

THE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT: THE RIGHT TO WATER

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Abstract

The Human Rights-Based Approach to Development (RBA) puts human rights at the heart of human development. It sets the achievement of human rights obligations as an objective of development aid and integrates human rights principles into the development process. Based on the experience of development agencies and using the right to water as an example, this article identifies the practical implications and added value of the RBA. The RBA establishes the obligations of States to ensure that basic water needs are met and empowers communities to claim their right; it identifies and addresses the root causes for lack of access to water; and it places people at the centre of the development process. Translating this complex approach into practice is challenging. Yet taking the extra steps to adopt the RBA will improve the overall impact and sustainability of development aid.

1. INTRODUCTION

The human rights-based approach to development (RBA) puts human rights at the heart of human development. In this way, the RBA re-conceptualises traditional development thinking about the nature of human development and the process by which it is realised. It 'describes situations not simply in terms of human needs, or of development requirements, but in terms of society's obligations to respond to the inalienable rights of individuals, empowers people to demand justice as a right, not as a charity and gives communities a moral basis from which to claim international assistance when needed'.¹ The RBA presents a framework for the pursuit of human development with human rights standards and principles guiding that process and international human rights obligations providing the objectives of development.

This novel approach to development is gaining ground among the international community, influencing the development policy and programmes of many major donors and international NGOs. Wrapped in appealing notions of 'justice', 'empowerment' and 'equity', it is popular in development discourse. Yet going beyond the official rhetoric to grasp the practical implications of the RBA is difficult. Conceptual clarity on how development organisations translate this approach into development programming and the means by which its universal goals and vision are adjusted to specific country contexts is missing.

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¹ UNDP, *Integrating Human Rights with Sustainable Human Development*, UNDP, New York, 1998, paras 173-174.

The aim of this article is to describe the RBA in conceptual terms and to examine what integrating human rights with sustainable human development means in practice. Focusing on the realisation of the right to water through the use of the RBA enables a clearer exploration of the practical implications and the value added by this approach, as well as its limitations. The growing urgency in the global freshwater situation today; the essential nature of water for sustainable human development; and the complex practical considerations of water-related development projects, make the right to water well suited for a full appreciation of this approach.

Owing to the recent introduction of the RBA into the world of development, empirical evidence to demonstrate its impact, at both organisation and country level, is limited. Most of the development organisations that have adopted this approach are still at the experimental stage. Case studies of water-related development projects that are realised through the RBA are particularly scarce. Consequently, this article should be viewed as a preliminary analysis of what the RBA means in conceptual and practical terms and an exploration of its added value and limitations. As the RBA is increasingly adopted and institutionalised in development practice, its contribution to achieving development objectives, such as freshwater for all, continues to emerge. As such, any evaluation of the RBA is an ongoing process, which in turn will contribute to the refinement of the RBA model itself.

The first part of this article provides a comprehensive overview of the RBA, charting its origins; identifying the basic elements that distinguish it from traditional development approaches; and illustrating the value that it adds to achieving development goals. Based on the experience of major development organisations that have adopted this approach, the article goes on to explore the practical implications of applying the RBA. These issues are clarified and developed further in the last part of the article, which examines the RBA in light of realising the right to water.

2. THE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT

2.1. Historical Overview

Development and human rights were considered as two separate spheres with diverging strategies and objectives until the late 1980s. Despite human rights and development appearing as interrelated objectives in the 1945 Charter of the United Nations, governments, international donor agencies, multilateral agencies and UN agencies were reluctant to recognise the relationship between the two. It was generally understood that human rights existed outside the domain of development. This perceived dichotomy between human rights and development meant that development organisations placed little or no emphasis on the promotion and protection of human rights. It was not considered part of their work.

The separation between human rights and development was partly due to the Cold War and the accompanying political rhetoric. Although the 1948 Universal Declaration of Human Rights recognises civil, political, economic, social and cultural rights together in the same document, the ideological divide of the Cold War counterpoised civil and political rights against economic, social and cultural rights. As a result, two separate legally binding treaties were drafted: the Covenant for Civil and Political Rights, promoted by Western governments and the Covenant

for Economic, Social and Cultural rights, promoted by socialist Governments. This institutional and philosophical divide obscured the interdependent and indivisible nature of human rights; as well as the relationship between human rights and development.

With the end of the Cold War, many of the ideological barriers to governments' recognition of human rights were removed. Human rights terminology became more accepted and development and human rights began to move closer together in international discourse.

At the same time traditional development approaches were being challenged by the arrival of globalisation. The rapid growth in international free trade and investment flows was successful in increasing global prosperity, but at the price of increasing wealth disparities and human insecurity. In the new international economic order weaker communities and countries now faced greater poverty and marginalisation. Traditional development thinking had considered economic growth to be the complete solution. However, as traditional models of development failed to resolve global injustices and eradicate global poverty, this thinking was 'exposed as a myth'.² As the development community came under sustained criticism for failing the poor and marginalised, it was forced to re-evaluate its traditional model and identify the failings within it. In doing so it came to recognise that human rights principles, such as voice, equality, non-discrimination and accountability were crucial to poverty alleviation.

The UN formally recognised the relationship between human rights and development in 1986 with the adoption of the Declaration on the Right to Development by the General Assembly. The Declaration recognises development as a human centred, participatory process and links human development to the realisation of international human rights obligations. It states that:

The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realised.³

The convergence between human development and human rights discourse was confirmed at the 1993 World Conference on Human Rights, held in Vienna. The Conference officially recognised that 'Development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing'.⁴

Since 1993 there has been a general shift in development thinking. The change within the UN normative framework is a clear illustration. In 1997, the UN Secretary General acknowledged that 'human rights are inherent to the promotion of peace, security, economic prosperity and social equity'⁵ and called for the integration of human rights into all principal United Nations activities and programmes. In

² Dias, Clarence, *Human Development and Shelter: A Human Rights Perspective*, UNDP Occasional Paper 21, 2002.

³ Frankovits, Andre, 'Rules to Live by: The Human Rights Approach to Development', *PRAXIS, The Fletcher Journal of Development Studies*, Vol. XVII, 2002, p. 7.

⁴ The United Nations Office of the High Commissioner for Human Rights, *Human Rights in Development*, Geneva, 2003.

⁵ *Idem*.

response, UNDP adopted a new policy on integrating human rights with sustainable development in 1998.⁶ In its subsequent 2000 and 2002 Human Development reports, UNDP went one step further, affirming that ‘human development is essential for realising human rights, and human rights are essential for full human development’.⁷

Today, most development organisations acknowledge the legitimacy and value of human rights and their relevance to development work.⁸ Many UN agencies, notably UNICEF and UNDP have officially adopted the RBA; and a number of governments, notably the United Kingdom and Sweden, as well as many NGOs, including Oxfam, CARE, Save the Children, Actionaid and WaterAid, have taken an explicit human rights approach to their development work.

2.2. What is the Human Rights-Based Approach to Development?

A rights-based approach to development sets the achievement of human rights as an objective of development. It uses thinking about human rights as the scaffolding of development policy. It invokes the international apparatus of human rights accountability in support of development action. In all of these, it is concerned not just with civil and political rights, but also with economic, social and cultural rights.⁹

At present there exists no set definition of the RBA. However, the basic elements of the RBA that distinguish it from traditional development approaches can be clearly identified.

Central to the RBA is that it is concerned with both the outcomes of development and the process by which development is achieved. It is founded on the comprehensive set of human rights laid down in the 1948 Universal Declaration of Human Rights and subsequent international human rights treaties and declarations. These provide a coherent framework in which to identify development objectives. They also provide the key normative principles and standards to guide the entire development programming process. These principles include: participation, non-discrimination and equality, accountability and the interdependence and indivisibility of rights.¹⁰

Integrating human rights principles into the development process empowers the beneficiaries of development aid to make their own decisions about the development process and to be actively engaged in it. ‘From being passive objects

⁶ Van Weerelt, Patrick, *The Application of a Human Rights-Based Approach to Development Programming, What is the Added Value?*, UNDP, New York, 2000, p. 1.

⁷ UNDP, *Poverty Reduction and Human Rights, A Practice Note*, UNDP, New York, 2003, p. 1.

⁸ Nguyen, Flore, *Emerging Features of a Rights-Based Development Policy of UN, Development Cooperation & NGO Agencies*, the UN Office of the High Commissioner, OHCHR Asia-Pacific Regional Office, Bangkok, 2002, p. 2.

⁹ The Overseas Development Institute (ODI), *What Can We Do With a Rights-Based Approach to Development?*, ODI Briefing Paper, London, 1999, quoted in: Nguyen, *op.cit.* (note 8), p. 5.

¹⁰ These are the key principles identified in the UN, *Report of the Second Interagency Workshop on Implementing a Human Rights-Based Approach in the Context of UN Reform*, ‘Attachment 1: The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies’, 5-7 May 2003, Stamford, USA.

of choices made on their behalf, the RBA enables all people to be active citizens with rights, expectations and responsibilities'.¹¹

Significantly, through framing development in terms of human rights the RBA establishes the existence of claims and corresponding obligations. Development cooperation thus focuses on the relationship between individuals and groups with valid claims (rights-holders) and State and non-State actors with correlative obligations (duty-bearers). It identifies rights-holders (and their entitlements) and duty-bearers, and works towards strengthening the capacity of rights-holders to claim and exercise their rights effectively and of duty-bearers to fulfil their obligations towards such rights.¹²

2.3. What is the Added Value of the RBA?

2.3.1. Empowerment

Human rights is empowering. It has the potential to empower people at the grassroots level into believing that they have a right to education, to health care or to any of the other rights proclaimed in the international instruments.¹³

One of the fundamental benefits of the RBA is that it empowers the people and communities affected by poverty. By framing development in human rights terms and subsequently in legal entitlements, what were previously seen as 'needs' are now translated into rightful 'claims'. And what was once understood as 'charity' becomes 'justice' from the corresponding duty-holder. This shift in emphasis is critical for the self-esteem of poor people. They are taken out of their 'victim' position and they are emboldened to mobilise themselves to claim their rightful entitlements.

2.3.2. Accountability

The defining attribute of human rights in development is the idea of accountability (...) All partners in the development process: local, national, regional and international, must accept higher levels of accountability.¹⁴

By framing development in human rights terms, the RBA not only establishes claims but it also establishes obligations to meet these claims and identifies the corresponding duty-bearers.

¹¹ Department for International Development (DFID), *Realising human rights for poor people. Strategies for achieving the international development targets*, DFID, London, 2000, p. 7.

¹² These principles are reflected in the UN's report of the workshop on implementing a human rights-based approach to development cooperation, *op.cit.* (note 10), p. 4.

¹³ Alston, Phillip, 'The Rights Framework and Development Assistance', *Symposium Paper – A Human Rights Approach to Development*, The Human Rights Council of Australia, Oslo, 1998.

¹⁴ Mary Robinson as UN High Commissioner for Human Rights, United Nations Office of the High Commissioner for Human Rights, *Draft Guidelines on a Human Rights Approach to Poverty Reduction Strategies*, OHCHR, Geneva, 2002, p. 12.

Under human rights law, governments are the prime duty-bearers for the realisation of human rights. Their obligations are of three kinds: to respect, protect and fulfil human rights. *Respecting* human rights means that State laws, policies, programmes and practices must accord with human rights law; for example, the State may not pass a law that prevents a group from accessing the local health care system or arbitrarily shut down a school. *Protecting* human rights requires States to prevent the violation of rights by non-State actors and to ensure provisions for redress; for example, the State must enforce anti-pollution laws so as to prevent private firms from polluting rivers and lands and putting the people's health at risk. *Fulfilling* human rights requires States to take appropriate legislative, administrative, budgetary, judicial and other measures toward the full realisation of such rights; for example, developing and implementing a reasonable plan of action to achieve access to basic health care services for all and directly providing when groups or individuals are unable to meet their own needs. The positive duty to fulfil human rights also imposes an obligation on State Parties to engage in international co-operation (through the provision of expertise or financial support) in order to help Governments that have difficulties in realising their own duties.¹⁵

The State, however, does not have a responsibility to realise all rights immediately, however, as shortages of financial resources often make this impossible; particularly in the case of economic, social and cultural rights. But, States are required to take immediate steps to the maximum of their available resources to achieve progressively the full realisation of the rights concerned.

The RBA emphasises the accountability of all actors whose actions impact the development process; both State and non-State. Bilateral and multilateral donors, NGOs and private contractors have a duty to ensure that they respect and protect human rights in their work. They are also required to ensure that their programmes are locally accountable.

It is argued that accountability is the key to improved effectiveness and transparency of action; facilitating monitoring of programmes and inducing duty-bearers to act. As such it offers the potential 'added value' of applying the RBA to development practices.¹⁶

2.3.3. Participation

Popular participation must extend to all aspects of community life, including the definition and formulation of development policies and programmes, as well as their international implementation, monitoring and supervision.¹⁷

Inter-linked to the principles of empowerment and accountability is the principle of participation. The RBA calls for broad-based participation across communities, civil society, minorities, indigenous peoples and women at all levels and stages of the

¹⁵ This is affirmed in the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, drafted in 1997. The guidelines elaborate and update the Limburg Principles on the implementation of the International Covenant on Economic, Social and Cultural Rights, drafted in 1986. They do not have any legal force, but are an authoritative summary of the state of international human rights law on the subject of economic, social and cultural rights.

¹⁶ Van Weerelt, *op.cit.* (note 6), p. 9.

¹⁷ Declaration by the UN Working Group on the Right to Development in its conclusions to the UN Commission of Human Rights, 1996, UN Doc. E/CN.4/1996/L.11.

development process. Human rights law stresses that participation must be 'active, free and meaningful'. People must be able to shape and determine development decisions, as well as to significantly contribute to the realisation and monitoring of the development programme itself.

Participation has been found to bring many advantages to development, such as using and considering local knowledge; exposing local needs and preferences; raising the efficiency of resource allocation; and maximising ownership in the development process.¹⁸ As opposed to the traditional 'needs-driven' approach to development, whereby the needs of the poor and marginalised were identified by organisations and attempts made to fulfil those needs, the RBA requires that poor and marginalised groups participate in identifying their own development objectives. They must then be actively involved in designing and implementing projects to meet those needs. Development organisations thereby move from being 'executors' to 'facilitators' of development programmes.

In leading to a sense of ownership in the development process, participation also guarantees greater sustainability of projects. As project beneficiaries participate in the design and implementation of the project, they ensure that it matches their needs, priorities and their capabilities to sustain the project themselves. As genuine participants in the project, they are more committed and motivated to look after the project once international and donor support has gone.

2.3.4. An Integrated Approach to Achieving Development Goals

Analysing development problems through the human rights lens allows for a better understanding of how laws, social practices, policies and institutions positively or negatively affect these issues. For example, by emphasising human rights principles at the analysis and assessment stage of poverty alleviation projects, the systemic and underlying causes of poverty, such as discrimination, inequality and corruption are identified. And the power relations within a society that prevent poor and marginalised groups from influencing change are exposed.

Identifying and understanding these broader issues leads to more effective development programming. New strategies, such as institution building, awareness-raising and advocacy, are introduced into development practice. These address the underlying obstacles at the political, institutional and social level, which need to be tackled simultaneously for development efforts to be successful.

2.3.5. Protecting and Promoting Economic, Social and Cultural Rights

The RBA forces us to take economic, social and cultural rights seriously as human rights. The legitimacy of these rights as human rights is still contested by many governments. This undermines the validity of claims made by people in developing countries in areas such as education, health care and water services. Indeed, economic, social and cultural issues are regarded by many States as secondary priorities. As such, they are treated as aspirations to be fulfilled only when resources are available.¹⁹

¹⁸ OHCHR, *op.cit.* (note 14), p. 15.

¹⁹ Alston, *loc.cit.* (note 13).

With its explicit linkage to human rights standards, the RBA encourages States and the international community to recognise the crucial principles of indivisibility and interdependence of all rights. These establish that all human rights are equally important for respecting the dignity and worth of every person. One cannot deal with one specific right in isolation without taking into consideration the whole range of related rights,²⁰ and one right cannot be pursued to the detriment of others. Where priorities between rights are made, this must be done on practical grounds; for example, a development organisation may choose to prioritise the right to education as this contributes to the enjoyment of other rights, such as the right to information.

Moreover, the economic, social and cultural rights of people, in particular poor and marginalised groups, have often been hurt in the past by development projects and international and national trade policies. For example, structural adjustment programmes, aiming to help a nation's economic development, have meant that States have been prevented from spending on education and health care in rural areas; making it hard to progressively realise the right of the rural poor to education and health.

In a resource-constraint setting, conflicts between interests in development are inevitable. Where trade-offs have to be made, the RBA ensures that harm is minimised. It also informs and guides the complex policy-making process.

The RBA requires that States and multi-lateral institutions, such as the World Bank and the International Monetary Fund (IMF) assess the potential impact of their development policies on human rights. Where policy trade-offs have to be made, the RBA imposes certain conditions that must be respected. In particular, human rights standards identify minimum protected interests that should not be bargained away in the course of policy trade-offs, for example, ensuring that the rights of marginalised groups are not arbitrarily sacrificed to those of the majority; and that the minimum essential level of certain economic and social rights, including the right to food, housing, health protection and education are not compromised.²¹ Integrating human rights principles into the programming process will ensure that at the very least, relevant information on the particular development issue is made available; all those whose rights are at issue have a reasonable opportunity to be heard; and that appropriate mechanisms are in place to resolve grievances and, as necessary, provide redress.

2.4. The Practical Implications in Adopting the Human Rights-Based Approach

It is much easier to refer to a human rights approach in policy statements than to implement it in practice.²²

Donor agencies and NGOs have experienced considerable difficulty in moving to a human rights-based approach. Translating a comprehensive set of legal standards into development policy at country level is a complex process. Equally, systematically

²⁰ Van Weerelt, *op.cit.* (note 6), p. 6.

²¹ OHCHR, *op.cit.* (note 14), p. 14.

²² Hausserman, Julia, quoted from speech 'A Human Rights Approach to Human Development', given at the Oslo Symposium, *Human Development and Human Rights*, 2-3 October 1998.

applying human rights principles into development programming is proving a challenge.

As yet, there is no set operational methodology for applying the RBA to development practice. The operationalisation of the RBA, known as ‘Rights-Based Programming’ (RBP), has greatly varied among development actors, depending on the extent to which they have adopted the human rights-based approach into their policy and practice. This article focuses on the experience of development organisations that view human rights as the explicit goal of development and that have accordingly moved to integrate human rights into development policy and programmes; for example, ActionAid, CARE, Department for International Development (DFID), OXFAM, UNICEF and UNDP.

Even within this category there are variations in approach. However, there is consensus on the key elements that effective RBP requires. These form the basis from which to design programming.

2.4.1. Integrating Human Rights Principles into Programming

Human rights principles must be applied at all the main stages of the programming process. That is the assessment, analysis, planning, implementation and monitoring and evaluation stage. Human rights-principles include: participation, non-discrimination, equality, accountability, and the indivisibility and interdependence of human rights.

Applying the principle of *participation* has profound consequences for the design and implementation of development activities. To achieve ‘active, free and meaningful participation’ of all ‘stakeholders’ (those people, groups or institutions who have specific rights and interest in the development project),²³ programmes aim to create the necessary channels of participation at both country and project level. At the country level, development organisations are encouraged to work with governments to strengthen democratic systems and institutions; for example through supporting the strengthening of free and fair electoral systems and parliamentary institutions.²⁴ At the project level, RBP requires that stakeholders are, as far as the context will allow, involved in the process relating to its formulation, implementation and monitoring. This requires that stakeholders are first provided with information on the project; trained in communicating and negotiating effectively; and trained in the required skills for managing and implementing the project themselves. Local implementation of projects also often requires that development organisation form partnership with local community organisations.

Integrating the human rights principles of *equality and non-discrimination*, requires a specific effort to identify those groups most marginalised in regard to access to public services, such as women, minorities, migrants, elderly and indigenous groups, persons living with disabilities and persons living with HIV/AIDS and to ensure that their rights are included in the development process.

²³ This will usually include members of Government at a national or local level; civil society, such as NGOs, community groups, indigenous people’s organisations, women’s groups; the private sector, such as industry associations, major companies, the media; and regional and international agencies, such as multilateral development banks, bilateral development cooperation agencies, and international NGOs.

²⁴ Department for International Development, *op.cit.* (note 11), pp. 24-25.

The next step is to identify and address the specific reasons for why these groups are marginalised. Extra concern is thus given to the political, legal and social framework of the country. Training for development practitioners may be required to ensure that they understand these issues. UNICEF in Sudan runs a consortium that offers a training course on Sudanese culture for all those working in humanitarian aid. The training enables relief workers to better understand which groups are most at risk and why.²⁵

To address discrimination in national legislation and policy, development programming may include steps that address and encourage States to take 'special measures', such as affirmative action programmes for women, or making planning information available in accessible formats for minority languages.²⁶ It does not matter whether a law, policy or practice is intentionally discriminatory or the unintended result of applying an outwardly 'neutral' law, policy or practice: for example, where an indigenous group cannot access information on a development project as it is not available in their language, both explicit and implicit discrimination must be taken into account in the programming process.²⁷

Moreover, to effectively address discrimination within a society, development programming will often need to prioritise marginalised and vulnerable groups in their operations. For instance, in its work for the promotion of child rights, UNICEF specifically targets marginalisation and discrimination in girls' education, with activities that support this area in many countries.²⁸

In keeping with the principle of *accountability*, RBP encourages the use of a series of intermediate targets to monitor the State's compliance with its human rights obligations. These benchmarks and their ensuing indicators, provide a basis upon which the reality of 'progressive realisation' can be measured. They are an essential pre-condition for effectively holding governments accountable to their international obligations. And in keeping with human rights principles, they must be formulated with local participation. From its experience of adopting a rights-based approach in India, CARE has found that joint community and government monitoring of rights conditions, on the basis of agreed indicators, provides a suitable basis for dialogue and, ultimately, enhancement of the community's rights. Initial resistance on the part of government officials can be eroded when they understand that communities have genuine needs and rights and have the capacity and willingness to be party to solutions.²⁹

Development organisations themselves must also ensure that their programmes are locally accountable. Transparency at all stages of the development process is an essential part of this.

²⁵ UNICEF, *Growing the Sheltering Tree, Protecting Rights through Humanitarian Action, Programmes and practices gathered from the field*, Inter-Agency Standing Committee (IASC), UNICEF, New York, 2002, p. 63.

²⁶ United Nations, *op.cit.* (note 10), p. 7.

²⁷ *Idem.*

²⁸ Moser, Caroline and Moser, Annalise, *Moving Ahead with Human Rights, Assessment of the Operationalization of the Human Rights Based Approach in UNICEF Programming: 2002*, UNICEF policy paper, 2002, p. 24.

²⁹ Rand, Jude, *CARE's Experience with Adoption of a Rights-Based Approach: Five Case Studies*, CARE International UK, 2002, p. 55.

2.4.2. Building the Capacity of Right-Holders to Claim Their Rights and Duty-Bearers to Fulfil Their Responsibilities

Human rights determine the relationship between individuals and groups with valid claims (right-holders) and State and non-State actors with correlative obligations (duty-bearers). Unless right-holders can claim and exercise their rights effectively and the corresponding duty-bearers fulfil their obligations, human rights will not be realised. Crucial therefore to the RBA is that the capacity of both of these groups is developed in the programming process.

A variety of new methods are added to conventional development strategies to enhance these capacities. Perhaps the most significant is *awareness-raising* and *advocacy*. Before right-holders can start claiming their rights, they first have to stop perceiving themselves as 'victims' with 'needs' and instead see themselves as responsible right-holders making just demands of power.³⁰ CARE in South Africa, for example, is aiming to change the power relations within society by encouraging civil society organisations to see themselves as responsible right-holders with the power to change how they are viewed and treated by others and to hold duty-bearers responsible. Through workshops including both civil society organisations and government, CARE has been changing the mindsets of communities and civil society; enabling them to effectively defend and exercise their rights and work to improve the capacity of government to fulfil their obligations.³¹

Building awareness of human rights among State institutions and national and local governments is also an integral part of RBP. UNICEF has found that capacity building frequently involves training for judges, police officers, prison wardens, social workers and women on the various laws and human rights that affect them.

Advocacy work, such as political lobbying and media campaigning, is important in ensuring that duty-holders keep to their national and international obligations. In 2001 Actionaid India undertook a right to food campaign to pressure the State into meeting the basic food needs of the poor. The campaign was based on Indian law which entitles citizens the right to a decent life, defined as 'shelter, food and work'. Yet, in reality this right only existed on paper and was not realised. Instances arose where there were huge buffer stocks of food available, but the State bodies refused to share them with the poor. After intense advocacy work by Actionaid and other civil society organisations the national courts ordered the Government of India to establish a monitoring mechanism that would ensure that food was accessible for all.³²

Social mobilisation and partnerships with local civil society organisations and human rights groups have also been found to be effective programme strategies in enabling right-holders to claim their rights. From its experience in the Philippines with a local environment rights organisation on a project to strengthen the fishing community, Oxfam concluded that strong people's organisations were the cornerstone of successful rights-based programming.³³ In its work in Cambodia, Concern, an

³⁰ Slim, Hugo, *Making Moral Law Ground: Rights as the Struggle for Justice and the Abolition of Development*, Stamford Policy Paper, Stamford, 2002.

³¹ Rand, *op.cit.* (note 29), p. 39.

³² *Idem.*

³³ Oxfam UK's experience in implementing a RBA was presented in the OHCHR Asia-Pacific report on the 'Practitioner's Forum on Human Rights in Development', *UN Thematic Working Group on Human Rights in Development*, Bangkok, 2003.

international NGO, found that through building a network of civil society organisations to advocate for land rights, villages were eventually granted the legal right to manage their own forest land.³⁴

The need to strengthen the duty-bearer has also meant that development organisations are now placing more emphasis on political and legal issues, such as *institution building*, traditionally viewed as external to the domain of their work. For example, UNDP now devotes one-third of its development activities to issues of ‘good governance’, such as reforming legislatures, increasing the efficiency of the executive and strengthening the judiciary. It also works with national authorities and civil society organisations to promote civil and political rights.³⁵

Strategic use of *international human rights institutions* is another useful strategy in building the capacity of both of these groups. The national reporting process under human rights treaties, complaints mechanisms where available and the other UN processes including reports by special rapporteurs, may help to enforce rights at critical moments. This means that development practitioners must be aware of and understand the different human rights instruments and process that are relevant to their programmes.

2.5. The Challenges in Adopting the Human Rights-Based Approach

Most development organisations that have adopted the rights-based approach are still at the initial stages. Consequently, there is little empirical evidence available to document its overall impact so far. This limits analysis of its successes and failures in achieving substantive and concrete results. It also makes it harder to assess how the RBA has affected development organisations as a whole, including their policies, programmes and practitioners. The effectiveness in which organisations have integrated the RBA in their work and the challenges they have faced, is only now emerging.

It is argued that the introduction of the human rights agenda into the international development circle goes no further than rhetoric. Although accepted and promoted at policy level, it has not transcended to development practice.³⁶ This has been confirmed by development practitioners. At a 2003 UN workshop on the RBA, UN staff recognised that ‘much remains to be done for human rights integration to be generally applied in the development activities of the UN system’.³⁷ This gap between rhetoric and reality would seem to reflect the lack of support from governing bodies and development practitioners, many of whom are reticent to change their existing practice for a new approach that involves the unfamiliar territory of international human rights law. It also reflects the time that this complex and comprehensive approach requires in order to be fully understood, accepted and integrated into development practice. From the experience

³⁴ Harris-Curtis, Emma, *The Implications of Rights-based approaches for Northern NGOs: A preliminary exploration*, INTRAC, Oxford, 2003.

³⁵ Nguyen, *op.cit.* (note 8), p. 4.

³⁶ Uvin, Peter, *On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise*, Stamford Policy Paper, Stamford, 2002, p. 2.

³⁷ OHCHR, *op.cit.* (note 26).

documented so far it will take much effort and time before the late High Commissioner for Human Rights' vision becomes reality:

The rights-based approach must inform all our endeavours, whether in trade or security, finance or education or development, in both the private and the public sectors. At some point, I hope, the rights-based approach will become so common that we will no longer have to debate its practicality: it will simply be our daily practice.³⁸

Essential for ensuring that the RBA transcends into practice and that it is not 'diluted' in the process, is that coherence of approach is achieved. Unless the key elements of the RBA are understood and implemented as an 'integrated, interrelated and mutually reinforcing package' the danger is that the RBA could turn into an 'a la carte menu of possibilities'³⁹ and thereby lose its potency and individuality.

At an operational level, development organisations have identified a number of challenges in adopting the RBA. One of the most important is that effective application of the RBA is contingent on the country context. Political and institutional factors such as the competence of national and legal mechanisms of redress, political will and respect for international human rights instruments, all play a crucial role in determining the extent to which the RBA can be applied and the success it will have. Similarly, cultural and social factors such as the general awareness of human rights in society, past experience of communities in participatory decision making and the strength of local civil society organisations, significantly influence the ease and degree of implementation. For example, in implementing the RBA in the Lao PDR, The Swedish International Development Cooperation agency (Sida), found that due to a repressive political environment, only a partial implementation of the RBA could be achieved. Low understanding of human rights among government officials and the general population as well as a lack of local independent NGOs, meant that working from a rights-based perspective was difficult.⁴⁰

With its emphasis on broad-based participation, it is also argued that the RBA presupposes a level of organisation and voice that may not be present. Communities may lack experience in expressing their views and needs and in participating in decision making. UNICEF in Botswana found that effective participation in the development process was impossible due to the lack of community capacity to participate. Poor and marginalised groups in particular lack this experience. They also often lack the confidence to participate in decisions and voice their opinions.

Yet these challenging political and cultural contexts do not preclude the successful application of the RBA. If a State is discriminatory, non-participatory and non-transparent, human rights texts constitute the only available framework for a citizen's claims for accountability. In these situations, the RBA can be of great value

³⁸ Late High Commissioner for Human Rights, Mr. Sergio Vieira de Mello, 2003 in: *idem*.

³⁹ Quote by Mr. Sergio Vieira de Mello, High Commissioner for Human Rights, in his opening Statement at the *Second Interagency Workshop Implementing a Human Rights based Approach in the Context of UN Reform*, *op.cit.* (note 10).

⁴⁰ Sida's experience of implementing the RBA was presented at the OHCHR Asia-Pacific, 'Practitioner's Forum on Human Rights in Development', *op.cit.* (note 33).

as it encourages the introduction of human rights principles into the country. With the gradual institutionalisation of these principles at different levels of society, they may begin to influence State practices. It is clear however that in these contexts extra time and effort will be needed to achieve results.

Challenging contexts can also be found from within development organisations themselves. The RBA presumes a readiness and willingness from the professional and technical people in charge of service provision to share information in ways that will enable communities to understand and make decisions. Practitioners must also be prepared to listen to the community's views and incorporate them into their work, and play an active role in community training, organising, conflict resolution and empowerment, particularly of vulnerable groups. Yet, they may not have the appropriate skills, training or time required to do so. Working with international human rights instruments and principles may also require training for development staff. For example, UNICEF in Cuba found that their professional staff was not sufficiently equipped to study and analyse national legislation in relation to children's rights and needed to be trained to do so.⁴¹

A further difficulty lies in the broad objectives that the RBA sets. It is hard for most organisations to target the full set of human rights, since aiming to implement all rights together as an indivisible whole is unfeasible and ineffective in programming practice. Consequently, organisations have had to prioritise and choose which rights to focus upon depending on their expertise and strategic considerations. Moreover, to achieve these broad, ambitious and long-term human rights goals, organisations have had to develop wider partnerships across various sectors. Oxfam has reported that it has needed to widen its co-operation to non-traditional partners, such as campaign organisations and human rights advocacy groups so as to achieve its human rights objectives.⁴²

Another important issue is that it is not easy to assess the impact or measure the success of the RBA. Most human rights goals are long-term (especially economic, social and cultural rights) and process goals, such as participation, empowerment and non-discrimination are difficult to translate into quantitative data; and the lack of reliable disaggregated data in many developing countries further exacerbates this problem. And this tests donor relations. There is tension between the 'traditional' requirements of donors for projects with short-term, tangible and quantitative results, and the application of qualitative and long-term human rights principles. This makes the RBA unpopular with staff who are under pressure to show concrete results.

Lastly, the politically sensitive nature of human rights forces development organisations to move into a politicised arena; the World Bank justifies its distance from the RBA as due to the human rights arena being 'fraught with very sensitive and difficult issues'.⁴³ This can make rights-based organisations unpopular with host States and their traditional donors, putting the future of their work at risk. For example, CARE in Uganda found that some key donors were not supportive of its

⁴¹ Moser and Moser, *loc.cit.* (note 28), p. 14.

⁴² Appleyard, Susan, *A Rights-Based Approach to Development: What the policy documents of the UN development co-operation and NGO agencies say*, UN Office of the High Commissioner for Human Rights, Asia-Pacific Office, Bangkok, 2002, p. 29.

⁴³ *Ibidem*, p. 41.

transition to a rights approach.⁴⁴ Moreover, in promoting the principles of non-discrimination, equality, broad-based participation and empowerment, the rights-based approach directly challenges existing power imbalances. This is potentially dangerous for development organisations as local resistance to changing the *status quo* could result in promoters of rights being put at risk in their work.⁴⁵ In these precarious conditions, finding ways to implement programmes while not compromising human rights principles, or compounding existing power imbalances is challenging.

3. REALISING THE RIGHT TO WATER THROUGH THE ADOPTION OF THE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT

Focusing on the realisation of the right to water enables us to take a deeper look at the practical implications of the RBA and the value added by this approach. The growing urgency in the global freshwater situation today and its strong parallels to the multi-dimensional concept of sustainable human development make it a pertinent and compelling case-study: water is essential to maintain life, economic development and environment integrity. Moreover, the complex practical considerations of water-related development projects, makes them well suited for a full appreciation of the RBA.

3.1. Legal Basis of the Right to Water

The right to water was explicitly recognised as a fundamental human right by the Committee on Economic, Social and Cultural Rights in November 2002 with General Comment 15.⁴⁶ Prior to this, the right to water was only mentioned in the Convention for the Rights of the Child (1989) and the Convention on the Elimination of all Forms of Discrimination Against Women (1979). The human right to water was understood to be an integral part of officially recognised human rights, a necessary precondition for the realisation of the right to an adequate standard of living (Article 11, ICESCR), the enjoyment of the highest attainable standard of physical and mental health (Article 12, ICESCR) and the right to life (Article 6, ICCPR). The 1948 Universal Declaration of Human Rights (UDHR) implicitly recognised the right in saying that ‘everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services’.⁴⁷ It is argued that water like air was seen as so fundamental to preserving a right to life that the drafters of the UDHR did not consider it necessary to ‘spell it out’.⁴⁸

⁴⁴ Rand, *op.cit.* (note 29), p. 18.

⁴⁵ *Idem.*

⁴⁶ The Comment provides guidelines for States Parties on the interpretation of the right to water under two articles of the International Covenant on Economic, Social and Cultural Rights – Article 11 (the right to an adequate standard of living) and Article 12 (the right to health).

⁴⁷ Quoted in: Scalon, John, Cassar, Angela and Nemes, Noemi, *Water as a Human Right?*, presented at the 7th International Conference on Environmental Law, Water and the Web of Life, Sao Paulo, June 2003.

⁴⁸ Gleick, Peter, ‘The Human Right to Water’, *Water Policy*, Vol. 1, No. 5, 1999, pp. 487-503, at p. 5.

Despite the recognition of water as a human right by the Committee on Economic, Social and Cultural Rights in 2002, debates still continue over the legitimacy of water as a right in international law. While General Comment No. 15 is an authoritative interpretation of a human rights treaty standard, it does not have the force of law or an international treaty. However, it does give the right to water legitimate juridical and political status. As such, it is an important first step to a clear definition of the right to water in international law.

General Comment No. 15 on the Right to Water

In adopting General Comment No. 15 on the right to water in November 2002, the Committee for Economic, Social and Cultural Rights confirmed that ‘water is a precondition of all human rights and indispensable for leading a life in dignity’.

Specifically, the General Comment defines the right to water as entitling ‘everyone, on the basis of non-discrimination, to sufficient, safe, physically accessible and affordable water, which is of an acceptable quality for personal and domestic uses’.⁴⁹ The provision of water must be adequate for human dignity, life and health.

The essence of the right to water resides in the implementation of the principle that no person may be deprived of enough water to satisfy basic human needs. Regardless of their available resources, all State Parties have an immediate obligation to ensure that the minimum essential level of the right is realised.

With the emphasis on access to water, there is an explicit recognition that water is an essential social good, which takes priority over water as an economic commodity where conflicts may arise: for example, in the context of privatisation of water services and the charging of user-fees. This makes it clear that governments have a duty to respect, protect and fulfil this right and that they cannot sub-contract their responsibilities: no person should be deprived of minimum requirements simply because they are unable to pay.

3.2. The Growing Importance of Water Today

‘Of all the social and natural crises we humans face, the water crisis is the one that lies at the heart of our survival and that of our planet earth’ (UNESCO Director General Koichiro Matsuura 2003).⁵⁰

According to the latest figures, more than 1.4 billion people still lack access to safe water and nearly 2 billion do not have safe sanitation.⁵¹ These figures are set to get worse. Demand for water is increasing at an alarming pace, a result of population growth and rising demand per person; due to irrigation development, industrialisation and increasing individual use as income rises.⁵²

Moreover, due to the growing problem of water pollution throughout the world water resources are diminishing. Today, 50 percent of the world’s wetlands have all

⁴⁹ Committee on Economic, Social and Cultural Rights, General Comment No. 15, *The Right to Water*, UN Doc. E/C.12/2002/11, November 2002, para. 2.

⁵⁰ Quoted in the UN World Water Development Report, *Water for People Water for Life*, UN, New York, 2003 (www.Wateryear2003.org/en/ev.php).

⁵¹ Department for International Development, *Addressing the Water Crisis: healthier and more productive lives for poor people, Strategies for achieving the international development targets*, DFID, London, 2001, p. 12.

⁵² UN, *op.cit.* (note 50).

but disappeared and in many instances rivers no longer reach the sea. Over the next 20 years the average supply of water per person is expected to drop by one-third.⁵³ It is estimated that by 2025, 4.4 billion people (approximately 63 percent of the projected population), could live under conditions of severe water stress, especially in Africa, the Middle East and South East Asia.⁵⁴ The UN has stated that water security is now the second major resource problem facing humanity, next to the problem of population expansion.⁵⁵

Yet there is enough fresh water on earth to meet all these human needs. The problem is not availability. Technically and physically there is sufficient water to handle most of the present and foreseen problems. The problem is access. Access involves political and economic issues: equity, affordability and the role of the State in providing services. In short, it requires political will. According to D. Mitterand, M. Soares and R. Petrella, 'Access to water for all is a possible right. No technological, economic, financial or political reason can be invoked to prevent its realisation'.⁵⁶ The required political leadership, international and national policies and action is missing. Priority is not being given to maximise resources available to address the issue.

States agreed at the Millennium Summit to include within the World Development Goals (the official international development targets for donor organisations and the UN) to halve by 2015 the proportion of people without access to safe drinking water. They also agreed to stop the unsustainable exploitation of water resources and to promote equitable access and adequate supplies through developing water management strategies at the regional, national and local levels. States are failing to meet these goals. The UN World Water report affirms that without more action from States the global water crisis will reach unprecedented levels in the years ahead.⁵⁷

One of the most important and controversial issues regarding water today is the growing trend in the privatisation of water services. The transfer of the production, distribution and management of water services from public entities into private hands has accelerated since participation by the private sector was encouraged at the Hague World Water Forum in 2000. As multi-nationals take over the water sector and priorities shifts from meeting needs to making profit, equitable and affordable access to clean water is under threat. There is serious concern over whether privatisation can address the social and environmental aspects of water. Recent experience confirms these fears as many communities that have had their water systems privatised have been negatively affected.⁵⁸ For instance, water prices have often been raised within a few years of privatisation and poor people who could not afford to pay have been cut off. Water provision companies have also tended to

⁵³ *Idem.*

⁵⁴ DFID, *op.cit.* (note 51), p. 12.

⁵⁵ Gutierrez, Eric, *Boiling Point: Issues and Problems in Water Security and Sanitation*, WaterAid briefing paper, London, 1999, p. 4.

⁵⁶ Smets, Henri, 'The Right to Water as a Human Right', *Environmental Policy and Law*, Vol. 30, No. 5, 2000, p. 249.

⁵⁷ *Idem.*

⁵⁸ The Center for Economic, Social and Cultural Rights, *Right to Water Fact Sheet 2: Why a Human Right?*, 2003 (www.cesr.org/PROGRAMS/waterfacts.htm).

favour investment in rich neighbourhoods to the detriment of poorer areas, such as shanty towns and rural areas.

3.3. The Value in Implementing the Right to Water from a RBA

3.3.1. Emphasising Water as a Right

From the perspective of the RBA, lack of access to basic services such as water and sanitation is a denial of human rights. All water-related development projects must be founded on this premise. The status of water as a right adds weight to achieving fresh water access for all. It brings attention to government obligations to ensure this access and supports international and national efforts to protect this access.

To emphasise the human right of access to drinking water does more than emphasise its importance. It grounds the priority on the bedrock of social and economic rights, it emphasises the obligations of State Parties to ensure access and it identifies the obligations of States parties to provide support internationally as well as nationally.⁵⁹

Development actors are provided with a valuable advocacy tool for bringing the world's attention to this sphere and for holding local or national governments accountable to their commitments. They are also given a platform from which to assist governments in establishing effective water policies and strategies.

Emphasising water as a right also strengthens the position of communities in relation to State authorities. With the appropriate training and education about their rights, communities are empowered to demand the needed water services from their national and local governments. Through its work on community based projects in India, CARE discovered that when a community is not aware of its rights it will not represent its case with as much force and courage as if it understands the moral, ethical and legal grounds for its case. For example, in a project in Delhi involving the installation of a water system, after joint planning and negotiations between the community and local authorities, the community agreed to install the system and the water board to provide the water. However, once the community had installed the system it discovered that the volume of water provided by the city fell far short of its minimum basic needs. CARE concluded that had the approach been rights-based, the community would have included the demand for an adequate amount of water *per capita* per day to meet basic needs in the original negotiations. Ignorance about minimum standards for access to safe water resulted in the community negotiating from a weak position.⁶⁰

Competition between the different users of water resources, namely the agriculture, industry and domestic sector, is growing. In a context of water-scarcity, access rights are thus becoming increasingly contested. In this context, emphasising water as a right plays an important role. It helps safe-guard the rights of all groups, in particular poor and vulnerable groups, to access to water and it guides policy

⁵⁹ Richard Jolly of UNDP, *Integrating Human Rights with Sustainable Human Development*, UNDP, New York, 1998, quoted in: Gleick, *loc.cit.* (note 48), p. 491.

⁶⁰ Rand, *op.cit.* (note 29), p. 52.

decisions over the use of shared water resources. The right to water affirms that the satisfaction of basic needs must take precedence in all political and economic decisions over the use of shared water resources. This is a State obligation. It takes precedence over other water management and investment decisions.

Furthermore, recognising water as a right helps resolve conflict over scarce water resources. A serious issue concerning access to water is the potential for conflict that it can spark conflicts between countries. There are presently 261 international river basins and 145 nations have territory in shared basins.⁶¹ According to the United Nations, some 300 basins are the scenes of current conflicts.⁶² Trans-boundary disputes have become particularly significant in recent years, in particular in Asia and the Middle-East; control of water resources is a central point of conflict between the Israelis and Palestinians. Moreover, these inter-State disputes are replicated many times on a lesser scale between upriver and downriver communities within national boundaries.

It has been argued that ignoring the human rights dimension of water is the principal reason behind the ignition of these conflicts.⁶³ Under international human rights law, States are obliged to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries. Moreover, water can never be used as an instrument of economic or political pressure and States have the duty to 'refrain from limiting access to, or destroying, water services and infrastructure as a punitive measure'.⁶⁴ By establishing access to safe and sufficient water as a human right with the consequential onus on governments to provide basic water services, an allocation framework for the distribution of water resources is provided. This helps resolve inter-State disputes as co-basin States have to agree upon minimum water requirements.

This year a case was presented to the Committee for Economic, Social and Cultural Rights, which illustrates the application of the international human rights framework as a tool for conflict resolution. In spring 2003, a group of Palestinian NGOs together with an international human rights NGO (the Center for Economic and Social Rights), presented a report to the Committee which documented widespread and severe violations of the Palestinians' right to water by the Israelis. Violations included the construction of the wall of separation in the northern West Bank, separating whole towns and villages from their land and water; the destruction of drinking water wells in Gaza; and Israel's refusal to provide water services to unrecognised villages in the Negev. The Committee concluded that Israel should 'take immediate steps to ensure equitable access to and distribution of water to all populations living in the occupied territories, and in particular to ensure that all parties concerned participate fully and equally in the process of water management, extraction and distribution'.⁶⁵

⁶¹ Scalon, Cassar and Nemes, *op.cit.* (note 47), p. 20.

⁶² *Idem.*

⁶³ Gutierrez, *op.cit.* (note 55).

⁶⁴ United Nations, Committee on Economic, Social and Cultural Rights, 29th Session, General Comment No. 15, *The Right to Water* (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), November 2002, p. 31.

⁶⁵ Quoted by the Center For Economic and Social Rights, *Palestinian Right to Water, The Right to Water, 2003* (www.cesr.org/PROGRAMS/waterpalestine.htm).

Lastly, in recognising water as a human right, governments, international monetary organisations and private corporations have a duty to ensure that they adequately address issues such as the need to provide for basic human needs, equitable access for the poor, affordability and equitable cost recovery, in any privatisation efforts. Economic considerations cannot be elevated over these concerns. Irrespective of the form of service management and the degree of involvement of private companies in the service, the State, as primary duty-bearer, has a responsibility to regulate public or private bodies involved in water management. This includes in particular, the financing of works, the quality of the water, continuity of the service and user participation.⁶⁶ By approaching water as both an economic and social good, guiding principles and standards to govern privatisation efforts are established.

It has been argued by Nigam and Rasheed that the rights-based approach is not at odds with that based on economic efficiency. If the initial endowment of resources and capabilities is changed to ensure that rights are met, then alternate but efficient outcomes can still be achieved. The market mechanism can reach an efficiency frontier which is more equitable and just.⁶⁷

3.3.2. Integrating Human Rights Principles into the Development Process

Plans for the implementation of national and international water strategies should encompass a human rights-based approach. In other words, they should refer to and be guided by international human rights instruments and reflect the principles of non-discrimination and equality. Procedural rights, such as the rights to information and participation in decision making processes must be an integral part of any policy, programme or strategy concerning water.⁶⁸

Demand-responsive and people-centred approaches for water services have been widely promoted in the water sector since the early 1990s. The 1992 Dublin principles endorsed at the International Conference on Environment and Development in Rio de Janeiro enshrined four principles seeking to ensure water sustainability. Three of which are also important elements of the RBA: holistic management, a participatory approach and the involvement of women as key players.

⁶⁶ Smets, *loc.cit.* (note 56), p. 250.

⁶⁷ Nigam, Ashok and Sadig, Rasheed, *Financing of Fresh Water for All: A Rights Based Approach*, UNICEF Policy Paper No. 2, prepared for the Expert Group Meeting on Strategic Approaches to Fresh Water Managements, Harare, January 1998.

⁶⁸ Joint Statement by the Special Rapporteur on adequate housing, Special Rapporteur on the right to food and Special Rapporteur on the right to the highest attainable standard of physical and mental health under the Commission on Human Rights, the Third World Water Forum, Kyoto, March 2003.

3.3.2.1. Participation

Water development and management should be based on a participatory approach, involving users, planners and policy makers at all levels.⁶⁹

With its emphasis on broad-based participation, the RBA recognises people's right to actively participate in the design and implementation of water-related development projects. It is argued that this 'people-centred' approach is the only way of achieving sustainable access to safe water and sanitation services.⁷⁰

Development organisations are required to actively involve the people whose needs they are striving to serve. It is the communities that make the decisions about the type of technology and level of service they require and are willing to pay for and maintain. They have the responsibility for managing water infrastructure and systems as well as maintaining and repairing them.

Community management has been found to have clear instrumental advantages. Firstly, it lowers the costs of projects as using local technology (such as locally manufactured hand pumps, low cost gravity piped systems, rainwater harvesting and low cost on site sanitation options), is often cheaper than importing the goods from outside. Secondly, when people make decisions about the management and maintenances of their own services, the services are more sustainable: communities have the appropriate knowledge and tools to repair the local hardware used. They have also agreed to pay for the service provided, and as genuine stakeholders in the process they feel responsible for maintaining the service. Significantly, it is also argued that for the protection of the fresh water environment, success can only be achieved when the community participates in decision making and sees a stake for itself in the protection of the environment.⁷¹

There are many examples of successful community management water projects all over the world. And these projects are not limited to simple, stand alone community water supply schemes, but have been shown to be effective even with large piped systems in poor rural or urban slum areas. In Ethiopia, for example, WaterAid realised a project whereby community management of water resources was promoted and facilitated in the regions of Hitosa and Gonde Iteya. Here, community members with nothing more than basic training and 'a high degree of motivation' efficiently ran two large scale water projects, which provided water to over 100,000 people and 51 communities.⁷²

Historically, water supply and sanitation and irrigation programmes have been supply-driven and centrally planned according to set standards and available resources.⁷³ Placing people at the centre of projects means developing water projects that are demand-responsive. It is the communities, not the development organisations, which are the key development actors. Their demands for services trigger development and they assist in constructing, financing, maintaining and managing the service.

⁶⁹ One of the Four 1992 Dublin principles, DFID, *op.cit.* (note 51), p. 31.

⁷⁰ Calaguas, Belinda, *The Right to Water, Sanitation and Hygiene and the Human Rights-Based Approach to Development*, WaterAid, London, 1999.

⁷¹ Nigam and Sadig, *op.cit.* (note 67), p. 14.

⁷² Mathews, Jenny, *Water Consumption Rates, Financial Sustainability*, WaterAid, London, 1998.

⁷³ DFID, *op.cit.* (note 51), p. 31.

The advantages of a more demand-responsive approach can be seen in a UNDP water management project implemented in Karachi, Pakistan. In Karachi the water system is under tremendous pressure and poorly managed. As a result many people have to resort to taking unclean water or getting their supply of water illegally; over 60 percent of the water supply in this area is obtained through informal means. The principal reason for why the system does not work well is the absence of dialogue in Karachi between the service providers and the people who use the water services. In April 2002, the UNDP Urban Governance Initiative decided to bring all the various stakeholders together to start discussing the issues. The main stakeholders were the local government authorities, development authorities, bulk consumers, *katchi abadis* (informal settlements) residents, civil society organisations, the private sector and support agencies such as the Asian Development Bank and the World Bank. At the end of the exercise, both citizens and authorities acknowledged that many useful and concrete lessons were learned. The authorities learned that they needed to be more inclusive and transparent in their decision making process. And the process of bringing together the key stakeholders to the table helped clarify the different interests that were at play. Consequently, the stakeholders were able to remedy actual and potential conflicts that existed. The Government learned why it was important to bring the informal settlements into the formal system, while the citizens helped emphasise the need for rights-based laws as compared to rule-based laws regarding water.⁷⁴

This example shows how a participatory approach can provide a useful framework for dealing with competing claims over shared water resources. With all stakeholders participating in the decision making process, different socio-economic groups and communities are given the opportunity to express their social, economic and environmental demands and incentives related to water. In this way, they also learn to value and honour each others' needs. Consensual decisions for the best usage of water resources are thus easier to achieve.

3.3.2.2. *Equity and Non-Discrimination*

(i) *Women*

The RBA's emphasis on gender equality is of particular value to water-related development projects. Given the central role that women play as providers, managers, users and safe-guarders of water-related resources and facilities their inclusion is crucial. Yet it is rare. In the water sector, the role of women is undervalued and underexposed.⁷⁵ As a result they have often been left out of the water development process altogether.

Moreover, access to water seriously impacts the lives of women. For example, in rural communities, women and children (mostly girls) have to spend several hours a day collecting water. WHO estimate that every year, African women and children spend 40 billion hours hauling water.⁷⁶ With improved access, women could spend this extra time and energy on economically productive activities that ensure family

⁷⁴ Thanentiran, Sivanthi, 'Citizen Report Card for Karachi Water Management', *The Urban Governance Initiative in Kuala Lumpur*, Sivanthi Thanentiran, UNDP Malaysia, 2003.

⁷⁵ Coates, Sue, 'A Gender and Development Approach to Water, Sanitation and Hygiene Programmes', *A WaterAid Briefing Paper*, WaterAid, WECD, 1999, p. 11.

⁷⁶ Calaguas, *op.cit.* (note 70), p. 13.

income, such as basket weaving, farming or food vending and children could spend more time in school.⁷⁷

Women's exclusion is particularly evident in water scarce situations where there are competing demands for water use. The efforts of women to protect this resource for drinking are often undermined in favour of other uses usually determined by men; in many countries it is the men that are responsible for making water-related decisions. In addition, women do not have access to information, knowledge, management options, choice and critically, ownership that would enable them to effectively participate in the development process.⁷⁸ However, their inclusion benefits the community as a whole. Experience shows that women's inclusion in the planning, design, maintenance and management of water resources brings tangible benefits to projects and enhances their sustainability.⁷⁹

The participation of women in water service delivery can also improve their status in society. After carrying out a study on women and development in Ethiopia in 1980, SIDA initiated a rural water supply project in Dodota, Ethiopia. Peasant women in Dodota had identified their main problem as the fetching of water, which took them between two and six hours a day. The aim of the project was aimed at both meeting their immediate needs and addressing the wider problem of their marginalised status in Ethiopian society. Through facilitating the participation of women in the design of the project, the women were able to influence its shape and content. Following training by a technical engineer to operate and manage the water supply project they were able to manage it themselves. This project both responded to their immediate need for improved access to water services, and by giving the women a strong sense of ownership in the project, it enhanced the women's self confidence and role in the community.⁸⁰

The integrated approach taken at the analysis stage of development programming further contributes to gender equity in the water sector, by bringing attention to the inequalities women face in other sectors. For instance, the discrimination that women suffer in terms of land rights, inheritance, education rights, access to employment and credit, all impact their ability to access water. It is important that development agencies look at and address these wider development issues if gender equity is to be achieved.

(ii) Focus on Poor and Marginalised Groups

Access to water is a problem predominantly faced by the poor. It is harder for poorer States, regions, communities and households to establish their claims to water. Of the estimated 1.1 billion people without access to safe drinking water today, more than 80 percent live in rural areas, and the majority live in low-income and highly-indebted countries in Asia and Sub-Saharan Africa.⁸¹ Few countries address the needs of the poor in their water policy design. In countries and communities where the control of water resources reflects existing power structures, conscious or

⁷⁷ Penn, Caroline, 'Water, Sanitation and Poverty Reduction', *Development Issue*, WaterAid, London, 1999.

⁷⁸ Coates, *loc.cit.* (note 75).

⁷⁹ Narayan, D., *The Contribution of People's Participation: Evidence from 121 Rural Water Supply Projects*, the World Bank, Washington, 1995.

⁸⁰ *Ibidem*, pp. 1-31.

⁸¹ UN, *op.cit.* (note 50).

unconscious bias towards the rich and powerful by those responsible for managing and allocating these resources is common. Considerations of efficiency and equity are lost in a system governed by political patronage and corruption. And as the competition over the use of water resources becomes increasingly competitive, the voice and influence of the poor is weakening.

By bringing all stakeholders to the discussion table, the RBA enables the voice of the poor to be heard and for their needs to be recognised and addressed. Furthermore, the RBA requires that development organisations pay careful attention to poor and marginalised groups in regards to access to services. Development organisations need to identify which individuals within communities have disadvantaged or no access to services provided, and which communities as a whole have problems in accessing water services. They also need to analyse the political, legislative and social reasons for why these groups have difficulty in gaining access. Through this analysis, the plight of certain groups such as the poor, women and the elderly, (in particular widowers and widows who have serious problems in accessing water services)⁸² is highlighted.

The urban poor are a group that face serious difficulty in accessing safe and affordable water services. People living in shanty towns are often forced to live in terrible water and sanitation conditions. In the Third World, slums and shanty towns frequently have no water and sanitation services at all. The situation of the urban poor, however, is often obscured by the bias that attributes poverty to rural areas and describes urban dwellers in general as well-off. When calculating water services, the conditions in the slums are often left out of all government calculations. This negatively impacts the urban poor as their needs are not taken into account in the design of water and sanitation services.⁸³ Without these services, the cost of water can be much more expensive. People living in shanty towns are forced to buy their water from private vendors. These vendors charge rates that are much more expensive than the cost of water from regular connections. According to a study carried out in 16 cities, the cost of water from private service suppliers is between 4 and 100 times more expensive than the cost of water from a regular piped supply.⁸⁴

As water scarcity increases, the cost of water is set to become higher. Since the poor are already paying more, it is likely that they will bear the disproportionate burden of the increasing scarcity of water. Hence, it is imperative that approaches to water service delivery promote equity in this sector.

3.3.3. A Framework for Addressing Conflicts over the Use of Water

In the past, development aggression has been prominent in the water sector. With a dramatic increase in the demand for water, bridging the gap between supply and demand has meant building to exploit more resources at any cost. All over the world, more and more dams, and other large scale water projects have been realised in order to ensure water security. These projects have had serious social and environmental costs, adversely effecting livelihoods, health, cultures, social systems and eco-systems. For instance, the Chico River Dam Project in the Philippines was

⁸² Hausermann, *loc.cit.* (note 22), p. 9.

⁸³ Black, Maggie, *Mega-Slums: The Coming Sanitary Crisis*, WaterAid, London, 1994, p. 11.

⁸⁴ *Ibidem*, p. 10.

carried out in the 1980s with World Bank financing to provide the water and electricity to attract foreign investments into the country. But for the sake of the nations' 'economic growth', project implementation meant the displacement of over 80,000 upland families. Their ancestral land was submerged and their rich cultural heritage lost.⁸⁵ Today, a project that risks causing severe environmental and social harm is the Mekong River power grid project. Financed by both the Asian Development Bank and the World Bank, the project aims to create a regional power grid and electricity trading system that will encourage co-operation and economic growth in the six countries sharing the Mekong River Basin: China, Burma, Laos, Thailand, Cambodia and Vietnam. To build the regional power grid, 32 dams are planned across the 4,800 km river. This ambitious plan threatens the fragile Mekong river eco-system and the lives of over 60 million people that depend upon the river for their livelihoods and survival. It is predicted that thousands of indigenous people will be forcibly displaced in Laos and Burma; the last major free flowing river in mainland Southeast Asia will be destroyed; and the Mekong tributary will be severely damaged.⁸⁶

Case studies conducted by the World Commission on Dams (WCD) indicate that the poor, vulnerable groups and future generations are likely to bear a disproportionate share of the social and environmental costs of large dam projects without gaining the economic benefits.⁸⁷ Equally, as competition grows over the use of water resources all over the world, ensuring the rights of marginalised and vulnerable groups to access to water resources is becoming harder.

While not able to avert conflicts between interests and rights, or resolve difficult policy choices over the use of water resources, the RBA provides a useful framework in which to acknowledge and address these sensitive issues. It also helps to negotiate solutions and prevents inevitable grievances spilling over into destructive conflict.

Abiding by human rights principles ensures that the rights of all groups, in particular the rights of the most disadvantaged or vulnerable with respect to the water-related projects, are identified and addressed in the decision making process. They also ensure that all decisions over the use of shared water resources are made in a participatory, transparent and non-discriminatory way. Where trade-offs between rights have to be made, for example the right of farmers who will get water from dam projects against the rights of other farmers whose land will be submerged by the vast lakes that will be built, human rights standards specify the essential minimum level of water access that must be protected. Where rights are violated, inadvertently or otherwise, the RBA requires that mechanisms for accessible and effective redress are available.

The value of adopting a human rights-based approach in these difficult and sensitive situations was confirmed by the WCD. In its report on the environmental and social impacts of Dams released in 2002, the WCD states that given the significance of rights-related issues as well as the nature and magnitude of potential

⁸⁵ *Gutierrez, op.cit.* (note 55), p. 7.

⁸⁶ This case was documented by the IRN (International Rivers Network), *Trading Away The Future: The Mekong Power Grid*, 2004.

⁸⁷ The World Commission on Dams (WCD) was an independent body sponsored by the World Bank to review the performance of large dams and make recommendations for future planning of water and energy projects. In 2002 after four years of investigation into dam development projects, the WCD released a final report: *Dams & Development: A new framework for decision-making*. For further information on this report, see www.dams.org/docs/overview/wcd_overview.pdf.

risks for all parties concerned, human rights should be the fundamental reference point in any debate on dams. Most importantly, the WCD states that, in the future, not only dams but the entire development debate requires 'a rights based approach where recognition of rights and assessment of risks provides the basis for negotiated decisions on dams and their alternatives'.⁸⁸

3.3.4. An Integrated Approach to Water Development Projects

The RBA introduces 'good governance' issues into the development agenda, such as accountability, transparency, the elimination of corruption and democratic participation. This is particularly important for the water sector which requires effective governance at the local and national level. However, corruption and bad management are common at both these levels. Institution building is essential if programmes and policies are to achieve substantial and long-term results.

Moreover, analysing the problem of water through the human rights lens brings attention to other rights whose restriction may be preventing access to water services. For example, lack of land rights can prevent the realisation of the right to water for many of the urban poor living in slums and shanty towns who are denied access to most of the public services granted to more permanent residencies. The Orangi squatter settlement in Pakistan provides a clear example of this. When in 1970 the local municipality accepted that the squatter community of Orangi was there to stay this had a major effect on the inhabitants' water and sanitation situation. Previously, most of those in the settlements had only bucket latrines and open sewers, but once people were allowed to buy titles to their home sites they were given a sense of permanency and had an incentive to invest in improvements. After repeated requests to the municipal authorities failed to prompt action, the Orangi Pilot Project was set up to help residents develop a sanitation system themselves. A few years later virtually every home in Orangi had a flush toilet connected to an underground sewage line.⁸⁹

3.4. Challenges in Implementing the Right to Water Through the Human Rights-Based Approach

Many of the challenges associated with implementing the RBA, identified earlier in this article, are pertinent to the water sector. For instance, country context significantly determines the extent to which the RBA can successfully be applied.

Similarly, development organisations have found that integrating the principle of participation profoundly influences the way in which water-related projects are realised. Before communities can manage their systems and effectively participate at all stages of the development process, they require special skills, training and capacity building. But, the technicians and engineering professionals that traditionally run the water sector are not necessarily equipped to work on such issues as community organising, training and capacity building.⁹⁰

⁸⁸ *Idem.*

⁸⁹ Nigam and Sadig, *op.cit.* (note 67), p. 5.

⁹⁰ Calaguas, *op.cit.* (note 70), p. 15.

Furthermore, sensitive cultural factors such as gender equity, belief systems and local political, social and economic power structures make it hard to achieve broad-based participation in decision making and community management of shared water resources.⁹¹ The time constraints imposed on development projects can even make it impossible. WaterAid has found that it is tempting for hard pressed field staff to proceed with a scheduled community meeting, even though only the men have turned up or those women in attendance are sitting silently outside the discussion circle. In such circumstances, development practitioners need to make difficult choices: do they carry on with the activity so as to keep to project time-frames and risk compromising human rights principles, or re-schedule to ensure that equality is achieved? Vital to the success of the development programme is that the development practitioners are genuinely committed to the principles of equity and participation and are able to remain neutral facilitators of an equity approach. To work in these environments, staff need to learn negotiation skills, gender sensitivity and understanding of different lifestyles and cultures. WaterAid has found that 'there are no short-cuts to developing effective water projects with communities made up of diverse populations and with conflicting water needs. Such projects are expensive in time, money and human resources but they are essential investments in achieving sustainable outputs which benefit those people whose need is the greatest'.⁹²

It is also important to note that although General Comment No. 15 on the right to water requires that States as primary duty-bearers must regulate and monitor the privatisation of water services, most developing countries lack the requisite expertise and skills. Openness, transparency and strong public regulatory oversight, which are fundamental for effectively monitoring any privatisation process, are also often missing.

Moreover, General Comment No. 15 does not have the force of law of an international treaty. As such, it is not directly enforceable in courts and tribunals. This makes it hard for individuals to hold the State and private corporations accountable if they violate their right to water. Communities that have been 'emboldened' to claim their rights may find themselves powerless to change the *status quo*. This illustrates the importance of building the capacity of both the duty-bearer and the right-holder. Unless programming focuses on macro-level policy and institutional reform, such as the introduction of legislation governing the use of water resources, as much as micro or community level work, the right to water will go unrealised. However, the required engagement in institution building and reforming may be out of the scope of many water-related development projects.

Lastly, translating a legal principle and normative values into a model for development with a clarified methodology, analytical concepts and policy options, is a challenge. The right to water in itself does not answer the tough questions, such as the precise amount of water that each person is entitled to under the principle of 'basic requirements'. And it does not provide practical guidelines for dealing with controversial issues, such as cost recovery for water. As noted earlier, it can only go as far as providing a useful framework for addressing these challenges and encouraging all actors to collaborate on solutions.

⁹¹ WaterAid, *Social Conflict and Water; Lessons from North-East Tanzania, Discussion Paper*, WaterAid, London, 2000.

⁹² *Idem*.

There is an urgent need for the international community to meet its political commitments to the water sector and to begin addressing the worlds' water problems with renewed vigour. The RBA as a tool for emphasising government obligations and for drawing the world's attention to the state of water resources and management encourages this. It also provides a valuable approach to the implementation and management of water services. Experience documented by development practitioners shows that the RBA improves the overall accessibility, efficiency and sustainability of water-related development projects. It is argued that if adopted by governments, donor agencies and development NGOs, the RBA could make universal access to water for all a reality. Nigam and Rasheed of UNICEF affirm that: 'fresh water for all is achievable early in the next millennium if a rights-based approach is adopted by Governments with the necessary political will and the mobilisation and allocation of adequate financial resources'.⁹³

4. CONCLUSION

Examining the implications of the RBA through the realisation of the right to water, illustrates the tangible benefits that this approach brings to development practice. It improves the sustainability, efficiency and overall impact of water-related development projects.

Moreover, this example demonstrates how the RBA fills the crucial gap left by previous development approaches. Where these just treated the symptoms, avoiding the tough issues that often lie at the root of development problems, such as political will, corruption, discrimination and inequality, the RBA identifies these obstacles and tackles them directly. In strengthening institutions, consensus on norms, legal standards and political processes for enforcing human rights obligations, the RBA effects profound and long-term change.

Furthermore, integrating human rights into the development arena opens up a whole new agenda. The RBA goes beyond set material outcomes, such as meeting basic survival needs, to include qualitative values such as empowerment, equality, voice and human dignity. By emphasising the importance of the development process itself and by placing people at the centre of this process, the RBA gives precedence to ethics and humanity in development.

However, it can be argued that for the RBA to work effectively it needs the very conditions it is there to create. The objectives of rights-based programming are to create an environment of law, policy, practice and culture that enables the exercise and enforcement of all rights in all processes of development. Yet, organisations have found that when political and legal institutions are weak and cultural experience and rights awareness is absent, applying the RBA effectively and achieving results is difficult. This, however, does not condemn the RBA to failure. These challenges have eluded the traditional development approach. Consequently, the initial stages of RBA implementation will have to work to transcend this legacy. This will require co-operation, investment and time.

From this article it is clear that making the RBA operational is a considerable challenge. The RBA presents a complex and comprehensive approach to

⁹³ Nigam and Sadig, *op.cit.* (note 67), p. 16.

development, which introduces new methods, values and objectives. As such, it has proved hard to translate into practice.

This article identifies the core elements that make up the RBA and the basic principles needed for rights-based programming, as well as the challenges facing it, such as a clear set of guidelines for the implementation of this approach. Encouragingly, with development organisations increasingly taking the initiative to develop practical guidelines for the implementation of the RBA, human rights principles are becoming more operational and action orientated. As feedback from the field emerges conceptual clarity will follow.

Crucial for the successful institutionalisation of the RBA is that development organisations adhere to its core principles and accept their role as facilitators rather than executors of development projects; their task being to strengthen the capacity of duty-bearers to meet their international obligations and of right-holders to claim and exercise their rights effectively.

