

**THE RIGHT SYNTHESIS:
LESSONS FOR UNICEF RIGHTS-BASED PROGRAMMING IN ZAMBIA**

By
Caitlin E. W. Goggin

A Practicum Submitted to
Saint Mary's University, Halifax, Nova Scotia
in Partial Fulfillment of the Requirements for
the Degree of Masters of Arts in
International Development Studies

December, 2008, Halifax, Nova Scotia

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Abstract

Rights-Based Approaches (RBA) to development programming are quickly gaining ground in their use by development practitioners. UNICEF, the United Nations Child's Fund, among other UN agencies has adopted the approach and publicly championed its virtues as a programming tool. This research examines various case studies of the utilization of rights-based approaches, and identifies lessons emerging from the implementation of RBA in the general Zambian experience of development programming, with a focus on UNICEF-Zambia.

December 15, 2008

Dedication

For Glenn - who takes my calls;

For Mum, Valmai and Dad - with me in every journey;

and

For my grandparents, Roger (1923-2005), Betty and Norma – Trailblazers.

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1. Introduction

“Rights talk is one way of trying to talk, think, and reason about what individuals and communities ought and ought not to do. Rights talk is used to inform people of their obligations and to give explanations of our own and other’s choices and actions” (Ozar, 1986).

Development practitioners, whether they are designing policy or contributing to ongoing programmes, are faced daily with issues of legitimacy, applicability, measurability, and perhaps paramount to all, efficacy. The tools, methods, approaches at their disposal are aplenty. But to what end? This discussion will examine one approach and the potential that it offers for development activities. Through the analysis of current literature and case study material of UN hosted programmes, this discussion will outline how the operationalization of a rights-based approach (RBA) allows for the most comprehensive and constructive conceptualization of both national and international duties and obligations in current development policy and practice, and comment specifically on the work of UNICEF Zambia with regard to rights-based approaches.

2. The Rights Debate

2.1 The Emergence of 'Development' and the Human Rights Regime

Post-World War II, development practice and theory evolved as a by-product of the decolonization process. In tandem with the creation of the UN system, the 'development project' focused both on stabilizing countries in transition as well as aspiring to build a more just world order (Grzybowski 2000). Yet despite any implicit reference in practice to *justice* or *rights*, development endeavours and development theory were almost immediately dominated by the work of economists, and focused on change at only the state level (Elliot 2002). The measure of economic growth emerged as the most paramount of progress indicators; in short, positive development was directly equated with economic growth (Bruton 1963; Rostow 1959).

Running almost in parallel to the 'development project' was the rise of the international human rights regime. The Universal Declaration on Human Rights of 1948 (UDHR) created the foundation for a new relationship between the *individual* and the global political order. Yet despite the advances which have been made in both development and human rights efforts since the end of WWII, particularly within the human rights realm, strong institutional and/or theoretical links between these two disciplines have been slow and laboured in coming to fruition.

2.2 Rights in Reflection – Natural and Human Rights

Since our purposes here are to discuss the dynamics of the intersection of human rights and human development theories it would not be particularly advantageous to

focus for too great a length on the centuries-old history and genesis of the rights culture. Nonetheless, we should briefly look at the natural rights and human rights debates.

In the seventeenth-century, in response to the social disruptions and transformations of modernity the idea of natural or human rights permanently entered the mainstream of political theory and practice in Europe (Donnelly 1999: 82). In his *Two Treatise of Government* (1688) John Locke wrote of property, property rights and their necessity for a functioning society. Locke proposed a labour theory of property that built on the idea of natural law. According to Locke's theory, by combining (mixing) one's labour with an object, a person can gain ownership of the object. Liberalism, often simultaneously both a vehicle and constraint on modern day rights, draws heavily on the theories and precepts of private property (MacPherson 1987; Thomas 1988). Locke presented the first fully developed natural rights theory which some view as fundamentally consistent with later human rights ideas. Locke suggested that human, or "natural," rights are non-visible properties of personhood; natural rights theorists relied on a metaphysical conception of human nature to ground their claims about natural rights to things like life and liberty – we have rights, they said, in the same way we have a soul (Orend 2002: 18).

Rousseau's discussion of the *social contract* encouraged the realization that humankind had a choice whereby one must choose between remaining in a state of nature or joining/forming a community - a society; the two options are mutually exclusive and definitive (*The Social Contract*). Essentially Rousseau discusses the concept of freedom within a civil society. In the state of nature (or pre-society) humankind enjoys the physical freedom of having no restraints on our behaviour. By entering into a *social*

contract, humankind willingly and knowingly places restraints on certain behaviours, a pact is constructed - one which is necessary in order to co-exist in a community of others. According to Rousseau, by giving up our *physical freedom* we gain the *civil freedom* of being able to think rationally. We can put a check on our impulses and desires, and thus learn to think morally. In Rousseau's work the term 'morality' only has significance within the confines of civil society.

The discussion of Locke and Rousseau brings us to the necessary discussion of natural rights and/versus human rights. While the idea of human rights descended from that of natural rights there are two camps of thought on whether or not the two are analogous. Some recognise no difference between the two and regard both as labels for the same thing, while others choose to keep the terms separate to eliminate association with some features traditionally associated with natural rights. The central claim of the body of thought regarding natural rights developed in seventeenth and eighteenth century Western Europe, was that every individual possesses certain natural rights simply by the nature of being an individual. According to Peter Uvin, though human rights possess essentially the same *raison d'être* and vision as natural rights of the eighteenth century, the current notion of human rights differs in many ways from natural rights and indeed does not refer to them or use their terminology (Uvin 2004: 9-10). He goes on to say that the major breakthrough contained in the 1948 Universal Declaration on Human Rights was that these rights were understood to be universal, that is, applicable to all human beings by virtue of their humanity – it was a dramatic affirmation of the equality of all individuals, wherever they live, regardless of their race, colour, sex language, religion, origin, birth or belief (Uvin 2004:10).

Richard Wilson has characterized the UDHR as a declaration which pretends to be universal, but actually reflects an idealistic European political tradition (Wilson 1997, cited in Sano 2000). While there are many who echo Wilson's thoughts on the dominance of European (or more broadly, Western) tradition within the so-called 'universalism' of human rights, there are also those who, while accepting that there is some truth in the observation that the UDHR originated from Western foundations, argue that this point is frequently exaggerated (Eide 1992). It is also suggested by some that regardless of ideological origin, the UDHR has great mass relevance and offers a central point of reference for all international rights orientated endeavours.

2.3 "Generations" of Rights

The development of human rights, by way of historical interpretation, is most often described as having three phases or generations. The first generation of human rights is comprised of civil and political rights; the second generation encompass economic, social, and cultural rights; and the third generation, the so-called solidarity rights include for example, the right to development, to the environment, and to peace and self-determination (Eide & Rosas 1995; Rosas 1995). Many have understood this not as a mere categorization but as a ranking which puts economic, social, and cultural rights after political rights (Hamm 2001:1006). Thus, the 'second-generation' rights led a kind of shadow life until the late 1980s, and this is more or less still true for cultural rights, which are mainly considered in the context of minorities. In contrast, economic and social rights have become part of mainstream human rights discussion, although they have not yet received equal treatment as compared with political rights and civil liberties

(Hamm 2001). The status of 'solidarity rights' remains unclear in much of the current literature, particularly, the right to development and the environment. A recent work demonstrates clearly that the environment has seldom been defined as a human right, yet that a human rights approach is increasingly being used as a means to achieve a safe, sustained environment (Boyle & Anderson 1996).

Sano cites the innovative work of Norwegian scholar Johan Galtung who operationalizes a system of intuitive colour-coding in describing the generational breakdown of rights: Galtung describes the first generation of human rights as belonging to the bourgeoisie (blue), the second generation to the working class (red), and the third generation to the social movements (green) (Galtung 1997, cited in Sano 2000). Sano though questions Galtung's exclusive association of third generation rights (right to development, environment, etc) solely with social movements, this is, "hardly completely correct since the right to development, for example, has been promoted by governments of many developing countries" (Sano 2000:737). Noberto Bobbio emphasizes the uneven nature of the third generation of human rights, but it is worth noting that according to this scholar the right to development is not as important to the overall category (Bobbio 1996). However, like Galtung, Bobbio sees third generation human rights as being connected with demands from environmental organizations (Bobbio 1996). And finally, of note for future work on a human rights taxonomy: Bobbio points to a *fourth generation* of rights that are related to what he deems to be the at times disturbing results of biological research and to the question of genetic identity. Much innovative work is currently being produced on biodiversity, and genetic rights, (Shiva 2001, 2005; Tokar 2001; Louka 2002), and while there is no dispute offered herein that these issues directly

relate to development, the focus of this discussion will, for the time being, remain focused on the first three generations of rights, and in particular how the third are impacting the universal progress of the second.

2.4 The Link between Rights and Development

There is an emerging body of policy research and empirical analysis exploring the relationships between kind of rights, and between human rights and specific development issues. Recent publications of the World Bank (World Bank, 2005) and UNDP (UNDP, 2005) show how entrenched inequities can frustrate the prospects for economic growth and the achievement of the Millennium Development Goals (MDGs). Other analyses on the growth/poverty/rights nexus have shown that substantial violations of political and civil rights are related to lower economic growth (Barro, 1997) and how subsistence, indeed survival, often depends on the existence of civil and political rights, especially those related to democratic accountability. Research has demonstrated that human rights underpin access to the justice system and are hence essential to the enforcement of contracts needed for a market economy to function (Olson, 2000). Another body of research bears out the functional importance of people being empowered to claim their rights to basic social services such as health and education (Brinks, Forthcoming). The links between civil and political rights, economic, social and cultural rights and development are the focus of extensive research by the World Bank Institute (Kaufmann, 2005). Preliminary findings based on the assessment of large sets of cross-country empirical data suggest that civil and political rights may causally affect a country's socio-economic outcomes and performance. However, there are no signs for the existence of

the reverse causality. The explanation for this absence of a positive feedback mechanism points, in particular, at the phenomenon of state capture and at corruption more broadly. Corruption therefore seems to play an important mediating role between salient civil and political rights, on the one hand, and economic, social and cultural rights, on the other. This, in turn, underlines the importance of civil and political rights and human rights principles, such as participation and accountability, in efforts to address corruption.

A more mature area of research is focusing on the link between women's rights (such as those related to education and economic activities) and overall economic development. There is ample evidence that as long as half of the population is not in a position – due to gender discrimination – to develop and use its capacities and participate in social, economic and political life, both society as a whole and economic development suffer from the resulting inefficiency. New tools such as the OECD's Gender, Institutions and Development Database (The Gender, Institutions and Development Database) which uses a number of innovative indicators, including informal social institutions and cultural and traditional practices, ownership rights and civil liberties, allow for more sophisticated measurements of gender (in)equality and help identify policies that address the roots rather than the symptoms of women's rights violations. Finally, new research suggests that a more nuanced view of the relationship between poverty/conflict nexus appears to be inequality and discrimination rather than absolute levels of poverty. Therefore, a poverty reduction agenda that does not adequately reflect an understanding of, and response to, discrimination may not have the anticipated effects on conflict prevention. This underscores the importance of understanding and exploring human rights

approaches to development in which equality and non-discrimination figure prominently (Ron, 2006).

2.5 Right to Development

The Declaration on the Right to Development (RTD) was created in 1986. The ideological origins of the Declaration lie in the development debates of the 60s and 70s and in particular with the Non-Aligned Movement. The content of the RTD has been the subject of many interpretations. The following components seem to constitute the core content of the right: comprehensive development, respect for all human rights, participation, social justice, international cooperation, self-determination.

Amartya Sen, a supporter of the marriage of human rights and development, categorizes critics of the concept of the right to development as having two major concerns: justiciability and feasibility. “Justiciability” is concerned with enforcement. Sen states, “Even though a government can be castigated for failing to do what is needed, say, eliminating hunger, there are difficulties in pressing this in a court of law with penalties for non-fulfilling governments” (Sen, 2006:3). Critics ask: if a right is not justiciable then is it in fact not a ‘right’ but simply a desirable goal? In response to these two concerns, Sen insists on the important role that social movements and social agitation play in obtaining adherence to human rights and specific in this case, the right to development. “When no such law exists, [for in some cases it may not be appropriate], there is room for social and political action through naming and shaming, and other ways of bringing public pressure on violators of human rights” (Sen, 2006:5). On the issue of feasibility, perhaps the most common critique of the right to development, and one which

puts the recognition of social and economic rights in particular peril, Sen and others point immediately to the concept of ‘progressive realization’. “Indeed, the promotion of human rights proceeds on the understanding that there is much to be promoted, including the expansion of feasibility of the recognised rights” (Sen, 2006:6).

2.6 From Right to Development to Rights-Based Approaches

Rights-based approaches utilize the principles embodied through the ‘right to development’ as a ‘complementary perspective that offers a grid of development norms and goals’ (Andreassen, 2003:32). Rights-based approaches to development are therefore not the same as the controversial and broader more all-encompassing ‘right to development’ which is a source of much debate within human rights circles (Sengupta, 2000, 2002; Gibbs, 2005; Morvaridi, 2004). Rather than offering a theoretical approach to a process of change, a ‘right to development’ implies that everyone has a right to a process of change which is compatible with the human rights norms listed in international human rights treaties (Sengupta, 2000). Similar ‘rights’ are drawn upon but a rights-based approach differs slightly in that it reflects human rights *in* development rather than an all encompassing right *to* development. The implication is that rights are indicators of change, standards for planning and assessments that development actors can use to establish clear objectives, ensure meaningful participation and set appropriate benchmarks and indicators (Frankovits, 2002: Andreasson, 2003).

Due to its emergence within a regime of international donor conditionality, caution is warranted concerning RBD’s ‘state-centrism’ at a time of rampant ideologically driven neo-liberalism which is undermining state capacity in much of the

developing world (Manzo, 2003; Mohan & Holland, 2001). The failure to extend 'rights' is compounded by the crisis of legitimacy that many states face (Zafarullah & Rahman, 2002). The fragile nature of democratic transition in many countries encounters additional challenges of pronounced economic exclusion and with this also, "the shifting alliances characteristic of the post-Cold War world, the fluidity of global capitalism, and the pressure from donors for privatization, 'good governance' and the opening of economies" (Barnett & Whiteside, 2002:296).

2.7 Rights-Based Development (RBD)

During the past decade there has been a growing awareness and discussion of the interplay and areas of intersection between rights and development. The dialogue arises from both the academic community as well as major development implementation agencies. The United Nations Development Programme (UNDP), for example, suggests that human rights are not to be regarded as the *outcome* of development but should rather be seen as the critical means of *achieving* it (UNDP, 2000 cited in Mohan & Holland, 2001). While some politicians and development activists argue that it always has been characteristic of development policy to deal with human rights, this view refers to the implicit effect that development efforts such as poverty reduction may have for human rights; it is not the same as a human rights approach to development, which explicitly follows human rights and accepts the legal obligation of development cooperation based on human rights (Hamm, 2001).

According to Mohan and Holland, RBD is characterized as iterative and evolutionary, and draws upon a broad range of intellectual ideas and policy frameworks

(2001). At its core, however, are notions and principles centred upon concepts of justice and equity invoked in a broader ‘right to development’ which imply that the well-being of the entire population can be improved through, “the expansion of opportunities and capabilities to enjoy those opportunities” (Senguta, 2000:566 cited in Jones, 2005). In addition to human rights as content, human rights as a reference has three important implications (Hamm, 2001:1012):

- It is based on a broad consensus over the content of human rights;
- it implies a change in perspective because of the legal obligation; and
- it influences the agents and changes the policy dialogue between donors and recipients.

The more recent dialogue which has emerged from the realms of both development and rights it is a dialogue which seeks to more directly link the two fields and, moreover, to create a framework for development which places primacy on human rights as central to all development policy and practice. The rights-based approach to development (RBA) is a relatively new approach. It is true that talk of rights is far from simple or straightforward, indeed contrary to the thoughts of some there is in fact no immutable rule-book on rights. Issues of cultural relativism, state sovereignty and not least of all morality are all-pervasive within any conceptualization of rights and by extension the role human rights may have to play in development.

2.8 Rights-holders and Duty-bearers

Human rights law recognizes three groups of agents: rights-holders, duty-bearers, and ‘other actors’. All people belong to the first group – we have human rights simply because we are human beings – these rights are held equally and inalienably.

To have a particular right implies having a claim on other people or institutions that they should help in ensuring access to this freedom. By signing the human rights treaties, States¹ are the *principal duty bearers* in their respective countries. It obliges the State to *respect, protect* and *fulfill* all human rights for all citizens (see box below). The duties of the State are sometimes misinterpreted as requiring it to meet all needs of all people, which would imply an immense burden of public budgets. Rather, fulfilling human rights requires the State to facilitate, provide and/or promote rights. Thus, if it can be justified from an effectiveness and sustainability standpoint, states can meet their obligations by acting as a regulator or facilitator of other actors who provide services, such as the market and civil society (Norton, 2001). However, rights-holders are not passive recipients but active subjects who are expected, whenever possible, through his or her actions, to ensure the satisfaction of human needs, individually or in association with others.

Obligations of State Parties to International Human Rights Law

The obligation to respect requires the State and all its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or impinging in their freedom to access resources to satisfy their needs. It also requires that legislative and administrative codes take account of guaranteed rights.

The obligation to protect obliges the State and its agents to prevent the violation of rights by other individuals or non-state actors. Where violations do occur the State must guarantee access to legal remedies.

The obligation to fulfill involves issues of advocacy, public expenditure, government regulation of the economy, the provision of basic services and related infrastructure and redistribution measures. The duty of fulfillment comprises those active measures necessary for guaranteeing opportunities to access entitlements.

Source: UNDP, 2001

¹ Over 140 states have committed to realizing human rights for their citizens by respecting, protecting and fulfilling human rights.

Realizing human rights often implies some public expenditure. It is often held that realizing economic, social and cultural rights are more costly than realizing civil and political rights. However, this is not necessarily the case – for instance, fulfilling a citizen’s right to vote is likely to have greater implications on public expenditure than respecting a citizen’s right from being unlawfully evicted from his/her home (Ljungman, 2005). In recognition of the resource constraints that poor countries face, international law allows for *progressive realization* of some rights over a period of time as long as the State takes deliberate, concrete and targeted steps in the direction of realizing human rights – although core obligations, including for instance non-discriminatory practices, must always be respected.² In addition, the *International Covenant on Economic, Social and Cultural Rights* (1976) comprises measures to assist poorer States in realizing human rights by obligating other States to international cooperation.

While governments have a *legal* obligation to protect and realize human rights, ‘other actors’ such as organizations and individuals also have *moral* obligations under the *Universal Declaration of Human Rights* to respect and promote human rights (see box below). They can therefore be described as *moral duty-bearers*.

² The non-fulfillment of human rights does not necessarily mean that a State is in non-compliance with its obligations as long as it has taken all measures within its power to ensure an expeditious progressive realization.

Obligations of Other Parties

‘The *General Assembly* proclaims *This Universal Declaration of Human Rights* as a common standard of achievement for all peoples and all nations, to the end that every *individual* and every *organ* for society, keeping the Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction’ (Preamble of *The Universal Declaration on Human Right*).

The moral duty-bearers implied by the preamble can be divided into the following groups:

- Primary duty-bearers – e.g. parents for children, teachers for students, police for crime suspects, doctors/nurses for patients, employers for employees.
- Secondary duty-bearers – e.g. institutions and organizations with immediate jurisdiction over the primary duty-bearers, e.g. school principals, community organizations, hospital administrations, etc.
- Tertiary duty-bearers – e.g. institutions and organizations at a higher level/more remote jurisdiction (NGOs, aid agencies, private sector organizations).
- External duty-bearers – e.g. countries, institutions, organizations with no direct involvement, e.g. WTO, UN, INGOs, Security Council, African Union.

Source: Ljungman, 2005

Moral duty-bearers exist not only at the local levels; NGOs, aid agencies, private sector organizations, trans-national corporations, regional organizations and the United Nations are all moral duty-bearers. As the world becomes increasingly globalized, moral duty-bearers at the international and trans-national levels may be expected to assume a greater responsibility in the promotion of protection of human rights.

2.9 Sen’s Interpretation: RBD and Entitlements

Amartya Sen’s recent work, *Development as Freedom* (2000), presents an overview of his thinking on development, gathering many of the theoretical threads from his previous work. The work presents Sen’s key concept of the ‘capabilities approach’. In an assessment from Stewart and Deneulin, they state, “[Sen] not only presents a philosophical alternative to the utilitarianism which underpins so much of economics, but, in so doing, also offers an alternative development objective which can be used to

inform a wide range of issues, from markets to gender, democracy to poverty” (2002:61). In brief, Sen argues, “for many evaluative purposes, the appropriate ‘space’ is neither that of utilities (as claimed by welfarists), nor that of primary goods (as demanded by Rawls, 1971, 1993), but that of substantive freedoms – the capabilities – to choose a life one has reason to value” (Sen, 2000:74). Sen’s capabilities approach has a strong philosophical foundation: his approach builds on that of Aristotle in arguing that development is about providing conditions which facilitate people’s ability to lead flourishing lives. Moreover, “he has been a most effective critic of the purely consequentialist views of the utilitarians, and their failure to recognize agency, or acknowledge that individual needs, capabilities, and context must enter into an assessment of well-being, not just utility or happiness” (Stewart & Deneulin, 2002:38).

Sen agrees with Rawls on the priority to be given to free choice (thus the emphasis on *capabilities* as an objective – what people may *choose* to be or do, rather than on *functionings* – what people actually are or do), but rejects Rawls’ focus on primary goods, which are the same for everyone and thus do not allow for varying rates of conversion from goods to individual *quality of life*, depending on the circumstances of the individual (Sen, 2000). And unlike the *basic needs approach*, the enlargement of capabilities is an objective which extends well beyond poor people and poor societies, with implications for people and societies at all levels of income. Indeed, Stewart and Deneulin point out, in contrast to other approaches which move away from the income-maximization objective, Sen’s capabilities approach, often set inline with RBD, meets most of the requirements needed for a satisfactory alternative measure of well-being: in

particular he provides a philosophical justification of the chosen objective by assessing individual well-being directly and not via inputs (2002:63).

Sen views the expansion of freedom both as the primary end and primary means of development. He calls for social development - enhanced literacy, accessible and affordable health care, the empowerment of women, and the free flow of information - as necessary precursors of the kind of development most economists are concerned about: growth of gross national product, rise in personal incomes, industrialization, and technological advance. In a number of his essays Sen calls on these economists to recognize the "unfreedoms" that leave people with little choice and opportunity to exercise "their reasoned agency" as citizens and participants in the global market. As a proponent of political and civil rights and personal freedom, Sen validates the human rights message to those who might otherwise ignore it because they see such rights as secondary to (and interrupting) economic expansion, primarily in the developing world.

Sen lays a good deal of stress on the proposition that a satisfactory conception of freedom must be fairly broad, and that its virtues are both intrinsic and instrumental. In general, he argues that political and social freedoms are both inherently desirable and conducive to economic growth. He notes, for example, that freedom of speech and democratic elections are highly valued, in themselves, by the world's poorest people as well as by the richest - so political freedoms have to be seen as an intrinsic objective of development. All too often economists have limited their discussion to the impacts of public policy on economic growth, and Sen does argue that democracy is also valuable because of the instrumental importance of a responsive government for the development process. However, he never lets the reader forget that economics is only part of life, and

argues throughout that income may be an imperfect indicator of the capabilities possessed by individuals.

When Sen argues for substantial public expenditure on the education of the whole population, he does so both because it directly increases freedom (in the sense of the capability to self-consciously choose the life one has reason to value) and because it indirectly increases economic freedom by increasing the income at people's disposal. He stresses the importance of female literacy (and female empowerment and labour force participation more generally) both because of the direct impact on women's effective freedom and because it is the surest route to long run stability of the world population. His argument for freedom is a powerful one, because it ties together both direct and indirect benefits. However, because his vision of personal freedom is one of individual capabilities, his vision of a politics that maximizes freedom cannot be one of a minimal state, whose only role would be to enforce private property rights. Since such a state would leave unprotected the capabilities of the disadvantaged, Sen argues strongly for the social responsibility of the state in education, health care, unemployment compensation, social assistance and the maintenance of adequate levels of employment.

2.10 RBD & Social, Economic and Cultural Rights

RBD is well documented as giving particular prominence to socio-economic rights. In their discourse analysis of the intellectual history of the United Nations, Emmerij, Jolly and Weiss provide an excellent assessment of the role that 'economic and social thinking' has played in shaping both policy and action originating from the UN system (Emmerij, Jolly and Weiss, 2005). Yet despite the documented thread of

economic and social thought which runs through general development theory, it would certainly appear that RBD is taking the lead in entrenching socio-economic rights within the development project. This emphasis given to socio-economic rights in RBD is important for a number of reasons. First, it represents an important challenge to the dominant ‘liberal consensus’ in international human right discourses which predominately champions civil and political freedoms but relegates socio-economic rights to the status of mere ‘aspirations’ (Evans, 2002). Additionally, the advantage of focusing upon economic and social rights allows a counterweight to the ‘good governance’ agenda often seen to be downgrading the significance of these rights (Sano & Alfredsson, 2002). According to Frankovits (2002), RBD supports [pressures or encourages] government to ensure that they satisfy their minimum obligations relating to each right in the International Bill of Rights; plan strategies and programmes for the eventual fulfilment of all their obligations; monitor both the fulfilment and the obstacles to the fulfilment of all their obligations over time. Citing rights-based struggles and the politics of HIV/AIDS policy in South Africa as a ‘test of governance’, Jones states, “In terms of rights-based approaches, the impact of the HIV/AIDS epidemic [...] represents a ‘test’ of governance in that states have human rights obligations to prevention, care, treatment, as well as to take action to prevent discrimination and to uphold ‘rights’ and respond adequately” (2005:431).

Second, RBD is important because the scope given to political, economic, social and cultural rights can be understood as ‘claims to a set of social arrangements – norms, institutions, laws, and enabling economic environment – that can best secure the enjoyment of these rights’ (UNDP, 2000:73, cited in Mohan & Holland, 2001). “It is thus

the obligation of governments and others to implement policies to put these arrangements in place” (UNDP, 2000:73 cited in Mohan & Holland, 2001). The approach therefore impacts national policies that undermine the realization of economic, social and cultural rights; RBD therefore has unavoidable consequences for good governance (Jones, 2005:431). There are significant implications of the growing emphasis upon social, economic and cultural rights (such as the right to work, health, education, and so on) for legitimising human rights approaches in policy dialogues (Frankovits, 2002 cited in Jones, 2005). Third, the RBD approach also focuses on those most in need as it identifies those whose rights are most denied (Sen, 1999); the empowerment of the neediest based on the recognition of state obligations is argued to result in increased ownership and sustainability (Hodgson, 2002; Alston, 2005).

An additional notion integral to RBD is that it provides a cohesive (interdependent), normative and legal framework derived from internationally negotiated norms and legal standards (Andreassen, 2003). As the main duty-holder these standards are binding on states and enable scrutiny of state obligations to respect, protect and fulfill each right (Uvin, 2004). By way of an example, a hypothetical (yet most possible) series of events laid out by Jones in his examination of governance, the rights-based approach and HIV/AIDS in South Africa:

If a mother is denied treatment for HIV/AIDS – a violation of the right to health – and a child drops out of education to care for the mother, then the right to health of the mother impacts upon the right to education of the child. And if there is inadequate sanitation or drinking water, this also impacts on the right to health of the mother. Furthermore, if the mother is discriminated against because of the stigma attached to her status of being HIV-positive, then the violation of civil and political rights is directly related to violation of the right to health. The woman might also be discriminated against by being thrown out of her family house because she has HIV/AIDS, is deprived of the socio-economic need and right to housing (Jones, 2005:431).

The example as exponentially tragic as it reads is wholly possible and presents a very succinct description of the interdependence of rights and how failure to ensure one set can lead to the erosion of rights on many fronts. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes ‘the right of everyone to the enjoyment of the highest attainable standard of physical and mental health’; in defining the scope of the ‘right to health’ we can therefore divide this into two categories: one relating to ‘health care’ (both curative as well as preventative) and the other relating to the ‘underlying preconditions for health’ (safe drinking water, adequate sanitation, adequate nutrition, health-related information, environmental health, and occupational health) (Toebes, 2001:174). Integral to the UN human rights ‘system’ is therefore what is called the ‘indivisibility’ and ‘interdependence’ of all human rights. In addition, socio-economic rights are to ensure that members of society have equal access to resources, opportunities and services in order to be able to achieve an adequate standard of living to participate in society. Socio-economic rights are interdependent with political and civil rights; in other words, if people are denied access to socio-economic rights then they will be shut out from participating fully in the political, social and economic life of a country.

2.11 RBD Issue Example: RBD and the Right to Health

In terms of the guiding principles which form a framework for the right to health, Toebes offers the following table, (2001:177-178):

- *Availability* of health services: the state must have a quantity of health services sufficient for the population as a whole.
- *Financial, geographic and cultural accessibility* of health services: financial accessibility requires that health services be affordable (and that there be an arrangement for the payment of health services for those who cannot afford the required care); geographic accessibility

sets the requirement that they be within reach of everyone; and cultural accessibility, finally, necessitates that such services respect people's cultural traditions.

- *Quality* of health services: the available health services must be of adequate standard, which includes the requirement that the services be *appropriate* in the specific context.
- *Equality* in access to available health services: health services must be equally accessible to everyone, with due attention assigned to the position of vulnerable groups in society.

Of particular interest to those concerned with developing theoretical links between governance issues (in this case, health) and human rights is to therefore indicate, how, “far from being merely abstract, these principles are part of a considerable array of international human rights law developed in the last three decades which gives specific substance to rights in the form of standards which elaborate the rights and map out the corresponding obligations of states” (Eide, 2003:22). According to Jones (2005) there are guiding principles which inform the specific state obligations; here they are mapped out as a tripartite typology, with state obligations to:

Respect – i.e. negative obligations to refrain from action, such as respecting equal access to available health services and not to impede access.

Protect – take legislative and other measures to assure that people have (equal) access if provided by third parties, and that people are protected from third parties.

Fulfill – such as adopting a national health policy, provision of necessary health services etc.

A human rights perspective therefore provides normative and legal protection to vulnerable groups in particular, which is further reflected in the principles of ‘minimum core’ and ‘adequate realization’ (Darrow & Tomas, 2005). It is incumbent upon states that they take the steps, “toward progressive realization of the right in question to the maximum extent of its resources” (Jones, 2005). Minimum core obligations are, regardless of resources, “to ensure the satisfaction of, at the very least, minimum essential

levels of each of the rights” (UN CESCR, 2000, cited in Waltz, 2002). Yamin succinctly captures these elements in that:

....[A]sserting a right to health means that not only has a government moral or humanitarian responsibilities to attend to the health needs of the most vulnerable and economically disenfranchised of the population, but it also has legal obligations that, at minimum, require it to establish a normative framework consistent with international law, to reflect health as a priority in its budget, and to devise a plan to take deliberate steps to move toward the progressive realization of the right to health. (Yamin, 2002:38-39)

These obligations also invoke additional human rights principles such as ‘participation’, ‘non-discrimination’, as well as ‘accountability’ and ‘access to effective services/resources’.

2.12 RBD and Implementation

In terms of implementing RBD, the obstacles to entrenching human rights legislation internationally and in national political and judicial structures are considerable and systemic. A key tension in rights debates in an African context concerns whether political rights or socio-economic rights should be prioritized and what the appropriate political arrangements should be to implement them (Waltz, 2001; Chander, 2001). Not least the failure of many states to protect social, economic and cultural rights, for whatever reasons, as well as being perpetrators of human rights abuses, at the same time as they are also considered in international law as the defenders and implementers of ‘rights’, therefore casts doubt on the role of the state and constitutionalism to deliver rights (An Na’im (on Africa specifically) cited in Mohan & Holland, 2001). However, even here, the fundamental point about RBD is that such a strategy goes beyond a legal approach and should also work on many non-legal, social and political paths for ensuring

enforcement of rights claims (Uvin, 2004). For example, Uvin mentions some of these as, “the dissemination and internationalization of new social norms, the mobilization of grassroots and citizen power in favour of certain rights, and the creation of ombudsmen, whistle blowers and other administrative complaint mechanisms” (2004:174).

There is also the need for the cultural norms, symbols and traditions of non-Western societies to enter into international human rights discourses in order for these rights to no longer be seen in the ‘Third World’ as ‘invasive of sovereignty, a result of imbalances of power and ethnocentric’ (Penna & Campbell, 1998:7). Yet while it is of course recognized that sensitivity to cultural context is required, and that the local and universal should be considered simultaneously, nonetheless, the often difficult intersection of human rights with customary law, for example, should not at the same time legitimise traditions which violate fundamental human rights (i.e. female genital circumcision) (Hamm, 2001; Tomalin, 2006; Udombana, 2000).

This discussion will further examine the issues raised in this section and seek to understand how UNICEF Zambia is and can continue to interpret rights-based approaches for their work.

3. Context: Rights in the United Nations, UNICEF and Zambia

3.1 Rights within the United Nations System

United Nations member states carry with them the collective and individual responsibility to promote universal respect for and observance of human rights. This is a founding principle and purpose of the United Nations organization. Article 1 of the UN Charter defines its three purposes: to maintain international peace and security; to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples; and to achieve international cooperation, including promoting and encouraging respect for human rights and fundamental freedoms for all. Article 55 ensures the UN's commitment to promote, "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."³

In the years since its founding, the United Nations has spearheaded critical human rights work, from the drafting and promotion of the ratification of human rights treaties that set human rights standards, to creating fact-finding task-forces and other mechanisms for monitoring and adjudicating human rights issues. Despite its apparent bureaucratic rigour, there has been a dearth of tangible tools originating from the UN for human rights promotion and advancement. Tellingly, the budget for the UN Secretariat for Human Rights⁴ had until recently been less than 1 percent of the UN's total budget. With interesting symbolism, the human rights Secretariat was moved from New York to Geneva in the mid-1980s, where, as author Karen Kenny comments, it was remote from the seat of high policy and political decision making at the UN headquarters in New York

³ In Article 56, all UN member states pledge themselves jointly and separately to implement Article 55.

⁴ The Secretariat was first the Division, then the Centre for Human Rights, and, since September 1, 1997, the Office of the High Commissioner for Human Rights.

(Kenny, 2000: 2). But in the new post Cold War era, an increased understanding of human rights and of the roles of international organizations in safeguarding them has arisen. While still allowing that the primary responsibility of ensuring respect for human rights resides with states, the UN has nonetheless come to be seen as having a key role in securing the implementation of human rights, which touch upon almost all aspects of its own direct work (Kenny, 2000: 2).

There have been two landmark developments in this process. First, the 1993 World Conference on Human Rights in Vienna, in which 171 states agreed by consensus on a Declaration and Programme of Action. The declaration called upon all agencies of the UN to engage in the formulation, promotion, and implementation of human rights. Similar to the stipulations of numerous human rights treaties, UN actors were asked to report back five years later on their progress in implementing the action programme. The second landmark development was the Program for Reform announced on July 14, 2007 by the then UN Secretary-General Kofi Annan. The Program acknowledged human rights as both a principal goal of the organization and a means by which its other goals could be advanced, and was designed to streamline the UN's work while improving its coordination and management structures. Four executive committees were created in the attempt to bring greater coherence to activities across the UN system. The reforms program states:

Human rights are integral to the promotion of peace and security, economic prosperity, and social equity. For its entire life as a world organization, the UN has been actively promoting and protecting human rights, devising instruments to monitor compliance with international agreements, while at the same time remaining cognizant of national and cultural diversities. Accordingly, the issue of human rights has been designated as cutting across each of the substantive fields of

the secretariat's work program (peace and security; economic and social affairs; development cooperation; and humanitarian affairs). A major task for the UN therefore is to enhance its human rights program and *fully integrate* it into the broad range of the UN's activities (UN Doc. A/51/950).

Seemingly reflecting the need to integrate human rights fully in each of the major functional areas, the UN High Commissioner for Human Rights became a member of each of the four committees, reflecting the perceived need to integrate human rights fully in each of the major functional areas. "Such integration was viewed at the time as being better served in this fashion rather than by creating a fifth committee specifically for human rights" (Kenny, 2000: 3).

3.2 UNICEF: Leading the way with the Rights agenda

Over time and with particular emphasis in recent years, the United Nations Children's Fund (UNICEF) has come to describe itself as a promoter of the human rights of women and children. The shift in rights awareness at UNICEF, however gradual, has been substantial. An illustrative example of this shift recalls that in 1979 after a resolution from the UN Commission for Human Rights asked certain UN agencies to address exploitative child labour, UNICEF responded by saying that, "of course, this was not an issue within its domain because it was a human rights matter"(Alston, 1996). As this discussion illustrates, in the years which have followed, UNICEF has come to frame its work in explicitly human rights terms. UNICEF played a critical role in the campaign for ratification of the 1989 UN Convention on the Rights of the Child (CRC) – today only the United States and Somalia have not accepted the convention's terms.

Accordingly, UNICEF's child rights policy has evolved over time. Its 1996 mission statement drew on human rights treaties concerning women and children:

UNICEF is guided by the Convention on the Rights of the Child and strives to establish children's rights as enduring ethical principles and international standards of behaviour towards children..... UNICEF aims, through its country programs, to promote the equal rights of women and girls and to support their full participation in the political, social and economic development of their communities. (UNICEF Website)

Other sources of relevant law utilized by UNICEF to inform policy include the Geneva Conventions and the African Charter on Human and People's Rights. The near-universal ratification of the CRC, however, provided UNICEF with what it considers the most potent foundation for its work.

3.3 Zambia in Brief

3.3.1 Political & Economic History

Zambia is one of the poorest countries in the world. It is a landlocked, peaceful country in Southern Africa with a population estimated at 11.4 million (CSO, 2000). The population is 65% rural and 35% urban (CSO, 2000). Zambia attained political independence from Britain in 1964 and adopted a predominantly socialist development agenda.

In 1967, worried by the emergence of other powerful figures within the ruling United Independence Party (UNIP), President Kenneth Kaunda made critical changes in party organization, introducing a personalized and authoritarian style of rule that was intolerant of debate or dissent. Elections for senior party posts were abolished, with all positions in the Party and the Government personally appointed by Kaunda. Having

declared his wish for a one-party state to emerge through the withering of the opposition, in 1970-71 Kaunda was shocked by the growing popularity of the breakaway United Progressive Party (UPP). Kaunda responded quickly by co-opting the other major opposition party into UNIP, banning the UPP and imprisoning 122 of its members, and, in 1972, changing the constitution to introduce a one-party state (Simutanyi & Mate, 2003: 6).

The economy was strong for the first 12 years of independence, based on revenue from the soaring copper industry. Despite the new wealth, however, the declaration of UDI in Rhodesia in 1965 led to international sanctions, creating a sudden shock to the Zambian economy, which had until then been intertwined with that of its former federal partner, and closing transport links to the south (Fundanga, 2005). Imports of fuel and commodities were restricted to the 2,000km dirt road linking Zambia to the Tanzanian port of Dar-Es-Salaam, a railway link to Angola that was blown up by UNITA in 1967 and never reopened, and even airlifts. The liberation struggles in neighbouring Mozambique, Zimbabwe (then Rhodesia), Namibia (South-West Africa), Angola and South Africa further obliged Zambia – the frontline state – to provide assistance to liberation movements, spend large amounts on domestic security, invest heavily in infrastructure to replace that which was bombed (by Rhodesian, South African and Angolan forces) and compensate for the loss of its major trading partner (Rhodesia) - costs that have been estimated to have reached \$19 billion by late 1980s (Banda, 2000).

Although the copper industry continued to provide wealth to Zambia, there was a critical failure during the 1960s and 70s to reinvest the nation's wealth into strengthening and diversifying the economy. The dependence on a single commodity, the expensive and

highly centralized one-party state, the under-educated human resource base and the adverse geopolitical circumstances facing Zambia left the economy vulnerable. In 1976, when copper prices fell sharply and oil prices rose, the economy collapsed (Fundanga, 2005:4). Zambia resorted to heavy external borrowing to finance its budget deficit, accumulating debts that rose to \$7.1 billion by 2004 (JCTR, 2005:16). Prospects of improvement were weakened by the one-party state's disastrous import-substitution policy, which diverted substantial borrowing into inefficient state-owned companies, maintained an over-valued currency, implemented strict currency control, and overlooked the diversification of the economy, including agriculture, into sectors where Zambia had a comparative advantage. The 1980s were characterized by economic collapse, borrowing to subsidize loss-making state-owned companies, disintegrating social services and very high rates of inflation (UNCTAD, 2005).

In recent history, since 1991, Zambia has been undergoing a political transition from one-party rule to multi-party democracy. Zambia has pursued policies of economic liberalization and structural reform programs that have transformed it from being a centrally-planned and controlled economy to one of the more open market economies in Africa.

3.3.2. Human Rights

Zambia has a Bill of Rights in its Constitution which guarantees the following civil and political rights and freedoms:

- Liberty
- Protection from slavery and forced labour
- Protection from torture, inhuman or degrading punishment
- Property; Privacy of home and other property

- Fair trial guarantees
- Conscience
- Freedom of expression
- Freedom of assembly and association
- Movement
- Protection from discrimination on the ground of race, sex, tribe, place of origin, marital status; political opinions, colour or creed
- Protection of young persons from physical or mental ill-treatment, all forms of neglect, cruelty or exploitation, or traffic in any form.

These rights and freedoms are justiciable, that is to say, any person who feels that his/her rights have been, are being, or are likely to be infringed has statutory recourse to sue the government in the High Court, which has broad power to award remedies (Chanda, 1997).

Zambian law also in theory guarantees some economic, social and cultural rights in the form of Directive Principles of State Policy (Zambia Constitution: Art. 112-119).

These are:

- adequate means of livelihood;
- clean and safe water;
- adequate medical and health facilities;
- decent shelter;
- equal and adequate educational opportunities in all fields and at all levels for all;
- provision to persons with disabilities, the aged benefits and amenities as are suitable to their needs and are just and equitable;
- culture, tradition, custom or language;
- clean and healthy environment for all;
- fair labour practices and safe and healthy working conditions.

Unlike civil and political rights, however, the Directive Principles are not justiciable. They are, therefore, not legally enforceable in any court, tribunal or administrative institution or entity. Moreover, the Directive Principles “may be observed only in so far as State Resources are able to sustain their application, or if the general welfare of the public so unavoidably demands, as may be determined by Cabinet” (Zambia Constitution: Art. 110(2)). Their value lies in the fact that they are supposed to guide the

Executive, the legislative and the Judiciary, as the case may be with regard to the following: the development of national policies, the implementation of national policies, the making and enactment of laws, and the application of the Constitution and any other law (Zambia Constitution: Art. 110(1)).

3.3.2.1 International and Regional Human Rights Instruments

Zambia is party to all the major international human rights instruments such as the International Covenant on Civil and Political Rights 1966 (ICCPR), the 1st Optional Protocol to the ICCPR, the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), the Convention on the Elimination of all forms of Discrimination Against Women 1979 (CEDAW), the Convention on the Right of the Child 1983 (CRC), and the International Convention on the Elimination of all Forms of Racial Discrimination 1965 (CERD). Zambia is also party to the African Charter on Human and Peoples Rights 1981.

3.3.3 Development Status

Zambia currently ranks number 165 of 177 countries on the Human Development Index (Human Development Report, 2007-2008). The World Bank classifies Zambia as a severely indebted, low-income country. Zambia is fighting an HIV and AIDS pandemic, extreme poverty and high infant mortality rates (Human Development Report, 2007-2008). With 75% of the population living below the poverty line, Zambia has one of the highest percentages of national impoverishment in the world. This alarming situation is only exacerbated by the poor results achieved so far regarding all Millennium

Development Goals (MDGs). Only Universal Primary Education is within its target with progress reflected in the net enrolment rate of 95.6% (Human Development Report, 2007-2008). However, much needs to be done in order to address development issues in Zambia. Children remain the most vulnerable and disadvantaged group in Zambian society. Zambian children under the age of fifteen constitute to over half of the total population and most of them live in extreme poverty (CSO, 2000).

The gross domestic product (GDP) for Zambia for 2006 was approximately 1.7% higher than in 2005, mainly due to continued strong expansion of copper production, high global commodity prices, and a good agricultural season. The Kwacha (Zambian currency) gained in exchange value against the US dollar resulting in a low overall average of ZMK 3,598 : \$1.00.

3.3.4 Socio-Economic Health

Zambia's development remains substantially and systematically undermined by the mutually re-enforcing 'triple threat' of a high prevalence of HIV and AIDS, chronic and acute food insecurity and poverty, and weak governance. The pandemic of HIV infection and the large numbers of people living with AIDS constitute Zambia's single most important development challenge. The last representative sample survey on HIV prevalence was conducted over five years ago and the results revealed that one of every six (16 per cent) of Zambians in the 15-to-49 year age group is infected with HIV (CSO, 2000). Data estimates on HIV-positive pregnant women currently receiving a complete course of antiretroviral (ARV) prophylaxis to reduce the risk of mother-to-child transmission of HIV range between 15-25% (CSO, 2000). The result is yet another health

threat to young children. AIDS is now one of the major causes of infant and under-five mortality. An estimated 40,000 babies are infected annually, the majority dying before the age of five. The introduction of the free ARV policy in 2005 has not yet achieved its goal of antiretroviral therapy (ART) for all in need. Currently 75,000 receive ARVs out of the 200,000 in need. Paediatric HIV and AIDS is an area that needs further research and support. Testing for children below age 18 months and paediatric treatment for HIV-positive children remains a major challenge with children making up only an estimated 5% of all people on ARVs (CSO, 2000).

The impact of HIV and AIDS is visible in the growing number of orphans. A total of 1.1 million children, about 19 per cent of those below the age of 18, are orphaned and only 13 per cent of orphans and vulnerable children (OVCs) receive free basic external support. This puts further pressure on the weakened social household structures. Many children, especially girls, drop out of school to care for the chronically ill, or because of unwanted pregnancy or to supplement the family income, often resorting to high-risk sexual behaviour, thus increasing the risk of sexual abuse and HIV infection.

Infant mortality	102/100,000 live births
Under – 5 mortality	182/1,000 live births
Net primary school enrolment	95.6%
Maternal Mortality	729/100,000
Total number of orphans	1,100,000

(Human Development Report 2007-2008)

Due to economic pressure and lack of support traditional family structures have weakened and no longer offer the social safety net for orphans and vulnerable children. Their elderly grandparents are too frail and too poor to support them. Many resort to the

streets. In 2006 a study on street children was conducted indicating that the total number of street children is much less than initially thought, amounting to an estimated 13,000 (Street Kids International, 2003-2004). However, numbers of vulnerable households are increasing and currently include 20,000 child-headed households that are on the brink of street life.

Basic social services do often not reach the most vulnerable groups, the poor and the rural. Availability of safe water and sanitation facilities remains a critical problem in the rural areas where about 4.8 million people lack access to safe water and 6.6 million lack access to adequate sanitation. Despite the introduction of a free basic education policy, school enrolment is still compromised by poverty, lack of school places and the long distances that children in rural areas have to walk to school. The result is ever-increasing numbers of community schools, outside the government system. The government of Zambia is developing a strategic framework for community schools to improve quality and to standardize the schools. On a positive note, recent data shows that the gender gap on primary school enrolment has been closed, leading to cautious optimism for MDG 3 on gender equity.

Zambia is not on track to achieve most of the other Millennium Development Goals, mainly because of its heavy disease and poverty burden. Malaria accounts for one third of deaths of children under age five, the other main causes being HIV and AIDS, diarrhoea, respiratory infections and neonatal conditions. The rate of chronic malnutrition (stunting) in children under age five years is as high as 50 per cent. It is the underlying cause of child mortality and low learning achievement in school. In short, Zambia's road to development is seriously hampered.

4. Lessons for Zambia: International Programming Experiences

Despite Zambia being the largest recipient of donor funds among all developing countries, there is a surprising dearth of analysis by development agencies operating in Zambia. During this research, many programmes with rights-based elements were identified as being implemented in Zambia but very few assessment and monitoring materials specific to RBA were identified. Arguably the entire development field is plagued by a shocking lack of analysis, but nonetheless, there is a growing dialogue on RBA both on academic and policy fronts; the following section will review and highlight specifics of this dialogue and seek to identify best practices and lessons learned which could be applied in Zambia and beyond.

UNICEF has been at the forefront of the evolution of human rights-based programming mainly due to its incorporation of the Convention on the Rights of the Child (CRC) in its mission statement, and to the Executive Directive of 1998 calling on all programming to be rights-based (UNICEF, 1998). Yet UNICEF also had to struggle with making sense of what was a new approach and to analyse precisely what difference the human rights approach would bring to practices evolved over many years and how human rights would be ‘mainstreamed’ throughout the activities of the organization.

To address capacity gaps and to monitor progress in the integration of the approach, a range of tools have been developed in UNICEF. These include guides on reporting to the UN Committee on the Rights of the Child, an annual review of the Planning and Programming Policy Manual, a yearly questionnaire to Country Offices (COs) asking how they are utilizing the HRBAP and a range of training materials. As well, UNICEF has published four booklets outlining exemplary experiences of the human

rights-based approach to programming in Peru, Jordan, Mali and the Southern Cone of Latin America. Each of these is informative either for innovative strategies for implementing the HRBAP or for identifying specific constraints in its application. Aspects of these materials are reviewed below.

In 2004 UNICEF commissioned a review of 35 cases which attempted to operationalize the human rights-based approach to programming (Thiess, 2004). The review identified good practices, common entry points, successful strategies and obstacles to the implementation of the approach. The review placed a focus on the relationship between duty bearers and rights claimants and described the importance of strengthening the capacity and willingness of duty bearers to fulfil their obligations through the provision of support for rights holders to claim their entitlements.

Accountability is one of the major principles of the rights-based approach. This applies equally at the community level, and therefore capacity building is required at this level as well. The presence of decentralization policies creates a problematic area where accountability at the local level is key. The review issued a warning that possible negative impacts of decentralization needed to be identified (including the concentration of power in local elites). This pointed to the essential need for more explicit analyses of power relations during the needs-assessment phase and general on-going monitoring of RBA programming.

In order to enable plaintiffs to claim their rights, UNICEF was found to be in a position to promote rights to information, expression and association. It is in this way that the interdependence of civil, cultural, economic, political and social rights can be made real. This also calls for a greater awareness of the inter-connectedness of human rights by

staff and partners. The review stressed the finding that process was key to the human rights-based approach and called for more than technical solutions and for efforts to change the relationship between rights holders and duty bearers by involving them in accountability mechanisms such as budget monitoring, auditing government institutions and legislative reform.

The review found that one of the factors that needed to be more explicit in programmes is the issue of accountability. The review refers specifically to needed changes in:

- Attitudes and beliefs;
- legislation;
- economic policies (such as pro-poor economic policies);
- budget and resources allocation;
- quality of institutions;
- data, information, monitoring; and
- participation and empowerment.

In 2003 UNICEF commissioned its fourth assessment of progress in UNICEF's application of the human rights-based approach to programming (Raphael, 2004). The review consisted of the analysis of a survey sent to COs. The recommendations arising from the assessment gave a good indication of the types of obstacles identified and the possible lessons learned:

- Redouble training efforts in regions with less Human Rights-Based Approach to Programming (HRBAP) experience;
- translate key HRBAP materials into other languages;
- make more effort to bring key staff from regions with more and less experience with HRBAP together to share programming experience;
- ensure that existing resources, such as case studies, tools created for use with communities, reports on innovative approaches, etc. are widely circulated among all regions;
- develop practical training and other operational tools that explain to COs how to make the transition from using human rights principles in their work to adopting a full-blown human rights based approach to programming, using concrete

examples. For example, providing suggestions on how to utilize a rights-based approach to achieve Mid-Term Strategic Plan (MTSP) goals;

- produce a “Guide to Best Practice in HRBAP” that can be used by UNICEF COs and partners and counterparts;
- until all regions are more familiar with HRBAP, create mobile HRBAP teams in each region to travel around to all COs and advise them on next steps, etc. for a three year period;
- integrate reporting on HRBAP progress into the Annual Report format;
- develop strategies to overcome the obstacle posed by highly centralized government structures; and
- ensure that all new staff members receive intensive training in both the theory and practice of HRBAP.

In a 2004 paper Akila Belembaogo notes that the 1998 Executive Director necessitated “various new activities consistent with the broader rights agenda, particularly with regards to civil and political rights, special protection, issues of adolescents and other areas” (Belembaogo, 2004: 16). She goes on to point out that even now only 50% of UNICEF Country Offices are integrating the human rights-based approach to programming. “The reason for non systematic application can include: lack of understanding of training, lack of will due to the perception that HRBAP is ‘not integral to the way UNICEF works in all sectors’, lack of monitoring and evaluation mechanisms adequate for assessing impact of HRBAP, or a difficult country context” (Belembaogo, 2004:22).

4.1 Lessons from Latin America

In the Southern Cone of Latin America (Argentina, Chile and Uruguay), UNICEF has adopted a regional approach to programming. This approach enables the sharing of expertise and experiences while conducting joint activities among the three Country Offices (CO). The challenges facing each CO are the legacy of the colonial years and the

cultural belief that the poor (children/immigrants/women) are somehow inferior and a threat to society. The privileged rich elites are predisposed to accept the responsibility of providing charity to the poor and the notion of obligation is alien to the region.

The historical context resulted in Minor's Codes in all three countries governing the treatment of children and particularly those at risk and empowering the authorities to place them in protective custody. UNICEF identified the need for legislative reform to integrate the principles of the Convention on the Rights of the Child (CRC) (ratified by all three countries) into national legislation. This called for the redirection of UNICEF's traditional programming towards *advocacy*, *capacity building*, and *technical assistance* on both the "supply" side (legislative, policy, institutional) and on the "demand" side (children, families, local communities). The shift from a "needs-based" approach to a "rights-based" approach is one of the major steps forward in development programming and a critical aspect of the human rights-based approach to development.

4.2 Lessons from Mali

The UNICEF CO in Mali was one of the first to adopt a child-rights based approach to programming, beginning in 1997. Programming was based on a situational analysis where the principles and standards of the CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) provided the main framework for the analysis. These included non-discrimination, best interest of the child, participation, indivisibility of rights and universality.

Poverty is prevalent in Mali but according to UNICEF assessments, it is the social and cultural factors that have aggravated the plight of women in Malian society. Such

practices as female genital mutilation, scarring as an identifier of ethnicity, over-feeding of women as a sign of wealth, and nutritional deprivation during pregnancy all represent obstacles to the implementation of the CRC and CEDAW. The human rights-based situational analysis was used by UNICEF Mali in its dialogue with the national authorities and in the preparation of the new country programme. The four components of the programme were ‘survival’, ‘development’, ‘protection’, and ‘advocacy and planning for social development’. Participation was treated as a cross-cutting issue. The first two of these programmes resembled closely more traditional development approaches, the first focusing on national policies on health, water and sanitation and the second on decentralization. Protection involved advocacy and capacity development in legal, social and economic areas, while the last emphasized programmes targeting the most vulnerable in society.

It was indicative of the state of development programs that at this stage accountability, which is key to the human rights-based approach, only featured in the last two programmes. Recognition of this fact has enabled the CO to re-examine its programme. The CO has also identified a number of constraints in implementing the approach. These include insufficient or inadequately disaggregated data, discontinuities and inaction caused by changes in, or untrained, international staff and inequality in partnerships with NGOs who were seen as critical to support for the programme.

4.3 Lessons from Jordan

In Jordan, UNICEF faced a similarly complex situation. A human rights situation analysis was conducted that revealed both legislative and cultural constraints to the

realization of the human rights of children and women. The legal issue is exemplified by the fact that Jordan has not publicized its ratification of CRC and CEDAW and has not legislated CRC into domestic law. Local custom restricts the movement of women outside their homes and restricts their labour participation. In response to the situation, the critical factor for UNICEF was the adoption of the human rights-based approach by the UN Country Team and the establishment of an inter-agency human rights task force that brings consistency in the UN system's advocacy for the rights of women and children.

The authors of the Jordan assessment identify a lack of strategy to bring about political and legislative change in favour of merely analysing the status quo. They suggest that rather than mainstreaming child rights in national and sectoral policies, UNICEF should be actively seeking to change these policies towards a rights-based perspective. With regard to accountability, the assessment expresses surprise that after twenty years' efforts to affect budget and resource allocation for the realization of child rights, little of this work addresses public budgets from a rights-based perspective. The authors also express words of caution about the rigid focus on the most marginalized that in some cases disproportionately redirect resources away from other groups. In a familiar vein, they comment on the nature of participation in programming wherein the voices of children themselves are rarely taken into account. Finally, they express dismay about the almost exclusive focus on children's rights at the expense of the rights of women and the integration of women's rights in UNICEF programmes.

4.4 Tools for Operationalising Rights-based Approaches

There are still relatively few tools to assist organisations in operationalising a rights-based approach. Some of those worth mentioning include the draft guidelines for a rights-based approach to poverty reduction (OHCHR, 2002) on which the World Bank and the UN collaborated. UNDP and OHCHR have also developed a simple checklist for programme staff (UNDP/OHCHR, 2003). Furthermore, the Human Rights Council of Australia (2001) has put together a manual that, although being geared towards government-to-government assistance, has been a source of inspiration to NGOs developing a rights-based approach.

In addition, NORAD (2001) has developed a handbook on "human rights assessment". The handbook assists practitioners in asking the relevant questions concerning human rights, implementing and monitoring them. It is particularly suitable when trying to apply a human rights *perspective* to a project. It includes a simple scoring tool (reproduced below) for assessing how a programme affects human rights, people's *awareness* about their rights and whether or not it *empowers* people to claim their rights. The scores used in the checklist are suggestive only. Their main function is to rouse attention and awareness to trends and tendencies as regards human rights impact. This scoring tool serves as a strong basis for building a country/region specific tool for use in Zambia and by UNICEF in general.

<i>Human Rights Issue</i>	Score	Follow up
1. AWARENESS		
1. What is the programme's assumed/actual impact on equality and non-discrimination?		
2. Has the population directly affected been informed about the programme?		
3. Does the programme respect/has it respected everyone's right to seek, and impart information relevant to its implementation?		
2. EMPOWERMENT		
4. Does the programme respect/has it respected the right to express views freely in the preparation and implementation?		
5. Does the programme promote/has the programme promoted participation in decision making of groups affected?		
6. Does the programme uphold/has the programme upheld the right to organise?		
7. Does the programme respect/has it respected the right to just and favourable conditions of work?		
8. Does the programme affect/has it affected the fulfilment of the right to an adequate standard of living for target groups and other people affected?		
9. Does the programme affect/has it affected the opportunity of people for self provision i. t. o. income generating activities?		
10. Does the programme address the right to compensation for those negatively affected?		

Legend for scoring: PI - Positive Impact / NC - No Change / NI - Negative Impact / NA - Not Available

4.5 Comments on RBA from the International Community

The Development Action Committee, DAC, offers a succinct assessment of RBA and development, the compelling aspects of their report are expanded upon below. Above all, both national and international institutions must seek to foster and support the increasing international consensus on how to promote and protect human rights and integrate them more systematically into development.

Through dialogue, build a shared understanding of the links between human rights obligations and development priorities. The links between human rights obligations and development priorities should be a regular feature of dialogue with partner governments at the political level as well as the development level. Donors should work with partner governments in developing countries on ways to fulfill their obligations under international human right law. Each country context will differ, but the partner government's existing obligations, achievements and shortfalls should be the basis for the dialogue's starting point. A shared understanding of human rights issues between donors and partner countries is essential for the durability of aid partnerships, and for the predictability and effectiveness of aid.

Identify areas of support to partner governments on human rights. Donors have an important role to play in supporting partner governments' actions to implement human rights obligations in practice. On the basis of shared assessments and analysis, they should seek to identify the priority areas and resources needed for partner governments to better respect, protect and fulfill human rights. Donors should encourage partner governments to build the results of these assessments into their development strategies.

Donors can also help strengthen analytical capacity to identify structural causes of human rights problems, and to develop practical solutions.

Safeguard human rights in processes of state-building. Safeguarding the human rights of those under its jurisdiction is one of the most essential functions of the state. It determine- in part- the level of state capacity to deliver its core functions, but also the strengthening of state-society relations based on the rule of law and a framework of rights and responsibilities. Supporting these processes will require donors to work with a range of accountability mechanisms such as national human rights institutions, ombudsmen, courts, parliaments, civil society, media and other bodies, including more informal political platforms and arenas such as local public hearings.

Support the demand side of human rights. Experience shows that support to governments needs to be complemented with support to civil society and other actors to ensure accountability and respect for human rights. Support for the “demand side” of rights will help strengthen the voice of the most vulnerable and excluded and enlarge the political space for the participation of all members of society in exercising and defending their rights. Through alliances with civil society networks, donors can help raise awareness, and support people living in poverty to claim and enforce their rights, as part of strategies to reduce poverty and implement the Millennium Declaration.

Promote non-discrimination as a basis for more inclusive and stable societies.
Discrimination and exclusion are among the key causes of conflict and instability. As a minimum, states must ensure that their actions do not discriminate against particular groups, even where capacity and resources are limited. Non-discrimination and tackling

inclusion provide a suitable entry point for dialogue and engagement between donors and partner governments.

Consider human rights in decisions on alignment and aid instructions. It is important to take the inclusiveness of government strategies, and their responsiveness to the perspectives of different interest groups and actors in a country – including the marginalized and most vulnerable – into consideration when assessing ownership and making decisions on alignment behind government strategies. The human rights context should also inform – in part – donors’ choice of aid instruments and the appropriate balance support to state and non-state actors. A range of instruments that can help strengthen accountability, and ensure that resources reach those who have difficulty in accessing services and exercising their rights, should be considered.

Do no harm. Donors’ actions may affect human rights outcomes in developing countries in positive and negative ways. They can inadvertently reinforce societal divisions, worsen corruption, exacerbate violent conflict, and damage fragile political coalitions if issues of faith, ethnicity and gender are not taken fully into consideration. Donors should promote fundamental human rights, equity and social inclusion, respect human rights principles in their policies and programming, identify potentially harmful practices and develop short, medium and long-term strategies for mitigating the potential for harm.

Take a harmonized and graduated approach to deteriorating human rights situations. In responding to serious human rights situations, the focus should be on harmonized, clear signals and targeted actions that do not penalise the most vulnerable in society. Rather than reducing aid in response to human rights concerns as a first resort,

donors should seek to deliver aid through a range of aid instruments and channels to continue supporting poverty reduction, and where possible, targeting their assistance to achieve progress on human rights. Establishing human rights as part of the developing partnership will help enhance predictability, and provide a basis for open and transparent dialogue when needed.

Ensure that the scaling-up of aid is conducive to human rights. In the era of scaled-up aid, it is important to avoid the perception that the provision of additional resources is an endorsement of poor human rights performance. Moreover, it is vital to avert the risk of negative effects on accountability and governments' willingness to tackle deep-rooted problems. Efforts to increase aid should therefore more in tandem with the strengthening of human rights institutions, accountability mechanisms and related capacities.

Promoting dialogue and collaboration between human rights practitioners and other development practitioners. Human rights practitioners and other development practitioners have been making progress in exchanging good practice and ideas. Efforts to build bridges are gaining momentum but more dialogue is needed between human rights specialists and other policy communities and aid managers to tap more systematically into one another's strengths, to learn the language and concepts of each other and to understand the complementarity of methods and points of connections.

5. Discussion

There are numerous significant challenges to the effective implementation of a rights-based approach to development. Three main sets of challenges are outlined below.

The first set of challenges relate to the inadequacy of state legal apparatuses, inconsistencies between law and practice, and poor awareness of human rights among state actors and citizens. These challenges include:

- Although a majority of states have ratified the various human rights treaties, many states have not codified the treaties into their domestic legal framework - which may contain laws that breach human rights principles;
- even when there is a formal coherence between domestic law and international human rights law, the policies and practices in a country may be contrary to human rights principles;
- many developing countries do not have an effectively operating judicial system;
- citizens may be unaware of their rights and indeed of their responsibilities as citizens, making it impossible for them to claim their rights and actively participate in democratic processes; and
- the poor are often deterred from approaching the formal judiciary by the cost of engaging a lawyer, the lack of legal aid, the opportunity cost of time spent in court, their mistrust in the objectiveness of judgements due to corruption within the judiciary system and the lack of general education and skills level necessary to engage in a litigation process.

To address these challenges, a rights-based development effort needs to undertake *advocacy* and be prepared to provide technical assistance to ensure that a state's formal laws comply with the human rights regime. Building the capacity of the justice and law sector and raising awareness of human rights among duty-bearers and rights-holders are of central importance. An effective rights-based approach would thus include initiatives ranging from promoting the inclusion of civic education in national curricula, to providing targeted human rights training and supporting a free, independent and

pluralistic media sector and anti-corruption programmes. Most organisations cannot tackle all these issues, but the composite development effort can make headway in these areas.

A second set of challenges concern the cadre of development workers. These challenges include:

- The international development community has inadequate knowledge of the human rights regime; and
- there is additionally little experience of applying rights-based approaches and insufficient practical guidance/guidelines available.

The fact that the majority of development practitioners have, at best, limited knowledge of the human rights and associated instruments requires a systematic educational effort within the development community (United Nations, 2003). A rights-based approach to development is, however, still at a pioneering stage, which means that practical guidelines will need to be elaborated in step with the development, application and experience of the approach. In this respect, sharing and documenting lessons learnt will be very valuable. To enhance its human rights proficiency at both the conceptual and practical levels, some organisations may adopt a strategy of introducing and developing a rights perspective in the short-term while gearing up for a full-fledged rights-based approach in the future.

A third set of challenges concern the limitations of the international human rights framework. The compliance with international law primarily relies on a state's own legal system, courts and other official bodies. When the legal system in a country is under-developed with regard to human rights and/or the governing regime violates the rights of its citizens, the international human rights system can play a role. However, in dealing

with these challenges we must remember that 1) the international system for responding to violations of human rights is often accused of being ambiguous and sluggish, and can be undermined by political agendas of UN member states, and 2) there is not yet an independent international judiciary to assist in enforcing all human rights in member states.

Although the international human rights framework may have shortcomings, so far it is arguably the best system we have for realising human rights. In any case, using an internationally recognised legal regime as a basis for development co-operation is preferable to development efforts taking place without a legal foundation. Furthermore, it is not a static regime, but can and has developed in line with changes in international relations and the demands of international civil society. A high proportion of the most significant initiatives to draft new international instruments and to establish new procedures and machinery have come about as a result of concerted NGO campaigns designed to mobilise public opinion and lobby government support (Steiner & Alston, 2000). This suggests that the application of a *rights-based approach to poverty reduction* can potentially lead to an organic development of the international rights regime so that it better serves the world's poor and the development community that aims to assist it.

UNICEF Zambia's experience shows that many obstacles remain to be overcome. One of the most systematic challenges is the persistence of a project and sector-based approach to development. Each donor funding a project wants to see its project achieve specific, limited outcomes. Approaches that emphasize process and programme vision are usually not favoured. Each line ministry operates in a vertical manner, and, even at the local district level, government officers, although participating in inter-sectoral teams, are

still fully accountable to their head offices. Donor and agency visibility and project outcomes, measured to a large extent in terms of financial disbursement and implementation, is still the prevailing *modus operandi* within the UNICEF environment. Moreover, the project approach is pursued almost exclusively in a top-down direction, through national and provincial level structures that leave little room for integration with other programme components, especially at community level.

Although a formal review of Zambia has yet to be conducted, the following brief synopsis of HRBAP programs in both Mozambique and Uganda are informative with regard to Zambia and UNICEF programming in general.

An external evaluation of UNICEF's Mozambique programme (2002-2004) was undertaken in 2004 to "identify lessons learned about both successes and constraints in the process of applying HRBAP in the implementation of the cross-cutting HIV/AIDS programme" (Hausermann, 2004). The evaluation found that the preparation of the programme has met all four unique characteristics defined in the UN Common Understanding (Jonsson, 2005:57). The adoption of an HRBAP had significantly changed the design and strategies in the country programme. A strategic focus was given to capacity development, particularly of communities. The design of the programme was influenced by the strong participation of children and young people. In the survey, about 60 percent of rights holders were satisfied with their involvement in the causality analysis, although many of them admitted that they lacked the basic knowledge about human rights. Most rights holders also thought that they had developed their capacity to claim their rights. There was a strong agreement that HRBAP had developed capacities at all levels of society to respect, protect and fulfill rights.

The adoption of HRBAP had meant that most good programming principles had been adopted, including the recognition of poor people as key actors in their own development, a focus on empowerment, local ownership, reducing inequalities and more clear accountabilities. Insufficient attention, however, had been paid to gender analysis and the economic and socio-cultural causes of HIV infection.

A common complaint among duty bearers was that they wanted to know more about their own rights in order to be able to claim these rights and as a result be more able to meet their duties as duty bearers. This reflects a serious problem in the programme, where rights holders and duty bearers are labels attached to certain people, rather than roles that most people may perform. An interesting finding was that most participants agreed that UNICEF project staff should be accountable to rights holders. This is, indeed, a significant change from past practice. In conclusion, the Mozambique programme successfully adopted HRBAP, but much more training is required, together with better monitoring of the process.

The adoption of HRBAP in the UNICEF Uganda Country Programme of Cooperation (2001-2005) was reviewed as a part of the mid-term review in 2002 (UNICEF, 2003). As in the Mozambique case, the adoption of HRBAP required significant changes in programme content and practice. In Uganda, the use of HRBAP had increased the ability to address exclusion and disparities. For example, 80 percent immunization coverage, praised just a few years ago, was no longer acceptable. The 20 percent excluded must be reached. Children and young people participated much more than before at both strategic and operational levels. Adults started to recognize their roles as duty bearers and appreciated the contributions of young people to the programme.

HRBAP led to a district-focused approach, aiming at the development of the capacities of duty bearers, the development of partnerships and strengthening communities to address issues that affected them. Local government district implementation teams play a crucial role in rural development in Uganda. A major challenge for successful implementation is the fact that the strength of the team depends on a few individuals. Poor delegation and weak supervision by district heads of departments are additional challenges that must be overcome in order to expand the adoption of HRBAP to larger areas of the country, a lesson which should be taken into account by UNICEF Zambia planners.

In parallel with the wide variety of rights-based practice is an emerging body of policy research and empirical analysis exploring the relationships between different kinds of rights, and specific development issues. Recent publications of the World Bank (2005) and UNDP (2005) show how entrenched inequities can frustrate the prospects for economic growth and the achievement of the MDGs. Other analyses on the growth/poverty/rights nexus have shown that substantial violations of political and civil rights are related to lower economic growth (Barro, 1997), and also how subsistence, indeed survival, often depends on the existence of civil and political rights, especially those related to democratic accountability. Research has demonstrated that human rights underpin access to the justice system and are therefore essential to the enforcement of contracts needed for a market economy to function, as well as the functional importance of people being empowered to claim their rights to basic services such as health and education (Olson, 2007).

The links between civil and political rights, economic, social and cultural rights and development are the focus of extensive research by the World Bank Institute

(Kaufmann, 2005). Preliminary findings based on the assessment of large sets of cross-country empirical data suggest that civil and political rights may causally affect a country's socio-economic outcomes and performance (Kaufmann, 2005). However, there are no signs for the existence of the reverse causality. The explanation for this absence of positive feedback mechanisms points, in particular, at the phenomenon of state capture and at corruption more broadly. Corruption therefore seems to play an important mediating role between salient civil and political rights, on the one hand, and economic, social and cultural rights, on the other. This, in turn, underlines the importance of civil and political rights and human rights principles, such as participation and accountability, in efforts to address corruption.

A more mature area of research is focusing on the link between woman's rights (such as those related to education and economic activities) and overall economic development. There is ample evidence that as long as half of the population is not in a position – due to gender discrimination – to develop and use its capacity and participate in social, economic and political life, both society as a whole and economic development suffer from the resulting inefficiency. New tools such as OECD's Gender Institutions and Development Database (OECD, 2008) which uses a number of innovative indicators, including informal social institutions and cultural and traditional practices, ownership rights and civil liberties, allow for more sophisticated measurements of gender (in)equality and help identify policies that address the roots rather than the symptoms of women's rights violations.

Finally, new research suggests that a more nuanced view of the relationship between poverty and conflict might be needed. The critical dimension of the

poverty/conflict nexus appears to be inequality and discrimination rather than absolute levels of poverty. Therefore, a poverty reduction agenda that does not adequately reflect an understanding of, and response to, discrimination may not have the anticipated effects on conflict prevention. This underscores the importance of understanding and exploring human rights approaches to development in which equality and non-discrimination figure prominently (Oskar and James, 2006).

6. Conclusion and Recommendations

There is an emerging consensus that a human rights-based approach to programming (HRBAP) has significant advantages compared to basic needs and human development approaches to programming. The most important of these are:

- 1. Increased accountability as a result of explicitly defined claim-duty responsibilities. These are different from entitlements which do not identify any specific duty bearer. A duty is also different from a promise or an interest.*
- 2. HRBAP makes most good programming practice obligatory, and not just optional. Human rights-based programmes are therefore effective even when measured by traditional development criteria.*
- 3. HRBAP offers better protection of people who are poor by ruling out trade-offs that are harmful to them. The most common trade-offs promoted in development work are: (i) the needs trade-off: relatively high levels of poverty should be accepted in order to maximize investment and future economic growth; (ii) the equality trade-off: initially economic growth will create inequalities that should be accepted; and (iii) the liberty trade-off: civil and political rights must be temporarily suspended in order to allow for economic growth. HRBAP, therefore, pays more attention to exclusion, discrimination, disparities and injustice, and emphasizes basic causes.*
- 4. HRBAP focuses on legal and institutional reform, and promotes the rule of law. When applying HRBAP, access to justice means that people's ability to seek and obtain remedy for grievances, through formal and informal justice mechanisms, and in conformity with basic human rights principles and standards. Currently, access to justice is most of the time limited to people's ability to use public and private justice services. In HRBAP, justice is seen as a social process, and not just a legal one.*
- 5. A human rights approach better protects people from power exertion and can be used to challenge power. HRBAP stimulates social movements and mobilizes civil society.*
- 6. In a human rights approach to development, development assistance can no longer be based on charity or solidarity only; it will be a result of national and international obligations (including (for example) obligations on INGOs such as UNICEF).*

The United Nations has an obligation to respect, protect, facilitate and fulfill human rights in all development and humanitarian work. There is therefore a need for

an operational HRBAP. UN agencies have moved fast in the process of agreeing on criteria for an HRBAP, manifested in numerous inter-agency “common understanding” documents. There is, however, a significant gap between agreements at the UN agency headquarters level and the reality at the country level. Very few agencies, and in very few countries, have mainstreamed human rights into their work. Therefore, training of UN Country Teams should be top priority for all agencies.

The current UN reform promotes stronger cooperation among UN agencies. HRBAP is new to all UN agencies and could therefore become an effective catalyst in the efforts to move towards a real UN team approach, including joint programming. Finally, the current strong focus on the achievement of MDGs must be balanced with a greater attention to the overall implementation of the Millennium Declaration, which provided the context in which the MDGs should be addressed.

As UNICEF progresses towards perfecting a human rights approach to programming through community capacity development, observations of the Zambia experience lead to three final recommendations:

*1. **Local Authorities:** An assessment of local authorities to determine their capacity to undertake planning, monitoring, and supervision of community level interventions is necessary at the beginning of the process, especially to establish skills levels for planning and use of information in planning. Local authorities often need support to develop and maintain information collection, analysis, and storage mechanisms, with practical linkages with ward and village-level basic information centres.*

*2. **Impact Assessment:** Ongoing improvements must be made in district management capacity to monitor and supervise activity implementation, along with strengthening communities’ capacity to maintain simple and user friendly information registers for use in community planning processes to document impact, through trend analysis, on the conditions of children and women.*

*3. **HRBAP Training:** Apart from exposure to HRBAP through practical experiences, short sessions aimed at reflecting on the theory and practice with counterparts have already been undertaken by UNICEF Zambia. This is an ongoing*

process that must be extended to more partners. The regional UNICEF network for HRBAP support can help inform activities and enable individuals to learn from the challenges and best practices in application. UNICEF Zambia must support the development and completion of training manuals for District Facilitators and Community 'Mobilizers' to fill current gaps in training and serve as reference tools for future programme officers.

It seems fitting to conclude this discussion with a quote from Philip Alston; the quote speaks to the fact that the concept of human rights is an ever evolving one. Rights-based approaches are an important development of note in the evolution of human rights, in this “*new process of international reality forming*”.

“ The idea of human rights having been thought, it cannot be un-thought. It will not be replaced, unless by some idea which contains and surpasses it.....There are tenacious individuals and non-statal organisations whose activity on behalf of human rights is not part of international relations but is part of a new process of international reality forming” (Alston, 1990).

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