

A RIGHTS-BASED APPROACH TO DEVELOPMENT: THE LINK BETWEEN HUMAN RIGHTS AND DEVELOPMENT

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Abstract

This article explores the relationship between human rights and development and the emergence of a Rights-Based Approach to Development (RBAD). It will give a RBAD more consideration in order to contribute to the conceptual direction of academic discourse, and perhaps even the political direction by proposing solutions to Africa's socio-economic problems, especially in South Africa, which is facing many developmental challenges. Human rights and development have long been understood as separate terms that were incompatible. Historically, development was only perceived for its role in promotion of economic growth and prosperity of particular countries without any consideration for human development and well-being. However, human rights and development cannot be understood separately. Development and human rights share the same goal, which is to promote the dignity and worth of a human person by creating an environment where people can achieve their full potential. Following the adoption of the UN Charter in 1945, development became a key issue for the United Nations

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(UN) and, for the first time, for the international community. Human development is now central to the realisation of human rights. After many years of debating development and human rights, it was agreed that human rights standards and principles do indeed recognise the link between human rights and development. In the 1990s, a RBAD emerged, transforming the global development order and affirming this relationship.

1 Introduction

Human rights and development have long been understood and treated separately.¹ Historically, development has been viewed only for its role in furthering the economic aspirations of individual countries with no connection to human development. However, human rights and development cannot be understood in isolation, as development and human rights share the same goals, namely, to promote the dignity and worth of a person by creating an environment in which people can achieve their full potential.²

In 1945, after the UN Charter was passed, development became a key issue for the UN and, for the first time, for the international community.³ Human development has become central to the realisation of human rights. After many years of development and human rights debate, it was agreed that human rights standards and principles do indeed make this connection. The adoption of the UN Declaration on the Right to Development (Declaration) confirmed and strengthened the relationship between human rights and development.⁴ This connection was reconfirmed in the 1990s when a RBAD⁵ emerged and changed the global development order.⁶

Even though the literature on human rights and development makes visible this relationship between these two concepts, there seems to be a lack of comprehension that results in the absence of a RBAD in African states, including South Africa. Although a RBAD is acknowledged globally, its implementation in the public and private sectors is questioned at the level of the community due to a lack of understanding. Lack of awareness of a RBAD is demonstrated, among other things, by the absence of community involvement in development projects and a lack of accountability for failed projects

1 HO Sano 'Development and human rights: The necessary, but partial integration of human rights and development' (2000) 22 *Human Rights Quarterly* at 739.

2 SP Marks *The human rights framework for development: Seven approaches. reflections on the right to development* (2003) at 1-2.

3 P Jackson 'A prehistory of the millennium development goals: Four decades of struggle for development in the United Nations' (2007) 4 *United Nations Chronicle* at 7.

4 P Uvin 'From the right to development to the rights-based approach: How "human rights" entered development' (2007) 17 *Development in Practice* at 597.

5 Marks (n 2) 5.

6 Sano (n 1) 751.

brought on by corruption. I contend that how a RBAD is currently conceptualised at the local level is insufficient to capture what a RBAD is in Africa and South Africa. Mohan argues that a RBAD needs to re-emphasise its agenda to connect with and build upon the participatory approach and good governance that has grown over the years.⁷ Considering the numerous appeals from academics and development organisations for a human rights-based development framework to combat the scourge of poverty, unemployment, and inequality in South Africa, this article aims to contribute to growing efforts to ascertain the potential value a RBAD could offer for development programming.

Therefore, this article's primary emphasis is on the relationship between human rights and development as well as the definition and underlying principles of a RBAD. It analyses the inherent advantages of such an approach and carefully evaluates its significance. The article further examines the limitations and criticisms that have been levelled against this approach. It articulates these viewpoints by focusing on a RBAD to offer a contribution to the conceptual direction of the academic discourses, and likely also the political direction by suggesting developmental solutions to Africa's socio-economic differences. In particular, I look at South Africa, which faces numerous development challenges.

2 The nexus between human rights and development

According to prominent development scholars such as Arndt,⁸ Todaro et al,⁹ and Sant'An,¹⁰ the notion of development was used in relation to resources to maximise wealth and status. This was done under the impression that achieving economic progress could lead to reaching society as a whole 'either by market-driven "trickle down" effects or by state-driven social policy'.¹¹ By no means had it related the notion of development to the effect of economic growth on reducing poverty, unemployment, inequality, or increasing human well-being. Human rights language was fully incorporated into development discourse with the publication of the first Human Development Report (HDR), which includes UNDP's Human Development Index (HDI).

7 G Mohan & J Holland 'Human rights & development in Africa: Moral intrusion or empowering opportunity?' (2001) 88 *Review of African political economy* at 190.

8 HW Arendt 'Economic development: A semantic history' (1981) 3 *Economic development and cultural change* at 457.

9 P Todaro & SC Smith *Economic development in the third world* (2003).

10 M Sant'Ana 'The evolution of the concept of development: From economic growth to human' (2008) *Inter-University Attraction Pole Working Paper* at 5 file:///C:/Users/K%20moseli%20(SW%20GXD)/Downloads/The_evolution_of_the_concept_of_developm.pdf (accessed 25 October 2022).

11 As above.

Integrating human rights into development activities is known as a RBAD. At the end of the 1990s, many non-governmental organisations (NGOs), national and international development organisations and human rights bodies advocated for a RBAD. A RBAD emerged from recognising the link between human rights and development. Human rights became a central factor in forming a socially oriented order.¹² Development was perceived as a process of change, and human rights were able to give meaning to the process of change by incorporating human rights, norms, obligations, and principles to influence the outcome of developmental programming.¹³ Incorporating human rights, norms, standards, and principles were recognised in the 1990s as an essential aspect of promoting developmental policy and planning. This rests on the basis that human rights can influence policy content and provide a conceptual framework to guide development and implementation.

Since then, a RBAD has gained worldwide recognition and has established itself over the years as an essential developmental tool to promote human development and well-being.¹⁴ Darrow and Tomas¹⁵ claim that integrating human rights norms and standards into development is fundamental and that such integration increases the potential for enjoying human rights in the development process.

The link between human rights and development was first formally recognised in Article 22 of the African Charter, adopted in 1981.¹⁶ In addition, the Declaration recognised development as an inalienable human right. According to the Declaration, development is defined as:¹⁷

[a]n inalienable human right under 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 realised.

12 Sano (n 1) 740-741.

13 D Banik 'Support for human rights-based development: Reflections on the Malawian experience' (2010) 14 *The International Journal of Human Rights* at 37-38.

14 A De Man 'The sustainable development goals and the rights-based approach to development: Compatible or missing the point?' (2019) 19 *African Human Rights Law Journal* at 469.

15 M Darrow & A Tomas 'Power, capture, and conflict: A call for human rights accountability in development cooperation' (2005) 27 *Human Rights Quarterly* at 501.

16 African Charter on Human and People's Rights (African Charter) adopted 27 June 1981 and entered into force on 21 October 1986.

17 United Nations Declaration on the Rights to Development adopted 4 December 1986.

The right to development integrates international human rights systems' norms, standards, and principles into development policies and processes. Thus, the right to development has given meaning to the notion of human-centred development and human empowerment.¹⁸ According to Article 1 of the Declaration, everyone is entitled to a rights-sensitive approach to development programmes that affect them.¹⁹

In addition, the right to development emphasises the primary role of government in creating favourable conditions for realising the right to development at the national and international level. In other words, the essential aim of this right is to achieve the highest standard of living at the local level by supporting national and international development actors.²⁰ This includes fulfilling the right to just benefits from development processes that enhance human freedom and well-being and realising their value.²¹ Article 2 of the Declaration recognises that '[t]he human person is the central subject of development and should be an active participant and beneficiary to the right to development'.²²

Development took a new direction after the right to development was recognised as a composite and multifaceted human right that is consistent with other human rights.²³ The right to development and a human rights-based approach reinforces each other and can have a positive impact if adequately developed.²⁴ Realising the right to development requires the implementation of a rights-based approach. Both concepts place the individual at the centre of the action to realise his or her rights. It emphasises that individuals and people should be viewed as subjects, not objects, in the development process.²⁵ For example, people have the right not only to participate effectively in consultation processes on implementing applicable development policies but also to contribute to shaping their policies by actively participating in decision-making. This participation enables the government to reformulate and apply human rights norms

18 Marks (n 2) 15.

19 RF Oppong 'Trade and human rights: A perspective for agents of trade policy using a rights-based approach to development' (2006) 6 *African Human Rights Law Journal* at 126.

20 CC Ngang & PA Ageh 'Intellectual property protection of African traditional medicine within the legal framework of the right to development' (2019) 27 *African Journal of International and Comparative Law* at 437.

21 A Sengupta 'Right to development as a human right' (2001) 36 *Economic and Political Weekly* at 2529; SR Osmani 'Human rights to food, health, and education' (2000) 1 *Journal of Human Development* at 120.

22 J Seabrook *The no-nonsense guide to world poverty* (2009) at 27.

23 LH Piron *The right to development: A review of the current state of the debate for the department for international development* (2002) at 31.

24 A Hayrapetyan 'The right to development and rights-based approach to development: Two mutually reinforcing concepts?' (201) *European Union Foreign Affairs Journal* at 32.

25 Hayrapetyan (n 24) 41.

and standards in implementing any development agenda on its territory, in line with national development policies.²⁶

Critics of the right to development argue that it has limited powers to bring about effective change. They are arguing that the right to development, as formulated in the Declaration, is non-binding and does not imply legal obligations at the international level.²⁷ The right to development does not have a clear textual presence in many constitutions, including that of South Africa.²⁸ South Africa's 1996 Constitution does not mention the right to development as a human right. However, the Bill of Rights guarantees socio-economic rights, including protecting the right to development.²⁹ This is evidenced by case law such as *Soobramoney v Minister of Health, KwaZulu-Natal*,³⁰ which was the first major Constitutional Court case to consider the enforceability of socio-economic rights. In the well-known *Government of the Republic of South v Grootboom*,³¹ which dealt with the right to housing, the Constitutional Court found the government's housing programme inadequate because it did not provide access to housing for those in need. The Court's ruling affirms the significance of the normative and contextual framework of the right to development in altering society so that people can live with dignity and free from hunger, disease, and poverty. Former South African Chief Justice Pius Langa stressed that there could be no development at the national level unless socio-economic rights are realised.³² This demonstrates once more that while the right to development is not explicitly addressed in the Constitution,³³ its realisation is aided by the protection of socio-economic rights that are consistent with it.

In the 1990s, human rights defenders argued that creating opportunities for people and groups to participate in development was a human right. Human rights and development work closely together in various aspects that affect the same target groups to advance human development. Both human rights and development aim to empower excluded and disadvantaged groups. Thus, the link between human rights and development is understood to create

26 Hayrapetyan (n 24) 33.

27 Uvin (n 4) 598; Sano (n 1) 738.

28 I Shai 'The right to development, transformative constitutionalism and radical transformation in South Africa: Post-colonial and de-colonial reflections' (2019) 19 *African Human Rights Law Journal* at 507.

29 SD Kanga *The right to development in the African human rights system* (2018) at 210.

30 *Soobramoney v Minister of Health, KwaZulu-Natal* 1998 (1) SA 765 (CC).

31 *Government of Republic of South Africa and Others v Grootboom and Others* 2000 (11) BCLR 1169 (CC).

32 Justice PN Langa 'Human rights, the rule of law, and the right to development' Speech presented at the Birchwood Conference Center in Johannesburg, 24 November 2006.

33 South African Human Rights Commission 'Reflections on democracy and human rights' 2006 at 109-118.

conditions under which human rights can be realised.³⁴ For example, human rights are not only recognised to protect individuals and groups from those in power, but they also oblige the government to create decent living conditions for citizens.³⁵ In 1995, the relationship between human rights and development was upheld following the publication of *The rights way to development*³⁶ by the Human Rights Council of Australia. It viewed development activities as an integral part of human rights work. In support of these views, Article 10 of the 1993 Vienna Declaration of Human Rights³⁷ recognises that development is part of the human rights framework.

3 The rights-based approach to development: Definition and principles

3.1 Definition of a rights-based approach to development

A RBAD was formally recognised at the 1993 Vienna World Conference on human rights where it was stated that ‘development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing’.³⁸ The conference also affirmed that all human rights are equal, valid, and interconnected. The recognition of human rights principles such as participation, equality, and non-discrimination, as well as accountability in the area of development, laid the foundation for the emergence of a RBAD (also known as human rights-based development).³⁹

A RBAD has been defined in many ways. Gauri and Gloppen⁴⁰ define a RBAD as principles that justify demands on privileged actors, made by the poor or those acting on their behalf, using national or international instruments to protect the disadvantaged. For Darrow and Tomas, a RBAD is ‘a framework for understanding and managing the negative impacts of discrimination and disempowerment, not a one-dimensional and static formula’.⁴¹ The UN Research Institute for Social Development defines a RBAD as ‘[a] conceptual framework that is capable in all development fields, and that is normatively based on

34 S McInerney-Lankford ‘Human rights and development: a comment on challenges and opportunities from a legal perspective’ (2009) 1 *Journal of Human Rights Practice* at 53.

35 Sano (n 1) 741.

36 Human Rights Council of Australia (eds) *The rights way to development: A human rights approach to development assistance: Policy and practice* (1995).

37 United Nations Vienna Human Rights Declaration and Program of Action (Vienna Declaration) adopted 25 June 1993.

38 Vienna Declaration (n 37) at para 8; A Payne & N Phillips *Development* (2010) at 122.

39 Darrow & Tomas (n 15) 497.

40 V Gauri & S Gloppen ‘Human rights-based approaches to development: Concepts, evidence and policy’ (2012) 44 *Polity* at 488.

41 Banik (n 13) 38.

international human rights standards and operationally directed to promoting and protecting human rights'.⁴² The primary function of a RBAD is to integrate the norms, standards and principles of the international human rights system into development plans, policies and procedures.

A RBAD treats international human rights law as a critical conceptual framework accepted by the international community that can provide a coherent system of principles and norms in the development field.⁴³ Following this approach, principles such as equality and non-discrimination are incorporated into development policies and strategies. Development plans, policies and projects anchored in a human rights system, therefore, correspond to obligations under international law. Uvin claims that a RBAD motivates a redefinition of the nature of the problem. The goals of the development initiative, translated into demands, obligations, and mechanisms, can promote respect and identify rights violations.⁴⁴ Protecting human rights promotes sustainability and the empowerment of the marginalised, participation in policy development, and actor accountability.⁴⁵ The 2003 UN *Statement of Common Understanding* also confirmed that all UN development programmes promote the realisation of human rights as enshrined in the Universal Declaration of Human Rights (Universal Declaration) and other international human rights instruments.⁴⁶

4 Principles of the rights-based approaches to development

4.1 Participation

A thorough implementation of the human rights framework for development requires that those affected fully participate in development planning and decision-making. Participation as a human right means that government must encourage and ensure the free, meaningful and active participation of all individuals and groups when

42 UN Research Institute for Social Development 'The human rights-based approach to social protection "Issue Brief 2" Geneva 31 August 2016 [https://www.unrisd.org/unrisd/website/document.nsf/\(httpPublications\)/1E57FC1E56010C2CC125801B004B0D10?OpenDocument](https://www.unrisd.org/unrisd/website/document.nsf/(httpPublications)/1E57FC1E56010C2CC125801B004B0D10?OpenDocument) (accessed 31 August 2022).

43 V Abramovich 'The rights-based approach in development: Policies and strategies' (2006) *CEPAL Review* at 34; Mcinerney-Lankford (n 34) 73.

44 Uvin (n 4) 602.

45 Abramovich (n 43) 36-37.

46 The Human rights-based approach to development cooperation: Towards a common understanding among UN Agencies. Interagency Workshop on a Human Right-Based Approach. 3-5 May 2003 https://unsdg.un.org/sites/default/files/The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf (accessed 31 August 2022).

implementing and evaluating the development process.⁴⁷ For example, in the *Matatiele Municipality and Others v President of the Republic of South Africa and Others case*,⁴⁸ the Constitutional Court ordered the Eastern Cape and KwaZulu Natal legislature to jointly appear in court to present evidence regarding public participation in passing the Twelfth Amendment and Repeal Act.

This shows that participation can be used to measure and identify needs and priorities at the local level. Involvement in politics is another example, which calls for institutionalised participation in social engagement and periodical elections. Furthermore, it gives individuals the chance to exercise certain fundamental rights such as the right of association and assembly, freedom to unionise and freedom of expression and information.⁴⁹

For effective participation, essential requirements should be met, and human rights should be fulfilled. Citizens should be equally empowered to assert their rights and be allowed to participate effectively in decision-making processes affecting their lives.⁵⁰ Interacting with community members gives development actors, who look from the outside, a better understanding of the local context. It ensures that development processes are relevant to people's lives and their daily challenges. They should be actively involved in planning, designing, and implementing programmes to meet people's needs. For example, the White Paper on Housing,⁵¹ which guides government housing policies, and the National Housing Code,⁵² provide housing policy guidelines. It requires that government housing policies and strategies promote effective public participation of affected people in the planning and implementation of housing development programmes.⁵³ This shows that people and their rights must be respected as a matter of principle. By adopting a RBAD, governments,

47 F Piovesan & MG Fachin 'Gender Equality, the right to development, and the 2030 Agenda for sustainable development in E-learning module on *Operationalizing the right to development in implementing the sustainable development goals*' (2018) at 4 https://www.ohchr.org/sites/default/files/Documents/Issues/Development/SR/AddisAbaba/Rtd_GenderEquality_2030Agenda.pdf (accessed 31 August 2022); E Filmer-Wilson 'The human rights-based approach to development: The right to water' (2005) 23 *Netherlands Quarterly of Human Rights* at 216-217.

48 *Matatiele Municipality and Others v President of the Republic of South Africa and Others* 2006 (2) SA 47 (CC).

49 *Abramovich* (n 43) 43-44.

50 *Osmani* (n 21) 122.

51 National Department of Housing White Paper: A New Housing Policy and Strategy for South Africa (1994).

52 Department of Human Settlements 2009. Upgrading of Informal Settlement Programme, Part 3 of the National Housing Code http://www.dhs.gov.za/sites/default/files/legislation/Policies_Housing_White_Paper.pdf (accessed 26 October 2022).

53 L Chenwi 'Meaningful engagement in the realisation of socio-economic rights: The South African experience' (2011) 26 *Southern African Public Law* at 136.

organisations, and other duty bearers move from executors to facilitators of the development process.⁵⁴

The power of the poor, vulnerable and marginalised lies in the power to participate in their development process because the ability to influence the development process puts them in a better position to assert their socio-economic rights. Section 152(1) of the Constitution of South Africa states that citizens must be encouraged to participate and engage in matters related to community development and that people's needs must be met in ways that satisfy them.⁵⁵ As a result, integrating rights and participation promotes empowerment by enabling people to voice their needs and wishes and act as their change agents.

Finally, participation should help development programmes succeed, in addition, it 'involves conflict, and demands a capacity to analyse, negotiate, and alter unequal relations at all levels'.⁵⁶ It should therefore be understood as a process that promotes fundamental awareness and decision-making as the basis of active citizenship.

4.2 Empowerment

A RBAD aims to empower through the recognition of rights. Once this concept is implemented in a political context, the focus of policymaking will not be limited to a specific section of society with unmet needs. Instead, it will include everyone who has enforceable rights.⁵⁷ Empowerment is a process of increasing interpersonal or political power so that individuals, families and communities can take action to improve their situation. It guarantees everyone's freedom to expand their choices.⁵⁸

A RBAD strives to restore dignity and respect for the inherent worth of individuals, groups and communities affected by poverty.⁵⁹ The empowerment of disadvantaged and marginalised sectors in the community derives from recognising their rights with corresponding legally binding obligations of the government.⁶⁰ A RBAD empowers people to claim their entitlements because 'what was once understood as "charity" becomes "justice" from the corresponding duty-holder'.⁶¹

54 Filmer-Wilson (n 47) 218-219.

55 Constitution of the Republic of South Africa, 1996 (Constitution) sec 152.

56 Darrow & Tomas (n 15) 506; S Kindornay, J Ron & C Carpenter 'Rights-based approaches to development: Implications for NGOs' (2012) 34 *Human Rights Quarterly* at 480.

57 Abramovich (n 43) 36-37.

58 Uvin (n 4) 601.

59 Filmer-Wilson (n 47) 217-218.

60 Abramovich (n 43) 34.

61 Filmer-Wilson (n 47) 217.

Therefore, people are no longer human beings ‘with needs who receive welfare benefits or other forms of discretionary provision, but possessors of rights who have the legal and social power to demand certain forms of behaviour from the State’.⁶² Darrow and Tomas maintain that empowerment suggests the following variety of programme priorities.⁶³

(1) Education and access to information, (2) strategies for inclusion and participation in decision-making and local and national level priority setting, (3) accountability of government officials, public employees, and private actors, and (4) the building of local organisational capacity.

Recognising rights is to take legal action that enable rights holders to seek redress when their rights have been violated, and so, hold duty bearers accountable.⁶⁴ In other words, rights holders are empowered in a way that can restore balance in social situations that exhibit fundamental inequalities.⁶⁵

4.3 Equality and non-discrimination

Inequality and discrimination are major global crises. The human rights framework introduces the principles of equality and non-discrimination to the development process to ensure fair and balanced development programming. The government must not only commit to non-discrimination but also, to some degree, adopt affirmative measures to guarantee the inclusion of population groups or sectors that have traditionally been discriminated against.⁶⁶

Guidelines to advance equality and non-discrimination can be found in several international human rights instruments. According to Article 2 of the Universal Declaration, everyone can assert their rights without repudiation based on race, colour, sex, language, religion, political or another opinion, national or social origin, property, birth or another status.⁶⁷ Similar statements are observable in the

62 Abramovich (n 43) 38, states that ‘people with needs who receive welfare benefits or other forms of discretionary provision, but possessors of rights who have the legal and social power to demand specific forms of behaviour from the State’.

63 Darrow & Tomas (n 15) 494.

64 P Gready ‘Reasons to be cautious about evidence and evaluation: Rights-based approaches to development and the emerging culture of evaluation’ (2009) 1 *Journal of Human Rights Practice* at 736.

65 Abramovich (n 43) 38-39.

66 Abramovich (n 43) 43.

67 Universal Declaration of Human Rights (Universal Declaration) adopted 10 December 1948, Art 2 states that ‘[e]veryone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’; United Nations High Commissioner for Human Rights (UNOHCHR) Economic, social and cultural rights: annual report 2004 implementation of activities and use of funds at 143.

International Covenant on Civil and Political Rights (ICCPR)⁶⁸ and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁶⁹ Article 20(2) of the CCPR and Article 10(3) of the CESCR emphasise the obligation to reject all forms of discrimination by recognising, promoting, and protecting all human rights.⁷⁰

The principle of equality and non-discrimination focuses on vulnerable people and groups such as women, children and refugees.⁷¹ The government must incorporate regulations that protect its citizens from discrimination and take extraordinary measures that include an active protection policy.⁷² Programmes aimed at empowering local populations should be straightforward and protect against potential discrimination between women and men, landowners and farmers, and workers and employers.⁷³ The equality principle also mandates special consideration for the most marginalised and at risk in society, including women, children, indigenous people, and refugees.

According to Abramovich, incorporating equality and non-discrimination principles into development processes can influence budget allocation criteria and social spending.⁷⁴ According to this viewpoint, the principle is sufficient to influence public order verification. Incorporating the principle of equality into development policies and strategies will ensure that vulnerable and marginalised groups enjoy their human rights.⁷⁵ By following this approach,

68 International Covenant on Civil and Political Rights adopted 16 December 1966 and entered into force on 23 March 1976 <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf> (accessed 31 August 2022).

69 International Covenant on Civil and Political Rights (n 68), Art 2(1) states that '[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'; International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966 entered into force on 3 January 1976), Art 2(2) states that '[t]he States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'; G Oberleitner 'International human rights Lexicon' (2006) 69 *The Modern Law Review* at 1035-1037.

70 RK Smith & C Van den Anker *The essentials of human rights* (2005) at 269-272; Art 20(2) states that '[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. (CCPR); Art 10(3) states that '[s]pecial measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions' (CESCR).

71 Abramovich (n 43) 42.

72 Osmani (n 21) 123-124.

73 Darrow & Tomas (n 15) 505.

74 Abramovich (n 43) 43; S Fukuda-Parr 'Human rights and politics in development' in ME Goodhart (ed) *Human rights: Politics and practice* (2016) at 179.

75 P Alston 'Ships passing in the night: The current state of the human rights and development debate seen through the lens of the millennium development goals' (2005) 27 *Human Rights Quarterly* at 801-805.

development processes will benefit all parties equally. Making sure that development programmes are equitable requires considering both direct and indirect forms of discrimination.⁷⁶

4.4 Accountability

Lack of accountability in most development projects and programmes leads to project failure. Assigning direct accountability has been a challenge in all areas of development, including development projects by governments, international agencies and financial institutions, local businesses, and associations.⁷⁷ However, adopting a RBAD brings legal obligations that ensure all duty bearers are accountable for their development programming actions. Article 30 of the Universal Declaration of Human Rights (UDHR) provides for non-state actors as duty bearers and government structures.⁷⁸ This includes NGOs and community-level organisations that recognise that they must be accountable to the individuals they choose to serve by establishing effective oversight mechanisms. The need for accountability is central to applying a RBAD, and this emphasis, in turn, requires commitment.⁷⁹

A RBAD views development issues as rights and responsibilities rather than charity. Bringing together duty bearers and stakeholders strengthens accountability in the development process.⁸⁰ The accountability principle also strengthens current accountability measures and aids in bridging some of the perceived gaps in accountability in horizontal (state-to-state) and vertical (citizen) interactions.⁸¹ Accountability is aided by the gathering of accurate, timely, and reliable data from every stage of the development process. Collecting high-quality, timely, and reliable data from all sectors of the development process, as required in a RBAD, contributes to accountability.

The relationship between government and citizens is central to the principle of accountability.⁸² The latter should be able to participate so that those directly affected by the policy can hold their

76 Darrow & Tomas (n 15) 506.

77 Darrow & Tomas (n 15) 488; Banik (n 13) 46-47.

78 UNG Assembly 1948. Universal Declaration of human rights. UN General Assembly, 302(2) adopted on 10 December 1948 https://www.verklaringwarenatuur.org/Downloads_files/Universal%20Declaration%20of%20Human%20Rights.pdf (accessed 31 August 2022).

79 Osmani (n 21) 123; Sano (n 1) 745-747.

80 A Cornwall & C Nyamu-Musembi 'Putting the "rights-based approach" to development into perspective' (2004) 25 *Third World Quarterly* at 1426-1428; Darrow & Tomas (n 15) 511; Alston (n 75) 805.

81 McInerney-Lankford (n 34) 75.

82 D Nabarro 'Transforming our world: How sustainable development will help us achieve zero hunger' (2016) 22 *International Food Policy Research Institute* at 23-27; Filmer-Wilson (n 47) 217.

government or entities acting on their behalf accountable. Effective accountability measures may be judicial, administrative, or community-based, to name a few examples. Similarly, international and regional treaties adopted by states hold governments to international accountability for the realisation of human rights.⁸³ Those affected by development processes should be able to demand accountability 'to a due process, and it should refer as far as possible to specific rules, results, or behaviours that are objectively set and agreed upon with the participation of those involved or affected by a particular situation'.⁸⁴ Through effective accountability measures, a RBAD empowers individuals to use local mechanisms, be they political, administrative, judicial or quasi-judicial, to hold the government accountable for their human rights and development obligations.⁸⁵ Applicable accountability measures include enforcement by courts, international reporting requirements, parliamentary oversight, and pressure from independent media and NGOs.⁸⁶

5 Advantages of the rights-based approach to development

A RBAD has numerous benefits that improve development programming. It provides a clear conceptual and normative framework that provides direction for more effective development programming.⁸⁷ By providing a clear conceptual and normative framework, a RBAD describes the duties of the duty-bearers.⁸⁸ Darrow and Tomas argue that a RBAD introduces a normative and instrumental approach to development. This normative approach ensures that human rights become binding through legal and moral obligation.⁸⁹ Normative standards indicate that human rights are at an end and must be considered in development processes.⁹⁰ In terms of specific developmental implications, Darrow and Tomas identify five distinctive features of a RBAD:⁹¹

(1) A solid normative basis for values and policy choices that otherwise are more readily negotiable; (2) a predictable framework for action, with the advantage of objectivity, determinacy, and the definition of

83 Osmani (n 21) 123.

84 Darrow & Tomas (n 15) 519, states that '[a]ccountability should be demanded and accorded by reference to a due process. It should refer as far as possible to specific rules, results, or behaviours that are objectively set and agreed upon with the participation of those involved or affected by a particular situation'.

85 Abramovich (n 43) 45; Uvin (n 4) 603.

86 McInerney-Lankford (n 34) 163-164.

87 Gready (n 64) 387; Abramovich (n 43) 34.

88 Abramovich (n 43) 34.

89 Darrow & Tomas (n 15) 492.

90 Darrow & Tomas (n 15) 492; Banik (n 13) 837; Sano (n 1) 748-750.

91 Darrow & Tomas (n 15) 485.

appropriate legal limits; (3) a quintessentially empowering strategy for the achievement of human-centred development goals; (4) a ready legal means to secure redress for violations; and (5) a secure basis for accountability, not only for the state party concerned but also for a significantly wider range of actors in international development cooperation.

The instrumental approach is based on the belief that a RBAD will generate more effective human rights ideas in development programming to reach the marginalised and improve their living conditions.⁹²

The 1990s saw excessive inequalities on both the economic and political fronts. Many people remained marginalised in the development processes. A RBAD is appropriate to ensure that the most vulnerable and the marginalised citizens have access to essential services such as decent housing, health care, water, sanitation, and education. The experience of Pakistani citizens from Karachi demonstrates the significance of creating projects based on RBAD principles. All interested parties convened to begin discussions about the water problem in response to the difficulty in supplying water to Karachi. Residents, civil society groups, the commercial sector, and funding agencies, including the World Bank and the Asian Development Bank, were all involved in the project deliberations. All parties involved in the negotiations concluded that the sessions had been fruitful and yielded valuable lessons. The government learnt to be more inclusive and transparent in its decision-making by embracing the idea of including all stakeholders in the project development process.⁹³

These human rights principles specifically address inequalities in resource allocation and wealth distribution, which play a significant role in poverty eradication.⁹⁴ For example, the *Khosa and others v Minister of Social Development* matter,⁹⁵ which dealt with the right to social security, confirmed that the debarment of permanent residents from the South African welfare system was inappropriate and inconsistent with the Constitution. Their exclusion was discriminatory and unfair and violated the right to equality. This decision obliged the government to help permanent and temporary residents implement the right to social security. In a RBAD, gaps can

92 Darrow & Tomas (n 15) 493.

93 Banik (n 13) 35.

94 G Schmidt-Traub 'The millennium development goals and human rights-based approaches: Moving towards a shared approach' (2009) 13 *The International Journal of Human Rights* at 79; E Dorsey et al 'Falling short of our goals: Transforming the millennium development goals into millennium development rights' (2010) 28 *Netherlands Quarterly of Human Rights* at 516; S Hickey & D Mitlin *Rights-based approaches to development: Exploring the potential and pitfalls* (2009) at 12.

95 *Khosa and others v Minister of Social Development and Others* 2004 (6) BCLR 569 CC.

be identified and addressed where poor, vulnerable, and marginalised groups have been overlooked.⁹⁶ By applying such an approach, these gaps are prioritised, and their needs are addressed.⁹⁷

In a RBAD, goals must be achieved relatively, equitably, and sustainably.⁹⁸ To achieve this, governments and other development agencies must monitor and report on the duration of their achievements and empower people to hold duty-bearers accountable when progress is not sustained. A RBAD makes it possible to monitor development processes through a human rights lens.⁹⁹ This will ensure that disadvantaged sector grievances caused by political actors advancing their political agendas are minimised.¹⁰⁰

The human rights agenda is not a narrow non-linear framework. It offers a holistic, integrated approach to address the multidimensional layers of development challenges. It is aware of local affairs. It considers the local environment and society, as well as the social, political, economic, and cultural practices that can influence development.¹⁰¹ For this reason, using such an approach requires local involvement, which entails completely underestimating all the social dynamics needed to achieve development goals.

The human rights framework values and adapts to different local realities, subjective perceptions, resource constraints, and cultural and social factors.¹⁰² A RBAD is primarily concerned with the appropriateness, affordability, accessibility, and acceptability of development outcomes in the local community. This approach aims to advance national efforts to ensure the fulfilment of human rights for all, to change the financial, social, and political frameworks underlying these efforts and strengthen international responsibility to support national programmes to a satisfactory extent.

96 S Kuruvilla et al 'The millennium development goals and human rights: Realizing shared commitments' (2012) 34 *Human Rights Quarterly* at 164; A Flynn-Schneider 'Inter-governmental organizations. Human rights brief 21(1)' (2014) <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1906&context=hrbrief> (accessed 31 August 2022). See also S Cecchini & F Notti 'Millennium development goals and human rights: Faraway, so close?' (2011) 12 *Journal of Human Development and Capabilities: A Multi-Disciplinary Journal for People-Centred Development* at 123.

97 Kuruvilla et al (n 96) 153; UN Office of the High Commissioner for Human Rights 'Frequently asked questions on a human rights-based approach to development cooperation' (2006) (a) <http://www.ohchr.org/Documents/Publications/FAQen.pdf> (accessed 31 August 2022); Cecchini & Notti (n 96) 123; Dorsey et al (n 94) 518.

98 Kuruvilla et al (n 96) 171; Dorsey et al (n 94) 518; Gready (n 64) 397.

99 RF Oppong 'Trade and human rights: A perspective for agents of trade policy using a rights-based approach to development' (2006) 6 *African Human Rights Law Journal* at 131.

100 Fukuda-Parr (n 74) 171; Darrow & Tomas (n 15) 487; Hickey & Mitlin (n 94) 220-222.

101 UDHR (n 78) 17; A Yamin 'Will we take suffering seriously? Reflections on what applying a human rights framework to health means and why we should care' (2008) 10 *Health and Human Rights* at 47.

102 Darrow & Tomas (n 15) 521.

The consideration of recommendations from international human rights mechanisms can be used to determine national areas of concern. This ensures that existing human rights violations are not perpetuated accidentally. Reports from treaty monitoring bodies can also be used to highlight development challenges, oppressive or discriminatory practices, and ongoing human rights violations. By recognising and responding to local needs and challenges, the opportunities for community members to take responsibility for development processes are improved. This, in turn, guarantees the sustainability of the programmes, as well as the progress made.¹⁰³

In human rights law, governments are the primary duty bearers for fully realising human rights. For example, in the well-known *Minister of Health and Others v Treatment Action Campaign and Others* case,¹⁰⁴ the South African Constitutional Court ordered the government to comply with its obligations under the right to health. Therefore, achieving development goals through a RBAD requires governments to respect, protect, promote, and fulfil human rights throughout the development programming cycle. A RBAD creates global responsibility for everyone's development - at the national and international level, and global and regional level.¹⁰⁵

6 Limitations and critiques of a rights-based approach to development

A RBAD has received mixed reactions over the years. Critics argue that the status of human rights is unclear and vague.¹⁰⁶ They believe that human rights are rhetorical and lack practical implementation. Others argue that a RBAD might be too rigid for public policy and therefore limits the discretionary powers of those setting development policies and strategies.

The lack of resources has also made it difficult for developing countries to adopt a RBAD. The shortcomings and challenges of a RBAD, particularly those experienced by essential institutions such as donor agencies and NGOs, have been noted by many organisations. One of the challenges identified by organisations is that a RBAD lacks a specific operational methodology for development practice. The interpretation of legal standards presented by international law in national development policies is a burdensome process which is hampered by a lack of knowledge and capacity.¹⁰⁷

103 Filmer-Wilson (n 47) 219; Cecchini & Notti (n 96) 123; Darrow & Tomas (n 15) 506.

104 *Minister of Health and Others v Treatment Action Campaign and Others* 2002 (1) (CCT9/02) SA (CC) at 16.

105 Gready (n 64) 735-741.

106 Sano (n 1) 744.

107 Filmer-Wilson (n 47) 221.

The political and institutional aspects such as structural inequalities, limits on jurisdiction, lack of political will and respect for international human rights instruments play a significant role in the non-implementation of a RBAD. Additionally, social and cultural aspects such as a general awareness of human rights in society, previous experiences of communities with participatory decision-making, and the strength of local civil society organisations significantly impact the ease with which development strategies are implemented.¹⁰⁸

Understanding human rights has also proven to be a stumbling block to the gradual implementation of a RBAD. For example, a lack of knowledge about human rights among government officials and the general population and a lack of independent local NGOs that can provide human rights education are obstacles from a RBAD perspective.

Applying human rights principles, such as participation, in development remains a significant challenge. A community might lack the skills to express its views and needs and contribute to decision-making. For example, in Botswana, UNICEF found active participation in the development process impossible due to a lack of community capacity. The poor and most marginalised groups lack decision-making experience owed to a lack of confidence to express their opinions.¹⁰⁹ However, Arnstein posits that in order to gain meaningful public engagement in development programmes, it is necessary to create initiatives to educate the public rather than simply appointing them to advisory boards to win their support.¹¹⁰ Among other things, public education must enlighten people about their possibilities, rights, and responsibilities and give them the chance to share their opinions and suggestions.¹¹¹

Similarly, the hypocrisy of bilateral donors and some NGOs in holding others accountable while evading accountability themselves is a significant challenge in implementing a RBAD.¹¹² The lack of support from managing authorities and development professionals for changes in their existing practice to incorporate a RBAD into their policies also makes implementation difficult. In Uganda, for example, the *Cooperative for assistance and relief everywhere* discovered that some key donors did not support the transition to a legal approach. Donors recognised that adopting the human rights approach would

108 Gauri & Gloppen (n 40) 494-500; Filmer-Wilson (n 47) 225.

109 Filmer-Wilson (n 47) 225-226.

110 SR Arnstein 'A ladder of citizen participation' (1969) 35 *Journal of the American Institute of planners* at 20.

111 Arnstein (n 110) 21.

112 Gready (n 64) 741.

promote the principles of non-discrimination, equality, broad participation and empowerment.¹¹³ Because this had the potential to challenge existing power imbalances directly, development agencies feared that local opposition to changing the status quo could endanger rights advocates.¹¹⁴ Filmer-Wilson agrees that ‘in these precarious conditions, finding ways to implement programmes while not compromising human rights principles, or compounding existing power imbalances is challenging’.¹¹⁵

A lack of conceptual clarity has proven to be a critical issue in adopting a RBAD. According to Darrow and Tomas, conceptual clarity is needed to highlight the unique opportunities and challenges that a rights-based approach poses.¹¹⁶ Colloquial language, superficial marketing, and undue complication would only serve to cover what is new and notable about a rights-based approach. Conceptual clarity could also promote practical consistency and coordination between different development agencies and actors, thereby increasing the prospects for joint action. The need for clarity is more vital than ever before, as critics believe that a RBAD is based on conceptual rhetoric with unproven practical implications and mixed motives for its implementation.¹¹⁷

Although a RBAD has shortcomings, recent experience shows that the practical value of human rights concepts and standards in development strategies is better understood.¹¹⁸ For example, UN agencies, policymakers, and program managers such as NGOs and bilateral development agencies have addressed and operationalised various rights-based programming methods in recent years. This benefits a better understanding of the conceptual framework of human rights by putting rights-based approaches into practice, promoting human development, and empowering the poor and marginalised.

7 Conclusion

This article has traced and examined the relationship between human rights and development and the emergence of a RBAD that has gained momentum among international development practitioners. Accepting a RBAD has enabled incorporating human rights, norms and standards into the development. The underlying RBAD principles of participation, empowerment, inequality, non-discrimination and accountability have proven essential to the advancement of

113 Filmer-Wilson (n 47) 226-227.

114 As above.

115 Filmer-Wilson (n 47) 227.

116 Darrow & Tomas (n 15) 482-483.

117 Darrow & Tomas (n 15) 483.

118 Darrow & Tomas (n 15) 489.

development programming. This can influence how government, international, national and local NGOs formulate, implement and monitor development policies and strategies to advance human development. Applying this approach in various development projects in South Africa will provide a framework in which the theoretical gaps between different types of rights can be overcome by emphasising their interconnectedness in practice. This paper has highlighted the need to understand development through the lens of human rights to improve the living conditions of the poor, the vulnerable and the marginalised.