



THE RIGHTS-BASED APPROACH (RBA): IMPLICATIONS FOR SUDANESE INTERNALLY DIPLACED PERSONS (IDPS) AND REFUGEES

Fiona C. Thomas, MSc

Abstract

The Rights-Based Approach (RBA) to development emerged only in the last two decades. Despite some criticism, the literature has acknowledged the importance of this approach in development. Yet, minimal attention has been given to exploring its application in a current-day situation where human rights have been violated regularly. This study will aim to counterbalance this trend in the literature by exploring the value of applying RBA with refugees and internally displaced persons in the Sudan. This paper concludes that the accountability RBA demands from state actors as well as its focus on all vulnerable individuals may ultimately make it more beneficial for refugees and IDPs, than other approaches.

Keywords: Rights-based approach, Sudan, IDPs, refugees

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Submission (July 2011 Edition): <http://journalinternaldisplacement.webs.com/announcements.htm>

JID is produce and published by EV Research Inc – www.evresearch.ca

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THE RIGHTS-BASED APPROACH (RBA): IMPLICATIONS FOR SUDANESE INTERNALLY DIPLACED PERSONS (IDPS) AND REFUGEES

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Introduction

The Rights-Based Approach to development (RBA), a term used interchangeably with the Human Rights Approach to Development (HRAD), is a fairly recent concept in the realm of international development. Its juvenile history emerged only in the post-Cold War period of the early 1990s (Cornwall & Nyamu-Musembi, 2004).

Yet, be it as a result of nationalist or anti-colonial movements, the struggle for the realisation of social, economic and cultural as well as civil and political rights has long been a feature of the political landscape in numerous developing countries (Cornwall & Nyamu-Musembi, 2004). Rights talk was, and continues to be, an integral feature of resistance and liberation movements. Those who fought and still fight for self-rule, liberty and even their own livelihoods, framed their demands in terms of the constant constraints imposed on them by colonial administrations. According to Mamdani (2002), it was in the very act of struggling for freedom from these colonial administrations that rights were articulated and came to form the basis of action for social justice (as cited in Cornwall & Nyamu-Musembi).

Although the fight for rights has been prevalent for centuries, the current regime of human rights *advocacy* has been more so prevalent since 1948. Conventionalizing this atmosphere further, Kofi Annan, United Nations (UN) Secretary General (1997/2006), in 1997, declared that the entire UN system would mainstream human rights in their development programming (Cornwall & Nyamu-Musembi, 2004). Within the UN system, the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP) have been the most adamant in streamlining the approach within their development programming (Cornwall & Nyamu-Musembi, 2004). Today, human rights are a definitive feature of development rhetoric at the theoretical and policy levels. However, its benefits at an operational level remain questionable – particularly for those in the disadvantageous position of being forced to reside in unfamiliar jurisdictions.

Those individuals forced to reside outside their territory of familiarity due to civil war, famine, violence, or other reasons, include refugees and internally displaced persons (IDPs). IDPs, although largely ignored for a number of decades, probably comprise the largest group of vulnerable people (United Nations High Commission for Refugees [UNHCR], 2006). Although both refugees and IDPs leave their homes for similar reasons, IDPs differ from refugees because of the fact that they remain in their own states.

According to a report by the UNHCR, those left in this position of displacement, comprise 35 million people of the world's population (as cited in Kenna, 2000). Moreover,

of the 35 million in flight, 26 million remain internally displaced as a result of conflict (UNHCR, 2010b). In Darfur alone, approximately 2.6 million people are displaced as a result of the conflict, making it one of three countries with the largest number of IDPs (UNHCR, 2010a; UNHCR 2010b).

The ubiquitous presence of the civil war in Darfur, Sudan, essentially consists of a number of intertwined conflicts, which has led to approximately 300,000 deaths, as well as an even greater number of displaced inhabitants. Consequently, in the midst of political turmoil and economic scarcity within Darfur, the international community has been called upon to provide aid in any form. Aid, in and of itself though, is necessary but far from sufficient. To help this state become self-sufficient, policies need to be changed and adhered to.

Eighteenth March 2010 was intended to establish peace in the area of Darfur by the signing of a cease-fire agreement between one of the main rebel groups, the JEM, and the Government of Sudan (GoS). While a second rebel coalition – the Liberation and Justice Movement – followed a few weeks later and signed a cease-fire shortly after the JEM signed, another major group (the Sudan Liberation Movement), is still holding out on peace talks (“Jem Darfur Rebels”, 4 May 2010). Although the peace deal meant relative peace during the April 2010 elections, the JEM have accused the army of air strikes and village attacks subsequently breaching the aforementioned ceasefire agreement. Re-elected president, Omar al-Bashir was also recently impugned by the International Criminal Courts over alleged war crimes in Darfur. With such circumstances, it is hard to say how formidable the effects of the ceasefire will be.

With the multiplicity of actors working towards assisting the people of Sudan, there is the potential for duplicity and inefficient programming. In this paper, I suggest that moving towards integrating RBA across all programming, will function as a general framework for governments and development agencies to adhere to, subsequently holding them accountable for their actions. Simultaneously, it ensures that the most vulnerable remain central to policy objectives.

Although numerous publications have expanded on the topic of RBA, few have assessed whether this approach would be beneficial for those in the most vulnerable groups; those residing far from their original homes; those who remain unrecognized as a ‘person’ by any state; those who have claimed refugee camps as home. This paper suggests that while RBA has gained significant momentum at the policy level, it is only in the distant future that this approach may actually produce the results at the practical level that are in need today. Notwithstanding when results may be achieved through this approach, it is evident that RBA may be the approach donor agencies have been in search of. Careful not to view RBA as a panacea however, this paper will assess the benefits of adopting this approach in parallel to maintaining the traditional ‘needs-based’ tactic to development. In reference to refugees and IDPs, this paper explores the human rights violations facing the Sudanese encamped in refugee camps as well as the violations IDPs face during flight.

It is important to note that the precedence of human security over state security is undeniable. The refugee crisis as well as its impact on human rights violations is inestimable, and the issues surrounding the movement of people are unlikely to dissipate in the foreseeable future.

Bearing this in mind, the situation of IDPs may actually be significantly more drastic than that of refugees. The number of IDPs globally has soared compared to the slightly declining number of refugees since 2003. Although IDPs remain at the forefront of humanitarian agendas, no international agency has a formal mandate to aid them. As they have not crossed any international borders, they are also unprotected by international refugee law. This being said, the following will attempt to unearth whether RBA may actually address the atrocities faced by refugees as well as IDPs.

Prior to assessing the benefits and constraints of implementing RBA into development programming for refugees and IDPs however, it is necessary to have an understanding of the situation of refugees and IDPs. The following section discusses the Conventions related to this vulnerable part of the population followed by a broad description of RBA and its limitations. Section three goes on to differentiate between a needs-based approach and a rights-based approach and discusses the benefits of rights-talk. Section four looks at the value of applying RBA in programmes for IDPs and refugees in Sudan. The final section concludes that the accountability that RBA places on state actors may be more beneficial for refugees and IDPs, than other approaches could be. While further research is needed on exactly which mechanisms within RBA can hold actors accountable and how implementation can take place more specifically, it is my hope that this paper will foster discussion in that direction.

Internally Displaced Persons (IDPs) & Refugees

Refugees and IDPs have been a part of development rhetoric for a number of decades and more so, since the early 1990s, this group clearly achieved a spot on the map of the international human rights movement. This was made evident by the increasing number of main international human rights organizations that began to devote greater attention to the treatment of refugees and IDPs in host countries (Verdirame & Harrell-Bond, 2005). Regardless, refugees and IDPs still significantly remain sidelined in the work of local human rights organizations in countries of the developing world (Verdirame & Harrell-Bond). This can partly be attributed to a lack of sufficient resources, "...but partly also as a consequence of insular attitudes and of the still prevailing belief that refugees [and IDPs] are an 'international' and 'humanitarian' question rather than one of the key items on any national human rights agenda" (Verdirame & Harrell-Bond, p. xiii).

According to Verdirame & Harrell-Bond (2005), the limited attention to the protection, promotion and facilitation of the human rights of refugees and IDPs in any host country cannot be said to reflect legal limitations. In contrast, while some uncertainty may persist regarding the scope and content of specific rights, overall, there is little uncertainty that refugees are legally entitled to a standard of treatment in host countries that encompasses both the specific rights in relation to refugees and general fundamental human rights.

Verdirame & Harrell-Bond (2005) proceed to note that these former laws are enshrined in international human rights law. Specifically, the 1951 Convention Relating to the Status of Refugees, which was ratified prior to most human rights treaties, remains the central instrument and consists of a relatively detailed list of rights. For example, in certain circumstances, the Convention requires states and their parties to provide to refugees the equivalent standard of treatment as are provided for citizens; in other cases, it obligates state parties to extend to refugees as favourable a treatment as possible and at worst, no less favourable than that accorded to refugees generally in a similar situation. Ironically, if the Convention were appropriately applied today, the dire situation that is all too familiar in a number of countries currently would be far from reality. It is plain to see that those who drafted the Convention in 1951 sought to protect the rights of refugees and to avoid, by any means, the prospects for this marginalized part of the population to be that of becoming pariahs at the margins of the host society. Unlike refugees, IDPs are not the beneficiaries of a specific convention. However, IDPs are still protected by different bodies of law, specifically, national law, human rights law and, if they are in a State experiencing an armed conflict - such as Sudan - international humanitarian law.

Under national law, the majority of IDPs are citizens of the State in which they remain displaced. In the case of Sudan, these physically and psychologically displaced individuals are still entitled to the full protection of national law, without any harmful differentiation consequential of their displacement (International Committee of the Red Cross [ICRC], 2002).

Human rights law, which remains applicable both in times of peace and in situations of conflict, also provides important protection to IDPs. It aims at preventing displacement and protecting basic rights should displacement occur (ICRC, 2002). It is imperative that provision of these rights be granted without discrimination, including discrimination on the grounds of displacement. Lastly, international humanitarian law is applicable in States involved in armed conflict where IDPs, provided they are not partaking in the warfare, are classified as civilians and are thus entitled to the protection provided to civilians in times of conflict (ICRC, 2002). Although minimal legal gaps remain in the protection of refugees and IDPs, the challenge ahead is in ensuring the implementation of current laws and Conventions in order to protect the rights of this vulnerable part of the general population. The other challenge is that IDPs, unlike refugees, do not have any strict legal definition

Overview: What is the Right-based Approach (RBA)?

The rights-based approach (RBA) to development can be defined as integrating the protection, promotion and fulfilment of human rights explicitly as the *objective* of development policy and programming. This approach also establishes that the *process* of development interventions should be conducted in a way that is consistent with international human rights norms, standards, and principles. Development itself then, becomes defined in terms of human rights (Cornwall & Nyamu-Musembi, 2004).

Although it is assumed that national governments remain responsible for the delivery of human rights protection, the growing importance of actors such as civil society and international donors cannot be ignored. As the example of Sudan shows, the *JID (2011), Vol 1 No. 1, 186-202*

importance of civilians, aid organisations, non-governmental organisations (NGOs) and UN agencies become more so emphasised in situations of fragile states.

Some of the main principles of a human rights approach are the principles of participation/inclusion, accountability/transparency, non-discrimination/equality, and indivisibility/interdependence. These four principles, proposed by the UNDP, should be adopted at all stages of development projects or programmes from project or programme design, through to implementation, monitoring and evaluation (Rothman, 2005).

Specifically, the principles of participation and inclusion means allowing for the voices and interests of the most vulnerable parts of the population to be heard in public policy choices and resource allocations and to be further reflected in the monitoring and evaluation of service delivery and public spending. In this regard, individuals are seen as subjects of human rights rather than objects of pity. Instead of being treated as passive beneficiaries of charity, they are treated as actors in their own development and agents of social change (Rothman, 2005). Citizens of the countries in question are supported to participate in development decision-making because it is their right and because it can increase the relevance and effectiveness of development efforts (Cornwall & Nyamu-Musembi, 2004). The principle of participation and inclusion encompasses concepts of local ownership and capacity building of civil society. In this way, it is also directly linked to sustainability, including through effective political systems and national institutions.

Non-discrimination and equality establish the bases for ensuring that all policies, programmes and practices of the development agency, the partner country and any organizations involved are rooted in ensuring rights for all. Every individual is entitled to the same rights. A human rights approach adopting these principles, questions why development efforts fail to reach certain groups and subsequently focuses attention on patterns of discrimination and inequality. This approach leads to a focus of the most marginalized persons - those whose rights are not being fulfilled and who need special protection. In this regard, policies, programmes and practices, adopting RBA do not deliberately or inadvertently exclude individuals, neither do they reinforce existing social, economic or political inequalities or create new inequalities.

This principle is significant to the rights of refugees and IDPs as it incorporates some of the most vulnerable parts of the population. The mere fact that RBA questions why development efforts fail to reach certain groups may aid in the development of programming focused specifically on this group - rather than simple aid provision.

Accountability/transparency means that agents, defined as duty-bearers (to be discussed further below) in rights talk, are answerable for the observance and respect of human rights. Duty-bearers can include States and their agents, such as enforcement professionals, advocates and community leaders. For development agencies and other external actors, this translates into assisting those with the responsibility to deliver their human rights obligations to develop their capacity to do so. With the respective capacity, duty-bearers have the ability to more effectively enact their roles as protectors, promoters and fulfillers of human rights.

Accountability and transparency also incorporates the concept of rule of law, necessary to ensure impartial and independent processes for individuals seeking justice (Cornwall & Nyamu-Musembi, 2004). For donors, this once again means helping to strengthen the mechanisms of accountability in public life, the private sector and civil society. Specifically, in adhering to this principle, donors assist governments with activities, strategies and methodologies to transform international standards on human rights into national level implementation such as legislation and locally related policy-level documents.

The final principle of indivisibility/interdependence recognizes that all rights are equal in status and human rights are inherent to the dignity of every human being. The fulfilment of one right often depends on the realisation of another subsequently pushing for a multidimensional and holistic approach. However, analysts do recognize the difficulty, and perhaps redundancy in aiming to programme efforts at every individual rights issue that arises. Resource constraints as well as a need for prioritization restrict donors from spreading themselves too thinly on the application of RBA. The other challenge for IDPs is that UN work with this group is not covered by core funds and is instead funded by appeals (Franklin, 2009). This subsequently means that even if the UN has mainstreamed RBA in its programming, it will be harder to implement for IDPs as funding is external and donors may have their own agendas.

Additionally, the four principles as they relate to refugees and IDPs, specifically in Sudan, shows that even these broad principles must be adopted and shaped to fit the group in question. RBA may produce beneficial impacts in the long run. However, as any development project or programme, this development approach must consider its context before implementation can be pursued.

Defining 'Duty-bearers' and 'Rights-holders'

In addition to the four principles of human rights, stakeholders including duty-bearers and rights-holders have a significant place in the discourse of RBA. Duty-bearers are usually classified as the State or as other individuals and/or organizations responsible for the delivery, protection and promotion of the individual rights of each person (Cornwall & Nyamu-Musembi, 2004). Rights-holders are classified as the beneficiaries whose rights are the ones expected to be protected. They are generally categorized as the marginalised and vulnerable groups, local communities and the population in general. In this paper, the term 'rights-holders' refer to refugees and IDPs while 'duty-bearers' include the GoS and its extension arms. It is important to note that rights-holders can also be duty-bearers to other segments of the population.

The idea of duty-bearers and rights-holders translate into practice in RBA through the implementation and adherence to Conventions. RBA makes it obligatory for countries to adhere to any Conventions - including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) - they may have ratified in regards to human rights by automatically making it a legal instrument with a force over prevailing domestic laws. Numerous countries have furthered this commitment by integrating it within their own constitution, the stipulation that all

international agreements, to which a country is a party to, become benchmarks for the interpretation of domestic constitutional and legal norms. As Mary Robinson from the UNHCR states, RBA is “an approach to development that is based on the principles embodied in the various instruments of human rights. This approach assumes that ‘the ultimate aim of development is the stage where all human rights are guaranteed and enjoyed by all’ (2001).

Secretary General, Kofi Annan in his Report of the Secretary General on the Work of the Organization (1998) expands on this point by stating the following:

The rights-based approach to development describes situations not simply in terms of human needs, or of development requirements, but in terms of society’s obligation to respond to the inalienable rights of individuals. It empowers people to demand justice as a right, not as charity, and gives communities a moral basis from which to claim international assistance where needed (A/53/1, par. 174).

Of course, these processes are potentially problematic; and furthermore, ratification and implementation of Conventions are very separate processes. For example, Sudan is not a party to the CEDAW Convention although they ratified the CRC as of September 2, 1990 (“Status of Ratifications,” OHCHR). While applause can be given to the ratification of the CRC, implementation of this Convention at a micro level remains trivial. For displaced women, lack of ratification of CEDAW has not only meant innumerable human rights violations during all stages of displacement, but also no means to hold the perpetrators accountable. Such violations include: sexual exploitation; torture; involuntary recruitment into militia and armed forces; abduction and trafficking; the lack of access to humanitarian assistance; lack of access to land and inequitable property rights especially upon return; and the lack of meaningful participation in decisions affecting their lives (“Refugee warehousing puts women at risk,” *NGO Statement*, 7-9 March, 2006). There has been a systematic failure from the international protection regime to protect the rights of these women and to respond to their protracted situations. More significantly, there has been a failure on behalf of the GoS to protect fifty percent of its population.

The NGO Statement on Agenda Item 5(iii) (7-9 March, 2006) emphasises the urgent need to respond to these women individually as well as collectively. Better guidance for donor countries is suggested as a requisite for helping displaced women resettle. This is to ensure that there is consistency of an approach in working with these women. The full participation of women in identifying their protection needs and solutions for their rights achievement, as well as the engagement of men and boys in the promotion and understanding of women and girls’ rights is also noted.

Taking these suggestions into account, it seems plausible that RBA, if adopted consistently and implemented rigorously, would address a number of these issues. It would do so by providing a coherent and constant approach, while integrating one of its main principles of participation and inclusion within its framework. However simple this may sound in principle, putting it into practice may prove far from logical and uncomplicated.

Limitations in the use of rights talk: similar meanings, different emphasis

Some of the complications of putting this approach into practice stems from the diversity of opinions on the meaning of the term. Not only can the approach have different meanings between countries but it may also mean different things between development agencies or even between individuals of the same agency. More importantly, it carries greater weight for those directly experiencing human rights violations.

Hugo Slim (2002) outlines these differences in the following way:

Rights-talk can function differently from different mouths. It depends who is speaking about rights and where they are speaking...The same language that may be rhetorical fluff in one place may be words of extreme courage and radical change in another...The use of rights-talk in Washington or Paris might be used piously as new words for the same old liturgy in the cathedrals of international trade and development...But from another place (a slum or the scene of a rigged election) and spoken from another voice (that of a poor man or a woman land rights lawyer) the same words of rights-talk could function prophetically as a demand for redress to change and challenge power (p.128).

Cross-examinations about the geo-political location of actors promoting and practicing RBA echoes this concern in that dialogue surrounding RBA and its principles ranging from participation, country ownership and participation hold different meanings for different groups of people.

The wide-ranging views of RBA makes for an extremely complex composition of interests, which consequently influences how rights talk is articulated as well as how it comes to inform what is actually implemented. Complimentary to the obstacles posed by differences in interpretation of RBA, is the fact that states remain with varying economic capacities. The Committee on Economic, Social and Cultural Rights has addressed this issue insofar as it argues that States are obligated, irrespective of their level of economic development, to ensure respect for at least the minimum subsistence rights for all (Ferguson, 1999). This allows for the progressive realisation of the remaining rights. With the states' obligations to protect, promote and facilitate the realisation of rights, it is made a requirement of the state that rights are enjoyed in practice as well as in law. The challenge lies in defining what constitutes minimal rights.

Providing a Human Face to the Human rights Approach to Development
Distinguishing Between 'Needs-based' and 'Rights-based' Approaches

This section provides a brief introduction to the differentiation between needs-based and rights-based approaches and perhaps the complementary roles they play. Since the 1970s, the concept of needs, which focus on the immediate requirements of vulnerable populations including food aid, shelter and things of the like, have become more so prevalent in social policy debates in developed, developing and countries in transition alike. As reflected in policies, there has been a shift away from universal, government provision to a narrower focus on the needs of the most vulnerable.

With this conceptualisation of needs and the parallel policies developed to address it, donor agencies have been criticised for focusing too much on recipients of aid as if they

are part of a charity programme. The criticism to this approach lies in the assertion that donors have viewed beneficiaries of aid simply as passive recipients rather than as individuals with active objectives of their own.

Emphasis is now moving towards participation and partnership in order to promote the idea that the needs of the vulnerable and the protection of their rights should start from the bottom-up (Ferguson, 1999). This is not to say that needs-based approaches cannot be bottom-up but that the element of participation in RBA inherently requires full participation of the most vulnerable.

The concept of human rights views people as active agents in the decision-making process. In this way, the human rights approach begins with the promotion of participation as the basis for making all other claims (Hauserman, 1998). All rights, whether included in international conventions or not, can be classified as legitimised claims (Ferguson, 1999). Moreover, as rights-based approaches see human rights as an integral part of development projects, a right in general can be enforced before the government and entails an obligation on the part of the government.

The resources used and the target population are also viewed differently within RBA. While a needs-based approach focuses on securing resources to ensure delivery of services to certain groups, a rights-based approach will strive for already existing resources to be allocated more equitably within the population and for assisting the most vulnerable and marginalised to assert their rights to these resources (Cornwall & Nyamu-Musembi, 2004). In this regard, although distinct differences exist between needs-based and rights-based approaches, RBA complements, rather than contradicts traditional needs-based understanding of policies (Ferguson, 1999).

Another significant difference is the fact that while needs can be ranked in a hierarchy of priority, human rights cannot. As indivisible and interdependent components 'basic rights' cannot be distinguished by a chain of requirement. While RBA may complement a needs-based approach, a human rights framework's advantage is in its ability of drawing on internationally legitimised rights as a means of further reinforcing the ability of the most vulnerable groups to claim social, economic and political resources to meet their basic needs (Ferguson, 1999).

Setting the two approaches apart then, allows one to assess how framing the thinking around development practices and the concept of human rights rather than human needs, pushes the realm of development work one step further. Yet, such glorification of RBA begs the question of how valuable it is to simply change the rhetoric of development language. Can there be a genuine shift in the way international agencies programme their development simply by adopting rights-based approach dialogue? These questions will be assessed in the following section by providing reasons as to why the use of rights talk may be effective.

Pragmatic reasons for the use of rights talk

With the shift in the way aid is delivered in recent years, new demands for ensuring accountability are placed on recipient states. One of the main arguments in favour of pursuing RBA in programming is the idea that simply speaking in terms of rights is in itself a vector for the transmission of increasing the accountability of government organisations to the citizens of their state. Subsequently, this increases the likelihood that policy measures will move away from theoretical discussions of implementation and towards practical execution (Cornwall & Nyamu-Musembi, 2004).

However, for development practitioners keen on finding value in this approach beyond the presumption that discussion on the topic will translate into implementation, the language of RBA in the realm of development work also offers the possibility of accountability for rights to non-state actors (Cornwall & Nyamu-Musembi, 2004). Particularly, in its *Draft Guidelines for a Human Rights Approach in Poverty Reduction Strategies*, the Office of the United Nations High Commissioner for Human Rights (OHCHR) expresses this notion of accountability as follows:

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 (as cited in Cornwall & Nyamu-Musembi, 2004, p.1417, emphasis in original)

Moreover, reference to human rights creates a sense that ‘beneficiaries’ are not simply lucky recipients of charity, but rather they are rights-holders whose governments are accountable for ensuring they enjoy their rights. This should increase the aforementioned accountability of state to citizen in ensuring a sense of empowerment for civil society organisations (CSOs) and people living in abject poverty.

Although the state is essentially the primary duty-bearer in regards to the respect of the rights of those living within its jurisdiction, it is the rights of refugees and IDPs that largely remain unattended to. In this way, monitoring and accountability procedures must not only apply to States, but also to global actors - such as the donor community, intergovernmental organizations and international non-governmental organizations - whose actions can have significant sway for the people of any country (Cornwall & Nyamu-Musembi, 2004).

While the GoScan be commended for ratifying the 1951 Convention relating to the Status of Refugees, they have yet to sign the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (i.e. the “Kampala Convention) nor is it a party to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness (UNHCR, 2010). In addition, the “Strategy for Achieving Comprehensive Peace, Security and Development in Darfur”, limits its focus on return to areas of origin for IDPs instead of understanding the range of durable solutions available for IDPs following prolonged periods of displacement (UNHCR). Such Government restrictions compromise IDP protection and limit their right to choose durable solutions for

themselves. More broadly, Cornwall and Nyamu-Musembi (2004) justify the value-added of rights in development in three broad categories: normative, pragmatic and ethical.

Similar to the rationalization provided previously, the normative justification for RBA is that simply speaking about rights situates values and politics side by side and at the heart of development rhetoric. According to Hausermann (1998), the significance of RBA is that it begins by establishing a vision of what *ought* to be, consequently providing a normative framework to orient development cooperation. By creating an international set of norms, supported by international law, it establishes a stronger base for citizens to make claims on their states and for holding states accountable for their roles to enhance the access of their citizens to the realisation of their rights.

This level of accountability fulfils the pragmatic reasons for RBA. As Peter Ulvin (2004) eloquently emphasises, the simple move from charity to claims arouses a specific focus on instruments of accountability. In this way, if claims are present, methods for holding those who violate claims accountable must be present as well. Otherwise, the claims lose meaning.

As in the case of Sudan, where the CEDAW Convention remains un-ratified, the state must still be held accountable as it exists as a governing body. As mentioned above, IDPs and refugees still remain protected through national and international law even if its government is not a part of a human rights convention. In this regard, the GoS is required to respect and protect the rights of individuals irrespective of a conventional international obligation.

One way to enforce this is by espousing it from within. If rights talk can begin from the bottom it can impact the higher layers of government to adopt this approach. To begin this however, consistency in the delivery of a human rights approach from the international community needs to take stronghold.

Narrowing in-from Policy to Practice

In previous sections discrepancies in how RBA is understood by its implementers was assessed. Pulling back from this rhetorical indecision, one may question how and where this approach can have an impact if consensus is not reached. While these debates continue, what is significant is that lives remain endangered and human rights atrocities are still committed. Sudan in particular has been entrenched in a roller-coaster battle between a multi-layered conflict and the absence of a comprehensive peace-agreement. While the nature of violence has changed substantially since the end of the 2004 crisis, approximately two million Darfurians continue to face protection issues and insecurity. The continued state of lawlessness, fragmented rebel groups, and limited space for humanitarian actors to assist persons in need, means that displaced individuals and refugees continue to live in fear (UNHCR, 2010c).

Accountability has been posed as an argument in favour of RBA in respect of the fact that the simple commitment to the protection of rights in theory could consequently increase the likelihood that policy measures would be implemented in practice. At a *JID (2011), Vol 1 No. 1, 186-202*

practical level in Sudan, this means ensuring security and sustainable reintegration of returning refugees and IDPs and conditions, which are conducive to a safe and dignified return. In addition, many IDPs have been living in urbanised situations for years and may prefer to not return to their area of origin. Rather than focusing solely on return to areas of origin, it is imperative for the GoS to uphold the voluntariness of durable solutions and to take into account the realities of urbanisation (UNHCR, 2010c).

At the same time, the advantages of RBA can only be experienced if accountability is in check. This means ensuring that responsibilities are identified, actions are monitored and there are means of claiming redress if obligations remain unmet (Ferguson, 1999). In Sudan, the Government can be commended for taking steps in this direction. For example, in September 2010 the *Strategy for Achieving Comprehensive Peace, Security and Development in Darfur*, was released which discusses the importance of achieving justice for the victims of the conflict (UNHCR, 2010c). While details of how this will be achieved remain unclear, there are plans of compensation and recovery of land based on a spirit of reconciliation. Yet, this Strategy is limited in its focus solely on return to areas of origin, rather than on the range of durable solutions that IDPs may choose. Accountability in this regard remains limited as international human rights standards call for voluntary return and providing the right for IDPs to decide on their durable solution.

Furthermore, the principles of participation and inclusion means, continuing to facilitate the active involvement of Darfur refugees and IDPs as stakeholders in the Doha peace process. More generally, access to information about agreements, legislation and regulation regarding citizenship status should be provided to the population (UNHCR, 2010c).

Non-discrimination and equality play a vital role in the application of RBA in programming geared towards IDPs and refugees. In particular, the element of this principle, which is most applicable to the vulnerable, is the fact that it questions why development efforts fail to reach certain groups and subsequently focuses attention on patterns of discrimination and inequality that underlie poverty. In Sudan for example, approximately 40, 000 urban refugees in Khartoum remain without legal status resulting in vulnerability to round-ups, detention, and deportation (UNHCR, 2010c). UNHCR calls for the urgent need of an urban refugee policy, which provides for registration, refugee status determination, and facilitation of employment amongst other rights. Access to asylum also remains inconsistent for certain groups of asylum-seekers, such as some nationals of Arab League countries (UNHCR). Greater compliance to international obligations is needed from the GoS to improve equality as outlined by RBA. The principle of indivisibility and interdependence - although difficult to implement - must also be recognized in order to attain the respect and fulfilment of rights, rather than just the mere meeting of 'needs'.

As for donors keen on adopting this approach, it must be noted that policy developments are dynamic and remain far from complete. If an overall document on RBA is developed, the policy document must be open to feedback from the field, from headquarters and from other agencies integrating this approach. Moreover, adequate training and dissemination of information about the approach to relevant staff is imperative to promote

coherent knowledge on the approach and to avoid the fragmented delivery of it. If proper training is provided, staff are less likely to view the approach as an added burden and more as an agency policy.

Suffice to say, pursuing a human rights approach may very well not produce any of the anticipated results in the short or medium-term for any group. Instead, results may only become perceivable in the long-term. Still, RBA is a departure from traditional participatory approaches and draws attention on how state systems can be made accountable for monitoring and fulfilling the respect of rights. In addition, the importance of RBA lies in its focus on all vulnerable groups – men, women, boys and girls thus proving more advantageous as it works to undo prevailing discriminatory points of view amongst all members of the population. Instead of simply empowering a subset of the population by educating them about their rights, the full achievement of this goal is made possible by the adherence and respect of these rights from the entire population. The holistic approach that RBA adopts, allows for the fundamental, underlying root causes to be comprehended rather than a simply surface view to be known (Molson, personal communication, July 5, 2010). Without a direct assessment and integration of root causes, development efforts remain unsustainable.

Conclusion: Future directions for the application of RBA

The precepts of interaction in acting to protect human security could not be more relevant today, given the age of globalization. The institutions present in Sudan currently could easily be accused of providing minimal assistance allowing for refugees and IDPs of Darfur to be displaced physically, sociologically and psychologically. However, RBA, if applied consistently, can work towards the protection of these individuals at a pragmatic level while slowly fostering efficient institutions and identities in development. In other words, intervention – on a programme or project level – incorporating RBA cannot simply be imposed on the people of Sudan. It needs to instead be delivered in accordance with the Sudanese government so that it establishes a stronger grip within this country. As discussed above, some elements of RBA are already reflected in the GoS' current policies. However, more can be done to integrate this more holistically.

The concept of shaping knowledge through relationships and interactions and ideas and dialogue – all pertinent to the development of solid policies – remain difficult in a nation-state like Sudan. Similarly, while RBA may indubitably have significant prospects, it remains largely fragmented in terms of interpretation amongst donor agencies. Until a consensus on this approach has been achieved, its significance will be questionable. At this stage of the game, “who” is saying “what” can either have significant clout for a population, or it may completely deter them from listening. In this regard, it is ostensible that only a push from within – be it from the people or from the GoS – could fully abolish human rights atrocities in a country so rich in culture and resources. Irrespective of the speculation that RBA may only produce results well into the future, rather than giving us anything substantial to work with, its sustainability in comparison to emergency aid or short-term projects is undeniable. Albeit its limitations, by focusing on the most vulnerable of the marginalized groups, RBA provides an increasingly promissory approach to working with and assisting those physically forced and psychologically displaced from their homes. The

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situation is irrefutable; the numbers remain inestimable and the time for the GoS and international actors to act is now.

References

- Annan, Kofi. (1998, August 27). *Annual Report of the Secretary General on the Work of the Organization*. Retrieved 14 August 2006 from <http://www.un.org/Docs/SG/Report98/con98.htm>.
- Canadian International Development Agency (CIDA). (2010). Sudan – Overview: Results. Retrieved 18 May 2010 from <http://www.acdi-cida.gc.ca/sudan>
- Commonwealth Secretariat. (2004). *Gender and Human Rights in the Commonwealth: some critical issues for action in the decade 2005-2015*.
- Cornwall, A., & Nyamu-Musembi, C. (2004). Putting the ‘rights-based approach’ to development into perspective. *Third World Quarterly*, 25 (8), 1415-1437.
- Darfur on brink of disaster, UN warns. (2006, August 29). *Times Colonist (Victoria)*. P. A12
- Ensor, J. & Gready, P. (Eds.). (2005). *Reinventing Development? Translating rights-based approaches from theory into practice*. London: Zed Books.
- Ferguson, C. (1999). *Global Social Policy Principles: Human Rights & Social Justice*. Retrieved 30 September 2006 from <http://www.dfid.gov.uk/pubs/files/sdd-gsp.pdf>
- Franklin, D. (2009). International Response to IDPs. *The Cambridge University United Nations Association Magazine. Michaelmas 2009 issue, 9-10*. Retrieved 12 July 2010 from http://www.cuuna.org/wp-content/uploads/UNStudent_2009.pdf
- Hausermann, J. (1998). *A human rights approach to development: rights and humanity*. (Discussion paper commissioned by the Department for International Development in preparation of the Government White Paper on International Development). London, United Kingdom: UK Government
- International Committee of the Red Cross. (2002). *Legal protection of internally displaced persons*. Retrieved 30 September 2006 from <http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList516/3D104AED2E6C7A1CC1256C250033D87F>
- Jem Darfur rebels snub Sudan peace talks over ‘attacks’. (2010, May 4). *BBC*. Retrieved 19 June from <http://www.unhcr.org/pages/49e483b76.html>
- Jordan, A.D. (2002). Human Rights or Wrongs?: The Struggle for a Rights-Based Response to Trafficking in Human Beings. *Gender and Development: Mainstreaming, A Critical Review; An Oxfam Journal*, 10 (1), 28-37.
- Kenna, K. (2000, June 15). Refugee Numbers ‘Dismal.’ *Toronto Star*.
- Mamdani, M. (1996). *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (N. Kabeer, Ed., 2002). Princeton: Princeton University Press.
- Moser, C. & Moser A. (2005, July). Gender Mainstreaming since Beijing: a review of success and limitations in international institutions. *Gender and Development: Mainstreaming, A Critical Review. An Oxfam Journal*, 13 (2), 11-22.
- Office of the United Nations High Commissioner for Human Rights. (2006). *Status of Ratifications of the principal international human rights treaties*. Retrieved 15 May 2010 from <http://www2.ohchr.org/english/bodies/docs/status.pdf>
- Okille, P.A. (2005). Rights in Practice – assessing the impact of rights-based training in Uganda. In J. Ensor & P. Gready (Eds.), *Reinventing Development? Translating rights-based approaches from theory into practice* (p. 99-107) London: Zed Books.
- Piron, L.H. (2003, July). Learning from the UK Department for International Development’s Rights-Based Approach to Development Assistance. *Overseas Development Institute*. Retrieved 1 October 2006 from <http://www.odi.org.uk/rights/Publications/DFID%20RBA%20Final%20Doc%20July%202003.pdf#search=%22DFID%20%2B%20Rights%20based%20approach%22>
- Standing Committee of the Executive Committee of the High Commissioner’s Programme. (7-9 March, 2006). *Refugee warehousing puts women at risk: NGO Statement*. Retrieved 9 April 2010 from http://www.refugees.org/data/wrs/06/docs/refugee_warehousing_puts_women_at_risk.pdf
- Robinson, M. (2001, December 3). Bridging the gap between human rights and development: from normative principles to operational relevance. *World Bank Presidential Fellows Lecture*. Retrieved 8 June 2006 from www.worldbank.org/wbi/B-SPAN/sub_mary_robinson.htm.
- Rothman, M. (2005). *Annex: Principles of a human rights approach to working with children*.
- Slim, H. (2002). A response to Peter Ulvin – making moral low ground: rights as the struggle for justice and the abolition of development. *Praxis* (17).
- Ulvin, P. (2004). *Human Rights and Development*. Bloomfield: Kumarian

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- United Nations General Assembly. (1979, December 18). *Convention of the Elimination of All Forms of Discrimination against Women (CEDAW)*. Retrieved 13 May 2006 from <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>
- United Nations General Assembly. (1989, November 20). *Convention on the Rights of the Child (CRC)*. Retrieved 17 May 2006 from <http://www.unhcr.ch/html/menu3/b/k2crc.htm>.
- United Nations High Commissioner for Refugees. (1954, April 22). *Convention Relating to the Status of Refugees*. Retrieved 13 May 2006 from <http://www.ohchr.org/english/law/refugees.htm>.
- United Nations High Commissioner for Refugees. (2010a). *2010 UNHCR Country Operation Profiles – Sudan*. Retrieved 21 July 2010 from <http://www.unhcr.org/pages/49e483b76.html>.
- United Nations High Commissioner for Refugees. (2010b). *Internally Displaced People: On the Run in their Own Land*. Retrieved 21 July 2010 from <http://www.unhcr.org/pages/49c3646c146.html?gclid=CO326PvH-aQCFQQCbAodTEIwgw>.
- United Nations High Commissioner for Refugees. (November, 2010c). *Submission by the United Nations High Commissioner for Refugees for the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: Sudan*. Retrieved 25 November 2010 from <http://www.unhcr.org/refworld/docid/4ccfe3502.html>
- Verdirame, G. & Harrell-Bond, B. (2005). *Rights in exile: Janus-faced humanitarianism*. United States: Berghahn Books.
- Vienna Declaration and Programme of action. (1993, June 25). (World Conference on Human Rights '93). Retrieved 12 June 2006 from [http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/A.CONF.157.23.En?OpenDocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.En?OpenDocument).