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COMMISSION STAFF WORKING DOCUMENT

TOOL-BOX

A RIGHTS-BASED APPROACH, ENCOMPASSING ALL HUMAN RIGHTS FOR EU DEVELOPMENT COOPERATION

"Develop a tool-box for working towards a rights-based approach to development cooperation, with the aim of integrating human rights principles into EU operational activities for development, covering arrangements both at HQ and in the field for the synchronisation of human rights and development cooperation activities"

Council Conclusions
on an "EU Action Plan
on Human Rights and Democracy"
(25 June 2012)

Following the adoption, in 2012, of the Agenda for Change[1] and the European Union (EU) Strategic Framework on Human Rights and Democracy[2], the European Union committed to move towards a Rights Based Approach for development cooperation.[3] This commitment is shared and strongly supported by civil society.

To this end, the European Commission has been mandated to develop this tool-box. The Commission has involved the European External Action Service (EEAS) in line with Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service.

This tool-box describes what a Rights Based Approach (hereinafter RBA) to development is by highlighting its core concepts and their rationale, clarifying common misunderstandings, introducing relevant legal references and other donors' commitments (Part 1).

It then describes how to systematically apply a RBA into EU development cooperation, which objectives to pursue, which working principles to apply, and how to integrate a RBA in the implementation of the programming and in each phase of the EU project cycle management (Part 2).

Finally, this tool-box provides a check – list to be compiled (Part 3), and offers support measures for EU staff in headquarter and Delegations to support the implementation of this new approach (Part 4).

This tool-box also contains references to examples of good practice provided by stakeholders that have officially adopted a RBA in their development cooperation.

The tool-box is intended to provide pragmatic support and guidance to EU staff and partners involved in the implementation of day-to-day EU development cooperation.

This tool-box, and all supporting documents, can be found at *www.eidhr.eu.*

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[1]   Council conclusions 'Increasing the Impact of EU Development Policy: an Agenda for Change', 3166th Foreign Affairs Council meeting, Brussels, 14 May 2012,
http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130243.pdf

[2]   Council conclusions on Human Rights and Democracy, 3179th Foreign Affairs Council meeting, Luxembourg, 25 June 2012,
http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131171.pdf;
EU Strategic Framework and Action Plan on Human Rights and Democracy, Council of the European Union, Luxembourg, 25 June 2012
https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf

[3]   This tool-box deals exclusively with EU development cooperation and does not apply, for instance, to EU humanitarian assistance.

Contents

1. WHAT IS A RIGHTS-BASED APPROACH TO DEVELOPMENT?

This tool-box presents what a Rights Based Approach to development is by highlighting its core concepts and their rationale, clarifying common misunderstandings and introducing relevant legal references and other donors' commitments.

1.1. Underlying concepts

In recent decades, donors have developed and progressively improved various ways to address and integrate Human Rights (HR) into development activities.

According to the Development Assistance Committee (DAC) of the Organisation for Economic Co-operation and Development (OECD)[4], these improvements can be regrouped in five categories as follows: (i) Human Rights Dialogue and Conditionality, (ii) Implicit Human Rights Work, (ii) Human Rights Projects, (iv) Human Rights Mainstreaming and (v) Human Rights Based Approach.

i) <u>Human Rights Dialogues and Conditionality</u> are used as leverage, in a positive or negative manner (incentive or disincentive) to encourage compliance with human rights principles and standards by linking the offer of aid to compliance with human rights principles and standards. This category affects both the types of modality and volumes of aid allocation.

ii) <u>Implicit Human Rights Work</u> involves the use of descriptors such as "empowerment" or "good governance" rather than explicitly referring to human rights. This can be useful in environments in which the explicit discussion of human rights is not conducive to achieving the aims of the work. This category does not entail an explicit commitment to human rights.

iii) <u>Human Rights Projects</u> are projects directly and visibly targeting HR issues and vulnerable groups and individuals in order to help them to claim their specific rights such as the projects financed by the European Instrument for Democracy and Human Rights (EIDHR).

iv) <u>Human Rights Mainstreaming</u> consists in systematically integrating HR in all sectors of aid interventions. It extends the integration of HR from traditional areas, such as governance and rule of law, to all sectors such as energy, transport, environment or health. While this approach is a key mechanism for ensuring policy coherence, it can also include a "*do no harm*" element avoiding unintended negative impacts of development activities contributing to human rights violations.

v) <u>A Human Rights Based Approach</u> (hereinafter HRBA) considers human rights principles and standards both as a means and a goal of development cooperation. It changes the analytical approach and integrates the achievement and fulfilment of

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[4] WB/OECD Compendium *Integrating Human Rights into Development. Donor approaches, experiences, and challenges,* Second Edition, May 2013

human rights into the design, implementation, monitoring and evaluation of all development policies and programmes.

The HRBA builds on mainstreaming and adds an additional element through raising awareness about human rights implications and subsequently fine-tuning the objective of the action. In this sense an HRBA goes beyond the traditional needs – based approach. Firstly, it integrates the fulfilment of rights as an essential condition and a key leverage to achieving development. Secondly, it integrates the fulfilment of rights as a component of the needs analysis to eradicate poverty.

Therefore, all policies, programmes and related activities of development cooperation implemented with an HRBA are aimed at concretely and directly contributing to the realisation of human rights. It is the ultimate form of reconciliation between development and human rights and represents today the most comprehensive and structured approach that completes and encompasses all five approaches described above.

While the Millennium Declaration and the Millennium Development Goals (MDGs) have defined the overarching goals of development cooperation, the Monterrey process its financial means, and the Aid Effectiveness Agenda its search for results, the HRBA is aimed at ensuring that development actions deliver tangible benefits to theirs target groups, including the concrete fulfilment of rights and access to the desired benefits of the development intervention. It can therefore be seen as a common sense approach focused on improving the quality of project delivery.

The intrinsic rationale behind the HRBA is to move development cooperation beyond voluntary cooperation and into the mandatory realm of law. In framing development in terms of human rights, an HRBA re-conceptualises traditional development, re-orients the objectives of development cooperation towards international human rights treaty standards, and redefines the role of "stakeholders" into groups or individuals who have human rights or rights to claim (*rights holders*) and those who have duties to respond (*duty bearers*).

A HRBA consists in, for example, avoiding that a justice reform programme focuses exclusively on capacity-building within the judiciary without taking into account the rights and the access of end–users to the justice system, without which the justice reform programme would be redundant.

The HRBA completes the analysis of donors on the root causes of poverty. This approach ensures that development cooperation does not merely treat the symptoms but the root cause of governance problems, by addressing them both from a top-down and a bottom-up perspective.

In this sense, it represents the last layer of the quality-improvement of development cooperation based on human rights principles and standards and a modern sign of like-minded donorship.

So, while an HRBA does not change the overall policy, which comprehensively supports human and social development, inclusive and sustainable growth, and governance, it changes the analytical and practical lens used to design and undertake actions in all areas and help both better reach their target-groups and improve the quality of the outcomes.

1.2.   *Clarifying common misunderstandings*

Several misunderstandings can arise when discussing HRBA. The most frequent ones are outlined below.

1 - Why does the EU tool-box refer to RBA and not HRBA?

The Council Conclusions refer to a ***Right Based Approach (RBA), encompassing all Human Rights***. The disappearance of the "H" should not be understood as a downgrade in terms of Human Rights and a weakening of the EU commitment towards upholding them. On the contrary**,** the reference to an RBA goes beyond the formally recognized Human Rights, to include other types of rights, such as intellectual property rights, basic economic and social delivery rights as well as sexual and reproductive health and rights. An RBA therefore is an approach covering a broader category of rights than those covered by an HRBA.

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*The project **Decentralisation reform,** implemented by SIDA, in **Moldova**, ensures that the decentralisation reform developing regional and municipal authorities do not discriminate vulnerable groups such as children women, often subjected to trafficking. Through comprehensive training on how to work with decentralisation reforms through an RBA, the project provides capacity-building to officials on central, regional and local levels and to civil society.*

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2 - Interlinks between RBA and Gender equality

Gender is an integral part of the RBA, encompassing the promotion, protection and fulfilment of all human rights and the full and effective implementation of : the Beijing Platform for Action; the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences and in this context sexual and reproductive health and rights; the CEDAW and the EU guidelines on violence against women and girls and combating all forms of discrimination against them; the EU Strategy on equal opportunities between women and men; the EU Comprehensive approach to the EU implementation of the United Nations Security Council Resolutions 1325 and 1820 on women, peace and security; and the EU Plan of Action on Gender Equality and Women Empowerment.

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*The project **Food and Land Rights,** implemented by UNWOMEN, in the **Kyrgyz Republic** ensures women's rights as part of the land reform process. It strengthened the capacity of local government officials to better protect women's rights to land. It helped them in submitting draft amendments to the existing Land Code through government agencies and Parliament. In addition, the project increased the understanding of the general public on the topic.*

The RBA to development and gender mainstreaming are complementary and mutually reinforcing and can be undertaken in parallel without duplication. Indeed, gender mainstreaming calls for the integration of a gender perspective in development activities, with

the ultimate goal of achieving gender equality. An RBA integrates women's human rights standards and principles and the prohibition of sex discrimination into development activities.

3 - Key focus on capacity-building

In applying an RBA, all development interventions should be based on an assessment and analysis of the capacity gaps of both rights–holders in claiming their rights and of duty–bearers in meeting their obligations. Subsequently, an RBA strengthens the capacity of duty bearers to respect, protect and fulfil human rights and the corresponding capacity of the rights-holders to promote and protect their rights and fundamental freedoms.

4 - Progressive realisation

Human rights are often part of complex policy choices and trade-offs between priorities. Therefore, the implementation of an RBA will be progressive as long as donors 1) respect core obligations; 2) prevent discrimination; 3) avoid retrogression; 4) use the maximum of available resources; 5) ensure transparency in the decision-making, implementation, monitoring and evaluation.

5 - What is NOT an RBA?

An RBA is a working method which does not radically change the development policies and the programming of development cooperation but rather requires a shift in the way development interventions are conceptualised and implemented.

Indeed, it is ***not about revising the sectors of concentration*** and intervention of EU aid. It applies to all OECD/DAC sectors, and is not intended to concentrate aid on governance related sectors. It is a qualitative methodology to advance the analysis, design and implementation of development programme and projects to better reach target - groups and to strengthen their access to basic services in all sectors of intervention. It is ***not about "what" but about "how".***

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*SIDA's programme "**Roads 2000**" helped the Ministry of Roads to develop rural roads in one of **Kenya**'s poorest provinces. Interest groups were created to guarantee the participation of the population in the planning of roads. About 30% of the building contractors were women. And detailed notices of information about the programme were posted in all municipal offices.*

*In parallel, the programme "**Nalep**" provided agricultural support to small – scale agriculture. The **farmers** received support to organise themselves into local interest groups. They got access to services, to help identify their needs and interests. They also got support for advocacy and policy debate on agricultural issues.*

An RBA, hence, ***does not consist in a simple rhetorical repackaging*** of human rights mainstreaming. It goes beyond this and integrates human rights in each step of the project cycle management towards the fulfilment of human rights. In addition, it extends the scope from usual sectors of intervention, such as governance and rule of law, to all sectors such as energy, transport, environment and health.

An RBA is *not about the Right to Development*. While the EU is fully committed to the important recognition of the interdependence between rights, security and development, and to the objectives of human well-being and dignity for all, the EU has not formally endorsed the content of the UN Declaration on the Right to Development from 1986[5]. An RBA is not a *de facto* endorsement of the Declaration.

An *RBA is not about artificially opposing the needs versus the rights*. On the contrary it intends to reconcile and integrate both approaches.

Indeed, on the one hand, the aid response to development needs can be undermined or negated, when the rights it seeks to promote or the benefits it creates are only enjoyed by a segment of the population. On the other hand, the achievement of rights can also be seen as a need in itself and should be integrated into the needs analysis.

In this sense the achievement of rights can be seen not only as an important precondition to ensure that target groups really benefit from aid but also as a need in itself.

> The project *"Water and sanitation"* implemented by Solidarités in the Democratic **Republic of Congo** provided water in Beni village through standpipes. The project succeeded in decreasing diseases and reducing domestic tasks. Moreover, it also decreased the number of rapes. Indeed, women did not have to go through the forest to reach the river anymore where they were sexually assaulted. Non direct gender project can have a huge impact on women's life when their situation is taken into account in the design of the project.

6 - RBA and aid effectiveness

An RBA is in line with the Paris Declaration principles on aid effectiveness, in particular the principles of ownership and alignment[6].

It seeks to strengthen the duty-bearers capacity to fulfil the rights of the right holders and the preparation of the support should be conducted in a participatory and transparent way that reinforces ownership. It reinforces mutual accountability and management for results. Moreover, an RBA strengthens the ownership of target groups, by moving *de facto* from government ownership to a meaningful and inclusive national ownership, based on the quality of the relationship between rights holders/citizens and the state. All citizens should be able to participate in the establishment of the national strategies and the international human rights legal framework can be used to identify common priorities both for donors and recipients.

> The project *"Ensuring the Right to Water for the Poorest"* implemented by BMZ/GIZ, in **Kenya** supplies drinking water to the urban poor. A dense network of water kiosks was set up at regulated prices, allowing the access for low – consumption house – holds. Water action groups and a water supply complaints system were created to improve participation of all people with limited access to water. As tangible result, the Kenyan government has made of the RBA applied the basis of its own national policy. Furthermore it requested all donors to align their programmes to the right to water and sanitation and has decided to include this right in the new Kenyan Constitution in force since 2010.

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[5] The Declaration on the Right to Development was adopted by the United Nations General Assembly resolution 41/128 of 4 December 1986

[6] The Paris Declaration on Aid Effectiveness, 2005, http://www.oecd.org/dac/effectiveness/34428351.pdf

1.3. *International references and EU commitments*

(I) International references

The UN Statement of "Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming" has been adopted by the United Nations Development Group (UNDG) on 7 May 2003[7]. It provides a common understanding and explanations of what Human Rights-based approaches are about and their implications for development programming among the UN agencies.

It consists of three major components:

- ✓ All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights (UN General Assembly resolution n°217) and other international human rights instruments (*ultimate goal)*.

- ✓ Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process (*process*).

- ✓ Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights (*capacity building*).

While the EU has not formally endorsed it, the Common Understanding is fully in line with corresponding EU commitments and can be used as a key reference as it offers a universally recognised umbrella to the RBA.

(II) EU commitments

The first reference to RBA lies in the Joint Communication by the European Commission and the High Representative of the EU for Foreign Affairs and Security Policy "Human Rights and Democracy at the heart of EU external action – towards a more effective approach" (12 December 2011)[8]. This Communication states that a *Human Rights Based Approach should ensure that human rights and democracy are reflected across the entire development*

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[7] The UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) was adopted by the United Nations Development Group (UNDG) in 2003, following two Un Interagency Workshop on "implementing a HRBA in the Context of UN Reform", respectively in Princeton and in Stamford. - See more at: http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies#sthash.hgNf5OPM.dpuf

[8] Joint Communication by the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament and the Council "Human Rights and Democracy at the heart of EU external action – towards a more effective approach", COM(2011) 886 final, Brussels, 12 December.2011
See more at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF

cooperation process, and ensure continuity of political dialogue on human rights issues and development cooperation"

→Although the EU has a longstanding commitment to mainstream human rights and democracy across development cooperation, this joint Communication explicitly mentioned a Human Rights Based Approach for the first time as a working methodology.

Since then, the Council Conclusions on "Increasing the Impact of EU Development policy: an agenda for change" (14 May 2012)[9] states that *EU support to governance should feature more prominently in all partnerships. This calls for a Rights – Based Approach (RBA), promoting in particular the right to universal and non – discriminatory access to basic services, participation in democratic political processes, transparency and accountability, justice and the rule of law, and with a focus on poor and vulnerable groups*".

→The Agenda for Change does not re-write basic policy principles but calls the EU for a more comprehensive approach. It confirms that changes on a number of fronts are called for. In particular, that the EU must seek to focus its support where it can have the greatest impact and should concentrate its development cooperation in support, *inter alia*, of human rights, democracy and other key elements of good governance.

The Council Conclusions adopting the "EU Strategic Framework on Human Rights and Democracy" (25 June 2012)[10] states "*In the area of development cooperation, a human rights based approach will be used…*"

→The Right Based Approach for development is recognised as working methodology for development cooperation.

Article 2 of the Regulation establishing a renewed Development Cooperation Instrument (DCI) for 2014-2020[11], states *The primary objective ... shall be the reduction and, in the long term, the eradication of poverty. Consistently with this primary objective, cooperation…will also contribute to….consolidating and supporting democracy, the rule of law, good governance, human rights and the relevant principles of international law*

→EU development cooperation is guided by the MDGs, such as the eradication of extreme poverty and hunger, by the development objectives, principles and commitments approved by the European Union and its Member States and by EU human rights commitments and obligations.

Moreover, article 3.8 of the Regulation establishing a renewed Development Cooperation Instrument (DCI) for 2014-2020, states that *The Union shall promote a rights based approach encompassing all human rights, whether civil and political, economic, social and cultural, in order to integrate human rights principles in the implementation of this Regulation, to assist partner countries in implementing their international human rights obligations and to support the right holders, with a focus on poor and vulnerable groups, in claiming their rights.*

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[9]   See more at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/130243.pdf
[10]   See more at https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf
[11]   Regulation (EU) No 233/2014 of the European Parliament and of the Council of 11 March 2014 establishing a financing instrument for development cooperation for the period 2014-2020

→The RBA is officially recognised as a general principle of the DCI Regulation.

1.4. Which donors are applying an RBA?

Over the last two decades, many donors have developed approaches to integrate human rights principles into operational activities for development. A comprehensive survey of such approaches can be found in the second edition of the WB/OECD compendium "Integrating Human Rights into development. Donor approaches, Experiences, and Challenges"[12].

Now six EU Member States (i.e. Austria, Denmark, Finland Germany, Spain and Sweden) apply a comprehensive RBA. By shifting the EU development cooperation towards an RBA, the majority (2/3) of EU Official development assistance (ODA) will be RBA oriented.

A Country case - Peru

The major group of donors, in agreement and with endorsement of the Ministry of Justice and Human Rights, has adopted in November 2013, local guidelines to apply an RBA to aid in Peru "Formulacion de Politicas Publicas y Proyectos de Desarrollo. Guia para aplicar en enfoque basado en derechos humanos"(EBDH)

The group is composed of the EU, the AECI, GIZ, BTC, UNDP and USAID.

Included below are useful references to different donors' approach to RBA :

Donor	Documentation	Link
Austria (ADA)	*Human Rights Manual, Guidelines for Implementing a Human - Rights Based Approach in ADC*	http://www.entwicklung.at/uploads/media/HUMAN_RIGHTS_Manual__July_2010_01.pdf
	Human rights Policy document	http://www.entwicklung.at/uploads/media/PD_Human_rights_July2011_01.pdf
Denmark (DANIDA)	*A Human Rights Based Approach to Denmark's Development Cooperation - Guidance and Inspiration for Policy Dialogue and Programming*	http://amg.um.dk/en/~/media/amg/Documents/Technical%20Guidelines/HRBA%20Guidance%20and%20Screening/130529%20HRBA%20Guidance%20Note/HRBA%20Guidance%20n

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[12] See more at http://elibrary.worldbank.org/doi/pdf/10.1596/978-0-8213-9621-6

		ote%2006062013.docx
Finland (FORMIN - KPT)	*The State of Finland's Development Policy in 2013. No development without human rights*	http://www.kehityspoliittinentoimikunta.fi/public/download.aspx?id=119726&guid={22852550-6EFA-43A5-B202-D1666B8388CC}
	Implementing the Human Rights – Based Approach in Finland's development policy - Guidelines	http://formin.finland.fi/public/download.aspx?ID=109804&GUID={E8B07334-3578-4C8C-AD6C-2C836DE8BA7C}
Germany (BMZ - GIZ)	*Human Rights in German Development Policy – Strategy* *Guidelines on incorporating human rights standards and principles, including gender, in programme proposal for bilateral German Technical and Financial Cooperation* *Human Rights in German Development Cooperation – Examples from the field* *Human Rights in Practice – Fact Sheets on Human Rights Based Approach in Development Cooperation*	http://www.bmz.de/en/publications/type_of_publication/strategies/Strategiepapier305_04_2011.pdf http://www.bmz.de/en/publications/type_of_publication/information_flyer/information_brochures/Materialie206_Information_Brochure_7_2010.pdf
Spain (AECID)	*Guía Para La Incorporación del Enfoque Basado en Derechos Humanos en el Ciclo de Gestión de los Proyectos de Cooperación Para el Desarrollo*	http://www.redenderechos.org/webdav/publico/guia_isi_abril_2010.pdf
Sweden (SIDA)	*How to Start Working with a Programme-Based Approach*	http://www.sida.se/Publications/Import/pdf/sv/How-to-Start-Working-with-a-Programme-Based-Approach.pdf
	Report on SIDA's Results on Democracy, Human Rights and Human Rights Based Approach, Results for Justice and Development	http://sidapublications.citat.se/interface/stream/mabstream.asp?filetype=1&orderlistmainid=3391&printfileid=3391&filex=4803269848111
Norway (NORAD)	Handbook in Human Rights Assessment. State Obligations,	http://www.norad.no/en/tools-and-publications/publicatio

	Awareness and Empowerment	ns/publication?key=10 9343
Switzerland(SDC)	*Integrating Human Rights and Poverty Reduction. Working Paper: Towards a human rights based approach for SDC* *A Human Rights Based Approach to Development in Practice: Key Questions for Programming"*	https://www.deza.admi n.ch/en/Home/Docume ntation/Publications

In addition, included below is useful reference to the Conceptual Framework on Human Rights and Poverty Reduction of the Office of the High Commissioner for Human Rights:

United Nations (OHCHR)	*Human Rights and Poverty Reduction: A Conceptual Framework (New York and Geneva*	http://www.ohchr.org/e nglish/issues/poverty/d ocs/povertyE.pdff

2. HOW TO APPLY AN RBA?

2.1. *Targeting two objectives*

The implementation of an RBA into day-to-day development work distinguishes two objectives (i) *Do No Harm* (ii) *Do Maximum Good.*

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*The project "**Education and Training for Endogenous Development"** implemented by ADA, in **Burkina Faso**, sets up training centres to provide basic education, vocational training and continuing education. The design of the project was conducted through intensive consultation with stakeholders. As a result teaching is conducted in six local languages to foster the individual identity, culture and to ensure participation of the respective regions.*

(i) Do No Harm

The logic behind the Do No Harm principle represents the basic concept that development cooperation should not cause unacceptable harm and human rights violations. All efforts to address development issues such as poverty should not result in new problems and harms. A development project in a recipient country could have unintended negative impact in terms of human rights such as disadvantaging certain groups, interfering with participation rights and labour rights or contributing to forced displacement. Based on this logic, development programmes and projects must be established to create parameters to safeguard the rights of affected individuals and communities.

(ii) Do Maximum Good

The Do Maximum Good principle defines positive impact in terms of human rights by improving and strengthening development programmes and projects. Development cooperation should have positive impact in terms of human rights such as strengthening capacity to implement development strategies, empowerment and education on human rights, fostering participation, supporting state institutions in their capacity as supervisors and regulators, strengthening accountability and control mechanisms and tackling corruption. Focussing on the essential elements of economic, social and cultural rights as defined by the UN Committee on Economic, Social and Cultural Rights in its general comments will help achieve this objective.

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*The project "**Water and Sanitation",** implemented by Swiss SDC, **in Peru**, combines financing and technical support to local projects. Local actors actively participate in decision – making process and provide inputs both in cash and manual labour. Private firms and NGOs provide capacity building for operation as well as maintenance and hygiene education. SDC focuses on capacity building with*

According to the OECD DAC[13], "*costly lessons learned stressed the importance of consistent, coherent policies and comprehensive tools in order to do maximum good and avoid unintended harm*"

2.2. *Encouraging sector policy dialogue*

The sector policy dialogue provides a framework to take stock on progress of the implementation of development programmes. It also provides an opportunity to assess the partner country's policies and reforms also in terms of its human rights obligations. The point of departure should be the local context and on what is possible. It might sometimes be conducive to be very explicit in others a more indirect approach may be more effective. The sector policy dialogue on these issues should be closely coordinated with the overall political dialogue.

2.3. *Applying five working principles*

An RBA is implemented through the application of five guiding working principles.

First principle – applying all Rights (legality, universality and indivisibility of HR)

The first principle **applying all Rights** is an overarching principle.

It is about all beneficiaries, not a selection of them. It is about all rights, not about trade-offs between those.

Indeed, a rights-based approach draws from international human rights obligations subscribed and ratified by countries. All "subjects of international law" are legally bound to respect, and operate within the confines established by the international **legal obligations** voluntarily entered into by States, including those related to human rights.

*The Project **Integrating human rights and agribusiness**, implemented by DANIDA in **Uganda**, supports agribusiness for rural Ugandans, in particular low-income and poor farmers. It ensures that all levels of the private sector in the agricultural sector from farmers to processors, traders and exporters are identified, corporate and public sector responsibilities are integrated across the programme and right – size actions/interventions are supported.*

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[13] The DAC Guidelines Helping Prevent Violent Conflict – International Development, at http://www.oecd.org/dac/incaf/1886146.pdf

Moreover, Human rights are ***universal*** and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in article 1 of the Universal Declaration of Human Rights, "All human beings are born free and equal in dignity and rights".

Finally, "Human rights are ***indivisible*** and equally important". The 1948 Universal Declaration of Human Rights makes it clear that human rights of all kinds—economic, political, civil, cultural and social—are of equal validity and importance. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.

The following are the core human rights instruments:

- The Universal Declaration of Human Rights;
- The Covenant on Economic, Social, and Cultural Rights (ICESCR)
- The Covenant on Civil and Political Rights (ICCPR)
- The Convention on Elimination of Racial Discrimination (CERD)
- The Convention on Elimination of all Forms of Discrimination Against Women (CEDAW)
- The Convention on Rights of the Child (CRC)
- The Convention Against Torture (CAT)
- The Convention on Migrant Workers and Their Families (MWC)
- The European Convention for the Protection of Human Rights and Fundamental Freedoms
- The International Convention for the Protection of all Persons from Enforced Disappearance (CED)
- The Convention on the Rights of Persons with Disabilities (CRPD)

Second principle - Participation and access to the decision making process

This principle is about participation and inclusion, to enable people to have access to the relevant information regarding projects and programmes and to make use of the freedom of expression in the development process. Participation is more than consultations or a technical step in project or programme preparation. It is about enabling participation in decision making processes as the basis for active citizenship. It could require, for example, building the capacity of civil society organisations (CSOs) or other citizen organisations in order to articulate their needs and expectations towards the state and making information available in an accessible way.

> *The program **"Agriculture and Rural Development"**, supported by MFA Finland in **Zambia,** enhances food security by increasing food supplies through agriculture production and fisheries, and improving people's access to food through income generation (saving and credit schemes) in the remote Luapula province. The co-management of fish resources and the participation of local civil society representatives ensure the access to food of vulnerable people, including those with HIV/AIDS.*

It is therefore essential that the application of this principle leads to a clear assessment of the main obstacles/caveats for an active, free and meaningful participation and identify any barriers to such participation.

Third principle - Non-discrimination and equal access

It is essential that all people have **equal access** to the basic public services and goods supported or delivered by development interventions. It is even more important that these interventions give a priority precisely to the marginalised groups who are the most vulnerable to poverty and human rights violations.

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*The project "**Strengthening the trade union movement"** implemented in **Myanmar**, by the Federation of Trade Unions (FTUM), builds a strong, cohesive and effective trade union movement. The project is heavily oriented to build capacity as to organising, collective bargaining, membership representation, union administration, legal support and public advocacy on issues pertaining to human and trade union right in the country. In addition, the project provides training and support to workers so that they may be more effective advocates.*

While it is an essential component, this principle does not focus exclusively on gender discrimination. Based on the right that all persons are entitled to equal access without discrimination of any kind on the basis of race, colour, sex, sexual orientation, ethnicity, age, language, religion or other opinion, origin, disability, birth or other status to public services, opportunities, justice and security, this principle requires taking account of all forms of discrimination. The programming and design stage of programmes must carefully assess whether specific groups are discriminated against because, for example they live in remote areas, or because of gender bias. This discrimination might be unintended or indirect, but should always be avoided.

Fourth principle – Accountability and access to the rule of law

This principle is about the alignment of the relevant national legislation with legal human rights obligations. It is the responsibility of the state to respect, protect and fulfil human rights and facilitate good development, it is therefore essential that accessible, transparent, and effective mechanisms of accountability exist both at central and local levels of government.

It is also essential that the application of this principle leads to the identification of the lack of capacity of the state to fulfil its obligations. This principle also demands that legal services are accessible to target groups in terms of procedures, training programmes and paralegal advisory service.

State Fragility and Capacity Limitations

> *In weak or fragile states, state capacity is so limited that the achievement and the fulfilment of human rights such as access to basic services or security may not be realistic. The United Nations Children's Fund (UNICEF) identified a number of contextual constraints in implementing an RBA such as war, widespread poverty, extremely weak capacity, etc. Human rights can encounter both political and social resistances in context of ethnic divisions where providing education in native languages and ensuring child and adolescent participation is not acceptable.*

The ability to hold those who govern to account is crucial for better governance. However, for accountability to be effective it also needs to be demanded. Therefore, it is also important in this context to assess the capacity of the rights-holders. While, it is the prime responsibility of parliaments to hold governments to account, CSOs can also play a role in boosting domestic accountability at local and national levels through a free, clear, accessible flow of information.

It is essential to support country-led efforts to strengthen domestic accountability systems, promoting CSOs' role in oversight, alongside parliaments, supreme audit institutions, public procurement monitoring agencies and the media.

Fifth principle - Transparency and access to information

The state and other duty-bearers can only be held accountable if citizens have access to information and if the enjoy freedom of expression.

It is therefore essential that access to free and independent information, in accessible format, is guaranteed at all stages of a development process. This requires public access to free and independent information especially for the poorest and marginalised groups in society. It also requires that development programmes and projects implemented at national, regional or local level are transparent and information is accessible and provided to target groups.

> *The project **"Realizing access to quality education for all children"** implemented in **Cambodia**, by UNICEF and the EU Delegation, improves children's access to quality education in the most disadvantaged districts with the lowest performance. The project identified two critical issues: the need to increase government resources allocated to education and the effective utilization by the Ministry of Education Youth and Sports of the available funds. Context analysis and donor coordination led to meaningful dialogue with the Ministry to align aid and ensure coverage of previously neglected regions.*

Yet again, civil society can play an instrumental role in initiating campaigns to inform citizens about their rights and their entitlement to services. CSOs can for example complement the efforts of the authorities by summarizing and disseminating budget information and other complex matters to the public at the local level – often by converting the information into easily understandable formats. This can usefully be combined with capacity development of local community based organisations in the area of budget literacy.

2.4.   *Addressing the project cycle from identification to evaluation*

The RBA must be applied in each step of the project cycle from identification, formulation, implementation, monitoring to evaluation.

The checklist below addresses the various specific elements to be taken into consideration for each of these steps in order to ensure the implementation of the five RBA principles.

In particular, the template of the ***identification fiche*** for all aid delivery methods will be modified to introduce an RBA. It will be revised to assess potential risks related to human rights issues, with regard to all five working principles, and to the positive outcomes of the actions on the concrete fulfilment of rights and access to the sought development benefits of the targets groups of the action.

A similar change will be introduced into Europe Aid ***project monitoring system*** (ROM - Results Oriented Monitoring) and evaluation.

3.   CHECKING A LIST OF ELEMENTS

This checklist is designed to help and support EU staff and all stakeholders involved in the whole development process of planning and design, implementation, monitoring and evaluation.

It consists of a list of questions/elements to guide the implementation of an RBA in all EU development programmes and projects.

Although all the elements of this checklist must be given due consideration and respect, it is not an additional formal administrative layer and will not have to be inserted into in-house systems. It should be treated as guidance. Its implementation will nevertheless be monitored and format reassessed after a first implementation period of two years.

The checklist questions address identification, designing, implementation, monitoring and evaluation stages.

To reiterate, it is important to note that the application of an RBA does not affect the choice of the programming process in terms of sector priorities. It helps designing the content of the actions within each sector of intervention by providing further analytical references, such as the human rights situation in a given sector. Human Rights Country Strategies and the UN Universal Periodic Review will provide guidance to find out which political, civil, economic, social and cultural rights have to be taken into account.

At the design stage, concrete solutions and actions to tackle the development issue/s raised in the programming stage will be suggested.

At the implementation stage, the five guiding working principles described above will be applied:

- Legality, universality and indivisibility of Human Rights

- Participation and access to the decision making process

- Non-discrimination and equal access

- Accountability and access to the rule of law

- Transparency and access to information

At the monitoring and evaluation stages, the application and the impact of the aforementioned working principles will be assessed.

As a follow up to this tool -box, the European Commission is planning to offer technical assistance to EU and Member States staff working in development cooperation.

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1. Context analysis

☐ Has the proposed intervention identified the immediate and underlying root causes of the main development problems also in terms of HR?

☐ Is the proposed programme/project compliant with the existing relevant legal HR obligations?

• Which international instruments are binding for the sector?

• Is the constitutional framework compliant with international obligations?

☐ Is the proposed programme/project consistent with the HR Country Strategy?

☐ Does the proposed programme/project support the partner country in implementing recommendations that it accepted during the UN Universal Periodic Review?

☐ Does the proposed programme/project clearly identify the rights holders/vulnerable groups with regard to the development challenges identified?

☐ Does the proposed programme assess the capacity of rights holders/vulnerable

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groups to claim their rights? Particularly regarding:

• Awareness about rights and access to information

• Access to legal/administrative/political services for claiming their rights

• Access to basic services

• Access to decision making processes

☐ Does the proposed programme/project assess the capacity of state institutions to fulfil duties and responsibilities? Particularly regarding:

• Transparency and openness

• Legal, political and social accountability (complaint mechanism)

• non – discrimination and equality

• meaningful participation and empowerment

2. Identification & Formulation

☐ Have you identified for the sector of intervention potential gaps between human rights standards and day to day reality including:

• Human rights concerns raised by international treaty bodies (UPR);

• Potential negative development trends potentially leading to human rights violations;

• Evidence of disparities for vulnerable groups;

• Capacities of local governmental and/or non-governmental partners;

☐ Do the objectives:

- Ensure that the rights of vulnerable groups are taken into account?

- Ensure that the targeted end–users enjoy or participate effectively in the benefits of the selected intervention strategy?

- Ensure that inequality and discrimination issues are taken into account?

☐ Does the programme /project:

- Ensure that the capacities of targeted vulnerable groups are strengthened, with a view to allow them to claim their rights?

- Aim at strengthening accountability mechanisms, with a view to make both donors and recipients accountable to rights holders?

☐ Were target groups and/or targeted vulnerable groups involved in the decision making processes?

☐ Does the proposed intervention strategy identify human rights indicators?

3. Implementation

☐ Does the implementation process respect the working principles of legality/universality/indivisibility, participation, non-discrimination and equality, accountability and the rule of law and transparency?

☐ Do implementation activities ensure non-discriminatory practices and safeguards, particularly with regard to selected vulnerable groups?

☐ Are target groups and/or targeted vulnerable groups involved and consulted during the implementation of activities?

☐ Does the implementation process take into account:

• The relations between target groups and all stakeholders?

• The capacity gaps identified?

☐ Is the proposed strategy transparent in its implementation activities?

□ Are the accountability mechanisms effectively used?

4. Monitoring and evaluation

□ Do monitoring and evaluation mechanisms effectively foresee specific monitoring with regard to the working principles of the RBA listed above?

□ Do they allow monitoring of:

• The impact on vulnerable groups in general? On targeted vulnerable groups?

• The effectiveness and quality of participation of targeted vulnerable groups?

• The impact of the selected programme/project on accountability mechanisms?

□ Do monitoring and evaluation mechanisms effectively refer to the quality of the implementation process?

□ Do the sources of information used include disaggregated data, qualitative and quantitative information, assessments and recommendations provided by national/international HR bodies, NGOs and other donor?

4. SUPPORTING A CHANGE OF APPROACH

The European Consensus on Development states that the European Commission and EU Member States will implement development programmes based on Europe's democratic values - respect for human rights, democracy, fundamental freedoms and the rule of law, good governance, gender equality, solidarity, social justice and effective multilateral action, particularly through the UN.

The Agenda for Change underlines that EU assistance should focus on two priority areas (i) Human rights, democracy and other key elements of good governance, and (ii) Inclusive and sustainable growth for human development.

Moreover, the EU has become the first donor in terms of human rights programmes and, according to the OECD/DAC Peer Review[14], holds high standards in terms of own transparency and accountability.

When looking back at the five ways to work on Human rights referred to in chapter one, *(Dialogue and Conditionality, Implicit Work, Projects, Mainstreaming and Human Rights Based Approach)*, the EU already applies intensively and comprehensively the first four of them.

Articles 8 and 9 of the Cotonou Agreement and the European Neighbourhood Policy principle of "more for more" represent very structured conditionality and political dialogue to encourage partner governments to integrate democracy and human rights into their development plans and identify opportunities for EU assistance to contribute to those objectives.

Amongst others, the EU Civil Society and Human Development programmes, in particular the Development Cooperation Instrument component supporting women and children, represent a strong package of implicit work on human rights. The European Instrument for Democracy and Human Rights (EIDHR) is also the largest global instrument explicitly supporting human rights.

Finally, democratic values, but also gender equality, are already mainstreamed in all EU development instruments and such principles as political participation, representation, accountability, transparency and equality are integrated in the planning, design, implementation, and monitoring of policies and programmes.

Furthermore, the five principles of the RBA (*the right Rights, participation, non – discrimination, accountability and transparency*) are all recognised by the EU and are already part of the EU's methods and guidance.

One could even conclude that some sectors are already applying an RBA, or at least a part of it. One obvious example, is the new Budget Support Policy that links the delivery of budget support with an assessment of fundamental values on human rights, democracy, and rule of law conceived as a "vector of change", both promoting human rights and democratic values and supporting an inclusive and sustainable development.

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[14]   http://www.oecd.org/dac/peer-reviews/europeanunion.htm

The EU needs to build on the existing improvements and make these more dynamic and systematic.

On the one hand, it means to move to a more structured and improved use of existing relevant guidance and good practices. On the other hand, it means enshrining this change of analytical approach into day to day practices.

Experience from other donors applying an RBA tells us that it has also taken time and is still a work in progress for most. Such change cannot happen overnight and needs to be built progressively.

There is similarity with the Aid Effectiveness process where the EU took a leading role in designing, drafting and more importantly, translating the Paris Declaration into practical implementation. It offers day to day quality improvement and additional synergies.

In order to do move towards a Rights Based Approach, encompassing all Human Rights for EU development, some concrete steps will be taken in 2014.

First, some key products will be developed:

- The template of the identification fiche for all aid modalities will be revised to adapt the analysis of the context to assess the potential negative and positive impacts in terms of fulfilment of rights and access to delivered services of the target groups.
- The same changes will also be made to the Commission project monitoring system (ROM - Results Oriented Monitoring) for projects and programmes results and outcomes.
- Likewise, the Commission grid of criteria for the evaluation of projects and programmes will be amended.
- The drafting of roadmaps for engagement with Civil Society Organisation is ongoing. It will offer a combination of dialogue and operational support to promote the participation of civil society in policy and budget processes and will offer the key CSOs related elements of the RBA.
- The RBA principles will also be systematically integrated into the various existing sector training and guidance,

Second, a support package will be designed. This will include:

- A training pack composed of various modules (HQ, regional training, and country training for Delegation)
- A support Help Desk, including relevant documents and educational materials,
- A dedicated website
- A dedicated space on the EU intranet
- A dedicated programme of support for EU delegations providing ad hoc thematic support at key milestones, such as identification or design, including provision of temporary expert support.

The European Commission will undertake a first assessment of the Rights Based Approach implementation in 2016.