

Check against delivery

Implementing Human Rights: Approach, Methods and Agency

Rajeev Malhotra¹

Madam Minister

Mr. Chairperson

Distinguished delegates

Ladies and gentleman,

It is my privilege to have been invited to participate at this important conference. I would like to start by thanking the hosts for their hospitality and the opportunity given to me for sharing some of my thoughts on an issue that is of vital importance to us – as human rights activists, development practitioners, policy makers and above all as individuals who face a constant struggle to realize and enjoy their human rights in different parts of the world.

I have been asked to speak on the issue of methods for mainstreaming and following systematic work for human rights implementation; hence I intend to outline in my address a possible approach, methods as well as tools for facilitating the implementation of human rights, and identify the potential actors (individual and collective agency) that have a crucial role to play in furthering the implementation of human rights.

The perspective that I bring to this discussion is essentially that of a development economist from a developing country, who had the opportunity to help conceptualize an approach and set into motion the current round of work on human rights indicators for the UN Human Rights Treaty Bodies, at the Office of the High Commissioner for Human Rights in Geneva, during the period 2002-07.

As one moves from human rights advocacy to human rights implementation there are at least three issues that need to be reviewed and addressed:

- ***Content and the language of the message:*** A value based, prescriptive content, anchored essentially in a legalistic language, has to be transformed into a message that is more concrete, accessible, operational and practicable. This is essential if we are to move from a situation where one is advocating for building a belief in and creating an acceptance for human rights standards, to a situation where one seeks tangible outcomes that enable people to realize and enjoy their rights,

¹ The views expressed here are in my personal capacity and not necessarily that of the organization for which I currently work or have worked in the past. Contact details: malh1@hotmail.com

thereby adding to their sense of well-being. In transforming the content of the message, there is a need to equip the human rights community, as commonly or narrowly defined, with an approach, methodology and specific tools which facilitate a better communication with a broader set of stakeholders, who may or may not have had a formal introduction to human rights. At the same time, it is important to ensure that the message so created withstands a rigorous scrutiny of the ‘sceptics’ who potentially may have a greater role in facilitating the implementation of human rights.

As one addresses these concerns, it is obvious that there is a need to rework and accordingly rearticulate the balance between the intrinsic and instrumental importance of human rights, in the message that one takes to the stakeholders. Indeed, the emphasis may have to shift towards the latter, if we are to make an effective case for furthering the implementation of human rights in meeting the desired objectives of development or social advancement in any society.

Consider, for instance, the notion of *indivisibility of human rights* - a central principal in the rights discourse. Up to now in the human rights literature, the two sets of rights, the ESCRs and the CPRs, have been viewed differently – a *progressive realization approach* for one and the *violation approach* for the other- even though they are both fundamental rights and are indivisible and interdependent. Indeed, it would not be entirely out of place to suggest that the analytical convenience that prompts the use of these approaches, (along with the accident of history that created the post-world war divide into the two blocs and the corresponding polities and the way of thinking), has contributed in consistently undermining the notion of interdependence and indivisibility of human rights. Thus, limiting or even concealing the value addition that the application of human rights standards and cross-cutting norms or principles could bring to the ways of addressing our problems of development and social advancement.

In general, when we consider the human rights normative framework, the codification of standards in various legal instruments and their elaborations, for instance, in the General Comments of UN Treaty Bodies, we are confronted with a body of work which is essentially a narrative. Use of a predominantly narrative message may not always be the best way to engage a broader constituency of potential practitioners in furthering the implementation of human rights. Not only do we need to be concrete in clarifying the normative content of a human right or of an issue that is being address (viz. racial

discrimination or violence against women), but we also need tools that allow that content to be operationalized, implemented and monitored.

Such (and other) gaps in the means (tools) and the desired ends (enjoyment of human rights) that one seeks to realize have to be bridged, if there has to be progress in implementation of human rights.

- ***Process to reach out stakeholders:*** Unlike the advocacy-phase, an effective implementation of human rights requires a strategy that - encourages ownership of the process to implement human rights by the local-level stakeholders; a set of tools that are contextually meaningful, without compromising in anyway the inherent universality of human rights; and a strategy that builds certain institutions (viz. National Human Rights Institutions) and requisite capacity (for example to objectively monitor the implementation of human rights obligations of the duty bearers or interpret the available information /data from a human rights perspective) to facilitate the realization of human rights. Above all mainstreaming human rights implementation requires a process that has a regional and country focus rather than a process which is essentially multilateral Geneva-centric.

I would like to emphasize that the contextualization of the message and the tools required to support it is a key element in the strategy to further the implementation of human rights. Indeed it is a part of the process adopted to reach out to the country level stakeholders. Since countries and regions within countries differ in terms of their level of development and realization of human rights, reflected in the nature of institutions, the policies and priorities of the State, it becomes necessary that the process is customized keeping the local needs in sight.

- ***Identification of human rights stakeholders at country level:*** Implementing human rights requires an *ad infinitum* focus on a process that promotes and protects the rights. It requires a continuous assessment of the efforts being made by duty-bearers in meeting their obligations-irrespective of whether it is directed at promoting a right or protecting it. This in turn requires engaging a diverse set of country level stakeholders, a larger constituency that includes human rights practitioners, civil society organizations, policy makers, development practitioners and administrative agencies encompassing social, economic, judicial and the law enforcement services, which is not necessarily the case when the focus is primarily on human rights advocacy.

The good news is that the concerns highlighted here are being addressed, to a considerable extent, in an evolving body of work on indicators for use in human rights assessments, currently underway at UN OHCHR.²

I must add here, the commonly talked of methods for mainstreaming human rights perspective into policy areas, such as rights-based governance, human rights budgeting or rights based monitoring are inextricably dependent on the use of appropriate human rights indicators. Indeed the use of indicators has to be the starting point for mainstreaming human rights in public policy.

The basic objective of the work on indicators has been to systematically and comprehensively translate universal human rights standards into indicators, both quantitative and qualitative, that are relevant and useful for monitoring the implementation of human rights at country level. Indicators are seen as useful tools in articulating and advancing claims on the duty-bearers, in making the normative content of human rights more concrete and in providing the benchmarks to guide and monitor appropriate policy response to bridge the gaps in the realization of human rights.

At country level, a structured and transparent approach to identifying and using standardized information for assessing human rights will facilitate the design and implementation of policy measures in mainstreaming human rights in the development process and, thus, help secure the universal enjoyment of human rights. At the same time, it will help States parties meet their reporting obligations under the international human rights treaties. Indeed, the use of appropriate quantitative indicators for assessing the implementation of human rights could help streamline the process, make it more transparent and more effective, reduce the reporting burden and, above all, improve follow-up on the recommendations and concluding observations, at both the committee and country levels. Appropriate indicators will also allow national human rights institutions and civil society organizations to exercise more effective oversight on the promotion and protection of human rights.

There are several features of the framework adopted to elaborate indicators for different human rights that make it more likely to be effective in furthering the implementation of human rights. *First of all*, it follows a common approach to identify indicators for promoting and monitoring civil and political rights, and economic, social and cultural rights, thereby strengthening the notion of the indivisibility and interdependence of human rights. *Secondly*, the framework comprehensively translates the narrative on the normative content of human rights (starting with the related provisions of international human rights instruments and general comments by treaty bodies) into a few characteristic attributes and a configuration of *structural*, *process* and *outcome* indicators. The

² See UN document HRI/MC/2008/3 and HRI/MC/2006/7.

identified indicators bring to the fore an assessment of steps taken by the State party in addressing its obligations – from commitment to international human rights standards (*structural* indicators) to efforts being undertaken by the primary duty-bearer, the State, to meet the obligations that flow from the standards (*process* indicators) and on to the results of those efforts from the perspective of rights-holders (*outcome* indicators).

Thirdly, the framework facilitates an identification of contextually meaningful indicators for universally accepted human rights standards. It enables the potential users to make an informed choice on the type and level of indicator disaggregation that best reflects their contextual requirements for implementing human rights or just some of the attributes of a right, while recognizing the full scope of obligations on the relevant human right standards. *Fourthly*, the framework focuses on exploring and exhausting the use of commonly available information, particularly from *objective* data sets, for tracking human rights implementation. *Finally*, and most importantly the ‘language of rights’ that has emerged from this work has been able to bring together, in the course of consultations and limited piloting that was undertaken to test and validate the framework, a diverse set of stakeholders. These included participants from National Human Rights Institutions, policy makers and agencies responsible for treaty reporting or with implementation mandates related to specific rights, national statistical agencies responsible for data collection and dissemination, non-governmental organizations and staff from UN country teams.

While this is still work in progress and will have to be further developed and validated before it can be usefully applied, it has the potential of meeting a large part of the unmet demand, for appropriate tools and methods, from the stakeholders who are engaged in promoting and protecting human rights at country level. There is a strong case here for the international community, particularly the donors and the UN OHCHR who initiated this work, to provide adequate support to take it to its logical end. More specifically, there is a need to develop resource materials, including users’ manual and other tool-kits to make this work more accessible to the potential users. In addition, there may also be a need to follow a decentralized approach to house research and resource capacity at regional and national level with a view to encourage contextualized development of resources for an effective backstopping of local stakeholders engaged in the implementation of human rights.

I thank you for your attention.