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“The rationale of implementing the human rights based approach towards aid effectiveness”

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LIST OF ACRONYMS:

AFRODAD – African Forum & Network & Debt & Development
CEE – Central-Eastern Europe
CEDAW – Convention on the Elimination of All Forms of Discrimination against Women
CRC – Convention on the Right of the Child
DAC – Development Assistance Committee (OECD)
DFID – Department for International Development
EU – European Union
GDP - Gross Domestic Product
GNI – Gross National Income
GNP – Gross National Product
HRBA – Human Rights Based Approach
ICPD - United Nations International Conference on Population and Development
ICCPR – International Covenant on Civil and Political Rights
ICESCR- International Covenant on Social Cultural and Economic Rights
IMF – International Monetary Fund
MCA - Millennium Challenge Account
MDG – Millenium Development Goals
NGO – Non-Governmental Organization
OHCHR – Office of the High Commissioner for Human Rights
ODA - Official Development Assistance
ODI – Overseas Development Institute
OECD - Organization for Economic Cooperation and Development
PD – Paris Declaration
PRS - Poverty Reduction Strategies
SIDA – Swedish International Development Agency
UDHR – Universal Declaration on Human Rights
UN – United Nations
UNHCHR - Office of the United Nations High Commissioner for Human Rights
UN GA – United Nations General Assembly
UNICEF - United Nations Children’s Fund
UNIFEM – United Nations Development Fund for Women
UNDP – United Nations Development Program
USA – United States of America
USAID - United States Agency for Foreign Assistance

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Source: Author's own project

The rationale of implementing the human rights based approach towards aid effectiveness

Chapter 1. Introduction

Living in a globalizing society poses enormous challenges for global actors. Socio-economic interdependency and competition for global resources especially in the advent of technology, rapid human migration and demographic issues requires international collective responsibilities. This is further complicated by asymmetrical power relationship that plays organizing role in the interaction between state actors, global institutions and individuals both at micro- and macro-level. If mutual coexistence is to be achieved using global aid flow as a mechanism, tolerance of the other and cooperation must be established. Historical trends indicate various difficulties in this global interaction, hindering harmonization of human coexistence. International system of nation-states is faced with political and cultural divisions, which sometime erupt into prolonged conflicts on the ethnic grounds, religious lines, territorial disputes and claims and financial interests. Utopian attempts in decades ago have failed. Although development aid has contributed to tangible results in improving a certain number of development goals, as health and primary education, additional efforts are needed. There is no single formula for an effective achieving of common well-being. However if wiser policy mechanisms are devised by global community the realization of such idealistic goal—economic equality and access to basic human needs for better living standard across the globe is possible. For these development mechanisms to be effective however, human rights based approach must be integrated in the process.

I. Development Aid, the genesis

Granting humans around the world an equal start, not only fulfills the moral idea of sharing, but also as James Wolfensohn claims - contributes to global

security.¹ These objectives have led various actors, to invest in development to secure peace, stability, better living conditions and a brighter future for the planet. The Conference in Bretton Woods in 1944 was a marking point for these efforts. Institutions created on the United Nations Monetary and Financial Conference (United Nations Reconstruction and Rebuilding Agency – UNRRA and Bank for Rebuilding and Development – the World Bank), followed by the unprecedented development campaign known as the Marschall Plan – fueled the first aid to countries destroyed during the WW II.

The improvement of life conditions in post-war Western Europe has proven, that an integrated strategy of investing in development undertaken by the government of the United States contributed to changing the epicentrum of conflict into a region of peace and prosperous cooperation. The since prevailing rule of law west from the „iron curtain” led to the primary goal of the Americans of stopping the spread of communism. The wealthy countries in the West of the continent became America’s natural allies in the cold war and the iron curtain its long lasting demarcation line. The proportionally opposite economic reality in countries under the communistic rule have shown the political dimension of aid flows.

The shift of wealth to rebuilt western countries has brought new donors in the aid agenda. The process of decolonisation has much contributed to forming of new beneficiaries. The multicplicity of targets through the newly created states showed the urge for establishing an integrated development aid strategy. The effort has been undertaken on the international level, as well as on the national slate. The OEEC’s aid assistance consultation forum - Development Assistance Group was transformed into an organized donor entity - Development Assistance Committee², with a mandate to facilitate the development aid of its members. At the same time the World Bank „set up the International Development Association (IDA), with an initial subscription of \$900 million to provide very soft loans to poorer developing countries.”³ Followingly the UN GA launched the development decade and urged the richest countries to donate 0,7% of their GDP to the development assistance. Several states have introduced their agencies for bilateral development assistance.

¹ Former president of the World Bank, statement before the Monterrey Conference in 2002, *Finance and Economics: Help in the right places; Aid Effectiveness*” *The Economist*, 16 March 2002

² Further referred to as DAC

³ Führer, *A history of the development assistance committee and ...* p. 12

The governments of Sweden, Canada, Kuwait, France, USA, Japan, Switzerland and Germany have created entities responsible for gathering and distributing aid.

Until today, as primarily assumed, the foreign aid not only fulfills its role of supporting the poorer states, but also serves as a tool in international politics. Rich countries tend to give preference to fuel the development of states, in the region of their interest and that way steer various actions of the beneficiaries under their agenda.

For the beneficiaries - it is an incentive to reach to the requirements to acquire help, an effective motor for changes towards development. Financial support incrimates perfectly in the external negotiations' „sticks and carrots” concept for the conflicted regions in the strive for peace. Meanwhile, for the donor countries, foreign aid has grown to become an obligation, as numerous treaties and declarations proclaimed „investing in development” an international duty⁴, repeated in Monterrey Mexico⁵, finally in the Millennium Declaration and the Millennium Development Goals.

II. The ineffectiveness of development aid

Despite the large amounts of money (104 billion in US dollars⁶ in 2006), organizational effort and staff involved, there is much recent concern over the quality of aid assistance. The experience shows numerous cases, in which the aid has failed to provide the assumed goals. According to Michael Edwards, aid is not being directed properly – „The proportion going to the poorest parts of the world continues to fall. Less is being spent on aid for infrastructure and technical assistance”⁷. The strategies and policies governing the development effort of the major aid actors including the World Bank and the IMF are insufficient and have affected the poorer and poorest countries disastrously. This is illustrated by the example of Argentina, where huge economic crisis was caused by the IMF policies, which were not adjusted to the given environment and led to the withdrawal of the investors from the country. Prof. Stieglitz argues, that “the (IMF’s) Country Assistance Strategy turned

⁴ UN GA Resolution 2626 (XXV), § 43, November 19, 1970, A/RES/35/56, § 20, 24, December 5, 1980; UN GA Resolution A/RES/45/199, § 17, 40, December 21, 1990, mentioned on the Earth Summit in Rio De Janeiro 1992, World Summit for Social Development in Copenhagen in 1995 and World Summit on Sustainable Development in Johannesburg in 2002.

⁵ A/CONF-198/11

⁶ www.oecd.org/document/17/0,2340,en_2649_33721_38341265_1_1_1_1,00.html

⁷ M. Edwards *Future positive*, p. 42

out to be a kiss of death”⁸ Aid agencies policies have led to grave losses on the national level of the beneficiary states, as the resources fueled have rarely left the capital’s officials. Privatization in his words is “barbarization,” proving the loss of resources over the machina of beaureaucracy and lack of accountability of top beneficiaries. Even the “good-will” but too dispersed disbursement system causes losses upon final delivery.

There is another aspect, which avails the failure of current aid assistance, crucial in the assessment of this thesis – the human aspect. As the ineffectiveness of aid has not only a disastrous effect on the poor country’s economic situation, but also jeopardizes the basic human rights of the inhabitants. Nations caught in what Jeffrey Sachs labels as “poverty trap”⁹ cannot grant their inhabitants the basic facilities and therewith are condemned to fail their social and cultural obligations towards individuals. From this point of view, the development aid fails, when the resources don’t reach the vulnerable, the women, the indigenou, the ones, who need it most. This perception requires placing the human being at the core of the development dispute, as only the actual improvement of well-being of individuals can be a scale of the effectiveness of aid. The International Community has taken several attempts to include the development into the catalogue of the human rights.

III. Development as a human right

“Development is the growth of possibilities of choices people make. (...) These include access to knowledge, better nutrition and healthcare, security from crime, abuse and war, political and cultural freedom, a felling of engagement with social life, and things as simple as time for leisure and family life. Development aims at creating an environment allowing people live a long, healthy and creative life”.¹⁰ This definition contains reference to numerous human rights encapsulated in the international treaties.

⁸ T J S George, *Hating America: Did World Bank beget Osama?*

⁹ Jeffrey Sachs *The End of Powerty*, the Powerty trap, encapsulates an idea of vicious circle-the countries are poor, because they lack basic necessities of health, infrastructure and education and because they are poor they cannot invest in the basic necessities in the scale to proceed with development

¹⁰ Dr Mahbug ul Hag “Human Development Report 2004”, issued by UNDP, NY – at: <http://hdr.undp.org/hd/>

The right to education is entailed in the Universal Declaration of Human Rights (art. 26). Following in the International Covenant on Economic, Social and Cultural Rights, (ICESCR) (art. 13) as well as in the Convention on the Rights of the Child (CRC) (art. 24)

The right to food is present in the ICESCR – art. 11 (1), (2). The right to an appropriate healthcare is contained in art. 12 ICESCR. The right of security and freedom of a person is contained in art. 9 International Covenant on Civil and Political Rights (ICCPR). The engagement with social life appears followingly in numerous provisions along the ICESCR (art.6 – art. 15)

The development is also a collective motion for a number of provisions within the human rights law. The International Community has taken several codification attempts to apprehend the development itself as a human right.

Already in 1968, the conference in Teheran resulted in proclamation of the interrelation between human rights and development: “the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development”¹¹. Furthermore, the resolution of the Commission on Human Rights¹². recognized the development itself as a human right. It started the rhetoric of the third generation of rights¹³ (along with environment, humanitarian assistance, peace, communication, and common heritage). However the motion of the third generation of rights has remained a mere academic terminology, development itself remained to play an important role in the further debate. As such, development has been placed in a number of further documents confirming its ties with human rights. As significant in this matter appeared the UN General Assembly’s Declaration on the Right to Development from 1986¹⁴. It referred to the previous – development related codification effort of the UN and stated profoundly, 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

¹¹ The Proclamation of Teheran, A/CONF.32/41

¹² Commission on Human Rights res. 4 (XXXIII) (1977)

¹³ following the selected literature – 1st generation – rights contained in the ICCPR, 2nd generation – rights contained in ICESCR

¹⁴ A/RES/41/128 (1986)

fully realized“. Finally The 1993 Vienna Declaration and Programme of Action¹⁵ called the Right to development “a universal and inalienable right and an integral part of fundamental human rights”. The over thirty years debate about the Development as a right has resulted in integrating it into the mandate of the High Commissioner of Human Rights, when the General Assembly added upon appointment into his responsibilities the promotion and protection of the right to development.¹⁶ The above named instruments refer to the development as a right literally.

There is also a number of actions, which omit the direct wording and resist on the conclusive interrelation between the development and human rights. In this dispute the development is perceived as the collection of social, economic and cultural rights. Such indirect recognition of development as a basic human right has been stated and regularly confirmed by the appearance in further debates and conferences of the UN General Assembly and the Commission of Human Rights. Mrs. Mary Robinson refers to further steps of the international community towards translating the development into the human rights terminology: „The UN Commission on Human Rights appointed an independent expert on the right to development (...). Kofi Annan asked the UN agencies and programmes, including the UNDP in 1997, to mainstream human rights throughout the UN system. Some of the UN key bodies included human rights within their mandates and started to integrate them in their programming.¹⁷ Finally the United Nations’ major Programme toward Development – the Millennium Declaration¹⁸. It is controversial whether this document refers to human rights whilst setting its goals:

1. Eradicate extreme poverty and hunger
2. Achieve universal primary education
3. Promote gender equality and empower women
4. Reduce child mortality
5. Improve maternal health
6. Combat HIV/AIDS, malaria and other diseases
7. Ensure environmental sustainability
8. Develop a global partnership for development.

¹⁵ UN Doc. A/CONF.157/23 (1993)

¹⁶ G.A. Res. 50/214, U.N. Doc. A/50/214 (1995)

¹⁷ Mary Robinson in Human Rights and Development towards mutual reinforcement, p. 29

¹⁸ UN Millennium Declaration A/55/L.2

None of the statements of the Declaration contains application of human rights *per se*, moreover as Prof. Nelston argues it uses „the language, which appealing to the donor audience, avoids the reference to human rights”¹⁹. Reading into the Millenium Declaration must awake the conclusion of its weak legal appearance and a declaration’s natural lack of monitoring and redress procedures. The „soft” form of guaranties its broad recognition by the actors of the International Community. Professor Nelston’s approach toward the MDGs is contested by Prof. Orwolo. He claims, that this document is prominent in the rights perspective matter, as „it summarizes most of the Conventions, Treaties and Summit recommendations by the United Nations and its specialized agencies since the Declaration on Human Rights in 1948 and the MDGs are predicated on the assumption that development process in all nations of the world will derive impetus from the human rights principles”²⁰. He also takes an effort to translate the eight Millenium Declaration Goals into corresponding Human Rights: „Each of the MDGs aims to fulfill a particular civil, economic, or social right” –

Millenium Development Goals	Human Rights Provisions
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¹⁹ P. Nelston *Human rights...* p. 1

²⁰ O. Arowolo, Achieving the MDGs with equity: need for the Human Rights Based Approach uaps2007.princeton.edu/download.aspx?submissionId=70599

Goal 1 – eradicate extreme hunger	The right to food
Goal 2 – achieving universal primary education	The right to education
Goal 3 - gender equality and empowerment of women	The right to non-discrimination
Goal 4 – reduce child mortality	The right to life
Goal 5 – improving maternal health	The right to health
Goal 6 - combating HIV/AIDS, malaria	The right to health
Goal 7 – ensuring environmental sustainability	The right to clean and healthy environment
Goal 8 – develop a global partnership for development	Linked to art. 2.1 ICESCR.

Table 1. Human Rights Definition of the MDGs

Source: O. Arowolo, Achieving the MDGs with equity: need for the Human Rights Based Approach

Yet, the MDGs – once achieved correspond with the enjoyment of the basic human rights. The approach offered by professor Orwolo is to be followed, as the Millenium Declaration explicitly does not express the motioned promotion and protection of human rights, it is however to exist paralelly to the human rights framework as a roadmap to their achievement. Therefore, the MDGs must be perceived through the human rights lenses with the inclusion of human rights as the targeted effect and the application of human rights principles upon execution:

Human Rights Standards – MDG Outcome	Human Rights Principles - MDG Process
1. Eradicate extreme poverty and hunger	• Universality and indivisibility
2. Achieve universal primary education	• Equality and non-discrimination
3. Promote gender equality and empower women	• Inclusive participation
4. Reduce child mortality	• Transparency
5. Improve maternal health	• Accountability
6. Combat HIV/AIDS, malaria and other diseases	• The rule of law
7. Ensure environmental sustainability	• Sustainability
8. Develop a global partnership for development	• Freedoms, Harmony and Tolerance

Table 2. Millenium Declaration Processes and Standards – goals vs. HR principles

Source: *O. Orwolo Achieving the MDGs with equity: need for the Human Rights Based Approach*

The Millenium Declaration is a document defining the effort to enhance the development in countries within the project. The tables above picture apprehension of the set goals from the human rights perspective. This human rights perception is to be followed in the below examination.

IV. Scope of the thesis

The goal of this assessment is to analyse, to what an extend mainstreaming of the human rights principles and legal solutions – the human rights based approach can have on the level and quality of development programming undertaken within the International Community.

It notices the weaknesses of present aid delivery system and recognizes a possible solution in basing development strategies on the already established, well organized and universally acknowledged human rights law. Subsequently it verifies the various aspects of the effectiveness of aid and argues the contribution of the HRBA to its advancement. Finally, the examination serves a conclusion, that for various economic, political and social reasons, the development effort has been conducted, excluding the reference to the human rights issues and bypassing the advantages of the application of the human rights law upon it. Finally it recommends a review of the existing legal instruments – human rights treaties and conventions and recent operational initiatives of the donor states (Paris Declaration, OECD Action Oriented Policy Paper) and establishment of an additional document combining them into a human rights based approach to development programming.

Arguing the urge of applying the HRBA, its limitation in form of contrary political interests and expectations has to be taken into consideration. However, the actions within the international community ought to be subdued to the rule of law and each approach toward development strategies based on law, international human rights law for this matter is superior to the ones driven by the interstate politics.

Chapter 2. Human Rights-Based Approach²¹ to International Development Programming

I. Definition of the HRBA

According to Mary Robinson, „a rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. The rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development. The norms and standards are those contained in the wealth of international treaties and declarations“²². As for the legal documents providing the conceptual framework, the former High Commissioner for Human Rights names the core – Universal Declaration of Human Rights along with the two Covenants – ICCPR and ICESCR. The Overseas Development Institute (ODI) adds further five treaties: International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, CRC, International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. According to M. Foresti, D. Booth and T.O’Neil this catalogue of the seven core international human rights treaties constitute „one of the most complete frameworks available to the international community (today, all UN member states have ratified at least one of these human rights treaties and 80% have ratified four or more) - for assessing development performance, providing universally applicable standards underpinning its claims fairness, legitimacy and objectivity“²³. The principles, which the human rights framework rest on are: „universality, inalienability, indivisibility, interdependence, inter-relatedness, equality, non-discrimination, participation, inclusion, accountability, rule of law“²⁴. „These principles provide standards, under which governments, authority figures and the people are expected to act. They

²¹ Hereafter referred to as HRBA

²² P.Alston, M. Robinson *Human Rights and Development*, p.38

²³ M. Foresti, D. Booth, T.O’Neil *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration*, p.8

²⁴ DCD/DAC(2007)15/FINAL p. 7

include guidance for such fundamental development activities as: health, education, food security and nutrition and housing.”²⁵

Having considered the essence of the HRBA, the ground for its application within the International Community must be examined.

II. Legal Basis for the Human Rights Based Approach

The initiative to perceive the development effort through human rights lenses doesn't rest on a specific legal entitlement within the International Community. Several UN Treaty Bodies applied it due to the recommendation flowing from the Secretary General's report entitled "Strengthening of the United Nations: an agenda for further change"²⁶. The therewith established „Action 2 Initiative, calls for joint UN action to strengthen human rights related actions at the country level"²⁷. As a response to this call of the SG, an Action 2 plan of Action and work plan was adopted. The Action 2 initiative doesn't embody any legal obligation nor provides a redress mechanism. It constitutes merely a strategy for the enhancement of the development programming, which the treaty bodies can adhere to voluntarily. In consequence, many bilateral and multilateral agencies, including the UN Development Program (UNDP), the World Health Organization (WHO), and the United Nations Children's Fund (UNICEF) have started to implement the rights based approach to their works. „WHO has published a series of papers on health and human rights: *Twenty Five Questions and Answers on Health and Human Rights* (2002), *WHO's Contribution to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Health and Freedom from Discrimination* (2001)²⁸

The UNICEF defined the human rights based approach as being „mindful in the development work of the basic principles of human rights that have been universally recognized and which underpin both CRC and CEDAW (...) it calls for more inherently integrated, cross sectoral and decentralized activities and for participatory approaches recognizing that those they are trying to help are central actors in the

²⁵ O. Arowolo, Achieving the MDGs with equity: need for the Human Rights Based Approach uaps2007.princeton.edu/download.aspx?submissionId=70599

²⁶ A/57/387

²⁷ <http://www.un.org/events/action2/>

²⁸ P.Alston, M. Robinson *Human Rights and Development*, p.29

development process.²⁹ On the operational level the effort has been undertaken to reform national laws to conform with the CRC. It led many UNICEF country offices to promote policy and institutional reform to establish an environment, where children's rights would be guaranteed and standards to which duty-bearers would be held accountable. „In countries where laws, policies and institutions are often less well developed, country offices have developed community capacity to demand and fulfill children's rights – while at the same time exposing state-level duty-bearers to human rights principles and the policies required to guarantee them.³⁰”

The bilateral agencies are not far behind. The Swedish International Development Agency (Sida) defined „the rights based approach as the consideration of people's economic, cultural, civil, political and social rights in all aspects of the development process.³¹” According to the 2007 report of the Swedish Government – development goals are to be achieved by „a rights perspective, which means that human rights must form a basis for the measures undertaken³²” This reflects in the goals intended by Sida, which are primarily the activities to promote human rights. The Swedish Helsinki Committee for Human Rights is implementing projects related to media and the rule of law, by supporting 30 NGOs and local media outlets in Serbia and Montenegro.³³ This contributes to the promotion of human rights from the outcome perspective. The rights based approach is also visible in the agency's programs upon execution. Sida bases its projects on the principles of inclusion, non-discrimination and participation. The tripolar cooperation with the government, private sector and civil society allows the disadvantaged „to gain power, safeguard their livelihoods and increase their choices³⁴ – therefore - execute the human rights principals enlisted above.

Finally, the British Department for International Development (DFID) released a presentation of its strategies to achieve the international development target of

²⁹ *A Human Rights Approach to UNICEF: programming for women and children*, April 1998

³⁰ OECD, *Integrating Human Rights into Development*, p. 106

³¹ Sida in OHCHR Asia Pacific Human Rights Roundtable No.1: A rights based approach to development October 2002

³² Ministry of Foreign Affairs Sweden, *Strategy for multilateral development cooperation* 30.03.07

³³ www.sida.se/sida/jsp/sida.jsp?d=118&a=3567&language=en_US&searchWords=righths

³⁴ http://www.sida.se/sida/jsp/sida.jsp?d=118&a=32068&language=en_US

„Realizing human rights for poor people“³⁵. It notes, that the elimination of poverty can only be achieved through the engagement of poor people in the development process, which affects their lives. The UK Agency brings forth the empowerment aspect of the HRBA, „which allows people to make their own decisions rather than being the passive objects of choices made on their behalf“³⁶. This approach exhausts the basic premise of the human rights implication underlined by the former HCHR: „that at the heart of a human rights approach must be the legal character of the international treaties, that creates rights and duties“³⁷. This legal origination of the HRBA is a crucial aspect upon its application. The rights perspective implies the empowerment of the individuals and their endowment with the right to claim the development assistance declared by international agreements from the government or other superior entity. The specification of the existence of a bipolar relation between the targeted beneficiaries and donors of the development assistance as a legal one is the first step in the practical application of the discussed Human Rights Based Approach.

III. Steps of application of the Human Rights Based Approach

1. identification of right holders and duty bearers

The first of the four stages in the consideration upon the application of the HRBA into development programming, consists the relation between a given right and a specific duty of a particular agent for the realization of this right – the duty bearer. This relation is a projection of every interdependences between the parties to a contract. The development assistance consists of a contract between the donor agencies, delivering the service and the government of a beneficiary state for further disbursement of the resources. The deliberation upon the specification of the parties to this legal relation requires the insertion of the human aspect of the development assistance. Hence the duty bearer side is assigned to the government of the beneficiary state, the party receiving the entitlement to claim the appropriate service

³⁵ DFID, *Realising Human Rights for Poor People*, 2000, at www.dfid.gov.uk/pubs/files/tsphuman.pdf

³⁶ DFID, at: <http://www.poline.org/docs/1385/153618.html>

³⁷ M. Robinson, *Bridging the gap between Human Rights and Development: From normative principles to operational relevance*

is the actual target of the development aid – the individuals, the vulnerable whose standard of living is to be improved by the development effort. Their identification requires the examination of the citizens' situation beyond the capital. Following the HRBA, it can be determined due to denial of their basic rights. The human rights provisions serve hereby as an indicator, on which the urge of aid delivery can be measured. Depending on a given beneficiary state's situation it can be the violation of CEDAW, CRC or broadly – ICESCR. The vulnerability is often indicated by the poverty line. The application of the human rights based approach not only places the human aspect at the heart of the consideration, but also provides an indispensable legal asset to this consideration. Determining, that the existing interrelation between the targeted individuals and the aid provider is a legal one. Without the HRBA, as Amartya Sen notices, „all the objectives contained in the concept of development are merely freedoms, not rights“³⁸. On the example provided by the Office of the High Commissioner for Human Rights whilst translating the poverty reduction into the right to food: „the rationale of poverty reduction no longer derives merely from the fact that the poor have needs but also from the fact that they have rights – entitlements that give rise to legal obligations on the part of others. Poverty reduction then becomes more than charity, more than a moral obligation – it becomes a legal obligation“³⁹. To reach the correspondence between the right holders and duty bearers, a legal element is required – accountability. Specifying the subjects of the development effort, naming their effective rights, which the opposite side, duty bearers are accountable for fulfilling, is the first step in applying the HRBA to the development assistance. Prof. Orwolo identifies two subsequent analysis processes.

2. Causality analysis

The determination of the groups of individuals to be targeted by development assistance is to be followed by the exhaustive analysis, aiming at identifying the principle factors and processes affecting realization of people's human rights. The recognition of the violation, denial, non-realization, failure to protect or omittance must proceed with an analysis of the possible causes of this state. The UNDP provides an examination method based on the three questions:

³⁸ A. Sen, *Development as freedom*, p. 230

³⁹ <http://www.unhcr.ch/development/povertyfinal.html>

- a) What rights are affected?
- b) In what way?
- c) Why are they affected?

Such approach to the given analysis shows its complex nature, because „the causes of a problem may be different at the immediate and underlying levels, the basic causes are often the same; for example lack of capacity, form of social organisation, gender discrimination etc“⁴⁰. On the example of poverty, Prof. Orwolo identifies all the major causes at immediate and underlying levels; the state of each variable (fertility, mortality, poverty, hunger, etc.) is assessed (measured or estimated)⁴¹. According to the above questions, the assessment from the human rights perspective proceeds as follows:

- a) Poverty encapsulates the denial of the ICESCR rights: to food (art. 11 I, II,), social security, (art. 9), health (art. 12), adequate standard of living (art. 11).
- b) In case of poverty, these rights are omitted, denied or mistreated.
- c) They are affected due to weak governance in the given state, mismanagement of funds, poor democracy standards. The reason for poverty may depend on the overall economic situation, armed conflict or environmental catastrophe.

The third question, constitutes the core ground of the causality analysis. Hereby a certain selectivity is required, as not all possible causes and mechanisms given in a society are to be included. The process is undertaken in the following stages:

- the relationship between the ultimate outcome and the immediate causes, second
- the relationship between immediate and underlying causes and last
- the relationship between underlying and basic causes.

An exemplary analysis, including the various levels of causes, has been conducted on the occurrence of the limited participation of women in political processes, by the joint workshop of the government of Namibia and the UN country team in 2004.

aa) As its immediate cause the following issues were identified:

- Traditional values,
- Politics of interest mediation,
- Restrictive electoral system,
- Multiple roles of women in the society.

bb) Underlying causes:

⁴⁰ UNDP, Applying HRBA to Development Cooperation and Programming, p. 40

⁴¹ O.Orwolo Achieving the MDGs with equity: need for the Human Rights Based Approach p. 12 at: uaps2007.princeton.edu/download.aspx?submissionId=70599

- Resistance to change in the pattern of gender roles and relations,
- Lack of empowerment schemes,
- „structure” of power,
- institutional capacity of political actors or groups,
- limited constituencies.

cc) Root causes:

- inadequate education,
- limited capacity of political actors/groups,
- constitutional provisions⁴².

The given example pictures, the layout of the causality chain. „Immediate causes determine the current status of the problem. Underlying causes are often the consequence of laws, policies and availability of resources. Root causes reveal conditions that require long-term interventions in order to change societal attitudes and behaviors at different levels.”⁴³

The analysis needs to include a broad spectrum of perceptions. Therefore the study should be based on the principles of affirmative action as it requires participation of representatives of various groups in the society, also those traditionally marginalized. It is essential, that the analysis is undertaken on the national level and taking into consideration the internal issues, as only this way the causality analysis serves as an adequate source for the further application of the HRBA.

3. Capacity analysis

The following step focuses on examining the extend of the violation, omittance or denial of rights of the right holders and adequately each duty bearer’s capacity gap for not meeting their duties. The UNIFEM in Tajikistan described the assessment at this stage of the HRBA application as „looking at a country’s existing international, regional and constitutional human rights obligations and identifying gaps in legislative frameworks, policies and programmes. The analysis then describes measures recommended by the human rights system to fill these gaps, thereby identifying

⁴² Source – O.Orwolo Achieving the MDGs with equity: need for the Human Rights Based Approach uaps2007.princeton.edu/download.aspx?submissionId=70599

⁴³ Equitas, www.equitas.org/english/programs/pdf2007/IHRTP2007-June26th-Violenceagainstwomen-FINAL.pdf

programme priorities”⁴⁴ This is followed by an explicit examination of the scope of the given gap and its reach in reference to each identified right in the claim - holder vs. duty - bearer relation. The mentioned gaps can consist of or base on the combination of the following factors⁴⁵:

- Responsibility / Motivation / Leadership,
- Authority,
- System processes for planning,
- Decision making,
- Resources,
- Communication.

In relation to the previously examined example of the little participation of women in the parliament, the capacity items are to be understood followingly.

- responsibility – political parties - duty bearers do not set adequate quotas for women upon the posts allocation. In constitutes a violation of art. 7 and art. 8 CEDAW. The discriminatory practice is visible throughout the entire examined capacity gap in the discriminatory action of the government authorities.

-authority – political parties are not exercising their powers fairly and responsibly when it comes to women in politics. This point is directly interrelated with the issue of accountability. Women have an equal right as men to execute their civil and political rights, as enshrined in art. 25 ICCPR

-capacity to make rational decisions - political parties are unable to make rational decisions, because they see women as a threat and tend to avoid negotiating with them. Political parties don't keep themselves informed and educated about issues relevant to women when dealing with national government. This factor indicates a clear interference with art. 2 II in connection with art. 25 ICCPR. The lack of authority's interest and intelligence in regard to the issues relevant to women and shows an evident inconsistency with „taking the necessary steps, (...) to adopt such legislative or other measures as may be necessary to give effects to the rights recognized in the present Covenant” (art. 2 II ICCPR)

⁴⁴ OECD, *Integrating Human Rights into Development*, p. 73

⁴⁵ assessment based on: – A. Orwolo Achieving the MDGs with equity: need for the Human Rights Based Approach
uaps2007.princeton.edu/download.aspx?submissionId=70599

-resources- political parties lack the resources to articulate the interest of women. Due to inadequate financial resources, some political parties are unable to set up structures in the regions/constituencies.

-capacity to communicate – the information being disseminated does not filter down to the grassroots level. In this regard language poses a barrier to some groups. Consultations with citizens are limited. In relation to the communities, parties sometimes lack the skills to communicate and they often do not have the relevant information. Such practice marks the disrespect for the human rights principle of inclusion and participation. It implies a limited concern over the civil society organizations and little space for their creation. In a society, where these factors coexist, the civil and political rights of the envisaged women can hardly be granted. At this stage of examination, the human rights provide an estimation scale on the extent of the violations of the Human Rights Treaties provisions and the contrarily placed - state's capacity gap. The capacity gap assessment is therewith an identification of priorities, which need to be addressed upon the development assistance work.

Apart from the explicit analysis, guarantying the access of the development work to the actual targets. The HRBA provides another aspect to the development dispute, which is the set of principles originated from the Human Rights treaties. These rules of conduct „already underpin much of development thinking, as they help to shift the analysis focus to the most deprived and excluded, especially to deprivations caused by discrimination“⁴⁶, they also contribute to the development programming and execution. The principles are adequately: participation, inclusion, non-discrimination, transparency, indivisibility and equality.

To assess, which impact the HRBA can actually have for the development practice, it has to be examined, what is the level of obligation imposed on the states and other international actors to apply it.

IV. The legal character of the HRBA initiative

It has been mentioned above, that the initiative to perceive the development programming through human rights lenses doesn't rest on a specific legal

⁴⁶ M. Robinson, P. Alston *Human Rights and Development*, p. 39

entitlement within the International Community. The effort the UN Treaty Bodies have undertaken to mainstream the human rights throughout their actions originates in the recommendation of the Secretary General's Report „Strengthening of the United Nations: an agenda for further change"⁴⁷, which contains the relevant „Action 2 Initiative". As a resolution of the General Assembly, the document doesn't bear any legal obligation upon the UN member states or other entities within the UN system. It merely implicates the advantage of the HRBA and recommends its application to the UN treaty bodies.

The non-legally binding character of the HRBA appears dubious in face of the clear assets this approach brings along to the development dispute. Lack of its codification has to be attributed to the political sensitivity of the matter of human rights and the contradictory interests of states among the international community. The noticeable overall lack of will to endow the human rights issues with a mandatory character hinders any legislative effort on the international slate.

There are however aspects of the HRBA, which ought to move the UN and its member states to revisit this approach and take an effort to endow it with a legally binding character. The main component to the HRBA – the human rights - is a globally ratified legally binding framework of treaties and conventions. States have a duty to promote, protect and by virtue of the international legal order, include the signed human rights documents into their national legislature. It refers also to the UN, which reaffirms its respect for human rights in art. 1 of the Charter of the organization. The broadly mentioned promotion, protection and respect for human rights implies the inclusion of the human rights law upon undertakings of the states and the agencies or at least approaching the actions from a human rights perspective - the very goal argued. Reversibly, mere reference to human rights awakes reluctance. The practice has shown, that promoting and protecting human rights in reference to the development assistance has seldom been interpreted that way. The political inconvenience of the human rights issues prevailed. Therefore the human rights based assessment of the development strategies and human rights oriented development planning need to result in proclaiming a legally obligating document with direct reference to the discussed HRBA. Such legislative initiative is to allow only little space for interpretation and reaffirming the already existing obligation to include

⁴⁷ A/57/387

the human rights upon all undertakings. The recommended regulation will be presented below, in chapter IV.

The legal entitlement of the HRBA into development aid appears perfectly suited for its reform initiatives. As the insertion of the human rights principles upon the establishment of the development strategies heals the abusive lack of reference to the actual targets of the development – the individuals. The subsequent systematization of the methods, in which the aid is distributed serves also as a natural limitation to „the spontaneous play of market forces”⁴⁸, which gave field to the donors to an arbitrary choice of the funds allocation.

The human rights perspective constitutes the contrary to the vague rules, which previously governed the aid stream to the developing states. It excludes the interference of the international financial institutions upon the creation of the PRSPs and aid tied to contracts with donor states’ domestic companies. The Human Rights Based Approach opposes the little downward insight into a state’s human rights situation and the mere political or financial aspect rather than a humanitarian one upon the application of the development assistance.

These motions, have raised the recent concern over the quality of delivered assistance and aid effectiveness. The initiative of mainstreaming the human rights based approach to enhance the aid effectiveness was put on the agenda.

Chapter III. Aid effectiveness through human rights based approach

The initiative to mainstream the human rights through the development programming strategies arose from the concern over the quality of delivered aid. Its ineffectiveness provoked the International Community to undertake legal steps to enhance the development aid – through proclamation of the Paris Declaration and subsequently through the OECD’s initiative to execute its commitments using the human rights norms and standards.

I. The assessment of the development aid effectiveness

⁴⁸ Arjun Sengupta *The right to Development as a Human Right*, p. 6

The development represents the „chance of people to a just and equal start“⁴⁹. Therewith, the effectiveness of efforts undertaken to enhance it, is the level of advancement toward the actual results – equal access to education, basic commodities and services from the state for everyone. From a human rights perspective, the effectiveness of aid sums up to the relation between the amounts of resources provided through foreign aid and the therewith improved level of the enjoyment of people´s rights, particularly the social, economic and cultural ones.

The most comprehensive development aid assesment method is provided by the Millenium Declaration and the MDGs. Considering, that the development results correspond with the Millenium Development Goals - the estimation of the level of their achievement, measures aid effectiveness.

The adequate studies are annually undertaken by the UN treaty bodies. The statistics are provided by the UNDP – *Human Development Index (HDI)*⁵⁰, contained in the yearly *Human Development Report (HDR)*⁵¹. Relevant data is delivered also by the UNICEF´s *State of the world´s children*⁵² and United Nations Population Fund´s (UNFPA) *Report on the state of world population*⁵³.

Most comprehensive however is the UN Department´s on Economic and Social Affairs (DESA) - Millenium Development Goals Report. It is „based on a master set of data (...) for periodic assesment of progress towards the MDGs“⁵⁴.

The statistical analisys of the given indicators proves however, that the level of goals achieved is not satisfactory. The Millenium Development Goal 1 sets to “halve between 1990 and 2015, the proportion of people whose income is less than a \$ 1 a day”, According to the UN Millenium Development Goals Report of 2007, the proportion of people living on less than \$ 1 a day has dropped only 7,7 per cent in Sub-Saharan Africa.⁵⁵ Considering that, the year 2015 is a deadline assumed by the MDG, this level of goals achieved is poor. The calculations undertaken by Professor Sachs asses, that there is little chance to achieve the given goals, as “the developing world will require an additional \$ 70 billion in aid over current levels by 2006, rising to

⁴⁹ R. Dworkin *How serious are the rights?* p. 3

⁵⁰ <http://hdr.undp.org/en/statistics/>

⁵¹ <http://hdr.undp.org/en/>

⁵² <http://www.unicef.org/sowc07/>

⁵³ <http://www.unfpa.org/swp/swpmain.htm>

⁵⁴ UN DESA *Millenium Development Goals Report 2007*, p. 1

⁵⁵ UN DESA *Millenium Development Goals Report 2007*, p. 6

\$ 130 billion over current levels by 2015".⁵⁶ All the 22 OECD Development Assistance Committee (DAC) countries including the USA fall short of meeting their commitments to aid for the poor countries to meet the Millennium Development Goals. Consequently the MDGs remain, what the international relations experts refer to them - mere "wishes."

Basing on these numeric evidence, the concern over the effectiveness of aid is very much in place. The occurring decrease of enthusiasm towards the year 2015 expressed in the vague statements: as "the poorest are getting a little less poor in most regions"⁵⁷, the diminishing amount of resources, due to the change of the geopolitical situation within the International Community. Finally the shift of funds allocation of the main donor – USA - through its war on terror, have provoked the Community of states to convey a consensus on the aid delivery with the goal to enhance its effectiveness. The Paris Conference on Aid Effectiveness was launched.

a) Paris Declaration on Aid Effectiveness⁵⁸

The outcome of the Paris Conference was the Paris Declaration on Aid Effectiveness⁵⁹ of 02.03.2005. It contains a statement of resolve, where the ministers, representing over 100 developing and developed countries declare to „take far-reaching and monitorable actions to reform the ways to deliver and manage aid“(art. 1). It reaffirms previous commitments of international cooperation for development (art. 3) and proclaims to monitor and evaluate implementation of the document (art. 10). The Paris Declaration launches finally five partnership commitments (art.13-50) between the donors and partner countries, endowing both sides of the development assistance procedure with coherent actions to be undertaken – ownership, alignment, harmonisation, managing for results and mutual accountability. These guiding principles not only show concern over the level of preparation for the delivery of aid in and by the beneficiary parties, but also expand their reach to the concern over the post stadium of aid delivery – accountability for

⁵⁶ J. Sachs *The Development Challenge*, in. Foreign Affairs March/April 2005, p. 84

⁵⁷ UN DESA *Millennium Development Report 2007*, p. 7

⁵⁸ further referred to as Paris Declaration (PD)

⁵⁹

the results. The Partnership Commitments are followed by 12 specific indicators designed to measure the progress of their application (Art. 8)

However the Paris Declaration constitutes an unprecedented landmark in the development debate, as it introduces an innovative approach to the development cooperation. The assessment of the application indicators contained in the document a year after the establishment, creates further doubts on the use of the Paris Declaration in the advancement of quality of the development assistance. Already the indicators reveal some inconsistency in the monitoring procedure. On the example of indicator 1: the commitment of national ownership has to be achieved by 75% of states by the year 2010⁶⁰. The lack of specific formulation allows arbitrary decisions as to which of the remaining 25% of countries can fail on this requirement. Without an indication which of them are allowed to fail on this requirement and under what circumstances, the countries are not treated equally. A development related document cannot differentiate among the partner states. The fact, that the indicators refer to the entirety of addressed states in an assessment of a given goal, declines the individual perspective toward chosen country. However the assessment system applied by the Paris Declaration is more exact than most of the previous indicators, yet its language leaves room for interpretation by parties and therefore lacks full specificity.

According to the “OECD 2006 Survey on monitoring the Paris Declaration,” which provides a comprehensive examination of 34 countries that receive aid. Most of them have generally mismanaged to implement procedures and operational strategies required by the declaration. According to the survey, Ethiopia, receiving \$ 1,8 billion, number 4 on the list of main ODA recipients⁶¹ records a moderate failure to comply with all of the Paris guidelines⁶². Ghana, which is in the middle of the mentioned list also shows moderate application of the Paris Principles and Uganda as “Aid Darling”⁶³ aligns to 3 of the 5 Paris Principles on high level.

Richard Manning, the chair of the DAC admits that the “Paris Declaration on Aid Effectiveness is an ambitious attempt to increase the impact of aid on development by promoting more mature partnership between donors and partner

⁶⁰ ⁶⁰ Paris Declaration, Appendix 1

⁶¹ R. Manning, Development Co-operation report 2006, p. 26

⁶² http://www.oecd.org/document/52/0,3343,en_2649_15577209_38542068_1_1_1_1_00.html

⁶³ expression used in the development dogmatic for states attracting the foreign donors and investors

countries.”⁶⁴ His report reveals however, that nearly all examined countries show discrepancies between the funds actually disbursed by donors and the information recorded in budget and that only a small minority of reviewed countries has an accountability for implementation mechanisms in place.

The little compliance with the committed motions, revealed by the DAC Survey in one year after signing of the Declaration, is the first point of criticism toward the Paris Initiative. The further one is more prominent in the elaboration of this thesis. None of the indicators refers to the actual on the ground human rights situation of the given state. The Principles, the Indicators and the DAC assessment seek an effect on the country level⁶⁵, which refers to the respondent of the guidelines– the beneficiary state’s government. Such horizontal approach rarely grants an insight into the standard of living of the groups and communities of individuals. The experience shows, that governmental reports, however adequate to the required indicators - are endowed with much relativism. Marc Levy and Philippe Meyer present this relation in a very skeptical manner: “as long as the lives of 100 million slum dwellers improve over a 20-year period, the target is met; the lives of the other 700 million slum dwellers could worsen, or the total number of slum dwellers could increase to two billion, and the target would still be met.”⁶⁶ The application of decisions taken and results assumed on the top vary from the outcome in the field. The aid doesn’t reach its presumed targets.

Yet, despite the critique toward the revealed imperfections of the assessment system, the very existence of the Paris Declaration has provided an opportunity to proceed with a comprehensive examination of the development aid *status quo* and serve as a further incentive to improve the effectiveness of the delivered development assistance. Such improvement can only take place upon the application of the human rights based approach towards development programming. The effort to include the human rights perspective in the application and execution of the five Paris Principles will be presented below. The examination will furthermore include the extend to which, the human rights framework can contribute to the motion of cooperation between the donor and beneficiary partners.

⁶⁴ R. Manning, *Development Co-operation report 2006*, p.56

⁶⁵ R. Manning, *Development Co-operation report 2006*, p. 29

⁶⁶ Marc Levy, Patrick Philippe Meier „Early warning and assessment of environment, conflict and cooperation p. 42” *Understanding environment, conflict and cooperation*

1. Ownership Commitment

Art. 14, 15 of the Paris Declaration define ownership as a country's ability to exercise effective leadership over their development policies, strategies and co-ordinate development effort. According to these provisions, the donors are responsible for supporting and enabling developing countries ownership by respecting their policies and helping strengthen their capacity to implement them. The partner states (the PD refers to beneficiary states as partners) are responsible for „taking the lead in co-coordinating aid at all levels” (art. 14 III). The motion relevant to this commitment was previously expressed by the 2005 Millenium Project Report⁶⁷, which urged the “developing countries, that their governments should prepare aggressive development strategies, showing the way to meet the Millennium Development Goal targets for the year 2015”⁶⁸. A number of developing states had already possessed such policies enshrined in the Poverty Reduction Strategy Papers, which “describe the macroeconomic, structural and social policies and programs that a country will pursue over several years to promote broad-based growth and reduce poverty, as well as external financing needs and the associated sources of financing”⁶⁹. These strategies however, revealed much inconsistency. According to the DAC Survey many of them remain unsatisfactory in their relevance to the actual on the ground situation. William Easterly calls them „international central planning”, due to the participation upon their preparation of the IMF, the World Bank as well as other external actors, as finished documents “need to receive endorsement from the Boards of both the World Bank and the IMF”⁷⁰. On the national level, according to the PRSP themselves, in their drafting the „government has striven to respond to the needs expressed by the populations during the participatory consultations”⁷¹. The participation was however often restricted. These strategies are therewith a product of governmental work with little horizontal insight into the actual situation.

The Millenium Project Report, motioning the establishment of the strategies doesn't vary significantly from the PD's formulation. Paris Declaration concentrates on the

⁶⁷ Millenium Project directed by J. Sachs, *Investing in Development, A practical Plan to Achieve the Millenium Development Goals*, p. 23

⁶⁸ M. Buzanski, *International cooperation for the achievement of the MDGs*, p.79

⁶⁹ IMF, <http://www.imf.org/external/np/exr/facts/prsp.htm>

⁷⁰ F. Stewart and M. Wang *Human Rights and Development*, p. 450

⁷¹ PRSP of Cameroon, April 2003, p. 2

explicit urge of the possession of an independent strategy by a country, whereas the Report concentrates on naming particular aspects to be contained in the strategies. The Paris Declaration, however less operational than the Millenium Project Report only shifts and stresses the focus area to the effective leadership of the country. Through the encouragement of the partner states „(i) to lead on developing and implementing national development strategies; (ii) to take the lead in coordinating aid; and (iii) to translate development strategies into operational programmes, and these into medium-term expenditure frameworks and annual budgets”⁷² the PD „places a country in the driver’s seat of its own development”⁷³, but doesn’t explain the internal assumptions of such leadership. To protect the Paris Declaration on Aid Effectiveness from criticism similar to the one expressed toward the Millenium Development Report, mainstreaming of the human rights based perspective through the Ownership commitment is indispensable upon its planning and execution.

The Overseas Development Institute (ODI) recognizes following entry points for human rights to contribute to the implementation of the PD’s commitment of ownership.

- Human Rights establish, that there should be national or citizen-based ownership (rather than exclusive government ownership) and provide guidance on how this principle can be operationalised.

This is a crucial point, where the Paris Declaration makes room for the HRBA to be adapted and executed adequately. The human rights perspective places the subjects to the previously undertaken analysis in the center of the development planning. The individuals, who suffer from the denial of their social, economic and cultural rights, are according to the HRBA, to participate in the establishment of the national strategies. Their inclusion upon the preparation of the development policy will grant the non-discriminatory approach of the aid disbursement. Such perception moves the *de facto* executive of the ownership principal from the governmental monopoly, as mentioned by the PD, to a wider scope of national actors. The guidance on how this principle can be operationalised is contained in the rules and principles provided by the human rights framework. The human rights norms and treaties especially the ICESCR - their denial or omittance provide the indication on how to determine the

⁷² M. Foresti, D. Booth, T.O’Neil *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration*

⁷³ Millenium Challenge Account, www.populationaction.org/Publications/Research_Commentaries/July_2007/Country_Ownership.pdf

actual targets of the development assistance. The principals flowing from the international human rights treaties serve as a code of conduct in the execution of national ownership.

- Human Rights provide guidance on the state capacity and institutions required for such national ownership and leadership.

National ownership rests on an range of institutions that ensure, that citizens are able to participate in decision-making processes and hold their governments accountable for these. To name are all the attributes of a strong civil society, endowed with its civil and political rights, as contained in the ICCPR – right of the citizens to be part in the conduct of public affairs (Article 25), to freedom of expression and opinion (Article 19), to assemble (art. 21) and associate (art. 22) vote (art. 25 II). A good state’s capacity is indispensable upon the participation of the citizenry in the establishment of national ownership. Yet again, the Human Rights provisions measure the scope of a state’s capacity and adequately show the relevant implications for a status of an effective national ownership

X	Type of state	Implications for ownership
1.	Capable and accountable	National/citizen-based ownership
2.	Fairly capable, non-accountable, development oriented state	Paternalistic government ownership
3.	Fairly capable, non-accountable, captured state	Particularistic ownership
4.	Weakly capable, weakly legitimized, fragile state	No ownership of a coherent development agenda

Table 3. Relationship between the type of state and ownership.

Source: *Aid Effectiveness and human rights, Framework Paper*

The graphic shows the relation between the type of state and the status of the national ownership. As can be observed, the implication of an effective- citizen-based ownership is an invention of strong societies within capable, with granted democratic values, states. Developing countries are seldom strong democracies, therefore an effort must be undertaken to enhance the civil society, its impact on the government and the reverse government's accountability toward the citizens in the first place. The enjoyment of the above mentioned civil and political rights serves as an incentive and a goal to be achieved in this matter. Human rights are a tool in place to determine the existing shortage and adequately to work toward its enhancement.

Mercedes Mas de Xaxas stresses the role of the local NGOs in this process. Once an environment is created for their existence, they contribute through raising awareness of the society about the development assistance mechanisms, especially the budget expenditure and reporting processes; engaging in advocacy and watchdog activities; monitoring implementation and setting up accountability mechanisms⁷⁴.

All of the mentioned undertakings require inclusion of the core human rights principles – participation, inclusion, non-discrimination and accountability.

- Human Rights can help to develop strategies for operationalising the principle of ownership in fragile state environments, including dealing with severe violations and abuse.

In cases of the type 4 states in the above table, the government is either weak or non-existent, the very social consensus, its enhancement is distant. The fragile states require delivering aid through external channels at first, which however preferable undermine the long-term state capacity. Fragile states are however also exceptional situation and beyond the interventionism charge, some human rights principals need to be channeled along.

The components of an effective ownership and therewith a country's leadership over the development strategy not only show room for human rights principles but prove that human rights can perfectly fill the gaps in the „good technocratic process currently reflected in the PD and so contribute to a richer and

⁷⁴ M.Mas de Xaxas, *Making Country Ownership a reality: NGO Perspective*, p. 4

more realistic reflection on ownership”⁷⁵. But foremost – the very assessment of the enjoyment of people’s human rights and road-setting toward their achievement imply the focus of the human factor in the entire development debate.

As it will be further presented, ownership is the primary among all five commitments. It endows the partner state with the explicit responsibility to take the development effort in „its own hands” and create the relevant national strategy. It is crucial, that already this commitment is based on the human rights rules and principals, as their very application will have the impact on the execution of the remaining commitments.

2. Alignment

Art. 16 of the Paris Declaration includes a commitment of the donors to base their overall support – on partner’s national development strategies and periodic reviews of progress in implementing these strategies. It refers to strategies, policies and operationally – systems and procedures. As a mutual commitment, alignment poses responsibilities upon both, beneficiaries and donor states. The partner countries are to strengthen public financial management capacity and procurement systems (art. 25-28 PD). The donors on the other side commit to support these efforts (art. 26 II, 30 PD). This commitment bears a particular economic output for the donors, as it implies an untied aid (not attached to domestic companies in the North) and for them to secede the profit opportunity from aid. The PD states furthermore, that „donors use strengthened country systems”. Such formulation implies the fulfillment of the first principle of national ownership, as it rests on an assumption, that such strategy is already in place. It automatically poses a threat of inconsistency, as fragile states, haven’t established such strategies. Donors then have to yet again refer to the exceptionality of such state and seek alternative ways to fuel aid and human rights into a fragile state. The case of varying internal conditions in the partner states reminds of the urge, to handle each beneficiary country individually and to resist from the overall approach suggested by the PD indicators.

This implication shows the first point, where the principles of the human rights law add value to the execution of the alignment commitment. The application of various models for different partners among the international community urges the donors to

⁷⁵ M. Foresti, D. Booth, T.O’Neil *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration* p. 33

apply the human rights` premise of the respect for diversity and non-discrimination. In the development dispute, the human rights are also relevant in the interstate relations.

Art. 16 II of the Paris Declaration allows the donors to „draw conditions, whenever possible, from a partner’s national development strategy”. Applying conditions upon aid disbursement is not in the compliance with the human rights law. Making aid assistance dependant on any external factors, such as political or economic adherence to donor’s requirements is often practiced. Among other donors, „the European Union has introduced human rights clauses in its agreements and considers human rights, democracy and the rule of law as „essential elements“ of development co-operation. If they are not respected, aid can be suspended.“⁷⁶ Contrarily, to this practise - making aid delivery a conditional of human rights fulfillment is pure contradiction, because the means used to achieve respect for human rights are in fact hurting the poor and violating the basic human rights principles. It is not only unethical, as it - once executed „hurts the poor and vulnerable, who are thus made to suffer for the sins of their rulers“⁷⁷ Presumably, the goal of the Paris Declaration art. 16 II was to narrow the application of conditionality exclusively to the strategies and not the aid assistance itself. The subject to the conditionality is therefore not a fulfillment of any other external requirements than those contained in the national development strategy drafted by the government. If a condition is to be drawn, it originates from the aspect assumed by the partner state in the first place. The here relevant, what Peter Uvin refers to as post-conditionality is a sophisticated form of previous donor conditionality and is rather an argument in a harmonized dialogue and so excluded from the strict human rights criticism. The ODI stresses subsequently that this sort of conditionality can strengthen donor accountability to citizens of recipient countries by holding their governments accountable for commitments made internationally and so push them to execute their role as a duty-bearer toward the citizens.

Art. 21 II of the Declaration calls for avoiding to the maximum extent possible, creating dedicated structures for day-to-day management in favor of long-term programmes. It encapsulates the very premise of the development itself, and spells out the human aspect of the development. Instead of reaching for the results

⁷⁶ OECD *Integrating Human Rights into Development* p. 53

⁷⁷ P. Uvin, *Human Rights and Development*, p. 59

appealing to the donors and indicators, it teaches how to acquire instead of receiving the basic commodities and so enhances the common partners' action for the peoples' rights to work (art. 6, 7 ICESCR) and promotes entrepreneurship initiatives.

The alignment commitment has to be executed with a constant reference to human rights, as it contains the conditionality clause, the human rights principles constitute a limitation to the extent to the possible conditionality imposed. The conditions cannot violate any of human rights rules. Subsequently, due to the mutuality of the commitment, the partner countries also have to align to the donors strategies which automatically provokes the strengthening of partner state's capacity and basing on the human rights experience of the donors and so enhancement of the an environment for the development of the civil society.

3. Harmonization

The third commitment of the Paris Declaration contained in art. 32 – 42, requires the states parties to harmonize common arrangements and simplify procedures. It refers primarily „to the increased co-ordination and streamlining of activities of different aid agencies, with the aim of reducing the transaction costs to governments receiving aid”⁷⁸. Hereby, the donors are to implement „where feasible common arrangements at country level for planning, funding, disbursement, monitoring, evaluating and reporting to government on donor agreement and aid flow”⁷⁹. It implies furthermore, the states should reduce the number of separate missions in the field and to promote common training of staff and share field experiences to divide the labor effectively (art. 33 – 35 PD). The beneficiary states commit in turn to provide views on donors' comparative advantage. (art. 34 PD) Harmonization is a core commitment in the entire development discourse around the Paris Declaration. Basing on an effective harmonization, the national ownership and result-oriented strategies can be strengthened. Harmonization encapsulates the effort to align to the procedures owned by the partner countries for managing development aid. In fragile states, this commitment requires the partners to harmonize their efforts, for the beneficiaries to make progress toward building

⁷⁸ M. Foresti, D. Booth, T.O'Neil *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration* p. 41

⁷⁹ Paris Declaration Art. 32 (2)

national institutions and governance structures and for the donors not to undertake activities to undermine it.

The role of human rights upon harmonizing the common actions toward better development assistance appears indivisible. Human Rights provide an already existing, organized structure, which can serve as a useful starting point for setting common priorities. They furthermore add broadly recognized codes of conduct, mechanisms of enforcement and monitoring, which contribute to the effort of unifying the common standards and procedures.

The harmonization commitment entails also the important motion of citizenry participation, in Art. 38 (III) PD, which states, that the broad participation of a range of national actors in setting development priorities should be encouraged. This aspect is especially important and has to be perceived through the human rights lenses, as the participation objective to be executed effectively consists of a number of civil and political human rights provisions, which need to be followed adequately by the state. This „process by which stakeholders influence and share control over priority setting, policy making, resource allocation, and/or program implementation”⁸⁰ adds also the crucial human aspect to the development assistance, as only the opinion of the citizenry can truly answer the question who should be targeted by the development aid. This fact appears to be omitted along the lines of the Paris Declaration on Aid Effectiveness, which pays very little attention to the citizenry participation. The Paris Declaration, which was designed to be a milestone document in the development debate, should refer to this aspect more visibly, especially that the previous efforts to include the civil society in aid assistance have turned out rather ineffective. Frances Stewart and Michael Wang prove, that consultation of the society primarily assumed by establishing the PRSPs, has turned out little influence of the stakeholders beyond capitals. „Participation was often extremely selective, excluding groups out of favor with the government. (...) In Ghana, for example trade union members reported that the government preferred to consult with more sympathetic institutions, (...) in Bolivia, at least five of its country programmes complained of little direct involvement of associations of the poor in PRSP deliberations. The poor were represented by local authorities that were only weakly connected to the poor, particularly to

⁸⁰ The World Bank Participation Sourcebook, p. 237

indigenous groups”⁸¹. Despite the little promising outcome assessment, some level of participation was reported by the International Financial Institutions. (IFI) In Rwanda, the government initiated local civil entities to produce priority rankings, community development plans and a participatory poverty assessment exercise to collect poor peoples` opinions. Mozambique had a particularly active private sector. Bolivia and Nicaragua gave importance to the religious organizations. Concurrently, other sectors of civil society remained inactive. Discrepancy in enabling the participation among the non-governmental state actors doesn't serve the effectiveness of aid and sums up to one of the reasons for the mere critique of the PRSPs by the International Community. To protect the Paris Declaration from a similar assessment, the participation, inclusion of a stron civil society and further human rights motives must be combined with the several PD commitments. Harmonization along the efforts to include the society's opinion by the creation of poverty reduction strategies could indeed contribute to more acute assessments and subsequently better qualified aid assistance.

4. Managing for results

According to art. 43 of the Paris Declaration „Managing for results means managing and implementing aid in a way that focuses on the desired results and uses information to improve decision-making”. The ODI adds in reference to this commitment, that it's „all about promoting a result-oriented approach in aid relationships. Recipient countries are expected to improve the linkages between planning and budgeting, and to put in place assessment frameworks and information systems that allow for tracking result-based indicators. (art. 44 II PD) „Donors, on the other hand, are expected to align with the recipient countries´ monitoring and evaluation system, avoiding additional and parallel reporting and strengthening their capacity for result-based management”⁸². The concept of result-oriented development management is to be driven back at the Marrakech International Roundtable on Results in February 2004, which elaborated the following principles:

- Focusing the dialogue on results at all phases of the development process

⁸¹ F.Stewart, M. Wang *Poverty Reduction Strategy Papers, in Human Rights and Development*, p. 457

⁸² M. Foresti, D. Booth, T.O'Neil *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration* P. 49

- Aligning programming, monitoring and evaluation with results;
- Keeping measurement and reporting simple;
- Managing for, not by, results;
- Using results information for learning and decision making⁸³.

The message of the Paris Declaration provides a repetition of the enlisted principles perceived from the ankle of the partnership commitments. The premise of result oriented management cuts across the remaining commitments of the PD. As „the development assistance can be made more effective (result to be achieved) by enhancing country ownership, aligning assistance with country priorities, harmonizing development agencies policies by focusing more consistently on the achievement of development outcomes”⁸⁴

The human rights perspective provides a major objective upon discussing the results management. Considering, that the PD doesn't define the very premise of the entire undertaking - the aid effectiveness. Basing the interpretation on other DAC documents⁸⁵, the effectiveness of aid is to be measured on the improvement of life conditions of groups addressed by aid assistance. The very well-being of individuals in the development aspect is the access to basic commodities, eradication of poverty and an opportunity for a dignified, equal living. These, expressed in the MDGs are merely a road-map to the actual, practically expressed provisions of human rights treaties and conventions. The fulfillment of human rights of the targeted groups is also the result, managed for upon the partnership for the development assistance.

Furthermore, the Paris Declaration in art. 44 (II) calls for establishing a result-oriented reporting and assessment frameworks for monitoring of the progress achieved, relying on partner countries result-oriented reporting and monitoring frameworks (art. 45 II), harmonizing monitoring and reporting requirements (art. 45 III). The imminence of the effective controlling mechanisms upon result-oriented management creates another entry point for applying the human rights based perspective to the development programming. „The human rights thinking and practice could be helpful for broadening the traditional top down and technical approach to monitoring, mostly confined to financial information to be made available

⁸³ Joint Marrakech Memorandum, at <http://www.mfdr.org/2ndRoundtable.html>

⁸⁴ Managing for Development Results, Principles in Action: Sourcebook on Emerging good Practice, at:

http://www.impactalliance.org/ev_en.php?ID=13235_201&ID2=DO_PRINTPAGE

⁸⁵ Action-oriented Policy Paper on Human Rights and Development, DCD/DAC(2007)15/Final

by recipient countries to donors to fulfill their accountability commitment⁸⁶. The access to information aspect is crucial in attaining the status of a rights-holder of the individual and subsequently to hold the duty-bearer – the state - accountable for its actions. Citizens receiving the information about the human rights goals to be benefited from the development aid are more likely to put in motion the domestic pressure for the promised results, which in turn is to motivate the governments to fulfill them. Confirming the ODI's statement, - transparency and the right to information are key elements of human rights approach to the managing for results commitment.

5. Mutual Accountability

The commitment of signatories to the Paris Declaration to mutual accountability for development results is confined in art. 47 – 50 of PD. „The concept of accountability describes the rights and responsibilities that exist between people and the institutions that affect their lives, including governments, civil society and market actors⁸⁷. According to the Paris Declaration, mutual accountability of partner countries and donors is a major priority in the strive for more effective aid assistance. „On the side of recipient countries, this implies strengthening the role of parliaments and reinforcing participatory approaches to policy making, monitoring and implementation. On the side of donors, it focuses on the transparency and comprehensiveness of information on aid flow. The reciprocal commitment is that of instituting country-level mechanisms for assessing the progress of both parties in living up to the spirit of the Paris Declaration and its various components⁸⁸.

The sphere, where the human rights can add value to mutual accountability figure is clearly apparent. Accountability is a central issue within all legal relations. In the interaction between states, which are or should be governed by the internationally approved standards and regulations, human rights provide an entire set of mechanisms widely recognized along the international community.

⁸⁶ M. Foresti, D. Booth, T.O'Neil *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration* p. 49

⁸⁷ Ch. Mutasa *Accountability in aid effectiveness* at: http://www.pambazuka.org/aumonitor/AUMONITOR/comments/accountability_in_aid_effectiveness/

⁸⁸ M. Foresti, D. Booth, T.O'Neil *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration* P. 53

The concern arising upon the PD perception of this commitment of donors vis-à-vis beneficiaries, is the question of the extent of accountability. Who is entitled to hold the given actors accountable? The PD refers to development partners on the side of beneficiaries (art. 48 II), the legislature and the citizens on the side of the donors (art. 49 I) and the vague formulation of the country level accountability mechanism for both sides. (art. 50 I). With such wording the accountability remains horizontal between the parties' governments. The PD's lack of „downward” accountability in the partner states in opinion of Charles Mutasa from AFRODAD „contrasts sharply with donors' excessive demands for „upward” accountability”⁸⁹. The ODI pictures the accountability structures followingly:

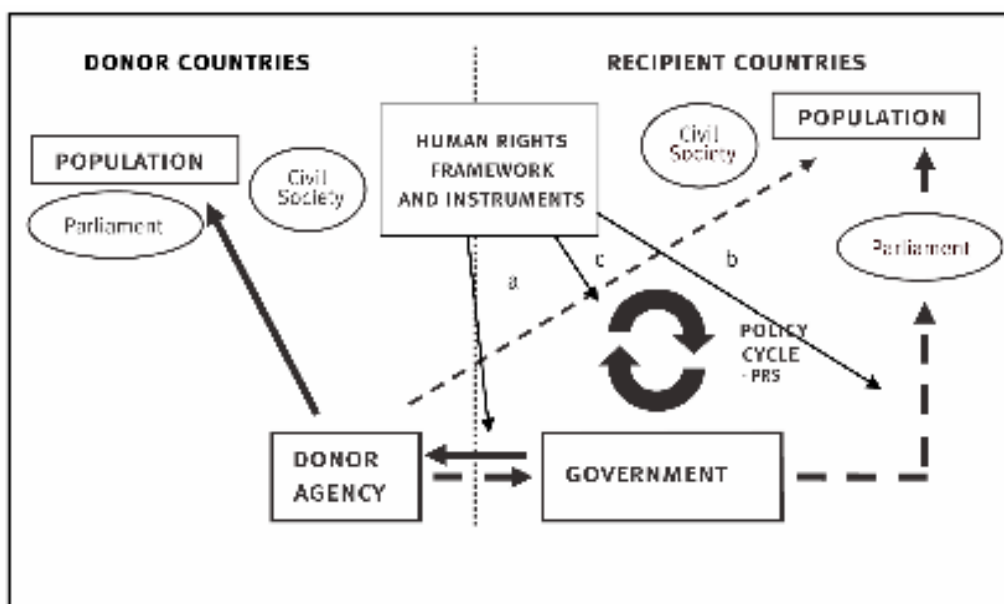


Table 5. Main Accountability Structures in Aid Relationship

Source: *Aid Effectiveness and Human Rights: Strengthening the implementation of the Paris Declaration*, ODI October 2006

According to Marta Foresti, David Booth and Tammie O’Neil, the thinner the line on the enclosed graph, the weaker the accountability relation between the given groups/entities. As can be observed, the lines directing to the partner states’ populations indicate the weakest link, meanwhile in the donor states, the population,

⁸⁹ Ch.Mutasa *Accountability in aid effectiveness*” at: http://www.pambazuka.org/aumonitor/AUMONITOR/comments/accountability_in_aid_effectiveness/

civil society and the parliament are given equal status in terms of holding the donor agency accountable. The unequal division doesn't contribute to the effective partnership with mutual commitments. The reluctance of the citizens rights in the partner countries and bypassing civil society can and should be perceived as a serious gap in the accountability chain, which can be healed by the human rights based approach. Accountability, also taking a step toward the empowerment of the citizens to hold their governments accountable for its actions lies at the center of the human rights construction. The right to exhaust the claim for an effective development action and mechanisms of redress must be provided. The implication of the human rights based approach poses an answer to this issue, yet again as mentioned before, such structure is applicable and has a view of effectiveness in a society steered by the rule of law. The implication, that no-one is above law, offered by the mentioned ODI authors can function only in such mature, democratic societies. However, the study „Aid Effectiveness and human rights: strengthening the implementation of the Paris Declaration” doesn't provide a consideration about states with different from democracy governance systems. The offered concept must be then rethought and adjusted to different approaches the rulers take toward their citizens. In countries, where the rule of law is merely a distant idea rather than an existing objective, ways must be found to enhance the accountability relation between the donor agencies and the citizens. An answer could be the direction to the civil society organizations, which naturally bridge the partner countries governments with the citizens. Their strengthening could enhance the voice given to the vulnerable and put the discussed human rights based approach to aid effectiveness in motion. Thanks to the imminent link to the duty bearers and rights holders mechanism, the mutual accountability for development results is on each level of its execution, the key commitment hence reading and applying the Paris Declaration on Aid Effectiveness.

The five Paris Commitments allow entrance and usage of the Human Rights principles numerously. The Declaration, however comprehensive - reveals several weaknesses. It focuses merely on the linkages between the donors and beneficiaries. This horizontal perception of the partnership doesn't envisage the actors within the beneficiary partners, beyond the aid recipient government and the rare mention of the civil society participation. Although the Paris Declaration is a

major step forward, as it shows the concern over the quality of aid and the effort to improve it, it lacks the essential broad scope, downward perception, which can only be inserted by mainstreaming the human rights approach through all five commitments and the links between them. The effort to include the HRBA, undertaken in the above analysis is illustrated on the following graphic:

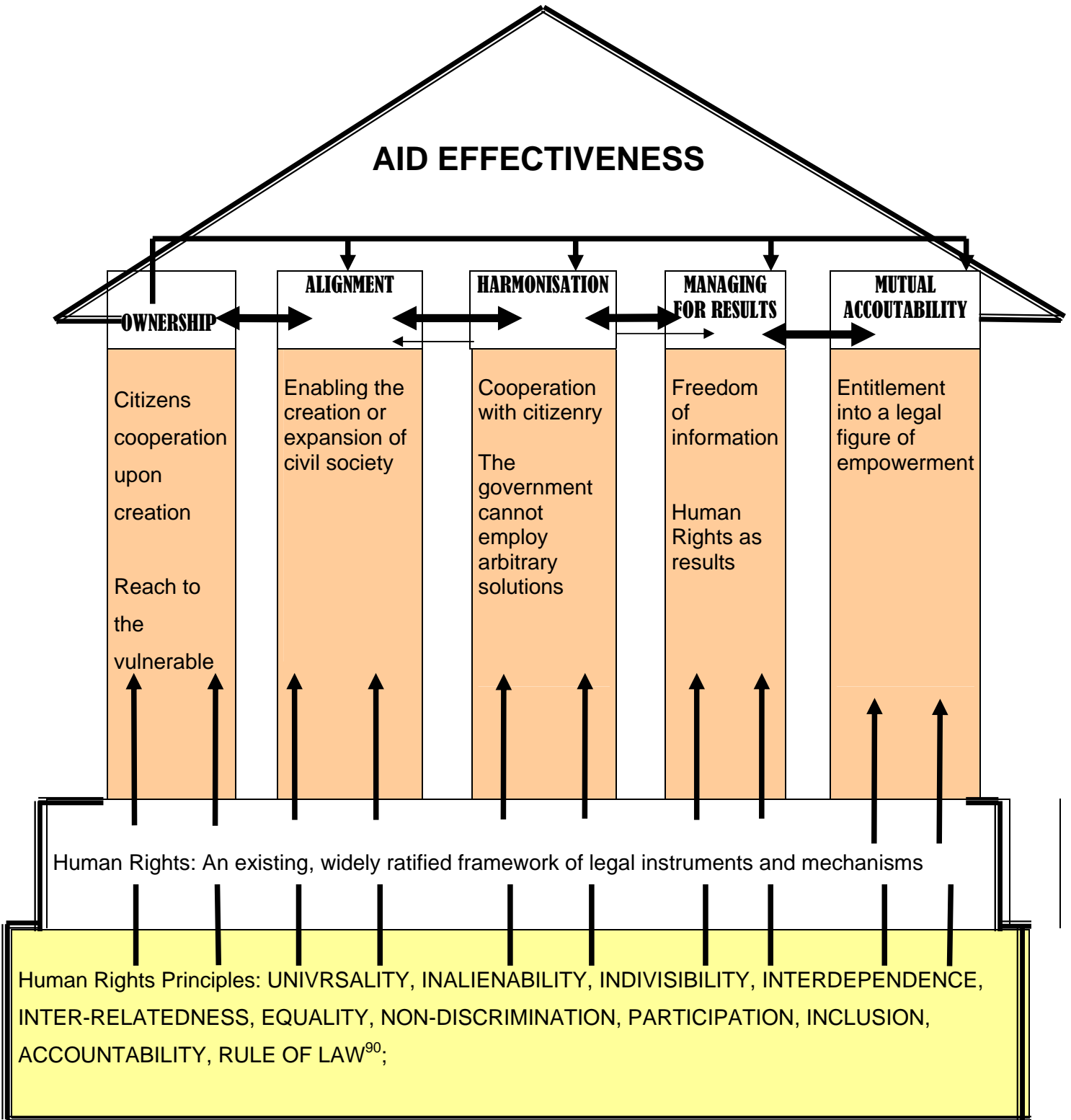


Table 6. The structure of human rights vs. aid effectiveness

Source: Authors own project

⁹⁰ DCD/DAC(2007)15/FINAL p. 7

The EU temple-graph used to picture the dependency relation within the European Union structures, serves to reflect the offered interdependences of the inclusion of human rights on the effectiveness of aid assistance commitments undertaken by the partner states of the Paris Declaration. The human rights based approach to aid effectiveness can be explained as follows: The roof of the building is an objective to be achieved. The tops of the five pillars represent the commitments, along with the human rights implications to each of them. The bottom of the construction constitutes the both figures human rights add to the quality of aid assistance (an existing legal framework and the broadly recognized principles). The choice of the graphic is not accidental, as the pillars support the construction and neither them nor the base is dispensable in the sustainability of the building. The arrows indicate the mutual correlation between the parts of the structure. The commitments are therefore strongly interdependent or as in case of harmonization – inclusive. The human rights principles and the human rights framework, mainstreamed through the entire construction tie it.

The above elaboration indicates the value the human rights can add upon the effort to enhance the quality of foreign aid. Having shown the several weaknesses of the Paris Declaration such as specific and exclusive concern over the level of donors vis-à-vis beneficiaries cooperation, which restricts to the relation between a given donor agency and the partner state's government. The situation beyond this link is not addressed. Considering, that the issue targeted upon the aid assistance debate is the human development, the well-being of the individuals is visibly neglected. With such *status quo*, the application of the human rights rules and provisions is the only way to redress it. They empower the individual, endowing him with a right to claim the freedoms contained in the international human rights treaties and indicating the parties bearing the duty to guarantee them. The low level of responsibility provided by the wording of the Paris Declaration, where „partners commit to” has to be strengthened by the legal value of core international human rights treaties, which constitute an obligation of these partners toward their citizens.

Concluding, mainstreaming the human rights through the Paris Declaration on Aid Effectiveness is the only way to meet a demand in the relation between the donors and the beneficiaries, through the inclusion of the empowered individuals in the development responsibility chain.

However the application of the HRBA to development programming appears to reveal numerous advantages, there is much criticism toward the idea of the human rights, the very existence and the composition if the international human rights codification and its allegedly global recognition. The charges, which the human rights bear, not only hinders the overall acceptance toward the HR based approach but also marks reluctance to the very initiative of foreign aid. The criticism originates foremost from the beneficiary states community – the World’s South.

II. Criticism of the Human Rights as an incentive to improve the effectiveness of aid

The Human Rights movement bears charges, which are alive in the South and indeed hardly arguable by the North. Tajudeen Abdul Raheem of Justice Africa Nigeria, states: „Human rights discourse today is laced with all kinds of hypocrisy, conditionality, selective enforcement and notions of ‘Do as I say not as I do.’ European governments and their big brother, USA, see themselves as the defenders and enforcers of Human rights standards and often talk to the rest of the world in very condescending terms”⁹¹. In this dominance of the Western Countries, their hypocrisy in using human rights and motioning the human rights based approach into programming of various projects targeted at the South is hidden the charge of Eurocentrism.

1. Charge of Eurocentrism

„From its very inception the human rights community (like the development one, for that matter) has been under attack on one of its very key premises, namely the universality of human rights”⁹². The universal validity of human rights is allegedly to be driven back at its European origin. This is a Western approach, motioned by the West itself, arguing the Western values hegemony. What William Easterly colloquially calls „the West and the Rest”⁹³ is the Eurocentric values vision, presented in the human rights law as superior to any other perspectives. Such approach deters with

⁹¹ Tajudeen Abdul, Raheem of Justice Africa Nigeria
www.africanexecutive.com/modules/magazine/sections.php?magazine=48§ions=38

⁹² P. Uvin, *Human Rights and Development*, p.17

⁹³ W.Easterly *The White Man’s Burden*, p. 21

its dominant attitude and an imposing manner. Amartya Sen undertakes a discourse with the Western claims of uniqueness. „There is clearly a tendency in America and Europe to assume, if only implicitly the primacy of political freedom and democracy as a fundamental and ancient feature of Western culture – one not to be easily found in Asia. It is as it were, a contrast between Confucianism vis-à-vis the respect for individual liberty and autonomy allegedly deeply rooted in Western liberal culture. Western promoters of personal and political liberty in the non-western world often see this as bringing Occidental values to Asia and Africa. The world is invited to join the club of „Western democracy“ and to admire and endorse the traditional „Western Values“⁹⁴. Sen`s ironic tone is an expression of the overall critique and hesitance to accept any act of imposition coming from the West, including the human rights framework.

Despite the dominant dogmatics of the North, the composition and the hierarchy of values, objectives contained in the human rights instruments comes from the post WW II positioning of its drafters. The UDHR was then signed and ratified in the only possible shape. Hadn't it been drafted by the WW II victors, the world might have waited for the very concern about the human aspect of post war organization of the International Community for another decades. The fact, that other values are not included, is due to colonization and the fact that major Western powers prevailed upon the composition of the treaty. It is therefore understood, that such approach deters with its dominant attitude and an imposing manner towards Easterly's „the Rest“.

The charge of Eurocentrism does indeed put the rationality of the HRBA to development programming in question. It is hard to strive for the enhancement of aid assistance quality using the human rights framework, once „the responsibility to obey the UDHR in totality at all times“⁹⁵ is undermined by the recipient community.

It is hard to argue the opposite, however indifferently of the little values relativism applied in the framework, it is universal by virtue of almost global ratification. Furthermore, as norms of international law, the provisions of the human rights treaties leave space for transformation due implementation to individual state`s legal conditions. The Universal Declaration of Human Rights serves as a basic legal frame

⁹⁴ A. Sen, *Development as freedom* p. 233

⁹⁵ Tajudeen Abdul, Raheem of Justice Africa Nigeria

www.africanexecutive.com/modules/magazine/sections.php?magazine=48§ions=38

for the further human rights codification efforts. „Many states have incorporated or drawn on the UDHR as a model for their constitutional and other legislative acts“⁹⁶. The language of the human rights documents is designed for variations upon application, especially visible in art. 2 II ICCPR and art. 2 II ICESCR, stating, that state parties are to undertake steps, including the legislative ones to give effect to the rights recognized by the covenants. The adjustability to the national level is visible also in the derogation clauses in the Covenants, which allow restrictions due to special duties and responsibilities carried out with the given rights (art. 19 II ICCPR) or limited by the requirements of the *ordre public* (art. 18 ICCPR). Furthermore, in the defence of the International human rights documents, rather than to discuss the background and the drafters' reasoning of the already existing, firmly grounded and globally recognized legal set of rules, a consideration could be directed into its more effective usage, finally - possible ammendation and the moderate value, which the human rights could add to the discourse instead of its *a priori* negation.

Bearing this argument in mind, another accusation toward human rights arise. The remote approach towards the regulations and the fact that basic rights of certain communities have numerously been used in as an argument in the international dispute, proves that human rights are highly political.

2. The charge of political implication of Human Rights

The political dimension of human rights becomes apparent whilst studying the selective reference to human rights issues as grounds for action or ommitance of various ators on the international slate. Several international entities are constantly being accused „of promoting policies that (...) serve their national interests at the expense of smaller and poorer states. They are often accused of failing to address questions of abuse, because they are politically sensitive, even though they undermine the credibility of their development strategies“⁹⁷. As an example serves the failure to intervene upon the occurence of the gross crime against humanity in Rwanda. „When the Genocide was occurring, major powers and stakeholders in governments and within the UN Secretariat were playing a political game on naming the true nature of the events, restraining from using the word “genocide” and

⁹⁶ A. Eide, G. Alfredsson, *The Universal Declaration of Human Rights*, introduction p. xxxi

⁹⁷ M. Robinson *Human Rights and Development* p. 33

spending most of the time planning to evacuate most of the remaining in- ground Peacekeeping operation”⁹⁸. Arbitrary raising of the human rights abuse arguments has been a part of the political game for decades. It serves remotely as a reason to intervene⁹⁹ or a reason to upstain from the *de facto* necessary intervention in favor of the people’s right to self-determination (art. 2.7 UN -Charter)

In correlation with the notion of human rights, also the political dimension of the development aid becomes apparent. Basic rights and freedoms become an instrument to explain the direction of aid flow or its denial dependant on the political interest of the donor: “Immediately after the September 2001 terrorist attacks President Bush lifted aid sanctions imposed on Pakistan and India after both countries tested nuclear weapons in 1998. Additional sanctions set against Pakistan after Musharraf seized power in a bloodless coup in 1999 were also waived”¹⁰⁰. Despite of the President Musharraf’s undemocratic practices and a dubious occurrence of the assassination of Prime Minister Bhutto and the subsequent situation in the country, any change in the direction of the US aid flow is not to be assumed. Pakistan supports the United States in the War on Terror and there is much political interest in keeping it that way. Examples, where development aid either serves as an incentive or is a direct price for political moves can be multiplied. Referring to James Wolfensohn’s primary remarks on the rationale of development assistance of poorer countries, cases such as the one of Pakistan show how little humanitarian character of sharing the aid bears. When it comes of the North’s security or other political interest, the human rights become secondary value added or removed selectively in order of political necessity.

The fact, that the North arbitrarily uses development aid and human rights to achieve further political goals, can legitimately raise concerns in the South about the sense of applying the human rights perspective to any development undertakings. The remote subsidizing of countries because of an interest, affects other developing countries, which suffer from the unequal division of resources. Furthermore, if the distribution of aid is subdued to political reasons, it cannot be predicted, which country loses its support in favor of the one with more attractive political field of interests.

⁹⁸ M. Buzanski, *Peace operations and the protection of civilians. Constraints and challenges. Recommendations for improvement* p.5, Unpublished

⁹⁹ Humanitarian intervention, a concept from the int’l customary law. Its implication contained in Chapter VII UN Charter – art. 51 UN Charter

¹⁰⁰ K. De Young, *Rice says U.S....* p. 1

The instrumentalisation of human rights and their adherence to current political needs waives their universal character. On the side of the donors human rights and development assistance are a tool to impose their goals. Looking from the reverse - Southern perspective – such tool becomes a condition.

3. Conditionality of human rights

„Donors threaten to cut off development assistance – and execute that threat – to recipients that consistently violate human rights, (...) to mend their evil ways“¹⁰¹, this practise, however common – is distant from the idea and the principles contained in the human rights treaties. Nevertheless, various aid actors use it: „The European Union has introduced human rights clauses in its agreements and considers human rights, democracy and the rule of law as „essential elements“ of development co-operation. If they are not respected, aid can be suspended.“¹⁰² The donors have a longstanding *de facto* policy of providing development aid to regimes regardless of their human rights practices. Furthermore the donors use the promise of large amount of financial leverage to provoke a change in a country's policy direction. Referring to the previously described example of Pakistan, President Musharaff has indeed changed his ways and withdrew some of his political aspirations due to the risk of losing the US resources. The possible improvement of the people's civil and political rights in effect of enhancing democracy in Pakistan appears to be a secondary added value. Besides that, in most places conditionality of the aid is narrowed to the requirement of undertaking the democratic elections, which in theory go along with a set of Civil and Political Rights, but they seldom refer to the ESC rights, which in most of the recipient countries stay neglected. The positive objectives about implying the conditionality of aid remain outweighed by the harm, which it causes to humans upon application. Making aid delivery a condition is contradictory in its essence, because the means used to achieve respect for the selected pace of civil and political rights are in fact hurting the ICESCR provisions or apply selectivity upon the targeted aid recipients, which is unacceptable in light of the equality and non-discrimination premises. Conditionality „hurts the poor and vulnerable, who are

¹⁰¹ P. Uvin, *Human Rights and Development*, p. 56

¹⁰² OECD *Integrating Human Rights into Development* p. 53

thus made to suffer for the sins of their rulers“¹⁰³. The rich can easily escape the results of sanctions and the vulnerable lose the alledged benefits from aid. The very basic human rights rule „do no harm“ loses its application due to proportionality of goals, which should not find its place upon the distribution of allegedly altruistic financial support to the developing states.

In conclusion, the Southern states have all the reasons to oppose this sort of North’s policies to disburse aid as it practically undermines all the principles so widely motioned by the donor countries. It not only awakes sort of disrespect for the contradictory practises but also contributes to enmity and it provokes the unnecessary antagonism in the International Community.

4. The interventionist character of Human Rights

Observing the political dimension of human rights, another charge noticed by the former High Commissioner for Human Rights arise. The application of conditions upon the beneficiary states, can legitimately be seen as an interventon into the internal matters of a state. In terms of international law it is an abuse of a state’s sovereignty, which exists as *ius cogens*. „The human rights approach diminishes the notion of national sovereignty, irritating national governments and undermining the effort to make them nationally responsible“¹⁰⁴. The following discourse can be drawn on this issue. The Northern governments tend to implement measures towards the Southern states, which by their dominant manner, lack of political decency and foremost contradiction with the rule of international legal order - as conditionality and interventionism are highy argued and unthinkable to be applied reversely. It appears, that this self-concluded leadership position comes from little relativism applied. Therefore, the South`s reluctance towards human rights based approach appears understandable. It is not about the programming method, which the HRBA brings along, rather the very reference to the basic rights. Raheem Judge of Africa Nigeria accuses the North`s practises of being hipocratic. Indeed an objective observation reveals many contradictions. The human rights law is a global legal framework constituting freedom, equality and self-determination of peoples and individuals. Using it as a condition or a reason to intervene into a state`s internal matters, not

¹⁰³ P. Uvin, *Human Rights and Development*, p. 59

¹⁰⁴ M. Robinson *Human Rights and Development* p. 32

only undermines the international legal order, which human rights are a part of, but also the very rules of logic and fairness within the International Community.

Apart from the criticism targeted at human rights as an initiative to improve aid assistance, the development aid bears similar charges as the human rights - arbitrary distribution and imposition of allegedly superior values and solutions. There are further aspects, which the experience of the development practice has revealed, through which the South expresses reluctance toward the entire foreign aid and gives an impression of accepting it merely out of necessity.

5. Criticism of the economic aspects of development aid

The development aid does enhance the economic growth in the less developed countries. This is the broad statement, given by R. Cassen to the question he raises in the report *Does aid work?*¹⁰⁵ According to his plausible assumptions, the annual growth rate with aid would record some significant increases¹⁰⁶. Apart from the presumed impact on the beneficiary's growth, the foreign aid bears disastrous effects on the economy, rather deterring than boosting progress. This truth came shocking at the famous human rights activist – Bono. „Africans scolded him for demanding more foreign aid, saying that's not what Africa needs“¹⁰⁷. The reasons for that discrepancy are magnifold. The IMF Managing Director Rodrigo de Rato y Figadero names a few of them: „Current aid flows are insufficient, unpredictable and often uncoordinated among donors“¹⁰⁸. Due to the poor management of aid flow, for instance the „food aid has enormously high transaction costs and distorts the local economy by depressing the prices local farmers receive for their goods“¹⁰⁹. Subsequent issue, which raises concern is the form of aid disbursement, direct subsidies instead of a long-term effect, produce an immediate, temporary relief. An appropriate analogy was raised during the 62nd session of the UN General Assembly on the agenda topic - social development: „Giving one a fish is less effective than teaching them how to fish“. This sort of „charity aid“ actually hinders the possibility of

¹⁰⁵ R. Cassen & Associates, *Does Aid Work?*, Oxford 1993

¹⁰⁶ R. Cassen, *Does Aid Work?*, p.21

¹⁰⁷ N. Kristof, *Bono, foreign aid and skeptics*, p.1

¹⁰⁸ Millenium Project, Report to the SG, p. 39

¹⁰⁹ J. Sachs, *The development challenge* p. 5

local economic growth. Instead of serving as an incentive for various forms of local entrepreneurship as investment does in this matter, it merely provides a temporary relief and a one-time solution. Furthermore apart from undermining the rationale of foreign aid mentioned before, the disclosure of the Northern interest's prevalence leaves tangible economic disadvantages to the South as „tying of aid to donor country exports or firms is estimated to be 11-30 percent less valuable because of price differentials between what donor country firms charge and what would be available in the market“¹¹⁰ In a broader, macro-economic perspective, the growth of the South, cannot be achieved without the North „improving access to their markets for developing country exports and (...) promoting the fuller integration of developing countries into the global trading system“¹¹¹. It concerns primarily the tariffs and subsidies on the developing world's major export industries, such as clothes and farm products. These remain one of the main obstacles within the World Trade Organization (WTO) negotiations, part of the Doha development round¹¹². The Cato Journal notices reversely, that: „The ODA has a negative, direct effect on economic growth, (...) as it neither significantly increases investment nor any human development indicator, but it does increase the size of government“¹¹³. The selectivity of group of recipients upon the disbursement of the beneficiary country, and a rapidly growing class of officials becoming wealthy due to mismanagement of the aid funds through venality and corruption is a plague of every transformation society. The financial support is upstained at the level of the officials themselves, who merit from the access to power and whose private financial interest prevails. The Central Eastern European (CEE) States serve as an example how much the transition from highly indepted regimes into a modern, free market democracies is accompanied by the widespread corruption. However this occurrence is decreasing in the region over the last years¹¹⁴, the former East cannot be compared with the variable situation in the South. For the time being, corruption is a clear obstacle to the progress and the \$ 1 Tr spent on bribery each year evidently blocks international aid.

However none of the developing states could repulse aid flow from the North, the present management of aid disbursement doesn't comply with the primary premise

¹¹⁰ M. Sundberg, A. Gelb *Finance and Development for Africa*, p. 3

¹¹¹ Millenium Project, Report to the SG, p. 39

¹¹² The negotiation round of the WTO, with its main task of reducing tariffs

¹¹³ S. Djankov *Does foreign aid help?* P. 14

¹¹⁴ Transparency International's Corruption Perception Index – at: http://transparency.org/policy_research/surveys_indices/cpi

of the development aid and so can hardly guarantee its effectiveness on the developing states' populations when steered by the commercial profit of companies from the donor states.

The political and economic difficulties of implementation of the HRBA into development, must be followed by the often forgotten issue of the large cultural and social discrepancy between the North and the South.

6. The socio-cultural ground for the criticism

The previously mentioned Eurocentrism bears a charge of the unconditional conviction of the North of its civilisation's supremacy. Such approach naturally entails little relativism in respect to the world's cultural differentiation. The rich countries rarely wish to apprehend, that cultural nuances, such as -that the women extreme emancipation is a Western phenomenon, which simply cannot be explained into the Muslim sphere. Roma teenage girls are designated to care for the family more than to take education, „because they are needed at home, or parents have decided that investing in their daughter's education is not worthwhile“¹¹⁵. Egyptian women, undergoing circumcision, maim themselves in order to uphold a tradition¹¹⁶. All of these practises are unthinkable in the North, which demonstrates ignorance rather than tolerance toward them. The lack of understanding applies also to different from common legal systems and other than democratic forms of governance. Such approach projects a coherent reaction from the South in form of a vast negation.

The northern development strategies often appeal to states with an evaluated judicial supervision system, legal frameworks, an engraved rule of law and a society, which subdues itself to a given order by the virtue of a coexistent wellbeing. This model rather doesn't apply to countries, „which need to proceed with the struggle for democracy and the rule of law in the first place“¹¹⁷. States torn by conflicts, failed states or ones, which have only recently recovered from a conflict are far from the ideal environment for these strategies. Moreover, the reluctance towards the North's approach is emphasized by a broad mentality problem. Mozambique's minister of Finance Pedro Couto opposed to the country's dependence on international aid,

¹¹⁵ R. Gerster, *Aid effectiveness: The case of general budget support*, p. 9

¹¹⁶ Daily Telegraph from 17.03.1997, at: <http://www.hartford-hwp.com/archives/30/150.html>

¹¹⁷ J. Walorek, *Report from the Conference Human Rights and Corruption*, p. 126

stating: „We do not like to beg permanently“¹¹⁸. States shouldn't be deprived of their „dignity“ in order to acquire support, just because the world is divided into the rich and the poor. Offending the governments with an imposing manner can waive the aid. „In 2004 in Burkina Faso the donors made a proposal for a new memorandum of understanding, which the government declined, because it saw taking the lead in the cooperation to be their own task“¹¹⁹. The states don't wish an interference into their internal matters. The aid is a matter of necessity, the additional requirements, strategies and indicators - an inevitable evil. The atmosphere of mutual denial donors *vis-à-vis* beneficiaries doesn't serve the effectiveness of provided aid.

The ideological clash between the South and the North is also caused by the fact, that the USA is in the camp of the latter.

As Ian Brownie's the „only remaining superpower“ the United States, undertake actions criticized by the majority of the remaining states, which do not recognize the legitimacy for imperialistic imperatives of this country. It is due to the American exceptionalism. While most countries perceive themselves as derived from the common history, the Americans, as Henry Kissinger argues along the lines of „The Diplomacy“ follow the sense of obligation to guide and lead others to the solutions chosen by them: liberty, egalitarianism, individualism and *laissezfaire*. The imposing comportment of the American approach is rarely coherent with the diversity of other ways. The occurrences in the Guantanamo US Military Base, where the provisions of international humanitarian law were arbitrarily applied and the prisoners gravely mistreated show America's imperfections and raise voices from the South, that “that the West is not the best teacher on human rights”¹²⁰. The USA is the main donor of the ODA and naturally the designer of most of the development strategies. The application of the imposing „American Way“ upon their execution poses objections and reluctance. The self-contradictory practice of spreading the respect for diversity and opposing it at the same time sentences the common undertakings to ineffectiveness.

¹¹⁸ R. Gerster, *Aid Effectiveness, the case of general budget support*, p. 3

¹¹⁹ R. Gerster, *Aid Effectiveness, the case of general budget support*, p. 12

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As had been presented, the clash between the South and the North has various political, economic and social grounds. It not only originates from the current bipolar division of the world. It is to be driven back at the post Cold War shift of influences and spheres of political interests. The economic isolation of the previously colonised countries is due to the exclusive allocation of the global wealth in the North and setting economic restraints for the South to access it. Globalisation is apparently a Northern invention for its exclusive benefits. The efforts of the rich countries to justify such *status quo* are endowed with dominance and little relativism in respect to the world's cultural differentiation. The analysis of the above described arguments along with the previously elaborated assessment of the current development effort prove, that neither the South appreciates the quality of development assistance, nor it guarantees the fulfilment of the assumed development goals. The conclusion needs to follow, that for the sake of the effectiveness of aid, the inclusion of their findings upon the development assistance reform is indispensable. The consent both sides of the Equator needs to result from a mutual understanding. Raheem Judge of Africa Nigeria agrees, that "however the hypocrisies, (...) that are glaring about human rights standards should not lead one into concluding that Human Rights advocacy and discourse is useless"¹²¹.

The North on its behalf should acknowledge the urge to reform the development assistance regulations and take a more strategic approach toward including the HRBA upon the development planning to enhance the effectiveness of aid.

III. The OECD DAC's initiative to improve the quality of aid

The Development Assistance Committee took an effort to enhance the correlation between human rights and development. The recent initiative of the Committee's Network on Governance (GOVNET) focused explicitly on strengthening the „understanding and consensus among donors on why and how to work more strategically and coherently on the integration of human rights into development"¹²². In February 2007 in collaboration with its advisory body of experts on Human Rights, the Human Rights Task Team, the OECD DAC adopted an Action-Oriented Policy

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www.africanexecutive.com/modules/magazine/sections.php?magazine=48§ions=38

¹²² OECD DAC *Integrating Human Rights into Development* p. 3

Paper on Human Rights and Development (AOPP), establishing primarily ten principles, which are to provide guidance for the donors on how to include the human rights into the strategies for development cooperation. For that matter the AOPP refers to the Paris Commitments. This document is merely a policy paper, which invites the donors to voluntarily apply the rules, as „it is expected, that the principles will be used as a basis for dialogue with national governments and non-state partners”¹²³ However lacking the legal character, the AOPP Principles are an unprecedented landmark in the development vs. human rights discourse. They serve as a proof of the North’s concern over the insufficient quality of development assistance, the possibility to boost it using the human rights framework and as will be observed below – the understanding of mentioned charges toward North’s apprehension of the foreign aid and human rights, as the following principles remind of a set of best practices, which basing on the negative experience, guide the action for a presumed result and as such should be included in every donors’ development strategy:

Principle 1. Build a shared understanding of the links between human rights obligations and development priorities through dialogue.

The links between human rights obligations and development priorities should be a regular feature of dialogue with partner governments at the political and development level. Donor countries should work with partner governments on ways to fulfill their obligations under international human rights law. The dialogue should be adjusted to each partner country’s individual context.

Principle 2. Identify areas of support to partner governments on human rights.

Donors should support and strengthen the capacity of the partners to undertake common analysis and assessment to identify the priority areas and resources needed for partner government to better respect, protect and fulfill human rights. Donors should encourage partner governments to include the results of these assessment into their development strategies.

Principle 3. Safeguard human rights in processes of state-building

¹²³ AOPP, DCD/DAC(2007)15/FINAL p.7

The Donors are expected to work with a range mechanisms, such as national human rights institutions, ombudsmen, courts, parliaments, civil society, media and other bodies, including more informal political platforms and arenas such as local public hearings.

Principle 4. Support the demand side of human rights

Donors should help strengthen the voice of the most vulnerable and excluded and enlarge the political space for the participation of all members of society in exercising and defending their rights. Donors can help raise awareness of the people living in poverty to claim and enforce their human rights.

Principle 5. Promote non-discrimination as a basis for more inclusive and stable societies

The donors should require their partners to ensure that their actions do not discriminate against particular groups, even where capacity and resources are limited.

Principle 6. Consider human rights in decisions on alignment and aid instruments

The human rights should inform donors in their choice of aid instruments and the appropriate balance of support to state and non-state actors.

Principle 7. Consider mutual reinforcement between human rights and aid effectiveness principles

DAC members should consider human rights principles, analysis and practice in the rollout of the Paris Declaration's partnership commitments. The Paris Declaration principles should be followed in designing and implementing human rights programmes.

Principle 8. Do no harm

Donors should identify potentially harmful impacts of their development strategies in the partner country and develop long, medium and long-term strategies for mitigating the potential for harm.

Principle 9. Take a harmonized and graduated approach to deteriorating human rights situations

Donors are to target actions that don't penalize the most vulnerable in the society. Rather than reducing aid in response to human rights concerns as a first resort, donors should seek to deliver aid through a range of aid instruments and channels to continue support poverty reduction.

Principle 10. Ensure that the scaling-up of aid is conducive to human rights.

Donors should restrain from the conviction, that the provision of additional resources is an endorsement of poor human rights performance. Efforts to improve aid should move in tandem with the strengthening of human rights institutions, accountability mechanisms and related capacities.

The principles are a statement to resolve, which the donors community commit to undertake in relation to the previously declared Paris Partnership Commitments. The principles identify the entry points for human rights upon the application of the Paris Declaration and exhaust the applicable human rights provisions within these points. The content of the commitment behind each of the principles reminds of the previously described analysis for the possible entry points of the human rights into the gaps of the Paris Declaration. They constitute a confirmation of the donor community's awareness of the urge to implement the HRBA. Finally the ten statements constructed as best practices for the rich states respond to the broad criticism of the human rights and aid assistance from the South, their application upon the development programming will diminish its causes.

Faced with the challenge of an ineffective development assistance, the International Community has reacted properly. The committee of the wealthiest donors – the OECD DAC - has convened a Conference (the PD) to enhance the quality of aid through systematization of the development cooperation between the rich and the poor countries. Due to the mentioned imperfections of this initiative, noticed in the marginal effect of those commitments on the well-being of the individuals, the donors undertook further steps to improve. The last stage of this process – the ten principles entailed in the DAC's AOPP appear very efficient, as

they cover up the previous weaknesses and add the requested human aspect to the development programming.

Nevertheless they are not the final in the strive for the achieved goal. Both documents, the Declaration and an internal Policy Paper, have little significance in the International System, as they lack legal obligation for the state parties. The natural consequence of this consideration is a recommendation on undertaking of a legislature act for matter of implementing the human rights based approach toward the improvement of aid effectiveness. Such initiative will be presented in the following chapter.

Chapter IV. Concluding remarks. Recommendation of codification

There is a few aspects under which the effectiveness of development aid can be estimated. In economic terms, the positive results of aid delivery are to be translated into growth the country records. The United Nations tend to measure the effectiveness of aid on the level of achievement of the Millenium Development Goals. The social aspect in turn refers to the quality of commodities the population receives from the state as an effect of the external capital surge. The raise of democratic values in a state is measured by indicators provided by institutions such as the World Bank Institute, Freedom House and Transparency International (TI). All of these single factors have an impact on the development of the state and for that matter, the improvement of the well-being of the persons inhabiting it. As such they can be translated into rights and freedoms of the individuals – human rights.

Such perception incrimates the subject of the discussed human rights based approach to development. The above aspects of development correspond adequately with sets of provisions of the human rights treaties. Freedom House and TI indicate level of governance of a state. It implies a number of civil and political rights for its inhabitants and so the provisions of ICCPR. The social perspective incrimates the content of the ICESCR. These Covenants and other Human Rights instruments have engraved into the legal order of the international community, by virtue of their universal ratification and acknowledgement by frequent confirmation of the rights they entail. The UN Vienna Declaration and Programme of Action¹²⁴ considers the promotion and protection of all human rights and fundamental

¹²⁴ A/CONF.15F7/23

freedoms as a priority objective and that all Human Rights are universal, indivisible, interdependent and interrelated. It also reaffirms the right to development, as a universal and inalienable right and an integral part of fundamental human rights.

The set of legal human rights provisions has also been in place for decades, yet it has never been used in the development programming. Until recently, the value of the human rights framework upon aid disbursement remained unnoticed. The recognition of an existing correlation appeared in the wording of the World Summit on Social Development in Copenhagen in 1995¹²⁵, which stated that social development cannot be attained in the absence of respect for all human rights and fundamental freedoms. It referred also to development *versus* respect for human rights. The discussed HRBA takes a step further and announces, the development cannot be attained in the absence of human rights themselves. Which is to be understood as the appraisal for the value of the legal character of human rights treaties' provisions and principles contained therein.

I. Codification recommendation

The assets of the human rights based approach to the effectiveness of aid have been described above. Nevertheless, these have not been supported by any acts with legal significance in the International legal order. The HRBA marks its presence exclusively in the recommendations deriving from a legally un-binding UN GA Resolution. Adopted in form of internal policy guidelines of UN bodies (UNICEF, UNFPA, UNDP) and some bilateral aid agencies. The issue of aid effectiveness is presently addressed by the Paris Declaration. This multilateral act, however broadly signed, is solely operational in its partnership commitments and as a declaration; it doesn't bind its state parties. The OECD DAC's *Principles for promoting and integrating human rights in development* are devised as internal policy guidance for the member states to be applied voluntarily upon entering the PD partnerships. However, in light of the international law Its worth considering whether the very presence of the HRBA in the documentation of the international community and its remote application in the donors' aid strategies bears any significance in matters of international law. Clearly, neither the composition of the Paris Declaration nor the one of the AOPP indicates any legal entitlement to mandatory application of the

¹²⁵ Copenhagen Declaration and Programme of Action, A/CONF.166/9

HRBA or measures to improve the effectiveness of aid. Their very existence however, as „soft law“¹²⁶, could implicate the first step in a law-making process. As Malcolm Evans argues, that despite the non-binding “legal effect of declarations, resolutions, guidelines and other soft law instruments (...) it is characteristic of nearly all of them that they are carefully negotiated, and often carefully drafted statements, which are in some cases intended to have some normative significance despite their non-binding, non-treaty form”¹²⁷. Following this path, the Paris Declaration containing a resolute statement of over 100 developing and developed countries to reform the ways the aid is delivered, reveals a staid intention to take far-reaching steps to improve aid quality. This intention of the donors is emphasized by the concurrent establishment of the *Principles for promoting and integrating human rights in development*, which manifests the will to take a resolute approach toward the partnerships committed by signing of the Paris Declaration. According to the International Court of Justice’s (ICJ) ruling, this could already endow the Paris Commitments with legal significance. In the 1974 Nuclear Tests cases, the ICJ decided as follows: „...When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking”¹²⁸. Taking all the assets of the human rights based approach into the effectiveness of aid, converting this soft law into a legally binding commitment is a much-appreciated initiative. It however poses severe difficulties, as the Paris Commitments are mutual and the beneficiary states haven’t expressed any declaratory statements that could be perceived as an intention to implement the PD as obligatory. Furthermore collective statements might not be fully representative for all the states expressing them. A possible selectivity upon the application of so established law is unacceptable. Therefore further ways to strengthen the HRBA initiative to aid effectiveness need to be sought.

Alternative means to guarantee the HRBA a legal entitlement would include the road to positive law through custom. “The classical international law sees customary rules as resulting from the combination of two elements: an established, widespread and consistent practice on the part of states and a psychological element

¹²⁶ this term describes a variety of non-legally binding instruments used in contemporary international relations by states and international organizations

¹²⁷ M. Evans, *International Law*, p. 143

¹²⁸ ICJ Judgement, ICJ Reports 1974, p. 253, para 43, in: M. Evans, *International Law*, p.135

known as the *opinio juris*¹²⁹ – “the belief by a state that behaved in a certain way that was under a legal obligation to act that way”¹³⁰. The material ground for the HRBA to the enhancement of aid effectiveness is in place (The PD and the AOPP). Several UN entities and numerous bilateral aid agencies have already accepted to take the HRBA upon development programming. It serves as the mentioned practice required for establishment for a custom. A certain time factor needs to be taken into consideration. Customs do not come into existence overnight. To be able to perceive the HRBA as *opinio juris*, the International Community needs to devote more attention to this issue. Finally further documents dealing with the enhancement of aid effectiveness through HRBA need to be established. A forthcoming High Level Forum on Aid Effectiveness in Accra, Ghana in September 2008 could serve as a podium to revisit this issue.

1. Recommendation for the Third High Level Forum on Aid Effectiveness (HLP 3)

The Concept Paper¹³¹ for this incoming event assumes the focus on the Paris Declaration evaluation. In the response to DAC’s commitment, to “harness the potential for the international human rights framework and the Paris Declaration to reinforce and benefit from each other”¹³²; the Human Rights Task Team will deliver studies on the inter-linkages through concrete examples from the field (as a follow up of the Dublin Workshop¹³³ on how human rights help deliver aid effectiveness objectives in the health sector.

The further evaluation of the PD could consist of the effort to mainstream the human rights through the PD partnership principles, using the ten AOPP principles. The above examination of the Paris Commitments (Chapter III) indicates the conceptual gaps of the Declaration and indicates the entry points for human rights to fill them. Relevant AOPP principles inform the donors on how to design human rights policies and programmes. The AOPP states, that “principles will be used as a basis for dialogue with national governments and non-state partners”. The graph below

¹²⁹ M. Evans *International Law*, p. 122

¹³⁰ M. Shaw, *International Law*, p.71

¹³¹ DCD/DAC/EFF(2007)42

¹³² DCD/DAC/EFF(2007)42

¹³³ Workshop on Development Effectiveness in Practice, Dublin Ireland, 26-27.04.2007
2007DCD/DAC(2007)40

pictures the possible scheme of application of the relevant principles to the partnership commitments through appropriate entry points:

PARIS COMMITMENT	ENTRY POINT FOR HUMAN RIGHTS	AOPP PRINCIPLE
Ownership	- Citizens cooperation upon creation of the national strategies	Promote non-discrimination as a basis for more inclusive and stable societies
	- Reach to the vulnerable	Support the demand side of human rights
Alignment	Enabling the creation or expansion of civil society	Consider human rights in decisions on alignment and aid instruments
Harmonization	Gather empirical intelligence from the donor state	Build a shared understanding of the links between HR obligations and development priorities through dialogue
	The government cannot employ arbitrary solutions	Identify the areas of support to partner governments on human rights
Managing for Results	Freedom of information	
	Enjoyment of the Human Rights Treaties provisions are the results	Support the demand side of human rights
Mutual Reinforcement	Transform entitlement into empowerment	Consider mutual reinforcement between human rights and aid effectiveness

Table. 7 Interlinkage between the PD commitments, HR entry points into the PD commitments and AOPP Principles.

Source: Author's own project

The evaluation of the offered concept of applying the AOPP human rights principles to PD commitments throughout the consultations and roundtable meetings of the HLP3 in Accra could result in emendation of the Paris Declaration, by placing a

reference to relevant provisions of the human rights treaties and conventions at each partnership commitment. The practice of international dispute shows, due to political reasons a rather reluctant approach to the direct reference to human rights issues. Such forward suggestion however would open floor for discussion on the very topic and result in a compromising agreement on writing “the respect of human rights” into the Statement of Resolve of the Paris Declaration or to include the essence of AOPP principles into the partnership commitments.

The rise of the topic of interrelation between human rights and the effectiveness of development aid whilst discussing the Cross Cutting Issues at the HLF 3 and finally the emendation of the Paris Declaration will result in signing a following document dealing with HRBA to aid effectiveness. This will encourage further aid actors to adhere to this aid policy and so expand the HRBA practice. Such document could consequently share the fate of the UDHR, which thus signed as a declaration served as a foundation and a model for legal acts on national and international level and so enhance the primarily assumed *opinio juris*. Therewith appeal to the expected creation of customary international law.

This forward approach engages much good faith in the intention of the actors on the international slate. Belief in their actual respect for the promotion and protection of human rights, which corresponds with the primary foundation of the International Community, as enshrined in the UN-Charter. Finally paying deuce to the original goal of foreign aid rather than making business or combating political opponents. However distant such idea may appear, the International Community requires innovatory approaches in its codification effort and the fifty years of existence of the human rights law prove that they are worthwhile.

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