



Project
MUSE[®]

Today's Research. Tomorrow's Inspiration.

Rights-Based Approaches to Development: Implications for NGOs

Shannon Kindornay
James Ron
Charli Carpenter

Human Rights Quarterly, Volume 34, Number 2, May 2012, pp. 472-506
(Article)

Published by The Johns Hopkins University Press
DOI: [10.1353/hrq.2012.0036](https://doi.org/10.1353/hrq.2012.0036)



- ▶ **For additional information about this article**
<http://muse.jhu.edu/journals/hrq/summary/v034/34.2.kindornay.html>

Rights-Based Approaches to Development: Implications for NGOs

Shannon Kindornay, James Ron,** & Charli Carpenter****

ABSTRACT

The rights-based approach to development has swept through the global development assistance sector during the last fifteen years. As a result, bilateral development donors, international organizations, and development-oriented nongovernmental organizations (NGOs) are increasingly committed, in theory, to implementing human rights. This commitment has dramatically accelerated the discursive and organizational merger of the global human rights and development policy communities. What impact—if any—has the

* *Shannon Kindornay* is a researcher at the North-South Institute, an independent development think tank based in Ottawa, Canada. She can be reached at skindornay@nsi-ins.ca.

** *James Ron* (www.jamesron.com) is the University of Minnesota's Harold E. Stassen Chair of International Affairs, jointly appointed to the Hubert H. Humphrey School of Public Affairs and the Department of Political Science, as well as a Visiting Professor at the Centro de Investigacion y Docencias Economicas (CIDE) in Mexico City. He publishes on human rights and NGOs, and can be reached at jamesr@umn.edu.

*** *Charli Carpenter* (www.people.umass.edu/charli) is Associate Professor at the University of Massachusetts' Department of Political Science, and author of two books and numerous articles on human rights and human security. She blogs at duckofminerva.com and can be reached at charli.carpenter@gmail.com.

The International Development Research Centre, the Social Sciences and Humanities Research Council, the Canada Research Chairs Program, and National Science Foundation grant NSF-SES 849610 supported this research. Any opinions, findings, and conclusions or recommendations expressed in this material are those of the authors and do not necessarily reflect the views of the National Science Foundation or any other agency. We are grateful to the Montreal-based NGO, Equitas: The International Centre for Human Rights Education, for generously facilitating access to participants in their International Human Rights Training Program (IH RTP) from 2005 through 2010. We are also grateful for the generosity of the 129 IH RTP respondents who shared their insights and time with James Ron and his team, and to Alex Montgomery for assistance with visualizations. Ron is particularly grateful to the skilled researchers who helped conduct, transcribe, and code his interviews, including Kathleen Rodgers, Archana Pandya, Ghita Bennessahroui, Sarah Peek, Philippe Martin, Andrew Dawson, Maria Derks, and Maya Dafinova.

rights-based approach had on the structure, resources, and work styles of development NGOs? This article offers five empirically grounded hypotheses to guide future research.

I. INTRODUCTION

The “rights-based approach” (RBA) emerged as a new development paradigm in the late 1990s. Within less than a decade, this new approach had swept through the websites, policy papers, and official rhetoric of multilateral development assistance agencies, bilateral donors, and nongovernmental organizations (NGOs) worldwide. Today, specialized consultants and advisors are elaborating and mainstreaming the paradigm through reports, workshops, and project evaluations, ensuring that rights-based thinking on development problems will continue to deepen and proliferate for years to come.¹

-
1. See, e.g., UK INTER-AGENCY GROUP ON RTS. BASED APPROACHES [INTERAGENCY GROUP], ANALYSIS WORKSHOP REPORT: DOES IMPLEMENTING A RIGHTS BASED APPROACH INCREASE IMPACT ON POVERTY REDUCTION? (2006) [hereinafter POVERTY REDUCTION REPORT], available at http://www.crin.org/docs/iap_workshop.pdf; SHEENA CRAWFORD, INTERAGENCY GROUP, THE IMPACT OF RIGHTS-BASED APPROACHES TO DEVELOPMENT: BANGLADESH, MALAWI AND PERU (2006), available at http://www.crin.org/docs/Inter_Agency_rba.pdf; DANISH INST. FOR HUM. RTS., WORKSHOP ON RIGHTS BASED APPROACHES: WORKSHOP REPORT (2006) [hereinafter DANISH WORKSHOP REPORT], available at http://www.humanrights.dk/files/doc/rapport_til_hjemmesiden_04-12_2_.doc; JAKOB KIRKEMANN BOESEN & TOMAS MARTIN, DANISH INST. FOR HUM. RTS., APPLYING A RIGHTS-BASED APPROACH: AN INSPIRATIONAL GUIDE FOR CIVIL SOCIETY (2007), available at <http://www.humanrights.dk/files/pdf/Publikationer/applying%20a%20rights%20based%20approach.pdf>; U.N. POPULATION FUND [UNFP], A HUMAN RIGHTS-BASED APPROACH TO PROGRAMMING: PRACTICAL INFORMATION AND TRAINING MATERIALS 3 (2010) [hereinafter UNFPA TRAINING MANUAL], available at <http://www.unfpa.org/public/cache/offonce/publications/pid/4919>; PENELOPE ANDREA & CLAIRE FERGUSSON, WORLD HEALTH ORG. [WHO] & U.N. OFF. OF THE HIGH COMM. ON HUM. RTS. [OHCHR], HUMAN RIGHTS, HEALTH, AND POVERTY REDUCTION STRATEGIES (2008), available at http://whqlibdoc.who.int/hq/2008/WHO_HR_PUB_08.05_eng.pdf; LEE WALDORF, U.N. DEV. FUND FOR WOMEN, CEDAW AND THE HUMAN RIGHTS BASED APPROACH TO PROGRAMMING (2007), available at http://www.unifem.org/materials/item_detail.php?ProductID=94; TODD LANDMAN, U.N. DEV. PROGRAMME, INDICATORS FOR HUMAN RIGHTS BASED APPROACHES TO DEVELOPMENT IN UNDP PROGRAMMING: A USERS' GUIDE (2006), available at [http://www.undplao.org/whatwedo/bgresource/demogov/RBA%20indicators-users%20guide\(UNDP06\).pdf](http://www.undplao.org/whatwedo/bgresource/demogov/RBA%20indicators-users%20guide(UNDP06).pdf); UNAIDS INTERAGENCY TASK TEAM ON GENDER & HIV/AIDS, ROYAL TROPICAL INSTITUTE, OPERATIONAL GUIDE ON GENDER AND HIV/AIDS: A RIGHTS-BASED APPROACH (2005) [hereinafter OPERATIONAL GUIDE ON GENDER AND HIV/AIDS], available at http://www.kit.nl/net/KIT_Publicaties_output/ShowFile2.aspx?e=834; ANDRÉ FRANKOVITS, U.N. EDUC., SCI. AND CULT. ORG. [UNESCO], THE HUMAN RIGHTS BASED APPROACH AND THE UNITED NATIONS SYSTEM (2005), available at <http://unesdoc.unesco.org/images/0014/001469/146999e.pdf>; UNESCO, DOCUMENTING EMERGING LESSONS LEARNED FOR HUMAN RIGHTS-BASED PROGRAMMING: AN ASIA-PACIFIC PERSPECTIVE (2007) [hereinafter UNESCO, LESSONS LEARNED: ASIA-PACIFIC PERSPECTIVE], available at <http://unesdoc.unesco.org/images/0015/001549/154946e.pdf>; GABRIELLE BERMAN, UNESCO, UNDERTAKING A HUMAN RIGHTS-BASED APPROACH: A GUIDE FOR BASIC PROGRAMMING (2008), available at <http://unesdoc.unesco.org/images/0017/001791/179186e.pdf>; NORWEGIAN AGENCY FOR DEV. COOPERATION [NORAD], HANDBOOK IN HUMAN RIGHTS ASSESSMENT: STATE OBLIGATIONS AWARENESS & EMPOWERMENT (2001), available at <http://www.norad.no/en/Tools+and+publications/Publications/Publication+Page?key=109343>.

Many view this trend with excitement, highlighting the normative and practical value of injecting human rights principles into standard development thinking and practice. These commentators hope that RBAs will empower marginalized groups, focus attention on social and economic inequality, and boost both state and donor accountability.² Skeptics, however, fear the emergence of yet another development fad.³ What, then, is really happening? Is the rights-based approach having observable impacts?

This article proposes five hypotheses about the likely impact of RBAs on the work, structure, and number of NGOs involved in the development process. If the rights-based paradigm is having real effects, its traces should be notable in the work and activities of development-related NGOs that accept overseas funding. Before proceeding, however, a caveat is in order: note that this article does not discuss rights-based impacts on actual communities, projects, or development aid recipients. Instead, the analysis is restricted to development donors, agencies, and implementing bodies, focusing in particular on the implications of rights-based policymaking for the local and international NGOs that disseminate so much of the development sector's thinking and resources.

Five empirically and theoretically grounded hypotheses are offered to guide future investigations, grounded in four evidentiary sources. The first source is a review of the available English-language literature on rights-based development conducted by this article's first author, Shannon Kindornay, whose sources are summarized in Figure 1. Details of her search method are available in Appendix A.

The second source is a set of semi-structured interviews by the article's second author, James Ron, who worked with research assistants to interview 129 members of rights-based organizations from eighty-nine NGOs, sixty countries, and multiple government agencies. These interviews focused on the activities, funding, and structures of rights-based development entities, lasted fifty-eight minutes on average, and were conducted in English or French. For details, see Appendix B.

The third source is an empirical study of the structure of organizations and issues in the transnational human rights network, managed by Charli

-
2. See, e.g., Brigitte I. Hamm, *A Human Rights Approach to Development*, 23 *HUM. RTS. Q.* 1005 (2001); Mac Darrow & Amparo Tomas, *Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation*, 27 *HUM. RTS. Q.* 471 (2005); Valerie Miller, Lisa VeneKlasen & Cindy Clark, *Rights-based Development: Linking Rights and Participation- Challenges in Thinking and Action*, *IDS BULL.*, Jan. 2005, at 31 (2005); PETER UVIN, *HUMAN RIGHTS AND DEVELOPMENT* (2004).
 3. See, e.g., Andrea Cornwall & Celestine Nyamu-Musembi, *Putting the "Rights-Based Approach" to Development into Perspective*, 25 *THIRD WORLD Q.* 1415 (2004); Sarah Bradshaw, *Is the Rights Focus the Right Focus? Nicaraguan Responses to the Rights Agenda*, 27 *THIRD WORLD Q.* 1329 (2006).

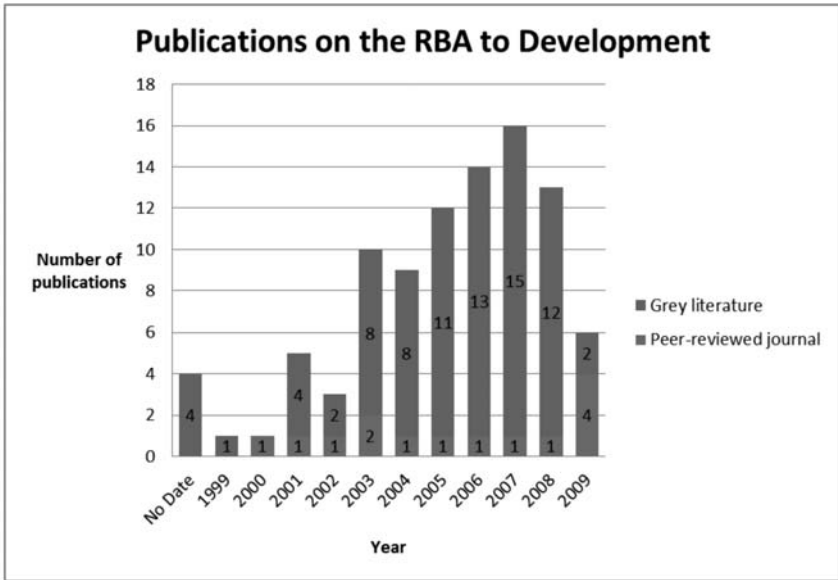


Figure 1. A Decade of English Language Publishing on the Rights-Based Approach to Development, 1999–2009

Carpenter.⁴ Carpenter’s team captured and studied hyperlinks among organizational websites associated with the concept of “human rights,” coded them for organizational type and thematic focus, and explored the network ties among different thematic approaches in the network. The team also coded websites for the prominence of certain human rights issues and examined the network structure of the issue agenda itself.⁵

Finally, the article draws on Ron’s personal experiences from 1998–1999 as a consultant on rights-based programming for CARE-USA, when that international development NGO first began exploring its own transition to rights-based work. Ron authored a case study on the paradigm’s relevance to CARE’s work, and while that study remains confidential, some of its findings were later revealed by third parties.⁶

4. The National Science Foundation’s Human and Social Dynamics program supported this collaborative project through NSF-SES 849610. See Charli Carpenter, Stuart Shulman, James Ron & Richard Rogers, *Issue Adoption in Human Rights Advocacy Networks* (2002), available at <http://people.umass.edu/charli/networks/HSD.pdf>. For more information, see the project website at <http://www.people.umass.edu/charli/networks>.
5. For details, see Appendix C. We are grateful to Gabrielle Griffis, Solomon Heifets, Meaghan Foran, Corina Rusu and Kyle Brownlie for assistance with coding.
6. DAVID RIEFF, *A BED FOR THE NIGHT: HUMANITARIANISM IN CRISIS* 315 (2002).

The structure of the article is as follows. First, it reviews the emergence and spread of rights-based development thinking and examines the merger of the human rights and development policy discourses (Section II). Next, it develops a schematic portrayal of the global development sector's structure (Section III), elaborates and justifies hypotheses (Section IV), and concludes with final remarks (Section V).

II. THE EMERGENCE AND CASCADE OF RIGHTS-BASED DEVELOPMENT POLICY

The rights-based approach to development was first articulated in Northern development circles in the mid-1990s, when two previously distinct strands of foreign assistance and global policy—"human rights" and "development"—began to merge, combining the principles of internationally recognized human rights with those of poverty reduction.⁷ Rights-based development experts began urging development practitioners to assess human rights conditions before formulating their plans and projects;⁸ identify rights-holders and duty bearers in prospective projects;⁹ ensure local participation in project planning and implementation;¹⁰ create and strengthen mechanisms of citizen-government accountability;¹¹ reduce discrimination against marginalized groups;¹² focus on development processes, in addition to outcomes;¹³ and, most importantly, engage in local and international advocacy efforts to pro-

-
7. Darrow & Tomas, *supra* note 2, at 471; Paul Nelson & Ellen Dorsey, *At the Nexus of Human Rights and Development: New Methods and Strategies of Global NGOs*, 31 *WORLD DEV.* 2013, 2016 (2003). Early landmark studies articulating this discursive, policy and theoretical merger in Northern development circles include AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999); UVIN, *supra* note 2. In the global South, human rights and development practitioners have cooperated more closely for some time. Note that the growing links between humanitarian and rights-based aid sectors are a separate, but related, phenomenon. For details, see RIEFF, *supra* note 6.
 8. FRANKOVITS, *supra* note 1, at 16.
 9. Frankovits refers to this type of analysis as the PANEL analysis, which stands for Participation, Accountability, Non-discrimination, Empowerment, and Linkage to human rights. FRANKOVITS, *supra* note 1, at 54.
 10. FRANKOVITS, *supra* note 1, at 67.
 11. Some international NGOs and UN agencies also include mechanisms for donor accountability to beneficiaries. See, e.g., FRANKOVITS, *supra* note 1, at 51–52, 64.
 12. SUSAN APPLEBYARD, OHCHR, *A RIGHTS-BASED APPROACH TO DEVELOPMENT: WHAT THE POLICY DOCUMENTS OF THE UN, DEVELOPMENT COOPERATION AND NGO AGENCIES SAY* 13, 16 (2002), available at http://www.crin.org/docs/resources/publications/hrbap/RBA_policy_docs_UN_NGO.pdf.
 13. *Id.* at 41.

mote the rights of vulnerable groups.¹⁴ Although rights-based development thinking has many variations, most share these core principles.¹⁵

In theory, these new ways of thinking should entail a substantial shift in the development practices of Northern donors, international NGOs (INGOs), and local Southern NGOs.¹⁶ The empirical reality, however, is still unclear and in flux. To help future research on this issue, we outline a rigorous framework for investigating the rights-based paradigm's potential impacts on NGOs.

Where and when did the rights-based approach appear? Unfortunately, there is no scholarly consensus yet on how and why the new paradigm emerged. Some point to the 1980s, when critics first voiced rights-based concerns about the International Monetary Fund's (IMF) structural adjustment policies.¹⁷ Others note the impact of the United Nations 1986 Declaration on the Right to Development,¹⁸ while still others highlight the post-Cold War blurring of boundaries between human rights "generations."¹⁹ As the walls

-
14. *Id.* at 7; U.N. DEV. GROUP, THE HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT COOPERATION TOWARDS A COMMON UNDERSTANDING AMONG THE UN AGENCIES (2003) [hereinafter COMMON UNDERSTANDING], available at <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>; Raymond C. Offenheiser & Susan H. Holcombe, *Challenges and Opportunities in Implementing a Rights-Based Approach to Development: An Oxfam American Perspective*, 32 NONPROFIT & VOLUNTARY SECTOR Q. 268, 287 (2003); Jennifer Chapman et al., *Rights-Based Development: The Challenge of Change and Power*, (Global Poverty Research Group, Working Paper No. GPRG-WPS-027, 2005), available at <http://www.gprg.org/pubs/workingpapers/pdfs/gprg-wps-027.pdf>; CECILIA LUTTRELL, LAURE-HÉLÈNE PIRON & DEBORAH THOMPSON, OVERSEAS DEV. INST., OPERATIONALISING NORWEGIAN PEOPLE'S AID'S RIGHTS-BASED APPROACH (2005), available at <http://www.odi.org.uk/resources/docs/2283.pdf>; ORG. FOR ECON. CO-OPERATION AND DEV. [OECD], INTEGRATING HUMAN RIGHTS INTO DEVELOPMENT: DONOR APPROACHES, EXPERIENCES, AND CHALLENGES (2006); OHCHR, FREQUENTLY ASKED QUESTIONS ON A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION (2008), available at <http://www.ohchr.org/Documents/Publications/FAQen.pdf>; BOESEN & MARTIN, *supra* note 1.
 15. See, e.g., John Ackerman, *Human Rights and Social Responsibility*, (The World Bank Grp., Soc. Dev. Papers, Paper No. 86, 2005), available at <http://portals.wi.wur.nl/files/docs/gouvernance/HumanRightsandSocial0AccountabilityFINAL.pdf>; Stephen P. Marks, *The Human Rights Framework for Development: Seven Approaches* (François-Xavier Bagnoud Ctr. for Health and Hum. Rts. Working Paper, 2003), available at http://www.undpcphr.org/%5Cuploads%5C82_16_ARD13.pdf (defining and understanding various approaches to human rights-based development).
 16. When the RBA was initially adopted, it was often contrasted with the needs-based approach to development.
 17. Darrow & Tomas, *supra* note 2, at 471.
 18. *Declaration on the Right to Development*, adopted 4 Dec. 1986, G.A. Res. 41/128, U.N. GAOR, 41st Sess., 97th plen. mtg., U.N. Doc. A/RES/41/128 (1986); FRANKOVITS, *supra* note 1, at 15. Donor proponents of the RBA do not place a strong emphasis on this declaration; rather, they focus on the overall international human rights framework. Cornwall and Nyamu-Musembi speculate that the RBA has been able to gain traction internationally because it was distanced from the Right to Development discourse, which some donors feared would legally oblige them to provide specified amounts and types of foreign aid. Cornwall & Nyamu-Musembi, *supra* note 3, at 1424.
 19. Cornwall & Nyamu-Musembi, *supra* note 3, at 1423; UVIN, *supra* note 2.

between West and East tumbled down, so increasingly did the distinctions between civil and political rights, on the one hand, and economic and social rights, on the other.

A wide variety of UN conferences and initiatives in the 1990s must also have played a major role in disseminating, legitimating, and deepening the rights-based approach. As the “world polity” approach to international relations has repeatedly demonstrated, formal International Governmental Organization (IGO) statements, documents, and ceremonies are crucial conduits for international policy diffusion, at least at the rhetorical level.²⁰ In the rights-based world, key IGO events include the 1993 UN World Convention on Human Rights in Vienna, which concluded that all human rights were of equal importance,²¹ and the 1997 UN Reform Agenda, which resolved that security, human rights, and development were interrelated processes, and that human rights should be mainstreamed throughout all UN agencies.²²

As a result of these causal vectors, IGOs, bilateral donors, and NGOs began experimenting with rights-based approaches in the late 1990s.²³ Simultaneously, a handful of international development and rights practitioners began working together on global advocacy campaigns, moving beyond simply endorsing each other’s efforts.²⁴ The “Clean Diamonds” campaign for Sierra Leone, for example, involved collaboration between internationally-minded development NGOs such as World Vision and classic human rights groups such as Amnesty International (AI).²⁵ The Coalition to Stop the Use of Child Soldiers similarly combined the forces of two traditional rights groups—AI and Human Rights Watch (HRW)—with those of classic development NGOs such as Terre des Hommes, Save the Children, and the Jesuit Refugee Service.²⁶

-
20. See, e.g., NITZA BERKOVITCH, *FROM MOTHERHOOD TO CITIZENSHIP: WOMEN’S RIGHTS AND INTERNATIONAL ORGANIZATIONS* 152–53 (1999); CONNIE L. MCNEELY, *CONSTRUCTING THE NATION-STATE: INTERNATIONAL ORGANIZATION AND PRESCRIPTIVE ACTION* 153 (1995).
 21. OECD, *INTEGRATING HUMAN RIGHTS*, *supra* note 14, at 26; FRANKOVITS, *supra* note 1, at 15. According to Cornwall and Nyamu-Musembi, the principle that rights are indivisible, interdependent, and non-hierarchical has become a “mantra” since then. Cornwall & Nyamu-Musembi, *supra* note 3, at 1422–23.
 22. RIEFF *supra* note 6; Elvira D. Redondo, *The Millennium Development Goals and the Human Rights Based Approach: Reflecting on Structural Chasms with the United Nations System*, 13 INT’L J. HUM. RTS. 29, 30–31 (2009).
 23. According to Cornwall & Nyamu-Musembi, principles of RBA are not new, but are rooted in the “struggles for self-definition and for social justice long before the discourse of rights ‘went global’ in the post-World War II period.” Cornwall & Nyamu-Musembi, *supra* note 3, at 1420.
 24. Nelson & Dorsey, *supra* note 7, at 2015–18. See IRENE KHAN WITH DAVID PETRASEK, *THE UNHEARD TRUTH: POVERTY AND HUMAN RIGHTS* 227 (2009). See also Cornwall & Nyamu-Musembi, *supra* note 3, at 1423. Both AI and HRW now include social and economic rights in their work. AI’s “Demand Dignity” campaign is largely focused on poverty as an abuse of rights in itself, as well as the root cause of other abuses.
 25. Nelson & Dorsey, *supra* note 7, at 2019.
 26. See CHILD SOLDIERS INTERNATIONAL, available at http://www.child-soldiers.org/csi/child_soldiers_international. See also Nelson & Dorsey, *supra* note 7.

For at least some development groups, this shift to rights-based thinking was not particularly revolutionary; after all, many rights-based principles have been long-established components of development doctrine, albeit not always framed in “rights” terms. The notion of ensuring popular participation in development processes, for example, has long been a discursive mainstay in the development industry, as have been the principles of empowerment and inclusivity.²⁷ As a result, the rights-based approach seemed to many practitioners like “old development” wine served up in new, rights-based bottles.

Within the United Nations, three key agencies—the UN International Children’s Fund (UNICEF), the United Nations Development Program (UNDP), and the Office of the United Nations High Commissioner for Human Rights (OHCHR)—were early and important champions of the rights-based approach. UNICEF was the first official adopter, announcing in 1997 that its work would henceforth be grounded in the UN Convention on the Rights of the Child.²⁸ Soon after, the UN High Commissioner for Human Rights helped UNDP integrate rights into its working documents, and the UNDP then formally adopted a rights-based approach in 2001.²⁹ In 2003, UNICEF, the UNDP, and OHCHR developed a “Common Understanding on the Human Rights Based Approach” to development,³⁰ and many practitioners now cite this Understanding as their main point of reference.³¹

Among international NGOs, the first to explicitly adopt a rights-based approach were Oxfam and CARE, both of which made the change in the early

-
27. See, e.g., COMMON UNDERSTANDING, *supra* note 14. The Common Understanding distinguishes between good programming practice, which development agencies had been using for some time and HRBA, stating that while good programming practices are necessary for good development, they alone do not constitute a RBA to development. See also Laure-Hélène Piron, Overseas Dev. Inst., Learning from the UK Department for International Development’s Rights-based Approach to Development Assistance 12–13 (July 2003), available at (on DFID’s adoption of the RBA, which was essentially comprised of three pillars: participation, inclusion, and fulfilling obligations, all principles and areas consistent with DFID’s programming at the time).
 28. Convention on the Rights of the Child, adopted 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., 61st plen. mtg., Agenda Item 108, Supp. No. 49, at 166, U.N. Doc. A/44/25 (1990), 1577 U.N.T.S. 3 (entered into force 2 Sept. 1990); CAROL BELLAMY, U.N. CHILDREN’S FUND, STATE OF THE WORLD’S CHILDREN 6 (1997), available at <http://www.unicef.org/sowc97/download/sow1of2.pdf>.
 29. U.N. DEV. PROGRAMME, HUMAN DEVELOPMENT REPORT 2000, at 70 (2000), available at http://hdr.undp.org/en/media/HDR_2000_EN.pdf.
 30. FRANKOVITS, *supra* note 1, at 22–23.
 31. See, e.g., *Integrating Human Rights and Poverty Reduction: Towards a Human Rights Based Approach for SDC* (Swiss Ministry of Foreign Affairs, Working Paper, 2004) [hereinafter *Integrating Human Rights*], available at http://www.sdc.admin.ch/ressources/resource_en_24885.pdf; FRANKOVITS, *supra* note 1; OECD, INTEGRATING HUMAN RIGHTS, *supra* note 14; International Human Rights Network [IHRN], Human Rights-Based Approaches and European Union Development Aid Policies (2008), available at http://www.terredeshommes.org/pdf/pressreleases/hrba_briefing_paper.pdf; Redondo, *supra* note 22, at 31–32; UNFPA TRAINING MANUAL, *supra* note 1; ANDREA & FERGUSSON, *supra* note 1.

2000s.³² At about the same time, two major Northern bilateral donors—the United Kingdom’s Department for International Development (DFID) and the Swedish International Development Agency (SIDA)—followed suit.³³ None of these groups, however, appear to have initiated the rights-based shift on their own. Instead, it seems that they all began heading in the same direction at more or less the same time.³⁴

According to the UN Common Understanding, all UN development activities after 2003 were to be structured to advance the principles codified in the Universal Declaration of Human Rights and its associated conventions.³⁵ As a result, the Common Understanding’s basic tenets include an emphasis on the universality, indivisibility, and interdependence of all rights, along with principles of non-discrimination, popular participation, inclusion, accountability, and the rule of law.³⁶ The Common Understand-

-
32. Oxfam began exploring the RBA in the 1990s and made the shift to this approach in 2000. See Offenheiser & Holcombe, *supra* note 14, at 174. CARE shifted to the RBA between the late 1990s and the early 2000s. It is unclear exactly when the organization made the official shift, but policy documents indicate that it began examining its experience with the RBA and elaborating on its approach in the early 2000s. See, e.g., Jude Rand, CARE’s Experience with Adoption of a Rights-Based Approach: Five Case Studies 50–52 (2002), available at http://www.fao.org/righttofood/kc/downloads/vl/docs/CARE_case_studies.pdf; CARE DENMARK, RIGHTS-BASED APPROACH GUIDELINES—DRAFT 11 (2009), available at http://www.careclimatechange.org/files/toolkit/CDK_Rights-Based_Guidelines.pdf; CARE INT’L, CI PROGRAM STANDARDS FRAMEWORK (2003), available at <http://www.care.no/Documents/CI%20Programme%20Standards%20Framework.pdf>.
33. DFID first made a reference to human rights in its 1997 white paper on eliminating poverty and adopted a rights based approach in its 2000 white paper on the same topic. See Department for International Development [DFID], ELIMINATING WORLD POVERTY: A CHALLENGE FOR THE 21ST CENTURY 7 (1997), available at <http://www.dfid.gov.uk/PolicyAndPriorities/files/whitepaper1997.pdf>; DFID, ELIMINATING WORLD POVERTY: MAKING GLOBALISATION WORK FOR THE POOR (2000), available at <http://www.hivpolicy.org/Library/HPP000152.pdf>. SIDA adopted a rights based approach in 1997. See SIDA, JUSTICE AND PEACE: SIDA’S PROGRAMME FOR PEACE, DEMOCRACY AND HUMAN RIGHTS (1997).
34. According to Piron, the factors motivating DFID to adopt the RBA included a “favourable international and domestic environment, a change of leadership, and a new vision for the organisation.” PIRON, *supra* note 27, at 9.
35. COMMON UNDERSTANDING, *supra* note 14, at 1.
36. *Id.* at 2. The United Nations recognizes that limited resources can hinder the realization of rights, and as such, defines two types of human rights obligations: progressive and immediate. This principle tends to distinguish between social, cultural, and economic rights, or positive rights, whose realization can require considerable resources, and civil and political rights, or negative rights, which are less costly and can be realized immediately. For example, an immediate human rights obligation might include eliminating all forms of discrimination between certain groups, freedom of association, and freedom of speech. Conversely, with respect to social, cultural, and economic rights, the OHCHR claims that the state is required take immediate steps towards the full realization of these rights, monitor progress, and not discriminate against certain groups in this process; however, the actual realization of these rights will be progressive, rather than immediate. OHCHR, FREQUENTLY ASKED QUESTIONS, *supra* note 14, at 2–3. Irene Khan, Secretary General of AI, has critiqued the notion of progressive realization. She argues that the notion of progressive realization perpetuates what she sees as the false dichotomy between civil and political rights, and social, cultural, and economic rights, that tends to emphasize the former set of rights over the latter. See KHAN WITH PETRASEK, *supra* note 24, at 12–17.

ing also instructs UN officers to use human rights standards when planning, monitoring, and evaluating their development activities, to strengthen the ability of duty-bearers to meet their obligations, and to improve the capacity of rights-holders to claim their due.³⁷

The Common Understanding has sparked a cascade of rights-based rhetoric across the UN system, including the UN Population Fund (UNFPA), the UN Education, Social and Cultural Organization (UNESCO), the Food and Agriculture Organization (FAO), the UN Development Fund for Women (UNIFEM), the Joint United Nations Program on HIV/AIDS (UNAIDS), the World Health Organization (WHO), and the UN Development Group (UNDG). All these distinct UN agencies adopted the Common Understanding over the last seven years, further fueling the rights-based discursive proliferation through each organization's grants, consultancies, strategy papers, project evaluations, and programming tools.³⁸

By 2005, several prominent international NGOs, including Save the Children and ActionAid, along with the official donor agencies of Denmark, Norway, Switzerland, Finland, and Germany had all announced their commitment to the rights-based approach.³⁹ In 2006, the Organization of Economic Cooperation and Development's Development Assistance Committee (OECD-DAC) joined in,⁴⁰ and the World Bank followed soon after with a "Social Guarantees Approach" that implicitly integrated rights into its work.⁴¹ And while the rights-based phenomenon is largely

37. COMMON UNDERSTANDING, *supra* note 14, at 2.

38. See, e.g., UNFPA TRAINING MANUAL, *supra* note 1; FRANKOVITS, *supra* note 1, at 22–23; UNESCO, THE HUMAN RIGHTS BASED APPROACH, *supra* note 1. See also BERMAN, *supra* note 1; OPERATIONAL GUIDE ON GENDER AND HIV/AIDS, *supra* note 1; WALDORF, *supra* note 1; ANDREA & FERGUSSON, *supra* note 1.

39. LUTTRELL, PIRON & THOMPSON, *supra* note 14; OECD, INTEGRATING HUMAN RIGHTS, *supra* note 14; *Integrating Human Rights*, *supra* note 31, at 1; Offenheiser & Holcombe, *supra* note 14, at 285; PIRON, *supra* note 27, at 4, 9, 17. Danish policy documents refer to the RBA as early as 2000, although it is not clear when the country officially adopted the approach. Denmark's approach sees participation, inclusivity, and accountability as central to the approach, similar to DFID. The Finnish government first adopted the RBA to development in 2004. See MINISTRY OF FOREIGN AFFAIRS, GOVERNMENT REPORT TO PARLIAMENT: ON THE HUMAN RIGHTS POLICY OF FINLAND 116 (2004). The German Federal Ministry for Economic Cooperation and Development (BMZ) first adopted the RBA in 2004, with its first Development Policy Action Plan on Human Rights (2004–2007). BMZ reaffirmed its commitment to a rights based approach in 2008, with its second Development Policy Action Plan on Human Rights (2008–2010). See BMZ, What We Do, available at http://www.bmz.de/en/what_we_do/index.html

40. OECD, INTEGRATING HUMAN RIGHTS, *supra* note 14, at 18. The report recognized that not all donors have officially adopted a RBA to development, however all OECD-DAC members have some policy on human rights and contribute to the realization of human rights in their development programming.

41. The World Bank says it adopted a RBA to social policy, terming this a "Social Guarantees Approach." In theory, this approach allows countries to prioritize the rights they want to work on and translate them into "social guarantees." Its main features include non

secular,⁴² some large Christian aid agencies have also joined in, including Catholic Relief Services, Christian Aid, the Church of Sweden, and DanChurchAid.⁴³ Today, the rights-based approach is also gaining ground in international discussions on the future of the OECD-DAC aid effectiveness agenda. For example, civil society members of the Working Party on Aid Effectiveness (WP-EFF)—including over 700 development organizations⁴⁴—have made the rights-based approach a key priority.⁴⁵

Carpenter et al.'s study of the structure of online ties among human rights organizations and issues provides further evidence of the human rights and

discrimination, widespread communication, government accountability, and mechanisms for redress. See SOC. DEV. DEP'T. OF THE WORLD BANK, INCREASING SOCIAL INCLUSION THROUGH SOCIAL GUARANTEES: A POLICY NOTE 1–7 (2007), available at <http://www.sedi.oas.org/ddse/documentos/Desarrollo%20Social/1minist/6.%20Increasing%20Social%20Inclusion%20Through%20Social%20Guarantees.pdf>; *Realizing Rights through Social Guarantees: An Analysis of New Approaches to Social Policy in Latin America and South Africa* viii, 75 (Social Development Department of the World Bank Report No. 40047 - GLB, 2008), available at http://siteresources.worldbank.org/EXTSOCIALDEVELOPMENT/Resources/244362-1164107274725/3182370-1164107324437/Realizing_Rights_through_Social_Guarantees-web1.pdf. More recently, the World Bank released an edited volume on the RBA to social guarantees. See Estanislao Gacitua-Mario & Andrew Norton, *Increasing Social Inclusion through Social Guarantees*, in BUILDING EQUALITY AND OPPORTUNITY THROUGH SOCIAL GUARANTEES: NEW APPROACHES TO PUBLIC POLICY AND THE REALIZATION OF RIGHTS 21, 21–31 (Estanislao Gacitua-Mario, Andrew Norton & Sophia V. Georgieva eds., 2009), available at <http://go.worldbank.org/VVK4D3ESI0>.

42. Malcom Malone & Deryke Belshaw, *The Human Rights-Based Approach to Development: Overview, Context and Critical Issues*, 20 TRANSFORMATION [Exeter] 77, at 81, 86 (2003); Emma Tomalin, *Religion and a Rights-Based Approach to Development*, 6 PROGRESS IN DEV. STUD. 93, 95 (2006).
43. See RTS. AND DEV. GROUP, RIGHTS-BASED DEVELOPMENT FROM A FAITH-BASED PERSPECTIVE (2008), available at http://www.kirkensnodhjelp.no/Documents/Kirkens%20Nodhjelp/Tematiske%20filer/Godt%20styresett/Rights%20Position%20PaperPost%20AssemblyDefinitief_.pdf. For a broader discussion on RBAs, religious sensitivity in development work and engaging with local faith-based organizations, see Tomalin, *supra* note 42.
44. See, e.g., BETTERAID, BETTERAID POLICY PAPER: PRELIMINARY DRAFT FOR CONSULTATION (2010) (ON FILE WITH AUTHORS); BETTERAID, *supra* note 45. CSOs are represented by the BetterAid Platform in the WP-EFF. It is coordinated by the BetterAid Coordinating Group, which is made up of twenty-eight CSO networks and international non-governmental organizations. This group is coordinating CSO preparations for the 4th High Level Forum and has two seats on WP-EFF. It is also on the WP-EFF Executive Committee.
45. The WP-EFF is a multi-stakeholder forum, distinct from the OECD-DAC, that brings together policymakers and aid practitioners from donor and developing countries and multilateral development agencies, as well as CSO representatives. The WP-EFF monitors progress on implementing the international aid effectiveness agenda, aims to improve partnerships between aid actors, and serves as the principle discussion forum on issues related to aid effectiveness. See *Working Party on Aid Effectiveness: Overview*, OECD.ORG, available at http://www.oecd.org/document/4/0,3343,en_2649_3236398_43414212_1_1_1_1,00.html. See also BETTERAID, DEVELOPMENT COOPERATION: NOT JUST AID: KEY ISSUES: ACCRA, SEOUL AND BEYOND (2010), available at http://www.betteraid.org/es/member-downloads/doc_download/165-dev-coop-not-just-aidenglish.html.

development sectors’ organizational merger.⁴⁶ Carpenter’s team identified the forty-one most prominent human rights organizations with the help of a web-based co-link analysis tool, Issuecrawler, which identifies links among websites around a specific concept on the World Wide Web.⁴⁷ Visualizations from this project demonstrate that the online human rights network is actually bifurcated into two distinct issue networks—organizations focused on human rights *per se*, and organizations focused on other things, of which development is by far the largest sub-category.⁴⁸ Both sub-networks enjoy more cohesion internally than they do to each other, yet both are encompassed under the concept of “human rights.”⁴⁹

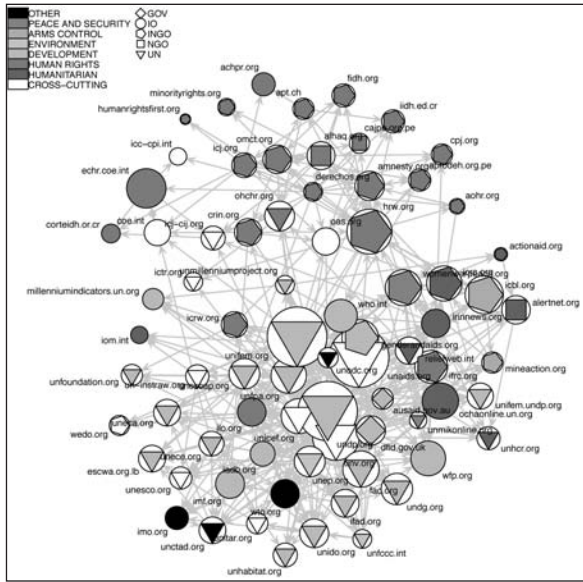


Figure 2. Core Human Rights Network on the World Wide Web, circa 2008.*
 *Nodes represent organizational websites and ties represent hyperlinks between them. Node size corresponds to in-degree centrality within the network.⁵⁰

46. The National Science Foundation funded the project (NSF-SES 849610). Carpenter was the project’s Principal Investigator, and Ron was a project Collaborator. See Transnational Advocacy Networks and Global Agenda Setting, *Project Outputs*, available at <http://www.people.umass.edu/charli/networks/>.
47. The Issuecrawler co-link analysis tool was invented by Richard Rogers at Amsterdam’s Govcom.org foundation. See Govcom.org, *Issuecrawler.net: Scenarios of use for NGOs and other researchers*, available at http://www.govcom.org/scenarios_use.html.
48. See Figure 2.
49. For a color-coded version of this image that represents the various thematic categories more clearly, see Charli Carpenter, *Visualizing the Human Rights Issue Agenda*, THE DUCK OF MINERVA (16 June 2011), available at <http://duckofminerva.blogspot.com/2011/06/visualizing-human-rights-issue-agenda.html>.
50. This visualization was created by Alexander Montgomery using R.

Although there is no definitive tabulation of the rights-based development sector's size, a rough sense comes from examining the budgets of individual donors and rights-based NGOs. The OECD, for example, estimates that nearly 10 percent of its foreign aid budget promotes civil and political rights, chiefly through governance-related programming.⁵¹ In 2007, the foreign assistance budgets of the United Kingdom, Sweden, and Norway—which are all formally committed to rights-based work—were roughly 9.8, 4.4, and 0.37 billion USD, respectively.⁵² The United Kingdom's 2008–2011 plan included pledges of over \$152 million to four rights-based NGOs: Save the Children UK, ActionAid, Oxfam, and CARE-UK,⁵³ and the Swedish government's 2005–2007 contribution to Save the Children-Sweden was \$50.6 million.⁵⁴ In Norway, roughly 30 percent of bilateral aid is channeled through NGOs,⁵⁵ the largest of which have adopted or support rights-based programming.⁵⁶

-
51. OECD, *INTEGRATING HUMAN RIGHTS*, *supra* note 14, at 41.
 52. OECD, OECD.Stat Extracts, *available at* <http://stats.oecd.org/Index.aspx>. The extent to which RBA is practiced within the organization and serves as a requirement for INGO, NGO, and CBO support varies. Norway requires that NGO partner programs outline their human rights components (NORAD & NORWEGIAN INST. FOR HUMAN RIGHTS, *SUPRA* NOTE 1, at 19). Conversely, a DFID/Care-UK agreement explicitly refers to RBA and requires Care-UK to develop practical rights-based tools, including various methodologies and approaches that can be used in promoting RBAs to development. The aim here is to promote the effective adoption of RBAs within Care-UK as well as by other major development actors. See DFID, DFID – CARE INTERNATIONAL (UK) PARTNERSHIP PROGRAMME AGREEMENT BETWEEN UK DEPARTMENT FOR INTERNATIONAL DEVELOPMENT (DFID) AND CARE INTERNATIONAL UK (CIUK) 2005–2011 (2005). CARE's Partnership Programme Agreement was renegotiated in 2008, with a larger emphasis on specific and measurable indicators. See Partnership Programme Agreement between UK Department for International Development (DFID) and Care International UK (CIUK) 2008–2011 (2008), *available at* <http://www.dfid.gov.uk/Documents/funding/ppa/currentppas/care-ppa-2008-11.pdf>.
 53. Care-UK is receiving the lowest amount, at just over 22 million USD (11.75 million GBP) while Oxfam weighs in at just under 56 million USD (27.83 million GBP) (2007 World Development Indicators, LCU exchange rate), representing the largest recipient of the four organizations. DFID, *Programme Partnership Arrangements*, *available at* <http://www.dfid.gov.uk/Working-with-DFID/Funding-opportunities/Not-for-profit-organisations/PPAs/>.
 54. 378 million SEK (2005 WORLD DEVELOPMENT INDICATORS, LCU EXCHANGE RATE). See CRISTINA A. RODRIGUEZ-ACOSTA, LINA LENEFORS, MOHAMED SALIH, ARNE SVENSSON & TONY BENNET, SIDA, SYSTEM-BASED AUDIT OF SAVE THE CHILDREN SWEDEN (SCS) 11 (2008) *available at* <http://www.sida.se/Documents/Import/pdf/System-based-Audit-of-Save-The-Children-Sweden-SCS.pdf>.
 55. ORG. OF ECON. COOPERATION & DEV.–DEV. ASSISTANCE COMM. [OECD-DAC], NORWAY DEVELOPMENT ASSISTANCE COMMITTEE PEER REVIEW 13 (2008), *available at* <http://www.oecd.org/dataoecd/10/40/41847146.pdf>.
 56. Fifty-six percent of Norway's NGO assistance goes to Save the Children Norway, Norwegian Church Aid, Norwegian People's Aid, the Norwegian Red Cross, and the Norwegian Refugee Council. See *id.*, at 37. With the exception of the Norwegian Red Cross, all of these organizations are either rights-based organizations or support rights-based programming and strategies. See SAVE THE CHILDREN NORWAY, *available at* <http://www.cronsee.org/save-the-children-norway>; NORWEGIAN CHURCH AID, *available at* <http://kirkensnodhjelp.no/en/What-we-do/Our-work>; NORWEGIAN PEOPLE'S AID, *available at* http://www.npaid.org/en/about_us/; NORWEGIAN REFUGEE COUNCIL, *available at* <http://www.nrc.no/?aid=9160690>.

Between 2000 and 2006, the European Instrument for Democracy and Human Rights (EIDHR) contributed over 169 million USD⁵⁷ to human rights promotion efforts.⁵⁸ The rights-based sector, in other words, now involves substantial development aid monies.

III. A SCHEMATIC OVERVIEW

Figure 3 offers a schematic overview of the global rights-based development sector based on Ron's 129 interviews with Southern development practitioners. It outlines five ideal-typical organizational tiers. First are the Northern-based, Tier 1 donors such as SIDA or DFID, which supply the sector with much of its cash, policy rhetoric, programming tools, and evaluation templates. Next are Tier 2 international NGOs such as Oxfam, CARE, and Save the Children, many of which are important conduits of aid from North to South. In developing countries, domestic Tier 3 NGOs are headquartered in major cities, while the smaller and more peripheral Tier 4 NGOs are typically located in poor urban neighborhoods or in secondary Southern towns. The smallest and most "local" of Southern NGOs occupy Tier 5; they are based in neighborhoods, small towns or villages, and tend to have the most circumscribed geographic scope. Whereas Tiers 1–3 are often legally and formally constituted entities with clear organizational structures, this is not always the case for Tiers 4 and 5.

Tier 1 donors and Tier 2 international NGOs shape the incentives of NGOs in Tiers 3, 4, and 5 by negotiating, awarding, and denying funding; by holding, funding, or promoting professional workshops, training modules, and other capacity building efforts; and by commissioning reports, evaluations, and programming guidelines. The upper-tier actors also shape the sector's overall orientation by requiring lower-tier entities to organize their activities, financial reporting, and program evaluations in specific ways.

57. 156.8 million Euro. 2000 nominal exchange rates, INTERNATIONAL MONETARY FUND [IMF], *WORLD ECONOMIC OUTLOOK* (2007), available at <http://www.imf.org/external/pubs/ft/weo/2007/01/pdf/text.pdf>.

58. EUR. INSTRUMENT FOR DEMOCRACY & HUMAN RIGHTS, ANNUAL WORK PROGRAMME FOR GRANTS [EIDHR] ¶ 7 (2009), available at http://ec.europa.eu/europeaid/documents/awp/2009/ec_awp_eidhr2_2009_en.pdf. According to the 2009 Annual Work Program for Grants 15.1 million USD (14 million Euro) will be directed toward enhancing human rights and fundamental freedoms while 60 million USD (55.5 million Euro) will go to 77 country based support schemes, which include strengthening civil society capacity to promote human rights and democratic reform. 2000 nominal exchange rates, IMF *supra* note 57, at 236. EIDHR funds NGOs and CSOs without requiring government consent or involvements, however most of the funding goes to northern NGOs. OECD, *INTEGRATING HUMAN RIGHTS*, *supra* note 14, at 41.

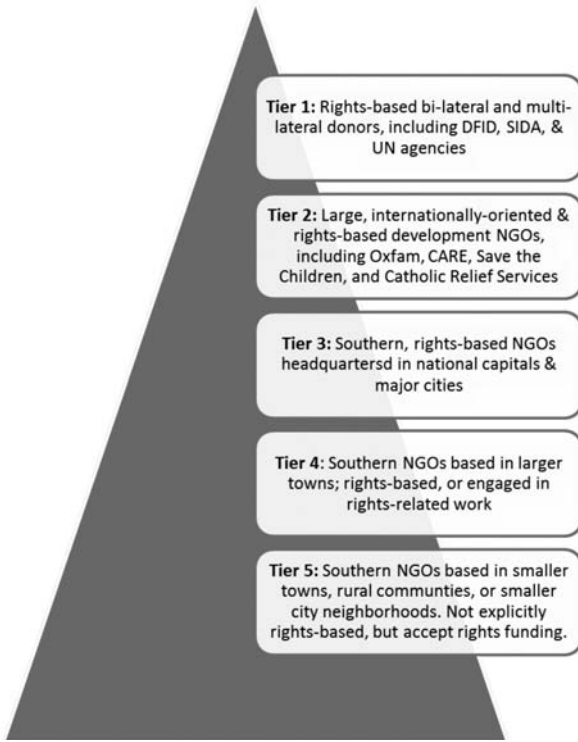


Figure 3. Schematic Overview of the Global Rights-Based Development Sector.

Importantly, Tier 2 international NGOs are both donors and recipients. They typically receive grants or contracts from Tier 1 public donors (as well as private donations from individuals, charities, and foundations), and then repackage those funds as sub-contracts, grants, and capacity-building aid to Southern NGOs located in Tiers 3 through 5.⁵⁹ Local Tier 3 NGOs often operate similarly, taking funds either from Tier 1 or Tier 2, and then passing some of those monies on to the smaller, more localized NGOs located in Tiers 4 and 5. The NGO pyramid, in other words, is a contracting chain composed of financial and discursive flows, along with a series of written contracts. Compliance within the pyramid is secured (to a greater or lesser

59. In 2007, for example, one of the authors (Ron) traveled to Mumbai and New Delhi with the Tier 2 NGO, Catholic Relief Services (CRS), visiting rights-based projects run by Tier 3–5 NGOs that CRS had funded with money it had itself received from Tier 1 donors.

extent) through upward reporting, downward monitoring by evaluation consultants, and through site visits, training sessions, workshops, and other forms of consultation and instruction.

The budgets of many international Tier 2 NGOs are in the hundreds of millions of USD,⁶⁰ outstripping the resources available to traditional international rights groups such as HRW or AI.⁶¹ In fact, many of the larger rights-based development NGOs have budgets comparable to those of small bilateral donors, as outlined in Figure 4 below.⁶² With the exception of World Vision International, the Gates Foundation, and the Open Society Institute, all the Tier 2 NGOs listed in Figure 4 are either officially rights-based, or incorporate rights approaches into their work.⁶³

IV. HYPOTHESES

The cascade of rights-based development thinking and policymaking should, in theory, prompt a series of changes among NGOs located in Tiers 2 through 5. We specify the logic behind each one of our five hypotheses, and offer preliminary empirical justification for each. In future research, scholars will determine whether empirical reality supports our expectations.

-
60. For the 2008 financial year, CARE-USA's total operating support and revenue was just over 707 million USD, of which over 484 million USD went to development projects. See CARE-USA, Consolidated Financial Statements for the Year Ended June 30, 2008 (2009), available at http://www.care.org/newsroom/publications/annualreports/downloads/2008_financials.pdf. Oxfam International spent over 704 million USD on development and relief programming for the 2006–2007 period. OXFAM INTERNATIONAL, ANNUAL REPORT 2007 12 (2007), available at <http://www.oxfam.org/sites/www.oxfam.org/files/OI-annual-report-2007-en.pdf>. Of its 467,794 USD expenditures for 2008, the Save the Children Federation, which is both an implementing and sub-contracting organization, gave over 106 million to other agencies in the form of grants SAVE THE CHILDREN FEDERATION, FINANCIAL STATEMENTS (2008).
61. Human Rights Watch's 2009–2010 budget will be in the \$45 million USD range, according to a 6 June 2010 conversation with the HRW Executive Director. Amnesty International's 2007–08 expenditures were 35 million GBP. See AI, Report and Financial Statements for the Year Ended March 31, 2008, at 31 (May 2009), available at <http://www.amnesty.org/en/library/asset/FIN40/004/2009/en/054ff402-edaa-412d-9d30-d0d32859396b/fin400042009en.pdf>.
62. Dirk-Jan Koch, *A Paris Declaration for International NGOs?*, POL'Y INSIGHTS, Aug. 2008, at 1.
63. Catholic Relief Services uses the term “justice lens” to refer to its RBA. APPELYARD, *supra* note 12, at 26–27.

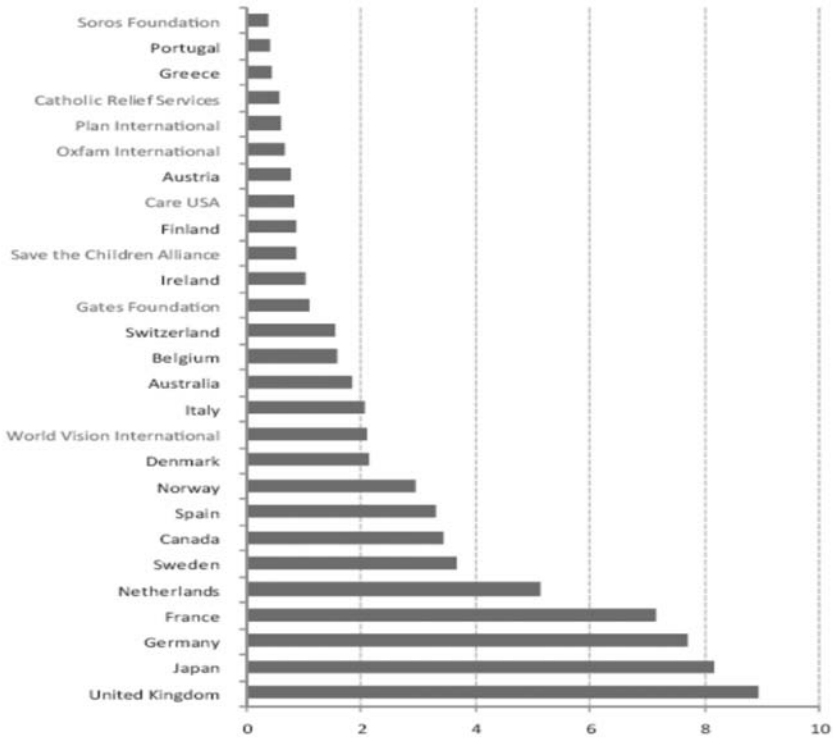


Figure 4. Select Donor and International NGO Annual Budgets, 2005⁶⁴

A. H1: Winners and losers: Rights-based donors seek like-minded NGOs, meaning that NGOs that do not transition to the rights-based paradigm will face funding cuts. Those that do successfully make the transition, however, will secure more grants. New organizations, moreover, will enter the development arena to seek rights-based funds. These trends will be more pronounced among Tiers 3–5 NGOs and among NGOs financed by European or UN agencies.

The transition to rights-based development is not an easy one. Existing NGOs that receive aid from upper-tier rights-based entities will have to gain new skills in analysis, public advocacy, legal strategizing, consciousness-raising, evaluation, and reporting. They will have to become familiar with a new language—"rights talk"—and gain at least a passing familiarity with

64. Koch, *supra* note 62.

international human rights laws, treaties, conventions, and agencies. All of these require specialized staff and resources, such as paralegals, grass roots organizers with at least some legal knowledge, communications experts, and rights-based consultants and evaluators.⁶⁵ One unintended consequence of all this may be overloading recipient communities with too many demands for “voluntary” participation,⁶⁶ while another may be overloading NGOs with excessive administrative and reporting commitments.⁶⁷ In a review of the official British donor agency DFID’s experience, for example, researchers discovered that many NGOs found it hard to manage the accounting and reporting procedures required by rights-based funding. They also found it hard to engage in the kind of national-level advocacy that rights-based donors required.⁶⁸

Logically, some NGOs will be unable or unwilling to make these changes, and these groups should, in theory, begin to lose contracts, grants, or other forms of support. At the same time, organizations that were never before recipients of “development” aid should start entering the global development sector to seek out new funding and development partnerships. UNICEF, for example, has recently joined with the Catholic Church, public universities, chambers of commerce, and political leaders in Costa Rica to promote improved governance.⁶⁹ Since 2005, moreover, the UNDP office in Kenya has been working with state agencies and organizations such as the Kenyan Human Rights Commission, Oxfam Great Britain, PeaceNet, and Action Aid to strengthen national capacities for peace building and conflict management. At the encouragement of these strongly rights-based partners, UNDP Kenya has also begun working with representatives of local communities.⁷⁰

65. OECD, INTEGRATING HUMAN RIGHTS, *supra* note 14, at 42. For a project launched in 2000 in India, CARE-USA changed to a RBA midstream, hiring a full time advocacy person and rights-coordinator. RAND, *SUPRA* NOTE 32.

66. INTERAGENCY GROUP, ANALYSIS WORKSHOP REPORT, *supra* note 1, at 26.

67. See, e.g., BOESEN & MARTIN, *supra* note 1. The Danish Institute for Human Rights recently released a guide for Southern civil society organizations on applying a RBA. The guide provides a thorough explanation on how to carry out all aspects of rights-based programming from initial problem analysis to implementation. However, these processes require considerable resource and technical capacity, and many Southern NGOs may not have the resources to devote to a holistic human rights assessment, or an extensive monitoring process. For example, under capacity building, activities include research, creating documents for training and education, raising awareness and organizational or network development. *Id.* at 26. However, the booklet does acknowledge in closing that RBA must be adapted to country context and that each organization will choose to take on RBA to different degrees. *Id.* at 35.

68. TIM BRAUNHOLTZ-SPEIGHT, MARTA FORESTI, KAREN PROUDLOCK & BHAVNA SHARMA, OVERSEAS DEV. INST., DFID HUMAN RIGHTS PRACTICE REVIEW: SYNTHESIS REPORT 11 (2008), available at <http://www.odi.org.uk/resources/download/2586.pdf>.

69. OECD, INTEGRATING HUMAN RIGHTS, *supra* note 14, at 66.

70. U.N. SYSTEM STAFF COLLEGE, EXPERIENCES IN APPLYING HUMAN RIGHTS BASED APPROACHES 7 (2010), available at <http://hrbaportal.org/wp-content/files/1278695062unsschrbaexperiences2010final.pdf>.

Prior to this, UNDP had focused its efforts only on the national level, in particular on central government.⁷¹ In yet another UNDP project aimed at improving water governance in the Commonwealth of Independent States (2009–2011), non-traditional development partners such as ombudsmen, human rights ministries, and human rights NGOs have played an important role in ensuring that the project was based on rights principles.⁷² Moreover, between 2003 and 2008, the UNDP supported a 5.8 million USD project in Egypt to combat female genital mutilation, joining with groups that have not, until now, been part of the official “development” paradigm, including religious figures, the local media, and civil society activists.⁷³ In Yemen, the German official development agency found that securing support from religious leaders was a critical factor in determining the success of a project aimed at promoting reproductive health and rights.⁷⁴

Tier 1 donors’ preference for funding like-minded, rights-based NGOs has already been established, rhetorically. In 2001, the Norwegian aid agency (NORAD) said it would incorporate human rights into all its development efforts, and adopted an operational implementation guide.⁷⁵ In 2010, Finland established guidelines on engagement with civil society in development policy, asserting that human rights should underpin all its partners’ activities.⁷⁶ In 2008, DFID launched the Civil Society Challenge Fund (CSCF), which provides nearly 23 million USD to UK-based NGOs for their efforts in building the capacity of Southern partners.⁷⁷ The CSCF guidelines stipulate that “all applications must include an element of raising awareness of entitlements and rights” with the aim of changing government policies and/or practice.⁷⁸ Further, projects that do not have a clear advocacy component, fail to mention or focus on rights, or place only a minimal emphasis on advocacy, empowerment, and capacity building, will be rejected.⁷⁹

71. *Id.*

72. *Id.* at 16.

73. GHADA BARSOU, NADIA RIFAAT, OMAIMA EL-GIBALY, NIHAL ELWAN, & NATALIE FORCIER, *NATIONAL EFFORTS TOWARD FGM-FREE VILLAGES IN EGYPT: THE EVIDENCE OF IMPACT 22* (POPULATION COUNCIL, POVERTY, GENDER & YOUTH WORKING PAPER NO. 22, 2011), available at <http://www.popcouncil.org/pdfs/wp/pgy/022.pdf>.

74. DEUTSCHE GESELLSCHAFT FÜR TECHNISCHE ZUSAMMENARBEIT (GTZ), *PROMISING PRACTICES: ON THE HUMAN RIGHTS-BASED APPROACH IN GERMAN DEVELOPMENT COOPERATION* (2009), available at <http://www.gtz.de/de/dokumente/giz2011-en-promising-practices-compilation.pdf>.

75. NORAD & NORWEGIAN INST. FOR HUMAN RIGHTS, *SUPRA* NOTE 1, at 4.

76. MINISTRY OF FOREIGN AFFAIRS OF FINLAND, *GUIDELINES FOR CIVIL SOCIETY IN DEVELOPMENT POLICY 14* (2010), available at <http://formin.finland.fi/public/default.aspx?contentid=206482&nodeid=15457&contentlan=2&culture=en-US>.

77. £14 million. See World Bank, *Data: Official exchange rate (LCU per US\$, period average)* (2011), available at <http://data.worldbank.org/indicator/PA.NUS.FCRF>.

78. See DFID, *Civil Society Challenge Fund Application Guidelines 2* (2010), available at <http://www.dfid.gov.uk/Documents/funding/CSCF-application-guidelines-2010.pdf>.

79. *Id.* at 11.

Tier 2 organizations—who are both donors and recipients—have also signaled their preference for rights-based partners. In 2003, the board of CARE International approved rights-based programming principles for all CARE units, including their work with and through partners.⁸⁰ Oxfam Great Britain’s Partnership Policy includes a principle on mutual respect for values and beliefs, which states that sufficient common ground must exist between partners to be viable, including commitments on gender-equality, non-discrimination, and fulfillment of rights.⁸¹ According to a 2007 report, moreover, Save the Children Sweden’s (SCS) selection of development recipients (called “partners”) is based on having a shared vision, including a rights-based approach to children’s issues.⁸² CARE-UK, moreover, has reportedly terminated relationships with partners that were unable (or unwilling) to adopt a rights-based approach, while ActionAid, another Tier 2 NGO, took a different tack by helping local partners develop their rights-based capacities.⁸³

We expect two NGO sectors in particular to be affected by these changing donor preferences. First, local, developing country NGOs in Tiers 3–5 are more likely to be more affected than those located in Tier 2, as the latter have more access to diverse human resources and funding opportunities. NGOs in Tiers 3–5, by contrast, should find it much harder to master a policy transition that they did not initiate and for which local human resources may be hard to find. Second, changing donor preferences should have more impact on NGOs funded by European or UN sources, as the latter have made the most serious commitments to rights-based aid. In North America, by contrast, the US Agency for International Development (USAID) and the Canadian International Development Agency (CIDA) are demonstrating far less commitment to working through rights-based NGOs.⁸⁴

-
80. CARE INT’L, CI PROGRAM STANDARDS FRAMEWORK, *supra* note 32. In 2009 CARE Denmark established draft RBA guidelines that stated that partner selection would rely on a proven track record of empowerment and promotion of vulnerable groups’ rights. CARE DENMARK, RIGHTS-BASED APPROACH GUIDELINES, *supra* note 32.
81. OXFAM, WORKING WITH OTHERS: OXFAM GB PARTNERSHIP POLICY (2007), available at http://www.oxfam.org.uk/resources/accounts/downloads/partnership_policy_principles.pdf.
82. RODRIGUEZ-ACOSTA ET AL., *supra* note 54, at 47.
83. LUTTRELL, PIRON & THOMPSON, *supra* note 14, at 28.
84. Lisa VeneKlasen, Valerie Miller, Cindy Clark & Molly Reilly, *Rights-Based Approaches and Beyond: Linking Rights and Participation: Challenges of Current Thinking and Action 16* (Inst. of Dev. Stud., Working Paper No. 235, 2004), available at <http://www.ids.ac.uk/files/Wp235.pdf>. USAID does not endorse the idea of economic rights, with the exception of investor and property rights. However, changing conditions and the rise of credible, well-funded Southern organizations with a clear anti-poverty rights agenda has led some US-based NGOs to expand their rights focus to include social, cultural, and economic rights. See *id.* at 17. A 2002 review of CARE-USA’s preliminary shift to the RBA in Uganda similarly acknowledged that USAID was not “terribly supportive” of the change (RAND, *supra* note 65, at 17). The Canadian International Development Agency’s (CIDA) 2001 child and youth strategy was explicitly rights-based. CAN. INT’L DEV. AGENCY, CIDA’S ACTION PLAN ON CHILD PROTECTION: PROMOTING THE RIGHTS OF CHILDREN

Our first hypothesis (H1) thus specifies clear, quantifiable expectations for future researchers to investigate. If the rights-based turn is having real impacts on NGOs, a clear pool of NGO winners and losers should soon emerge. Membership in these pools should be strongly correlated with the NGOs' ability or willingness to adopt, or not adopt, the rights-based approach. In addition, organizations that have never before received development aid should begin entering the global development arena, and this trend should be most pronounced among the Tier 3–5 NGOs that are more vulnerable to shifting donor tastes, and that rely more heavily on European and UN funding.

B. H2. Increasing emphasis on advocacy: Development NGOs will increasingly boost their advocacy work while curtailing their service delivery efforts.

Development projects often provide essential services to needy communities. Service provision, however, is heavily contested by rights-based experts, many of whom argue that NGOs should instead hold duty-holders accountable by “monitor[ing] and report[ing] from the grassroots on the use and abuse of power.”⁸⁵ Development NGOs, in this view, should abandon service delivery and focus instead on creating and strengthening local accountability mechanisms through activities such as grass roots networking, local and national lobbying, abuse documentation, reporting, and advocacy of all kinds.⁸⁶ This approach is appropriate, rights-based thinkers say, because governments, not NGOs, are duty-bound under international human rights law to provide essential services.⁸⁷ In this view, NGO service delivery treats symptoms rather than causes,⁸⁸ lets governments off the hook, and disrupts citizen efforts to build accountability.⁸⁹ According to one study that examined

WHO NEED SPECIAL PROTECTION MEASURES (2001), available at <http://publications.gc.ca/collections/Collection/E94-314-2001E.pdf>. CIDA's newest strategy places less importance on rights, indicating a move away from rights-based programming in this area. See CAN INT'L. DEV. AGENCY, SECURING THE FUTURE OF CHILDREN AND YOUTH: CIDA'S CHILDREN AND YOUTH STRATEGY (2010), available at [http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUImages/Youth-and-Children/\\$file/children-youth-strategy-e.pdf](http://www.acdi-cida.gc.ca/INET/IMAGES.NSF/vLUImages/Youth-and-Children/$file/children-youth-strategy-e.pdf).

85. STEIN-ERIK KRUSE & KIM FORSS, NORWEGIAN AGENCY FOR DEV. COOPERATION, ORGANISATIONAL PERFORMANCE REVIEW OF NORWEGIAN PEOPLE'S AID: SYNTHESIS REPORT, at i, 1, 12 (2007), available at <http://www.norad.no/en/tools-and-publications/publications/publication?key=109623>.

86. *Id.* at 12.

87. See Offenheiser & Holcombe, *supra* note 14.

88. VeneKlasen, Miller, Clark & Reilly, *supra* note 84, at 3.

89. The OECD, for example, argues that both donors and NGOs should phase out service delivery and work instead “at the level of the overall legal and policy framework.” OECD, INTEGRATING HUMAN RIGHTS, *supra* note 14, at 65, 108. For a similar argument about humanitarian aid, see ALEX DE WAAL, FAMINE CRIMES: POLITICS AND THE DISASTER RELIEF INDUSTRY IN AFRICA (1997).

US-based INGOs' experiences, this preference for advocacy over service delivery has prompted the defunding of several partner projects.⁹⁰

A second school of rights-based thought is a bit more flexible, arguing that service delivery can empower groups and individuals, and lend rights-based groups the means to gain citizen trust and commitment.⁹¹ In Ron's interviews with rights-based workers from the developing world, for example,⁹² many respondents noted the difficulties involved in developing strong NGO-grass roots relations. When rights-based NGOs had no concrete services to offer, they found it hard to persuade local communities to contribute time, energy, and resources to rights-based activities such as consciousness raising or advocacy. NGOs that provided direct services, by contrast, found persuading people to cooperate much easier, as they offered valuable resources in return for participation. In a lesson first learned by revolutionary organizations and radical social movements, rights-based workers are now discovering that service provision is a very useful way of building grass roots constituencies and relations.⁹³

This debate between rights-based purists and pragmatics suggests that both international and local NGOs will increase their advocacy activities, but will not dramatically curtail service delivery activities. Indeed, as one study has already shown, American rights-based groups often add advocacy to their existing agendas, rather than fundamentally changing the way in which they operate.⁹⁴

Our second hypothesis thus posits a second set of clear and quantifiable expectations for future researchers. We expect development NGOs increasingly to boost their advocacy activities, and traces of this change should appear in their budgets, work plans, publications, public statements, and human resources. Although overall levels of NGO service delivery are not likely to substantially decline, we should see more efforts to combine advocacy and service together in a new, synthesized approach to development.

90. Miller, VeneKlasen & Clark, *supra* note 2, at 35.

91. Chapman et al., *supra* note 14, at 35; DANISH INST. FOR HUM. RTS., *supra* note 1, at 4; Miller, VeneKlasen & Clark, *supra* note 2, at 36.

92. See Appendix B.

93. SAMUEL L. POPKIN, *THE RATIONAL PEASANT: THE POLITICAL ECONOMY OF RURAL SOCIETY IN VIETNAM* (1979); JOEL S. MIGDAL, *PEASANTS, POLITICS AND REVOLUTION: PRESSURES TOWARD POLITICAL AND SOCIAL CHANGE IN THE THIRD WORLD* 226 (1979).

94. VeneKlasen, Miller, Clark & Reilly, *supra* note 84, at 4, 7–10.

C. H3. Growing Challenges to Universalist Human Rights Discourse: As the rights-based paradigm expands and deepens, we expect more cultural pragmatism and discursive flexibility in international rights discussions. Greater acceptance of context-specific human rights interpretations is likely to increase the further one goes down the NGO pyramid.

Until the advent of rights-based development, much of the international NGO human rights discourse was dominated by international advocacy NGOs such as HRW or AI, with work focused solely on research and advocacy. These groups rely heavily on international legal instruments, conventions, and protocols, and promote a universal view of human rights that has space for localized, context-specific interpretations. Because these NGOs tended to engage chiefly with Northern policymakers, international organizations, and elite Southern leaders, they have felt little pressure to vernacularize their message. The merger of human rights and development discourses, however, increasingly forces rights-based groups to interact with ordinary people, including local civil society. Rights-based development NGOs, moreover, must now secure the support, time, and commitment of ordinary people, local leaders, and small organizations in rural areas and poor or lower middle class urban neighborhoods.

As a result, rights-based workers can no longer assume that they speak the same general language as their would-be constituents, and cannot draw on shared transnational documents, symbols, and ideas. Instead, they must reach out to local people with words, concepts, and ideas that have local resonance. The result promises to be an increasingly diverse set of local/universal human rights syntheses.

In theory, this trend should push both Tier 1 donors and Tier 2-5 NGOs to include culturally nuanced perspectives in their official rhetoric and policies.⁹⁵ In practice, however, this sensitivity is expected to grow in inverse relation to an actor's position within the tiered NGO pyramid: the further an NGO is located downstream, the more likely it is to engage in the up close and personal management of grass roots constituency relations. At the pyramid's bottom, Tier 5 NGOs will rely very little on the universal language of international human rights; in some cases, they may be rhetorically "rights free."⁹⁶ At the top of the pyramid, Tier 1 donors and Tier 2 international NGOs will continue to frequently use universal rights language, and rely far more on concepts, principles, and ideas borrowed directly from the Universal Declaration of Human Rights and other international legal instruments.

95. LUTTRELL, PIRON & THOMPSON, *supra* note 14, at 27. See also Tomalin, *supra* note 42.

96. The same is true in the world of academic scholarship. The more researchers are embedded in the particularities of rights-based work, the more skeptical they tend to be of the utility of universalizing rights language. See, e.g., SALLY ENGLE MERRY, HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE 219–22 (2006).

This third hypothesis suggests that the Tier 3 workers that Ron interviewed (see Appendix B) occupy a uniquely privileged position, because these individuals serve as translators between local and international concepts of rights.⁹⁷ As a result, Ron's respondents were deeply aware of the depth and complexity of the local/universal discursive contradictions. Over 60 percent of Ron's respondents, for example, agreed with the statement that the concept of human rights was "hard for the average person to understand and use," noting that ordinary people often viewed "rights" as an elite term belonging to educated or Westernized urban residents, well paid NGO workers, or the political and social upper classes.⁹⁸ Tensions between the language of ordinary people and that of human rights were particularly acute, they said, when it came to issues of gender and family.

To enhance culturally sensitive and locally embedded approaches to human rights, both Tier 1 donors and Tier 2 NGOs have created learning processes with Southern NGOs and have developed pilot projects that look at Southern rights interpretations.⁹⁹ As these learning processes unfold, alternative interpretations of rights will trickle up to higher-tier actors, infusing the international discourse with greater humility, nuance, and contextual knowledge. The understanding and use of contextually specific language will be most robust at the bottom of the NGO pyramid, and least robust at the top.

97. See Appendix B. See also Sally Engle Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 AM. ANTHROPOLOGIST 38, at 39, 42 (2006).

98. For a similar view, see the INTER-AGENCY GROUP, *supra* note 1, at 34.

99. Dignity International's Linking and Learning project, funded in part by Novib, is one example highlighted by Luttrell, Piron and Thompson. See LUTTREL, PIRON & THOMPSON, *supra* note 14, at 27; DIGNITY INTERNATIONAL, *available at* <http://www.dignityinternational.org/>. More recently, in 2007, the UNDP introduced a new HURITALK series on civil society approaches to applying the RBA with the aim of sharing experiences. See Voices on HRBA, HRBA PORTAL, *available at* <http://hrbaportal.org/voices-on-hrba>. Other donors have assessed their use of the RBA in the context of respecting cultural sensitivities and alternative perceptions on rights. See UNFPA, CULTURE MATTERS: WORKING WITH COMMUNITIES AND FAITH-BASED ORGANIZATIONS (2004), *available at* http://www.unfpa.org/upload/lib_pub_file/426_filename_CultureMatters_2004.pdf; UNFPA, INTEGRATING HUMAN RIGHTS, CULTURE AND GENDER IN PROGRAMMING (2009), *available at* https://www.unfpa.org/webdav/site/global/shared/documents/publications/2009/ghrc_participants_manual.pdf.

D. H4: Increasing Calls for Tier 1 and Tier 2 accountability: The rights-based approach insists that all global development sector actors be held accountable. Although donors believe this scrutiny should apply chiefly to developing states, some local NGOs will try to hold upper-tier NGOs and Tier 1 donors accountable. This pressure will result in a plethora of consultative mechanisms and reports. There will be little upstream accountability in practice, however, as the upper-tier NGOs and donors still hold most of the resources.

Rights-based proponents argue that the paradigm will enhance accountability and reduce power differentials throughout the global development sector. Although most rights-based proponents see developing states as the main duty-bearers, they also recognize the duties of Tier 1 donors, international NGOs, local NGOs, families, and private sector companies. They claim that the rights-based model's transformative power extends beyond government-citizen relations, challenging international and local NGOs to recognize power dynamics with their partners and within their own organizations.¹⁰⁰ As an Oxfam review notes, international NGOs "need to be honest and recognize that funding inequities have too often reduced partnership to a patron-client relationship. A rights-based partnership assumes that actors in the South bring irreplaceable assets to the effort to secure economic and social justice."¹⁰¹ To combat these unequal relations, the review called for increased cross-Tier sharing of goals and decision-making.¹⁰²

Still, there are very few formalized mechanisms for holding non-state actors accountable, and most of the money and power will remain in the hands of upper-tier donors and international NGOs. Lower-tier NGOs will be hard pressed to hold donors, international financial institutions, and upper-tier NGOs truly accountable,¹⁰³ despite the new accountability principles of the international aid effectiveness agenda. Instead, the number of North-South "consultative mechanisms" will grow. Some of these will be empty rhetorical exercises, but others will be genuine attempts by upper-tier groups to ask their Southern counterparts what they feel or think.¹⁰⁴ Few of these efforts are likely to trigger real change, however, as the sector's fundamental political economy and power relations remain unchanged.

100. VeneKlasen, Miller, Clark & Reilly, *supra* note 84, at 23. For example, INGOs may focus on the production of information for local partners rather than the empowerment of local partners. Limited two and three year project timeframes, demanded by donors, reinforce a definition of success measured by the number of workshops held, pamphlets disseminated, and violations documented. *Id.* at 25.

101. Offenheiser & Holcombe, *supra* note 14, at 287.

102. *Id.* at 287–88.

103. Chapman, *supra* note 14, at 37.

104. For a discussion of how Southern (Tier 3–5) rights organizations can stymie international rights-based (Tier 2) NGOs through boycotts and tacit subversion, however, see SHAREEN HERTEL, UNEXPECTED POWER: CONFLICT AND CHANGE AMONG TRANSNATIONAL ACTIVISTS (2007).

E. H5: The Null Hypothesis: The development world is periodically swept by new paradigms and fads, and the rights-based approach will ultimately be no different. On-the-ground personnel in international and Southern NGOs will resist, making only token and rhetorical adjustments. Aware of this lack of buy-in, donors will eventually tire of the rights-based paradigm and relegate it to the dustbin of development history, along with so many other failed strategies.

Finally, we entertain the null hypothesis, which argues that there will be no real change among international and local NGOs. The rights-based approach is by now more than ten years old, and proponents are still struggling to demonstrate its value. This effort has proven difficult, because there is little baseline data and the long-term nature of rights-based development makes monitoring and evaluation difficult, expensive, and impractical. Current donor enthusiasm for aid effectiveness and results-based management has compounded this problem, because donors are increasingly keen to support projects that can quickly demonstrate value for money, along with clear, measurable results. While civil society groups have made rights-based approaches a key priority in their own discussions of aid effectiveness, donor and partner country responses have been lukewarm.

Indeed, many organizations are reporting difficulties in disseminating rights-based thinking from headquarters to field staff and local partners. In 2006, UNESCO commissioned a study to review the relevant experiences of UN agencies, most of which “reported that government and non-government partners [were] largely ignorant of the human rights-based approach . . . [a problem that was] compounded by the relative lack of familiarity with the approach within agencies themselves.”¹⁰⁵ The experience of many international NGOs is similar and in many cases the rights-based approach is more rhetorical than actual.¹⁰⁶ Evaluations and reviews of rights-based development indicate that many NGO field staff and partner organizations, Western and Southern alike, do not know what the rights-based approach

105. FRANKOVITS, *supra* note 1, at 61.

106. See, e.g., INTERAGENCY GROUP, *supra* note 1; DANISH INST. FOR HUMAN RIGHTS, *supra* note 1. The UK Inter-Agency Group is a loose network of UK-based INGOs, such as CARE, Save the Children UK, and Oxfam. The workshop included participants from DFID and multilaterals such as the UNDP. Participants in the Danish workshop included Denmark-based CARE, Red Cross, Save the Children, Ibis, Dan Church Aid, the Danish Institute for Human Rights, and the Danish Refugee Council. The event was financed and hosted by the Danish Ministry of Foreign Affairs.

entails, either in theory or in practice.¹⁰⁷ A review of Norwegian Missions in Development, for example, an umbrella group consisting of eighteen mission organizations, found poor knowledge and application of the rights-based approach in the field.¹⁰⁸ Reviews of Norwegian People's Aid and CARE US also found that many staff did not have the tools or skills for implementing rights-based work.¹⁰⁹ According to a 2006 OECD review, moreover, translating rights-based policy into practice is one of the main problems facing rights-based bilateral aid agencies.¹¹⁰

Moreover, some empirical evidence indicates that the appropriation of "human rights" discourses by development NGOs has had limited impact on the broader human rights movement. While organizations in the online human rights network are now predominantly development-oriented due to the adoption of rights-based rhetoric by development agencies, Carpenter's coding of the same human rights websites suggests that economic and social rights are still underrepresented. However, her findings, which are visualized in Figure 5, also suggest a present emphasis on cross-cutting rights and rights that problematize, or go beyond, the old dichotomy between civil and political rights on the one hand, and economic and social rights on the other.

107. See, e.g., KRUSE & FORSS, *supra* note 85; ALEX BORCHGREVINK & JOHN-ANDREW McNEISH, CHR. MICHELSEN INST., REVIEW OF BISTANDSNEMDA'S (NORWEGIAN MISSIONS IN DEVELOPMENT) WORK WITH INDIGENOUS PEOPLES 21 (2007), available at <http://www.cmi.no/publications/file/2902-review-of-bistandsnemdas-norwegian-missions-in.pdf>; VeneKlasen, Miller, Clark & Reilly, *supra* note 84; FRANKOVITS, *supra* note 1, at 33–34, in relation to UNFPA's experience with the HRBA. Some staff even described the HRBA as just another "fad imposed by headquarters."

108. BORCHGREVINK & McNEISH, *supra* note 107, at v, 21.

109. KRUSE & FORSS, *supra* note 85, at 10; RAND, *supra* note 65, at 9.

110. OECD, INTEGRATING HUMAN RIGHTS, *supra* note 14, at 21–22. The OECD outlines two other main problems, namely difficulties with partner countries and political barriers, such as lack of commitment, and the need to push human rights into Paris Processes.

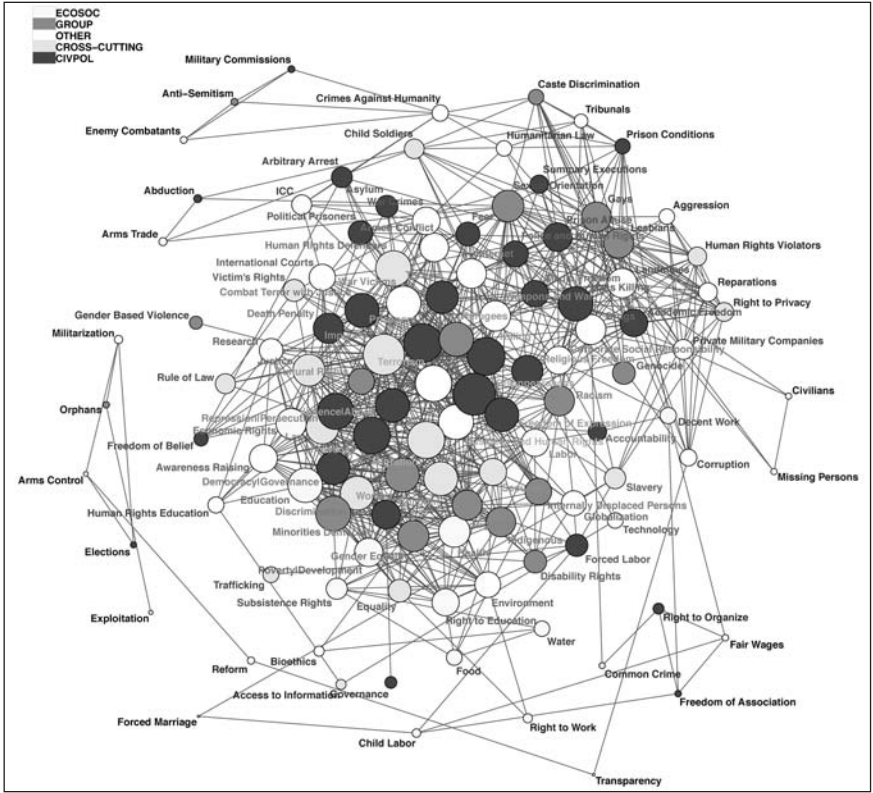


Figure 5. Presence and Co-Occurrence Between Issues on Organizational Websites in Human Rights Network*

* Nodes represent discrete ‘issues’ mentioned on organizational websites; links between nodes represent the co-occurrences of two issues on the same website. Node size corresponds to frequency of issue mention across all websites; proximity between nodes represents the relative density of ties.¹¹¹

Indeed, conceptual confusion over what, precisely, “rights-based thinking” means is one reason that NGOs encounter so many dissemination problems.¹¹² Although many donors and NGOs adhere to similar rights-based principles, there are many different interpretations of what this means

111. This visualization was created by Alexander Montgomery using R.
 112. In the mid-2000s, many scholars pointed out that the RBA lacks conceptual clarity which undermines its usefulness as a way of doing development. See, e.g., Darrow & Tomas, *supra* note 2, at 483; Bradshaw, *supra* note 3, at 1330. See Cornwall & Nyamu-Musembi, *supra* note 3, at 1418–1419. For a discussion of different versions of the rights based approach, see ACKERMAN, *supra* note 15; MARKS, *supra* note 15; UVIN, *supra* note 2.

in practice. For example, a UNESCO review of rights-based programming in the Asia-Pacific region found a wide variety of strategies. Some actors relied on social and interest group mobilization, while others took legal and quasi-legal approaches.¹¹³

In some cases, field personnel see the rights-based approach as simply one more headquarters-imposed fad.¹¹⁴ In other cases, the relevant institution may have no “champions” of RBAs, and rights-based initiatives may therefore lose steam. In Britain’s DFID, for example, a senior official initially promoted the rights-based approach within the agency, but then moved to a new post before the paradigm was fully consolidated.¹¹⁵

These problems have prompted both donors and international NGOs to develop a plethora of rights-based toolkits and framework from the mid-2000s onwards. As a result, it is now possible to find tools for rights-based programming in multiple sectors, including health, sanitation, and women’s rights.¹¹⁶ More recently, the United Nations launched a new website dedicated to providing tools for development practitioners engaging in rights-based programming, called the HRBA (Human Rights Based Approach) Portal.¹¹⁷

The null hypothesis suggests that these tools will never ensure true local buy-in and that implementation of the rights-based approach will never genuinely occur. As a result, some donors will begin to lose interest, and, as noted above, this may have already occurred within the United Kingdom’s DFID, and Canada’s CIDA. In Norway, moreover, the country’s commitment to rights-based policy—which was a prominent feature in its 2004 White Paper—appears to have declined.¹¹⁸

V. CONCLUSION

This article has demonstrated that the jury is still out on whether the rights-based approach represents a fundamental paradigm shift for the global development sector. The five hypotheses advanced above provide a basis for exploring this question through careful empirical research in the international and local NGO sector. Although a preliminary case for the five expectations has been suggested, only future scholarship will tell whether the expectations are borne out.

113. UNESCO, *THE HUMAN RIGHTS BASED APPROACH*, *supra* note 1, at 2.

114. FRANKOVITS, *supra* note 1, at 33–34.

115. PIRON, *supra* note 27.

116. See, e.g., WALDORF, *supra* note 1; BERMAN, *supra* note 1; ANDREA & FERGUSON, *supra* note 1; LANDMAN, *supra* note 1; OPERATIONAL GUIDE ON GENDER AND HIV/AIDS, *supra* note 1; BOESEN & MARTIN, *supra* note 1.

117. HRBA PORTAL, available at <http://hrbaportal.org/>.

118. OECD-DAC, *supra* note 55, at 21. Reviewers argue that greater clarity is needed on the status of RBA, as well as the challenges in implementation and lessons learned. *Id.* at 25–26.

To summarize, the expectations are as follows. First, new development partnerships will proliferate as both donors and international NGOs seek rights-based partners and engage with new types of development actors such as religious figures, the media, and human rights activists. Traditional development NGOs that are unable or unwilling to transition to rights-based work, by contrast, will lose ground by missing out on contracts, funding opportunities, and others forms of donor support.

Second, NGOs of all kinds will increasingly include advocacy efforts in their development projects and work. Third, NGOs operating in higher tiers of the global development sector are likely to employ universalistic rights rhetoric in their mission statements, project justification, and public advocacy. NGOs operating at lower levels of the development sector, by contrast, are more likely to use the kind of context-specific language that resonates more readily with ordinary people.

Fourth, calls for accountability by all development actors will become more frequent, prompting the establishment of new consultative mechanisms, fact finding missions, and evaluations aimed at holding recipient governments, donors, and NGOs to account. These efforts, however, will have more rhetorical than actual effects, as underlying power relations between NGOs remain unchanged. The rights-based approach will change the development sector's packaging and rhetoric, but it cannot, on its own, change the latter's fundamental structure.

Finally, it is still possible that the null hypothesis is correct and that the rights-based paradigm is simply one more development fad that will soon fade into obscurity. This hypothesis suggests that new rhetorical currents periodically sweep through the overseas development assistance sector as its members struggle with the same intractable problems. Each new theoretical concept or development fad comes and goes, only to be succeeded by yet another, equally unsuccessful, paradigm.

This article remains agnostic about the possibilities for real change. Instead, its goal has been to organize the existing data into coherent and testable hypotheses, thereby aiding future researchers in their efforts to evaluate and track the rights-based paradigm's effects.

APPENDIX A. KINDORNAY'S METHODOLOGY REVIEWING THE ENGLISH LANGUAGE RIGHTS-BASED LITERATURE

Kindornay conducted a bibliographic scan of the English language RBA literature in 2009, using a mix of databases and search terms. She used Google to search web content and locate major research institutions, multilateral donors, and bilateral donors, and site searches to locate documents. She also followed links where appropriate. She used Google to search particular websites (e.g. site: worldbank.org + search term). She also used search

tools such as “inulr” or “intitle.” For scholarly articles, she used the Journal Citation Report database to identify all 129 journals listed in the “development and planning” and “political science” fields, and then searched the top thirty-seven in each field that were relevant to either human rights or development. She also explored databases such as Sage Publications, Scholars Portal, Wiley InterScience, and Google Scholar. The following page lists the databases, websites, and journals that she examined separately. Cases where Kindornay used Google to search a particular site are marked with an asterisk (*).

Kindornay’s main search terms were:

- rights based
- rights based approach
- rights based AND development
- rights based development human rights based
- rights based organization*
- rights based organization OR organisation

Kindornay conducted searches with and without quotations under “any field.” For the search of scholarly literature, she added the terms “bilateral,” “multilateral,” “bilateral donor OR donor government,” and “multilateral donor.”

Databases and Websites

Australian Agency for International Development*
 Canadian International Development Agency*
 Chr. Michelsen Institute
 Connect Complete Publications
 Danish Institute for Human Rights
 EUR-Lex
 European Development Fund
 European Union website*
 General World Bank Website*
 Google (web and scholar)
 Institute of Development Studies
 International Development Research Centre
 International Human Rights Network
 Irish Aid*
 Ministry of Foreign Affairs, Denmark*
 Norwegian Agency for Development Cooperation
 Organisation for Economic Cooperation and Development

Overseas Development Institute
Royal Tropical Institute
Sage Publications
Scholars Portal
Swedish International Development Cooperation Agency
Swiss Agency for International Development*
UK Department for International Development*
United Nations Development Program Publications
Wiley InterScience
World Bank eLibrary

Journals

African Development Review
American Journal of Political Science
American Political Science Review
Canadian Journal of Development Studies
Comparative Political Studies
Development and Change
Economic Development and Cultural Change
Economic Development Quarterly
Futures
Growth and Change
Human Rights Quarterly
IDS Bulletin
International Development Planning Review
International Journal of Urban and Regional Research
International Studies Quarterly
Journal of American Planning Association
Journal of Development Studies
Journal of International Development
Journal of Rural Studies
Latin American Perspectives
Latin American Politics and Society
Local Government Studies
Long Range Planning
New Political Economy
Political Analysis
Political Geography
Politics and Society
Public Administration and Development
Review of Development Economics
Social Policy and Administration

Studies in Comparative International Development
Sustainable Development
The Developing Economies
Third World Quarterly
World Bank Economic Review
World Bank Research Observer
World Development

APPENDIX B. RON'S INTERVIEWS WITH WORKERS IN THE GLOBAL RIGHTS-BASED SECTOR

Ron and his team first conducted ten pilot interviews in June 2005 with participants in a three-week human rights training seminar, the *International Human Rights Training Program* (IH RTP). The program is organized annually by the Montreal-based NGO, *Equitas: The International Centre for Human Rights Education*, with financial support from Canada's donor agency, CIDA.

Ron then worked with a team of assistants to conduct 129 standardized interviews at the IH RTP in June 2006, 2007, 2008, and 2010. The interview schedule consisted of ninety-one questions (seventy closed and twenty-one open), fifty of which were orally administered, and forty-one of which required written responses. Interviews took place in English or French and lasted on average fifty-eight minutes, a time limitation imposed by IH RTP staff.

The survey's sampling frame is an estimated 480 IH RTP participants in the years 2006 through 2008, and in 2010. Ron's team selected their sample purposively in an effort to obtain a balance of respondents in terms of region, language (French or English), and gender. Some 600 individuals apply each year to the IH RTP and from these *Equitas* staffers select 100–30 each year for participation, some 90 percent of which eventually arrive in Canada for the annual training seminar. *Equitas'* selection criteria include the applicants' depth of experience in rights-related work the strength of their recommendations and statement of intent, and their eligibility for Canadian Overseas Development Assistance, typically granted to persons from countries below a certain per capita national income.

According to *Equitas* staff, program participants hail from a wide cross section of organizations and social justice sectors. The bulk of them work for non-governmental organizations of various kinds, while a smaller minority work for national human rights commissions or other governmental bodies with an interest in human rights, such as social services, education, or women's affairs. Most come from the global South or former communist countries; a small number come from Canada or other Northern countries, and all of these were excluded from our sample.

Workplace Characteristics: Seventy-four percent of the respondents worked for one of the eighty-nine different NGOs, focusing on social jus-

tice, migrant rights, the rule of law, women's rights, civic education, and development, broadly interpreted. Only 12 percent worked for the public sector, mostly in national human rights commissions.

The median founding date of the 129 respondents' organizations was 1996 and their median staff size was twenty-six, suggesting that these are relatively large groups. Most entities focused their energies on the national (57 percent) or sub-national (24 percent) level, while only 20 percent worked at the global or world regional level. Their focus is thus largely domestic.

Respondent characteristics: At the time of interview, the 129 respondents were in their mid-thirties, with a median birth-year of 1972. They held either senior (46 percent) or mid-ranking (46 percent) positions within their organizations. The sample was evenly divided among men and women. Most (75 percent) were full or part-time salaried workers, while only 25 percent were unpaid volunteers. Financially, rights-based employment provided 61 percent of the respondents with a "decent standard of living," suggesting that NGO work was a viable career path. Most (79 percent) said their salaries were better than that of a secondary school teacher in their country's capital city, the chosen yardstick for relative compensation.

The respondents' professional backgrounds were varied, with no single profession dominating. On average, respondents had begun working for a rights-based group in 1998, and 36 percent also had experience with other types of NGOs. Less than a third (28 percent) had trained as lawyers. Other professional backgrounds included journalists (5 percent), university teachers (5 percent), non-university teachers (10 percent), and social workers (10 percent). Virtually everyone (96 percent) had attended university, and most had grown up in cities; 75 percent had attended secondary school in a major city, and 14 percent in a smaller city.

Finally, the sample was geographically diverse. Respondents hailed from sixty countries across the global South and former communist zone. Regionally, 29 percent came from sub-Saharan Africa; 16 percent from Latin and Central America; 14 percent from South Asia (India, Pakistan, Bangladesh, and Sri Lanka); 14 percent from the Middle East and North Africa; 13 percent from Southeast and East Asia; and 15 percent from Eastern Europe, the Russian Federation, and Central Asia.

The 129 interviews were funded at various points by the Canada Research Chairs program, Canada's Social Science and Humanities Research Council of Canada, the National Science Foundation (see below), and Canada's International Development Research Centre.

APPENDIX C: CARPENTER'S COLLABORATIVE STUDY OF THE ONLINE STRUCTURE OF THE HUMAN RIGHTS ISSUE NETWORK.

As part of National Science Foundation grant 0729279, Carpenter's team aimed to study the salience of issues among the organizations most central

to the human right network. They operationalized the network by using the Issuecrawler co-link analysis tool, with the links pages of the UDHR-60 website, Amnesty International's human rights directory, and the Choike directory of links to human rights groups as starting points. The organizations falling into all three of these online networks were then used these organizations as starting points for a second crawl, the results of which can be found on the Issuecrawler site and are visualized in Figure 2. The visualization codes each organization according to type and thematic emphasis. Ron and Carpenter coded for this visualization through a consensus coding process.

Carpenter's team then examined the webpages of each of forty-nine organizations at the core of the triangulated network for evidence of issue and thematic cluster salience within the human rights core network. First, her team captured the "Mission Statement" and "Issue List" for each website. This raw text data was then uploaded into Atlas.ti 6.0 and annotated by independent coders associated with the Qualitative Data Analysis Program at the University of Massachusetts-Amherst. Specific "issue" labels (e.g. "trafficking" or "genocide") were derived from a grounded theory process and then applied to the web text data by teams of undergraduate coders. At least two coders reviewed each document, resulting in an inter-rater reliability score of .805 using Fleiss' Kappa. Carpenter adjudicated remaining inter-coder disagreement by using the Coding Analysis Toolkit to arrive at the final frequency distribution. Carpenter and Ron then categorized each "right" into one of five clusters through a consensus coding process. Civil and Economic Rights (e.g. "repression") and Economic and Social Rights (e.g. "right to food") refer to violations of the two charters, respectively.¹¹⁹ "Group Rights" (e.g. "women" or "indigenous") refers broadly to abuses against specific populations. "Cross-Cutting" refers to rights that fall across both the two main categories (e.g. "Discrimination" or "Slavery") and "Other" refers to either "issues" that are actually procedures rather than problems (e.g., "Awareness-Raising"); issues from other areas of international law, especially humanitarian law (e.g. "Cluster Munitions"); or new issues not reflected in the treaties, but to which human rights discourse is now being applied (e.g. "Gangs," "Internet," or "Environment").¹²⁰

119. International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., 1496th plen. mtg., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976); International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., 1496th plen. mtg., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).

120. Replication data for this project and the codebook are available at <http://www.people.umass.edu/charli/networks/human-rights.html>.