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# Exploring Human Rights in Development

## A Rights-Based Analysis of the EU's Development Strategies

David Eduardo Nilsson

# Abstract

There is constant dispute on how – and even if – development policy should be formulated and implemented. This thesis focuses on the approach called the rights-based approach to development (RBA).. The aim is to explore the theoretical framework on RBA in order to understand the relationship and tension between human rights and development. Central themes of the RBA will then be applied to the EU's development strategies. The EU is one of the most important development actors in the world and its policies have huge impact on third countries. The importance of a coherent approach to human rights and development can thus not be stressed enough.

Compared to development actors like the World Bank, the EU makes frequent and explicit reference to human rights in the development strategies in question. However, this is not accompanied by a deeper rights-based presentation of development objectives in terms of claims for identified rights-holders. The thesis concludes that the EU's approach to human rights in development is incoherent and confused. This does not imply that the EU's human rights incorporation is meaningless, but rather that it does not fulfil the criteria of a rights-based approach to development.


*Key words*: rights-based development, EU, human rights, development

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# List of Abbreviations

| | |
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| ACP | Africa, the Caribbean and the Pacific |
| CEEC | Central and Eastern European Countries and |
| CESCR | Committee on Economic, Social and Cultural Rights |
| CSP | Country Strategy Paper |
| DfID | UK Department for International Development |
| EC | European Community |
| ECJ | European Court of Justice |
| EU | EU |
| ICCPR | International Covenant on Civil and Political Rights |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| LDC | Least Developed Country |
| LIC | Low-Income Country |
| LMIC | Low or Middle-Income Country |
| MDG | Millennium Development Goals |
| NGO | Non-Governmental Organisation |
| NIP | National Indicative Programme |
| OECD | Organisation for Economic Co-Operation and Development |
| OHCHR | Office of the High Commissioner for Human Rights |
| PRSP | Poverty Reduction Strategy Paper |
| RBA | Rights-Based Approach to Development |
| RBD | Rights-Based Development |
| RTD | Right to Development |
| UNDP | United Nations Development Programme |
| NIS | New Independent States of the former Soviet Unions |
| NSA | Non-State Actor |

# 1    Introduction

*My children were hungry and I told them the rice is cooking, until they fell asleep from hunger*

> *Poverty is lack of freedom, enslaved by crushing daily burden, by depression and fear of what the future will bring*

(World Bank, 2000)[1]

Arundhati Roy points out that 'there is no such thing as the "voiceless". There are only the deliberately silenced or the preferably unheard' (Arundhati Roy quoted in Tyler, 2003:199). The quotes above are two examples of testimonies from poor people around the world. They point to a sense of powerlessness and insecurity thus illuminating the multidimensionality of poverty.

It is a central assumption of this thesis that poverty needs to be understood as much more than low income. But what implications does this assumption have on development assistance? The rights-based approach to development (RBA/RBD) is one answer and also the choice of focus for the thesis in front of you.

It should be noted that the meaning of development and by which means it can be best achieved is frequently disputed. There are development experts who argue for the "trade not aid" approach, those who emphasise the importance of political conditionality when providing aid and those who advocate a multidimensional approach including environmental, gender and human rights concerns. Most importantly however, there are those without degrees or influence – those who are experts by experience.

## 1.1    Problem and Purpose

The underlying problem that guides this thesis is the unclear and debated relationship between human rights and development. Few scholars, development professionals or human rights advocates contest the interconnection between the two. It is rather the character of this relationship which is disputed. The purpose of this thesis is to clarify this relationship in the context of the world's most significant development actor – the European Union (EU).

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[1] From the project *Voices of the Poor* in which 60 000 poor people were interviewed globally.

Policy language can easily include empty references to human rights just to benefit from the moral capital that they contain. It is therefore important to see *how* human rights are integrated in development policies in order to prevent hollow inclusion without any practical implications. This can be done by investigating implementation in the field or by analysing the language and provisions of the policies themselves. The approach of this thesis is the latter.

The main question can be formulated as follows:

- *How does the European Union integrate human rights into development strategies?*

The thesis will not simply describe what the EU writes about human rights in its development policies. Instead it is the purpose to locate the EU's strategies within the theoretical framework that deals with human rights and development while tracing theoretical tensions and concerns in the strategies.

The breakthrough of RBA came in the late 1990s. Abstract approaches have been dominating the debate and this thesis is an attempt to apply theoretical considerations on concrete policy concerning specific countries and circumstances (see Alston & Robinson, 2005:3; Manzo, 2003:438).

## 1.1.1 Discussion on selection

The EU is selected because of its extraordinary importance as a development actor and promoter of human rights. The European Community's (EC) aid programme (not counting the member states) is the fifth largest in the world and constitute 10 percent of all aid distributed by OECD countries. The EU is also at the hub of its member states guiding the bilateral development cooperation between third countries and individual member states. Furthermore, the EU is particularly important to consider since its foreign policy rhetoric has been increasingly characterised by references to human rights (Crawford, 2001:7; Williams, 2004:4). In other words, the impact of the EU's development actions on developing countries is substantial. Moreover, the way that the EU itself handles human rights in external relations thus influences the perception of the Union and the way it can exercise influence on the international stage.

The EU's development framework is vast, but the main focus of this analysis is on the Country Strategy Papers (CSPs) and National Indicative Programmes (NIPs).[2] This is because of the inherent difficulty in alternative documents such as guidelines. General statements of intent are often characterised by simplistic content called for by the need to satisfy political demands (Middleton et al., 2001:9). The CSPs/NIPs are formulated with one particular state in mind and the

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[2] For a detailed introduction of the CSP and NIP, see chapter 3.

measures suggested are described in detail making them possible to analyse in a meaningful way.

## 1.2   Introducing Theory

There are differing opinions on the reasons for integrating human rights into development policies. For instance, the intrinsic rationale acknowledges that human rights integration is the morally or legally right thing to do while the instrumental rationale focuses on the function and outcomes of the rights-based approach and assumes that it fosters a better and more sustainable human development. The literature discusses questions like if it is possible to identify human rights as the means and development as the end or vice versa, if they in fact are mutually reinforcing, if they are mutually exclusive or if they, to a large extent, are the same thing?

The theoretical framework is based on previous research by development and human rights scholars as well as reports on RBA by international organisations and institutions like the World Bank and the Office of the High Commissioner for Human Rights (OHCHR).

## 1.3   Method

Alan Bryman's description of qualitative content analysis captures some of the key elements of the method used in this thesis. He describes the method as an analysis where the researcher searches for underlying themes in a material like official documents. The method does not specify the ways in which the themes should be identified, traced and illustrated leaving the researcher with several methodological options (Bryman, 2004:368). Defined in this way, this thesis can be described as a qualitative content analysis. More specifically, it is a textual analysis where different components of selected policies are identified and investigated (see Bergström & Boréus, 2000:19). Leaving labelling behind, I will now describe more explicitly describe how I will conduct my analysis.

The analysis focuses on the content of EU's development strategies and how they deal with the relationship between human rights and development. First, previous research on human rights and development is explored in order to establish a theoretical framework that will guide the subsequent analysis of the CSPs/NIPs. Contesting understandings of the connection between human rights and development will be investigated and different interpretations of a rights-based approach to development explored. Certain aspects and tensions central to these disputes will be highlighted serving as the goggles through which the development strategies will be viewed. The components of the CSPs/NIPs will then be compared with and located within the theoretical dimensions and debates.

Answers will be searched to subquestions like these: Is it possible to label the strategies as a rights-based approach to development? Do the strategies tell us anything about how the EU perceives the relationship between development and human rights? How does the EU choose priorities and make trade-offs among rights?

It should be kept in mind that the CSPs/NIPs are not meant to be exhaustive accounts of the development projects. Criticism to, for instance, unspecified provisions will thus be applied with awareness of the potential existence of complementary directives on the implementation level. It is acknowledged that the inclusion of such documents in the analysis could change the results significantly. However, documents more specific than the CSPs/NIPs have not been find. Furthermore, delimitations are necessary and if a completely fair image of the "rights-basedness" were to be provided of the EU's development cooperation with the countries in question, a thorough analysis of treaties, resolutions, guidelines, and agreements would be necessary. Needless to say, such an analysis is beyond the scope and limits of this thesis.

## 1.3.1  Material

It is the Country Strategy Papers and National Indicative Programmes themselves that will be analysed and not the implementation of them. A weakness of this approach can be perceived in that real life consequences of the policies are not assessed and that words without practical meaning risk being given excessive importance. However, investigating implementation with the above mentioned purpose is difficult since causality between certain strategy provisions and the protection or enforcement of human rights is complicated to identify. Moreover, the strategies will be critically explored in a manner making it possible to identify mere rhetorical incorporation of human rights.

If there is no policy, there is nothing to implement. Public policy, including development policy, sets out a course of action and determines methods of execution. Consequently, policy is central in the struggle to improve quality of life and to guarantee the enjoyment of rights for all persons (Diokno, 2004:17). In other words, policies are important and the strategies investigated cannot be reduced to means of public relations, but that they are crucial to how the projects are carried out.

Basic arguments from the field of discourse analysis can help motivate the focus on policies. In discourse analysis the distinction between idea and reality is blurred and language and action is intertwined. The language is not a mere reflection of reality, but it rather constructs reality (Bergström & Boréus, 2000:221f.).

The main part of the material used to establish the theoretical framework is secondary sources of academic nature, but it will also include material from other development and human rights actors. An account of the wider development community's contribution to the general understanding of human rights in development is important to providing a context in which the EU's strategies can

be understood. Moreover, the interdependence is significant between the EU and for example the World Bank, the OECD or individual member states' development agencies like the Department for International Development (DfID).

## 1.3.2  Delimitations

The analysis will focus on the CSPs/NIPs for Bangladesh, Georgia and Paraguay. It should be noted that these strategies are not to be compared with each other but are rather selected as examples to illustrate and increase our understanding of EU's development strategies. The choice of these particular countries is partly motivated by geographic concerns. I want to reduce the risk of coming to conclusions that are a consequence of a state's regional belonging following a wider cooperation agreement with the EC. For instance, if only choosing countries from Eastern Europe, any conclusion might be entirely dependent on the EC's agreements with its neighbouring region in particular. Related to this is the choice not to focus on any countries from Africa, the Caribbean and the Pacific (ACP). The ACP countries have had a privileged position in development co-operation for a long time. This is slowly changing along with the form of co-operation, making strategies towards these regions difficult to analyse. Moreover, development assistance to the ACP countries is heavily dependent on different bioregional agreements like the Cotonou Agreement.

These considerations are connected to my generalisation ambitions. The purpose is not to generalise the results of this analysis to the EU's general incorporation of human rights in development. The aim is to conduct an in depth analysis while at the same time choosing strategies that can be said to represent a wide selection of CSPs/NIPs.

The analysis will pay most attention to the parts of the CSPs/NIPs containing intervention areas, objectives and measures. This is as opposed to the parts that assess the current situation in the country or that specify potential obstacles to the achievement of the goals in the strategies. Since process is important from a rights-based perspective, the guidelines of how to draft CSPs/NIPs will also be reviewed.

The most important delimitation is the theoretical framework that will be used to analyse the development strategies. The selection of a few themes within the discourse on rights-based development makes the thesis focused and comprehensible.

## 1.3.3  Central concepts

The relationship between human rights, development, poverty reduction, good governance and economic growth is of a highly interdependent nature and distinctions are often blurred. Also the rights-based approach itself is interpreted differently by different scholars and organisations. It would therefore appear essential to define central concepts here to avoid conceptual confusion. However,

since the definitional issue is at the heart of the analysis such a discussion cannot be held this early. More specifically, since the thesis aims to investigate how the EU and different scholars understand the relationship between human rights and development – and consequently, the separate concepts as well – an introductory definitional discussion is of limited importance. Rather than being part of the underlying assumptions, definitions and understandings will be part of the result.

### 1.3.4  Outline

The following chapter will explore the literature on human rights and development. It starts off with a theoretical background explaining how the two got associated with each other. The main part of the chapter is aimed at presenting central tensions and issues in the relationship between development and human rights. Chapter 2 finishes off with a selection of a few of the most central themes that will guide the analysis of the development strategies. In the third chapter the CSPs/NIPs are analysed guided by the perspective presented in section 2.3. Finally, chapter 4 summarises the findings of the thesis and makes concluding remarks about the results connecting back to purpose and main question.

# 2    The Rights-Based Approach

The relationship between human rights and development will be the base of the thesis and it is through this perspective that the strategies will be analysed. The main aim of this chapter is to give a presentation of central theoretical considerations essential to the debate on the rights-based approach to development. The chapter concludes by identifying and selecting certain themes that will be referred to and explored in the subsequent analysis of the EU's development strategies.

## 2.1    Evolution of Linkage

There was a rise of interest in development issues in the 1960s with decolonisation. Poverty reduction was then given increased attention after the Cold War with the decreasing strategic priorities of the two blocs. It was fuelled by the severe political, economic and environmental consequences of poverty and made feasible through popular pressure through NGOs. The development enterprise is a more modern phenomenon than human rights but did immediately rise to become a higher priority with far more resources. In the 1990s, around $50 billion dollars were spent on development assistance while human rights received less than 1 percent of this amount. Human rights were perceived to be much more political, under constant dispute and consequently marginalised on the agenda. However, the rhetoric of human rights is undoubtedly more accepted and used today than ever. This seems to indicate a change of priorities, but of what importance? (Middleton et al., 2001:223; Sen, 2002:321; Uvin, 2004:12f.).

Development and human rights discourse were introduced to each other through the debate on the right to development (RTD), which was originally a Cold War related development dispute between those countries who advocated economic, social and cultural rights and those who focused exclusively on civil and political rights. The Vienna Declaration and the Right to Development Declaration are two examples of how human rights and development merged formally with the RTD assumption that development is a human right. The expansion of the poverty concept was also crucial in the strengthened connection between human rights and development. Poverty has gone through a conceptual expansion and is no longer just a reference to low incomes, but to a lack of capabilities. Poverty is multidimensional including isolation, vulnerability and powerlessness. Logically, poverty reduction needs to take all aspects of poverty into consideration (Uvin, 2004:123).With this expansion of the poverty concept the connection between poverty reduction and human rights have strengthened.

This is equally true for the rights in the ICESCR and those enshrined in the ICCPR (Nankani et al., 2005:475,479).

Human rights were not met without scepticism in the development community due to the perception that human rights are too political and sometimes unrealistic. One reason to this is that human rights advocates are generally reluctant to bargain about rights. This has been interpreted as making human rights integration unrealistic (see Robinson, 2005:34; Uvin, 2004:40).

## 2.2   Central Dimensions of the RBA

There is no single version of a rights-based approach to development. Maria Socorro Diokno identifies several human rights principles that should be included in right-based approaches, for instance accountability, transparency, participation, independent judiciary, non-discrimination, attention to vulnerable groups, good governance, universality, interdependence and indivisibility. Rights-based strategies should thus empower people and improve access to the development process (Diokno, 2004:5). Wenche Barth Eide and Uwe Kracht add that explicit reference to human rights is important (Eide & Kracht, 2005:23). For Osmani, the legal obligation is crucial (Osmani, 2005:121f.).

According to the OHCHR, a human rights-based approach to development identifies the entitlements of rights-holders and the obligations of duty-bearers while seeking to strengthen the capacities of both groups to claim their rights and meet their obligations (OHCHR, 2006:15).

Frankovits argues that development is rights-based if human rights guide "the manner in which it should be delivered, for the priorities that it should address, for the obligations for both donor and recipient governments and for the way that official development is evaluated" (Frankovits quoted in Marks, 2005:28).

Definitions of RBA often contain criteria relating to empowerment/participation and accountability through scrutiny and identification of obligations and duty-bearers. Additionally, a focus is often put on structural causes, discrimination. Finally, both the outcome and processes need to be informed by human rights (Alston, 2004:41).

### 2.2.1  Human rights as outcome or principle?

A human rights-based approach to development can be applied for different reasons. First, there is the intrinsic rationale which acknowledges that human rights integration is the morally or legally right thing to do. Second, the instrumental rationale focuses on the function and outcomes of the rights-based approach and assumes that it fosters a better and more sustainable human development (OHCRH, 2006:16). Both these views assume that human rights are to be a guiding principle of development. There are alternative understandings where human rights are viewed as the outcome of development. Human rights are

included in many poverty reduction outcomes (Nankani et al., 2005:481). This makes it easy for development actors to claim that human rights are a basic part of their development policies. For instance, the World Bank has been reluctant to talk explicitly about human rights. This has not prevented the institution from claiming that human rights are at the heart of its development assistance. The argument has been that human rights are implicitly promoted through the Bank's focus on education, health, nutrition, food security, housing, anti-corruption and gender equality (World Bank, 2003).

Similarly, Stewart and Wang investigate how Poverty Reduction Strategy Papers (PRSPs)[3] can improve human rights situations. They do this by analysing how the PRSPs contribute to empowerment and participation and to what extent they reduce poverty. If succeeding in achieving poverty reduction, Stewart and Wang suggest, the human rights situation is improved (Stewart and Wang, 2005:449). Human rights are thus seen to be achieved through development. The World Bank is generally dominated by a view that human rights are outcomes of development while, for example, the United Nations Development Programme (UNDP) argues that human rights are essential tools to achieving development (Manzo, 2003:438).

Diokno notes that human rights entail goals of development but not always the other way around. A rights-based approach must therefore make use of human rights principles when defining development objectives and human rights should inform the formulation and implementation of policies and laws dealing with development. They should be integrated throughout the entire development process (Diokno, 2004:4, 7).

Amartya Sen argues that rights and freedoms play a constitutive role in all kinds of development and that they are, consequently, parts of both means and ends of development. Sen further notes that the question of whether rights and freedoms drives development forward misses the crucial point that these freedoms are inescapable parts of development and their relevance do not need to be demonstrated through their contribution to GDP growth. The rights and freedoms do, however, contribute to economic growth (Sen, 2002:10,19f.,25). If development equals expansion of freedoms, also *rights-based* is a misleading concept. Rights and freedoms are then intrinsic parts of development and not the principles upon which development is based.

Similarly, in Peter Uvin's understanding of a rights-based approach to development the boundaries between human rights and development are not simply blurred but disappear. In the rights-based definition of development human rights are not integrated but inherent in development (Uvin, 2004:122).

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[3] Documents produced by loan takers to the World Bank and International Monetary Fund.

## 2.2.2  The R-word

Uvin argues that the assumption that development assistance inherently and automatically integrates economic, social and cultural rights – for instance through the funding of education or health services – is a misconception. A right is about a long-term guarantee and a set of structural claims protecting the most underprivileged in particular and consequently the right to food or health is not fulfilled simply by improving health care or food production. The fulfilment of a right is not an act of charity, but social arrangements need to be made to guarantee enjoyment of the right (Uvin, 2004:52f.). This is why it is important to mention the R-word as referred to by James Wolfensohn when speaking about the World Bank's stakeholders' reluctance to mentioning human rights (Wolfensohn, 2005:22). There has been a general fear that explicit reference to rights will raise calls for democracy and meaningful participation (Frankovits, 2002:11).

During recent years, there have been increased demand for integrating human rights in development assistance and some donors have chosen to react to this pressure by reformulating their terminology (Frankovits quoted in Uvin, 2004:50f.). According to Osmani, the essential idea of RBA is that policies and institutions chosen for achieving development should be based explicitly on human rights but Uvin fears that the reformulation of development terminology protects the status quo by simply suggesting that development projects automatically protect human rights. In this understanding the rights-based approach is reduced to a source of moral authority and political appeal that does not force the development agencies to act differently. (Osmani, 2005:112; Uvin, 2004:53).

In an analysis of the PRSPs Stewart and Wang concludes that the lack of explicit reference to human rights is problematic. They argue that this is not accidental but rather a strategy to escape the obligations implied by rights. The authors admit that a change in language might be possible but they suspect that this would be done in a way that would avoid any concrete change concerning the establishment of responsibilities. If this would be the case Stewart and Wang claim that this could even be counterproductive for human rights in reducing the power of the language of human rights (Stewart & Wang, 2005:469).

However, the importance of such a change of policy language should perhaps not be reduced to mere rhetoric. Interpreting it as a change of discourse it can redefine and transform norms, expectations, perceptions and preferences with concrete consequences in the long run (Uvin, 2004:51). It should also be remembered that "[t]he same language of rights that may be rhetorical fluff in one place may be words of extreme courage and radical change in another" (Hugo Slim quoted in Uvin, 2004:128).

Some examples of how development objectives could be transformed with the R-word should be presented. For instance, malnutrition could be perceived differently if referred to as a failure to ensure 'the fundamental right of everyone to be free from hunger' (ICESCR, art 11:2). The objective to improve primary education completion rates can make reference to article 14 of the ICESCR in which states are obligated to 'work out and adopt a detailed plan of action for the

progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all' (ICESCR, art 14). Access to clean water can instead be described in terms of the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health', (ICESCR, art 12:1). Falling infant mortality rates could be achieved if acknowledging that 'special protection should be accorded to mothers during a reasonable period before and after childbirth' (ICESCR, art. 10:2) (see Alston, 2004:31).

## 2.2.3  From charity to claims

The major benefits with a rights-based approach, Uvin suggests, is that it converts charity to claims changing the way we think about aid and that it changes the process and implementation of development even if the aims remain the same. A focus on claims transforms the beneficiaries to rights-holders it is a central element in promoting actual change. The fulfilment of the beneficiaries' needs is an obligation of no one, while claim-holders are subjects claiming established rights by established duty-bearers (Uvin, 2004:129).

A rights-based approach offers a framework by which problems like malnutrition or contamination of water are reanalyzed as violations and as such they cannot be as easily tolerated and measures to eliminate them cannot be as easily postponed. For instance, the right to education is not simply about buildings or text books. More importantly it is about developing a system paying attention to issues of discrimination seeking to ensure the enjoyment for all children regardless of where they live, if they are boys or girls etc (ibid:130).

A rights-based approach to development focuses on rights and obligations rather than growth rates and numbers. This makes it natural to look upon development issues from a perspective of exclusion and discrimination rather than seeing poverty "as a fact of nature or some original state everyone departs from" (ibid). The root causes of poverty are illuminated in the human rights framework where power structures are revealed and discrimination and denial of access to resources and opportunities are given legalistic and more precise definitions, thus enabling a better analysis of poverty and disadvantage (Diokno, 2004:9; Frankovits, 2002:12).

## 2.2.4  Accountability

The rights-based approach's focus on claims implies obligations, duty-bearers and mechanisms of accountability. Claims loose meaning if they are not connected to measures of accountability. Accountability is a central component of the rights-based approach illuminating the important distinction between claims and charity. However, according to Uvin accountability should not be defined to narrowly. Holding violators of human rights can also be interpreted as including

internalisation of norms or shaming leading to self-regulation (Uvin, 129,131,134).

Human rights scholars argue that each right includes a threefold obligation. A state must *respect* human rights, thus not itself violating them or interfering with the enjoyment of them. Moreover, the state must *protect* people against human rights violations by a third party. Finally, the state must take measures to *fulfil* the enjoyment of all human rights, particularly of those who cannot themselves satisfy their own basic needs. The latter can be divided into facilitating, providing and promoting human rights (Darrow, 2003:296; Osmani, 2005:117). In other words, human rights obligations are not fulfilled by simply not formulating policies that violate human rights. The enjoyment of human rights also involves the obligation to create circumstances in which rights and freedoms can be enjoyed (Diokno, 2004:8,18; OHCHR, 2006:2; Uvin, 2004:40). Uvin argues that these three categories of obligations can serve as a tool of human rights analysis applicable to development:

> The right to food, for example, is then about (a) abstaining from diminishing people's existing access to food, refraining from discriminating between people in their access to entitlements, and protecting people's capacity to continue providing themselves with food; (b) protecting people against those who would deprive them of their access to food; and (c) in last resort, providing food to those in need (and this provision is, of course, subject to the progressive clauses outlined above, meaning that this obligation depends on resource availability) (Uvin, 2004:40).

According to Uvin, the categories of obligations include legal, social as well as economic approaches to food and hunger issues and can thus be constructively adopted by the development community (ibid).

Rights-based development policies should also identify duty-bearers and their obligations. States are the main subject of international law, but also non-state actors are involved in public policy making and an expansion of duty-bearers, at least in the normative sense, has followed (Diokno, 2004:6,17; Uvin, 2004:14). From being considered a matter for the state exclusively, human rights are increasingly argued to be a responsibility of NGOs, multinational corporations and organisations as well (Uvin, 2004:14f.).

Human rights make development efforts more detailed and less arbitrary. They are of legal nature and are therefore legally enforceable. Included in the categories of obligations are also core duties from which there can be no derogation, thus contributing to an international minimum standard. Additionally, human rights can serve as a framework defining norms and limits on state and non-state actions. A human rights-based approach will thus lead to greater accountability of governments and make institutions more effective and equitable (Diokno, 2004:8f.).

## 2.2.5 Criticism

As already indicated, human rights have not been welcomed into development practice without reservations and disputes. Criticism against the RBA holds that documents claiming to be rights-based are often formulated in an abstract manner making them general and difficult to implement. For instance, participation that is a central part of RBA is often described too generally without any concrete implications for implementation. Participation needs to be specified and preferably connected to relevant civil and political rights. According to Alston, proponents of the RBA also tend to aim to high and seek to embrace too many dimensions and concerns. For instance, the identification of obligations and duty-bearers might be associated with serious difficulties. Establishing the government's role or to assess the extent to which the private sector or the international community are responsible to act is not easily done the context of complex development policy. Another example is the search and elimination of underlying, structural obstacles to the enjoyment of human rights (Alston, 2004:43,50).

Alston argues that there is a clear need to be selective and to make trade-offs. Claiming the importance of all human rights in all development strategies will lead to inflation of both rights and development goals. Alston wants to see a more realistic inclusion of human rights which also takes obstacles into account. Several circumstances in a countries political, economic, social and environmental situation might affect the possibility of ensuring human rights and achieving the goals of the strategies. He emphasises that neither of these suggestions are the same as arguing that certain human rights violations should be ignored. He calls for a contextual identification of priorities and not for fixed hierarchies of rights (ibid:47).

## 2.3 The RBA of this Thesis

My definition is not a normative one in the sense that it is necessarily the right way to go about when constructing development policy. Rather it is a selection of what I, taking the criticism into account, perceive to be the crucial elements of the rights-based approach to development.

First, where possible, the development goals should be described in terms of rights and make reference to international law ratified by the state in question. This is strongly connected to the importance of formulating the objectives as claims which is crucial to the identification of obligations and duty-bearers.

> Rights make it clear that violations are neither inevitable nor natural, but arise from deliberate decisions and policies. By demanding explanations and accountability, human rights expose the hidden priorities and structures behind violations and challenge the conditions that create and tolerate poverty (CESCR quoted in Uvin, 2004:130).

Consequently, a focus on equality and anti-discrimination is also central in the present rights-based analysis (see Marks, 2005:28; Osmani, 2005:121f.).

The R-word is essential in a credible rights-based development strategy, but the language of rights must go beyond rhetorical incorporation. Human rights should not be understood as an unproblematic package deal which can be applied to development policy and programmes simply and directly. Considerations need to be made on the various dimensions of human rights and the debates within the community (Uvin, 2004:16).

Secondly, an RBA needs to be just that – rights-*based.* Including a human rights section is not enough for a strategy to be considered rights-based. Human rights need to be present throughout the development process – from drafting to implementation. However, it is acknowledged that the relationship between human rights and development is complicated and cannot be reduced by concluding that one equals, implies or subsumes the other (ibid:52). Moreover, looking at human rights from a purely instrumental perspective might even be dangerous if this is interpreted as implying that they should only be applied when being productive in reaching other development goals.

Furthermore, the strategies need to be process orientated where the vulnerable people need to be empowered to be able to claim their own rights. Participation and empowerment is crucial in a rights-based approach and can be seen as an end in itself (Nankani et al., 2005:480,487; Plant, 2005:502; Stewart and Wang, 2005:449). The inclusion of the people affected by development programmes or actors advocating their interests is of outmost importance. The type of participation needs to go beyond mere consultation and include influence in defining targets and priorities of development. In other words the participation has to be mirrored in the content (Diokno, 2004:10; Plant 502).

Finally, a criteria not purely rights-based will be used in the analysis of the CSPs/NIPs and that is the extent to which they are realistic. The language needs to be specific enough to give concrete guidance. It is also important to make contextualised priorities in order to achieve anything at all. A selective rights-based approach – i.e. not including every single right – is not inconsistent with the idea of indivisibility of rights according to Nankani et al. (Nankani et al., 2005: 480).

# 3 The EU and RBA

In this chapter, Country Strategy Papers and National Indicative Programmes towards Bangladesh, Georgia and Paraguay will be analysed from a rights-based perspective. To contextualise the CSPs/NIPs, a note is first needed on the general framework of the EU's development and human rights policies. The chapter then continues with tracing the theoretical tensions and concerns, as introduced in chapter 2, in the strategies.

## 3.1 The General Framework

The European Union is often claimed to be the world's largest contributor of development assistance. This is based on calculations counting both the European Community and its individual member states. Independently of the remaining importance of the individual members, the EU's institutions are increasingly influencing and coordinating the member states' policies and the EC itself has been considered the fifth largest donor in the world. Moreover, it can be argued that development is of rising concern within the EU since, viewed as part of the total EU budget, development assistance has increased significantly over the last ten years (Bonaglia et al., 2006:176; Bretherton & Vogler, 2006:111).

The CSPs/NIPs are far from the only documents guiding the EU's development cooperation and human rights practice. The EU's aid is structured into several regional programmes. The EU is bound by contractual trade and aid agreements with third parties as well as sectoral programmes like food aid or emergency relief. Each of these regional programmes is guided by distinct financial, legal and administrative framework. The process of formulating the EU's development policy is highly complex and involves several different channels. Member states can proclaim new agendas at the European Council. Policy aims can be included in treaties providing a legal basis. These are usually not discussed in detail but rather on an abstract and general level serving as broad guidelines. Council resolutions are more specified. The Commission plays an important role in initiating these resolutions that have to be integrated into development agreements between the EC and the different regions.

Serious human rights violations in the 1970s made persistent exclusion of human rights concerns in development untenable particularly in countries like Uganda and Equatorial Guinea where the abuses took place "under the nose of the Community's development activities" (Williams, 2004:27). Human rights have increasingly been adopted as a political objective by the EU, not least through European Council meetings like in Luxembourg in 1991 where an important

resolution was passed promoting human rights and democracy as both objective and condition of development programmes, not only for the EC's own development actions but also for the member states. The resolution contained four main features: human rights, democracy, good governance and decreased military spendings. It promotes these elements with both carrots and sticks. While supporting human rights and democracy through financial incentives, the resolution also threatens to sanction violation of human rights (Crawford, 2001:53-56).

A verdict in the ECJ legally sanctioned the inclusion of human rights in development practice following an objection from Portugal concerning the incorporation of human rights clauses in a co-operation agreement with India. The ECJ referred to article 177 (2) of the EC Treaty when determining that human rights provisions could be included in development policy. The EC was also deemed authorised to suspend or terminate such agreements if violations of human rights should occur (Williams, 2004:35f.).

Rhetorically the EU has come a long way in the incorporation of human rights into its policies. However, despite being present in several statements and policy initiatives there is no single human rights policy of the EU. Moreover, there are still no human rights commission or a directorate-general focusing exclusively on human rights. This can be interpreted as an "institutional unwillingness to become possessed of an effective human rights structure" which can have serious consequences on the perception of the Union's human rights promotion in external relations. Andrew Williams even argues that the incoherence of the EU's approach to human rights makes effective action difficult if not impossible. Incoherence between the EU's approach to human rights in external and internal policies risks leading to a perception of hypocrisy when the EU talks about the universality and indivisibility of rights. If the norms that the EU promotes externally are not mirrored by internal approaches, the credibility of the Union as a global civilian power is undermined. The incoherence also produces an image of incompetence, the argument being that if the EU cannot adopt a fully-fledged internal human rights policy it most likely will fail in producing one externally (ibid:6-8).

This section has aimed to provide the reader with a wider image of the EU's development enterprise and human rights promotion. It is not meant to be exhaustive, but rather to contextualise the CSPs/NIPs by presenting a few examples that illuminate the complexity and interdependence of the EU's development and human rights regimes.

## 3.2   Introducing the CSP/NIP

The first Country Strategy Papers were drafted in 2001 and are thus relatively young policies. Today there are around 160 CSPs covering eight regions. The Commission is the main actor in preparing the CSPs/NIPs even though the member states exercise some influence through their embassies and in the

managing committees. More specifically, the Directorate-General of External Relations is responsible for development cooperation between the EC and Asia, Latin America, Eastern Europe and Central Asia, and the Balkans. The European Parliament needs to approve all development programmes, but it influence remains limited (Berlin & Resare, 2005:61,63, 71-75).

The new sets of CSPs range from 2007 to 2013. They were drafted with the ambition of making participation a more central theme. This was to be achieved through discussions with different stakeholders surrounding for example the focus of development assistance. The objectives in the CSP are further specified in the National Indicative Programmes that range from 2007-2010 (ibid:61f.)..

The drafting process usually takes between 12 and 18 months and involves several actors. First, the country's own priorities as set out in the PRSPs are analysed. A simultaneous assessment of the country's political, economic, social and environmental situation is also part of the first phase of the drafting process and a key element of all CSPs. The political situation should cover the human rights situation and present the obstacles to the respect, protection and promotion of human rights. It should be noted that fulfilment is not included here. The social situation should include the poverty situation which is stated to include underlying causes, trade, democracy and human rights (Common Framework on Country Strategy Papers, 2006:4-11: European Commission). This inclusion of human rights as part of the poverty situation implies a wide understanding of poverty also encapsulating the non-realisation of rights.

Also, the country's ratification status concerning international human rights conventions should be included as well as a section on potential risks to implementation (Common Framework on Country Strategy Papers, 2006:10).

Paraguay is categorised amongst the lower middle income countries (LMICs) with a per capita GNI of 746 – 2975 USD in 2001 and Bangladesh amongst the least developed countries (LDCs). Georgia belongs to the category of low income countries (LICs) with a per capita GNI of less than 745 USD and are also one of the Central and Eastern European Countries and New Indpendent States of the former Soviet Unions (CEECs/NISs). The CSPs/NIPs in focus are financed through the general Commission budget, which is the case for all development assistance except to the ACP countries. There is also a special methodology when evaluating performance and determining the needs of the ACP countries (Berlin & Resare, 2005:57,62,136-138).


## 3.3   Human Rights in the CSPs/NIPs


How does the EU understand human rights within its development regime? To what extent are development goals described as claims for identified rights-holders? In which ways do the CSPs/NIPs empower vulnerable people and promote participation? Originating from the exploration of RBA in chapter 2, these are examples of questions that will be answered by analysing the CSPs/NIPs towards Bangladesh, Georgia and Paraguay.

### 3.3.1 Defining human rights

Human rights are frequently presented as one of several concerns, mostly together with environment and gender issues (CSP/NIP for Paraguay:18). This does not necessarily imply that the latter issues are not understood to be part of human rights. It can very well be that the environment and gender concerns are parts of human rights that need to be emphasized. However, no level of abstraction is presented to confirm or deny this.

In the CSP for Bangladesh, good governance and human rights form one of three focal areas (CSP for Bangladesh:1). Good governance usually focuses on anti-corruption measures like accountability and institution-building. Such development goals are strongly related to rights enshrined in the ICCPR. In the context of the CSPs/NIPs in question however, it remains unclear whether good governance are seem to encapsulate human rights, if it is in fact part of human rights or if the two concepts are completely separate. One of the other two focal areas in the CSP for Bangladesh is human and social development (ibid). The section including human rights is thus separate from the area including human and social development, signaling an understanding of human rights as separate from concerns like education and empowerment. In the NIP for Bangladesh, the focal areas are broken down into specifics where human and social development includes efforts in the educational sectors and where human rights focus fighting human trafficking and on the safety of minorities, workers and human rights defenders (NIP for Bangladesh:3-5,10f.).

The NIP for Georgia is an example of where human rights are poorly specified. The democratisation and human rights section includes the "specific objective" to "ensure respect for human rights and fundamental freedoms, including in the economic and social sector" (NIP for Georgia:6). The section on human rights reaches its most specified level when identifying the media and freedom of expression as areas of particular importance (ibid).

### 3.3.2 Human rights as outcome or principle?

Human rights are rarely explicitly referred to as neither means nor ends of development. It is also difficult to determine whether they are considered to be an inherent part of development or if there is a norm to simply associate them with development and, if so, if this is done because of the intrinsic or instrumental value of human rights.

In the CSP for Paraguay, macroeconomic stability is to be established before making economic growth fair and sustainable. This could be interpreted as that economic development is the means and justice and rights the ends. In the same CSP environmental concerns are said to be crucial to improve the quality of life in Paraguay and consequently to ensure the population's potential for development (CSP/NIP for Paraguay:17f.). Also here, the unspecific language is a cause for concern. Several environmental issues are enshrined in the ICESCR, but so are

several factors often included in the vague expressions of 'quality of life' or 'human dignity'.

The CSP for Bangladesh proclaim that "[i]mproved governance, human rights and human security are central to the achievement of the MDGs, the delivery of pro-poor growth and, within this, to the efficiency of donor aid". Here, human rights are referred to as means of development. The CSP also states that social and economic development are to be enhanced by improving education and health care. Social development, education and health care can all be described in terms of rights signaling an understanding of human rights as both outcome and principle of development (CSP for Bangladesh:17f.).


## 3.3.3  The R-word

The CSPs frequently make explicit reference to the human rights. The manner in which this is done signals an understanding of development and human rights as separate phenomena. For instance, the response strategy to development challenges in Paraguay includes an emphasis on providing education to the most disadvantaged groups in particular, but no reference is made to discrimination or education as a human right (see CSP/NIP for Paraguay:17,20).

If the aims and means of development are not described as rights, it is difficult to identify if the EU perceives of human rights as the means of or ends to development. For example, the CSP for Paraguay notes that "improving education has maximum impact on social inclusion", but neither education nor social inclusion are discussed in terms of rights (ibid:17).

The CSP for Bangladesh contains objectives to improve literacy rates and primary education rates (CSP for Bangladesh:16). A rights-based development strategy would have described these objectives with reference to article 13 (2) of the ICESCR which states that '[p]rimary education shall be compulsory and available free to all' and that '[f]undamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education' (see Alston, 2004:31). In the Paraguayan CSP/NIP gender equality is sought (CSP/NIP for Paraguay:20). From a rights-based point of view, this objective would have benefited from a reference to article 2(2) and 3 of the ICESCR according to which '[s]tates … guarantee that the rights … will be exercised without discrimination of any kind as to […] sex' and 'undertake to ensure the equal right of men and women' (see Alston, 2004:31).

Food security is lifted as a central concern in the Bangladesh CSP and NIP (CSP for Bangladesh:1; NIP for Bangladesh:1). This is related to the right to food but is not referred to in that way. The CSP Paraguay, similarly, presents education and economy as its focal sectors without making reference to human rights. However, the CSP presents human rights as a cross-cutting concern that will be integrated and taken into account in all the EC's interventions in Paraguay (CSP/NIP for Paraguay:18). How this will be done is not specified.

The NIP for Paraguay sets out expected results on efforts aimed to improve the educational performances of girls and indigenous people, thus identifying rights-holders. However, the needs of these groups are nowhere discussed as rights. This reduces the development objectives to charity rather than making them to entitlements being effectively claimed by these rights-holders.

The CSP for Bangladesh presents the problem of lacking confidence in the judiciary and police brutality. One of the specific objectives of the CSP is to improve security and access to justice for the poor. Violence and discrimination against women and the extensive child labour are additional problems presented (CSP for Bangladesh:3f.,17). One of the good governance and human rights themes in the CSP Bangladesh is justice, security and human rights. The rights of minorities and not specified vulnerable groups are to be improved through the activities of the EC. Moreover, the EC will seek to increase the safety of human rights defenders. Finally, focus is put on ensuring labour rights and combatting human trafficking (NIP for Bangladesh:3-5,10f.). The Bangladeshi response strategy does talk about "actions in support of human rights particularly with regard to women and children's rights and to the rights of all minority groups in the country, including refugees and other vulnerable groups, including people with disabilities". Thus, the situation is presented as a problem of rights, examples of rights-holders are presented and measures suggested. But what does the CSP say about what rights the women, children and minority groups have? Labour rights are mentioned as one example, but other than that development goals are separate from human rights making it difficult to understand the implications of a commitment to improve the human rights situation (CSP for Bangladesh:18f.).

Connected to the issue of the R-word, a rights-based approach would talk about groups or individuals as rights-holders and not only beneficiaries of development. If means and ends of development are insufficiently recognised as rights, the beneficiaries are consequently not described as rights-holders. The rights-holders are not always adequately identified since the CSPs often limit the presentation of beneficiaries to "the most disadvantaged groups" (see CSP/NIP for Paraguay:17). The most disadvantaged groups must be specified to make considerable impact. Moreover, not only the most disadvantaged groups need to have the enjoyment of rights ensured.

The expected results presented in the NIP Paraguay make reference to the women and indigenous people as what can be interpreted as groups that ought to be prioritised in the area of education. Indicators to measure performance by are the number of girls and indigenous people attending and completing basic and middle school. Additionally, the need for reducing the disparities between rural, urban and suburban areas is stressed (ibid:20). The groups are nowhere referred to as rights-holders, which is not surprising since the needs are not discussed as rights.

Human rights in Bangladesh are to be supported through implementation of a regional peace accord and community empowerment measures. The security of the poor is of particular concern (CSP for Bangladesh:18f.). The connections between human rights and security along with empowerment of vulnerable groups

are important. However, poverty is lacking precise definition and consequently the poor are left unspecified.

The CSP for Georgia highlights the situation in the penitentiary and law enforcement system with reports of torture and poor living conditions in detention facilities. There is also a problem of what is described as "ethnic-motivated human rights violations" in certain regions of the country, but these violations are left unspecified (CSP for Georgia 13f.). Improving the human rights situation is included in one of the key objectives of the Georgian CSP together with strengthening democracy, good governance and the rule of law. These concepts are not specified further in the CSP and become even more ambiguous when considering other key objectives like the settlement of internal conflicts and cooperation on justice, freedom and security. Other priorities set out in the Georgian CSP and NIP are "[e]conomic and social reform, poverty reduction and sustainable development" and "[t]rade-related issues, market and regulatory reforms" (CSP for Georgia:20f.; NIP for Georgia:4).


## 3.3.4  Empowerment

The EU's member states and other development actors are consulted to increase the effectiveness of development assistance and to maximise work-sharing. The drafting process should also be open to third country governments and non-state actors (NSAs). It is said that the delegations should facilitate involvement of these actors and consider their views. A summary of this consultation process should be included in the CSP. However, consultation is not compulsory (with the exception of the ACP countries) (Common Framework on Strategy Papers, 2006:14; European Commission).

As the Common Framework on Country Strategy Papers sets out, the CSP and NIP of Bangladesh is annexed with a record of consultations during the drafting process. The PRSP has been taken into account and there is explicit reference to one meeting with the Secretary of the Economic Relations Department as an example on the consultation with the government of Bangladesh (Common Framework on Strategy Papers, 2006:24). The dialogue with civil society is of more importance to the empowerment of the people. There is a vague statement saying that the delegation keeps "close contact" with civil society and the organisations involved in implementing the EC's programmes. There is only explicit reference to one meeting concerning the CSP and NIP. Neither in this context are the civil society organisations specified ant the only comment made about the meeting is that the representatives "emphasized the need for attention to human rights, in particular gender issues" (NIP for Bangladesh:25).

The CSP and NIP states that the mid-term review will assess the extent to which the cooperation programme has succeeded. This will be done, it is said, by using certain performance criteria. These, however, are not specified. It further sets out that a participatory approach will be applied when determining contributions and that NSA participation will be promoted in the implementation

and monitoring of the projects (ibid:20). The question of what is included in the promotion of participation remains unanswered.

The annex of the CSP/NIP for Paraguay is more detailed and formalised consultation seems to have been more extensive with three meetings in different parts of the country. Around 150 people participated according to the registers and the representatives is described as qualified and representing a wide spectra of the civil society. The participants of the discussions are poorly specified and the few comments relating to this concerns the delegation or representatives from the Paraguayan authorities. The content of the discussions are categorised into priorities including education, economic integration, environment and improvement of the institutions (CSP/NIP for Paraguay:33f.).

The CSP consultation process concerning Georgia does not seem to have included any NSAs. The annex simply makes reference to correspondence with Georgian ministries and authorities (CSP for Georgia:28).

Thus it can be concluded that the CSPs/NIPs in focus largely fail to include civil society in the drafting process as recommended in the Common Framework. Where consultations have taken place such dialogue is vaguely described and neither of the CSPs/NIPs specify the representatives of civil society making it impossible to assess if consultation has been meaningful.

An assessment of empowerment must, however, also take into account the measures included in the strategies. An example of this is the objective in the CSP for Bangladesh to improve access to justice for the poor. That particular objective is further strengthened by identifying women and minorities as in particular need of this improved access and with specific examples as legal aid and the development of village courts (CSP for Bangladesh:19).

The promotion of participation of citizens and civil society organisations in decision-making is part of the specific objectives set out in the Georgian CSP/NIP, but there are no suggestions on how this should be achieved and with these organisations being left out of the drafting process of the strategy paper, the EC fails to set an example (NIP for Georgia:6).

In addition to the content with the explicit goal of empowerment there are other human rights measures, like improving the rights of women or indigenous people or ensuring the right to education, that of course also have an important effect on empowerment and possibilities of participation (see CSP for Paraguay:17-18).

Studies have suggested that civil society organisations, trade unions, and private sector groups are increasingly active in the process of drafting the PRSPs that the CSPs/NIPs are based on. However, rural representatives are often absent from the debates. The representation itself has been questioned meaning that some argue that the representatives do not in fact represent the poor people. In many cases, participation is limited in different ways failing to meet the key criteria of participation, i.e. shared decision making and "initiation and control by stakeholders" (Nankani et al., 2005:487ff.).

# 4 Conclusion

This thesis has explored the rights-based approaches to development and applied central dimensions of these on the EU's development strategies. It is acknowledged that all CSPs/NIPs cannot and should not encapsulate all elements of RBA.

With frequent reference and often prioritised positions of human rights in the CSPs/NIPs there is reason to assume that the EU considers human rights to be a crucial element of development co-operation. However, there are signals indicating that there is an understanding of human rights and development as separate objectives. For instance, development goals like gender equality or education are rarely described in the language of rights. Consequently, the importance of looking at development objectives as claims is not mirrored in the CSPs/NIPs.

Human rights are frequently put together with democratisation, good governance and the rule of law. Although being strongly interrelated, the interchangeable use of the terms makes it difficult to capture the EU's understanding of the relationship between human rights and development.

Whether or not the CSPs/NIPs have been drafted in line with the goals of empowerment and participation is hard to determine because of insufficient or non-specific information on the consultation process. The strategies themselves all contain measures that, if implemented, will mean improved participation, but this is not done with reference to empowerment. This might seem irrelevant, but has serious consequences for the way that development issues are perceived and solutions are formulated. Referring to education as empowerment and to gender equality in terms of anti-discrimination illuminates power structures and obstacles to development.

As indicated in the introduction, the results of this thesis are not to be generalised to other areas of the EU's development enterprise. The strategies in question, however, have illuminated a confused and incoherent understanding of the relationship between human rights and development. This can be easily avoided with more specific reference to rights and rights-holders as well as obligations and duty-bearers.

While incorporating human rights in a far more than rhetorical manner, the CSPs/NIPs are rights-*integrating* and have a long way to go to become rights-*based*.

Rights-based development must not become an empty concept, but needs to be guided by clear principles and goals. By signing up to abstract understandings of an interconnection between human rights and development, donor agencies can seek moral capital while remaining uncommitted to any obligation. Here, rights-based analyses can play a significant scrutinising role.

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