

PROMOTING A HUMAN RIGHTS-BASED APPROACH (HRBA) WITHIN THE DEVELOPMENT EFFECTIVENESS AGENDA

**Briefing Paper prepared for the CSO Partnership for
Development Effectiveness (CPDE) Working Group on HRBA**

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HIVA, Research Institute for Work and Society is a multidisciplinary research institute which is associated with the University of Leuven. Focusing on themes of concern for a caring, solidarity-based and sustainable society, HIVA is specialized in academic and policy-oriented research about a variety of domains related with labour market, work organisation, social integration, lifelong learning, welfare state, civil society, migration, sustainable development and development cooperation. More information on <http://hiva.kuleuven.be/en/onderzoek/>

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Preface

This document is a briefing paper on the current debate and ways forward with regard to the integration of a Human Rights Based Approach (HRBA) into the practice of development cooperation. This paper has been commissioned by the Working Group on ‘Human Rights Based Approach’, set up within the CSO Platform for Development Effectiveness, and assigned to the Research Institute for Work and Society (HIVA – University of Leuven). To carry out this assignment, HIVA has called on the services of the Leuven Center for Global Governance Studies in order to jointly research and co-author this brief.

The idea of this briefing paper is to provide a concise mapping of existing governments’ guidelines and best practices as well as stands and opinions of different stakeholders, including the main multilateral institutions, bilateral donors and civil society organizations. The current relevant literature and position papers as well as a series of interviews have served as the main sources for input, analysis and recommendations.

This briefing paper consists of five chapters. The first chapter briefly situates the historical origins of the HRBA concept. Chapter 2 gives a conceptual overview of the different aspects of HRBA. Chapter 3 draws a mapping of stakeholders voices and positions. Chapter 4 analyses the challenges and the perspectives for a HRBA accountability framework. Finally, Chapter 5 formulates a number of recommendations as a way forward.

The authors are grateful to all who contributed directly or indirectly to this research and this paper.

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1 | Introduction

Human rights and development are considered to be communicating vessels with a common emphasis on issues of poverty, discrimination and injustice, both aimed at spurring “new worlds that are more prosperous, more humanly fulfilling, and more just” (Archer, 2009, p.26). Despite these synergies, however, the international community did not acknowledge the policy imperative of integrating one into the other until the mid-1980s, when the UN General Assembly adopted its Declaration on the Right to Development. Since the reaffirmation of those principles in the 1993 Vienna Declaration, the past two decades have brought forth an increasingly integrated framework within which human rights and development practitioners have been striving towards one common working language to institutionalize a human rights-based approach to development (HRBA).

Ten years after the adoption of the UN Common Understanding of a Human Rights-Based Approach to Development Cooperation in 2003, it is imperative to take stock of its implementation and to grasp the extent to which development practitioners have, in fact, come closer towards a much-needed common understanding of a HRBA. To that end, this briefing paper provides a concise overview of the rationale behind putting human rights at the heart of development policies, thereby looking into the broader policy framework within which reflections on a HRBA have taken place over the past decade. Delving deeper into the positions of stakeholders involved in the operationalization of such an approach, moreover, a selection of multilateral institutions, bilateral donors and civil society organisations (CSOs) will be analysed, on the basis of which a number of challenges in the wake of a lingering HRBA will be identified. Lastly, this briefing paper will then formulate some preliminary recommendations for possible future avenues and their related research imperatives.

2 | Towards A Human Rights-Based Approach¹

A HRBA has been described as the most far-reaching attempt to integrate human rights into development cooperation, whereby the core mission of development practitioners has evolved from notions of charity to the obligation to promote and protect human rights. In spite of several attempts to operationalize this approach, however, there is still little conceptual consensus as to how to integrate, monitor and evaluate human rights in development processes. It is therefore more accurate to speak of several human rights-based approaches, with different definitions and models which have been developed and adapted as variations on the same theme (D’Hollander, Marx and Wouters, 2013). Indeed, as the UN Office of the High Commissioner for Human Rights (OHCHR) put it, a HRBA ought to be seen as a broader “conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyze “ *the inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress*” (OHCHR, 2006, p. 15). Acutely aware of the need to render its application more practical, the UN Development Group put forward a Common Understanding of a Human Rights-Based Approach to Development Cooperation (UNCU), which defines human rights as both a means to an end (human rights as a precondition for sustainable development) and an end in itself (human rights as a goal of sustainable development). Hailed as the most widely adopted working definition of a HRBA, this

¹This section and the section 2.1 and 2.2 draw on an extensive study which was conducted for the Flemish Government in the context of the Policy Research Centre on Foreign Affairs, International Entrepreneurship and Development Co-operation. See: David D’Hollander, Axel Marx and Jan Wouters (2013) ‘Integrating Human Rights in Development Policy: Mapping Donor Strategies and Practices’, 63p. Paper available at: <http://ghum.kuleuven.be/ggs/projects/policy-research-centre/publications.html>

Common Understanding has served as a 'blue print' for multilateral donors, bilateral donors and civil society organisations (CSOs) to further operationalize a HRBA. It includes three core elements (UNDG, 2003):

- all programmes of development cooperation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments;
- human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process;
- development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

2.1 From a legal Human Rights framework to a Human-Rights Based Approach

The International Bill of Human Rights consists of the International Covenant on Civil and Political Rights (ICCPR) and its optional protocols, and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These instruments have been ratified by an overwhelming majority of states and are legally binding to its respectively 167 and 160 treaty parties. They cover a broad number of rights, which the signatory states have an obligation to respect, protect, and fulfill. Together with the ICCPR and ICESCR, seven other international human rights treaties constitute the core of the international human rights framework. These are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (CRC), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPED), and the Convention on the Rights of Persons with Disabilities (CRPD). A number of international agreements, declarations and conventions specify, elaborate and complement these 'core' human rights instruments. These include the eight fundamental Conventions of the ILO, the UN Resolution on the Right to Water and Sanitation, the International Conference on Population and Development Programme of Action, the Beijing Declaration and Platform for Action for equality, development and peace for all women, the UN Security Council Resolutions 1888 and 1325 on women and peace and security, and the UN Declaration on the Rights of Indigenous Peoples.

Within the UN structure, a number of international bodies and mechanisms monitor states' compliance with these human rights obligations including the UN Treaty bodies and Committees, the Universal Periodic Review under the auspices of the Human Rights Council, and the related UN Special Procedures. These human rights bodies have also further specified what these legal obligations imply in terms of national law and policies, providing guidance on how to effectively implement the obligation to respect, protect and fulfil human rights. In addition to the international framework, human rights have also been consolidated in regional human rights charters², as well as national constitutions. These formal human rights instruments differ from various 'rights-based approaches' such as a HRBA on two main levels.

² See, for instance, the African Charter on Human and Peoples' Rights (available here) and the American Convention on Human Rights (available here).

First, the degree to which a HRBA consistently and explicitly draws on international human rights law and its obligations differs significantly between development actors and the context. While linkages to specific human rights instruments are considered essential, in implementing a HRBA there is often an emphasis on the implementation of human rights principles such as non-discrimination, participation, empowerment and accountability. In addition, a HRBA also ‘interacts’ with national legislation, community, customary and informal norms (ODI, 2012). It is argued that this gives organisations the advantage of defining rights more fluidly and allows greater interaction with local understandings of justice and local power dynamics (Piron, 2005a, p. 24-25). However, where national legislation does not reflect human rights law, or people are unaware of their government’s obligations under human rights law, a HRBA can provide a legal framework to ensure the rights and freedoms to which every person is entitled by the mere virtue of being human. In such context, a HRBA aims to strengthen domestic accountability dynamics based on international norms. Human rights are thus not only born and safeguarded through jurisprudence and legislation, but also need to be internalized in the minds of both rights-holders and duty-bearers by becoming part and parcel of the political processes which steer the legal framework (Gready, 2008; p. 736). Accountability, in order words, “is a cornerstone of the human rights framework” (OHCHR, 2013 p. ix).

Although a HRBA uses the language of rights as found in jurisdiction and legislation, it therefore does not strictly focus on ensuring a legal outcome, but rather seeks to empower the rights-holders to hold the duty-bearers accountable for non-compliance (Uvin, 2007, p. 601-602). In doing so, a HRBA aims to structurally change development processes by ‘transforming state-society relations’ and ‘strengthening the ‘social contract’ between citizens and the state (Piron, 2005a, p. 22). A HRBA thus offers a ‘theory of change’ (Gready and Vandenhole, 2013) and a ‘strategic’ way of rethinking partnerships and prioritizing issues, enhancing the ‘political’ dimensions and social fabric of development work (Hickey and Mitlin, 2009, p. 214, 225). A ‘radical’ implementation of this theory would imply that both donors and development NGOs drastically shift away from supporting service delivery and rather focus on strengthening the capacity of the state to fulfill its human rights obligations, while promoting capacity-building processes for citizen’s empowerment and state accountability. In practice, a HRBA has led to ‘hybrid’ approaches combining these two elements.

Second, a HRBA does not merely view human rights as “universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity”, but explicitly recognizes that “human rights and human development share a preoccupation with necessary outcomes for improving people’s lives” (OHCHR, 2006: 7). This holistic and reflective understanding of development processes resonates with other human development concepts which have been elaborated since AmartyaSen’s landmark ‘capability approach’ (Sen, 1999).The added value of a HRBA, however, consists of its objectively formulated benchmarks and legal terms on the basis of internationally agreed human rights standards and norms to integrate, monitor and evaluate the realisation of human rights, thereby providing policy-makers with concrete checklists for action (Darrow and Tomas, 2005, p. 485-486).

2.2 An end in itself: Human Rights as a Goal of Sustainable Development

Human rights treaty standards are binding for all states that have ratified them and therefore set the tone for the design and implementation of development programmes. Drawing on the premise that development cooperation should lead to the realization of human rights because of their *intrinsic* value, development practitioners alike have engaged in advocacy, capacity-building and dialogues with partner governments in developing countries to ensure compliance with the international human rights framework. In addition to the legal ‘top-down’ framework within which international human rights instruments can be ratified and

monitored closely, a HRBA offers a ‘bottom-up’ understanding of the structural issues underlying processes of change, forcing policy-makers to take human rights issues into account when designing sustainable development processes and enabling an extra-judicial platform throughout which human rights situations can be monitored, evaluated and safeguarded over longer periods of time. Enabling a strong analytical framework, a HRBA thus provides insight into the distribution of power and identifies groups that have been withheld from exercising their rights while often being subject to mutually reinforcing conditions of discrimination, poverty and vulnerability. Such an approach has been known to reinforce situation analysis at three levels (OHCHR, 2006: 27):

- causality analysis: drawing attention to root causes of development problems and systemic patterns of discrimination;
- role/obligation analysis: helping to define who owes what obligations to whom, especially with regard to the root causes identified; and
- identifying the interventions needed to build right-holders’ capacities and improve duty-bearers’ performance.

A HRBA therefore implies a fundamental rethinking of the development process: a paradigm shift away from seeing aid beneficiaries as passive ‘needs-fulfilling’ individuals to active ‘agents of change’ (Sen, 2013), and development processes as being continuously driven by the beneficiaries themselves (Johnson, 2003). Indeed, as the OHCHR has noted ‘for people to be enabled to assert a legally binding claim that specific duty-bearers provide free and compulsory primary education (ICESCR, art. 13) is more empowering than it is to rely on “needs” alone’ (OHCHR, 2006: 7).

2.3 A means to an end: Human Rights as a Prerequisite for Sustainable Development

In addition to being morally imperative, the realization of human rights has also come to be seen as *instrumental* in spurring development and eradicating poverty. Integrating human rights norms and principles in the process of development cooperation itself, a HRBA thus offers a ‘strategic vision’ on ‘outward change’(Gready, 2012), thereby taking into account human rights principles in every phase of the development cycle, and in every thematic area of work (Darrow and Tomas, 2005, p. 501).

Precisely because of the people-centered and cross-cutting nature of human rights, a HRBA is deemed to generate many positive externalities in development processes and to contribute to overall aid effectiveness. First, acknowledging that human rights violations are both a cause and a consequence of poverty, a HRBA is said to be an indispensable tool in designing poverty-reduction strategies. Second, drawing on the established link between the protection of human rights and mechanisms of accountability, participation and transparency, a HRBA is viewed as a necessary precondition for attaining good governance. Third, by strengthening the social contract between citizens and their governments, a HRBA is also expected to contribute to partner countries’ ownership (OHCHR, 2013).

The question remains, however, to what extent the current preoccupation with aid effectiveness and results-based management in turn also contributes to the protection of human rights. In what has been dubbed to be the ‘partnership era’ (Whitfield, 2009), the debate on aid effectiveness has been soaring since it culminated into the 2005 Paris Declaration on Aid Effectiveness (Sjöstedt, 2013). At first glance, this landmark Declaration explicitly endorsed the Millennium Declaration, the promotion of human rights and the right to development. Indeed, as the Organisation for Economic Cooperation and Development (OECD)’s Development Assistance Committee (DAC) stated “the implementation of the Paris Declaration for

increased aid effectiveness can help to achieve human rights. Equally, the application of human rights to development processes can strengthen the implementation of the Paris Declaration and help to attain its goals” (OECD-DAC, 2008, p. 1).

In a similar vein, the 2008 Accra Agenda for Action promoted a more comprehensive understanding of development processes, stating that democracy and social progress are ‘prime engines’ of development in all countries. Perhaps most importantly, it stated that “addressing inequalities of income and opportunity [...] is essential to global progress. Gender equality, respect for human rights [...] are cornerstones for achieving enduring impact. It is vital that all our policies address these issues in a more systematic and coherent way” (Accra Declaration, 2008, paragraph 3). More specifically, Accra noted that both donors and recipient governments would have to ensure that development policies and programmes are designed and implemented in ways consistent with their agreed international commitments on gender equality and human rights. In this reduced sense, it reflected the different ‘mainstreaming’ policies which donors have adopted related to human rights, gender equality and the environment.

The most recent Busan Outcome Declaration submitted that “promoting human rights, democracy and good governance are an integral part of development efforts” (Busan Declaration, 2011, paragraph 3). The Declaration also recalled the aid-effectiveness principles are “consistent with our agreed international commitments on human rights, decent work, gender equality, environmental sustainability and disability” (Idem, paragraph 11). Importantly, a thematic session on a rights-based approach to development was held at Busan, but the Busan outcome document only mentioned the relevance of a rights-based approach to development with regard to civil society, thereby carefully omitting the implications of such approach for donor and recipient governments. Indeed, it asserted that “civil society organisations play a vital role in enabling people to claim their rights, in promoting rights-based approaches, in shaping development policies and partnerships, and in overseeing their implementation” (Idem, paragraph 22).

It is important to note from the outset, however, that Paris, Accra and Busan marked a consensus on the ‘mechanics’ of aid, aimed at identifying a number of operational guidelines on the ways in which aid may be rendered more effective without further defining the goals or even substance of development cooperation. On these global development platforms, human rights discourse is thus systematically viewed from an effectiveness perspective, whereby the former is said to have a mutually reinforcing effect on the latter. In spite of this alleged correlation, however, a number of criticisms have arisen on how the concept of aid-effectiveness can potentially even undermine progress on human rights. First, when ownership and alignment are narrowly conceived as preferring government-to-government aid such as budget support, this risks undermining governments’ accountability towards citizens and the possibilities for citizens to claim their human rights. Therefore the need for ‘democratic’ ownership or ‘community-based’ development is underlined by CSOs (AG, 2007). Second, if results-based management leads donors to narrow the scope of development programmes in service of quantifiable short- and medium term goals, or emphasize technical support, this undermines a long-term structural approach to development as envisioned by a HRBA (AG, 2007). Third, as one researcher recently forewarned, “[...] although all donors are supposed to promote partner country ownership, harmonize their efforts with other donors, and align themselves with partner country priorities, results-based management simultaneously implies not only a focus on continuously measuring and reporting results but also stricter prioritizations on behalf of donor governments” (Sjöstedt, 2013: 144). In the absence of a clear and global policy framework on human rights integration into the aid-effectiveness discourse, therefore, the current scattered quest for a HRBA is likely to generate a fragmented landscape with differing understandings of how to implement such an approach on the ground.

Drawing on the added value of rights-based approaches to development policies, both in terms of their own substantive merit and their catalysing effect on the overall aid architecture, it emerges that a HRBA has the *potential* to turn development cooperation into a more demand-driven, people-centred and thus sustainable process. In order to also grasp that potential from a practical point of view, the following section looks into the different positions and accompanying policies of stakeholders on the ground.

3 | Stakeholders' voices & positions on HRBA

3.1 Multilateral Institutions³

This section provides a brief overview of the four most prominent multilateral institutions which have developed policies and guidelines for the integration of human rights and the implementation of a HRBA into development.

3.1.1 Organisation for Economic Cooperation and Development (OECD) – Development Assistance Committee (DAC)

The DAC's Guidelines on Poverty Reduction recognize the linkages between human rights, empowerment and development, stating that *'Powerlessness, injustice and exclusion perpetuate poverty – and make it worse. The poor need to be able to exercise their human rights and to influence state institutions and social processes that affect their lives'* (OECD-DAC, 2001, p.19). The guidelines noted the emergence of 'rights-based approaches' in development and their potential to raise the awareness and confidence of poor and excluded groups of their rights, facilitating 'greater participation in development' (idem, p. 47). The integration of human rights in development gained a prominent place on the DAC agenda with the creation of a 'Human Rights Task Team' within the Governance Network (GOVNET) in 2005. An extensive study was published in 2006, and recently updated and re-published, providing a broad overview of how multilateral and bilateral donor agencies have worked with the concept of human rights (see OECD-DAC/WB, 2013).

OECD-DAC Principles and Actions for Integrating Human Rights in Development

Based on donor experiences included in the study, the DAC has issued an 'Action-Oriented Policy Paper on Human Rights and Development' in 2007, putting forward 10 principles for the integration of human rights into development. These principles would serve as 'basic orientations' for donors to inform the design of human rights policies and programming, and identify the 'key areas' and activities for harmonised donor action. The principles were also intended to serve as a basis for dialogue with other stakeholders such as national governments and non-state partners.

³ Although no particular order of importance has been followed, the Organisation for Economic Cooperation and Development (OECD) has been given slightly more prominence in light of the post-Busan consultations on the creation of the CSO Partnership for Development Effectiveness (CPDE).

OECD-DAC Principles for promoting and integrating human rights in development

1. Build a shared understanding of the links between human rights obligations and development priorities through dialogue.
2. Identify areas of support to partner governments on human rights.
3. Safeguard human rights in processes of state-building.
4. Support the demand side of human rights.
5. Promote non-discrimination as a basis for more inclusive and stable societies.
6. Consider human rights in decisions on alignment and aid instruments.
7. Consider mutual reinforcement between human rights and aid effectiveness principles.
8. Do no harm.
9. Take a harmonised and graduated approach to deteriorating human rights situations.
10. Ensure that the scaling-up of aid is conducive to human rights.

Source: OECD-DAC Governance Network (2007) 'Action-Oriented Policy Paper on Human Rights and Development'

The DAC Policy paper further mapped out three action points: (i) Make use of the principles, (ii) Promote dialogue and collaboration between human rights practitioners and other development practitioners, and (iii) Act as a resource to others by strengthening human rights assessments and indicators, including through horizontal work across the OECD. Regarding the monitoring of progress on the actions and commitments to these principles, the DAC Policy Paper did not set out a framework, but mentioned that the 10 principles might guide the OECD-DAC Peer Review Process if a donor's human rights policy were part of the evaluation. However, a preliminary screening of these Peer Review Reports indicates that human rights-policies have largely been omitted or only mentioned briefly in these evaluations. As such, only a limited number of OECD donors have made progress in implementing the DAC's principles and action points, as will be elaborated further on.

OECD DAC's Work on Human Rights and Aid Effectiveness

The DAC has sought to bring the Aid-effectiveness and Human Rights agenda closer together by elaborating key actions to forge greater synergies. The *Human Rights and Aid Effectiveness* (2008) paper issued by the Governance network identified a number of guidelines to improve inter-linkages between Human Rights and Aid Effectiveness, including the need to build 'democratic ownership' of development processes based on human rights standards and principles of meaningful participation, accountability, transparency and non-discrimination, thereby echoing the HRBA policy adopted by donors. Here, development actors should use 'national, regional and international accountability processes', including parliaments, civil society, UN mechanisms and regional courts, to review donor and partner government action. Another area of donor action is the incorporation of human rights indicators in results-based management frameworks, thereby strengthening the capacities of national statistical institutions to disaggregate data by gender, socio-economic and ethnic dimensions. To this end, the DAC supported the Metagora project, an extensive research programme into the different types, methods and policy approaches towards measuring human rights (OECD-DAC, 2008). The DAC also noted the importance of human rights as a diagnostic tool in planning, whereby development programmes are screened to ensure they at the very least 'do no harm' to human rights. To illustrate the functional contribution human rights can bring towards strengthening the

implementation of the Paris Declaration and the realization of the MDGs, the DAC also published a report on practices in the Health sector (OECD-DAC, 2008b).

From Human Rights to Domestic Accountability and Democratic Governance

Starting in 2009, the DAC-GOVNET initiated a new 'Programme on Improving Support to Domestic Accountability'. This work stream addressed the inter-linkages between aid, accountability and democratic governance, and although essentially covering similar issues concerning donor, recipient state and civil society relations, the DAC did not connect this to its previous work and recommendations on the integration of human rights into development cooperation. One of the key policy messages noted how previous support had often been based on 'inaccurate assumptions' about 'democratic and institutional transitions' (OECD-DAC, 2011, p. 2). As such, greater consideration should be given to local systems and dynamics of accountability and how donors can 'work with the grain' of societies to develop country specific strategies. This can be read as shift away from linking and grounding accountability processes within the international human rights framework. This could possibly explain why the DAC's 'Orientations and Principles on Development Co-Operation, Accountability and Democratic Governance' issued in 2012, do not consider the role of donors' human rights policies or a human rights-based approach to development (OECD-DAC, 2012).

3.1.2 World Bank (WB)

The WB has long remained silent in the debate on human rights and development, which is largely due to the legal boundaries in which it operates. The 'Articles of Agreement' which provide the framework for its operations clearly stipulate that only economic considerations can guide decisions, and the WB cannot be influenced by, or interfere in, the internal political situation of a country (Dañino, 2005). As such, human rights and a HRBA, which explicitly address the political and institutional dimension of development issues, have been considered 'off limits'. As a result, although the WB recognizes it has a role to play in realizing human rights (WB, 1998), it has not been able to develop a human rights-based policy. Here it should be noted that some governments which work with a HRBA in their own policy or advocate human rights at international fora, have shown less commitment to pushing this issue at the WB (WRI, 2010). It is thus not surprising that the Common Vision elaborated by the WB's Development Committee in 2013 did not include any reference to the human rights framework (WB-DC, 2013).

However, there has been a growing interest within the WB to develop a better understanding between human rights and economic development. In recent years the WB has published more policy-oriented publications on human rights, including a broad study on human rights indicators (WB, 2010). In a similar vein, the Nordic Trust Fund was established as a 'knowledge and learning programme' for WB staff on human rights. The recent publication of a report on Human Rights Impact Assessments is an indication of how a HRBA could possibly take root within the WB Group structure. This resonates with several advocacy efforts from different sides which urge the WB to review its 'safeguard policies' and introduce a human rights mechanism (see WRI, 2010; UN-SRAH, 2013; ESCR-Net, 2013). There has also been considerable interest in concepts closely related to a HRBA such as social accountability and citizen's 'demand for good governance', and how

concepts of law and justice can improve the efficiency in service delivery.⁴ Here it can be underlined that these budding initiatives within the WB approach accountability from an ‘instrumental’ instead of a ‘normative’ perspective, whereby the focus is mainly put on enhancing efficiency in the management of services.

3.1.3 United Nations (UN) Development Group

The UN’s 1997 reform process indicated a milestone in bringing greater coherence to the UN’s different development activities and branches, and indicated the beginning of a process of ‘mainstreaming human rights’ which led to the 2003 UN Common Understanding on a HRBA (UNCU). Agencies such as UNICEF spearheaded this process, by adopting the Convention on the Rights of the Child (CRC) as the organisation’s guiding frame of reference (UNICEF, 1998). To a greater or lesser extent, other UN agencies and bodies have issued similar commitments and have sought to develop and implement the UNCU. The OHCHR, for instance, has taken up an important role in developing policy guidance and creating synergies between the UN Development Group and the UN’s human rights mechanisms, most notably by periodically conducting research on a HRBA. These UN agencies have made particular efforts to elaborate a practice-oriented HRBA policy at different levels, linking this to the human rights framework and the UN human rights bodies and mechanisms. However, besides the significant guidance and policy material⁵ from UN agencies, a number of assessments, including recent evaluations of both UNICEF and UNDP, have indicated that the implementation of a HRBA at the country- and programming level remains challenging. Such evaluations identify a number of internal factors which hamper the consistent implementation of a HRBA, including a lack of capacity, time and resources to carry out comprehensive HRBA analysis and participatory assessments which a fully human rights-based programme demands (UNICEF, 2012; MOPAN, 2012). In more general terms, tensions between economic growth and human rights, as well as other development priorities such as the Millennium Development Goals (MDGs), seem to have overshadowed the implementation of a HRBA within UN agencies (OHCHR, 2010).

3.1.4 European Union / European Commission

The Lisbon Treaty firmly anchored the importance of human rights in both the EU’s internal and external policies. Although development cooperation is still a shared competence with its member states, and national governments are thus not strictly bound by EU development policies (Broberg, 2011, p. 545), the ‘duty of loyal cooperation’ (Duke and Blockmans, 2010, p. 3) and an increasing push for greater harmonization, coordination and coherence has led to a more streamlined ‘European’ development policy. In this sense, the European Consensus on Development (2006) which underlined the protection of human rights, good governance and democratisation has served as a fundamental guiding tool for sustainable development, whereby human rights and democracy have been identified as one of the cross-cutting issues to be

4 In February 2013 the WB has launched a ‘Global Partnership for Social Accountability’. It also has a ‘Demand for Good Governance Practice Community’ and houses a Law Resource Center which addresses the legal dimensions of development.

5 See for example; UNDP (2006) ‘Applying A Human Rights-Based Approach to Development Cooperation and Programming: a UNDP Capacity Development Resource’; UNICEF (2007) ‘A Human Rights-Based Approach to Education for All; A framework for the realization of children’s right to education and rights within education’; UNIFEM (2007) ‘CEDAW and the Human Rights Based Approach to Programming’; OHCHR (2006a) ‘Principles and Guidelines for a Human Rights Approach to Poverty Reduction Strategies’.

mainstreamed into all of the Union's actions. However, the development of a coherent EU vision and policy on a HRBA is still a work in progress.⁶

In recent years, the European Commission has undertaken new steps to further align its development policies with human rights. The Commission's 'Agenda for Change', the 'Joint Communication on Human Rights and Democracy at the Heart of EU External Action', and the 'EU Strategic Framework and Action Plan on Human Rights and Democracy' launched in 2012 all reflect a political willingness to 'upgrade' the EU's approach towards the consistent integration of human rights into its development policies. In this light, the Directorate-General for Development Cooperation (DG-DEVCO) has developed a number of new policies which have given greater importance to the promotion and protection of human rights. Most notably, a 'Human Rights Country Strategy' has been in the making for each partner country, with input from EU member states and civil society. This is closely linked to the Commission's new budget support policy, designed to be more flexible in addressing human rights challenges with partner governments. In 2012, the EU 'Action Plan on Human Rights' identified the 'rights-based approach in development cooperation' as one of the key actions to be undertaken jointly by the Commission, the EEAS and the Member States. Momentarily, DG-DEVCO is developing a HRBA toolbox to guide the implementation of a HRBA in all EU policies, including its ubiquitous trade policy for which the EU is exclusively competent, by flagging human rights concerns and core labour standards in dialogues with its Free Trade Association (FTA) partners (Council of the EU, 2012).

In brief: While all four of the multilateral organisations we discussed recognize the importance of human rights, there are still variations in the extent to which their respective human rights frameworks serve as a frame of reference, action and accountability for their policy. Although the UNDG and the EU have formally adopted a HRBA to development, its operationalization is still work in progress. Recognizing the mutual relation between the aid-effectiveness and human rights agenda, the OECD-DAC has developed 10 principles on the integration of human rights into development policies, but is yet to follow up on their concrete implementation. The WB has been reluctant to recognize a HRBA to development but is increasingly looking into the relation between economic growth and human rights. It is important to note that neither of these institutions, apart from the UN, has indicated that the post-2015 framework for global development should build upon obligations laid out in international human rights law.

3.2 Bilateral Donors⁷

Over the course of the last decades, bilateral donors have approached the integration of human rights into their policies in different ways, resulting in three broad categories of methods⁸ (for a full overview, see

⁶ In 2008, a critical report by several human rights NGOs indicated EU development policies 'contain distortions and inaccuracies regarding applicable human rights law, and inadvertently or intentionally eschew human rights based development'(IHRN, 2008). Similarly, an extensive internal evaluation of the Commission's support for human rights indicated the EC is 'confronted with an important delivery gap with regard to its human rights agenda' (EC, 2011).

⁷ Based on OECD-DAC membership, bilateral donors are understood to entail Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, South Korea, Spain, Sweden, Switzerland, United Kingdom and United States. Although the European Union also acts as a full member of the committee, it has been analysed here as a multilateral institution for the purpose of methodological clarity.

D'Hollander, Marx and Wouters, 2013). Although the role of emerging donors and south-south cooperation is certainly an important trend to take into account (Vaes and Huyse, 2013), this section focuses on the so-called 'steward states' in international human rights promotion, namely "countries that have a strong national interest and track record in advancing human rights abroad" (Hafner-Burton, 2013, p. 5). Following a short introduction, an assessment is provided of those bilateral donors that have systematically voiced their support of a HRBA ('steward donors'), whereby particular emphasis is put on how they have used tools or indicators to ensure a HRBA is effectively implemented at different policy levels. By way of illustration, this mapping exercise then also touches upon those donors that, for various reasons, have taken a more reluctant stance in pursuing a HRBA ('critical donors').

Steward Donors

The Swedish International Development Cooperation Agency (Sida)

As one of the earliest donors to develop an understanding of a HRBA to development, Sweden has been one of its most active advocates on fora such as the OECD-DAC, and also supports and collaborates with UN agencies and the OHCHR to further operationalize a HRBA, thereby promoting greater synergies between the Aid-Effectiveness and human rights agendas (Sida, 2010a). In terms of its own policy, it has sought to integrate a 'rights-perspective' in all areas of its work. To this end, it has developed extensive guidance material on how to apply this approach in various sectors and with different partners. Sida stresses the necessity of working with four principles in all stages of the development process, including non-discrimination, participation, openness and transparency, and accountability. As such, these principles constitute a 'basis for analysis and assessment and a common basis for dialogue, cooperation and follow-up' (Sida, 2010b). While clearly emphasizing states' human rights obligations, Sida also stresses 'flexibility' in the application of the rights perspective' (Idem). Internally, it has integrated the HRBA into its quality assessment procedures, whereby each proposed programme or project is screened against the four principles. In addition, evaluations and reviews of partner organizations, country programmes or individual programmes often include a section on cross-cutting issues, covering the application of a HRBA and other issues such as gender equality.

Sida has also made efforts to develop human rights indicators to assess performance and apply results-based management in the area of human rights promotion and the application of a HRBA. To this end, it commissioned an extensive, practice-oriented mapping study of existing indicators and how they are relevant

8 These policy strategies can be summarized as follows (1) Human rights dialogue and conditionality: Respect for human rights is often referred to as a precondition for selecting partner countries and human rights are often, to a greater or lesser extent, part of governance assessments. Despite a general consensus in donor policies that a minimum respect for civil and political rights are crucial for a sustainable partnership, donor responses have varied widely. This is notably due to the importance of external factors, such as idiosyncratic, historical and cultural ties, as well as the media attention paid to particular issues and countries. Although conditionalities are still relevant, most donors and civil society actors agree that human rights should serve as a basis for dialogue and consensus building between partners, and not be applied as a conditionality for cooperation. (2) Human rights and democracy programmes: Donors have initiated human rights projects with a view to stimulating democratic governance and with a focus on political and civil rights. A broad variety of activities fall under these programmes, including support for electoral processes and political reforms or support for independent media and local or international human rights organizations. Donor's Human Rights and Democracy programmes often include civil society support, but can also include government reform programmes or support for multilateral initiatives. (3) Human Rights Mainstreaming and Human Rights-Based Approaches: Human Rights Mainstreaming implies that human rights are adopted as a transversal, cross-cutting thematic issue in all areas and sectors of development policy. In line with policies on gender-mainstreaming, the aim of mainstreaming human rights is to consider for each strategy, programme or project, its impact and implications on the full spectrum of human rights. It also often implies that human rights principles are integrated throughout the entire process of planning, implementation and evaluation.

for its policy (Dibbets et al., 2010). In terms of assessing how a programme succeeds in integrating the HRBA principles in all its stages, a number of ‘process indicators’ has been experimented with. These have been tested on a small-scale and have yet to be implemented more broadly (Sida, 2012). Sida’s most recent report on human rights and the application of its HRBA flags a number of challenges in systematically integrating these principles, whereby non-discrimination and participation have been easier to translate into practice-oriented measures than the principle of accountability (Sida, 2012). Fragmented implementation is also apparent across geographical and thematic lines. The integration of a HRBA in sectors such as water and sanitation, health and education has succeeded to a greater extent than other areas such as Sida’s ‘Business for Development’ Programme, although its guidance material also covers these areas. In addition, there are significant differences in implementation across country teams, which reflect a difference in internal capacity and HRBA training at the level of country offices. Accordingly, while being one of the most vocal advocates of a HRBA, Sida is still working to translate its policy into practice.

The German Federal Ministry for Economic Cooperation and Development (BMZ)

BMZ adopted a second action plan on human rights in 2008 which confirmed a ‘*voluntary* commitment to systematically integrate the human-rights-based approach into German development policy’ (BMZ, 2008). A new human rights strategy issued in 2011 indicates a stronger commitment as it aims for a ‘more systematic alignment’ towards human rights and contains binding provisions for the formulation of development policies, as well as the position of German development policy on international and global fora (BMZ, 2011). The BMZ clearly states that the international human rights conventions ratified by Germany and its development partners are legal obligations and provide ‘the binding frame of reference’ for development cooperation with partner countries. At the same time, the BMZ also identifies ‘goal conflicts’ in policy areas such as trade, agriculture, security, and migration, and calls for a degree of sensitivity in dialogues with partner governments on human rights.

The BMZ calls for a ‘whole-of-government’ approach to human rights and emphasizes the need to mainstream a HRBA at all levels of development policy. To bring the 2011 Strategy into practice a joint programme ‘Realizing Human Rights in Development Cooperation’ was launched by GIZ and KfW, (Germany’s main implementing development agency and development bank) in collaboration with the German Institute for Human Rights (DIMR). An extensive information portal has been launched⁹ containing sector-based training material, manuals, case-studies of ‘promising practices’, and other guidance material. One of the key tools has been the development of a ‘human rights risk assessment’ for screening bilateral development programmes and projects. To what extent these assessments are currently implemented, and if they have been successful in providing an internal accountability mechanism for applying a HRBA, was not clear at the time of writing. In addition, the BMZ’s 2011 strategy paper notes the feasibility of a human rights accountability or ‘complaints’ mechanism is being assessed, which would allow individuals or groups affected by German-funded development programmes or projects a means of redress. In late 2012 the German Human Rights Forum (a group of 38 German Human Rights NGOs) urged the BMZ to take further steps to realize such complaint system (FM, 2012).

The Austrian Development Cooperation (ADC)

The Austrian Development Cooperation’s human rights policy identifies three areas of action, including the integration of a human rights perspective into all working areas, the promotion and protection of human rights as a sector of intervention, and human rights as part of the political dialogue (AMFA/ADC, 2006). The first area aims to integrate human rights in the form of an ‘analytical framework’, to be incorporated in all

⁹ Available online at <http://www.institut-fuer-menschenrechte.de/en/publications/development-policy.html>

aspects from programming to the various phases of the project cycle in all partner countries' (Idem). ADC notes that a 'rights perspective' can be implemented in several ways, most notably as a normative guiding principle, as a component to be integrated in programming, and as an instrument for evaluating and measuring interventions on the basis of which indicators can be developed (Idem). In a further strengthening of this stance, a HRBA programming manual was published in 2010, as well as a number of thematic briefing papers covering different sectors. The manual and sector guidance notes provide ADC staff with several tools for ensuring a HRBA is mainstreamed such as a 'Human rights checklist for project cycle management'.

To what extent these tools are implemented systematically on the basis of indicators of assessments is not clear. The Quality Assurance and Knowledge Management division of the Austrian Development Agency (ADA) contributes to the practical implementation of the principles and objectives in ADC programmes and projects. An evaluation of ADC's work on human rights is planned for 2014 (ADC, 2012).

The Danish International Development Agency (DANIDA)

Human Rights have been a cross-cutting theme within Danish development policy for a number of years, but it is since the 2013 entry into force of the 'International Development Cooperation Act', that the promotion of human rights is an objective in itself, and the international human rights framework is to become a central point of reference for Danish development policy. The Danish HRBA aims to make systematic use of UN human rights conventions, standards, norms and instruments as a 'compass' to guide political dialogue and concrete development interventions and partnerships (Dan-MFA, 2012). Similar to the UNCU, it implies using the human rights principles of non-discrimination, participation and inclusion, transparency and accountability in all phases of development cooperation (idem). To elaborate on a more practice-oriented vision, a guidance note was published which indicates a HRBA should be implemented in a 'pragmatic and realistic way', adapted to local contexts and based on a thorough analysis of political and power relations (Dan-MFA/DANIDA, 2013). Here, the importance of local ownership and alignment with national priorities and systems is underlined, as these are conditions which can make a HRBA particularly effective as a 'driver of positive change'. DANIDA also indicates that the aid effectiveness agenda should focus on results that contribute to the realization of rights, and not only address technical issues, emphasizing the need to formulate results-frameworks in terms of human rights outcomes, as well as tracking the application of human rights principles in the process of development. Practically, an online HRBA portal for practitioners has been established¹⁰ providing additional tools and indicators to ensure monitoring and evaluation of the programmes reflect a HRBA.

To ensure a HRBA is mainstreamed effectively, DANIDA has issued a screening note, which serves as a checklist to capture the core elements of a HRBA by posing a number of questions. Importantly, the note is a mandatory part of the DANIDA Programme Cycle, and staff is expected to 'reflect upon' and respond to the questions posed when concept notes are presented for approval and financing. In-depth evaluation of its use should provide insight on how this type of internal approval mechanism translates into more HRBA-oriented programming.

The Finnish Ministry of Foreign Affairs

The Finnish Government's Development Policy Programme adopted in 2012 requires that a human rights-based approach is implemented in all development policy and development cooperation practiced by Finland (FMFA, 2012). Parallel to the Development Policy Programme, the human rights-based approach is also defined by the other policy guidelines of the Finnish Government, such as the Government Report to

¹⁰ An online training course has been made available at <http://um.dk/en/about-us/e-learning/hrba-human-rights-framework/>.

Parliament on the Human Rights Policy of Finland 2009. Finland's human rights-based approach is in line with the UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) adopted by the United Nations Development Group (UNDG) in 2003.

The Foreign Ministry on Finland has published guidelines to cover the implementation of a human rights-based approach in bilateral and multilateral political dialogue and cooperation as well as cooperation with non-governmental organisations (FMFA, 2013). Importantly, the guidelines clarify that a HRBA also applies to ongoing projects/programmes, and a HRBA is to be incorporated during mid-term evaluations and the design of follow-up projects. Mid-term evaluations will include questions and recommendations regarding the human rights-based aspects of the projects. The guidelines also stress that the human rights-based and results-based approaches are compatible, as human rights standards and principles define the concrete goals and methods of development cooperation activities, which are to be implemented and monitored from a results-based perspective. Similarly, evaluations should account for the application of a HRBA in the process of implementation, and also provide a human rights-based measurement of a programme's results. It should be underlined that the guidelines do not further specify what human rights assessments frameworks or human rights indicators should be applied. As the adoption of a HRBA is a recent development in Finnish policy, assessments of its implementation have not yet been carried out.

Critical Donors

Despite the fact that most donor countries have ratified the 9 core human rights treaties, a HRBA has not been adopted by all of them. For states who have not ratified several core human rights treaties, such as the US which has not ratified ICESCR, ICRC and CEDAW, there is an obvious reluctance and inability to implement this approach. For other donors, human rights continue to be a political matter which does not fall within the scope of development cooperation. Among these are relatively large donors such as Japan and South-Korea (Marx and Soares, 2013).

There are also a number of development organizations and donors who do see the promotion of human rights as an important aspect of their work, such as Australia¹¹ and Canada¹², but conceive of human rights as a separate and insulated thematic sector, not as a cross-cutting theme or overarching framework of action (Molenaers, 2012). Another position, expressed initially by the World Bank, is the claim that donor support always contributes to the fulfillment of human rights, even if this is not explicitly communicated as such. Similarly, donors who have adopted a HRBA on paper, have not always invested in the capacity to translate these commitments into policy (OECD-DAC/WB, 2013). This is what some have called 're-packaging', whereby human rights or a HRBA are adopted as a 'feel good' term for the development community but do not lead to any significant changes in practice (Uvin, 2004; p. 51).

Other donors have moved away from a HRBA under the pronouncement that it may not easily lend itself to a results-based management framework. This is notably the case for the British Department for International

11 Despite a parliamentary committee recommending AUSAID to formally adopt a human rights-based approach, it has not done so (JSC, 2010).

12 The Canadian Development Agency, CIDA, recognizes human rights as a governance theme and since the 'ODA Accountability Act' of 2008 development cooperation is to be consistent with international human rights standards (CCIC, 2008). However, no coherent human rights-based strategy has been adopted by CIDA, with the exception of its 'Action Plan on Child Protection' which embraces UNICEF's rights-based approach (CIDA, 2001).

Development (DFID) and its recent shift to focus more on the ‘mechanics of aid’. As early as 1997, DFID adopted and developed a rights-based approach and consistently referred to the human rights framework in its policy strategies (see DFID, 1997, 2000). In 2008, DFID also launched a Civil Society Fund for CSOs for which applications must include an ‘element of raising awareness of entitlements and rights’ (DFID, 2010). However, since then structural reforms have re-oriented DFID’s programming towards a results-based ‘value for money’ agenda (DFID, 2011a, 2011b). Strongly emphasizing ‘evidence-based’ policies, this has been problematic for programmes inspired by a HRBA, such as the Civil Society Fund, which cannot deliver clear-cut evidence of their effectiveness within fixed, short-term timeframes. As such, the ‘new’ DFID still seems to emphasize some key elements from its HRBA, notably in policies concerning ‘domestic accountability’ and women’s and girls’ rights (DFID, 2011b), but does not place the human rights framework central in its new policies.

In brief: A significant number of bilateral donors have adopted a HRBA over the last decade. While a HRBA in theory presents a ‘paradigm shift’, donors stress the need for flexibility and pragmatism, whereby the integration of human rights principles are often seen as more constructive than a ‘confrontational’ use of human rights. Donors have also faced a number of challenges in consistently applying the approach to different thematic and geographic policy areas. While they have developed tools and guidance material, there is often no systemic follow-up framework to track progress. Similarly, there is still a considerable knowledge gap on how to carry out monitoring and evaluation from a human rights perspective, and how to do so within a results based-management framework. Some donors such as DFID seem to have moved away from their initial HRBA as they adopt a ‘value for money’ approach, focusing foremost on the ‘mechanics’ of aid effectiveness. In addition to this counter-stream donor, a number of others continue to see human rights as an overly political concept, and have thus not adopted a HRBA.

3.3 Civil society organisations (CSOs)

3.3.1 Positions and HRBA applications¹³

CSOs mostly take a strong stand in favour of adopting a HRBA. Extensive consultations undertaken by the Advisory Group on Civil Society and Aid Effectiveness¹⁴ indicate that a growing number of CSOs hail a HRBA as a new framework for development cooperation and partnership (AG, 2007). Similar to the operational confusion among donors, however, there is no consensus on the exact scope and implementation of a HRBA. Drawing on consultations carried out for this briefing paper, **three main positions** can be identified.

The most radical position is held by those who regard a HRBA as the **key guiding principle** of development cooperation. According to this view, development goals should be replaced by targeted compliance with human rights norm as the ultimate objective of all development practitioners. The idea is to eliminate the causes of poverty, injustice and discrimination by enabling people to exercise and claim their rights. Implementing this view in the daily practice of development efforts would imply far-reaching consequences, however, as it would necessitate a re-design of partnerships, staff, tools and monitoring processes, with a focus on long-term rather than short-term project cycles. This rights-based view, embedded in the aforementioned agency-oriented approach to development, is often presented as the only valid alternative to the needs-oriented approach. A significant number of CSOs who are active as watchdog or advocacy organizations in the field of human rights and gender equality, trade unions, as well as, some development NGOs are supporters of the ‘radical’ view on HRBA. Some of those have claimed that “a HRBA should

¹³ This section draws mainly on interviews (cfr. sources in annex).

¹⁴ This group does not exist anymore.

frame all our work, whether we are engaging at a local, sub-national, national, regional or international level and whether we are directly working with people living in poverty or raising funds to support the work” (Action Aid, 2012, p. 29), while others point out that “rather than pursuing an action as part of a development project, such as setting up an income-generating project for example, a rights-based approach may lead to an action such as making political demands on government, a corporation, or international actors.” (AWID, 2002, p.2). The focus of ‘watchdog or advocacy CSOs’ is on a wide range of issues including capacity-building, awareness-raising of rights and legal assistance. A fully-fledged HRBA requires a long-term strategy based upon an inventory of human rights realisations and shortcomings in the country, an institutional framework, a national policy on equality and non-discrimination, a transparent monitoring system and an accessible accountability mechanism.

A second group of CSOs/NGOs sees the implementation of a HRBA as a **mainstreaming tool**. This means that they systematically use HRBA as a transversal issue in all their actions (in a similar way as for core issues such as gender equality and environmental sustainability), without turning it into the ultimate, overarching goal or guiding principle of their programmes. Many development NGOs such as Care and Plan International seem to be in favour of this HRBA concept. They may be specialized in providing services in specific sectors such as education, water and sanitation, but cast their specialization from a comprehensive people-centred perspective, aimed at empowering entire communities and target groups. They will pro-actively try to integrate human rights into all aspects of their activities by promoting active participation, inclusion of vulnerable groups and non-discrimination. This involves the use of appraisal instruments at the community level to identify which groups are systematically being denied their rights. Such systemic integration of human rights principles also affects how NGOs select and work with local CSO partners. NGOs/CSOs have argued that through their role as a service provider in a community, they are able to build a relationship of trust which serves as a basis for empowerment and advocacy initiatives (AG, 2007).

A third group of CSO/NGOs mainly thrive on the **rhetorical use** of HRBA. Some NGOs will strategically use ‘rights-language’ in their campaigning activities towards a specific goal, but do not see the human rights framework as their point of departure. Such approach could be described as ‘rights-framed’ instead of ‘rights-based’ (Miller, 2010), as part of the structural aid business, with a strong accent on empowerment and capacity-building aimed at spurring human development without necessarily implementing a HRBA.

Because HRBA is not embedded in formal legal norms, this gives organisations the advantage of defining rights more fluidly and allows greater interaction with local understandings of justice and local power dynamics (Piron, 2005a, p. 24-25). However, this also risks broadening the scope of rights language to include virtually any demand. Therefore, there is quite some variation as to where and when a HRBA is applied. Some thematic **sectors** seem to be more suitable to a rights-based approach than others, such as gender equality (Gooneskeres.d.), children’s rights and non-discrimination of indigenous groups or ethnical minorities. Social protection is essentially about rights (Sepuldeva, 2012, p.20). Although it is certainly feasible to phrase access to water, food, education (Traoré, 2012) or health care in terms of rights, many development agencies will put the accent on service provision as a ‘safety first’ principle, given the urgency of certain needs. Workers’ rights are not often highlighted, due to the assumption that these are sufficiently covered by the International Labour Organization (ILO)’s conventions and regulatory mechanisms. Hardly ever mentioned are environmental rights (including the right to clean and sustainable environment, bio-diversity and the prevention of climate distortions). Some suggest, however, that including the environmental chapter is the best guarantee for inducing the principle of extraterritorial accountability. Finally, attempts to associate access to capital and micro-credit with a HRBA get critical reviews and may be hard to sustain (Hudon 2009,

Gershman 2012). A comprehensive overview on the rights-based approach in the different development sectors can be found in Chrichton (2012). A number of stakeholders interviewed stated that, some countries feature a better legal and institutional context for applying HRBA than others. This is explained by the degree to which the rule of law is applied, and the official acknowledgement of an independent voicing by the civil society. We do however not have sufficient empirical findings to endorse regional generalisations.

In brief: While many CSOs take a strong stand in favour of HRBA, there is no consensus on the exact scope and implementation of a HRBA. Some NGOs try to bring a paradigm shift into their daily practice, by replacing development goals by human rights and adapting their strategy, their theory of change and their operational apparatus. Other NGOs implement HRBA under the form of mainstreaming, which also implies operational changes on the ground. Others still implement a HRBA in a mainly rhetorical manner. HRBA is also applied more easily in certain sectors such as children's rights, social protection and minority groups.

3.4 Governments of recipient countries

The position of recipient countries' governments was outside the scope of this paper. The cooperation of local governments will however be key to any progress of HRBA being accepted and applied. An authoritative survey carried out in 2005 recommended that International donors and human rights NGOs should give more attention to local governments in the light of defining their accountability as well as enhancing their ownership and capacity to interiorize human rights (International Council on Human Rights, 2005, p.90). The position of recipient countries has also been affected by the presence of the emerging donors whose cooperation policy is characterized by non-interference. The emerging donors do not step in the logic on political conditionalities (among which respect for human rights) which has been promoted by OECD-DAC since 2005.

4 | Analysis and discussion

4.1 Challenges in the wake of a HRBA

In the absence of an operational consensus on the exact scope and application of a HRBA, the main challenge is to coordinate the efforts of stakeholders in the HRBA debate in order to forge a common understanding on the ground and reduce fragmentation of policies among donors and CSOs alike. The following section provides a closer look into the various elements to take into account for CSOs who advocate for a HRBA.

4.1.1 Coalition-building and agenda-setting

Although some scholars propose a new legal framework convention on the 'Right to Development' (De Feyter, 2013, p. 7), most stakeholders recognize that international human rights norms are sufficient to put human rights at the heart of human development. What is still lacking at the international level in spite of these legally binding norms, however, is a regulatory framework enabling effective monitoring, accountability, enforcement and sanctioning mechanisms. To this end, a sufficiently broad coalition of CSOs and other like-minded development agencies, donors and recipient countries would be needed, in order to create a 'task force' which could then design a regulatory system and start the long march of negotiations, endorsements and ratifications. As it is acknowledged that building up such coalition as well as imposing enforcement and sanctioning mechanisms would be very hard to achieve, a more bottom-up version of this approach would be

that stakeholders create learning networks in anticipation of the accountability being brought on the ‘future of aid’ agenda.

Quite a few CSOs, including Oxfam and Action Aid, as well as bilateral donors, such as Sida and Danida, do not see these reservations as a reason to stall on the implementation of a HRBA within their own mandate and policy competences. As discussed in the previous section, these actors have adopted a process-oriented strategy directed towards the realization of human rights, thereby identifying appropriate stakeholders and elaborating their own monitoring guidelines. Although this ‘leading by example’ approach deserves merit in its own right, it has also led to a plethora of tools and practices, thereby reinforcing the already existing operational confusion on the ground (Sjöstedt, 2013).

4.1.2 Emphasis on complaints or on compliance?

Many stakeholders will argue that building compliance does not necessarily lead to filing complaints and aggravating legal burdens, as building compliance between rights-holders and duty-bearers is a method to prevent that rights would *a priori* be violated. Due to the complications that legal procedures may involve, the emphasis of CSOs and donor agencies has often been on building compliance (Uvin 2004, Katzui 2008, Corkery 2013). Given that development ultimately aims to realise human rights, a HRBA thus takes the participatory form of empowering both rights-holders and duty-bearers. In addition, for donors and some development NGOs, compliance is also about aligning their own work methods with human rights standards and principles. However, CSOs with a long-standing track record in advocacy on behalf of discriminated and disadvantaged groups have argued that a right is only a right if it can be enforced.

In the discussion on the responsibility of multinational corporations, compliance is often translated in terms of the due diligence principle and/or belonging to companies’ internal risk management, which again is put in juxtaposition with the principle of independent monitoring (recently subject to an interesting discussion in the Journal Impact Assessment and Project Appraisal, cfr Kemp (2013), Graetz (2013) and Harrison (2013).

4.1.3 Coherence versus fragmentation

Some donors and a number of CSOs have already launched or implemented a HRBA while others have not. As a result, the current joint cooperation practices run counter to harmonisation efforts, and could therefore undermine aid effectiveness. While some CSOs with a tradition in human rights advocacy see harmonization as a ‘donor obsession’, the reality in international cooperation is that local governments and CSOs are already under strain in catering for the often diverging visions, beliefs, output requirements and accountability and monitoring mechanisms of their donor partners. Oxfam’s Duncan Green (2012) describes how an empowerment-initiative of rural school communities in India to demand drinking water from the local authorities, is jeopardized by another NGO providing water tanks. The fragmentation of HRBA and non HRBA-approaches in the same operational context can thus be counterproductive. This has in a number of cases also been an element in the debate on the added value of South-South cooperation. Despite the new opportunities for Africa brought on by the emerging donors (India, China, Brasil...), some fear that “unconditional cooperation could entrench the power of unaccountable political elites at the cost of democratic reforms and respect for human rights” (Vaes & Huyse, 2013, p.6).

4.1.4 Challenges for the daily practices of Development Cooperation

Change that is not merely rhetorical but also substantive will invariably come at a cost. Uvin (2004) draws the picture: re-conceptualisation of the strategy, re-identification of suitable partners, establishing more long-term

and programmatic partnerships, and adapting the internal management systems, funding procedures and addressing of the public. Given their smaller scope, their greater flexibility and their urge to innovate, it seems logical that CSOs/NGOs and the more progressive bilateral donors rather than bureaucratic multilateral donors will be spearheading the HRBA. Kindornay (2012) underlines that the array of new tasks will require new competency and job profiles. Domain expertise, advocacy skills and the supporting participatory monitoring and evaluation (PM&E) process will have to be internalized by all development agencies. NGOs in the process of moving towards a HRBA confirm an accelerated staff-turnover as a consequence of this. Similarly, donors committed to applying a HRBA in all of its activities need to invest in internal capacity and ensure monitoring tools are in place to follow up on commitments. Experience has shown that in some areas of work, notably large infrastructure projects, 'development for trade' programmes and other private sector development, practitioners are not familiar with human rights or a HRBA.

4.1.5 Universal or context-specific rights?

A considerable risk is that cultural pragmatism leads to the acceptance of context-specific rights, especially with regard to culturally sensitive areas such as gender and sexual orientation (Kindornay 2012). Turning, for example, a blind eye to girls' right to education in Afghanistan or LGBT rights in Uganda would be undermining the universalist human rights discourse, and therefore also the power of the necessity of human rights (e.g. equality) as a driver for development. HRBA champions claim cultures are not static, and the application of HRBA will therefore be a gradual process (Social Watch a.o.). Indeed, most stakeholders do admit the voice and participation of CSOs, including that of women's rights organisations, on the ground is currently underrepresented in the HRBA debate, while their substantive and systematic involvement would be key if any global consensus were to be reached. Some authors (De Feyter, 2006) thus advocate for a localized approach as a point of departure, by having global norms interpreted and voiced by community organisations. This would enhance local ownership and stimulate dynamics between CSOs in the global North and the global South alike. This is based on the assumption that some recipient governments tend to not be at ease with framing development programmes and national development plans in terms of human rights and corresponding obligations, even if they have ratified the core human rights treaties.

4.1.6 Uncertainty about who is accountable among development actors

The question of accountability, both in formal legal terms and as a more 'fluid' concept, is central to a HRBA. As national states (including local/provincial authorities under national jurisdiction) are the signatories of human rights treaties, traditionally they have been considered to be the principal accountable duty-bearers. However, in order to be credible as a universal backbone for development, human rights accountability does not stop at the level of the local government. Increasingly, legal scholars have identified the obligations of 'new' duty-bearers, including multinational corporations, International Financial Institutions, donors and development agencies (Salomon et al., 2007). Although in theory a HRBA aims to strengthen this upward accountability, local NGOs may feel uncomfortable when they have to hold their partners in the North accountable and at the same time being depending financially on these partners. At present, there are not only few mechanisms which hold states accountable for human rights, there are also very few mechanisms for holding non-state actors accountable for human rights obligations. When an upstream accountability claim would reach the donor level, it may collide with anticipations or fear of losing funding in the future. While many accountability claims will therefore remain rhetorical, some demands may result in North-South consultative mechanisms. Some donors are also looking into establishing accountability mechanisms towards citizens in partner countries – the notable example being Germany's BMZ which indicated that it would consider a 'human rights complaint mechanism' (BMZ, 2011).

4.1.7 Risk of prolonged standstill

Since the 1986 Declaration on the Right to Development and the Vienna World Conference on Human Rights in 1993, the process of inducing HRBA has come to a standstill at the multilateral level. Although at the level of bilateral donors and development NGOs the quest for an operationalized HRBA remains on the agenda of committed actors, and policy shifts and implementation tools are still being developed, the results-based management and ‘value for money’ discourses have also gained prominence, and could signal an increasing loss of interest in a HRBA (as most notably indicated by the change in DFID’s policies). Kindornay et al. (2012) elaborate five hypotheses on the future of the HRBA, ranging from an optimistic view wherein the majority of actors in the development sector will progressively come to adopt a HRBA, to a more pessimist reading of a HRBA as a temporary trend soon to fade away. The authors also argue that a HRBA could simply imply that human rights CSOs/NGOs can now apply for development funding. While this hypothesis may lack empirical evidence, it indicates that HRBA protagonists may have to constitute a broader and more diversified ‘coalition of the willing’ if they were to stand a chance in bringing HRBA back on the international development agenda. As will be argued in the following section, the discussion on a post-2015 development agenda may be an occasion to relaunch the HRBA paradigm.

In brief: Some issues will need to be discussed before development practitioners will be fully able and convinced to move forward with HRBA, such as: conciliating compliance with complaints, avoiding fragmentation, avoiding context-specific interpretation of human rights while building local ownership, assessing the consequences for daily practice, being clear about who bears the ultimate accountability and how that accountability chain is monitored.

4.2 Towards a HRBA accountability framework

Development practitioners working with a HRBA have interpreted and implemented human rights accountability considerations in various ways. What emerges is a fragmented sector, with little to no consistent monitoring to assess whether development actors effectively respect and uphold human rights standards, and put their commitment to a HRBA into a practical policy. In what follows, a number of preliminary ‘stepping stones’ is presented, as a reflection on possible avenues towards a human rights-based accountability framework.

4.2.1 The ILO-model

One long-standing example of a rights-based approach is the body of work and labour regulations as introduced over the years by a number of **ILO conventions**. Accordingly, fundamental labour rights such as freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation¹⁵ have been effectively introduced in many parts of the world. The three key elements for establishing these rights and making them observed are (1) a binding legal framework, which implies that conventions have to be ratified and translated into national laws, (2) a tripartite structure (with recognized stakeholders) and (3) a complaints and remedy mechanism. By making the analogy of the ILO apparatus with a HRBA in a ‘development’ context, it highlights the lack of an actual multi-stakeholders setting¹⁶, fully involving CSOs with well-defined roles. Trade unions are social movements with a uniform membership structure, with a representation from the work floor level to the transnational

¹⁵The ILO's Governing Body has identified eight conventions as "fundamental", covering subjects that are considered as fundamental principles and rights at work: <http://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>

¹⁶ Some suggest that for example ECOSOC (UN) and still to be created in-country monitoring bodies could take up that role

level and a recognized operational practice. The question then arises which CSOs would have the legitimacy to represent a very diverse group of stakeholders.

4.2.2 A Framework Convention on the Right to Development

The Declaration of the Right to Development was adopted by the UN General Assembly in 1986, recognizing the right of every human being to participate in, contribute to, and enjoy development. Since its adoption, different views on how the right to development should be interpreted have made it impossible to take further steps towards its realization: the ‘South’ tends to emphasize issues surrounding the international financial and trade system, while the ‘North’ would rather focus on questions of good governance and democracy (De Feyter, 2013). In addition, some states, mostly pertaining to the Non-Aligned Movement, have called for the right to development to be consolidated in a binding treaty. Others, such as the EU, have called into question the necessity to upgrade the Declaration. Indeed, the 2007 UN General Assembly resolution presented on behalf of the Non-Aligned Movement by Cuba, proclaiming that “an international legal standard of a binding nature”¹⁷ on the right to development should be developed, “provoked Canada, the EU and Australia to express their opposition to the elaboration of a convention” (Marks, 2008, p.15). A recent proposal to bridge these differences consists of a Framework Convention on The Right to Development, which would ‘clarify the contemporary understanding’ of the 1986 Declaration and provide a platform for subsequent legal development through protocols and multi-stakeholder agreements (De Feyter, 2013). The drafting process would serve as a ‘venue for negotiations’, and a focal point for public opinion, and result in a broad commitment, thereby consolidating principles derived from the Paris Declaration, such as mutual accountability and alignment, and human rights-based principles such as accountability to rights-holders, equality and non-discrimination, and participation. It could also include general obligations on states such as the obligation to collect development-related statistics. The added-value of this approach would be that it transcends individual state obligations of current human rights law and captures the complex accountability relationship of development cooperation more adequately.

4.2.3 A broad-based CSO Coalition for Global Advocacy

Building on the role and the position they have played as a recognized development policy pillar since the Paris Declaration, CSOs have profiled themselves as the protagonist of human rights, inclusiveness and equality. The BetterAid and the Open Forum for CSO Development Effectiveness¹⁸, put forward a clear definition of the essential characteristics of CSOs as distinct development actors: voluntary, diverse, non-partisan, autonomous, non-violent, and working and collaborating for change. The Istanbul Open Forum proclaimed eight principles¹⁹ which are to guide the work and practices of CSOs, whereby the first principle is of particular importance here as it explicitly endorses CSOs’ mandate to ‘respect and promote human rights and social justice’. CSOs are therefore deemed to be ‘effective as development actors when they develop and implement strategies, activities and practices that promote individual and collective human rights, including the right to development, with dignity, decent work, social justice and equity for all people’. According to CONCORD, the European NGO Confederation for Relief and Development (27 members), this means in

¹⁷ See UN GA Resolution 62/161, 18 December 2007

¹⁸ BetterAid and Open Forum were replaced in 2012 by one single CSO platform: the CSO Partnership for Development Effectiveness CPDE

¹⁹ These principles include (1) Respect and promote human rights and social justice; (2) Embody gender equality and equity while promoting women and girls’ rights; (3) Focus on people’s empowerment, democratic ownership and participation; (4) Promote environmental sustainability; (5) Practice transparency and accountability; (6) Pursue equitable partnerships and solidarity; (7) Create and share knowledge and commit to mutual learning; (8) Commit to realizing positive sustainable change.

practice the endorsement of a HRBA as part of the ‘CSO constitution’. CIVICUS, the World Alliance for Citizen Participation, also acknowledged that the Istanbul principles could serve as an important contribution for CSOs to advance the global agenda on international cooperation (Civicus, 2013). The advocacy for recognition and implementation of a HRBA has shown the potential to play a catalysing role in bringing CSOs and their representing networks together into a broad-based and vocal coalition. This coalition should be able to place a HRBA on the agenda in various global forums for aid effectiveness and human development. The CPDE may be the appropriate platform to lobby for a Multi-Stakeholder Initiative which could spearhead the practical elaboration of a HRBA accountability framework.

4.2.4 A Multi-stakeholder Initiative towards a HRBA

Multi-Stakeholder Initiatives (MSIs) have been set up to respond to complex sustainability problems between different actors within a given economic sector (Marx, 2011). Where national governments lack the capacity to regulate international markets, such partnerships have been set up between CSOs and private actors, to jointly come to an alternative regulatory framework. (Marx et al., 2012) Examples of MSIs are the Forest Stewardship Council (certification body), the Fair Wear Foundation (membership based organisation) or Dutch Coal Dialogue (roundtable dialogue) (Van Huijstee, 2012, p.14-15). There is no clear-cut governance model for MSIs and opinions differ on what kind of accountability structure should be put in place (Marx, 2013). Although MSIs have emerged as private sector-specific initiatives and usually do not draw upon the human rights framework, they could serve as a model to operationalize a bottom-up HRBA. Crucially, this broad coalition would include CSOs and development NGOs, but also committed donors, recipient countries, UN entities, and possibly private development contractors. These could set out a minimum ‘human rights-based standard’ within the development sector, and set up an independent monitoring and accountability framework. Such comprehensive approach contrasts with the current system of sporadic self-monitoring which most donors have in place to assess their policies, programmes and projects.

4.2.5 Human Rights Accountability in the Post-2015 Framework

Anticipating the looming expiry of the MDGs, the High-Level Panel (HLP) on the Post-2015 Development Agenda recently published its report and initiated the consultation and negotiation process towards a new agenda for global development. Critical voices have already pointed towards several weaknesses in the HLP Report, noting that it was drafted following limited consultations with civil society actors, and importantly, does not present a comprehensive accountability framework for the goals it puts forward (ITUC, 2013). The role of human rights in a post-2015 framework has become an important theme (Darrow, 2012). In reiterating that ‘goal setting without accountability’ does not function, some have called for developing a framework for ‘millennium development rights’ instead of goals (Dorsey, et al., 2010, p. 521). Similarly, development organizations have advocated for ‘righting the MDGs’ (Actionaid, 2012). To this end, the UN OHCHR has issued a flagship report stressing the need to integrate human rights accountability in the Post-2015 Framework (OHCHR, 2013). The OHCHR calls upon states to explicitly align MDG frameworks with human rights standards, thereby taking into account their specific existing international treaty obligations. Secondly, it reiterates the need for putting human rights principles at the heart of the goal-setting process, whereby the meaningful and active participation of all individuals, in particular vulnerable groups, is ensured. Thirdly, the OHCHR stresses that the voluntary character of monitoring and reporting in the current framework has made the promotion and protection of human rights less effective, and should be strengthened by the human rights framework which provides the basis for ensuring accountability, as the ability of vulnerable groups to hold officials and other duty-bearers accountable is crucial in the development process. Whereas judicial mechanisms are the principal means for legal redress, the OHCHR notes a number

of non-judicial mechanisms which can also strengthen human rights accountability in the post-2015 context, including parliamentary committees, administrative hearings, service delivery grievance procedures and citizen consultation groups. Importantly, the OHCHR report does not propose any targets or goals, but states that strong accountability mechanisms are essential if any new goals were to be achieved.

In brief: CSOs may look at the mechanisms proper to the ILO apparatus or at multistakeholder initiatives as stepping stones for placing themselves on the HRBA governance map, but these are not options that can be adopted without a longish process of reflections, discussions and operationalisation. The post-2015 framework debate and the recent OHCHR report provides an important lead-out to stimulate the discussion on both the clarification of the HRBA principle and the road to further implementation.

5 | Way forward

Ten years after the adoption of the UNCU on a HRBA to development cooperation, this briefing paper has provided a concise overview of the latest developments and stakeholder positions in the field in order to map existing guidelines and practices, and to translate what is concretely meant when talking about HRBA in development cooperation policies. This final section formulates a number of recommendations for future reflection.

5.1 Building up a case for HRBA based upon empirical evidence

Although in the literature and the current debate, the argumentation in favour of HRBA is well motivated on theoretical grounds, there is still a lack of empirical evidence to support this claim. As a result, scepticism still prevails about HRBA's added value and development practitioners seem reluctant to fully endorse it. Building up a convincing case from an aid effectiveness perspective would require more systematic and empirical research whereby comparable circumstances under which a HRBA has been integrated or not integrated, would be scrutinized.

5.2 Exploring the application of HRBA in different contexts

Faced with the reigning conceptual confusion, it is imperative to (i) forge operational consensus among development practitioners regarding the scope and applicability of a HRBA, and (ii) to enhance their ability to convert HRBA principles into consistent tools and practices. To this end, further clarification is needed on the following open-end questions.

First, in light of its universalist character as well as its context-specific applicability, a HRBA would have to be elaborated in function of a community's specific economic, social and political idiosyncrasies. This means that it is crucial to take into account local voices with regard to a HRBA and build stronger synergies between grass-root demands and the international human rights framework. Second, whereas the substance of human rights can be derived from existing international declarations, a 'full' HRBA requires accessible and transparent accountability and monitoring mechanisms. Envisaging these, the question remains how an in-country CSO representation should be constituted for domains not traditionally covered by the tripartite partners (state, employers' organizations and trade unions). Third, given the transnational nature of development cooperation, trade and investment in an increasingly globalised context, it is important to pay closer attention to the extra-territorial applicability of human rights in order to safeguard the HRBA's credibility. When the chain of accountability ends at the premises of the local government, lingering uneasiness about donor-driven approaches and conditionalities may again be lighted up.

5.3 Building on coalitions of the past, establishing dialogues for the future

The protracted progress towards reaching the MDGs, the transfer of a HRBA to a mere working group topic at the Busan High-Level Meeting, as well as the watering down of a HRBA in the Post-2015 HLP Report have to some extent created a momentum for CSOs to propose a HRBA as an alternative perspective on human development. For clarity, it is useful to situate the current debate and possibilities of pushing forth a HRBA at two levels.

First, international norms and their scope of applicability are being discussed at the global level, where committed actors face reluctance or downright opposition from other actors who are not convinced of basing and framing development cooperation on the human rights framework. Parallel to the discussions on the Post-2015 Development Agenda and the Framework Convention on the Right to Development, the discussion on global guidelines to ensure accountability in the wider development agenda is gaining prominence in the international community. However, consolidating ‘accountability’ into actual global obligations remains problematic. The contribution of CSOs to these discussions, especially in light of their post-Paris recognition as indispensable actors in multilateral configurations, is considered to be vital for the legitimacy of a global framework based on human rights principles. To this end, however, it is imperative for CSOs and donor champions to articulate a common understanding of its principles and practices. In this vein, a dialogue could be initiated and kept alive with development actors who are either following different policy lines (such as USAID, DFID, China, the World Bank) or who do not feel motivated to review their strategy in light of a lingering HRBA (such as many NGOs). Such process could be guided by external facilitators in order to avoid further fragmentation and foster the much sought-after principles of alignment, harmonization and ownership. Seen from this perspective, a HRBA could further build upon the achievements and networks for coalition-building of Paris, Accra and Busan.

In the absence of a human rights-based framework for development cooperation at the global level, a number of committed development actors – among which the EU and the bilateral donors discussed in this briefing paper - have already pronounced their support for a HRBA and are designing and implementing policies within the boundaries of their capacity and mandate. On this level, the debate focuses on how a HRBA can be internalized by donors, NGOs and other stakeholders, and what its implications are for programming and decision making in the day to day practice of development cooperation is. Here, a crucial issue is how committed actors can strive towards greater harmonization, as current efforts to concretely apply HRBA norms are based on different interpretations. As a result, a plethora of different HRBA working methods has reinforced the already prevalent fragmentation. Coming to a broad consensus between all stakeholders on the ‘minimum’ operational implications of a HRBA can be seen as a crucial step in realizing its potential as a ‘new development paradigm’.

As this brief analysis has indicated, donors and CSOs are still in the process of following up on their commitment to consistently apply a HRBA throughout the development policy cycle, thereby rendering it necessary to closely monitor their delivery on these commitments in the short- to medium-term. Moreover, by engaging in a continuous dialogue with each other, the committed donors and CSOs could benefit from knowledge-sharing and exchanges on HRBA best practices and their policy implications. Similarly, champion actors could also foster closer relations with the more reluctant players, in order to arrive at a consistent coalition-building effort at both the policy and ground-level. Precisely because of the reinforcing synergies between the lack of a conceptual consensus at the global policy level and the operational confusion on the ground, any comprehensive HRBA strategy would require a continuous dialogue at these two levels.

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