>41</sup> *Ibid*

<sup>42</sup> Human Development Report 2003 Africa Policy E-Journal, July 27, 2003  
<http://www.africaaction.org/docs03/hdr0307.htm> last visited on 14 Jan. 2009

<sup>43</sup> Orest, *Supra* note 1

<sup>44</sup> Marta Santos Paris, *A Human Rights Conceptual Framework for UNICEF 1999*, at 1

<sup>45</sup> Seppanen, *Supra* note 1, at 26

states and international organizations have, according to this argument, an international legal obligation to base their development policies on the human rights-based approach; being merely compatible with human rights obligations is not enough. Development policies - development objectives, policy papers, strategies et cetera - need to be explicitly formulated on the basis of human rights obligations. The argument is, however, somewhat difficult to maintain since it merges human rights law with the policy that is the human rights-based approach.

The HRBA is, contrary to many of its definitions examined in the previous section, outside the legal framework to begin with. This is because, first, the approach, as discussed already, is not part of any of the sources of international legal regime as stated in the Statute of the ICJ. Neither is the approach challenged in courts of law like many other international legal concepts.<sup>46</sup> Unlike norms on the protection of foreign investments or TRIPS patent regulations, the human rights-based approach is intended to work as a general policy tool together with other development policies. The concept provides legitimacy to development programs or simply gives them a 'new angle'. Its linkage to international law influences the human rights-based approach in unintended ways, however.<sup>47</sup>

The advantage of the human rights-based approach is its normativity. Human rights can be employed to policies. When social action is explained through human rights, it appears more understandable and acceptable as in human rights add a qualitative dimension to national development strategies, by ensuring a consistent focus on equitable outcomes and the poorest. Such legitimization can be helpful for all actors in the development field - for governments, NGOs, donor agencies and various activist groups. A human right activist opposing a dam project may employ human rights arguments to topple the project. Donor agencies, such as the World Bank, may draft general-level human rights policy guidelines to demonstrate that softer values are incorporated in their development policies. If one is to believe the stories about the "insensitivity and thoughtlessness of the development industry"<sup>48</sup> a checklist of human rights considerations may well raise some previously ignored issues in the planning of development projects.

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<sup>46</sup> *Ibid.*, at 32-33

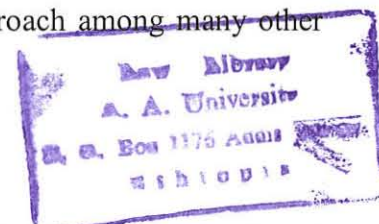
<sup>47</sup> *Ibid*

<sup>48</sup> *Ibid*

## 2.2 Relationship to Other Development Policies and Concepts of

### International Law

Today, the human rights-based approach functions within a world in which neo-liberal trade policies are promoted within international structures such as the World Trade Organization (WTO), while poverty reduction plans at the country-level aim to reduce the negative consequences of global trade and poverty. The HRBA is just one approach among many other development policies and theories, some which conflict with it.



#### 2.2.1 Neo-liberalism

This theory is discussed in the outset as one of a historic analogue of the human rights-based approach to development. The Washington Consensus, which refers to the consensus that development organizations -the World Bank and the IMF, whose headquarters are in Washington D.C. - had on economic policies, carried within the range of economic reform measures it promoted a conception of the role of law as the guarantor of private property. Reforms based on that model promoted a minimalist version of law solely concerned with the definition, protection and exchange of property rights.<sup>49</sup> 'Neo-liberalism' represents this model of development and is a general name of economic policies which advance economic liberalization, privatization of state companies, and deregulation of the economy and has the assumption that obstacles impeding development are created by trade barriers, regulation, taxes and public services.<sup>50</sup>

There is wide recognition of the fact that neo-liberalization models in the countries where they were attempted during the 1980s and 1990s have occasionally promoted growth but have generally failed to promote sustainable development benefiting the majority of the population.<sup>51</sup> The human rights-based approach was a confrontational development policy to begin with as it was developed essentially as an objection to neo-liberal economic policies.

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<sup>49</sup>Ioannis Glinavos, 'Neo-liberal Law: Unintended Consequences of Market-Friendly Law Reforms' *Third World Quarterly*. 29:6 (2008) at 1087-1088

<sup>50</sup>Joel R. Paul, 'Do International Trade Institutions Contribute to Growth and Development' *Virginia Journal of international law*. 44 (2003) at 285

<sup>51</sup>Ioannis, *Supra* note 109 at1088

The opinions of the donor community on economic and trade policies are naturally diverse. While some countries have profiled themselves promoters of free trade and market economy, others have favored policies that promote market economy with a 'human face'.<sup>52</sup> The relationship between international trade and human rights is an equally loaded issue. Promoters of free trade generally argue that the two concepts go hand in hand, while opponents of trade liberalization claim the opposite. The former argue that the spread of international commerce will enhance democracy, which correlates with economic prosperity and the fulfillment of development goals. As a consequence of the economic prosperity that supposedly follows from neo-liberal economic policies, human rights on the whole are promoted. The opponents of this view insist that free trade and other neo-liberal economic policies undermine human rights instead of promoting them. Their argument is that the liberalization of trade, tax cuts, the privatization of state property and the dismantling of public services worsen social conditions. Disadvantage of neo-liberalism: the reduction of the size and scope of state functions and other non-market arenas of civic participation along neo-liberal lines continue to threaten to further exclude sectors of the poor from influencing the direction of society.<sup>53</sup> The counter-argument made by the promoters of neo-liberal economic policies is that economic reforms benefit the whole population in the long run, even if there may be problems in the term. Their opponents can point out that, so far, the results of neo-liberalism have been bleak.<sup>54</sup> Besides, this Anglo-Saxon model is not applicable given the much greater inter-country economic and institutional disparities.<sup>55</sup>

The link between human rights and economy is further complicated by the fact that human rights have become part of the neo-liberal development agenda. Unlike in the 1980s, today it is not sufficient to simply call for more attention to human rights. After 1997 the World Bank abandoned the minimalist conception of state...the Bank accepted in principle the need for the intervention and regulatory action.<sup>56</sup>

Promoters of neo-liberal economic policies have rearticulated their policies in the human rights language. Tax cuts and the reduction of public services can be seen to contribute to the promotion

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<sup>52</sup> Seppanen, *Supra* note 2, at 40

<sup>53</sup> Ioannis, *Supra* note 49, at 1096

<sup>54</sup> Seppanen, *Supra* note 2, at 41

<sup>55</sup> Chu, *Supra* note 39 at 922

<sup>56</sup> Ionnis, *Supra* note 49 at 1090

of human rights (especially economic, social and cultural ones), since they benefit the whole economy. On some specific questions, however, certain neo-liberal policies are in conflict with human rights conventions. This is the case with attempts to introduce or justify national tuition for primary education.<sup>57</sup> While tuition fees in, for instance, private schools are not unlawful *per se*, the ICESCR states that ‘primary education shall be compulsory and available free to all.’<sup>58</sup>

### 2.2.2. Poverty Reduction

This approach has been recently endorsed by the UN General Assembly, the UNDP, the World Bank, the IMF, and various national donor agencies. It is the central policy of the day. The approach is part of the so-called ‘second generation reforms’ of the ‘Post Washington Consensus era.’<sup>59</sup> Unlike the case in the 1980s, second generation reforms aim to include social factors in economic development strategies. Poverty reduction and other social concerns are part of the World Bank’s and IMF’s ‘Comprehensive Development Framework’ (CDF).<sup>60</sup>

UNDP’s institutionalize the concept in 1997 in its Human Development Report entitled *Human Development to Eradicate Poverty*. The UNDP defined poverty as ‘denial of choices and opportunities to live a tolerable life’. For the UNDP, poverty eradication began with the empowerment of women and men and participatory decision-making.<sup>61</sup> The World Bank and the IMF formally adopted poverty reduction strategies in 1999. The goals of the new focus on poverty were to ‘support comprehensive, country-led efforts to sharpen the poverty focus and effectiveness of development assistance in low income countries, and to align assistance by external partners around those strategies’.<sup>62</sup>

Poverty reduction framework can be interpreted as human right policies because both emerge from a similar ideological and political background. Both take the side of the ‘poor’ and the ‘unprivileged’. Both appear as compassionate concepts and position themselves in opposition to neo-liberal policies. At the same time, both are moderate concepts which do not seek to overthrow

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<sup>57</sup> Seppanen, *Supra* note 1, at 42

<sup>58</sup> International Covenant on Economic, Social, and Cultural Rights, Art 13 (2-A)

<sup>59</sup> Seppanen, *Supra* note 2, at 42

<sup>60</sup> *Ibid*

<sup>61</sup> Seppanen, *Supra* note 2, at. 44

<sup>62</sup> *Ibid*

the existing economic order, even if they seek to reshape it. Under both approaches, market economy, poverty reduction and human rights coexist harmoniously provided that certain adjustments are made in favor of the poor.<sup>63</sup>

Poverty reduction is essentially a redistribution strategy: development aid is directed towards the eradication of social problems, while economic structures (that may or may not have produced these problems) are left unchanged.<sup>64</sup> Buzzwords associated with the concept include ownership, inclusion, participation, and empowerment. Poverty eradication strategy Papers (PRSPs) are the principal policy tools of the poverty reduction policy. These are policy papers drafted by the governments of developing countries with the assistance of donor agents and individual consultants which set out the 'macroeconomic, structural and social policies and programs that a country will pursue over several years.'<sup>65</sup> As of September 2005, 49 countries, over half of which are in sub-Saharan Africa, have prepared Poverty Reduction Strategy Papers (PRSPs). Our country is not an exception. Ethiopia has a Plan for Accelerated and Sustained Development to End Poverty (PASDEP), which guides the country's strategic framework for the five-year period 2005/06-2009/10. The PASDEP represents the second phase of the Poverty Reduction Strategy Program (PRSP) process, which has begun under the Sustainable Development and Poverty Reduction Program (SDPRP), and which has been in place since 2002/03.<sup>66</sup>

Like the Human rights-based approach to development, poverty reduction plans came about as a reaction against neo-liberal structural adjustment plans. At the international level a land mark in the realization of institutionalization of the approach was the 1995 World Summit for Social Development in Copenhagen. The Declaration recognized that people must be at the centre of development efforts and acknowledged the intrinsic link between poverty, unemployment and social integration.<sup>67</sup> Chapter two of the Summit's Program of action laid down the principles for the eradication of poverty. The participants agreed that there was an 'urgent need for national

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<sup>63</sup> *Ibid*

<sup>64</sup> Jeremy Gould and Julia Ojanen, 'Merging in the Circle' :The Politics of Tanzania's Poverty Reduction Strategy, 2003, P. 32-33

<sup>65</sup> Review of the first United Nations Decade for the Eradication of Poverty (1997-2006) Report of the Secretary-General Commission for Social Development Forty-fourth session February 2006 <http://www.globalpolicy.org/socecon/develop/2005/1212unpoverty.pdf> last visited on 14 Jan. 2009

<sup>66</sup> A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06-2009/10) Volume I: Main Text (Ministry of Finance and Economic Development (MoFED), Addis Ababa, September, 2006, at 1

<sup>67</sup> Seppanen, *Supra* note 2, at 43

strategies to reduce overall poverty substantially' and for development of methods to measure all forms of poverty.<sup>68</sup>

The most obvious difference between poverty reduction and HRBA lies in the operational usage of the concepts. Poverty reduction is a policy tool, which aim at achieving certain economic goals. The South African Human Rights Commission in its owns domestic context, along with the Commission on Gender Equality and the South African National NGO Coalition (SANGOCO) holds that the eradication of poverty became not merely a policy choice for the State, but a legally binding responsibility for which it was accountable.<sup>69</sup> This is not the case, though. Because poverty eradication is a mere policy with no enforcement guarantee by the law. The HRBA, rather, is a normative apparatus which can bestow legitimacy upon other development policies, but is mostly silent on the ways these policies are achieved. One can also detect a slight difference of the worldviews of the two approaches. Poverty eradication is more of an extreme measure which aims to tackle first and foremost poverty, whereas the HRBA presents an all-embracing utopia for development. The HRBA is also a more ideological concept: it does not recognize any utilitarian calculations on the best means of achieving development. Consequently, the HRBA focuses on the individual: it willingly refuses the development of many if this causes suffering for a few. Moreover, poverty reduction policies do not meet the standards of those definitions of HRBA which require that development objectives should be formulated as legally enforceable rights. For better or for worse, legal language and legal methods have remained legally alien to poverty reduction.<sup>70</sup>

### **2.2.3 Good Governance**

Human rights and good governance are often linked together but the concepts are different in certain ways and partly at odds with each other. Development agencies replaced the rhetoric of structural adjustment with the concept of good governance in the late 1980s and early 1990s. This still somewhat fashionable concept has numerous definitions, which change according to their context. What constitute 'good' in governance is up to the interpreter. Some say the centrality of good governance in the democracy equation should include, "social mobilization, popular

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<sup>68</sup> *Ibid*

<sup>69</sup> Orest, *Supra* note 1

<sup>70</sup> Seppanen, *Supra* note 2, at 46

participation, economic and political empowerment and uninhibited exercise of political rights.”<sup>71</sup> As regards the European Union institutions, the European Commission finds that the principles of good governance can be summarized as ‘openness’, ‘participation’, ‘accountability’, ‘effectiveness’ and ‘coherence’.<sup>72</sup> Different definitions of the concept materialize in a number of ways. The deregulation and liberalization of the economies are at the heart of the World Bank’s usage of the concept, whereas good administrative conduct is the core of the concept’s domestic incarnations.<sup>73</sup>

Certain manifestations of good governance are controversial because in many respects the concept is just another way of describing liberal democracy with normative and positive prescriptions about political rights, the rule of law, accountability and state capacity.<sup>74</sup> The concept is, however, usually discussed at such an abstract level, that policy disagreements are not easily visible.

The difference between good governance and human rights based-approach is that human rights present objectives whereas good governance policies also attempt to provide the means of achieving them. Of course governance is used by donor agencies because it lies at the heart of national development strategies in partner countries.<sup>75</sup>

Unlike the human rights-based approach, good governance policies are closely linked to economics and many of them also to neo-liberal economic policies. The legitimacy of the concepts is also different. While there are ‘hard law’ obligations on human rights, the concept of good governance has been mentioned only in certain ‘soft law’ instruments, the normative relevancy of which is questionable.<sup>76</sup> Neo-liberal good governance policies are generally opposed by the advocates of the human rights-based approach. The latter argue that privatization and deregulation promoted under good governance policies do not promote the realization of economic, social, and

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<sup>71</sup> Norman, *Supra* note 35, at. 257-258

<sup>72</sup> Seppanen, *Supra* note 2 at 48

<sup>73</sup> *Ibid*

<sup>74</sup> Norman, *Supra* note 35, at. 258

<sup>75</sup> DAC, Action-Oriented Policy Paper On Human Rights And Development 2007  
[Http://Www.Oecd.Org/Dataoecd/50/7/39350774.Pdf](http://www.oecd.org/dataoecd/50/7/39350774.pdf), Last Visited At 14, Jan., 2009

<sup>76</sup> Seppanen, *Supra* note 2, at 49

cultural rights.<sup>77</sup> On the other hand, the domestic manifestations of the concept of good governance (or rather, good administration) seem compatible with human rights law.

#### 2.2.4 Human Development

The UNDP defines human development as a 'process of enlarging people's choices'. These choices are malleable but three essentials ones are recognized by the UNDP: long and healthy life, acquisition of knowledge, and a decent standard of living.<sup>78</sup> Like the human rights-based approach, the concept of human development came about as a response to the World Bank's and IMF's neo-liberal development doctrines. According to UNDP, 'the primary objective of development is to benefit the people.'<sup>79</sup> The emergence of the human development concept should, however, be understood against the background of the movement against the 'Washington Consensus' and its focus on economic factors.

Human development's relationship to the human rights-based approach is close since they share the same background in relation to development policies. For UNDP development, and especially human development, *includes* the enjoyment of one's human rights.<sup>80</sup> Promoters of human development are likely to endorse human rights aspects as well. As the UNDP states, 'the basic idea of human development has much in common with the concerns expressed by the Universal Declaration of Human Rights. Because they share the same political background; the substantive differences between the concepts are not great. Both policies call for the focusing on attention on social issues in stead of economic structures and both are more sensitive towards the plight of the poor.'<sup>81</sup> An obvious difference between the two concepts concerns their normativity. Human development is promoted as a good idea, whereas human rights are advocated as objectively valid norms. The latter approach is defined in terms of law and the former in terms of politics.

#### 2.2.5 The Right to Development

The right to development is a legal concept that is advanced by the developing world to obtain more development aid and to counter and resist various demands made by the USA, the EU and

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<sup>77</sup> *Ibid*

<sup>78</sup> Smith, *Supra* note 31 at 47

<sup>79</sup> *Ibid*

<sup>80</sup> *Ibid*

<sup>81</sup> Seppanen, *Supra* note 2, at 50

the rest of the developed world. Though only regional, Africa, the least developed continent, recognized the right to development as a basic human right in the African Charter on Human and Peoples' Rights, in 1981.<sup>82</sup> Developed countries, the USA included, have consistently opposed the right to development or treated the concept half-heartedly. A vote in the UN Commission on Human Rights in 2001 shows that the USA voted against the concept, a number of important European donor states, including Sweden, the UK, Norway, and Germany, abstained from voting.<sup>83</sup>

The right to development is one of the more progressive concepts in international law. The most notable international legal instrument relating to the right is the 1986 Declaration on the Right to Development.<sup>84</sup> The right in such soft law remains a policy tool which cannot be enforced in any practical way. No state can hope to sue (successfully) another state in order to enforce its right to development. If one, nevertheless, accepts the legal validity of the right to development, it would appear that the right should form part of the human rights-based approach to development. From the outset the concept of the right to development states that the right 'is inalienable human right by virtue of which every person and all people are entitled to participate in'.<sup>85</sup>

Supporters of the human rights-based approach state that their goal is to change development cooperation from charity to a right. This goal is shared by the developing countries advancing the right to development against the developed ones. But even though the premises of the HRBA and the right to development are the same, the concepts are used in different political contexts. The HRBA is nowadays promoted as a means to pressure governments of the developing countries. In this sense, the concepts function within opposite political camps and their subjects are different.



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<sup>82</sup> African [Banjul] Charter on Human and Peoples' Rights, Art, 20 and 22

<sup>83</sup> Seppanen, *Supra* note 2, at 51

<sup>84</sup> Declaration on the Right to Development, UN GA Res.41/128, A/41/53, 4 December 1986.

<sup>85</sup> *Ibid.*, Art 1(1)

## CHAPTER THREE: MEASURING HUMAN RIGHTS IN DEVELOPMENT

If a development planner has to include human rights concerns in development he/she should consider the need for different indicators that reflect human rights. From the side of international development agencies (especially by UN agencies), the demand for indicators comes from the need to mainstream human rights into development projects and to monitor and implement a human rights-based approach to development. From the side of human rights, the demand has come from recognition among the human rights treaty monitoring bodies and those agencies on the need to develop indicators to monitor state compliance with human rights treaty obligations. It is equally important (and somehow required) for national governmental agencies/officials to take into account the indicators while designing development agencies, and evaluate their actions based on them. In this Chapter, attempt will be made to discuss measurement of human rights in developmental organizations' activities. In so doing, assessing human rights indicators, the reason for the use of the indicators and the way they should be used in the process of development will be discussed.

### 3.1 Indicators and Indexes

#### 3.1.1 What are Indicators and Indexes?

An indicator is an instrument to tell us how a project/program is proceeding. It is a yardstick to measure results, be they in the form of quantitative or qualitative change, success or failure. It allows managers and all the stakeholders involved in a program, to monitor desired levels of performance in a stable and sustainable fashion. As a marker for results, an indicator can help in assessing the developmental impact of a program. As an intermediate benchmark, it can act as an early warning system to identify problems, resolve them and most of all, learn from them.<sup>1</sup>

Indicator works mostly in natural science study, though it is not irrelevant to social science. Yet, it is not equally important to both studies. The difference between social and natural science knowledge is that unlike the movement of planets, human activity cannot be measured with

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<sup>1</sup> Iian Kapoor, Policy for CIDA on Human Rights, Democratization and Good Governance December 1996  
<http://www.acdi-cida.gc.ca/CIDAWEB/acdicida.nsf/En/REN-218124821-P93#pdf> last visited on 8 Jan. 2009

numbers. Despite the good intentions (which will be explained in the subsequent Section) behind and valuable reasons for measuring human rights, important ethical, methodological, and political problems remain.

Indexes are compilations of indicators, which produce one figure out of many variables to describe a large situation.<sup>2</sup> It draws an average from the overall results of different variables.

### **3.1.2 Human Rights Indicators and Indexes**

Even within the social science disciplines the importance of measurement is not equally significant. It is highly important for economists and statisticians. Social indicators are usually presented as statistics as in of employment data. The indicators come down to numbers which describe subjects such as unemployment, to which the word indicator has been used metaphorically to signify anything that tells (indicates) of a social phenomenon. Human right lawyers can make use of such measurements. In a way analogous to methyl red's usage in chemistry (as in other natural science studies), a country's human rights situation may be seen to be reflected in its torture statistics: if the police torture people, the experiment can be seen to turn red and indicate a bad human rights situation.<sup>3</sup> In this sense, torture or information thereof is one sort of human rights indicator.

Nonetheless, human rights are different from other objects of measurement, even when these are considered to include social phenomena. Human rights do not exist in the 'real world' in a way mountains, wavelengths, infectious diseases, and revolutions do. One can measure Ras Dashen in Ethiopia and compare it to the height of Kilimanjaro in Tanzania. But how can one measure the Ethiopian human rights situation and produce a number thereof?

Indeed it would appear that it is in the very nature of human rights that they cannot be measured. That is to say, it is not possible to measure and properly quantify human rights conditions and

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<sup>2</sup>Sammuli Seppanen, *Possibilities and Challenges of the Human Rights-Based Approach to Development*, 2005, at 57

<sup>3</sup>*Ibid*

associate them in robust causal relationships with economic and other variables.<sup>4</sup> Rights, in any meaningful sense of the word, belong to one or another field of law; be it tax law, international law, natural law, or divine law. Law is about interpretation and prudence – jurisprudence – not about measurement. Holistic, prudential thinking is the reason why the human rights-based approach to development is promoted in the first place. Mathematical formulas on the basis of the results of which countries are either praised or condemned are hardly the results of holistic thinking. Human rights indexes, in particular, are problematic; they deliver a judgment (that is, a human rights index figure) automatically after the relevant data has been put in. when the HRBA employs mathematical formulas, it becomes much like the economic doctrine it first set out to oppose: mechanical, procedural and bureaucratic.<sup>5</sup>

Despite such misgivings about their feasibility and desirability, several human rights related indexes have been made and put into use. The Human Rights Indicator<sup>7</sup> of the Danish Institute for Human Rights has constructed a human rights index worth mentioning here. The Danish Human Rights Indicator consists of four indexes.<sup>6</sup> The Formal Commitment Index describes the ratification of international human rights instruments, reservations that have been made to them and their implementation. The second index, entitled the Commitment to Civil and Political Rights Index, measures human rights violations, such as extra-judicial killings and torture. The third index, Commitment to Social, Economic and Cultural Rights Index, reflects the proportion of government expenditure spent on education and health in relation to GDP, and progress in the UNDP's Human Development Index on education and health. Finally, the commitment to gender discrimination Indicator shows the employment rate of women at all levels of government. Each index produces a score on a scale of 0-8 or 0-6 (formal commitment). The lesser the score the better the human rights situation in the country.<sup>7</sup>

UN agencies, like the UNDP, are in the fore front of using human rights indicators and indexes. In the UNDP Users' Guide to Indicators for Human Rights-Based Approaches to Development

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<sup>4</sup>NYU Conference: "Human Rights and Development: Towards Mutual Reinforcement" March 1,2004 <http://74.125.47.132/search?q=cache:UCWCoYlqShUJ:www.worldbank.org/wbi/governance/pdf/winstoncomments.pdf+human+rights+in+development+policy&hl=am&ct=clnk&cd=24&gl=et> last visited on 14 Jan. 2009

<sup>5</sup> Seppanen, *Supra* note 2 at 64

<sup>6</sup> *Ibid.*, at 65-66

<sup>7</sup> *Ibid.*, at 66

in UNDP Programming March 2006, human rights can be measured 'in principle' (i.e. as they are laid out in national and international legal documents) and 'in practice' (i.e. as they are enjoyed by individuals and groups in nation states), and as outcomes of government policies that have a direct bearing on human rights protection.<sup>8</sup>

Measurement of human rights can take, as per the guide, the form of coding country participation in regional and international human rights regimes, coding national constitutions according to their rights provisions, qualitative reporting of rights violations, survey data on perceptions of rights conditions, quantitative summaries of rights violations, abstract scales of rights based on normative standards, and individual and aggregate measures that map the outcomes of government policies that have consequences for the enjoyment of rights.

### **3.1.3 Sources of Data and Assumptions**

Indicators and indexes are based on data and assumptions which may or may not be appropriate for what is being measured.

Though not prepared by lawyers data is one of the tools by which we can measure human rights, and can be collected from various sources. Governance and human rights data is obtained from government and academic statistics, development agencies' and NGOs records, opinion surveys financed by various actors, budgets, the United Nations Treaty Series (regarding formal commitment to human rights instruments), and even magazines. An indicator is naturally only as accurate as the data on which it is based. In the Users Guide to the Indicators for HRBA in UNDP Programming the variety of the sources could be;

“... rights in principle, rights in practice, official statistics, narrative reports, ‘who did what to whom’, newswire reports, cross-national surveys, national surveys, international treaty coding, domestic legal, framework coding, events-

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<sup>8</sup>Todd Landman, Measuring Human Rights: Principle, Practice, and Policy  
[Http://Privatewww.Essex.Ac.Uk/%7Etodd/M-HR-Landman.Pdf](http://Privatewww.Essex.Ac.Uk/%7Etodd/M-HR-Landman.Pdf) last visited on 14 Jan. 2008

based data, expert judgments (standardized scales), survey-based data, national aggregate, national disaggregate.”<sup>9</sup>

Narrative and qualitative reports produced by foreign and domestic governmental organizations and foreign and domestic non-governmental organizations can also be of use. The US State Department and the UK Foreign Office human rights reports are examples of foreign governmental organizations collecting descriptive information on human rights practices.<sup>10</sup> Also, international non-governmental organizations such as Amnesty International and Human Rights Watch produce annual reports on human rights practices around the world, where their coverage tends to be of those countries where there are significant problems.

However, there are various problems in obtaining appropriate data on governance and human rights issues. If the data is wrong to start with, the indicator cannot be reflective of whatever it sets out to describe. In addition, according to the UNDP produced Governance Indicators, a Users’ Guide, information source biases; validity, reliability, and transparency; and variance truncation and aggregation are limitations of application for human rights based approach to development programming.<sup>11</sup> Their compatibility in terms of time and other countries is questionable. One should be aware of these limitations when using various indicators for human rights programming.

In addition to data making assumptions is part of measuring human rights situations, as indicators follow the scientific dogma of hypothesis. So, before an indicator is employed or an index is constructed, its assumptions have to be considered. One has to assume that a certain state of affairs which the indicator describes is relevant for whatever one is measuring. In human rights-based approach to development, indicators can be regarded as evidence that is used in the

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<sup>9</sup> Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users’ Guide, March 2006 [http://74.125.47.132/search?q=cache:w\\_IOvXlyiu4J:www.undp.org/oslocentre/docs06/HRBA%2520indicators%2520guide.pdf+how+to+measure+human+rights+in+development&hl=am&ct=clnk&cd=2&gl=et](http://74.125.47.132/search?q=cache:w_IOvXlyiu4J:www.undp.org/oslocentre/docs06/HRBA%2520indicators%2520guide.pdf+how+to+measure+human+rights+in+development&hl=am&ct=clnk&cd=2&gl=et) last visited on Jan. 14, 2009

<sup>10</sup> *Ibid*

<sup>11</sup> *Ibid*

application of human rights law. There are no cases on HRBA, but legal reasoning takes place whenever a legal assumption is made.<sup>12</sup>

The creators of the Millennium Development Goal Indicators, for instance, assume that gender equality and empowerment of women correlate with the proportion of female's members in parliament.<sup>13</sup>

Indexes are even more obviously based on assumptions even if they produce a single 'objective' number. As compilations of many indicators, indexes give each indicator certain weight in the overall weight. The Freedom House, for instance, rates all independent countries on a scale from one (free) to seven (not free) by assuming that extra-judicial killings and disappearances takes one eighth place among the civil and political rights. There is nothing predetermined about this evaluation: it is a matter of opinion whether 'extra-judicial killings and disappearances' should account for one eighth (in stead of one seventh or one sixth) of civil and political rights in a given country.<sup>14</sup> Besides, the index is reputedly compiled on the bases of vague questionnaires which are based on problematic Anglo-Saxon assumptions about freedom and the political process.<sup>15</sup>

### 3.2 Why Use Indicators and Indexes?

Human rights are an infinitely complex matter; it would seem banal to reduce human rights situation of a whole country to a single number (say, 2, 4). Neither can we reduce the poverty situation of a country in a single or two numbers. An examination of poverty shows that it cannot solely be seen in terms of figures – for example whether there is insufficient income to buy a minimum basket of goods and services – rather one must look at the broader lack of basic capabilities to live in dignity. Poverty is about physical and economic insecurity, fear of the future and a constant sense of vulnerability. It is about lost opportunities and a sense of

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<sup>12</sup> Seppanen, *Supra* note at 59

<sup>13</sup> UN, 'Millennium Indicators Database', available at [http:// millennium-indicators.un.org/unsd/mi/mi\\_gaols.asp](http://millennium-indicators.un.org/unsd/mi/mi_gaols.asp), last visited on 8 Jan. 2009

<sup>14</sup> Seppanen, *Supra* note at 62

<sup>15</sup> *Ibid*

powerlessness.<sup>16</sup> Since consideration, rather than calculation, seems to be built into human rights thinking, why do we need to reduce human rights situations in a number or two?

With the limitations it would be very difficult to use numerical languages for human rights, but they are still necessary. The reasons for indicators and indexes are forwarded by different scholars and development agencies. For Todd Landman, measuring human rights serves four functions: (1) contextual description and documentation of violations, (2) classification of different types of violations, (3) mapping and pattern recognition of violations over space and time, and (4) second-order analysis that provides explanations for violations and policy solutions for reducing them in the future.<sup>17</sup>

Landman also explains what he meant by the functions. Contextual description provides the raw information upon which measures of human rights are based. Classification allows for the differentiation of rights violations across their civil, political, economic, social, and cultural dimensions. Mapping provides time-series and spatial information on the broad patterns of violations within and across different countries. Finally, second order analysis allows for hypotheses about rights violations to be tested and inferences to be drawn that can be fed into the policy making process, whether it involves sanctions and conditionalities imposed on rights-violating states, prioritizing domestic spending to improve rights conditions, or bringing about a change in institutions and practices. Such accumulation of information on human rights protection in the world and the results of systematic analysis can serve as the basis for the continued development of human rights policy, advocacy, and education.<sup>18</sup>

The use of indexes is necessitated by institutional factors. Indicators and indexes are required by decision makers, who use them in the course of their work. Decision makers do not have the time, the means, or the will to conduct qualitative field research in the developing world.<sup>19</sup> Time is especially relevant factor. Certain treaty bodies governing the implementation of human rights

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<sup>16</sup> Orest Nowosad, A Human Rights Based Approach to Development: Strategies and Challenges, National Institutions Team Office of the High Commissioner for Human Right <http://www.nhri.net/pdf/African4thNhri/Novosad%20Development.pdf> last visited on 5 Jan. 2009

<sup>17</sup> Todd, *Supra* note 9

<sup>18</sup> *Ibid*

<sup>19</sup> Seppanen, *Supra* note 2 at 60

treaties have only a few hours to discuss each state when they present their reports on the implementation of their relevant treaty. The members of such treaty bodies do not have sufficient time to familiarize themselves with all the relevant data from the individual countries under discussion.<sup>20</sup> One, two, or three indexes – numbers - on the human rights situation in the country in question would ease the decision making process.

Another reason for the demand for indexes is the impossibility of assessing complex country-specific indicators where collection methods differ from country to another. The realization of the Millennium Development Goals (MDGs), for instance, is measured with 48 ‘Millennium Indicators’.<sup>21</sup> These have been felt to be too numerous for practical use,<sup>22</sup> making the index necessary to draw conclusions about the rights in the MDG in a certain country.

Indicators are also used to evaluate the success of single projects. The success of a water pump project in a village, for instance, can be measured by the changes in child mortality rate. This could be problematic, though, as child mortality is a sum of many factors changes in it may not be due to the installation of a water pump.

### **3.3 How to Use Indicators and Indexes?**

With the difficulties and limitations of indicators and indexes so far explained we still need them for the reasons examined above. Even the critics of indicators agree that, if properly used, human rights indicators may act steps in the process of achieving understanding.

The United Nations Development program has compiled a useful guide on the use of governance indicators in development cooperation. The UNDP identifies three golden rules in using such data:

1. Use a *range* of indicators
2. Use an indicator as a *first* question – not the last

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<sup>20</sup> *Ibid*

<sup>21</sup> UN, *Supra* note 13

<sup>22</sup> Seppanen, *Supra* note 2 at 60

### 3. *Understand* an indicator before using it.<sup>23</sup>

By the first golden rule, the UNDP means that no single governance indicator can be found to evaluate societies. The UNDP states that ‘using just one indicator could very easily produce perverse assessments of any country and will rarely express the full situation.’<sup>24</sup> For example William Meyer found that economic investment (GNP per capita, US economic aid and foreign debt) stands in a positive relation to civil and political rights in the third world nations that he studied. But good governance does not somehow magically arise from economic development. The invisible hand of the market must be guided by the visible hand of the rule of law in order for investment-driven development policies to succeed in creating a larger economic pie to be enjoyed by all. Without the rule of law, good governance, and the rooting out of corruption, economic investment alone cannot and has not delivered the social goods.<sup>25</sup> Another example, the UNDP itself refers to, is the use of voter turn out in assessing the state of democracy in a country. In countries where voting is compulsory, voter turnout is very high but not reflective of the democratic nature of the country.

According to the second golden rule, an indicator should be used as a procedural device, rather than a single question. The first indicator may ask a yes or no question the second might ask for numbers, the third for a percentage and the fourth for the general significance of the problem.<sup>26</sup> To cite the UNDP’s example, the survey of government auditing should first ask whether there is an auditing office in a country and whether it is sufficiently independent – whether its role is, for instance, enshrined in legislation – and then ask for a numerical data: what percentage of government funds are audited within so many months and so forth.

The third golden rule means that an indicator should be used only after its methodology and assumptions are understood.<sup>27</sup>

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<sup>23</sup> UNDP, Governance Indicators – A Users’ Guide, March 2006  
[http://74.125.47.132/search?q=cache:w\\_I0vXlyiu4J:www.undp.org/oslocentre/docs06/HRBA%2520indicators%2520guide.pdf+how+to+measure+human+rights+in+development&hl=am&ct=clnk&cd=2&gl=et](http://74.125.47.132/search?q=cache:w_I0vXlyiu4J:www.undp.org/oslocentre/docs06/HRBA%2520indicators%2520guide.pdf+how+to+measure+human+rights+in+development&hl=am&ct=clnk&cd=2&gl=et) last visited on Jan. 14, 2009

<sup>24</sup> *Ibid*

<sup>25</sup> NYC, *Supra* note 4

<sup>26</sup> UNDP, Governance Indicators, *Supra* note 23

<sup>27</sup> *Ibid*

However, these rules appear to have problems. Samuli Seppanen examined the problems in the UNDP golden rules of the human right indexes as follows.

...firstly, human rights indexes produce only one or a couple of numbers to describe immensely complex issues. Even if they consist of several indicators, human rights indexes are still unique in their assumptions. A far more sensible way would be to examine the raw data from which the index was constructed and draw conclusions on their basis. Secondly, there is a danger that human right indexes are not the first question but the last truth. Indexes rank countries in to a pecking order: once a human rights index and a ranking order are established they have influence even if it is realized that their evaluations are not totally objective. Ranking are easier to remember than elaborate essays on the complexities, ironies and paradoxes of the human rights situation in a certain developing country. Thirdly, and most importantly, lawyers who use human rights indexes are not trained to assess indexes, understand their assumptions and appreciate the problems in the collection of data on which they are based.<sup>28</sup>

Richard Claude and Thomas Jabine, devoted to quantitative studies, stressed this point when they said that the "essential nature of human rights is qualitative, not quantitative,"<sup>29</sup> and hence venturing to measurement is problematic. The thing is, however, that there is demand for indicators. It now seems clear that although measurement might not represent the central feature, it must play a role in studying, assessing, and planning for human rights. There is no easy solution to this: it would be equally problematic to leave decision making on human rights matters to statisticians.<sup>30</sup> It seems, therefore, care should be taken while making assumptions and selecting indicators and preparing data so that objective figures which can tell the world of human right situation be made.

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<sup>28</sup>Seppanen, *Supra* note 2 at 67

<sup>29</sup> P. Claude Richard & B. Jabine Thomas, 'Editors' Introduction, Symposium: Statistical Issues in the Field of Human Right,' *Human Rights Questions*, V. 8 (1986) at 553

<sup>30</sup> UNDP, Governance Indicators, *Supra* note 23

The understanding of the power behind indicators is one of the prerequisites. Good quantitative data enhance the likelihood that human rights will be supported through condemnation of violators and through changes in policy to guarantee rights more strongly.<sup>31</sup> Any indicator which has been constructed to achieve certain ends and its assumptions are based on those ends. If one accepts the values and ends of whoever has constructed the index and willing to trust that person or organization an index may be a useful governance tool.

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<sup>31</sup> Claude Richard and Jabine Thomas, *Supra* note 29, at 556

## CHAPTER FOUR: CASE STUDY ON HUMAN RIGHTS-BASED EDUCATION IN ETHIOPIA

Political differences that are present in other fields of development cooperation are also found in the educational sector. Education is one field where the previously discussed development issues materialize. This makes the human rights-based development in the particular sector of education of Ethiopia worth discussing. Besides, there is a wide consensus on the positive effects of education for the economy as well as the society in general. Considering the magnitude of the use of education Global Monitoring Report 2006, Education for All (EFA), states the following;

Education is a human right; contributes to economic growth by raising productivity; increases social cohesion and reduces social inequalities, has an impact on fertility, age of marriage, population growth, health and nutrition; is a 'social vaccine' against HIV/AIDS; and matters for poverty reduction.<sup>1</sup>

Education is both the end and the means. Like free trade, good governance, human rights, and democracy, education is seen as a solution to the problems of the developing world.<sup>2</sup> A more equal distribution of education accelerates the transition from an oligarchic regime to a democracy and facilitates economic and political reforms. If formal education provides political attitudes conducive to democracy, the likelihood of a country establishing and maintaining a democratic regime will be higher the larger the educated population in the society.<sup>3</sup>

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<sup>1</sup> Africities 2006 -- Thematic session 2: Universal Primary Education Kenyatta International Conference Centre Nairobi, Kenya 18 September 2006 PRESENTATION BY Susan Nkinyangi Senior Education Adviser UNESCO-Nairobi [http://www.education.nairobiunesco.org/PDFs/Africities%20\\_%20UPE%20presentation\\_Susan%20Nkinyangi\\_unesco\\_nairobi.pdf](http://www.education.nairobiunesco.org/PDFs/Africities%20_%20UPE%20presentation_Susan%20Nkinyangi_unesco_nairobi.pdf) last visited, March 17 2009

<sup>2</sup> Sammuli Seppanen, Possibilities and Challenges of the Human Rights-Based Approach to Development, 2005 at 70

<sup>3</sup> Amparo Castello-Climent, 'On the Distribution of Education and Democracy,' *Journal of Development Economics*, Vol. 87, (2008) at 189

When education came up in the history of Ethiopia and why deserves few words here. The country possesses a 1,700 year tradition of elite education linked to the Orthodox Church.<sup>4</sup> Nonetheless, secular higher education was initiated only in 1950 with the founding of the University College of Addis Ababa.<sup>5</sup> In the 1960s, the process of expansion was boosted by two important factors. The first factor was the convictions among politicians that education was the engine of progress and growth and a panacea for the creation of jobs and wider economic opportunities.<sup>6</sup> The other factor was the fact that the expansion of education was boosted by the availability of external assistance from bilateral donors like Sweden on concessional terms and the readiness of the communities to participate in the constructions of schools through contributions made in kind as well as in cash.<sup>7</sup>

If Ethiopia has to bring about an over all change in the society, then it must realize the objective of knowledge-based and knowledge-driven society. This requires first and for most the need for reposition education at all levels - primary, secondary and tertiary - at the very heart of development and democracy. Among these, primary education, for which the international legal regime gives categorical requirement for its fulfillment, is a bed rock of the other tiers of education.

Currently in Ethiopia there is big expansion of education, even bigger than ever. The quality of the education, however, is highly questionable. Yet, there is a need to see the quantitative and qualitative education against the normative international human rights regime, and in particular the human rights-based approach to development in the sector. This Chapter is devoted to that.

As existing approaches have measured human rights in three ways (as discussed in the previous Chapter); in this Chapter I will go and try to measure human rights in the education sector of Ethiopia in same ways. These are human rights as they are laid out in national and international legal documents (human rights in principle), as they are enjoyed by individuals

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<sup>4</sup>William Saint, Higher Education in Ethiopia: The Vision and its Challenges [http://www.iked.org/ethiopia/web/PDF/Higher\\_Education\\_in\\_Ethiopia\\_The\\_Vision\\_and\\_its\\_Challenges \[1\].pdf](http://www.iked.org/ethiopia/web/PDF/Higher_Education_in_Ethiopia_The_Vision_and_its_Challenges[1].pdf) last visited on March 17, 2009

<sup>5</sup>Kinfe Abreham, 'Ethiopia and Europe : Ethiopia's Relation with Western Europe and EU Countries' *The African Economist*, Vol. XXVII No. 50, Addis Ababa, July 2006, at 9

<sup>6</sup>*Ibid*

<sup>7</sup>*Ibid*

and groups in nation states (human rights in practice) and through the generation of statistics that may not have been devised originally to measure rights, but that nevertheless may serve as important proxy measures related to human rights protection.

Hence, herein below education in Ethiopia is treated on legal and policy basis. On the legal level, I tried to see the international, regional and national laws governing the sector. On policy level, development and education policy documents will be analyzed as well. And finally the value-added in the sector of human rights-based approach will be dealt with.

#### **4. 1 International Legal Basis**

The human rights based-approach to development takes international human rights norms as the basis of development cooperation. Of these norms the Universal Declaration of Human Rights is one. Article 26 of the Declaration states everyone has the right to education which should be free, at least in the elementary and fundamental stages, and compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. The same Article also says 'education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

The other relevant international legal instrument on education is the international Convention on Economic, Social and Cultural Rights (ICESCR), Article 13 of which rephrases in detail what is stated in the UDHR and reads as follows

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
  - (a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

Article 14 (on the implementation of the right to education) of the same Convention requires each State Party at the time of becoming a Party, if it has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, to undertake, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

According to these documents it has become universally mandatory that every child of school age - irrespective of sex - should go to school and receive at least a primary education. Stated otherwise, the articles seem to impose a clear obligation on the member states of the ICESCR, to which Ethiopia has acceded to in 1993 without reservations,<sup>8</sup> to provide free primary education to all. Other aspects of the right to education are more vaguely defined, rendering lack of consensus on the scope of the international legal right to education. To the other aspects of the right it is not clear what the right actually stands for, how and when the rights are violated, and what the consequences of breach of the right are.<sup>9</sup>

There are several other sources of international human rights law which relate to education. The Committee on Economic, Social and Cultural rights has given a general comment on the implementation of the ICESCR's right to education and on the plans of action for primary education. The comment on Article 13 includes remarks on topics such as the availability,

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<sup>8</sup>Legal Text of the Federal Democratic Republic of Ethiopia <http://www.law.emory.edu/ifl/legal/Ethiopia.htm> last visited on March 17 2009

<sup>9</sup> Seppanen, *Supra* note 2 at 74

accessibility, acceptability, and adaptability of education<sup>10</sup> and the comment on Article 14 includes, among other things, a definition of compulsory and free education.<sup>11</sup>

#### 4.2 Regional Legal Basis

The African [Banjul] Charter on Human and Peoples' Rights, to which Ethiopia acceded on 15 June 1998<sup>12</sup>, is the principal African regional human rights instrument in Africa. Article 17 of the Charter says every individual shall have the right to education.

The realization of the Charter is monitored by the African Commission on Human and Peoples' Rights. The Commission was established by the Charter in 1986 to 'promote and protect human and peoples' rights.<sup>13</sup> Africa's regional human rights system has recently been revamped, as the member states of the Organization of African Unity have agreed in 1998 on the establishment of an African Court, which has powers to decide 'cases and disputes submitted to it concerning the interpretation and application of the Charter... and any other relevant human rights instruments ratified by the states concerned'.<sup>14</sup> As for now, only state parties will have access to the court; individuals and NGOs may bring cases only if the state concerned has made a declaration to that effect.<sup>15</sup>

The African Union (AU) as the successor organization of the Organization of African Unity (OAU) has, facing the challenge to lead Africa into a better century than the last one has been, established the Committee on Education, Culture and Human Resources as one of its Specialized Technical Committees.<sup>16</sup> The Committee's establishment is proclaimed in the Constitutive Act of the African Union in Article 14(G). In Article 13 (h) of the same Act, together with the Executive Council, to which the Committee is accountable, it shall undertake

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<sup>10</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13, The Right to Education (Art 13). E/C. 12/1999/10, 8 December 1999

<sup>11</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 14, Plans of Action for Primary Education, (Art 14). E/C. 12/1999/4, 10 May 1999

<sup>12</sup> The Charter was ratified by Proclamation No 114/1998 titled 'Ethiopia Accession to African Human and peoples' Rights Charter'

<sup>13</sup> African Charter on Human and Peoples' Rights, Art. 45

<sup>14</sup> Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III). Adopted on 10 June 1998, Art. 3

<sup>15</sup> Ibid, Art. 5(3), 34 (6)

<sup>16</sup> [http://mirror.undp.org/african\\_union\\_en/treaties/constitution.pdf](http://mirror.undp.org/african_union_en/treaties/constitution.pdf), last visited on March 25, 2009

to coordinate and take decisions on policies in areas of education as one of common interest to Africans. Hence dedicated to work in the field of harmonization and coordination of education policies is dedicated to the Committee.

#### 4.3 National Legislation

It would do some good to begin with the domestic supreme law of the country. The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) provides broad human rights protections in conformity with international human rights laws and principles. A recently publicized American journal says the list of enumerated fundamental rights and freedoms in the Constitution are progressive and impressive.<sup>17</sup> Among the very relevant provisions to education in the Constitution is Article 41 which lists economic, social and cultural rights. This Article does not clearly provide for the right to education. The wording of it goes rather in terms of duty as it says the state (of Ethiopia) has the obligation to allocate an ever increasing resource to provide to the public health, education and other social services, and every Ethiopian national has the right to equal access to publicly funded social services.

As far as the other relevant legislations are concerned, there is no single domestic law enacted in our country governing all levels of education. There is, however, peace meal laws on different aspects and levels of education in Ethiopia, which includes Vocational Education and Training Proclamation No.391 /2004, Higher Education Proclamation No. 351/2003 and Higher Education Cost-Sharing Regulation No. 91/2003. These legislations came into force following the issuance of policy documents by the government, which are to be discussed in the subsequent section.



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<sup>17</sup> Chi Mgbako Et Als, 'Silencing The Ethiopian Courts: Non-judicial Constitutional Review And Its Impact On Human Rights', *Fordham International Law Journal*, Vol. 32:259 (2008) at 260 Note that one third of the Constitution, which runs from Art 13 - 43, devotes itself for fundamental rights and freedoms.

#### 4.4 Education and Development Policy Documents

Many countries in Africa have witnessed the serious decline, disarray and/or total disintegration of their educational system.<sup>18</sup> These are attributed to various failure factors in educational development. In a report on primary education in Nigeria, the World Bank listed the following as factors that militate against success of the education system:

- inadequate financing of primary education
- deteriorating infrastructure and physical resources
- a physical environment that is not conducive to learning
- insufficient number and quality of primary school text books
- deficiency in the provision of primary school library
- lack of educational technology and instructional aid
- poor quality, undersupply, skewed distribution, and poor motivation of teachers.<sup>19</sup>

Ethiopian progress in accessing/expansion education to the people is very big and impressive. The quality of the education is, however, meager. Even if it is hard to say Ethiopian education system is disintegrating, the failing factors stated above are mostly manifested in the Ethiopia's education reality. The long-standing problems with the Ethiopian education system have been essentially limited and inequitable access, lack of quality and relevance, and continuous decline in quality and standard.<sup>20</sup> Many third world countries are facing the challenge of meeting both the quantity and quality demands of their peoples' education given their resource limitation. The Ethiopian government is saying that although it has to be admitted that creating a balance between the expansions of education and controlling its quality is quite difficult for developing countries, educational expansion is nevertheless necessary even for quality education itself.<sup>21</sup>

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<sup>18</sup>Francis Nwonwu, 'The Role of Universal Primary Education in Development: Implementation Strategies and Lessons form Past Mistakes', *Africa Insight* Vol. 37:4 (March 2008) at 143

<sup>19</sup> *Ibid*

<sup>20</sup>Ministry of Education, The Education and Training Policy and its Implementation, 2002 at 8

<sup>21</sup> *Ibid.*, at 74

To deal with these problems, framework for a workable system and planning of education should be created. Education planning should not aim at the short-term, but at the long-term, it should be inclusive and not exclusive, comprehensive, and should involve all stakeholders involved in the planning.<sup>22</sup> This calls for a systems approach and systematic evaluation of the factors that would impact on the education system, such as population, change in demand, economic conditions, and technological changes, among other things. These change elements must be factored into the planning to achieve a comprehensive education plan. One way of achieving that would be by using the strategic educational needs assessment which takes into account to;

- identify the manpower needs at all levels in the short, medium and long term in all sectors of the economy;
- assess the human and material resources needed to train the required manpower;
- identify the sources of the required resources and their availability, readily and continually;
- identify and project possible constraints to obtaining the desired resources and achieving the education objective and building in control measures;
- have a built-in mechanism to ensure continuity and non-interruption in the actual education process and the system administration;
- entrench monitoring and evaluation measures at every stage to assess the performance against the planned goal.<sup>23</sup>

What has the Ethiopian government done facing those problems in education? Does it have the framework for a workable system and planning of education? Regarding the planning, the answer is in the affirmative. The Government launched a twenty-year education sector indicative plan, to implement a national Education and Training Policy (ETP) since 1994.<sup>24</sup> The objective of the policy is the cultivation of citizens with an all round education capable of playing conscious and active role in the economic, social, and political life of the country at

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<sup>22</sup> Francis, *Supra* note 18 at 143

<sup>23</sup> *Ibid*

<sup>24</sup> A Plan for Accelerated and Sustained Development to End Poverty (PASDEP) (2005/06-2009/10) Volume I: Main Text, Ministry of Finance and Economic Development (MoFED), September, 2006, at 109

various levels.<sup>25</sup> Further, as goal of the plan to improving educational quality, equity, and relevance with special emphasis on primary education for all by 2015 is stated in the policy.<sup>26</sup>

The policy direction also indicates that the aim is not merely to raise the standard of education of the few, but to:

- universalize primary education
- expand secondary education in synchronization with the number of primary school students and the desire for higher education; and also
- expand higher education institutions based on the country's professionals manpower needs.<sup>27</sup>

There has been series Education Sector Development Programs (ESDPs) designed in shorter periods to implement these education objectives. The ESDP process had been, as regards donors, considered to offer the advantage of providing them with an overview of the developmental needs of the sector. The Government started its own part of the ESDP program in 1997.

In the process a sequel ESDP takes lesson from its predecessor and makes necessary changes. ESDP II, for instance, emanated from the technical, and organizational experience gained through the development and implementation of ESDP I and has been implemented since 2002/03.<sup>28</sup> ESDP III (2005/06-2009/10) has been launched, the general objective of which, is to achieve the MDGs and meet the objective of National Development Plan through supplying qualified trained work force with the necessary quantity and quality at all levels.<sup>29</sup>

In general, the Ethiopian educational policy has focused on expanding access to educational opportunities. It is intended to achieve universal primary enrolment by 2015, with local language used as the language of instruction in the primary grades. The ETP and the Education

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<sup>25</sup> Ministry of Education, *Supra* note 20 at 15

<sup>26</sup> *Ibid.*, at 110

<sup>27</sup> Ministry of Education, *Supra* note 20 at 15-16

<sup>28</sup> ESDP Ethiopia: Education Sector Development Programme 1997, 2002/03-2004/05. Joint Review Mission Report October 27 – November 14, 2003 at 1

<sup>29</sup> *Ibid*

Sector Strategy linked with it and the ESDP have addressed the problems of access, equity, efficiency, planning and management capacity, quality, and relevance in education, which have been focus of their objectives and strategies.

The Government has also undertaken actions to achieve these objectives related to the ESDP, which includes, among others, basic education (access, equity, quality, and out-of school children and adults); secondary education (access, quality, continuing education for out-of school young people and adults); teacher education (increasing the proportion of qualified teachers, retaining qualified teachers, and improving the quality of teacher training); tertiary education (improving efficiency, increasing the number of engineers, educators, health workers and public administrators, and implementing a strategy for diversifying the resource base for tertiary education.<sup>30</sup>

#### **4.5. Value Added of the HRBA in the Ethiopian Education**

##### **4.5.1 Basing Educational Objectives on Human Rights**

Under the ICESCR, education should be free and compulsory at the primary level. At the secondary and higher levels, education should be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education. At the fundamental level the goal seems clear: the net enrollment rate at primary level should be close to 100% in Ethiopia. Only in such a case would obligatory primary education arguably be enforced as required by the ICESCR. At present, Ethiopia falls short of this goal. Primary education should also be provided free of charge. This is achieved in Ethiopia as students of public school from grade one up to ten are relieved from payment of fee in the EPRDF regime.

There are other definite implications of the ICESCR: state parties are obliged to have a 'detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.' The plan should, according to the Committee on Economic, Social and cultural rights, 'cover

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<sup>30</sup> Johanna Lasonen, Et Als, Education And Training In Ethiopia: An Evaluation Of Approaching EFA Goals, [http://ktl.jyu.fi/arkisto/verkkojulkaisu/TP\\_23\\_Lasonen.pdf](http://ktl.jyu.fi/arkisto/verkkojulkaisu/TP_23_Lasonen.pdf), Last visited on March 17, 2009

all of the actions which are necessary in order to secure each of the requisite component parts of the right and must be sufficiently detailed so as to ensure the comprehensive realization of the right'.<sup>31</sup> Our government, as noted in the above section, launched a twenty-year education sector indicative plan, intending to achieve universal primary enrolment by 2015.

Equality is also the other concern in the Covenant. The principle of non-discrimination is stated in Art 2(2) of the ICESCR: 'the right enunciated in the ...Covenant will be exercised without discrimination of any kind as to race, color, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status.'

Of course, there cannot be a sustainable approach to education without understanding who are excluded from the ambit of enjoyment of education right. Jana Zahle identified the missing persons from the picture of primary education in Ethiopia who are girls, extremely poor children, orphans, children with various disabilities, children from remote areas and pastoralists' children, street children growing up in refugee camps and children growing up in prison as their mothers are in custody. The Ethiopian government takes into account the primary education interest of girls and children from remote areas and pastoralists in its policy. With respect especially to girls the Ethiopian government has clear objectives. The government commits itself to the following objectives to realize the equal fulfillment of the needs of education to females.

- ensuring that all children, particularly girls, living in difficult circumstances, and children belonging to ethnic minorities, will be provided with free and compulsory basic education of a high standard by 2015;
- ensuring that the learning needs of all young people will be met by giving them equitable access to appropriate educational and life management skills programs; and
- improving adult, particularly women's literacy by 50 per cent by 2015 and giving adults equitable access to basic and further education.<sup>32</sup>

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<sup>31</sup> Committee on Economic, Social, Cultural Rights, General Comment No. 14, Plan of Action for Primary Education Art. 14 Par. 8

<sup>32</sup>PASDEP, *Supra* note 24

Even so, the equal distribution of education to Ethiopian girls, when compared to boys, remains unpractical.

Other aspects of the right to education are more difficult to define on the basis of the ICESCR. According to the Covenant, education should, for instance, be 'directed to the full development of the human personality and the sense of its dignity, and...and strengthen the respect for human rights and fundamental freedoms. What this signifies is a matter of debate. The quality of education and standards of educational institutions is another issue. In its General Comment on the right to education the Committee on Economic, Social and Cultural Rights has stated that the 'availability' of education means that 'all institutions and programs are likely to require buildings and other protection, sanitation facilities for both sexes, safe drinking water, trained teachers receiving competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology'. Ethiopia falls short of these lists of requirements.

The expansion of the educational system has created a serious shortage of teachers in Ethiopia. According to a report by Ethiopian Ministry of Education in 2004, 97.1 per cent of the first-cycle (Grades 1-4) and 28.7 per cent of the second-cycle (Grades 5-8) primary-school teachers were certificated in 2002-2003.<sup>33</sup> According to national standards, first-cycle primary-school education requires teachers with the minimum qualification of a certificate from a Teachers Training Institutes (TTI), while a second-cycle primary education teacher must have a diploma from a TTC. Female primary-school teachers are more likely to have received pedagogical training than male teachers: about 85 per cent of female and 65 per cent of male teachers are trained. The percentage of certified secondary-school teachers was 39 in 2002-2003.<sup>34</sup>

In second cycle primary education and secondary education the current situation is far from the target of having the great majority of teachers qualified. The student teacher ratios are increasing as primary education enrolment rates continue to rise.

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<sup>33</sup> *Ibid*

<sup>34</sup> *Ibid*

Despite the Ministry's claim, the shortage of teachers is likely to grow with HIV/AIDS taking its toll among teachers. There is also a shortage of teachers in rural and remote areas, and quality varies between the regions. Moreover Ethiopian schools operate with very modest facilities. There are a number of schools that are failing to respond to educational needs especially in regard of increasing girls' access to primary education and supporting women's desire to become teachers. Most of the schools lack even plain basic facilities such as lavatories, not to speak about providing counseling and clinics.<sup>35</sup>

Due to the shortage of schools and limited financial and human resources, the objectives defined in the ESDP concerning the qualitative development of primary and vocational education have not been achieved.<sup>36</sup> Attention should be paid to enhancing the attractiveness of education by increasing material and qualitative resources and by preventing the attrition of teachers. The aim of assessment seems to be classifying students and weeding out the poorest performers among them rather than supporting and promoting student learning.<sup>37</sup>

So far discussed are the requirements of the ICESCR as they appear straight forward. The extended definition of HRBA, however, requires more than what is stated here. The 'wide' definition of the human rights-based approach is not based solely on hard law instruments. The wide approach, as promoted by, for instance, the OHCHR, pays attention to such issues as 'accountability', 'empowerment', and 'attention to vulnerable groups'.<sup>38</sup> As already pointed out, the goals of the wide approach can be attributed to international law only with some amount of creative lawyering. The quasi-legal aspects of the HRBA includes, for instance, that free primary education should be an enforceable right at the national level.<sup>39</sup> Though not in a clear and straightforward manner, the Ethiopian Constitution provides a right to education. Under the definition of HRBA, the Constitution should establish, in words, a right to education, including right to free primary education.

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<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> UN OHCHR, Rights-Based Approaches, available at <http://www.unhchr.ch/development/approaches-04.html>, last visited on January 5, 2009

<sup>39</sup> *Ibid*

Again as per the HRBA definition, judicial reforms would also be needed to ease the enforcement of such right. At least free legal services should be provided for. Such again is not the case in Ethiopia.

#### **4.5.2 Policy-Setting, its Implications and Legitimacy**

The HRBA has provided a new language for development cooperation. In this Section, I will deal with the question if the above mentioned objectives add anything new to development in Ethiopia by closely looking into the policies discussed above. Policy-setting is one field where the human rights-based approach has implications.<sup>40</sup>

Ethiopia has ratified major human rights instruments. Most importantly the ratification of the ICESCR by the country was made without reservation. Also, the country designed a 20 year education plan. The country already aims to provide free primary education for all. As part of the plan, 'democracy', 'good governance', 'people's participation', 'social justice', 'attainment of the MDGs' and 'equality' (especially 'gender equality') are stated in the policy paper of Ethiopia, which has been drafted under poverty reduction strategy. These concepts by themselves would not represent all the human rights catalogues under the international human rights instruments, and some of them even go out side of the ambit of the normative international human rights regime.

Even while these objectives have not been achieved, donor agencies, to which the HRBA is visible in their policies, have pressured our government for their realization; their fulfillment is still insufficient, though. The country, for instance, received the status of a program country in Finnish development cooperation in 1982.<sup>41</sup> The Finnish Government Resolution on Development Policy takes the rights-based approach as its starting-point. In its 2004 resolution on development policies, the Finnish government declared its commitment to rights based approach and the realization of the rights of the individual as defined by the international human rights agreements.<sup>42</sup>

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<sup>40</sup> Seppanen, *Supra* note 2 at 83

<sup>41</sup> Johanna, *Supra* note 30

<sup>42</sup> Seppanen, *Supra* note 2 at 19

Yet, when it comes to the domestic policy papers, despite these general concepts as ‘good governance’, ‘gender equality’ and ‘social justice’, human rights have not been integrated into development policies as thoroughly as the wide definition of the HRBA would seem to require. Development objectives are not explicitly based on human rights obligation or on the express linkage to rights in the sense that human rights are not mainstreamed in the process of realizing education to the Ethiopian people.

The impact of the HRBA is the legitimacy of certain kind of development policies. As has been pointed out, some economists (at least those employed by the IMF) have argued in favor of fee-based education. While such argument may be valid from the point of view of economic theory, they can easily be disputed by the HRBA. Regardless of the economic implications, education must be free at the primary level in countries like Ethiopia which have acceded to the ICESCR and made no relevant reservation to it. At the secondary and tertiary level the law is not as categorical, although the ICESCR states that accessible education should be achieved through the ‘progressive introduction of free education’. The progressive introduction of free education to tertiary education seems to be disregarded in Ethiopia when the cost-sharing scheme was introduced through a regulation by the Council of Ministers in 2003.<sup>43</sup> Some say the scheme would make the higher education system more accessible, more equitable, and more efficient in the allocation of social resources.<sup>44</sup> However, for the ICESCR, as years go by in the process of attaining results required by the Covenant, the government should go lenient on payment of fees. With this in mind, it would be deviation from the Covenant to introduce fee payment because the government is going the other way round by this Regulation.

#### **4.5.3 Measuring the Realization of the Right to Education**

There are various ways of measuring human rights. However, I, for the most part, will depend on statistics acquired from governmental, non-governmental and inter-governmental sources. Of course, efforts to monitor progress in relation to human rights depend crucially on

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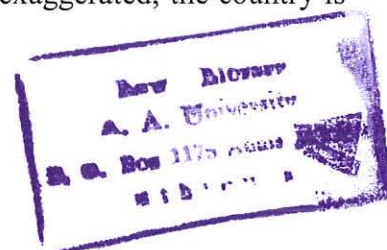
<sup>43</sup>Regulation No. 91/2003, Council of Ministers Higher Education Cost-Sharing Regulation, Federal Gazette, 2003.

<sup>44</sup>William, *Supra* note at 4

statistics-based evidence.<sup>45</sup> In this section quantitative answers will be sought to questions like to what extent Ethiopian children have access to educational and what extent women progress to education. Though proving their unreliability is not within the scope of this research it is to be noted that not all statistics are reliable.

The Millennium Development Goals Indicators consist of three indicators for measuring education; these are the net enrolment ratio in primary education, the proportion of pupils starting grade one who reach grade five, and the literacy rate of 15-24 year-olds.<sup>46</sup> The Ethiopian development policy, the Plan for Accelerated and Sustained Development to End Poverty (PASDEP), has so many figures on development and educational fields, extending to drop out rates and proximity to school.<sup>47</sup>

In another source, looking at the data on enrollment of both sexes shows that primary school enrollment level in 2005 was at 51% while secondary school level is 15%. Therefore, raising the enrollment rate is one of the major problems the Ethiopian government must tackle.<sup>48</sup> On a related indicators, statistics adopted from African Development Bank in 2006 shows that primary school enrollment is 66% (76% male and 55% female) and Secondary 20% (male 23% and female 14%).<sup>49</sup> Hence, Ethiopia has not met the 100% requirement for primary school enrollment. In a governmental statistics indicated in the ruling party's (EPRDF) news letter, our country's gross primary education enrolment has risen from 91.3% in 2005 to 97% in 2007.<sup>50</sup> According to this figure, which the author thinks is a little exaggerated, the country is close to realizing the free compulsory education.



<sup>45</sup> Human Rights and the Millenium Development Goal, Making the Link United Nations Development Programme, Oslo Governance Centre Oslo, Norway <http://hurilink.org/Primer-HR-MDGs.pdf>, last visited on January 14, 2009

<sup>46</sup> Seppanen, *Supra* note 2 at 83

<sup>47</sup> PASDEP, *Supra* note 24 at 28

<sup>48</sup> EDUCATION - Italian Development Cooperation in Ethiopia.htm [http://www.itacaddis.org/italy/index.cfm?fuseaction=basic\\_pages.basic\\_page&page\\_name=15](http://www.itacaddis.org/italy/index.cfm?fuseaction=basic_pages.basic_page&page_name=15) last visited on March 17 2009

<sup>49</sup> Francis, *Supra* note 18 at 142

<sup>50</sup> 'Ye Economy ena Mahiberawi Limat Tegbarat: Yetimihirt Limat Tegbarat Afetsatsem ena Yetegegnu Wutetoch', *Addis Ra'ey*, Vol. 2, Addis Ababa (July 2009) at 60

Challenges facing Ethiopian children not to go to school have something to do with the economic situation of the country. Many children cannot go to school, either because schools are unavailable, or because their families cannot afford to send them. A child's labor is often needed at home to support their family income.<sup>51</sup>

The numbers and figures noted so far do not, however, give evidence of the quality of the education. Bringing about quality education in Ethiopia is one field where significant change deserves to come.<sup>52</sup> The two main problems that brought about the decline in the effectiveness and efficiency of the education system have been identified as: inadequate funding, which has implications for the provision of text books and school infrastructure, including library and buildings, and a lack of well trained teachers, and an insufficient number of teachers and teaching aids.<sup>53</sup>

Class sizes are often way in excess of average number, making Ethiopia in critical need of teachers. Examining the pupil: teacher ratios, the UNESCO study reports that Ethiopia, along with Rwanda, Chad, Congo, and Malawi, have the ratios exceeding 60:1.<sup>54</sup> As stated in the Ethiopian Ministry of Education document, and pointed out previously, the government claims educational expansion is necessary for quality education. On the contrary, the expansion of the educational system has created, as this ratio indicates, a serious shortage of teachers, impacting the quality of the education only negatively. Lack of educational aids, which is very likely a fact in the country under the circumstance, would have the same impact.

Partly as a result of poor quality education and curriculum content an overwhelmingly high proportion of school leavers is unemployed or lacks the grades to pursue further education. Ethiopia's national learning assessment samples indicated that only half of the students at grades four and eight met the achievement expected of their grade.<sup>55</sup> In some instances passing

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<sup>51</sup> Combating poverty in Ethiopia, <http://www.ahead.org.uk/activities.html> last visited on March 17, 2009

<sup>52</sup> 'Sebategna Dirijitawi Guba'e Meglecha,' *Addis Ra'ey*, Vol. 2, No. 3 (September-October, 2009) Addis Ababa at 61

<sup>53</sup> Francis, *Supra* note 18 at 146

<sup>54</sup> Africities, *Supra* note 1

<sup>55</sup> Jana Zehle, Universal Primary Education In Ethiopia: Going Beyond Increasing Numbers And Considering The Diversity Of Out Of School Children, last visited on March 17 2009 [http://www.norrag.org/db\\_read\\_article.php?id=1135](http://www.norrag.org/db_read_article.php?id=1135)

national tests, especially 'A' levels, had been seen as winning a lottery, until the extra ordinary education expansion which is happening very recently.

#### 4.5.4 Relevancy to Development Issues

Educational policies should be seen in their general social and economic context. According to the Human Development Index 2008, Ethiopia takes a pecking order/position of 169 out of 179 countries.<sup>56</sup> This index created by the UNDP, measures deprivations in three dimensions - a long and healthy life, knowledge and a decent standard of living,<sup>57</sup> and Ethiopia is before only ten countries in the world.

The Ethiopian Poverty Reduction Plan states the reasons for the country's poverty.<sup>58</sup> They are volatility and external shocks; drought; capacity constraints in construction and in the public and private sectors; and the challenge of maintaining quality of services in the face of massive expansion of the number of persons and communities served. Ethiopia's poverty-stricken economy is based on agriculture, which accounts for half of GDP, 60% of exports, and 80% of total employment.<sup>59</sup> The agricultural sector suffers from frequent drought and poor cultivation practices.

In Ethiopia, HIV/AIDS worsened poverty. HIV/AIDS prevalence estimates range from 6.4 to 11% of the Ethiopian population, and estimates of the number of people believed to be living with HIV/ AIDS range from 2.1 to 3 million.<sup>60</sup>

The effect of poverty is seen in education. Poverty significantly reduces the likelihood of school participation and a strong negative correlation exists between household poverty and primary school attendance in both rural and urban regions in Ethiopia.<sup>61</sup>

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<sup>56</sup> <http://hdr.undp.org/en/statistics/>, last visited on March 5, 2009

<sup>57</sup> Combating poverty in Ethiopia, Supra note 51

<sup>58</sup> Supra note 24 at 215

<sup>59</sup> *Ibid*

<sup>60</sup> Dod HIV/AIDS Prevention Program Status Report: Ethiopia Html <http://www.med.navy.mil/sites/nhrc/dhapp/countryreports/Documents/yearly/ETHIOPIA.pdf> last visited on March 17, 2009

<sup>61</sup> Combating poverty in Ethiopia, Supra note 51

What are the value-added of the human-rights based educational policies to such problems? The HRBA differs from the present poverty reduction policies that are implemented in Ethiopia in its emphasis on human rights. At the international level, human rights language can provide an argumentative device for donor organizations. Human rights can legitimize development projects and raise support for particular development projects. Human rights obligations can be used to compel governments receiving development aid to focus on basic education rather than on elitist university teaching alone.

At the headquarter level, the focus of attention on human rights can place various vulnerable groups at the center of development planning. But, at the same time, international human rights law seems to leave many topical development problems unanswered. Should educational policies, for instance, concentrate on the quantity or quality of education? In the world of limited resources, it is not possible to have both. The quality of primary education is thought to have declined in Ethiopia, while accessibility to schooling has improved. Is this the optimal strategy in the long run? What should be the proportion of funding for pre-school, primary education, secondary and higher education?

Literal interpretation of ICESCR would indicate that states have a primary obligation to provide free and obligatory primary education. As long as this right was not fulfilled – as long as the net enrolment rate was not close to 100% – no effort could be applied towards secondary or higher education. Luckily, the ICESCR provides means of avoiding such a conclusion: in order to provide primary education a certain number of teachers – educated teachers – is needed. It also follows from the realization of other rights that some amount of secondary and higher education is needed. But this leaves the original question unanswered. What is the optimal educational policy for Ethiopia? Economists have tried to answer this question through economic theory, but human right lawyers can hardly do the same, and stay within the field of law.<sup>62</sup>

The same is true of the discussion at a more general level. What proportion of the overall budget in Ethiopia should be made up of investment in the educational sector? Among the total

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<sup>62</sup> Seppanen, *Supra* note 2 at 89

Government Expenditure in 2005 our government allotted from its budget 19.7% for education whereas 16.7%, 11.2% and 4.8% went to agriculture and food security and health respectively.<sup>63</sup> Though the education sector here is more beneficial among the pro-poor sectors, there remains the question: what if it happens that the government allocates less percentage to education sector than the other/s? Given limited resources and capacity, which needs are to be addressed first? Should each right be awarded on equal share of the budget? The ICESCR seems completely irrelevant to this question. As a matter of principle, in the international human rights regime there is no hierarchy of rights: all rights are equally important.

While there is no hierarchy among rights, certain rights, it can be argued, can be given priority in certain circumstances. Firstly, the right may function as a catalyst.<sup>64</sup> Education is a good case in point. In efforts to reduce the poverty rate, for example, countries might consider giving priority to the right to education, which is a catalyst for the fulfillment of many other rights, such as the right to food, the right to health and the right to work.

Secondly, the human rights framework does in fact assist prioritization by providing basic principles and standards that may not be violated in the name of efficiency.<sup>65</sup> While it may be true that human rights do not provide a set formula for making decisions on what development issues should be prioritized, it does provide guidance in making such decisions. At the end of the day, such decisions fall to national governments, within the capacity constraints they face. Using human rights framework will, however, ensure that choices are made through participatory processes, an informed citizenship, and without compromising on fundamental human rights principles and norms.

Thirdly, tough choices may not be solved by human rights, but they may be informed by human rights authorities.<sup>66</sup> For example, recommendations from international treaty bodies and national human rights institutions can help governments to be strategic in their prioritization.

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<sup>63</sup> PASDEP, *Supra* note 24 at 5

<sup>64</sup> Human Rights and the Millennium Development Goal, Making the Link United Nations Development Programme, Oslo Governance Centre Oslo, Norway <http://hurilink.org/Primer-HR-MDGs.pdf>, Last visited on January 14, 2009.

<sup>65</sup> *Ibid*

<sup>66</sup> *Ibid*

This way, defence can be made against 'resource limitation' as ground for compromise or failure in promoting the right to education based on priority to other sectors.

If poor education is a cause of poverty, then poverty eradication should be the primary goal of development works. Of course, poverty reduction and its ultimate eradication in all its dimensions have been and still are the overriding development agenda of the Government of Ethiopia.<sup>67</sup> The human rights-based approach consists of aims which have already promoted under the poverty reduction strategies, including the Ethiopian PASDEP, but provides little assistance towards their achievement.

#### **4.6 Possibilities and Challenges of the Human Rights-Based Approach**

It would be mere repetition to say that the greatest advantage of the human right-based approach is the legitimacy that is attached to human rights. The language of rights can be employed for the benefit of particular development projects. It can help raise funds, organize political campaigns, and provide a means for setting checks and balances for recipients of development aid. To some extent, human rights also seem to provide a new perspective on the meaning of 'development'. In the human rights-based approach, isolated and relatively few human rights violations can turn a government into an international pariah, even if it could facilitate economic progress for the whole population.<sup>68</sup> Focus on individual actors also increases the sensitivity of development program to the difficulties of 'vulnerable' groups.<sup>69</sup>

However, the development approach faces crucial challenges. The logic of international law restricts the human rights-based approach to the limits of law insofar as the approach is considered to have legal validity. Legal argumentation has to follow certain rules in order to qualify as law. Under these rules, the view that the human rights-based approach (instead of merely human rights) is an international legal obligation is problematic. In international law the 'Lotus principle' -which still appears in the standard treatises of the field -connotes a legal principle according to which sovereignty may be constrained only by particular norms of

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<sup>67</sup>PASDEP, *Supra* note 24 at 18

<sup>68</sup> Seppanen, *Supra* note 2 at 91

<sup>69</sup> *Ibid*

international law.<sup>70</sup> In the words of the Permanent Court of International Justice, 'restrictions upon the independence of States cannot. . . be presumed'.<sup>71</sup> In light of the Lotus principle it is difficult to claim that there is an obligation of states to base their development cooperation on the human rights-based approach instead of other development policies if these do not violate hard law obligations. No such rule can be found in the international covenants establishing human rights law. When states accede to the central human rights instruments, they agree, for instance, to 'recognize the right of everyone to an adequate standard of living for himself and his family not to implement a policy called the human rights-based approach to development.'<sup>72</sup>

The most problematic aspect of the HRBA is not, however, the legal constraints concept, but its practical implications -or rather, the lack of them. A statement to the effect that everybody has the right to education is not the most relevant one when the mundane issues of program design for education are concerned. Even if the right appears in papers, little is achieved by simply restating that human rights are essential to the program under consideration. Sometimes they are ignored or not even read; when they are, they may not connect with the bread and butter issues on the ground.<sup>73</sup>

The implementation of the approach would, therefore, call for definite action: legislative reforms at the national level which define development objectives as legal rights; the construction of a legal system that is necessary for rights enforcement; information campaigns to 'empower' or educate the people about their rights. But such actions can also be problematic. Firstly, even if one way of educating and empowering the public about the international human rights laws is through publication of the laws in legal gazette, Ethiopia has greatly failed on that. Publication of the entire text of any international human rights covenant or treaty as an official Amharic translation subsequent to ratification followed by the implementation of national legislation is ideal, but it is not an express requirement of the Ethiopian Constitution.<sup>74</sup> Thus far, Ethiopia has ratified most of the major international human

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<sup>70</sup> *Ibid.*, at 35

<sup>71</sup> *Ibid*

<sup>72</sup> *Ibid*

<sup>73</sup> *Ibid.*, P. 92

<sup>74</sup> Chi Mgbako, *Supra* note 17 at 270

rights instruments but has published only one.<sup>75</sup> The problem is even worse given the fact that Ethiopia is a country of multi-languages.

Secondly, the legal framework has its limitations. Law provides techniques to undermine whatever is claimed to be legally obligatory. Hence, economic, social and cultural rights, the right to education being one of this catalogues of rights, suffers claw back clauses as the country's resource capacity. For those lucky enough to stand before court, going to court to hold the state accountable for a violation of human rights can be complicated and expensive. Moreover, even if successful in taking a state to court, the state may resist the enforcement of the verdict.<sup>76</sup> The weakness of human rights enforcement mechanisms limits the merit and value of human rights for helping achieve development goals.

The issue cannot be solved by simply improving 'access to justice'. Even the ordinary legal process takes long time precisely because human rights and the principle of 'fair trial' must be observed. Snap judgments are hardly in line with the human rights-based approach. It seems hallow to speak of rights enforcement, if rights may be enforced only in exceptional cases after a long and expensive legal process. The more problematic consequence of this is that the human rights-based approach misallocates resources to issues that are of marginal concern on the well being of the people.<sup>77</sup> If the official legal system is largely irrelevant to the approach in countries like Ethiopia, it must be asked why resources should be spent in this sector. Why not simply improve education instead of improving the 'right to education'? This might have been understood by development planners as they see education merely as sectoral issues.<sup>78</sup> For them, advancing education quality is generally not seen as protecting a right. Such underestimates the significance of human rights in development.

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<sup>75</sup> Note so far it is the African Union Establishment Charter whose terms are reinstated in a local legislation.

<sup>76</sup> Human Rights and the Millennium Development Goal, *Supra* note 64

<sup>77</sup> Seppanen, *Supra* note 2 at 93

<sup>78</sup> Jorge Daniel Taillant, A Rights Based Approach to Development Presentation to the World Social Forum Seminar on Globalization and Human Dignity March 2, 2002 <http://www.cedha.org.ar/docs/doc78.htm>, last visited on March 4, 2009

Further, as long as the international human right legal sector is concerned it has to coexist with the local 'customary' or 'traditional legal systems. Rule of law projects end up enforcing the official legal system, which can have adverse effects for the local community.<sup>79</sup>

Whether the problems (negative effects) can be compensated for by the advantages (positive consequences) of the human rights-based approach is for the policy makers to decide. To some extent, it is probably possible to use the approach selectively: to employ the legitimizing effects of human rights language to foster development objectives of, for instance, poverty reduction strategies, while giving up the mechanical side of law enforcement.<sup>80</sup> In the Ethiopian context the approach could provide additional means for donor agencies and NGOs to pressure the government to put more effort into providing free education. Accepting that the human rights regime has its limits will not help the project: the legitimacy of human rights is based on the conception that human rights are the universal answer for all development questions.

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<sup>79</sup> Seppanen, *Supra* note 2 at 93-94

<sup>80</sup> *Ibid.*, at 94

## CONCLUSION AND RECOMMENDATIONS

Historically the relationship between human rights and development reveals that in the name of development, personal as well societal freedoms have been curtailed in the name of economic development. Under human rights-based approach, development objectives are based on human rights law and its promoters position themselves against such economically-minded development policies. Human rights, like the right to education, are used to legitimize development objectives such as the promotion of free universal primary education. The human rights-based approach calls for a holistic approach that is sensitive to the needs of the individual and the community. Where human rights are observed, they support the development of a safe and predictable enabling environment for investment and growth, and help to ensure that the benefits of growth reach all groups in society.

Various definitions of HRBA to development are forwarded by various agencies and scholars evidencing the limits of human rights' relevancy to development. The definitions reveal a similar phenomenon: on the one hand, the legitimacy of the concept is derived from human rights law; but on the other hand the definitions are supplemented by concepts that are not part of the human rights regime such as empowerment and accountability.

The HRBA is in some way similar to some concepts and policies of international law. Its relationship with poverty reduction strategies like the Ethiopian PASDEP, from which its language is partly derived, is quite interesting. Policies that were originally implemented under poverty reduction strategies can be reinterpreted as human rights-based policies. From the policy setter's point of view, the HRBA materializes in policy guidelines. So the Ethiopian government can employ the HRBA together with the poverty reduction strategy for achieving human rights objectives

The Ethiopian government does not mainstream its policy documents like the education policy documents and the PASDEP with human rights. Looking closely these documents show that education is a sectoral matter, not a right. With the understanding that the HRBA should be a center piece of Ethiopian development policies the government should support the inclusion of human rights into development policies. The HRBA has its esteem due to an

increasing popularity of 'rights talk' and 'legalization' in the international field. Today law and rights, rather than economics, take center stage in development ideology. Also, the government should ensure that human rights are not undermined in development cooperation, and every project plan should include a part which assesses the human rights implications of that particular policy.

Human rights should also be used for legitimizing for a certain project. The HRBA takes the realization of human rights - rather than, for instance the improvement of macroeconomic indications, such as the GDP - as the central objective of development cooperation. To realize this objective, development policies should be formulated in the language of human rights. Support for primary education, for instance, should be promoted under the right to education, rather than under an economic theory which assumes that primary education is beneficial to for a country/s economic development. So, the government should legitimize economic development through human rights so that legitimizing language of human rights, for instance, elevates political campaigns to an international level. Besides, NGOs in Ethiopia may refer to the ICESCR in order to justify their demands for more funding for the education sector.

Owing to its normativity, HRBA has its force regardless of the economic outcome of development. However, the approach's added value, in contrast to poverty reduction strategies, is reduced because in some fields of development the international human rights law is silent. Development issues concern either grass roots issues, such as the provision of affordable mosquito nets to combat malaria in rural areas of a developing country; or large structural issues, such as a country's integration to the world economy. Many would agree that human rights law does not govern these matters. Human rights are objectives, not solutions, and as objectives they are widely accepted within the donor community, though some rights like the right to education are not promoted by all international actors as established by ICESCR.

Indicators and indexes provide means for measuring human rights in development. Indicators provide useful information on the degree to which rights have been realized in a given

society, the level of violations that occur and whether they occur systematically, the possible causes for the persistence of violations and/or the failure to realize human rights progressively. They provide important information on both the stock of the human rights situation and the flow of socio-economic and political processes that are related to the achievement or failure in rights protection. They thus seek to cover the degree to which states are meeting their legal obligations to respect, protect, and fulfill the different types of human rights.

However, it should be acknowledged that human rights do not exist independently of legal interpretation: a statement on whether a right is fulfilled is a matter of interpretation which cannot be reduced to numbers, statistics or mathematical formulae. Even so, it may be possible to use human rights indicators as evidence. Further, indicators are only as reliable as their collection methods-which are less than perfect in developing countries and they are based on potentially incorrect assumptions about correlation of certain facts and the realization of human rights. To a large extent indexes are at odd with human rights reasoning. The starting point of the HRBA is the attention to human rights helps to avoid mechanistic project planning. When indexes are used in human rights work, flexible human rights reasoning are abandoned in favor of mathematical calculations on which the particular index is based. Secondly, indexes are generalizations in nature, whereas human rights indexes ignore individual circumstances, although these are precisely what human rights reasoning is focused on the individual. Human rights indexes ignore individual circumstances, although these are precisely what human rights reasoning tries to oppose.

Nonetheless, the inaccuracy of indicators and indexes is tolerated by the legal discourse. Law has always had to function with more or less insufficient evidence. In any case, human rights evidence should be as complete and diverse as possible. Indicators can assist in human rights evaluation, as long as their limitations and assumptions are correctly understood. Educational statistics may, for instance, assist in determining what aspects of the right to education have been realized in particular country.

Also, index can be put in use in the legal discourse as there is at present a tendency to favor easily manageable quantitative data-statistical indexes, which are compilations of many different statistics - over more complex qualitative information, such as various country reports. The decision-making practices of international organizations make indexes even more attractive as they reduce complex human rights situations into easily digestible information which can be used for instance, in summery county-review processes.

Having the benefit of measurement of human rights is established, there are important implications for future work. First, all human rights measurement relies primarily on information. There is, thus, a continued need for the generation of high quality information at the lowest level of aggregation, suggesting an important role for government organs, NGOs, IGOs, and academics devoted to documenting and measuring human rights. Second, there is a great need to share all available information. Finally, there is obviously the need for effort of data collection.

Despite the variety of incentives, influences and pressures by the HRBA that may make a difference in the decision or not to move forth with a public project, there are no clear and universally acceptable priority-setting mechanisms in place to assist in determining the best possible use of the investment funds made available for program/project work. It is a problem in itself that prioritization is treated reluctantly within the human rights approach. In a world of scarce resources, prioritization is a necessity. No matter how large the development budget, it still needs to be divided between different sectors and projects- health care and education, law enforcement, energy and so forth. If the HRBA does not resolve the issue, prioritization is to be carried out under other development policies. Yet, for the right to education priority, if worked out, would turn to its advantage. Such is basically because education is a means to the realization of other rights through its contribution to human well being by raising productivity; reducing social inequalities, impacting on fertility, age of marriage, population growth health and poverty reduction.

Another problem with respect to HRBA is its practicality. In practical terms, enforceable rights are probably not a very efficient means to promote development objectives. Rights

enforcement is often costly and time consuming. Since governments have better access to legal remedies than individuals, law and the judiciary is more easily used against the people than against states. There are also questions of resource allocation. When the law is taken to the focus of development cooperation, attention is directed towards legal issues such as the judicial process.

While it may be true that priority-setting mechanisms is lacking in the international human rights system and the justiceability (enforcement) of human rights in the domestic legal system is weak it is important to note that legal remedy is only one of a number of strategies for holding states accountable to their international commitments. There are other formal mechanisms, such as parliaments, national human rights institutions and Ombudsman, and less formal mechanism, such as participatory budgeting, a critical media, a mobilized and an engaged civil society which help strengthen accountability. These mechanisms and strategies help ensure that states are responsive to their people. They are built on and re-enforced by human rights: the right to expression, to be informed and to assembly.

The Ethiopian government has made efforts to the education. Ethiopia has ratified the ICESCR, the most relevant human right instrument to the right to education, without reservation and designed a 20 year education plan. The country has also developed its education system on the basis of a sector-wide policy and framework since 1994. It launched in 1997 the Education Sector Development Programme, which has been divided in series of programs. The country already aims to provide free primary education for all.

Following these policies and programs, schools enrollment in Ethiopia grew rapidly. With education seen as the avenue to better paid jobs, a better standard of living, neither households nor governments had any reason to question the benefit of investing in education. Nonetheless, Ethiopian literacy, women's inequality and quality of education fall short of what is required by the ICESCR. The needs of the education sector are still huge.

Statistical data from various sources indicate that the provision of educational resources and access to education are not still attained, and to the utilization of the available resources boys

are favored over girls. Further, there is a high dropout rate results in an unacceptably low proportion of pupils completing primary school.. Teacher education in the country is in a state of crisis. The inadequacies are especially prevalent in the area where the greatest level of expertise is needed, the early grades, where there is explosion of gross enrollment.

Generally, it can be said that the main problems in the effectiveness and efficiency of the education system have been the inadequate funding, which has implications for the provision text books and school infrastructure, including library and buildings, and a lack of well trained teachers, and an insufficient number of teachers and teaching aids.

The government began to make students share the cost of education in 2003. However, Council of Minister's Cost-Sharing Regulation did not take into account 'the progressive introduction of free education to tertiary education' of ICESCR, when it introduces a fee-based university education to a country where no such scheme has ever been put in place in history. The introduction of the fee can only be backed up with economic reason, which the HRBA sets out to oppose.

A system approach and systematic evaluation of the factors that would impact on the education system, such as population, changes in demand, technological changes, among other things should be used by the Ethiopian government. A built-in mechanism to ensure continuity and non-interruption in the actual education policy implementation process should be made by ensuring engaging the people to the process. Renovating the existing school facilities and teaching aids, promoting females' access to education and resources, and upgrading the teacher's capability and improving their standard of lives by paying competitive salaries positively influences the quality education of the country. In a nutshell, the rules in the ICESCR and the General Comments of the Committee on Economic, Social and Cultural Rights from designing the education policies all the way to their implementations should be observed. That should include mainstreaming the rights in the international instruments in the education policies of Ethiopia and periodically evaluating them with relevant indicators and indexes in the processes of the implementations.

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### Declaration

I, as author of this research work, hereby declare that this research is original; other research works stated therein are acknowledged, and hence, take full responsibility for the out come related to its integrity.

Name of Advisee: Teramed Tezera

Signature TT

Date TT

I verify the above declaration of my advisee is true, Teramed Tezera.

Name of Advisor: Salah S. Hammad (Dr.)

Signature 

Date 08-07-2009