



National Human Rights Institutions and the Human Rights Approach to Development

A Background paper for the Regional Workshop on the Role of National Human Rights Institutions and Other Mechanisms in Promoting and Protecting Economic, Social and Cultural Rights

Introduction

At the dawn of the 21st Century, perhaps more than at any time in human history, the capacity of national governments to respect, protect and fulfill the human rights of their people is affected by international factors. This is particularly the case for countries that require international assistance, through grant aid or loans, to meet even their core obligations under international human rights agreements.

The challenge of realising all human rights for all calls for more than the political commitment signaled by freely entering into human rights treaties. It calls for resources to be allocated as a priority to respecting, protecting and fulfilling the human rights of the poorest and most vulnerable. It calls for a human rights approach to development at the national level and as a shared global mission.

The International Covenant On Economic, Social and Cultural Rights (ICESCR) has particular relevance to development – to the challenge of overcoming and eradicating poverty. In May 2001 the Treaty body responsible for monitoring compliance with the Covenant, the UN Committee on Economic, Social and Cultural Rights (the Committee), adopted a statement reaffirming that poverty is a denial of human rights. Speaking at a subsequent international workshop Paul Hunt, a member of the Committee said:

the heart of the Statement is that international human rights provide a framework of legal norms or rules voluntarily entered into by states parties; these norms bring with them legal obligations or duties; these legal obligations demand that all duty-holders are held to account for their conduct in relation to the international human rights

norms. Without accessible, transparent and effective mechanisms of accountability, the human rights norms and obligations are mere window-dressing.

At around the same time the Commission on Human Rights adopted a resolution calling on all states parties to ICESCR to “ensure that the Covenant is taken into account in all of their relevant national and international policy-making processes”. National Human Rights Institutions (NHRIs) clearly have a vital role in giving effect to this resolution.

NHRIs are increasingly important parts of the global architecture being constructed to monitor human rights and to make states accountable to their promise of guaranteeing human dignity. Effective NHRIs with a broad mandate encompassing all human rights have the potential to complement at the national level the vital monitoring and accountability role performed by the UN Treaty Bodies at the international level.

They can fulfill this potential in part by seeking to ensure that economic, social and cultural rights are effectively integrated into national development planning and the development dialogue with international development agencies, through closer interaction with the Committee and by fostering greater awareness and understanding of economic, social and cultural rights among NGOs and civil society.

In its General Comment No 10 on NHRIs and the Covenant the Committee clearly envisaged NHRIs taking on this function. It suggests NHRIs provide technical advice, undertake research and surveys, promote awareness and understanding of economic, social and cultural rights among public officials and, more broadly, identify national-level benchmarks for realisation of specific rights, monitor and provide reports on compliance with rights in the Covenant and examine individual complaints.

Building Accountability - Promoting Economic, Social and Cultural Rights in National Development Planning

UNDP’s Human Development Report 2000 concluded that one of the key “added values” of the human rights approach to development was the accountability the approach brought to the development process.

National development planning must take account of state parties’ obligations to respect, protect and fulfill economic, social and cultural rights. These are legally binding commitments freely entered into by states. National development planning and decisions on the allocation of resources should aim at the progressive realisation of the rights in the Covenant on Economic, Social and Cultural Rights. In particular, development plans need to give attention to the core obligations of states to these rights and to focus on the situation of vulnerable and marginalised groups. This calls for changes at the national, international and local level.

That development planning does not currently reflect the content of the Covenant can be ascribed partly to a lack of knowledge and awareness of the Covenant within national planning ministries, departments of health, labor, education, international development agencies and local government.

One way of addressing this lack of understanding would be for NHRIs to be given a more formal consultative role in national development planning processes. This would enable NHRIs to bring their expertise on economic, social and cultural rights directly into the development

dialogue. They could ensure that any concerns of the UN Committee, which has the formal role at the international level of monitoring states parties' compliance with the Covenant, are addressed in development planning. Where NHRIs have themselves conducted surveys and research on the situation of vulnerable and marginalised groups - as the Indian and Australian Human Rights Commission have done - these could be used to inform the setting of priorities.

The Indian Human Rights Commission's work on bonded labour, on the situation of people displaced by major development infrastructure projects and on the use of child labour have added considerably to the body of experience available to NHRIs in exploring their role in protecting and promoting economic, social and cultural rights. While ICESCR is not included in the mandate of the Australian Human Rights Commission it has worked creatively on the issues of homelessness, and the rights to education and health of people living in rural and remote areas. In doing so it has brought human rights awareness to new and vulnerable sections of the community and focussed attention on economic and social rights.

At the same time NHRIs could look into mechanisms to ensure that the rights of the poor, marginalised and vulnerable are more formally addressed in development planning. Disseminating to relevant government officials the Committee's Concluding Observations (see below) on states parties' initial and periodic reports offers one low cost option. Initiating reviews of national development plans from a human rights perspective may provide another.

National Human Rights Action Plans (NHRAPs) represent a potentially important avenue for integrating human rights with development planning. Indeed if NHRAPs are to see the necessary resources allocated to the realisation of human rights and to have an impact on people's experience of their rights, it is necessary for priorities identified in NHRAPs to be reflected in national development plans and budgets.

NHRIs could be provided with the resources to take on a formal role in independent monitoring of the implementation of national Human Rights Action Plans.

The expanding role of the private sector in many societies gives added urgency to the need for NHRIs to engage with the business sector, which has a significant influence over how many people experience their economic, social and cultural rights. Legal responsibilities in relation to human rights fall primarily on States and one way in which they fulfill these rights is the passage of appropriate laws and the creation of regulatory mechanisms to govern the actions of non-state actors.

There is however a need to supplement legal and regulatory measures with a more effective engagement and dialogue with businesses on how they can reflect shared moral responsibilities to human rights in their practice. NHRIs with their expertise across a broad range of rights have an important role to play in facilitating the dialogue.

In the development context it is clear that micro-credit schemes and community banking initiatives have the potential to assist people to realise their rights to housing, health, education and an adequate standard of living. It is also true that such schemes and initiatives have the potential to further marginalise the already marginalised and vulnerable and to entrench existing patterns of discrimination. Moves toward assisting communities and individuals toward greater self-reliance and self-sufficiency do not absolve the state from its responsibilities to respect, protect and fulfill human rights.

Architects of these schemes need to ensure that they are rights sensitive and focussed. NHRIs can assist and be consulted in this too.

Promotion, Education and Training

The lack of understanding and knowledge of economic, social and cultural rights within development agencies and government departments can also be addressed by NHRIs through promotion and training strategies.

The Committee has highlighted the need for both general and targeted education initiatives on economic, social and cultural rights by NHRIs. The literature on economic, social and cultural rights has grown considerably in recent years. The General Comments on the rights to housing, food, education and health adopted by the Committee have clarified the content of these rights. The section in the UN Manual on Human Rights Reporting on economic, social and cultural is a valuable training resource, particularly for officials and NGOs involved in seeking to establish appropriate benchmarks for progress.

NHRIs can help bring economic, social and cultural rights to the centre of discussions on development by strategically targeting their promotional work on the official and civil society participants in development planning processes. Disseminating the General Comments to these participants would be a step toward increasing awareness.

NHRIs could target training at senior officials involved in the development planning process, including those officials involved in negotiating with international development agencies and the drafting NHRAPs. With moves in many countries toward the increased decentralization of government, it is important that local government also be one of the target audiences for training in the nature of government responsibilities for economic, social and cultural rights.

Economic, Social and Cultural Rights and International Development Agencies

For many countries, decisions on development plans and budget priorities are made in close consultation with, and arguably at the behest of, international financial institutions (IFIs) such as the World Bank and IMF and bilateral development donors. Decisions taken in the negotiation of international development assistance directly affect the resources available to national governments to meet their human rights obligations.

The World Bank hosted Consultative Group on Indonesia for example, like other World Bank hosted Consultative Groups, is one of the most influential forums at which international development agencies and national governments sit down and negotiate development priorities and coordination. Indonesian NGOs have had a hard struggle to obtain even observer status at these meetings – in contrast to most UN meetings. Important decisions affecting human rights are made at these meetings – people have a right to participate in them.

If civil society has been largely excluded from these processes, so too has consideration of human rights. Nevertheless multilateral and bilateral development agencies have a responsibility to ensure that the programs and projects they fund do not violate economic, social and cultural rights or other human rights, do not undermine the capacity of national governments to respect, protect and fulfill human rights and give particular attention to the impact of proposed policies and programs on the rights of the poor and vulnerable.

To do no harm is the minimum requirement. Various international human rights instruments, including ICESCR, and the commitments entered into at the UN global summits of the 1990s, go further and emphasise the role of aid (and the right of states to call for such assistance) in realising human rights.

More than ever donor governments today give a high priority to human rights in their aid policy statements and programs. This is partly reflected in the increased aid funding made available to NHRIs. Some donor agencies have gone further and adopted a human rights approach to development – accepting that the purpose of aid should be the realisation of human rights in recognition that this is both the mutual responsibility of development partners and the most effective way of tackling poverty.

The UN Independent Expert on the Right to Development has canvassed the need for a development compact – a contract of sorts to bring accountability to aid relationships. In suggesting the need for a contract between aid donors and recipients in its *Manual for a Human Rights Approach to Development Assistance*, the Human Rights Council of Australia explored a number of possible mechanisms and grievance procedures. It suggested the creation of an independent monitoring and inspection panel, modelled to a degree on the World Bank's Inspection Panel.

In the absence of such a specialised and dedicated mechanism the Human Rights Council suggested that NHRIs may be in a position to take on some role in adjudicating grievances concerning international development agencies and to order remedies. It emphasised that if NHRIs were to take on this role they needed to be provided with the technical and financial resources to do so. It is well past time that donor agencies who themselves give such emphasis to the principle of accountability should accept their own accountability to the recipients of aid – people with rights.

Even without such a formal role, NHRIs are today often in a position to promote human rights as a central consideration in discussions between international development agencies and governments. For example they could be formally invited to take part in development forums such as the World Bank hosted Consultative Groups and formally consulted by bilateral donors in the drafting of country assistance strategies.

Participation and Information

Participation is central to the human rights approach to development and a key concept in the UN Declaration on the Right to Development. The Declaration demands that people have a say in the decisions affecting their development. It recognises that meaningful participation helps to guarantee that the benefits of development are shared more equitably. Participation also brings greater accountability to the development process.

Accountability comes not only through the creation of formal mechanisms through which complaints and grievances can be negotiated and redress sought. Just as importantly, accountability comes from individuals and communities aware of their rights. People aware of their rights are in a better position to claim them.

Nationally and internationally there is a commitment to achieving greater popular participation in development planning processes. For Highly Indebted Poor Countries (HIPC) this is reflected in the Poverty Reduction Strategy Papers (process) auspiced by the World Bank. These are de

facto national development plans intended to guide the efforts of all development agencies - national and international. For non HIPC countries the World Bank is developing the Comprehensive Development Framework which fulfills a similar function. Most bilateral donors now also give great emphasis in their policies to the need for civil society participation.

However, if people are to be able to participate meaningfully they need timely access to relevant information. International NGOs, including Article 19, have raised concerns that the existing information disclosure policies of the World Bank breach human rights standards and are unnecessarily secretive. This issue of transparency could be taken up by NHRIs.

To most effectively claim their rights through these participatory processes people also need to know what their rights are and the nature of the obligations they impose on government agencies and others. NHRI promotional strategies on economic, social and cultural rights should help to address this need for information.

NHRIs and Interaction with the UN Committee on Economic, Social and Cultural Rights

The reporting process established under the Covenant provides for a degree of international accountability by states parties. NHRIs can help enhance the effectiveness of the reporting process through

- reviewing and providing comments on their governments' initial and periodic reports to ICESCR – to their government prior to the submission of the report or directly to the Committee
- Working with NGOs to facilitate consultation and participation in ICESCR reporting processes, including through hosting information sessions
- Disseminating the Committee's Concluding Observations
- Initiating dialogue with government on follow-up action in relation to issues raised in the Concluding Observations.

NHRI expertise in dealing with specific economic, social and cultural rights in different national contexts clearly also has the potential to contribute to the Committee's development and adoption of General Comments.

It is now over fifty years since the world committed itself to the Universal Declaration of Human Rights. It is thirty-five years since the adoption of the Covenant on Economic, Social and Cultural Rights. It is time for governments to deliver on their promises.

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*The role of national human rights institutions in the protection of economic, social and cultural rights : 03/12/98.
E/C.12/1998/25, CESCR General Comment 10.*