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THE HDCA APPROACH AND HUMAN RIGHTS

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THE HUMAN DEVELOPMENT AND CAPABILITY APPROACH

The capability approach proposes that social, economic, and political systems should be evaluated in terms of the valuable freedoms that people *can* and *do* enjoy. Capabilities include basic freedoms such as the ability to avoid starvation, or to escape premature mortality. They also include enabling opportunities given, for example, by schooling. Capabilities can relate to political activities (such as the capability to participate in political decision-making) and to complex as well as elementary states of *being* and *doing* (such as appearing in public without shame).

THE HUMAN RIGHTS APPROACH

A human right is a claim to a fundamental benefit that should be enjoyed universally by all people everywhere on the basis of equality and non-discrimination.

...recognition of the inherent dignity and of the equal and inalienable rights of all

members of the human family is the foundation of the freedom, justice, and peace in the world...

Preamble, Universal Declaration of Human Rights

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act

towards one another in a spirit of brotherhood.

Article 1, Universal Declaration of Human Rights

The idea of human rights - increasingly being applied as a framework for the “rights-based development” approach - has become a strategic, and at times controversial, international norm.

Internationally recognized human rights include economic, social and cultural rights, as well as civil and political rights.

UNIVERSAL DECLARATION

The Universal Declaration of Human Rights adopted in 1948 sets out the fundamental freedoms and human rights to which all people everywhere are entitled equally on the basis of non-discrimination. These include the human rights to fundamental benefits including, food, health, housing, an adequate standard of living, education, protection of the family, democracy, participation, the rule of law, and protection against enslavement, torture, cruel or inhuman or degrading treatment or punishment. Subsequent international human rights conventions have translated these human rights into legally binding form (under international human rights law). As well as codifying the key civil, political,



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economic, social and cultural rights set out in the Universal Declaration, legally binding international treaties provide more specific protection for particular groups (e.g. women and children) and in relation to particular violations (e.g. slavery and racial discrimination).

UNIVERSAL, EQUAL, & INALIENABLE. ALSO INTERDEPENDENT AND INDIVISIBLE

Internationally recognized human rights are generally viewed in terms of three basic principles. Human rights are:

- *Universal* – they apply to all people everywhere by virtue of their humanity (rather than by virtue of a special relationship, such as membership of a particular national or ethnic group).
- *Equal* – the benefits of human rights should be enjoyed on the basis of equality and non-discrimination.
- *Inalienable* – human rights cannot be transferred or taken away.

The principles of the *indivisibility and interdependence* of human rights are also increasingly reflected in international standard-setting. This implies that the protection and promotion of civil and political rights on the one hand, and of economic, social and cultural rights on the other, goes hand in hand with one another. Equal attention should

be given to both categories of human rights, and the protection and promotion of one category of human rights does not exempt or excuse states from the promotion and protection of the other.

WHO IS RESPONSIBLE FOR UPHOLDING HUMAN RIGHTS?

The *assignment of responsibility* is central to the Human Rights Approach. Human rights are usually conceived in terms of corresponding (or ‘correlative’) notions of obligation and duty - with the statement “x has a human right to z” being interpreted in terms of the corresponding obligations and duties of counter-parties to ensure that x’s human right to z is upheld. The Human Rights Approach is therefore distinctive in that it focuses attention on the critical question of *who should be doing what for whom?* Human rights-based relationships can be viewed in terms of a series of social relationships between beneficiaries (the ‘*human rights-holders*’) and those who have an obligation or duty to take appropriate measures to uphold human rights (the ‘*obligation-holders*’ or ‘*duty-holders*’).

MONITORING, ACCOUNTABILITY AND ENFORCEMENT

Although human rights are a moral concept, they have also developed into specific legal tools with established institutional mechanisms for monitoring, accountability and

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enforcement. In the international human rights context, where the idea of human rights has been incorporated into international human rights law, the primary burden for upholding human rights is assigned to nation-states or governments. This is not to imply that other agents (such as individuals, private organizations and inter-governmental organizations) have impunity. All people, nations and institutions are obliged to respect other people's human rights, regardless of age, gender, sexuality, race, religion, ethnicity or nationality. However, as the primary obligation-holders under international human rights law, nation states have the primary legal responsibility to ensure that appropriate regulatory mechanisms are in place.

WHAT ARE THE KEY OBLIGATIONS OF STATES UNDER INTERNATIONAL HUMAN RIGHTS LAW?

Some 150 states have promised to defend the core civil, political rights and social cultural and economic rights recognized in international human rights law. The duties of each international obligation-holder in relation to each internationally recognized human right are often characterized in terms of three types (or 'tiers') of international obligation. These are the international obligation:

- **to respect human rights** (by not interfering with or undermining their enjoyment);
- **to protect human rights** (by ensuring compliance by third parties);
- **to promote human rights** by taking positive measures aimed at their facilitation and fulfillment.

THE 'MINIMUM CORE OBLIGATIONS' APPROACH

The requirements above can seem relatively vague. The "Minimum Core Obligations Approach" was developed by the UN Committee on Economic, Social and Cultural Rights in order to establish minimum core obligations for states relating to "minimum thresholds" of certain human rights including nutrition, water, health, housing and education. According to this approach "any situation in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic shelter and housing, or of the most basic forms of education constitutes *prima facie* evidence that a State party is failing to discharge its obligations under the Covenant" (UN Committee on Economic, Social and Cultural Rights, General Comment 3).

INDIVIDUAL AND COLLECTIVE OBLIGATIONS

The principle that human rights should be protected and promoted by governments both *individually* and *collectively* (through international assistance and co-operation) is built into legally binding international



The HDCA and the Human Rights Approach reflect the Kantian view that individuals should be treated as ends, and not as means only.

treaties (such as Article 2 of the International Covenant on Economic, Social and Cultural Rights). International recognition of this principle was underlined by the adoption of the Declaration on the Right to Development by the UN General Assembly in 1986.

HDCA & HRA: INTRINSIC VALUATION OF HUMAN ENDS

So how do human rights and the human development and capability approaches relate to one another?

The HDCA and the Human Rights Approach have much in common. Both reflect the maxim that individuals should not be treated as a means to an end, but should be treated as ends. Human rights embody this idea by suggesting that all people have claims to social and economic arrangements that protect them from the worst abuses and deprivations, and that enable them to enjoy their security and dignity as human beings. Human development, in turn, is a process of expanding valuable human freedoms—the range of valuable things that a person can *do* and *be*. When human development and human rights advance together, they reinforce each other—expanding people’s capabilities and respecting, protecting and promoting their human rights.

NORMATIVE SUPPORT FOR POSITIVE OBLIGATION AND DUTY

The HDCA complements the international human rights framework by providing normative support for positive obligation and duty. Sen’s treatment of the “general obligations of those in a position to help” emphasises the ‘imperfect’ obligations of non-state actors, whether these are individuals or institutions, to support and defend human rights (as well as the obligations to refrain from undermining / violating human rights). Further emphasis is placed on the characterization of human rights-fulfilments as a *goal* to be promoted (rather than as a negative constraint on individual behaviour) and on the validity of extending a theory of human rights into the domain of “imperfect obligation”. Sen’s position here represents an important departure from not only from libertarianism, but but also from influential theories in the liberal tradition that suggest that “imperfect positive obligations” to alleviate and eliminate forms of basic deprivation and impoverishment such as hunger and starvation, ill-health and illiteracy fall within the domain of “charity” rather than “justice” - and cannot be coherently incorporated into a theory of human rights.



HOW DO THE HDCA AND THE HRA PROVIDE COMPLEMENTARY SPACES FOR PRACTICAL ACTION?

By building on this normative support for positive obligation and duty, the HDCA complements the HRA in two very practical respects. First, if the international human rights framework is sometimes viewed as implicating governments only, the capability approach reinforces the idea that *all* people have obligations to respect, protect and promote human rights - including far-reaching third party obligations of defence and support. Second, the HDCA provides a complementary “space” for action that is not contingent on the precise specification of duties or on legal codification. Even where international human rights law is weak, the HDCA highlights the ways in which human rights goals can be incorporated into public policy and reflected in individual action.

HOW IS THE VALUE OF HUMAN RIGHTS REFLECTED IN THE HDCA?

As a social scientific framework for development and economics, the HDCA takes account of the both the *intrinsic* and the *instrumental* value of fundamental freedoms and human rights. The *intrinsic* value of civil and political rights and democracy is for example central - with individual freedom of choice and participation valued as ends in themselves. The

HDCA also takes account of the *instrumental* value of fundamental freedoms and human rights - as one of the overall variables and influences that can contribute to overall processes of capability expansion (and therefore to overall processes of development and growth). Empirical research establishing the interconnections between different rights, as well as the *instrumental* role of civil and political rights and democratic forms of government in the context of famine reduction has been particularly influential.

USING THE INTERNATIONAL HUMAN RIGHTS FRAMEWORK TO PROTECT AND PROMOTE BASIC CAPABILITIES

The ways in which social scientific research findings associated with the HDCA can be combined with human rights advocacy to achieve complementary and mutually reinforcing goals are illustrated by the *Right to Food* Campaign in India. The analysis of the phenomenon of ‘hunger amidst plenty’ is a central concern of the HDCA. The critical role of social and economic policy in combating hunger and starvation - including the pivotal role of cash-for-work programs in ensuring entitlement protection in the context of famines - has been a key research finding.

However, human rights advocacy can also have an important role in entitlement protection - by influencing the overall framework of values and



expectations, and by adding a sense of individual grievance and social justice. Human rights advocacy can also help to ensure an overall institutional and legal framework in which governments can be held accountable, and that abuses of power can be challenged and reversed.

The *Right to Food Campaign* in India provides a practical example. In the *Case of People's Union for Civil Liberties*, the Indian Supreme Court addressed the occurrence of starvation deaths despite the availability of surplus food reserved for famine situations. The Court found systematic failure by the government to implement and finance the various policies and arrangements that should have been in operation. It ordered that the Famine Codes be implemented for three months; that "Food-for-Work" Schemes be strengthened; that ration shop arrangements for those below the poverty line be improved; and that the school "mid-day meal" scheme be implemented on a progressive basis.

Polly Vizard
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Key international human rights instruments are available via the UN Portal on Human Rights:
<http://www.un.org/rights/index.html>