

# Human Rights and Development: Human Rights Principles and Their Indicators

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**Abstract:** This article addresses how participation and accountability are defined in governance and human rights literature. The distinct way in which these concepts are understood and applied is rarely discussed. Donors and other actors tend to be vague when employing these concepts in governance and human rights programmes resulting in implicit understandings of what participation and accountability are intended to mean. Yet human rights advocates often contend that human rights principles such as participation and accountability add value to governance activities or strategies. Insofar as human rights thinking is increasingly important in influencing development policies, conceptual clarity is warranted. This is especially true when efforts are made to define indicators, measuring the implementation of human rights principles.

**Keywords:** Human rights indicators; Human rights principles; Good governance criteria; Accountability and Participation

## I. Introduction<sup>1</sup>

This article provides an account of the importance of human rights principles in development including how indicators of human rights principles may be elaborated. Development actors often lack a clear explicit human rights policy or tend to subsume human rights practice under other policy concerns such as good governance or the rule of law. Yet, there are indications that human rights concerns are increasingly gaining ground in donor policies, among business corporations and NGOs, and even in government and law. The article explores this process of integration, reflecting on how the incorporation of human rights principles may serve to provide added value in governance and human development policies. The article focuses on two core human rights concepts, accountability and partic-

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ipation, and considers their significance for development, both as principles and as legally binding human rights under international treaties and domestic law.<sup>2</sup>

The article further focuses on the convergence of human rights and development evident in donor policies. The basic premise is that human rights and development trends are evolving, partly through normative and legal interpretation, but also via practice. In this, the arguments build on the author's earlier work on human rights indicators<sup>3</sup> as well as the seminal framework of human rights indicators developed by the OHCHR.<sup>4</sup> The article argues that human rights integration is evident in donor development policy and practice at the uptake of principles. However, donors tend to devise mostly unsystematic ways of integrating human rights, often dependent on the context in which they operate. In addition, human rights are less often reflected as obligations in development policy and practice. This pattern of ambiguous human rights support has implications for human rights indicators inasmuch as donors may adopt approaches whose margin of appreciation are so wide that they lose sight of the human rights obligations that they are supposed to serve.

Three questions can be addressed to donor policies: First, what implications do donors draw from the integration of human rights principles into development? So far, there seems to be no clear understanding on this; it remains difficult to find specific guidance even within the UN on this point. Second, in what way are rights-based approaches influencing donor policies? Third, how do rights-based approaches affect measurement?

All these questions have implications for human rights indicators in development. Unfortunately, human rights indicators in donor policies remain a mostly sorry story despite genuine efforts to improve practices. Thus, a good place to begin, it is argued, is to clarify what the invocation of human rights principles

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2 Both of these concepts are human rights principles. Participation is a principle, but is also a legal standard under specific treaties. In contrast, accountability is a crosscutting and defining aspect of the entire human rights framework.

3 Baard Anders Andreassen and Hans-Otto Sano, 'What's the Goal? What's the Purpose? Observations on Human Rights Impact Assessment' (2004) 02 Research Notes. Norwegian Centre for Human Rights (University of Oslo). Erik André Andersen and Hans-Otto Sano, 'Human Rights Indicators at Programme and Project Level. Guidelines for Defining Indicators, Monitoring and Evaluation' (The Danish Institute for Human Rights 2006). Siobhán McInerney-Lankford and Hans-Otto Sano, 'Human Right Indicators in Development. An Introduction' (The World Bank 2010).

4 United Nations, Office of the High Commissioner for Human Rights, 'Human Rights Indicators. A Guide to Measurement and Implementation' (New York and Geneva, United Nations 2012).

may imply. This is partly because governance and human rights concerns converge in human rights principles. An insight into how a human rights approach to accountability and participation may add value to the dominant governance discourse may advance the formulation of key human rights concerns in development and help in the formulation of indicators that embody human rights principles as a practice.

## II. Human Rights Indicators in Development at a Glance

### The Emerging Consensus

A decade ago, the urgent need for human rights indicators was a principal point of agreement among those who debated human rights indicators.<sup>5</sup> Indicators were needed to assess implementation processes and levels of enjoyment in various contexts and at different levels. Since then, five incipient points of consensus can be identified:

1. The approach to human rights indicators should be a positive one, ie that a violations based perspective is not warranted.
2. Ranking types of indicators are not warranted as it is counterproductive: ranking of country performance tends to provoke resentment and is likely to undermine joint ownership of indicators among country stakeholders and external agencies.<sup>6</sup>
3. The framework of human rights indicators developed by the United Nations Office of the High Commissioner for Human Rights<sup>7</sup> has legitimacy and can be used and adapted to diverse national and institutional settings.<sup>8</sup>

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5 For articles on human rights indicators published around this time (2000), see for instance UNDP, 'Using Indicators for Human Rights Accountability' (2000) (Chapter 5); UNDP, 'Human Development Report 2000 (New York, UNDP 2000); See also Maria Green, 'What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement' (2001) 23 *Human Rights Quarterly* 1062; Todd Landman, 'Measuring Human Rights: Principle, Practice, and Policy' (2004) 26 *Human Rights Quarterly* 906.

6 Ranking methodologies prevail, however; especially in US indicator works. See for instance the most recent Mo Ibrahim Index of African Governance which also comprises human rights measurement <<http://www.moibrahimfoundation.org/IIAG/>> accessed December 2012.

4. Quantification is an option to explore further. This opens the door for surveys rather than for expert assessments of human rights.
5. The problem of data shortage has yet to be satisfactorily tackled by any agency occupied with human rights.

Some progress has therefore been achieved at the general level, but shortcomings prevail as regards the support for the implementation and realisation of human rights. Difficulties emerge in the specific, country-based assessment of human rights compliance, but especially at the program and project level, there are almost as many approaches as there are NGOs and donors.<sup>9</sup> The plethora of measurement approaches reflect therefore that human rights in development has not yet come to terms with its methodologies.

#### Human Rights Indicators Applied by Development Agencies: The Twilight Zone

In a previous work, the authors argued that there were three main paths to human rights integration in development: via coincidental and overlapping dimensions; via human rights principles; and via legal obligations.<sup>10</sup> These three tracks can be summarised as follows:

##### Dimensions

At a practical and substantive level, human rights and development appear to share common and complementary goals. Moreover, in this realm, the spheres of influence of development and human rights overlap. Integration in these terms is not systematic.

7 See, Geneva, 23-25 June 2008. UN Human Rights Instruments, 'Report on Indicators for Promoting and Monitoring the Implementation of Human Rights', UN Seventh Inter-committee meeting of the human rights treaty bodies, UN Doc. HRI/MC/2008/3 (6 June 2008). A guide-book based on the indicator system has been elaborated under the aegis of Office of the High Commissioner of Human Rights: See *supra* note 4 (United Nations 2012).

8 During May 2011, the European Union Fundamental Rights Agency held its second annual symposium on indicators, see the outcome report European Union Fundamental Rights Agency, 'Using indicators to measure fundamental rights in the EU: challenges and solutions' (Vienna 2011). During the meeting, it became clear that a number of agencies and country level authorities (some of them non-European) worked on the OHCHR indicators, adapting them to the local context.

9 The Guide for the OHCHR indicators has been in process since June 2010, but has been published now while this article was written (See *OHCHR* n 4). This explains partly why progress as regards country compliance assessments has been slow.

10 See *supra* note 3 (McInerney-Lankford and Sano 2010).

### Principles

On a second level, a convergence around principles is identifiable. These principles include accountability and participation; equality and non-discrimination and equity; inclusion; empowerment; transparency; and principles related to good governance as a prerequisite for sustainable development.

### Obligations

Development and human rights can be seen to intersect around legal obligations (albeit implicitly). Even though international legal obligations are relevant to both development and human rights, they do not feature prominently in the development discourse. Indeed the idea of development assistance, as defined in terms of obligations, remains controversial.<sup>11</sup>

In the present article we will elaborate on these distinctions by outlining the operational and indicator implications of each category and by adding a fourth category, that of human rights-based methodological approaches that focus on rights-holder empowerment and duty-bearer accountability. The latter category will overlap with the human rights principles category, however – further overlap with human rights obligations is also possible. Donors and NGOs have been influenced by these methodological trends, not only at the normative level but also in the practical domain. The influence of human rights approaches and methods prevails, notably in the importance afforded to agency, outreach, and empowerment.<sup>12</sup>

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11 See McNerney-Lankford and Sano, *supra* note 3, 29-31; 36-37.

12 The influence of human rights-based approaches is prominent in Danish, Finnish, German and Swedish bilateral agencies resulting in a growing emphasis on empowerment, participation and accountability. At the multilateral level, the UN organisations have since the 2003 Common Understanding formulated strategies according to a rights-based thinking. See UN Development Group, 'The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies' (HRBA Portal 2003). <<http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>> accessed 7 February 2012.

*Table 1. Overview of donor human rights integration*

| Mode of Integration                       | Operational Implications  | Indicator Implications   |
|---|---|--|
| Human rights as values and dimensions     | Occasional reference to human rights, eg gender or rights of the child.   | No systematic measurement of human rights.   |
| Human rights as principles                | Focus on accountability and the rule of law, participation and inclusion, and non-discrimination                    | Indicators will be a loose mix of governance, rule of law, and human rights indicators. Possible measurement of procedural rights: rights to information, to participation, and transparency |
| Human rights as methodological approaches | Inspiration from rights-based approaches; focus on empowerment of rights-holders and on duty-bearer accountability. | Indicators will measure agency from below, and responsiveness from the duty-bearers. Measurement of empowerment achievements and of procedural rights.                                       |
| Human rights as obligations               | Emphasis on the legal implications of human rights, in terms of respecting, protecting, and fulfilling them.        | Indicators measuring compliance with standards, structural human rights indicators, and process and outcome human rights indicators.   |

Table 1 above shows four ways in which donor policies and development organisations (whether multilateral or bilateral, public or private) are influenced by human rights: human rights as values and dimensions, as principles; as methodological approaches, and as obligations. In terms of indicators, the three last categories present interesting options, which are likely to blend in the practices of development actors.

When it comes to the use of human rights indicators, however, development agencies exercise cautious strategies. Most agencies appear to be rather reluctant to discuss their methods of measurement. Accordingly, the Millennium Development Goals are likely to have had a much stronger influence on the measurement of development policy than human rights have – even in agencies whose policies are closely linked to human rights.<sup>13</sup> Many donors and organisations have as an

objective that their programs of assistance contribute to enhance human rights respect and protection. They have professed human rights policies, but are ambiguous as to methods of measurement. This means that it remains difficult to learn about precise human rights practices and to compare them. Some agencies have completed valuable studies and monitoring notes, but it remains difficult to see how they use these or how useful they are considered to be by the agencies themselves.<sup>14</sup> The Nordic development agencies have committed human rights policies, yet it is apparently difficult to glean much about measurement from the websites of the agencies, except perhaps at the level of outputs.

There are exceptions to be found to the general pattern of vague approaches to measurement, particularly when it comes to UN agencies. The UN Development Assistance Group has produced a *Results-Based Management Handbook*.<sup>15</sup> Although a final version of the Handbook appears to not have been elaborated upon thus far, it represents a step forward in clarifying relevant approaches to measurement within the UN Development assistance framework. Yet two questions remain unanswered. Firstly, how is this framework of the handbook to be coordinated with the methods employed by the Guide on indicators recently being developed by OHCHR?<sup>16</sup> Presently, there is no reference to the OHCHR framework in the handbook despite the fact that such work has been carried out within the UN for some years now. Secondly, how are human rights principles actually employed as tools of measurement? Human rights principles are strongly

13 Research on the websites of Danida, Sida, Norad and BTZ is not informative with regard to human rights measurement. When human rights indicators are mentioned, it tends to either be in terms of outputs or in terms of formal acceptance of human rights. In a very recent evaluation of Sida support for Democracy and Human Rights (published in Swedish), the general conclusions are that '[o]ften the results are reported at the output level with unclear linkages to the overall goals' (translated from Swedish). See Swedish Agency for Development Evaluation, *Demokratisk utveckling och ökad respect för mänskliga rättigheter. Resultat av svensk bistånd* [Democratic development and increased respect for human rights. Results of Swedish assistance], Report (2012) 1, 56.

14 An example is DFID's "How to Notes", originally from 2009. The human rights note has recently been edited, but intends to give a practical Guide to assessing and monitoring human rights in country programmes. See DFID Equality and Rights Team, 'How to Note: A Practical Guide to Assessing and Monitoring Human Rights in Country Programmes' (DFID 2009) <[http://www.stabilisationunit.gov.uk/stabilisation-and-conflict-resources/thematic/doc\\_details/303-how-to-note-a-practical-guide-to-assessing-and-monitoring-human-rights-in-country-programmes.html](http://www.stabilisationunit.gov.uk/stabilisation-and-conflict-resources/thematic/doc_details/303-how-to-note-a-practical-guide-to-assessing-and-monitoring-human-rights-in-country-programmes.html)> accessed 6 February 2012.

15 See United Nations Development Group, 'Results-Based Management Handbook: Strengthening RBM Harmonization for Improved Development Results' Clean Draft Version, March 2010. <<http://www.un.org/files/UNDG%20RBM%20Handbook.pdf>> accessed December 2012.

16 See OHCHR (n 4).

associated with the application of a human rights-based approach;<sup>17</sup> although it is suggested in both the UNDG Handbook and the OHCHR indicator Guide that these principles of accountability, non-Discrimination, equality and participation *guide* the implementation of human rights.<sup>18</sup> The formulations in these documents leave the degree to which human rights principles are part of operational practices unclear; it is also not clear whether human rights principles are mainly a guide to the processes of implementation. In the OHCHR Guide, the formulation is as follows: ‘These cross-cutting norms are expected to guide State and other duty bearers in their implementation of human rights’.<sup>19</sup> While in the Results-Based Management Handbook, it is formulated as follows: ‘Monitoring how programmes have been guided by human rights principles (non-discrimination, participation, accountability) in the process of reaching results’.<sup>20</sup>

Statements regarding how human rights principles are to be applied are far from precise and as such open to interpretation. The principles can be norms and values that are loosely applied, rather like human rights that generally come under the Millennium Development Goals; alternatively, they can be more narrowly conceived guides to operational practices, another possibility is that they can themselves be objects of implementation. The latter two more rigorous manners appear to be the vision embodied in the UN Common Understanding of a human rights-based approach of 2003, which indicates that human principles can be integral elements of processes as well as outcomes of rights-based programming: Human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation.<sup>21</sup>

These tensions, it can be argued, affect the way that human rights principles are integrated in development policies: as outcomes or as guidance to processes. It

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17 See for instance OHCHR, ‘Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation’ (United Nations 2006) 16-17; See also Jakob Kirkemann Boesen and Hans-Otto Sano, ‘The Implications and Value Added of a Human Rights-based Approach’ in Bård Anders Andreassen and Stephen Marks (eds), *Development as a Human Right: Legal, Political and Economic Dimensions* (Intersentia 2010).

18 See OHCHR (n 4) 13; *United Nations Development Group* (n 15) 18.

19 OHCHR (n 4) 13.

20 *United Nations Development Group* (n 15) 18.

21 *UN Development Group* (n 12).

can be hypothesised that many organisations and agencies working with human rights principles on the ground would tend to associate human rights principles with significant outcomes of a rights-based development process, while agencies and organisations working with duty-bearers would associate the principles with guidance tools.

Generally, then, there are ambiguities on at least at two levels:

1. At the level of understanding how human rights principles of accountability and participation are distinct from the ways in which these concepts are applied in governance programs. It is often argued that a human rights-based approach bring value added to development work, but what is the nature of value added that the application of human rights principles of accountability and participation bring?
2. How are these principles integrated in the implementation of human rights in development including development programming.

In Section 3, I shall reflect mainly on the first issue.

### III. Human Rights Principles: What do they imply?

Donors, whether multilateral or bilateral, often combine governance and human rights activities. Governance policies aim to improve institutional performance and shape better state-citizens relationships.<sup>22</sup> The governance dimension implies overlapping commitments with regards to participation and accountability

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22 See Maria Melody Garcia, 'Improving Donor Support for Governance: The Case for More Rigorous Impact Evaluation', Briefing Paper 11, German Development Institute (DIE 2011): See also Hans-Otto Sano and Gudmundur Alfredsson (eds), *Human Rights and Good Governance. Building Bridges* (Martinus Nijhoff Publishers 2002) 141. The Office of the High Commissioner for Human Rights describes good governance in the following manner: 'there is a significant degree of consensus that good governance relates to political and institutional processes and outcomes that are deemed necessary to achieve the goals of development. It has been said that good governance is the process whereby public institutions conduct public affairs, manage public resources and guarantee the realization of human rights in a manner essentially free of abuse and corruption, and with due regard for the rule of law. The concept of good governance has been clarified by the work of the former Commission on Human Rights. In its resolution 2000/64, the Commission identified the key attributes of good governance: transparency; responsibility; accountability; participation; responsiveness (to the needs of the people)'. See <<http://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/GoodGovernanceIndex.aspx>> accessed December 2012.

between governance and human rights actors. However, the governance dimension also opens the door to a level of ambiguity concerning what is actually meant by participation and by accountability, when addressed in governance and human rights projects and programs respectively. In addition, the human rights principle of non-discrimination and equal treatment is mostly left out of governance reflections, a fact which results in further lack of clarity as regards this human rights principle. Finally, the intersection between governance and human rights is too often left open in donor policies. One dimension of this shortcoming is perhaps that a theoretical understanding of governance and human rights has never been subject of conclusive contributions.<sup>23</sup>

If human rights principles are becoming an integral element in donor policies then it seems reasonable to define what these human rights principles deliver. Is participation from a governance point of view distinct from participation from a human rights view? I would argue that a degree of clarity is warranted in this regard, even though the donors may not adhere to a rights-based approach.

This article focuses on two principles in particular: Participation and inclusion, and accountability.<sup>24</sup> These principles are important from an operational point of view, ie they are widely used in development and human rights programming. Space does not permit, analysis of a third (and also highly important principle from an operational point of view), namely equality and non-discrimination.

The UN Common Understanding explains the two principles under scrutiny here as follows:

Participation and Inclusion:

Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural

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23 A relatively recent publication by the Office of the High Commissioner for Human Rights brings out a number of best practices where governance efforts impact positively on human rights protection. As such the publication discusses a number of achievements and challenges. However, it could also be asked: How does human rights contribute to good governance policies? As Newell and Wheeler have shown: Accountability cannot be achieved through institutional reform alone. Accountability processes require a political dynamic between states and citizens. The precise nature of this dynamic is still to be understood. See OHCHR, 'Good Governance for the Protection of Human Rights' (United Nations, OHCHR 2007); Peter Newell and Joanna Wheeler (eds), *Rights, Resources and the Politics of Accountability* (Zed Books 2006) ch 1.

24 Despite the reference in the Common Understanding to the human rights principle of accountability and the rule of law, the following text will focus only on accountability. This principle in itself warrants a closer discussion.

and political development in which human rights and fundamental freedoms can be realized.

#### Accountability and Rule of Law:

States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.<sup>25</sup>

Two questions can be addressed to these principles: What are their sources, and what are their operational implications? In relation to the latter, a third question may be added: How can they be measured?

Given the fact that the OHCHR seminal framework on human rights indicators<sup>26</sup> does not address how these principles are measured, and given that development agencies, NGOs, and potentially, national governments attach importance to them, it seems relevant to reflect about their metrics and the criteria underpinning them.

#### Participation and Inclusion as a Principle

Participation rights cover a spectrum of areas of the International Covenant on Civil and Political Rights (ICCPR)<sup>27</sup> including freedom of assembly under article 21; right to freedom of association under article 22; and the right to take part in the conduct of public affairs under article 25. The Covenant protects a range of rights which participation rights depend on, such as the rights to freedom of thought, conscience and religion (article 18) and the right to hold opinions without interference (article 19).

In addition, participation rights are central to a number of key universal human rights treaties, Convention on the Rights of the Child (CRC),<sup>28</sup> the Con-

<sup>25</sup> See supra note 12.

<sup>26</sup> See supra OHCHR 2012, note 4. .

<sup>27</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

<sup>28</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (ICCRC)

vention on the Rights of Persons with Disabilities (CRPD),<sup>29</sup> and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),<sup>30</sup> as well as regional human rights instruments such as the European Convention on Human Rights<sup>31</sup> and the American Convention on Human Rights.<sup>32</sup> Participation is also a central theme under the Declaration on the Right to Development.<sup>33</sup>

Participation may also be protected through provisions aimed instrumentally towards other rights, such as the right to education under the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>34</sup> Article 13 protecting the right to education provides that States parties ‘further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace’. Articles 29 and 30 of the Convention on the Rights of Persons with Disabilities (CRPD) ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.<sup>35</sup> CRPD also promotes actively an environment in which persons with disabilities can effectively and fully partici-

29 Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3 (CRPD).

30 Convention on the the Elimination of All forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

31 The European Convention on Human Rights, formally *Convention for the Protection of Human Rights and Fundamental Freedoms* adopted by the Council of Europe 4 November 1950, entered into force on 3 September 1953).

32 The American Convention on Human Rights (adopted on 22 November 1969 by the Organization of American States, entered into force 18 July 1978).

33 The Declaration on the Right to Development UNGA Res 41/128 (1986) specifies that: ‘The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.’ (art 1). ‘The human person is the central subject of development and should be the active participant and beneficiary of the right to development’. (art 2.1) ‘States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.’ (art 2.3). ‘States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.’ (art 8.2).

34 Footnote for ICESCR

35 See *supra* note 29.

pate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourages their participation in public affairs.

Given the legal norms and their interpretation by authoritative bodies such as the Treaty Bodies to the Covenants and Conventions, a number of operational implications can be formulated as regards Participation and Inclusion. These operational implications can further guide the formulation of relevant indicators in development. These reflections are summarised in Table 2. Participation as a human rights principle is argued to have operation implications in terms of electoral interventions, in relation to affected groups, especially vulnerable ones, and as regards the quality of participation.

*Table 2. Human rights of participation and inclusion*

| Operational Implications  | Indicator implications   |
|---|--|
| <p><i>Participation in elections</i></p> <ul style="list-style-type: none"> <li>• The right to take part in elections and to be elected</li> </ul> <p><i>Participation of all affected by development and of vulnerable groups</i></p> <ul style="list-style-type: none"> <li>• The right to take part in the conduct of public affairs</li> <li>• Meaningful participation of minorities, indigenous groups, civil society, communities, and women.</li> <li>• Participation of the child in society</li> </ul> <p><i>The quality of participation</i></p> <ul style="list-style-type: none"> <li>• Participation as citizens endowed with rights</li> <li>• The processes of participation</li> </ul> | <ul style="list-style-type: none"> <li>• Free and fair elections</li> <li>• Procedural rights in place to facilitate participation:                             <ul style="list-style-type: none"> <li>accessibility of government</li> <li>right to information</li> <li>routines of consultations</li> </ul> </li> <li>• Freedoms of association, assembly, movement and freedom of speech</li> <li>• Inclusion of vulnerable groups in consultative practices</li> <li>• Policies and measures in place to involve children in development</li> <li>• The right to have rights</li> <li>• The institutionalisation of participatory measures</li> </ul> |

What does Table 2 tell us about participation and inclusion as human rights principles, compared to the meaning attributed to these concepts in governance discussions? To answer this question, it is pertinent to clarify how the governance agenda has evolved. One of the major institutions involved in promoting good governance and in strategising its application is the World Bank. According to the World Bank, the agenda has evolved at least from 1995 until recently when a second governance strategy was elaborated within the Bank. The significant changes have resulted in a much stronger focus on demand side participation than on supply side institutional reforms. In other words, part of the strategy has evolved to institutionalise participation and to make participation and monitor-

ing from below an integral part of achieving development effectiveness.<sup>36</sup> In this light, it is now possible to revert to Table 2.

The Table points towards the importance of inclusion of minorities or marginal groups as part of the operational policies. It might be argued by International Financial Institutions (IFIs) and other institutions that they do reach out to vulnerable groups through demand side (social accountability) measures. Generally, these institutions will direct attention towards the participation of women and occasionally towards other groups. However, the more systematic inclusion of marginal groups is not always prevalent in social accountability measures.<sup>37</sup>

A human rights approach to participation invites a citizen focus according to the Table. This implies that participation becomes systemic, ie that the right to have rights becomes the accepted norm and that the practice of exerting rights demands become an acquired skill.<sup>38</sup> The conduct and institutionalisation of participatory measures is an integral focus of a human rights approach to participation.

The principle of participation in the human rights context is closely linked to freedom rights such as the freedom of speech, assembly, movement and association as noted in the Table.<sup>39</sup> In post conflict and transitional situations from autocratic regimes to democratising ones, the freedom of association is a key to the establishment of a credible civil society as the present situation in several North African countries illustrates.

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36 See World Bank, 'Evolution of DFGG (demand for Good Governance) in the World Bank' (The World Bank: Social Development) <<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXT-SOCIALDEVELOPMENT/0,,contentMDK:21211265-pagePK:210058-piPK:210062-theSitePK:244363,00.html>>, accessed December 2012.

37 The challenge of institutionalising social accountability or demand side governance in World Bank projects is still presenting itself with some force. In fragile, post conflict situations, there is a strong interest in working with civil society groups, but the selection of these groups can be difficult. The question can be raised: to what degree are they representative of the poorest segments of the population. The risk of a middle class capture is imminent. Even outside the fragile situations these risks may prevail. See World Bank: Social Development, 'How-To Notes. How, When, and Why to Use Demand-Side Governance Approaches in Projects' Governance and Anti-Corruption in Projects (The World Bank 2011) 16.

38 See John Gaventa and Gregory Barrett, 'So What Difference Does it Make? Mapping the Outcomes of Citizen Engagement' Working paper Vol. 2010, no. 347, Institute of Development Studies 39-46; See also *Newell and Wheeler* (n 19) 28-30. It should be underlined that citizenship can also be used as a means to exclude marginal populations.

39 In Tunisia, the World Bank is supporting freedom of association efforts. See Global Trends in NGO Laws, 'Arab Spring: An Opportunity for Greater Freedom of Association and Assembly in Tunisia and Egypt?' (undated) <<http://www.icnl.org/research/trends/trends3-1.pdf>> accessed 2 March 2012.

In sum, apart from indicators relating to free and fair elections, indicator implications of participation rights include procedural rights like accessibility, right to information, procedures of systemic consultations, moreover freedoms, inclusiveness including attention paid to the rights of the child, and indicators recognizing the right to take part of citizens and in specific cases of other groups residing within the territory of the state.

### Accountability as a Human Rights Principle

First, it can be useful to address what “accountability” means in the good governance context. The World Bank explains that “accountability” involves two distinct stages: *answerability* and *enforcement*. Answerability refers to the obligation of the government, its agencies and public officials to provide information about their decisions and actions and to justify them to the public and those institutions of accountability tasked with providing oversight. Enforcement suggests that the public or the institution responsible for accountability can sanction the offending party or remedy the contravening behaviour. The centrality of oversight mechanisms is emphasised in order that government activities meet their stated objectives and respond to the needs of the community they are meant to be benefitting.<sup>40</sup> According to this perspective, accountability refers to a political perspective the main elements of which are information and openness and oversight.

The World Bank’s classification of demand for good governance tools now contains 24 different measures of social accountability described under the following main headings: Information dissemination and demystification, Participatory monitoring, Participatory financial management, Complaint handling, Participatory decision making, Participatory management.<sup>41</sup> Impact studies on these efforts of monitoring public authorities and holding them to account indicate positive outcomes in a number of cases, but not in all. The knowledge on the effectiveness of the different tools is subject of intense studies at the moment.<sup>42</sup>

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40 See The World Bank, ‘Accountability in Governance’ <<http://siteresources.worldbank.org/PUBLICSECTORANDGOVERNANCE/Resources/AccountabilityGovernance.pdf>> accessed December 2012.

41 See *The World Bank*, ‘Demand Side Governance’ (n 23). The World Bank’s data base of demand for good governance initiatives in development comprises 710 initiatives as per 7 March 2012.

42 *Ringold et al* (n 34), studied 427 Human Development Projects 2005-2010. Among these projects, 36 had social accountability measures in their design, 13 in health, six in education and 13 in social protection (four unreported). Of 15 impact evaluations, 11 report positive outcomes in terms of improving service delivery or in terms of reduced corruption.

Turning now to the human rights perspective, accountability lies at the heart of the human rights framework not as a right, but as an overarching objective and underlying justification. For some, it is the essence of what human rights contributes to development:

Perhaps the most important source of added value in the human rights approach is the emphasis it places on the accountability of policy-makers and other actors whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability.<sup>43</sup>

The notion of accountability has gained increasing prominence in development discourse too through the proliferation of governance and anti-corruption initiatives as well as rule of law and justice programs within development cooperation. Accountability, however, has gained strength in democratic policies not only in the developing world, but also in the developed. It has become an integral part of global governance discourses.<sup>44</sup> Accountability is the bulwark of newer work on demand side of good governance as well as engagement in fragile states and conflict affected areas.

Despite the breadth and significance of the convergence on accountability as a principle, it can be argued that the notion of *legal accountability* may be one of the single most important distinctions between human rights and development discourses and frameworks, and also defining of one of the most significant contributions that human rights law can make to development.

One particular dimension of accountability that warrants emphasis, is its direct anchoring in international legal standards as well as in domestic constitutional and legislative frameworks. As such, the explicit invocation of human rights almost automatically brings with it a reliance on law, which in turn, it is argued, introduces a measure of clarity and strength by virtue of being binding – regardless of challenges surrounding enforcement and compliance.

Thus, at the heart of what human rights law is seen to contribute is the strength of international legal accountability through the obligations of States

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43 P Hunt, S Osmani and M Nowak, 'Summary of the Draft Guidelines for a Human Rights Approach to Poverty Reduction' (2004). Geneva: OHCHR.

44 Anne Marie Goetz and Rob Jenkins, *Reinventing Accountability. Making Democracy Work for Human Development* (Palgrave 2005) 4, argued that '... a new accountability agenda is in the making: 1. a more direct role for ordinary people and their associations in demanding accountability, across, 2. a more diverse set of jurisdictions, using 3. an expanded repertoire of methods, and on the basis of 4. a more exacting standard of social justice'.

parties under human rights treaties as well as through their applicability in domestic law, constitutions and regulatory frameworks where such obligations are transposed. In general terms, that accountability demands a number of inter-related elements: the justification of States' performance vis-à-vis others, the assessment, oversight or judgment of that performance against certain standards, with the possible imposition of consequences if states fail to live up to those applicable standards through redress and remedies. At another level, the principle of accountability underpins the relationship of rights-holder and duty-bearer:

The principle of accountability asserts that people are active subjects or claim holders. To have a right is to have a claim against others, whether against other individuals or against organized social units like the family or the state.<sup>45</sup>

In addition to the focus on accountability as a key contribution of human rights, this analysis emphasises legal accountability as something that, in itself, adds value. As Paul Gready has noted in the context of identifying the value added of human rights-based approaches (HRBAs) 'the most obvious distinct contribution that human rights can make is through leverage provided by the law'.<sup>46</sup> Beyond the obvious virtue of being legally binding, elements of the 'value added' include the public and visible nature of the norms as international treaty obligations, the relative stability, predictability and clarity of those norms and the fact that they are the subject of states' publicly declared intentions as States parties (reservations, limitations and derogations notwithstanding). The legal accountability underpinning human rights norms is defining of the international rule of law, upon which a range of normative and instrumental structures rely and it provides the frame within which international policy coherence can be pursued. Furthermore, the legal accountability is reflected complaints procedures under human rights treaties<sup>47</sup>, as well as the pronouncements of treaty monitoring bodies, which are now strengthened by assessment methodology and the development of human rights indicators. At another level, these international norms add value by

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45 Jennifer Chapman in collaboration with Valerie Miller, Adriano Campolina Soares and John Samuel, 'Rights-Based Development: The Challenge of Change and Power for Development NGOs' in Sam Hickey and Diana Mitlin (eds), *Rights-Based Approaches to Development. Exploring the Potential and Pitfalls* (Kumarian Press 2009).

46 P Gready, 'Rights-Based Approaches to Development: what is the value added' (2008) 18 *Development in Practice* 735, 737.

operating at different levels, whether international, domestic or even local. Despite variances in countries' constitutional approaches to international law obligations, once ratified, human rights treaties are typically transposed into domestic legal frameworks, which can in turn generate constitutional litigation aimed at the enforcement of human rights.

The value added of legal accountability is sustained notwithstanding the fact that legal recourse is not the only avenue for accountability, that the law may be used directly or indirectly, and that other accountability mechanisms exist which are relevant to development. It is further acknowledged that legal accountability is imperfect given the persistent challenges surrounding implementation and enforcement and the doubts that some have articulated about the actual impacts of international human rights treaties. Legal accountability is therefore not viewed as the principal or even dominant form of accountability for human rights in development, nor is it presented as covering the extent of the possible contribution of human rights to development or the MDGs. Indeed human rights accountability in development may be achieved through political mobilisation and grass roots movements that rely on the direct participation of groups; it may also be effectively advanced through social accountability and efforts to support the demand-side of governance. It is submitted, nevertheless, that legal accountability and other forms of accountability are not mutually exclusive and that they may even be mutually reinforcing in the context of development, and be used simultaneously to advance the attainment of the MDGs and shape the goals and process in a post-2015 setting.<sup>48</sup>

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47 Five of the human rights treaty bodies (CCPR, CERD, CAT, CEDAW and CRPD) may, under particular circumstances, consider individual complaints or communications from individuals: The CEDAW may consider individual communications relating to States parties to the Optional Protocol to the Convention on the Elimination of Discrimination Against Women; The CAT may consider individual communications relating to States parties who have made the necessary declaration under article 22 of the Convention Against Torture; The CERD may consider individual communications relating to States parties who have made the necessary declaration under article 14 of the Convention on the Elimination of Racial Discrimination; and The CRPD may consider individual communications relating to States parties to the Optional Protocol to the Convention on the Rights of Persons with Disabilities. The Convention on Migrant Workers also contains provision for allowing individual communications to be considered by the CMW; these provisions will become operative when 10 states parties have made the necessary declaration under article 77.

48 See also Siobhán McInerney-Lankford, 'Legal Accountability: From Human Rights Obligations to Development Policy and the MDGs' in Malcolm Langford, Andy Sumner and Alicia Ely Yamin (eds), *The MDGs and Human Rights: Past, Present and Future Edited* (Cambridge University Press 2013).

Like the World Bank, Newell and Wheeler emphasise that rights demands for accountability give rise to two sets of accountability actions, one based on enforcement and the other on answerability.<sup>49</sup> However, Newell and Wheeler frame these in a manner more akin to human rights thinking. Thus, duty-bearers are obliged to *comply* with norms and policies and *enforce* them, but they are also required to become *responsive* to demands and to engage in *collaborative processes and dialogues*. Thus apart the legal accountability and redress dimension preeminent in human rights thinking, there is also the element of responsiveness and eventually outreach mechanisms.

*Table 3. The human rights principle of accountability*

| Operational implications  | Indicator implications  |
|---|---|
| <p><i>Compliance and enforcement</i></p> <ul style="list-style-type: none"> <li>• with human rights standards:                             <ul style="list-style-type: none"> <li>Respect</li> <li>Protect</li> <li>Fulfil</li> </ul> </li> <li>• Remedy and Redress mechanisms in place</li> <li>• Compliance with policies and their enforcement</li> </ul> <p><i>Responsiveness to human rights claims and remedial actions</i></p> <ul style="list-style-type: none"> <li>• Transparency and the right to information</li> <li>• Efforts to curb corruption</li> <li>• Collaborative and dialogue processes</li> <li>• Efforts to facilitate access to public institutions</li> </ul> | <ul style="list-style-type: none"> <li>• Non-interference in rights enjoyment</li> <li>• The duty to protect enjoyment against third party violations of rights</li> <li>• The duty to provide for and facilitate rights enjoyment</li> <li>• The channels of redress, the no. of complaints received and treated</li> <li>• The effectiveness of managing public resources</li> <li>• Transparency policies respected</li> <li>• Open data access</li> <li>• Perception surveys of corruption</li> <li>• Bribe indicators</li> <li>• Media reports</li> <li>• Measures reaching out and facilitating access</li> </ul> |

Table 3 above summarises these reflections. It is suggested that accountability as a human rights principle has implications in terms of compliance and enforcement, and in terms of responsiveness. The compliance dimension will relate to the legal human rights obligations and to the associated human rights standards. Compliance, however, will also address policy enforcement, and with that the effectiveness and predictability of governance. Indicators will also relate to the

<sup>49</sup> Newell and Wheeler (n 19) 41. See also Dena Ringold, Alaka Holla Margaret Koziol and Santosh Srinivasan, *Citizens and Service Delivery. Assessing Accountability Approaches in Human Development*, (The World Bank 2011) 33-67.

complaints mechanisms in place and their channels. Complaints mechanisms are an integral part of accountability. In terms of responsiveness, broader implications are raised relating to institutional accountability and to the measures of transparency, right to information, non-corruption, dialogue measures and access facilitation to public institutions. These measures, possibly with the exception of the measures of reaching out, resemble the broader governance concerns of accountability and represent the overlap between human rights and good governance as regards accountability.

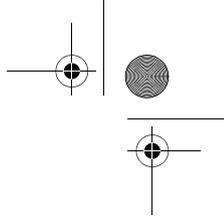
#### IV. Conclusions

The article has discussed the integration of human rights principles of accountability and participation in development. These principles are important in development, not least as donors address them, and as NGOs employ them. The article has argued that these principles are surrounded by ambiguity. It is unclear how they have been defined, it remains unclear when they overlap with governance criteria and when they are to be considered distinct from them, and it thus becomes unclear what they deliver including how they can be measured.

The article has sought to reflect upon how legal and non-legal instruments arising from human rights norms and from human rights practices can help clarifying the ground. What do human rights principles of accountability and participation add to a governance conception of such criteria?

In terms of participation as a human rights principle, the analysis indicates that freedom and procedural human rights are the vehicles through which participation becomes possible. Participation from a human rights perspective warrants a focus on marginal and vulnerable groups as a systemic feature and requires therefore often disaggregated data and more elaborated processes of enabling participation. Finally, the quality of participation and its institutionalisation is also linked to a human rights approach to participation. Quality aspects include that individuals and groups are treated as citizens endowed with rights and that space is provided for agency or empowerment.

As regards accountability, the reflections have brought a perspective on compliance as well as on responsiveness. Compliance in legal terms and as regards enforcement of policy is implied under the compliance dimension. Concerning responsiveness, the implied aspects of accountability from a human rights perspective comprise transparency, rights to information, non-corruption, and col-



laborative measures on part of the authorities to facilitate access to institutions and collaborative efforts. The latter will not be very different from the criteria on good governance accountability except for the emphasis on collaboration and outreach. The human rights principle of accountability therefore adds legality, quality of interaction, and redress as an integral element of development efforts.

