

Decentralized Governance and a Human Rights-based Approach to Development

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Introduction

The issue of human rights has not figured prominently in the ongoing discussion on decentralization. In part, this is because human rights advocates have focused their attention on getting central governments to accept the basic HR principles. Human rights advocates have only recently begun to consider the effects of decentralizing decision making power to lower levels of government¹. As they begin to focus on this growing political phenomenon, they are increasingly recognizing that such process creates new opportunities to promote HR as well as threats to protection. Indeed, issues of justice, accountability, poverty reduction, employment/livelihood, environment, women and children are fundamental concerns of local development.

Given this historic lack of recognition of the links between decentralized governance and a human rights agenda, the critical message to be delivered in this paper is that **a human rights approach to decentralized governance is critical to protecting and promoting the freedom of men and women to lead the kind of lives they choose in dignity, free of injustice and humiliation**. However, the current reality is that the creative processes that lead to individual freedom and development are often constrained by societies. Frequently such constraints are imposed in the name of security, culture or tradition. UNDP has recently started to think about what HRBAD means when we work in a decentralized governance setting so that programming can be more broadly effective in dealing with these societal constraints on individual freedom.

This note is designed as a means of stimulating discussion on the nature of the relationship between implementation of decentralization reform and human rights. Drawing upon evolving ideas from a number of specialists², primarily from the fields of economics, political science and the new field of complexity science this note represents some of the recent thinking on local institutional development for human rights promotion.

The opening major section provides an overview of some of the critical issues that are being raised as decentralization and human rights issues are starting to be discussed together. The second major section contains brief reviews of several recent

¹ Local Rule: Decentralization and Human Rights. International Council on Human Rights Policy, 2002.

² The theoretical framework for this note is based heavily on previous materials prepared under the UNDP Global Programme on Human Rights (HURIST) by Prof. Leonard Joy and Patrick Van Weerelt. Additional comments and insights have been added based on this author's studies and experiences. Any misinterpretations or errors in analysis are this author's alone.

decentralized governance support programmes in Asia that provide a sound basis for initiating a human rights-based approach to decentralized governance. Links between the theory and practice are noted in the concluding section.

A Conceptual Framework

Towards A UN Common Understanding of a Human Rights Approach to Development

As a framework for development programming, perhaps no concept has a stronger underpinning than that of a human rights-based approach to development (HRBAD). The United Nations is founded on the principles of peace, justice, freedom and human rights. The Universal Declaration of Human Rights (UDHR) recognizes human rights as the foundation of freedom, justice and peace. The unanimously adopted Vienna Declaration and Programme of Action states that democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

Human rights are defined as the supreme, inherent, and inalienable rights to life, to dignity, and to self-development. A HRBAD is, thus, oriented towards assuring the broad spectrum of rights included in the international system of human rights standards are integrated into development policies and programmes. Using the UDHR as its philosophical underpinning, HRBAD broadens the normal concept of development to include the whole range of civil, political, economic, social and cultural as rights covered by the Declaration. One of the significant differences of a HRBAD over 'normal' development is the process of translating our perception of developmental needs into rights and the explicit recognition of the interconnectedness of all aspects of the human condition. This perceptual shift helps practitioners and policy makers alike to recognize the mutual responsibilities on the part of all actors in a society to respect, protect, promote and fulfill those rights.

Human rights are increasingly recognized as forming the basis of a global vision for human development backed by State obligations. The UDHR is supported by a wide array of international covenants that have been signed by most members of the United Nations. The resultant treaty obligations establish legal frameworks for their enforcement, providing legitimacy for the advocacy of a HRBAD.

Under the UN Programme for Reform that was launched in 1997, the Secretary-General called on all entities of the UN system to mainstream human rights into their various activities and programmes within the framework of their respective mandates. This move provided the basis for an operational framework that was previously lacking. Most importantly, building upon the present emphasis on poverty reduction and service delivery, the Secretary-General's programme clearly aims to go beyond improving services by emphasizing the premise that realization of human rights is the prescription of a healthy sustainable society.

Changing our methods of intervention

A human rights based approach to development is seen as both a means and an end. The rights-based definition of development in article 1 of the Declaration on the Right to Development sees it as a comprehensive economic, social, cultural and political process. Its objective is the constant improvement of the well-being of the entire population and of all men and women, based on their active, free and meaningful participation in development and in the fair distribution of the resulting benefits.

Consequently, HRBAD requires that development programming abandon the previously common practice of employing external advisors to prescribe solutions to local problems in favor of an inclusive consultative process in which the knowledge and concerns of the local society are predominant. This is a difficult shift for many in the development business. We have grown so used to believing that outsiders know what is needed for any given situation that many programmes contain conditionalities that require certain predetermined changes to occur before allowing assistance to continue. As a consequence, HRBAD also requires that we deepen our understanding of the social forces that impinge upon an individual's ability to defend his rights. This understanding further strengthens our recognition of the fundamental correctness of a catalytic process approach to development that focuses on influencing the general direction of development rather than attempting to force it into a predetermined frame to address particular problems that currently manifest themselves. Thus, one of the critical issues presented in this paper is that the process of HRBAD is also the product of HRBAD.

The growing realization of the need for a shift in attitude and approach in all work of the UN system led recently to an Interagency Workshop on a Human Rights based Approach in the context of UN reform 3-5 May, 2003. This workshop resulted in the preparation of a Statement of Common Understanding that specifically refers to a human rights based approach to the development cooperation and development programming by UN agencies. The core agreements were summarized as follows:

1. All programmes of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

As a result of this workshop, all future development programmes need to be assessed in light of these agreements. No longer can programmes be designed that only incidentally contribute to the cause of human rights. They must be specifically designed to contribute to the realization of one or several human rights. Programmes must

introduce the fundamental principles of human development which are often summarized as:

- Indivisibility and inalienability of all rights
- Meaningful participation of all claim holders, and
- Accountability of all duty bearers

One of the clear distinctions of HRBAD from 'normal' development is the inclusion of the word 'all' in its defining principles. No longer is it sufficient for a 'majority' or 'most' men and women to benefit, all must benefit—especially those who have gained the least from past efforts.

Connecting HRBAD with governance

The implementation of a HRBAD is fundamentally about inducing reforms in the overall approach to governance in a society. Over two hundred years ago, Alexander Hamilton, one of the chief architects of the federal constitution of the United States of America, summarized the reasons for this approach when he wrote,

“Good government is characterized by both its aptitude and by its tendency”

For far too long, UNDP and most other donors focused their attention on improving the aptitude (capabilities) of government employees. We have now learned that paying attention to the incentives that influence the behavior of government employees (tendency) is vital. Without this orientation, we run a clear risk of building the capabilities of government employees without changing their basic attitude towards their constituents from one of command to service. Associated with this is the recognition that one of the most productive means of shifting the tendencies of government is to build the capacity of the citizenry to require such a shift.

It is useful at this point to take an example of a country, Pakistan, that has had considerable difficulty throughout its existence in conducting its governance agenda from a human rights perspective. Socio-economic development in Pakistan faces myriad constraints that stem from the basic dysfunctioning of key institutions. In the past, Pakistan recorded strong achievements in key macroeconomic indicators and infrastructure development. Unfortunately, most of these achievements have disappeared in recent years. Critically, the progress of human development has always lagged behind that of standard economic indicators of growth, as reflected in poor social indicators on literacy, health, population growth and access to basic services for the poor and marginalized members of society.

Major operational reasons for poor achievements in human development have been identified as a breakdown of basic service delivery mechanisms through corruption, staff absenteeism, and poor maintenance; lack of accountability, transparency and politicization of personnel selection and resource allocation. In addition, concerns regarding the fairness of the legal system and its ability to provide an enabling

environment to promote social and economic development; lack of, or selective, enforcement of rules (many of which are outdated); poor co-ordination among government departments and among donor agencies; and the poor morale and work ethic of the civil service. In other words, Pakistan has experienced a steady erosion in the quality of its governance institutions.

Introducing institutions as a framework for analysis

This cursory overview of the impediments to carrying out a human rights based development agenda in Pakistan introduces us to the criticality of recognizing the power of institutions³ in our work. When institutions place a perverse influence on individual decision making they tend to undermine the achievements of organizations in both the public and private sphere, with serious and measurable consequences for the achievement of a human rights based development agenda. When, on the other hand, these incentive structures lead to a positive impact on individual behavior they are often referred to collectively as positive 'social capital'⁴. A human rights based approach to governance seeks fundamentally to broaden and deepen the qualities of social capital in a given society.

When embarking on a HRBAD it is useful to use an analysis of institutions as the basis for policy reform. Institutional analysis focuses the attention about the relationships between rules and action and the relationships among the various actors. In such an approach, the focus revolves around developing an understanding of how various constraints and opportunities present in an institutional context influence why men and women act the way they do. This enables us to more clearly understand the forces at work that impinge upon the ability of men and women to lead the lives of their own choice and of the responsibilities of key actors, both public and private. Such key actors are known as 'duty bearers' in the human rights jargon: those who are responsible for the protection, promotion and/or fulfillment of someone else's human rights.

A human rights-based approach to development is above all a responsibility-based approach. It asks "who is, and who should be, responsible for what with respect to whom?" One of the most useful results of a responsibilities analysis of the role of individual duty bearers is the recognition of the interdependence of various rights together with the identification of actors whose behavior could contribute to changes that enhance the realization of those rights.

Such an analysis starts with an identification and assessment of the institutional causes for concern about the condition of men and women and their communities based on evidence about the status of the whole range of human rights concerns. From a human

³ The word institution is typically used as synonymous with organizations. Institutions, in this sense, however, are defined as configurations of formal rules, informal social constraints and the enforcement characteristics of both. The objectives set by organizations to achieve certain purposes are often undermined by institutional forces that provide incentives to individuals to emphasize their personal objectives over those of the organization.

⁴ The term social capital is correctly used for either positive or negative influences on a society that emanate from forces of social cohesion. Linking social cohesion with the principles of human rights avoids this paradox.

rights perspective, it is important to recognize that the origin of those institutional configurations, at least in a democratic society, is with the people in the type of social capital that is created by them. The sort of relationships that exist within families and in communities are mirrored in the laws and policies devised by government.

Governance is not a unilateral linear process whereby government determines the direction for the people. Men and women must be recognized as having a significant and ongoing influence on government. This recognition should lead us away from the *dirigiste* paradigm for development that assumes that all change of consequence flows from government-lead decisions.

Some experts argue that the success of a HRBAD depends on a pre-existing institutional framework that accepts a 'culture of human rights'. This is known in systems terms as 'getting the initial conditions right'. This implies that respect for human dignity must be reflected in a State's norms, institutions, legal frameworks and an enabling economic and political policy environment. This argument holds that getting initial conditions right will define the path the society will take toward achieving its objective. If initial conditions are not set right then the process could fail or depend on random events during implementation to correct unsupportive initial conditions.

While all would agree that such an approach should be taken to the extent feasible, it is never possible to establish the perfect 'initial conditions' in favor of HRBAD for a number of technical or political reasons. Given this reality, others argue that it is important to also focus our attention on developing incentive mechanisms that encourage national, local and non-state entities to learn from their experiences as they develop. In this way, the viability of HRBAD is more dependent on facilitating a local capacity to create an ongoing process of organizational learning through open dialogue than on attempting to control the outcome through a complex array of policies and rules at the outset.

In all cases, it is important to fully recognize that institution building takes time and needs to be locally driven. Unfortunately, due to a failure in the past to deeply investigate the institutional framework that influences the visible results of a process of reform, donors have often misdiagnosed the problems confronting them by assuming failure to reform is the result of a deficit in individual skills and knowledge when the real constraints are actually deep configurations of social or political institutional incentives. Sometimes when donors do recognize these deeply ingrained behavior patterns they still resort to attempting to change values and beliefs through training courses. Even less effective are overly-elaborate national programmes that attempt to incorporate externally determined solutions to all the identified constraints simultaneously in one package of assistance. This approach to governance programming is akin to the failed integrated rural development projects of the 1970s and 1980s. This is not to argue that an integrated approach is not appropriate. In a HRBAD, however, it is the local society that should play the dominant role in deciding what are the critical pieces of the jigsaw that need to be focused on at any particular point in time. One of the potentially effective mechanisms for enhancing the voice of citizens in development programming is through decentralization.

Decentralized governance as the ‘killer application’ for HRBAD

The rationale for instituting a decentralization reform process is often supported, in part, by arguing that the specific conditions of specific groups in a society can be better understood and addressed at the local level. Those who follow this line of reasoning argue that decentralization is critical to the establishment of a long-lasting form of participative democracy that respects the dignity of the person by providing direct opportunities to engage directly in public decision and to voice concerns. Opposition to this belief is presented later in this note.

Before we begin to define how a HRBAD programme framework for decentralized governance should be structured, we need to review a few governance concepts. A basic principle that must be understood before addressing the links between decentralized governance and a HRBAD is that local governments always exist at the will of a pre-eminent authority at the national level. This is precisely why this paper initially discussed the relationship between human rights and governance at the societal level before delving into the linkage with decentralized governance.

It is the central Government and Parliament that commit a country to the norms and principles of human rights, not regional and local governments. Thus, from a legalistic perspective, it is important that a country's international obligations under international human rights law are made explicit in the context of decentralization and local governance to the extent that the actions of those below the central government who will exert power, dispose of resources and shoulder responsibilities are also guided by the country's human rights obligations.

Richard Bird⁵ reminds us of this unbalanced relationship when he defined two key characteristics of decentralized governance around the world:

- 1 No matter how much local governing units spend, the amount under their direct control is invariably less than their expenditure (the remainder coming from the national government, with varying levels of conditionalities).
- 2 Not all subnational governments are equal, national government transfers determine the pattern and level of expenditures in the poorer regions of countries, so that the design of transfers becomes critical in establishing the effects of decentralization on poverty.

A second principle that is important to this discussion of HRBAD emphasizes the responsibility of the individual to govern his own affairs in a way that is consistent with the rights of others. This principle supports the development of an interdependent relationship among men and women, communities and between the state and civil society. This principle is critical to an understanding of the full ramifications of a HRBAD responsibility framework. Depending upon the time and purpose, we all constantly shift between being a duty bearer and being a claim holder. This relationship, thus, should

⁵ Bird, Richard et al. Decentralization and Poverty Reduction, 1999.

not be construed as a dichotomy between different types of people or entities. It is rather one where the relationship changes depending upon the circumstance. For this reason, a responsibilities analysis cannot be conducted, say, during a programme design and then filed away. Responsibilities constantly change as people change, as circumstances change and are dependant upon which aspect of a particular right is being discussed.

Unfortunately, all too often, decentralization reform has been approached as primarily an exercise in the permanent reallocation of roles and functions within government. Often, it is seen simply in administrative terms, and as a remedy for the inefficiencies in the delivery of services resulting from a lack of ownership. As a result, many papers and speeches have been written that attempt to define what is good or bad decentralization.

Taking an emergent perspective on decentralized governance allows for a more complete analysis from a human rights perspective. Decentralization is not an either/or proposition, it is both/and. The typical dichotomy deflects our attention away from the interdependent relationships between and within levels of a society that are needed to solve particular developmental problems. A more meaningful effort to undertake in this context is to design an operational environment that supports all actors to seek innovative solutions to current problems.

At the same time, we must always remain cognizant of the fact that international treaties rarely influence human interactions at the personal level. Therefore, the potential for local attitudes to HRBAD to be more, or less, supportive than that of the national government must always be kept fully in mind. This is, after all, the true essence of decentralization—facilitating diversity. The critical issue to reflect upon here is that all discussions of HRBAD and decentralized governance must include both a discussion of the nature and orientation of national government as well as the potential variation inherent in the various sub-national bodies in the society in question. However, since this paper is specifically focused on decentralized governance the remainder will emphasize processes and experiences at the local level that support a HRBAD, fully recognizing the systemic relationship with the national government.

Therefore, before we discuss how such support to decentralized governance could be designed, it is important to note some of the potentially negative aspects of decentralized governance.

Recognizing the potential for deflected development

Many practitioners refer to decentralized governance as if it were an unmitigated good. Some go so far as to argue that decentralized governance is a necessary condition to allow for a HRBAD to be implemented. However, most careful experts argue quite strongly, and often with considerable empirical evidence, that decentralization can lead to seriously deteriorated conditions of human rights unless care is taken. It is important to recognize that such care cannot be limited to the design phase, but needs to be built into the day-to-day operational behavior of both state and non-state actors.

It is painfully obvious that progress in the realization of human rights does not necessarily follow automatically from attempts to decentralize. Local officials often violate the public trust by using their positions for personal gain, wasting or misusing revenue. The machinery of local government can be used to impose a particular set of social values on men and women that interfere with voluntary economic activities and violate private property rights in order to rearrange opportunities for the benefit of some and to the detriment of others. Consistent with the discussion above, decentralization in itself may be unable to effect change where national policies and political, administrative and judicial systems are unsupportive.

UNDP programming needs to be informed by these realities and especially by the understanding that the path of development for governance systems reflects the historical development of societal norms. This understanding is essential in resisting advocacy for preconceived forms of governance and seeking instead to support the exploration of developmental steps suited to the local historical and cultural context.

In a thoughtful piece for Unicef, Dr. Jeni Klugman⁶, clearly warns that one must be very watchful of decentralization programs. She argues that there is little or no evidence to support the commonly held assumption that decentralization would automatically promote both the efficiency and equity of government activities. She says that rigorous assessments of the impact of decentralization on child welfare outcomes are scarce. She does admit that because local governments tend to focus on those services that are of greatest direct relevance to child welfare that positive outcomes can be expected.

However, Dr. Klugman is concerned that, because of the long time horizon, local communities may not see education or other aspects of human development as important goals. Because of this concern, she argues that it may be necessary for the central government to override family decisions on issues such as immunization and education. This is a very real concern in Pakistan where families willfully keep their children, especially their daughters, from school. However, others argue that it would be far more effective to have local community pressure brought to bear on such families rather than procedural pressure from distant bureaucracies.

Another of her key concerns is that decentralization may lead to a deterioration of overall attainment of social objectives because there is a significant risk that the equality of opportunities and of outcomes will be adversely affected due to a failure to provide sufficient resources for poorer regions. While the overall outcome (attainment of national goals) may be met more easily through decentralization, the process may lead to greater interregional disparities (see Bird's comment above).

Interregional disparities are a critical concern when considering the link between decentralized governance and a HRBAD. However, decentralization is sometimes inappropriately blamed for an inequitable development of regions within a country. Geography also has a critical role in disparate rates of economic development, and its

⁶ Klugman, Jeni. Review of Decentralization: A survey from a child welfare perspective. Innocenti Occasional Papers, Unicef, 1997.

impact is independent of any political regime. Unevenness in development is an unpleasant fact throughout the world, under centralized and decentralized, democratic and dictatorial regimes. Certainly, it occurs under highly centralized regimes as well.

Policies can change the inherent agricultural or trade potential of an area granted sufficient resources are available. Through centralized policies, certain localities can be targeted and given special treatment. This may be the poorest region in the land, it may be the fastest growing or it may simply be the home of the prime minister. The fact remains that such support is the prerogative of a central government. In contrast, decentralized governance units do not have the means to write local regulations that provide them with disproportionate facilities from the state. All decentralization can do is enable local governments to take full advantage of their local resources and do the best for their own people. Through decentralization, a local community can use the opportunity of enhanced authority and responsibility to discover unique qualities within itself that can be exploited for the benefit of its constituents that a national planning strategy would never consider.

Polycentric governance as a design principle for rights-based decentralization

It is often argued that if decentralization is properly designed and implemented it can promote democracy and a broad good governance agenda. Perhaps one of the most critical design principles that should be supported by supporters of a HRBAD is that of polycentrism. Following the practice of the framers of the American constitution, decentralization policy formulators should recognize that in order to protect individual freedoms we must first guard against unchecked government power at any level. The strongest defense against this situation is a polycentric governance⁷ framework that enables different mixtures of organizational relationships depending upon the particular public problem that needs to be resolved. Unfortunately, public administration experts and practitioners typically argue against competition in public service as being inherently inefficient. However, seen from a different angle, redundancy in a public service system provides for more options to solve a problem than if we restrict ourselves to a single hierarchical pyramid of control, thus increasing the power of the individual or community to find solutions to their problems.

Arguably, the most polycentric governance system in the world is that of the United States of America. There are more than 82,000 separate units of government in America, not including state and local regulatory boards. This plethora of options helps to ensure that any single local government cannot have absolute power over the rights of men and women to personal freedom. This is necessary. While the machinery of local government certainly can be, and often is, used for the public good, the existence of this power too often provides an irresistible temptation to those who would use it for

⁷ For an introduction to the concepts and practical application of polycentric governance see: Ostrom, Vincent, David Feeny, and Hartmut Picht, eds. Rethinking Institutional Analysis and Development: Issues, Alternatives, and Choices. 2d ed. ICS Press, 1993. and Ostrom, Elinor, Larry Schroeder, and Susan Wynne, Institutional Incentives and Sustainable Development: Infrastructure Policies in Perspective, Westview Press, 1993.