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# Module 1

## Human Rights and the Human Rights-based Approach to Development



*In order to respond to recent changes in development theory, finance and international cooperation, and to address the effects of poverty and inequality on children's and women's rights, UNICEF is increasingly working in public policy analysis and advocacy with governments and development partners. To strengthen its equity agenda, UNICEF works on evidence-based analysis to build support and political capital in favour of effective policies, laws and budgets that promote the rights and well being of children and women.*

*UNICEF has partnered with Economic Research Foundation (ERF) to develop the learning programme "Socio-Economic Policies for Child Rights with Equity". ERF coordinates the activities of IDEAs (International Development Economics Associates), a globally renowned policy and economic network, consisting of distinguished academicians and development practitioners from different parts of the world with multidisciplinary interests.*

*The course has also been designed to take into account the current and rapidly changing development architecture and for UNICEF and its development partners to continue being a strong advocate for children, especially the most marginalised and unreached.*

#### Socio-Economic Policies for Child Rights with Equity

Economic Research Foundation (ERF) and United Nations Children's Fund (UNICEF)  
New Delhi and New York, 2011

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## **MODULE 1**

# **Human Rights and the Human Rights-based Approach to Development\***

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### **What is this module about?**

Policy entry points for advocating children's and women's rights are related to the legal instruments available for making political, economic and administrative authorities accountable and the approaches for empowering citizens, including children, to claim their rights. In this module, we will examine the major human rights instruments and mechanisms, especially those that can guide legal and economic reforms and inclusive public policies for the realisation of women's and children's rights. We will also look at the implications of the human rights-based approach to development (HRBA) for UNICEF's programming.

The module will facilitate a critical understanding of the extent to which national laws, public policies and/or donor programmes take into account and reflect international standards on children and women's rights. This will enable you to apply human rights principles in the design of concrete proposals for advancing children's and women's rights in different country contexts.

You will get some answers to the following questions:

- ❖ What are human rights and why are they critical to everything humanity does?
- ❖ What is the human rights-based approach to development (HRBA)?
- ❖ What are the major international and regional human rights instruments and mechanisms, especially those closely related to UNICEF's mission?
- ❖ What are the implications of human rights instruments for national public policies, legislation and governance, in the context of children's and women's rights?
- ❖ What are the operational implications of HRBA for UNICEF's country programming?

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**Some useful readings for this Module are:**

1. Urban Jonsson (2003), Human Rights Approach to Development Programming, UNICEF Regional Office for Eastern and Southern Africa, [http://www.unicef.org/rightsresults/files/HRBDP\\_Urban\\_Jonsson\\_April\\_2003.pdf](http://www.unicef.org/rightsresults/files/HRBDP_Urban_Jonsson_April_2003.pdf)
2. United Nations Office of the High Commissioner for Human Rights (OHCHR, 2006), Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation, <http://www.ohchr.org/Documents/Publications/FAQen.pdf>
3. Radhika Balakrishnan and Diane Elson (2008), 'Auditing Economic policy in the Light of Obligations on Economic and Social Rights', Essex Human Rights Review Vol. 5 No. 1, <http://www.cwgl.rutgers.edu/globalcenter/publications/auditing.pdf>.

## **The Evolution of Human Rights**

### **An Introduction to Human Rights**

Human rights are about human dignity. They are the moral rights that every human being possesses and is entitled to enjoy simply by virtue of being human. They are the claims that all people have to social arrangements, which protect them against actions and omissions that interfere with their fundamental freedoms, entitlements and human dignity.

#### **Key human rights principles:**

- Human rights are universal. They are inherent to all human beings and can be claimed by every human being.
- Human rights are equal and non-discriminatory. That is, regardless of our nationality, place of residence, gender, national or ethnic origin, colour, disability, religion, language, or any other characteristic, we are all equally entitled to our human rights without discrimination.
- Human rights are inalienable; they cannot be voluntarily given up or taken away.
- Human rights are indivisible. This means that all rights, whether civil, cultural, economic, political or social rights, are inherent to the dignity of every human. Therefore, they all have equal status and cannot be ranked.
- Human rights are also **interdependent and interrelated** (see pop-up below). This means that the realisation of one right depends, wholly or in part, upon the realisation of others.

The term “collective rights” refers to the recognition and protection of the rights of individuals as members of groups such as ethnic and religious minorities and indigenous people.

#### **Pop-up: Inter-linkages of the Right to Food with Other Human Rights**

Consider the following example. We know that malnutrition in early childhood leads to deficits in cognitive development and learning skills. These may force children to drop out of school and work. Thus realisation of a child’s right to education (and the right of a child to be free from child labour) is dependent on the realisation of her/his rights to food and health. On the other hand, to be free from malnutrition, people need to know how to maintain a nutritious diet; they should also have the skills and capacity to produce food as a livelihood or have access to food through financial means. Thus realisation of the right to food is often dependent on the realisation of the right to education. For detailed discussion, see OHCHR and FAO (2010), ‘The Right to Adequate Food’, Fact Sheet No. 34, <http://www.fao.org/righttofood/publi10/FactSheet34en.pdf>

Similarly, the fulfilment of many children’s rights such as their rights to food, health, education, etc. are often dependent on their right to social security or the realisation of their parents’ right to adequate livelihood or work. This indivisibility of human rights makes it imperative to approach the protection and promotion of rights in a holistic manner.

## Human rights in historical perspective

Since early history, there have been ideas of liberty and equity. Philosophers, lawyers,



social scientists and activists have fought against the privileges and abuses of elites in power, and tried to consolidate their movements into charters, declarations and laws, in which all citizens would have common rights. Examples range from the English Magna Carta in medieval times (1215), to the French Declaration of the Rights of Man and of the Citizen (1789).

The abolition of slavery and workers’ rights were central achievements of the human rights struggle in the 19<sup>th</sup> century. Fights for the rights of women, workers and racial or ethnic minorities were the most significant in the 20<sup>th</sup> century. In the 21<sup>st</sup> century, the rights of children, persons with disabilities and

indigenous people are emerging powerfully.

Many groups and movements have managed to achieve profound social changes through the struggles for human rights. Some of these have come at a high cost; across the centuries many have lost their lives defending the idea of equality. For instance, Martin Luther King was assassinated while supporting a strike of black-American sanitation workers in Memphis in 1968. Even now, union workers are killed annually in many countries, as officially reported by the International Labour Organisation (ILO).

These historical experiences tell us that the struggle for human rights is a challenge, which requires strong and committed action. Even if the results may not be perfect, what is important is to move the agenda forward. In the words of Kofi Annan, the former UN Secretary General, “We have it in our power to pass on to our children a brighter inheritance than that bequeathed to any previous generation... we aim for freedom from fear, freedom from want, and freedom to live in dignity... we can forge a set of updated international institutions to help humanity achieve these noble goals”.

## Claims and responsibilities

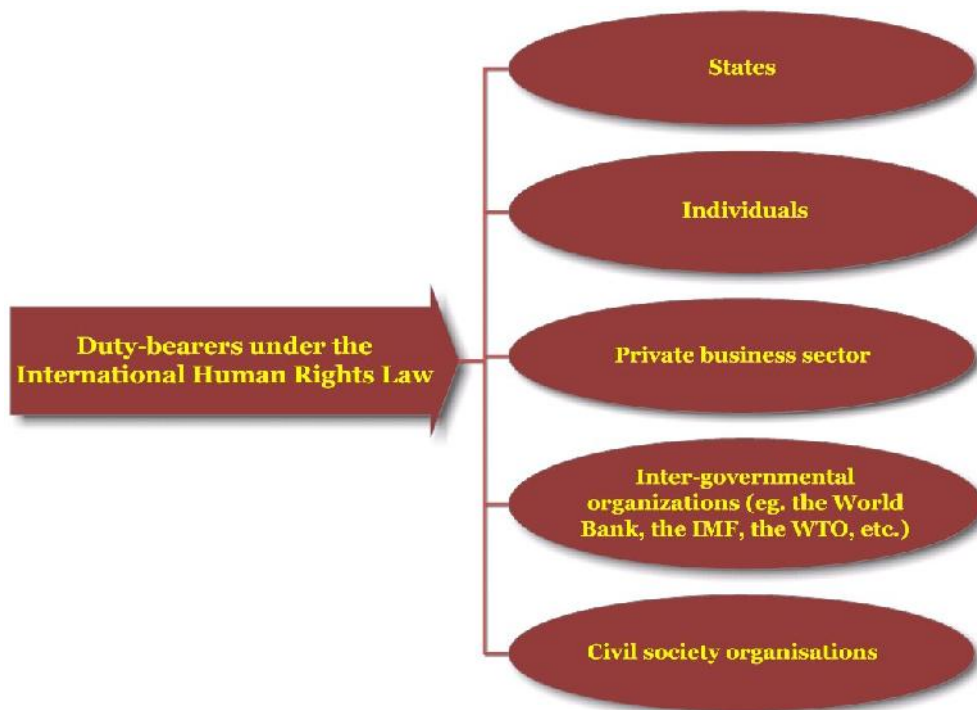
Every right is a claim and there are duty-bearers against whom the claim can be made. Duty-bearers are accountable for the realisation of that right. Every right-holder also

has a duty to ensure that the enjoyment of her/his rights respects the rights of others. So there is a relationship between rights-holders' claims and duty-bearers' responsibilities.

As signatories to the treaties under the international human rights law (IHRL), States are the primary duty-bearers.

But apart from the legal duties of States that arise from the ratification of treaties, as enduring moral standards human rights are the ethical duties of all people.

Read [the Guiding Principles on Business and Human Rights](#), endorsed by the UN Human Rights Council in June 2011, which clarify the obligations and responsibilities of States and businesses in preventing and addressing human rights abuses linked to business activities.



In situations of international armed conflict, International Humanitarian Law applies. This seeks to safeguard human dignity in the specific context of armed conflicts. The Geneva Conventions and their Additional Protocols are at the core of international humanitarian law, which has been ratified by 194 States Parties.

In this case, the warring parties are duty-bearers and the rights holders are the civilian population that is affected or liable to be affected by the conflict.

The rights of the civilian population in international as well as in civil or internal conflicts include protection against:

- violence to life and person;
- being taken hostage; and
- outrages upon personal dignity, including humiliating and degrading treatment.

The warring parties have a duty to protect civilians and civilian property. This includes the duty to ensure water and food supplies by protecting agricultural areas for the production of food, crops, livestock and irrigation and water supply facilities.

Warring parties also have a duty to allow humanitarian agencies to assist the civilian population.

When it comes to internal conflicts, apart from States, other combatant parties such as armed opposition groups and rebels, liberation and independence movements, often referred to as “non-State entities”, are all duty bearers.

For UNICEF, the UN development agency that has been mandated with protecting the rights of children since World War II, the claim-duty relationships include all relevant subjects and objects at national, sub-national, community and household levels. The child is the primary claim/right-holder, and parents, communities, civil society organisation, governments and others have resulting duties. In most cases, parents are the immediate duty-bearers. At the same time, in order to meet their duties to children, parents must be able to claim their own rights vis-à-vis other specific duty-bearers.

For instance, while parents have a duty to provide food for their children, they often cannot do so due to lack of resources such as income from employment or productive assets. In such cases where parents lack resources because some of their rights have been violated, as well as in situations of conflict and natural disaster, parents cannot be held accountable for not providing food for their children. In this way, parents become “secondary” claims/rights-holders and others become the second-level duty-bearers, while the State is the primary duty bearer.

## **The Role of the UN in the Advancement of Human Rights**

Human rights are the moral and legal foundation of the UN. Human rights, peace and security, and development underpin the synchronised objectives of the UN set out in the 1945 UN Charter and the Universal Declaration of Human Rights (UDHR). Indeed, human rights were acknowledged as a global responsibility for the first time in the intergovernmental context, when the UDHR was adopted by the UN General Assembly in 1948.



Article 55 of the UN Charter states:

“With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development;
- b. solutions for international economic, social, health, and related problems; and international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1948, mostly as a response to the genocide and atrocities committed during World War II.

However, as Sir Richard Jolly in his intellectual history of UN ideas portrays, the UDHR was subscribed by countries that had major violations of human rights.

Watch: <http://www.youtube.com/watch?v=VcLefkF1-YA>

Further, while there was a common agreement at the time that these abuses should not be repeated, even now different kinds of human rights violations continue to occur across the globe.

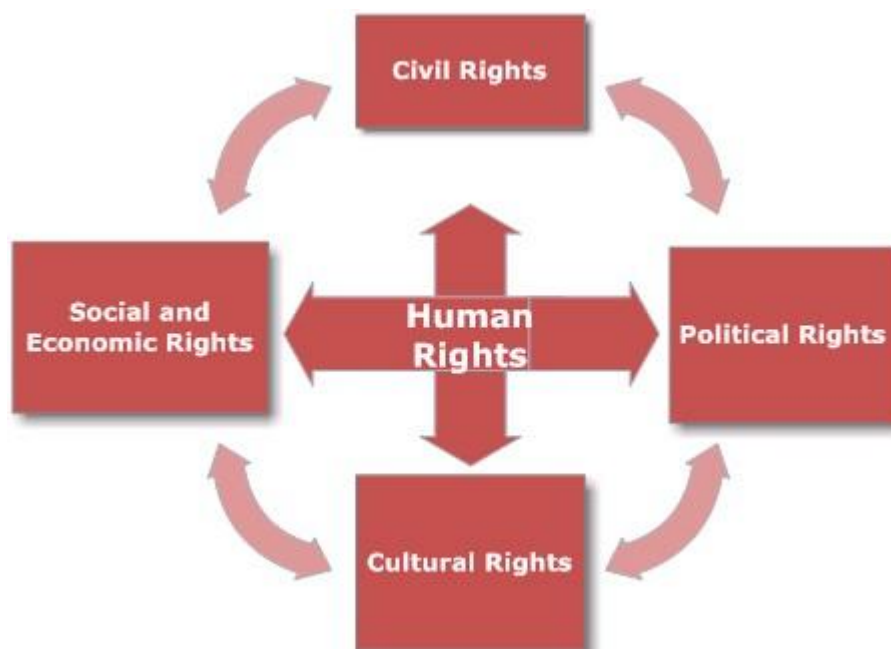
The UDHR contains 30 articles setting out all human rights that are to be protected.

Article 1 proclaims the universality of all human rights: “All human beings are born free and equal in dignity and rights.”

Article 2 specifically describes the non-discriminatory principle of human rights:

“Everyone is entitled to all the rights and freedoms set forth 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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”

The categories of human rights include **civil, political, economic, social and cultural rights** (See chart and pop-ups).



**Pop-up: Civil rights** include such rights as the right to life, liberty and personal security; the right to equality before the law; the right to protection from arbitrary arrest; the right to the due process of law; the right to a fair trial; and the right to religious freedom and worship. Civil rights also establish the right of every child to be registered and to have a name and a nationality.

**Pop-up: Political rights** guarantee involvement in public affairs, and include such rights as the right to speech and expression; the right to assembly and association; and the right to vote and political participation.

**Pop-up: Social and economic rights** include such rights as the right to work and fair remuneration; the right to a family; the right to education; the right to health and well-being; the right to form trade unions and free associations; the right to leisure time; and the right to social security, including social insurance; the right to the widest possible protection and assistance for the family, especially mothers, children and young persons.

**Pop-up: Cultural rights** maintain and promote sub-national cultural affiliations and collective identities, and protect minority communities against the incursions of national assimilationist and nation-building projects. They include such rights as the right to the benefits of culture; the right to indigenous land, rituals, and shared cultural practices; and the right to speak one's own language and to 'mother tongue' education. (Source: UNDP Guide to HR Indicators)

Because there is no hierarchy among human rights, UN has always considered and promoted civil, political, economic, social and cultural rights as equally important.

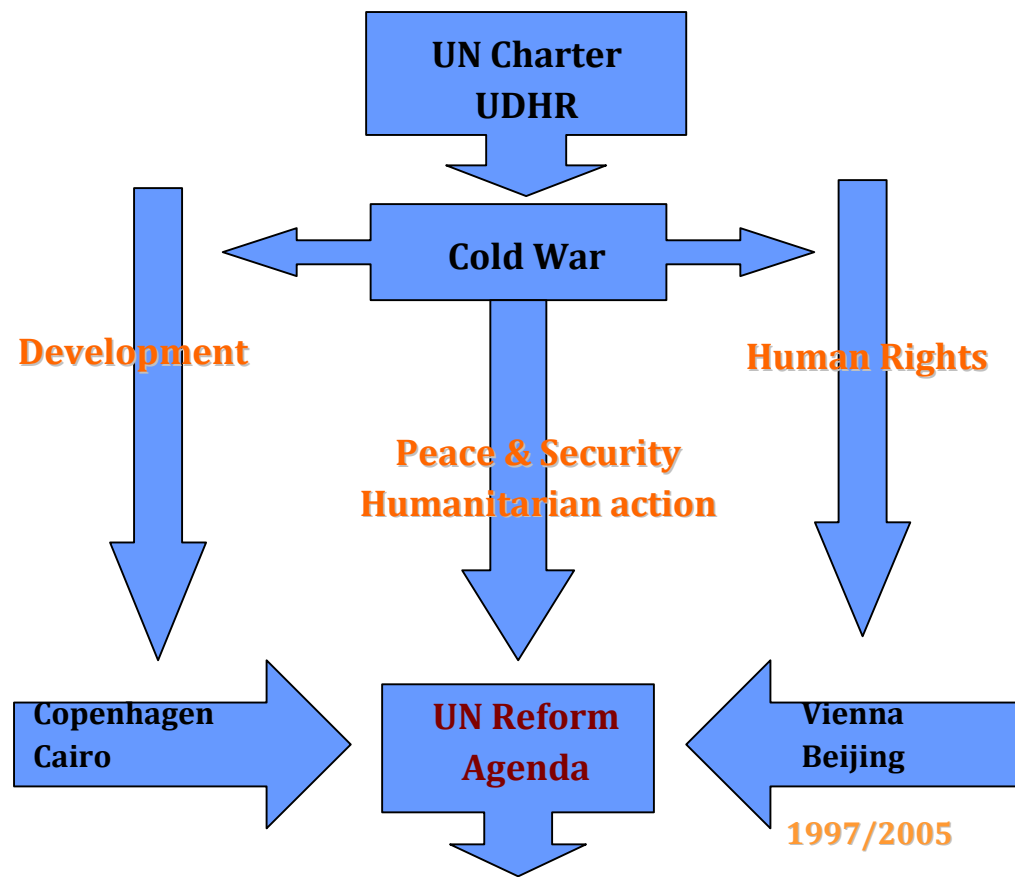
However, during the Cold War, the ideological divisions led some Western nations to emphasise the superiority of civil and political rights over economic, social and cultural rights, while others, particularly the socialist countries, opposed this. The political resistance to an integrated treatment of rights by some UN member countries resulted in the creation of two separate covenants for these two sets of human rights, as an unsatisfactory compromise. Thus, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted by the General Assembly as separate texts in 1966 and entered into force in 1976. These have been followed by other UN treaties over the subsequent decades.

The political realities of the Cold War led to the evolution of parallel programme and policy tracks within the UN system, focused separately on development, human rights and humanitarian action.

In the 1990s, the work of various UN treaty bodies that have been established to monitor and advance human rights across the world (you will get to know more about them in the next sections) as well as the **global conferences and summits of the UN** (pop up below) played an important role in addressing inter-related aspects of these three mandates. This was aided by the fact that the end of the Cold War shifted global power balances.

**Pop-up:** Some of the major UN global conferences that re-emphasised the linkages of human rights with development are:

- \* The 1990 World Summit on Children (WSC);
- \* The 1993 Vienna World Conference on Human Rights;
- \* The 1994 Cairo International Conference on Population and Development;
- \* The 1995 Copenhagen World Summit for Social Development;
- \* The 1995 Beijing Fourth World Conference on Women;
- \* The 2000 New York Millennium Summit; and
- \* The 2005 World Summit.



Source: UNDG (<http://www.undg.org/index.cfm?P=531>)

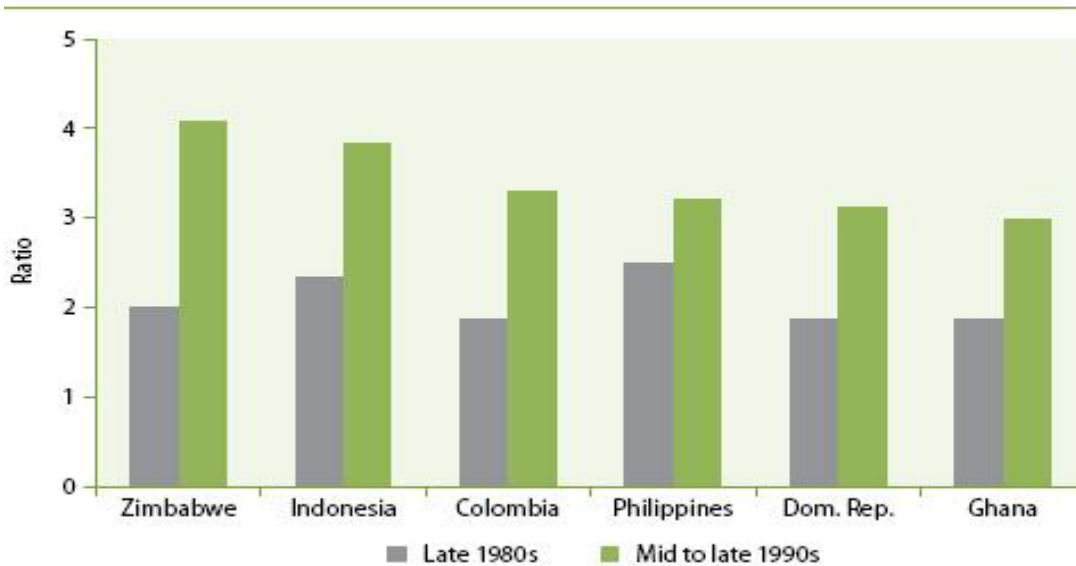
### The importance of tackling economic development in the struggle to achieve human rights

Human rights often address crude violations such as genocide, torture, sexual abuse or forced labour. However, there are other crude assaults on people lives that arise from the social and economic policies adopted by countries as well as because of international economic conditions that are beyond their control.

Often in recent history, many people died because of complex and apparently invisible causes like the Irish potato famine (1845-1852) in which nearly one third of the Irish population died; or the Madras famine in India (1876), where about 5.5 million people starved to death due to the British policy of promoting free trade.

Similarly, the impacts of economic structural adjustment imposed by international financial institutions during the debt crises in the 1980s and 1990s led to a rapid rise in infant mortality rates among low-income groups in many developing countries (see graph).

**Ratio of under-five mortality rate for the bottom quintile to that for the top quintile, selected developing countries, late 1980s and mid to late 1990s**



Source: World Health Organization, Regional Office for the Western Pacific (2002).

Since 2008, the world has been facing a food crisis, in which nearly a billion people are suffering hunger owing to causes they cannot understand. Many people in both developed and developing countries have also experienced adverse social impacts because of the fiscal consolidation efforts in the aftermath of the global financial and economic crisis.

Read the report [\*Bringing Human Rights to Bear in Times of Crisis: A human rights analysis of government responses to the economic crisis\*](#) presented to the 13th session of the UN Human Rights Council during its High-Level Segment on the impact of the global economic and financial crisis.

These are all avoidable assaults on people's lives, which are directly linked to the development strategies adopted by governments, the accompanying social and economic policies carried out by them and inadequate international economic cooperation by developed countries.

You will find further discussion on related issues in the later sections of this module. Module 2 presents a detailed discussion of the critical implications of social and economic policies on the realisation of human rights.

The UN Treaty Bodies have also noted the interdependence of human rights and development through their "General Comments". General Comments are the authoritative statements published by them for providing guidance on interpretation of various UN human rights treaties (The role of Committees and some of the other General Comments are discussed in detail in the next section).

For instance, the Committee on Economic, Social and Cultural Rights in its General comment No. 14 on the right to the highest attainable standard of health (Article 12 of the ICESCR) states:

“Health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity...

The right to health is closely related to and dependent upon the realisation of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health.”

In another General Comment (No 2) the Committee states that two general principles are important:

“The first is that the two sets of human rights are indivisible and interdependent. This means that efforts to promote one set of rights should also take full account of the other... wherever possible, the agencies should act as advocates of projects and approaches which contribute not only to economic growth or other broadly defined objectives, but also to enhanced enjoyment of the full range of human rights.

The second principle of general relevance is that development cooperation activities do not automatically contribute to the promotion of respect for economic, social and cultural rights. Many activities undertaken in the name of ‘development’ have subsequently been recognised as ill-conceived and even counterproductive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt within the Covenant should, wherever possible and appropriate, be given specific and careful consideration.”

In his 1997 report on UN Reform, then Secretary-General Kofi Annan called for mainstreaming human rights in all UN activities. Since then, many UN agencies and programmes have been integrating human rights in all their activities to implement their core mandates.

For UNICEF, the UN development agency mandated with the protection and promotion of children’s rights since World War II, child development is at the core of human development. With its Mission Statement approved by its Executive Board in 1996 and the Convention on the Rights of the Child (CRC) as the guiding frame of reference for the organisation’s work (this will be discussed in more detail in the later sections), UNICEF was ahead of many other UN agencies in recognising human rights as a foundation for development work.

The unprecedented global consensus on a shared vision of development generated by the various UN processes culminated in the Millennium Summit of 2000, with its Millennium Agenda. The respect for all internationally recognised human rights and

fundamental freedoms, including the right to development, minority rights, the rights of women, the rights of children and the rights of migrants, forms the normative basis for the Declaration.

### **The Right to Development**

Human rights and development both aim to promote well-being and freedom, based on the inherent dignity and equality of all people.

Development is the process of enhancing human capabilities such that each person can lead a life of freedom and dignity. Human rights are the claims that all people have to social arrangements that secure the freedom for a life of dignity. While securing freedom and dignity is dependent on the realisation of human rights, the realisation of human rights requires capacities that development can make possible. Thus, human rights and human development reinforce one another by protecting people's rights and fundamental freedoms and expanding their capabilities.

The Right to Development was first proclaimed in 1986 and reaffirmed in the 1993 Vienna and 2000 Millennium Declarations.

It has the following core elements:

- The human person is at the centre of development, and the process of development should be respectful of all rights;
- Development should in particular respect the right of participation;
- Development should promote social justice;
- States have the primary responsibility for realising the right to development at the national level, as well as through appropriate international policies and international cooperation.

An improvement in the realisation of the Right to Development requires the promotion or improvement of at least some human rights, while no other deteriorates.

This offers a way out of the traditional tension between, on the one hand, the declared interdependence and indivisibility of all rights, and on the other, the need to prioritise certain actions and policy areas given the resource and capacity constraints of developing and low income countries. This allows for a sequencing of rights-based interventions.

For a detailed discussion, see Andy Norton and Diane Elson (2002), 'What's Behind the Budget? Politics, rights and accountability in the budget process', Overseas Development Institute, <http://www.odi.org.uk/resources/download/1740.pdf>

Some of the main international development goals of the Millennium Declaration were later collated as the **Millennium Development Goals (MDGs)**. The MDGs articulate the social, economic and environmental advances that are required to achieve sustainable gains in human development.

## Millennium Development Goals



The MDGs have become the framework for development cooperation by the UN as well as by other international organisations and bilateral donors. Many countries have begun to integrate the MDGs into their National Development Strategies or sectoral development strategies.

The MDGs and human rights share the ultimate objective of protecting and promoting human well-being and the inherent dignity of all people. As MDGs are a set of quantifiable, time-bound goals, they help to prioritise development objectives. In this manner, they can help galvanise efforts towards the achievement of certain human rights – particularly the social and economic rights, which have far too often been neglected in comparison to civil and political rights. For their part, human rights offer both legal and moral support to efforts for achieving the MDGs. They are thus mutually reinforcing frameworks and complement each other.

You can see a detailed discussion of the links between MDGs and human rights in UNDP (2007), 'Human Rights and the Millennium Development Goals, Making the link', <http://hurilink.org/Primer-HR-MDGs.pdf>

Countries produce yearly MDG reports and there are both regional and global opportunities for monitoring. This provokes a universal accountability for the implementation of the Goals. However, progress towards the achievement of the goals remains very uneven.

In 2006, the report of the Secretary General's High-level Panel titled UN System-wide Coherence (Delivering as One) called all UN agencies and programs to further support and strengthen the development of policies, directives and guidelines to integrate human rights in all aspects of the UN's work.



As of now, the UN Development Group (UNDG), which was established in 1997 to design system-wide guidance, unites the 32 UN funds, programmes, agencies, departments and offices that play a role in development.

## **The Human Rights-based Approach to Development**

In 2003, the UN system adopted the Common Understanding on Human Rights-based Approach (HRBA) to Development and Programming.

The human rights-based approach to development is a conceptual framework for the process of human development, which is normatively based on international human rights principles and operationally directed to protecting, promoting and fulfilling human rights. When human development as an empowering and capacitating process and human rights as outcomes advance together, they reinforce one another.

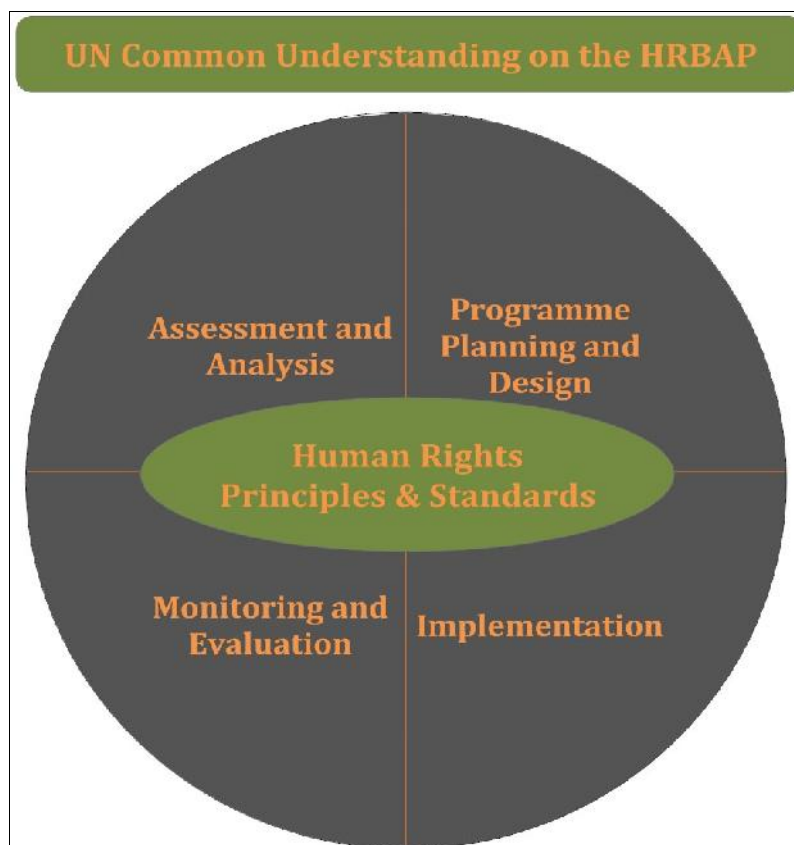
The human rights-based approach to development leads to an understanding of the causes of (non-) fulfilment of human rights and focuses on developing the capacities of rights-holders to claim their rights and duty-bearers to fulfil their obligations.

For understanding about different development agencies' perspectives on the rights-based approach, you can read Celestine Nyamu-Musembi and Andrea Cornwall (2004), 'What is the Rights-Based Approach all about? Perspectives from International Development Agencies', IDS Working Paper 234, [www.ids.ac.uk/download.cfm?file=wp234.pdf](http://www.ids.ac.uk/download.cfm?file=wp234.pdf).

In 2007, the UN's new Common Country Assessment (CCA) and the UN Development Assistance Framework (UNDAF) Guidelines underscored the mandatory character of the human rights-based approach to development in UN programming.

According to the UN Common Understanding, human rights standards and principles should guide all development programming in all phases of the programming process:

- Assessment and analysis;
- Programme planning and design
- Implementation; and
- Monitoring and Evaluation.



The key human rights principles guide programming to obtain and sustain development results.

For more details, see *The Human Rights-based Approach to Development Cooperation: Towards a common understanding among UN agencies*, [http://www.undg.org/archive\\_docs/6959-The\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf)

By providing a legal framework of entitlements (as opposed to needs or charity) and obligations, the human rights-based approach sets legal benchmarks to human development processes and outcomes.

By setting thresholds against which States and other duty bearers can be held accountable, the legal framework of claims and duties prevents the monopolisation of development policies and outcomes by elites. The HRBA thus puts the legal obligations that come with international human rights instruments at the centre of the development debate.

You can read Joachim Theis (2004), *Promoting Rights-Based Approaches- Experiences and Ideas from Asia and the Pacific*, Save the Children, Sweden, <http://www.crin.org/hrbap/index.asp?action=theme.themeItem&subtheme=6&item=4780>

Human rights protection systems encompass international, regional and national systems, which play complementary roles.

## **International Human Rights Protection Systems**

### **International Treaties and Mechanisms**

While the Universal Declaration of Human Rights (UDHR) is a universally accepted set of principles by which to measure the degree of respect for, and compliance with, international human rights standards across countries, it is not legally binding on governments. However, all the rights set out in the UDHR have found legal expression in the binding international human rights instruments of UN treaties.

The UDHR together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are known as the International Bill of Human Rights.

Additional international human rights conventions have been adopted subsequently. These have expanded both the scope and depth of the rights that are to be protected and contain the measures of implementation required to ensure the realisation of all the rights and freedoms set out in the UDHR.

As of now, there are nine core international human rights treaties (see table).

You can find definitions of key terms used in the UN Treaties at: [http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1\\_en.xml](http://treaties.un.org/Pages/Overview.aspx?path=overview/definition/page1_en.xml) and a glossary of terms relating to Treaty actions at: [http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1\\_en.xml](http://treaties.un.org/Pages/Overview.aspx?path=overview/glossary/page1_en.xml).

States' compliance with their obligations under specific treaties is assessed by the Committees established under the different treaties, consisting of independent experts that monitor implementation of the existing core treaties.

Some of the treaties are supplemented by optional protocols, which are instruments that establish additional rights and obligations to a treaty, and are subject to independent ratification (see table).

Name of the Treaty	The Core International Human Rights Instruments and their Monitoring Bodies		
	Acronym	Year	Monitoring Body
International Covenant on Civil and Political Rights	ICCPR	1966	CCPR
International Covenant on Economic, Social and Cultural Rights	ICESCR	1966	CESCR
International Convention on the Elimination of All Forms of Racial Discrimination	ICERD	1966	CERD
Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	1979	CEDAW
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	1984	CAT
Convention on the Rights of the Child	CRC	1989	CRC
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	ICRMW	1990	CMW
Convention on the Rights of Persons with Disabilities	CRPD	2006	CRPD
International Convention for the Protection of All Persons from Enforced Disappearance	CPED	2010	CED

Source: <http://www2.ohchr.org/english/law/index.htm>

Name of the Optional Protocol	Optional Protocols to the Core International Human Rights Treaties and their Monitoring Bodies		
	Acronym	Year	Monitoring Body
Optional Protocol of the Covenant on Economic, Social and Cultural Rights	ICESCR-OP	2008	CESCR
Optional Protocol to the International Covenant on Civil and Political Rights	ICCPR-OP1	1966	HRC
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	ICCPR-OP2	1989	HRC
Optional Protocol to the Convention on the Elimination of Discrimination against Women	OP-CEDAW	1999	CEDAW
Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	OP-CRC-AC	2000	CRC
Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	OP-CRC-SC	2000	CRC
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	OP-CAT	2002	CAT
Optional Protocol to the Convention on the Rights of Persons with Disabilities	OP-CRPD	2006	CRPD

Source: <http://www2.ohchr.org/english/law/index.htm>

Today, all except the last of the nine core covenants and conventions on civil, political, economic, social and cultural rights have each been ratified by 140 or more countries.

Upon ratification of an international human rights treaty and through constitutional and legal provisions, States accept their responsibilities as duty-bearers and commit themselves to implementing it.

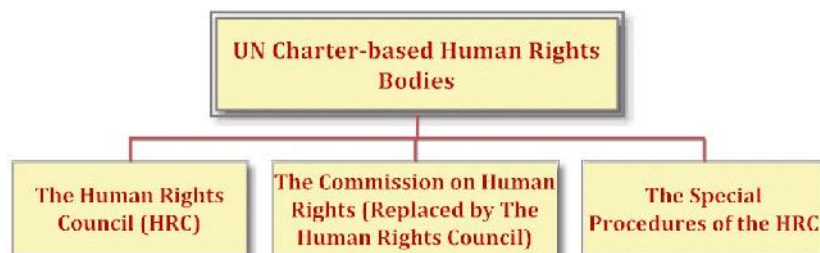
The ratification status of countries for all the UN treaties and protocols can be found at: <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

States can make reservations when they ratify a particular treaty. However, they have the obligation to progressively review and remove any such reservations. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) incidentally has the most number of reservations among all the treaties.

**Find out yourself:** Which of the international treaties have been ratified by your country? Has it made reservations in any of these? In cases where particular treaties or protocols have not been ratified, what have been the major obstacles?

### **UN Human Rights Bodies**

The charter-based bodies together with the nine treaty monitoring bodies constitute the UN human rights bodies.



The UN Commission on Human Rights was established in 1946 as an inter-governmental body within the UN system made up of 53 States. It is responsible for strengthening the promotion and protection of human rights around the globe. It addresses situations of human rights violations and makes recommendations on them.

In 2006, the UNCHR was replaced by the Human Rights Council (HRC) made up of 47 States.

The new Universal Periodic Review mechanism (UPR) that has since been put in place is a unique process, which involves a review of the human rights records of all 192 UN Member States once every four years.

The revised Complaints Procedure mechanism under the HRC allows individuals and organisations to bring complaints about human rights violations to the attention of the Council. The HRC also continues to work closely with the UN Special Procedures established by the former Commission on Human Rights and assumed by the Council.

As mentioned already, there are nine human rights treaty bodies that monitor implementation of the core international human rights treaties. These are given in the chart.



These Committees review State Party reports on the progress in implementing the various treaties and adopt ‘Concluding Observations’ following the deliberations.

Governments are expected to implement the recommendations they contain, and publicise the observations widely so that they serve as the basis for a national debate on ways to improve the enforcement of the provisions of the Convention.

Treaty bodies’ reports and Concluding Observations offer important assessments of national development challenges.

For example, in the Concluding Observations of the Committee on Economic, Social and Cultural Rights on Cambodia in May 2009, the Committee quoted a global forest survey by the Food and Agriculture Organisation (FAO), which estimated that the country has lost 29 per cent of its primary tropical forest cover because of the rapid increase in economic land concessions granted even within the protected zones. This was found to be the major factor in the degradation of natural resources, adversely affecting the ecology and biodiversity. This in turn resulted in the displacement of indigenous people from their lands without just compensation and resettlement, and in the loss of

livelihood for rural communities who depend on land and forest resources for their survival.

Clearly, this involves the violation of a range of social and economic rights involving rights of survival, food, livelihood, etc. Subsequently, obligations under international treaties require the State to review its policy regarding the conversion of protected zones into economic concessions, by conducting environmental and social impact assessments including consultations with relevant stakeholders and communities with due regard to their right to participate in informed decisions that affect their lives. This is what the Committee recommended to the country.

Apart from this monitoring function, treaty bodies also carry out an interpretation function. Because States that have ratified a particular treaty commit themselves to implementing it, national courts often refer to the relevant treaty provisions in their interpretations of national law. However, the applications of the provisions of the treaties in specific country contexts lead to the identification of problems or questions of interpretation. The various Committees therefore supply authoritative guidance in light of such problems and questions through the publication of formal statements known as 'General Comments' (or "General Recommendations").

General Comments are not legally binding documents of themselves, but they have often led to greater clarity in understanding the implications of various rights. They are therefore widely considered as useful guides for assessing States' obligations in the case of different rights.

Consider the Committee on Economic, Social and Cultural Rights' General Comment No.2 on International Technical Measures which discusses the formulation of macroeconomic adjustment policies in indebted countries: "The Committee recognizes that adjustment programmes will often be unavoidable and that these will frequently involve a major element of austerity. Under such circumstances, however, endeavours to protect the most basic economic, social and cultural rights become more, rather than less, urgent. States parties ..., should thus make a particular effort to ensure that such protection is, to the maximum extent possible, built-in to programmes and policies designed to promote adjustment... Similarly, international measures to deal with the debt crisis should take full account of the need to protect economic, social and cultural rights through, inter alia, international cooperation. In many situations, this might point to the need for major debt relief initiatives."

Non-governmental organisations and other rights advocates have pointed to General Comments as authoritative interpretations of rights in litigation before national courts.

Tribunals in many countries have acknowledged the juridical value of General Comments as evidence of the intentions and meanings of the instruments. For example, national court decisions citing the interpretations contained in the General Comments of the Human Rights Committee (under the International Covenant on Civil and Political Rights) are numerous throughout the world. (See UNICEF and Bernard van Leer Foundation (2006), A Guide to General Comment 7: 'Implementing Child Rights in Early

Childhood’,

[http://www.bernardvanleer.org/a\\_guide\\_to\\_general\\_comment\\_7\\_implementing\\_child\\_rights\\_in\\_early\\_childhood](http://www.bernardvanleer.org/a_guide_to_general_comment_7_implementing_child_rights_in_early_childhood))

The Concluding Observations and General Comments of treaty bodies are thus important tools that support the human rights-based approach to development.

### **Special Procedures**

“Special Procedures” is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council (HRC) to address either specific country situations or thematic issues in all parts of the world.

Special Procedures are either an individual –a special rapporteur or representative, or independent expert—or a working group.

The mandates of the Special Procedures are established and defined by the resolution creating them. Mandate-holders of the Special Procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. This ensures their ability to fulfil their functions in all impartiality. These independent experts report their findings and recommendations to the Human Rights Council.

Some Special Procedures with thematic mandates include those on:

- Special Rapporteur on adequate housing;
- Working Group on people of African descent;
- Working Group on arbitrary detention;
- Special Rapporteur on the sale of children, child prostitution and child pornography;
- Independent Expert in the field of cultural rights;
- Special Rapporteur on the right to education;
- Independent Expert on the question of human rights and extreme poverty;
- Special Rapporteur on freedom of religion and belief;
- Special Rapporteur on the right to food;
- Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights;
- Special Rapporteur on the human rights of internally displaced persons;
- Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- Special Rapporteur on the human rights of migrants;



- Special Rapporteur on violence against women;
- Special Rapporteur on water and sanitation;
- Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights; and
- Special Representative of the SG on human rights and transnational corporations and other business enterprises.

Special Procedures with country mandates are currently operating for:





- Cambodia;
- Democratic People's Republic of Korea;
- Haiti;
- Myanmar;
- Palestinian Territories Occupied since 1967;
- Somalia;
- Sudan;
- Côte d'Ivoire; and
- The Islamic Republic of Iran

A Special Rapporteur on the situation of human rights in the Syrian Arab Republic was also established in December 2011.

The Office of the High Commissioner for Human Rights (OHCHR) works as the body providing support to the different human rights monitoring mechanisms in the UN system, that is, the Charter-based bodies and the treaty bodies.

### **Other UN Human Rights Instruments and Mechanisms**

The umbrella UN bodies that are concerned with the promotion and protection of human rights are:

-  The United Nations General Assembly;
-  The UN Security Council;
-  The UN Economic and Social Council; and
-  The International Court of Justice

All other UN agencies and partners are also involved in the promotion and protection of human rights in some way or the other and interact with the main human rights bodies.

So there are other international instruments that contain additional human rights standards such as the refugee law, as well as the conventions and declarations of the International Labour Organisation (ILO), United Nations Educational, Scientific and Cultural Organisation (UNESCO), UN Food and Agriculture organisation (FAO) and others.

For instance, ILO, the UN agency responsible for drawing up and overseeing international labour standards, has maintained and developed a comprehensive system of instruments on work and social policy aimed at promoting opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and dignity.

For more information on ILO conventions, visit: <http://www.ilo.org/ilolex/english/convdisp1.htm>.

To examine the labour law status of specific countries, you can use the NATLEX Country Profiles Database ([http://www.ilo.org/dyn/natlex/country\\_profiles.home?p\\_lang=en](http://www.ilo.org/dyn/natlex/country_profiles.home?p_lang=en)).

There are also the declarations and recommendations that are the outcomes of the UN global conferences. The next global conference, the United Nations Conference on Sustainable Development, which is also called Rio+20, will take place in 2012.

While covenants, protocols and conventions are legally binding for those States that ratify them, declarations, principles, guidelines, standard rules and recommendations have no binding legal effect. However, as part of soft law, these instruments are also very important as they provide practical guidance to States in their responsibilities as duty bearers.

## **What are the Human Rights Obligations under International Law?**

Under international law, the signatories to a treaty have moral and legal obligations to guarantee and realise all the rights enshrined in the treaty. States as signatories have three types of specific obligations to respect, protect and fulfil the rights recognised in the treaty and to take necessary actions towards their implementation. These are described below.



An example of a violation of the obligation to respect the right to housing is arbitrary forced evictions by the State.

In the case of the right to food, the obligation to protect requires States to ensure that non-State actors (individuals, business firms, etc.) do not deprive individuals of their right "to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures the physical and mental, individual or collective, fulfilling and dignified life free of fear."

Similarly, a State's failure to ensure that the business sector complies with basic labour or environment standards amounts to violations of the right to just and favourable conditions of work.

**The obligation to fulfil** includes obligations to "facilitate" and "promote", as well as "provide."

- ✚ The **obligation to facilitate and promote** refers to the obligation of the State to engage proactively in activities that strengthen people's ability to realise their rights, by giving effect to the rights recognised in international law. This requires States to adopt all appropriate policy, legislative, administrative and budgetary measures necessary towards the full realisation of all rights, and to set goals, targets and timeframes for their national plans for fulfilling rights. They must also take all measures necessary to promote respect for human rights and fundamental freedoms among the citizenry, including human rights education and training.
- ✚ The **obligation to provide** refers to States' duty for the direct provision of services if the right(s) concerned cannot be realised otherwise. This can involve State provision and mechanisms to compensate for market failure, or to help vulnerable groups that are unable to provide for themselves.

Clearly, human rights obligations have implications for State's involvement in the economy. This means that different economic policy frameworks, which adopt different degrees of State involvement, can lead to different development and poverty reduction outcomes, and thus impact upon the enjoyment of human rights differentially.

The implications of different development strategies and macroeconomic policies are discussed in detail in Module 2 on Social and Economic Policies to Reduce Poverty and to Ensure Child Rights.

In developing and low income countries, States are often constrained by the fiscal and monetary policies imposed by international financial institutions or by the obligations under international trade and other agreements that they enter into.

This has been noted in the CESCR General Comment No. 14 on the Right to Health:

“States parties should ensure that the right to health is given due attention in international agreements and, to that end, should consider the development of further legal instruments.... States parties should take steps to ensure that these instruments do not adversely impact upon the right to health... States parties which are members of international financial institutions, notably the International Monetary Fund, the World Bank, and regional development banks, should pay greater attention to the protection of the right to health in influencing the lending policies, credit agreements and international measures of these institutions.”

Notwithstanding the clarifications provided by these and similar other General Comments by the CESCR, there continue to be severe tensions between States' human rights obligations and their obligations arising out of international economic agreements. For instance, there are human rights violations occurring in several developing countries arising out of their commitments under the WTO agreements or/and free trade agreements.

**Watch this video:** <http://www.youtube.com/watch?v=E1Oj7Hk31LY>

In the case of economic, social and cultural rights, obligations are also of a progressive kind. The ICESCR provides that States should “take steps ... to the maximum of available resources ... towards the progressive achievement of the full realisation of these rights.”

This recognises that governments do face resource constraints in meeting their obligations, and that fulfilling economic and social rights will take time. But this does not mean that States can indefinitely defer efforts to ensure full realisation, under any circumstances. All States Parties have the obligation to immediately initiate steps to fulfil their commitments under the ICESCR. All rights, to varying degrees, entail obligations of an immediate kind, such as the obligation not to discriminate in the realisation of the right in question.

Progressive realisation imposes a constant and continuing duty to move as quickly and effectively as possible towards full realisation of rights. States should be able to demonstrate that they have implemented “to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

“Maximum available resources” refer to “both the resources existing within a State as well as those available from the international community through international cooperation and assistance”. Thus, States’ duties also include seeking international development assistance, whenever it is required. States also take upon themselves the obligation to contribute to its global implementation through international cooperation.

Of course, as Balakrishnan and Elson (2008) have highlighted, progressive realisation also depends on how the State mobilises resources from the people living under its jurisdiction to fund its obligations to fulfil human rights. For instance, if a State generates very little revenue, it will be able to provide only limited public services.

Human rights standards allow for progressive realisation within limited resources, but they also set clear limits on the possibility of setbacks to existing rights.

The principle of non-retrogression of rights means that when allocating more resources to some rights that have been accorded priority at any given time, the other rights must be maintained at least at their initial level of realisation.

Cuts to expenditures on public services that are critical for the realisation of economic and social rights; or cuts to taxes that are critical for funding such services are both examples of potentially retrogressive measures that have inequitable outcomes. This is discussed in more detail in Module 4.

States that are parties to the ICESCR are also under a ‘minimum core’ obligation to ensure, at the very least, the satisfaction of ‘minimum essential levels of each of the rights’. This is a continuing obligation, requiring States with inadequate resources to strive to ensure enjoyment of rights.

Even in times of severe resource constraints, States must ensure that rights are fulfilled for the vulnerable members of society. The provision of minimum essential levels is an immediate obligation. This means that it is the duty of the State to prioritise the rights of the poorest and the most vulnerable people. Nevertheless, this does not imply that States must adopt special programmes that are only for the very poor.

## **Justiciability of Rights**

The UN treaty provisions and the General Comments clearly mean that governments can be held accountable for ensuring both progressive realisation and non-retrogression of human rights in their formulation and implementation of economic and social policies. Often, unlike civil and political rights, social and economic rights have not been considered justiciable – that is, capable of being claimed through judicial means.

Some governments claim that economic, social and cultural rights are not legally enforceable and do not recognise them for that reason. However, an increasing number of countries such as Argentina, Colombia, Egypt, Germany, India, Indonesia, Latvia and South Africa have made economic, social and cultural rights part of their national law, which can be and have been enforced by the courts. Kenya's new Constitution, adopted in August 2010, also makes several economic and social rights legally binding in the country for the first time.

In countries where such rights are justiciable, it is possible to use domestic courts, administrative tribunals, international judicial and quasi-judicial bodies and other legal entities to advance such rights.

Here is an example from South Africa. In 2000, the government refused to provide the anti-retroviral drug Nevirapine – used to prevent mother-to-child HIV transmission – to all those who required the treatment, even though 70,000 infants were being infected each year. The authorities decided that the drug would only be provided at certain pilot locations until they had fully devised their own programme, despite support for the drug from the World Health Organisation and the South African Medicines Control Council and an offer by the manufacturer to provide the drug free for five years. The advocacy group Treatment Action Campaign carried out extensive mobilisation on the issue and took the government to court. In 2002, South Africa's Constitutional Court ruled that the government must permit and expedite the use of Nevirapine throughout the public health sector in order to ensure the right to health. The decision helped to undermine the government's position and bolstered lobbying work for the wider provision of anti-retroviral treatment. In 2003, South Africa's cabinet adopted a plan to combat AIDS that included anti-retroviral treatment as one of its core components. See Amnesty International (2010), *Make Our Rights Law*, <http://www.amnesty.org/en/library/asset/ACT35/002/2010/en/457d95d3-e50a-4df0-9fb5-91de951b1420/act350022010en.pdf>

Advocates of economic, social and cultural rights are constantly devising innovative legal strategies to enforce such rights, sometimes directly arguing a violation of these rights, and other times claiming them as components of civil and political rights such as the right to life, security of the person, or the right to freedom from discrimination. Visit [http://www.escri-net.org/caselaw/caselaw\\_results.htm](http://www.escri-net.org/caselaw/caselaw_results.htm)

In Bangladesh, India and Pakistan, the courts have interpreted the right to life embodied in their constitutions to include several economic and social rights (Amnesty, 2010).

Consider the right to food case in India as an example. In April 2001, the Indian civil society organisation People's Union for Civil Liberties (PUCL) filed a "writ petition" in the country's Supreme Court to seek legal enforcement of the right to food. This petition was filed at a time when India's food stocks reached unprecedented levels while hunger in drought-affected areas intensified. Initially the case was brought against the Government of India, the Food Corporation of India (FCI) and six State Governments, in

the context of inadequate drought relief. The basic argument of the petition was that since food is essential for survival, the right to food is an implication of the fundamental “right to life” enshrined in Article 21 of the Indian Constitution. The petition highlighted two specific aspects of State negligence: the breakdown of the public distribution system and the inadequacy of drought relief works.

Over time, the scope of this public interest litigation has expanded considerably. Today it covers a wide range of issues related to the right to food, including the implementation of food-related schemes, urban destitution, the right to work, starvation deaths, maternity entitlements and even broader issues of transparency and accountability. So far, about fifty “interim orders” have been passed by the Supreme Court, and the Court has explicitly defined the lines of accountability of different duty bearers in its directions to the government. These orders have contributed to the advocacy initiatives for a new food security law being considered by the Government of India (See <http://www.righttofoodindia.org>).

Until the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR) was opened for signature and ratification in September 2009, the UN had no mechanism for receiving complaints on economic and social rights.

The OP-ICESCR enables people whose rights have been violated in their own country and have been denied an effective national remedy to seek justice through the UN, if the State has ratified the OP-ICESCR. Complaints will be heard by the Committee on Economic, Social and Cultural Rights.

While increasing numbers of national level organisations around the world are building capacity to advance ESC rights claims before domestic and international courts, tribunals, etc., the scope of the OP-ICESCR is expected to have an immense effect on these.

## **Human Rights Instruments Related to Children and Women**

### **Convention on the Rights of the Child (CRC)**

The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly in 1989, at the end of a process that had begun with the 1979 International Year of the Child.

The CRC is the first human rights treaty to cover all categories of human rights.

The Convention on the Rights of the Child can be found at: <http://www2.ohchr.org/english/law/crc.htm>.

Human rights apply to all age groups. However, children are mentioned explicitly in many of the human rights treaties, because they are particularly vulnerable. So they have particular rights that recognise their special need for protection. The CRC not only brought together the children’s human rights articulated in other international

instruments, but also built on concerns for the specific needs and vulnerabilities of children.

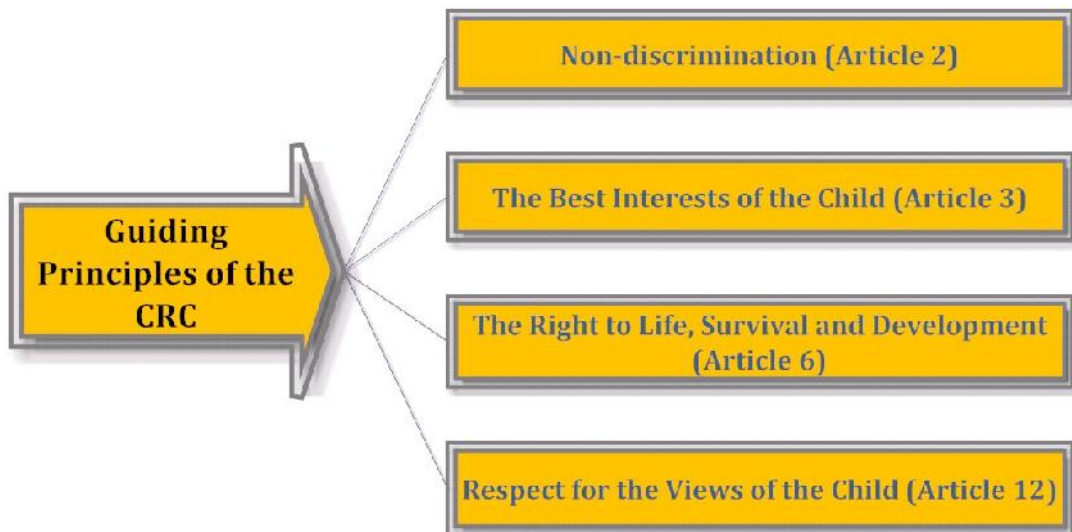
The CRC articulates the rights of children more completely and provides a set of guiding principles that fundamentally shapes the way in which we view children. The CRC provides the legal foundation for the ethical and moral principles that guide the UNICEF work for children.

By defining child as every human being below the age of 18 years (unless the laws of a particular country set the legal age for adulthood younger), the Convention reflects a new vision of the child. This vision of the child as an individual human being, with rights and responsibilities appropriate to his or her age and stage of development, implies that children are neither the property of their parents nor helpless objects of charity.

Under the CRC, governments have the obligation to help families to fulfil their essential role as nurturers of children and to create an environment in which children can grow and reach their potential.

The convention refers to both civil and political rights as well as social, economic and cultural rights.

There are four guiding principles of the CRC that underpin all its other Articles. These four principles underpin the obligations of the State and UNICEF work across countries. These **guiding principles** are given in the chart below (See pop-ups below).



**Pop-ups:**

**Non-discrimination:** Under Article 2 of the Convention on the Rights of the Child, States Parties to the Convention have committed to “respect and ensure the rights set forth” to “each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion”.



**The Best Interests of the Child:** The best interests of children must be the primary concern in making all decisions and actions that may affect them, and should reflect a balance between the child's short- and long-term interests. This means that all laws, policies, administrative decisions, resource allocations, programmes and other measures and actions in a country must be formulated and/or reformed, taking into account their impact on children.

**The Right to Life, Survival and Development:** This is the most fundamental right, since no other rights have any meaning without it. It implies protection of a child from its life being taken in all circumstances, including in situations of conflict and other emergencies. The right to survival implies that countries have to take all measures to ensure that the child does not die as a result of disease, malnutrition, gender discrimination (for instance, female foeticide) or other causes. The child's right to survival and development includes the right to health, nutrition, water and sanitation, the rights to education, leisure and play, and most importantly, the rights to gender equality.

**Respect for the Views of the Child:** This refers to the right of children to express their views and participate in making decisions on all matters that affect them. The views of the child must be given due weight in accordance with the age and maturity of the child. A child who is capable of forming her or his own views has the right to express those views in all matters affecting her/him, and these views must be taken into account whenever decisions concerning the child's well-being are taken. This includes providing a child the opportunity to be heard in any judicial and administrative proceedings affecting her/him, either directly or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 43 of the CRC provided for the establishment of a monitoring body, the UN Committee on the Rights of the Child, one of the eight treaty bodies discussed earlier. The Committee is composed of independent experts elected by ratifying countries and is serviced by the United Nations Centre for Human Rights in Geneva. It currently holds three sessions per year.

Under Article 44 of the CRC, States parties accept the duty to submit regular reports to the Committee on the steps they have taken to put the Convention into effect and on progress in the enjoyment of children's rights in their territories. The first implementation reports are to be submitted within two years of ratification of or accession to the Convention, and thereafter, every five years.

The Committee regularly reviews the progress achieved by countries in the realisation of the obligations they have undertaken under the Convention. Governments are recommended to prepare their reports according to the guidelines, indicating the "factors and difficulties" encountered by the State in the implementation of the Convention. States are also asked to specify "implementation priorities" and "specific goals for the future", along with relevant legal texts and statistical data.

The country reports to the Committee are available at: <http://tb.ohchr.org/default.aspx?Symbol=CRC/C/5>

**Find out yourself:** When did your country ratify the CRC? Has your country made any reservations? How has the CRC been implemented in national law? What modifications to existing laws were made to explicitly ensure the implementation of children's rights? Has there been additional legislation for the protection of any of the individual rights, for example, the right to education?

UNICEF engages with the Committee on the Rights of the Child, particularly in the State Party reporting process and in requests for assistance from States. The scope of UNICEF involvement in a country programme includes areas of concern with any or all of the social, economic, cultural, civil and political rights of children and women that the CRC and the CEDAW comprehensively address.

The stimulus of the reporting process and the Concluding Observations of the Committee on the Rights of the Child have provided fairly strong impetus to bring national laws and policies in line with the CRC in several countries.

This is reflected in the following examples from South Asia:

Bhutan launched the National Commission for Women and Children as a direct result of the reporting process and follow up on the Committee's Concluding Observations.

In Bangladesh, "serious lacunae highlighted by the Committee in its concluding observations on Bangladesh's initial report issued in 1997 prompted the Government, with the assistance of various development partners, to develop and launch new interventions in the fields of birth registration, juvenile justice and child rights awareness."

Pakistan eventually responded positively to the Committee's repeated recommendation to withdraw the country's reservation to the CRC, which had proclaimed that articles of the Convention inconsistent with Islamic law shall not apply. (Source: Karuna Nundy (2008), 'South Asia's Children: A consolidated review of their rights (2001-2007)', UNICEF ROSA.)

The Committee on the Rights of the Child has issued General Comments on the following thematic issues.

S. No.	General Comments by the CRC	Year
1	The aims of education	2001
2	The role of independent human rights institutions	2002
3	HIV/AIDS and the rights of the child	2003
4	Adolescent Health	2003
5	General measures of implementation for the Convention on the Rights of the Child	2003
6	Treatment of unaccompanied and separated children outside their country of origin	2005
7	Implementing child rights in early childhood	2005
8	The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment	2006
9	The rights of children with disabilities	2006
10	Children's rights in juvenile justice	2007
11	Indigenous children and their rights under the Convention	2009
12	The right of the child to be heard	2009
13	The right of the child to freedom from all forms of violence	2011

Details can be found at: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

The Committee holds a Day of General Discussion each year, to foster deeper understanding of the specific contents and implications of the Convention.

Some of the topics of previous Days of General Discussion (DGD) are given below.

- The rights of all children in the context of international migration (upcoming in September 2012)
- Children of incarcerated parents (2011);
- The right of the child to education in emergency situations (2008);
- Resources for the Rights of the Child - Responsibility of States (2007);
- The right of the child to be heard (2006);
- Children without parental care (2005);
- Implementing child rights in early childhood (2004);
- The rights of indigenous children (2003);
- The private sector as a service provider (2002); etc.

Representatives of Governments, UN human rights mechanisms, other UN bodies and specialised agencies, non-governmental organisations, national human rights institutions as well as individual children and experts can take part in these discussions.

After the discussion, the Committee adopts recommendations. You can find the themes of all Days of General Discussion and their recommendations at: <http://www2.ohchr.org/english/bodies/crc/discussion.htm>

## **Optional Protocols to the CRC**

There are two optional protocols to the CRC:

- ✚ The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and
- ✚ The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The CRC recognises that children who are the least responsible for conflict suffer disproportionately in the midst of armed conflicts and their aftermath, both as targets and often as instruments, and should be protected. Girls face additional risks, particularly sexual violence and exploitation. The CRC articles that are particularly relevant to situations of armed conflict and complex emergencies include:

- ❖ Article 38, which links the Convention with International Humanitarian Law. It also addresses the recruitment of children into armed forces;
- ❖ Articles 9,10 and 22, which relate to family unity and family reunification;
- ❖ Article 22, which deals with the rights of refugee children; and
- ❖ Article 39, which affirms the right to support for psychological recovery and social reintegration of traumatised children.

Article 38 of the CRC states: "States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities." This meant that minors who are over the age of 15 but under the age of 18 are still voluntarily able to take part in combat as soldiers. The Optional Protocol on the involvement of children in armed conflict was effected to take care of this gap in the CRC.

The Protocol, which entered into force in 2002, stipulates that State Parties "shall take all feasible measures to ensure that persons below the age of 18 do not take a direct part in hostilities and that they are not compulsorily recruited into their armed forces". The Optional Protocol further obliges States to take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalise such practices.

Similarly, Articles 34 and 35 of the CRC say that governments should protect children from all forms of sexual exploitation and abuse and take all measures possible to ensure that they are not abducted, sold or trafficked. The Optional Protocol on the sale of

children, child prostitution and child pornography, which also came into force in 2002, supplements the CRC by providing States with detailed requirements to end the sexual exploitation and abuse of children and to ensure that its criminal or penal law covers all offences related to child pornography. It also protects children from being sold for non-sexual purposes—such as other forms of forced labour, illegal adoption and organ donation.

This Optional Protocol also requires governments to adopt appropriate measures to protect the rights and interests of such child victims at all stages of their criminal justice process. Further, governments have to take adequate measures for the rehabilitation of the affected children.

A third Optional Protocol, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, was opened for signature by Member States on 28 February 2012.

The protocol allows individual children to complain about specific violations of their human rights. It came out of the need to provide children with options for remedial measures when violations occur. While States are already required to provide such remedies at the domestic level, the Optional Protocol provides the method for international redress when national level remedies fail. This brings the level of protection under the CRC equivalent to that provided in many other international core human rights treaties.

The Optional Protocol to the Convention on the Rights of the Child on a communications procedure allows for the following:

- It provides the Committee on the Rights of the Child with the competence to examine individual and inter-State communications and also to initiate inquiry procedures for grave or systematic violations.
- It allows the Committee to request the adoption of interim measures to avoid possible irreparable damage to the child, as well as measures to protect individuals who submit complaints to the Committee.
- It also contains provisions on the Committee's role with respect to friendly settlement agreements and in ensuring follow-up to the recommendations made to States.

The Protocol will enter into force upon ratification by 10 States and is expected to have a significant impact on efforts to improve child rights protection around the world.

## **Special Procedures**

There are two Special Procedures related to children's rights.



In 1990, the UN appointed the Special Rapporteur on the sale of children, child prostitution and child pornography to investigate the exploitation of children around the world, to submit reports and make recommendations for the protection of the rights of the children concerned. Annual reports of the Special Rapporteur can be found at: <http://www2.ohchr.org/english/issues/children/rapporteur/index.htm>

The mandate of the Special Representative of the Secretary-General for Children and Armed Conflict was established by the UN General Assembly in 1996. You can find more details and read the reports at: <http://www.un.org/children/conflict/english/theoffice.html>

**Watch the video** on Special Representative Radhika Coomaraswamy talk about young boys being recruited for warfare by the Taliban and sexual exploitation of boys by warlords and militia in Afghanistan at: <http://www.un.org/children/conflict/english/afghanistan-june-2008.html>

## **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other international human rights instruments relating to women provide an overarching legal framework for the protection, promotion and realisation of women's and girls' rights. It is also critical to UNICEF's mandate and mission.

- ✚ CEDAW declared that the human rights of women and the girl-child are an inalienable, integral and indivisible part of universal human rights.
- ✚ It also stated that the full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.

The scope of CEDAW extends beyond public life to include discrimination that occurs in private life and in the family, and its stipulations apply to girls and women of all ages.

The Convention targets culture and tradition as influential forces shaping gender roles and family relations, and it is the first human rights treaty to affirm the reproductive rights of women.

CEDAW, along with the CRC are the two most widely ratified human rights treaties, each having been ratified by more than 90% of the UN membership. Unfortunately, CEDAW also has the largest number of reservations.

### **State obligations under CEDAW**

States have the obligation to make sure that there are no laws that directly discriminate against women.

But States' positive obligation goes beyond to ensure that all necessary arrangements, which will help women to experience equality in their lives, are put in place.

This implies that States must take all necessary efforts to end customs or practices that discriminate against women, whether or not they are written into law.

It also implies that States have the obligation to end discrimination perpetrated by private individuals and organisations.

States also have the obligation to take measures that promote equal *outcomes*, along with equal *opportunity*.

Example: There are many laws which can lead to conflicting results for women. For instance, while women in China have the right to petition for divorce, courts consider the woman's access to housing in granting the petition. Because State housing policy gives the marital home to the husband after divorce, a woman must be able to demonstrate access to other housing in order to have the divorce petition granted. Therefore, access to divorce is discriminatory in practice, even though women have the right legally. More such examples of contradictions in national laws and policies that impact upon women's and children's rights can be found at [www.unifemeseasia.org/resources](http://www.unifemeseasia.org/resources). These are useful in identifying entry points for policy reforms.

The rights of women as spelt out in CEDAW have been reaffirmed many times, including in the Beijing Platform announced in 1995. There are also other protocols and conventions related to women's rights. You can find out more on these by clicking on the links below.

- ✚ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)
- ✚ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

**Watch the video** on early marriage in Niger, available at:

<http://www.youtube.com/user/unicef?blend=1&ob=4#p/u/32/cudUWmMFr1A>

## **Violence against women**

Although women did gain a comprehensive bill of rights through CEDAW, the treaty did not explicitly name violence against women until 1992, when CEDAW General Recommendation 19 on Violence against Women declared gender-based violence to be a form of discrimination that constitutes a serious obstacle in the enjoyment of human rights and fundamental freedoms by women.

The Declaration on the Elimination of Violence against Women defines violence against women to mean “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.”

It outlines the scope of private and public spheres to include violence in the family, violence in the community, and violence perpetrated or condoned by the State, wherever it occurs.

Gender-based violence is often a direct consequence of humanitarian crises. In Darfur, Northern Uganda and the Democratic Republic of the Congo today, girls and women are frequently forced to serve as sex slaves and ‘wives’ to military forces, and are victims of rape as a weapon of warfare.

On 2 July 2010, the UN General Assembly unanimously voted to create a single UN body, the UN Entity for Gender Equality and the Empowerment of Women, or UN Women, tasked with accelerating progress in achieving gender equality and women’s empowerment.

This has been created to deal with the challenge faced by the UN for many years that there has been no single recognised driver to direct UN activities on gender equality issues. It is thus part of the UN reform agenda, bringing together resources and mandates for greater impact.

The new entity UN Women will merge four of the UN’s agencies and offices: the UN Development Fund for Women (UNIFEM), the Division for the Advancement of Women (DAW), the Office of the Special Adviser on Gender Issues, and the UN International Research and Training Institute for the Advancement of Women (UN-INSTRAW). For more information, visit <http://www.unwomen.org/>

This has implications for UNICEF’s work, because children's rights are integrally linked to women’s rights. Discrimination against women hurts both women and the next generation of children, boys and girls alike. Starting even before birth, a child's health and development prospects are closely linked with the mother's health and socio-economic status. Women are, moreover, the primary care-givers for children.

**View the Photo Essay:** Double Dividend of Gender Equality, at:



<http://www.unicef.org/photoessays/37446.html>

## **Operational Implications of the Interdependence of Children's and Women's Rights**

Efforts to reduce child mortality and malnutrition call for simultaneous implementation of legal, social, economic and budgetary policies for addressing children's, adolescent girls' and maternal health issues in a complementary manner. Simultaneously, this also imposes obligations on States to take measures to ensure women's employment-related rights to maternal and infant survival and health, apart from the rights to water and sanitation, education, etc.

This is why the areas of action identified by UNICEF for legislative and policy reform for young child survival and development include support for essential health, nutrition, and young child and maternal care as follows:

- Access to health care and immunisations: policy for prevention and control of diseases; legal framework for the administration, regulation, financing and maintenance of health care facilities as well as personnel; training, certification and code of ethics for medical personnel; establishment and regulation of Expanded Programme of Immunisation (EPI) centres; and quality control of vaccines and other drugs.
- Protecting, promoting and supporting breastfeeding, including maternity protection laws and policies, maternity leave for women in paid employment (and paternity leave too), prohibition of workplace discrimination on the basis of pregnancy and maternity, etc.
- Alleviating micronutrient deficiencies, primarily through food fortification: legislating standards for fortification; labelling of products; quality assurance procedures; etc.
- Water, sanitation and hygiene: through adoption of policies that focus on equity and equality and the development of effective decentralised planning, monitoring and evaluation mechanisms; allocation of resources for construction of low-cost water and sanitation facilities; etc.

An example of positive change along these lines can be found from Sierra Leone, which recently announced free health care for pregnant and lactating women and for all children under five years of age.

**See the video** of UNICEF's Kyle O'Donoghue reporting on Sierra Leone's new free healthcare programme at:

[http://www.unicef.org/infobycountry/sierraleone\\_55298.html](http://www.unicef.org/infobycountry/sierraleone_55298.html)

Another instance of operationalising the integral links between the realisation of children's rights to women's rights is seen in UNICEF's 'Prevention of Mother to Child Transmission of HIV' services. UNICEF closely links these services to the 'Woman to Woman Initiative on HIV' to offer a comprehensive package of services ranging from primary prevention and prevention of transmission, to care and support for women and their families. This provides women with a platform and a safe space to learn about HIV and the issues that make them vulnerable to sexually transmitted infections (STIs), female genital mutilation (FGM), violence and abuse.

Many more examples of the integrated approach to children's and women's rights can be observed in UNICEF practices across all its five focus areas. Some of the most notable innovations and best practices from UNICEF's 2007 programme reporting can be found in UNICEF (2007), Selected Lessons Learned from the UNICEF Programme Cooperation, [http://www.unicef.org/evaluation/files/llcompexternal2007\\_11032009.pdf](http://www.unicef.org/evaluation/files/llcompexternal2007_11032009.pdf).

For understanding how UNICEF's focus areas contribute to progress towards the MDGs, read UN Economic and Social Council (2005), 'Midterm Strategic Plan, 2006-2009, Investing in Children: The UNICEF contribution to poverty reduction and the millennium strategy, [http://www.unicef.org/protection/files/05-11\\_MTSP.pdf](http://www.unicef.org/protection/files/05-11_MTSP.pdf)

**Think about it:** How does the CEDAW complement State obligations for the implementation of social programmes for children? In what ways has the CEDAW been integrated into UNICEF's work on children's rights in the country where you work?

## **Other Instruments**

The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) wholly prohibits discrimination based on race, national origin or ethnicity. This is also crucially relevant for ensuring non-discrimination and equity in the realisation of children's rights, because these features continue to be associated with inequalities in income, health, access to education and other such indicators.

For example, it has been found in Latin America that children from indigenous groups are more likely to die early than those from non-indigenous groups. According to the most recent Demographic and Health Survey (DHS) data from Bolivia, Ecuador, Guatemala, Peru and Brazil, children of indigenous origin were also between 1.6 and 2.5 times more likely to be undernourished than children of non-indigenous origin.

Maternal mortality is also generally much higher among indigenous communities, particularly those in remote areas, where it can be two or three times the national average. For instance, in Ecuador in 2003, the national maternal mortality rate was 74.3 per 100,000 live births, whereas it was 250 per 100,000 among remote indigenous communities. For more details, read Naila Kabber (2010) 'Can the MDGs Provide a Pathway to Social Justice? The Challenge of Intersecting Inequalities', IDS and MDG Achievement Fund, <http://www.ids.ac.uk/go/idspublication/can-the-mdgs-provide-a-pathway-to-social-justice-the-challenges-of-intersecting-inequalities>

In January 2009, Bolivia adopted a new national constitution granting many rights and self-determination to the 36 indigenous nations within Bolivia in the areas of government, judiciary and land holdings. The constitution has a whole chapter devoted to indigenous rights. It is designed to reaffirm the significance of ethnicity in the country's make-up and State ownership of natural resources in sectors like oil and gas, which were privatised by previous governments. It also allows agrarian land reform to take place by limiting the size of rural landholdings in future sales. These constitutional changes can be expected to go a long way in reducing the inequities faced by Bolivia's indigenous communities. Read more at: <http://www.bolivianconstitution.com/>

Racial discrimination, including caste, is a key source of major injustice and inequity.

**Watch the film** by UNICEF India - I am dalit. How are you?  
<http://www.youtube.com/watch?v=WBxy1R0jitM>

There are a number of other legally binding conventions related to children's rights.

Some of these are:

1. Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, 1996
2. Convention on the civil aspects of international child abduction, 1980
3. Convention on protection of children and co-operation in respect of inter-country adoption, 1993
4. Convention for the suppression of traffic in persons and of the exploitation of prostitution in others
5. Protocol to prevent, suppress and punish trafficking in person, especially women and children, supplementing the UN Convention against transnational organised crime

In addition, there are also protocols related to protecting child refugees and the treatment of unaccompanied and separated children. The Treatment of Unaccompanied and Separated Children Outside their Country of Origin (General Comment by the Committee on the Status of Refugees) adopted in 2005 seeks to address problems specific to refugee children as distinct from general adult refugees.

ILO Conventions are also very important. Apart from the conventions that protect the work-related rights of men and women (which in one way or the other affect children's lives through their caregivers' rights, including maternity rights), there are conventions that impose direct child rights obligations on States against work-related violations of children's rights to social, economic and political development. These are:

- ILO Convention 138 concerning the Minimum Age for Admission to Employment, 1973. This stipulates a minimum age for employment (15 years), and is the most instrumental legislation against child labour till date. (See <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>)
- ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. This identified the various dangerous occupations children were engaged in, and provided guidelines to demarcate allowable and non-allowable employment for children. The Convention identified all forms of slavery or bonded labour, child prostitution, using children in drugs trafficking and any other job which might be deemed harmful to the health, safety and morals of children, to be illegal. (See <http://webfusion.ilo.org/public/db/standards/normes/appl/appl-displayConv.cfm?conv=C182&hdroff=1&lang=EN>)

The ILO estimates that there are at least 10 million working children in Africa alone.

**Watch this video** about bonded labour, servitude and violation of child rights of the Guaraní indigenous people in Bolivia <http://www.youtube.com/watch?v=5lRy65TR4Sg>

Some non-binding instruments related to children's rights are the following:

- Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

Their non-binding nature does not provide the licence for State violation of human rights, as the rule of customary international law makes them morally and ethically bound.

## **Regional Human Rights Mechanisms**

The body of international human rights treaties and mechanisms is complemented by regional level mechanisms, which do not replace but complement and reinforce the international regime. Some examples are provided here.

### **🚩 The European Convention for the Protection of Human Rights and Fundamental Freedoms**

This international treaty to protect human rights and fundamental freedoms in Europe entered into force on 3 September 1953. All Council of Europe Member States are party to the Convention and new members are expected to ratify the convention at the

earliest opportunity. The European Court of Human Rights offers mechanisms for redress of human rights violations in the member countries. You can read the Convention at <http://conventions.coe.int/treaty/en/treaties/html/005.htm>

The European Convention on the Exercise of Children's Rights provides for measures that aim to promote the rights of the children, in particular in family proceedings before judicial authorities. Among the types of family proceedings of special interest for children are those concerning custody, residence, access, questions of parentage, legitimacy, adoption, legal guardianship, administration of property of children, care procedures, removal or restriction of parental responsibilities, protection from cruel or degrading treatment, and medical treatment. (For details, go to <http://www.crin.org/resources/infoDetail.asp?ID=9692>.)

### **🚩 The American Convention on Human Rights**

The American Convention on Human Rights (also known as the Pact of San José) was adopted by the Nations of the Americas meeting in San José, Costa Rica, in 1969 and came into force in 1978. The bodies responsible for overseeing compliance with the Convention are the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, both of which are organs of the Organization of American States (OAS). You can read the Convention at [http://www.hrcr.org/docs/American\\_Convention/oashr.html](http://www.hrcr.org/docs/American_Convention/oashr.html)

### **🚩 The African Charter on Human and Peoples' Rights**

The African Charter on Human and Peoples' Rights (also known as the Banjul Charter) intended to promote and protect human rights and basic freedoms in the African continent emerged under the aegis of the Organisation of African Unity and came into effect in 1986. The Organisation of African Unity has since been replaced by the African Union.

Oversight and interpretation of the Charter is the task of the African Commission on Human and Peoples' Rights set up in 1987. The Protocol establishing the African Court on Human and Peoples' Rights came into effect on 25 January 2005. You can read the Charter at <http://www.hrcr.org/docs/Banjul/afhr.html>

Also see [http://www.achpr.org/english/info/court\\_en.html](http://www.achpr.org/english/info/court_en.html)

The African Member States of the Organisation of African Unity have also collectively drafted the African Charter on the Rights and the Welfare of the Child to protect the rights and interests of the children in the continent. This Charter is drafted along the lines of the CRC, and seeks to address problems unique to the children of Africa, given their specific socio-economic conditions. For example, it has a stronger definition of child, strict prohibition on child participation in armed conflicts, special provisions for internally displaced refugee children, protection for imprisoned expecting mothers, and also provisions for protecting pregnant girls.

For more details, go to [http://www.africa-union.org/official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/a.%20C.%20O.N%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africa-union.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20O.N%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf)

For monitoring and implementation records, see <http://www.achpr.org/>

In 2004, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa came into force. (For details, go to: <http://www.africa-union.org/root/au/Documents/Treaties/Text/Protocol%20on%20the%20Rights%20of%20Women.pdf>)

Regional human rights systems such as those established by the Organization of American States, the African Union and the Council of Europe include complaint mechanisms, which can provide a remedy for violations of some of these rights.

**Example:** The case of Centre on Housing Rights and Evictions vs. Sudan at the African Court on Human and People's Rights

Since February 2003, following the emergence of an armed conflict in the Darfur region of Sudan, militiamen known as Janjaweed have engaged in forcibly evicting, killing and raping thousands of Black indigenous people in that region. In this case, a complaint was filed on behalf of the indigenous groups in the region, who had experienced massive and systemic violations of their human rights. The questions were whether the government of Sudan violated its obligation to respect and protect the rights of the people of Darfur and whether domestic remedies were exhausted to allow review by the African Court.

The complainants alleged that the government failed to respect and protect the rights of the people of Darfur and violated several articles of the African Charter on Human and People's Rights. The Commission admitted the complaint and affirmed that domestic remedies can be considered to have been exhausted where the seriousness and widespread nature of the violations make remedies in effect unavailable.

The Commission found that forced eviction in Darfur violated the right to integrity of the person and the prohibition on cruel, inhuman or degrading treatment or punishment, as well as the right to adequate housing. It also found that the State not only failed to protect citizens from violations perpetrated by its forces or third parties, but also failed to provide immediate remedies to victims. The Commission held that "the destruction of homes, livestock and farms as well as the poisoning of water sources, such as wells", amounted to a violation of the right to highest attainable standard of health. Finally, the African Commission held that there was a violation of the rights of all people to their economic, social and cultural development.

While the African Commission lacks an enforcement mechanism, this decision has already been shared with NGOs and civil society organisations, which will use it to complement their campaigns for accountability. Follow up reporting to the Commission as well as UN treaty mechanisms has also been planned.

This decision is significant as a successful story of an African treaty applied by an African enforcement mechanism to the atrocities in Darfur. Source: [http://www.escri-net.org/caselaw/caselaw\\_show.htm?doc\\_id=1333625&](http://www.escri-net.org/caselaw/caselaw_show.htm?doc_id=1333625&)

### **🚩 The Arab Charter on Human Rights**

The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on 22 May 2004. The League of Arab States is a regional organisation of Arab States in North and Northeast Africa, and Southwest Asia. It currently has 22 members.

You can read the Charter at: <http://www1.umn.edu/humanrts/instree/loas2005.html>

### **🚩 Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia**

The South Asian Association for Regional Cooperation (SAARC) has designed guidelines for protecting the rights of the children within their domain. This Convention also uses the CRC as its guiding spirit. The Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia can be found at: <http://www.saarc-sec.org/userfiles/conv-children.pdf>

In 2004, the SAARC also adopted a Social Charter incorporating a broad range of targets to be achieved across the region in the areas of poverty eradication, population stabilization, empowerment of women, youth mobilization, human resource development, promotion of health and nutrition, and protection of children. You can read the SAARC Social Charter at: [http://www.saarc-sec.org/areaofcooperation/detail.php?activity\\_id=7](http://www.saarc-sec.org/areaofcooperation/detail.php?activity_id=7)

## **National Human Rights Systems**

National human rights protection systems are fundamental to implementing international and regional human rights standards at the national level and for making the human rights-based approach to development a reality.

### **The constitutional and legislative framework**

A constitutional and/or legislative human rights framework which reflects international human rights standards is essential for building strong national human rights systems.

The ways in which international human rights norms are integrated into national legislations vary with the constitutional structures and legal systems of different countries.

While civil and political rights are included in the bill of rights (which is the list of the most important rights of the citizens of a country) of most countries, some constitutions do not mention economic, social and cultural rights at all. Examples of countries that have detailed provisions on economic, social and cultural rights include South Africa, the Philippines, Mexico, and most recently, Ecuador and Kenya.

The South African constitution of 1996 is widely regarded as the most progressive constitution in the world. The inclusion of a special section on the rights of the child in the Bill of Rights was an important development for South African children, most of whom had suffered under apartheid for many years. You can read the constitution at: <http://www.constitutionalcourt.org.za/site/theconstitution/thetext.htm>

Ecuador's 20th constitution that has been in place since 2008 also guarantees, without discrimination of any kind, the true enjoyment of the rights established by international instruments, in particular education, health, nutrition, social security and water for its inhabitants. The new constitution also has the world's first ever bill of rights for nature, which grants inalienable rights to nature to "exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution". See <http://www.france24.com/en/20080925-ecuador-considers-new-constitution-rafael-correa>

Kenya's new constitution adopted on 27 August 2010 gives economic and social rights the highest legal recognition at the national level. It explicitly refers to the right to the highest attainable standards of health, adequate housing, adequate food, clean and safe water, social security and education, in the context of economic, social and cultural rights that are essential for people to live in dignity. With regard to implementation and enforcement measures, the Constitution explicitly mentions the "fundamental duty of the State and every State organ to observe, respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights" and foresees different types of claim mechanisms in case of a right being denied.

There are currently four basic legal systems operating around the world, namely:

- ❖ Civil law;
- ❖ Common law;
- ❖ Islamic law; and
- ❖ Plural legal systems, which involve a civil or common law system combined with, or balanced by, a system of customary or traditional law.

In civil law systems, while the legislature creates the law, the judiciary applies the law. The civil law tradition serves as the basis of law in the majority of countries, especially in continental Europe, Quebec (Canada), Louisiana (USA), Japan, Latin America, and most former colonies of continental European countries.

Upon ratification of international treaties, the constitutional provisions of most civil law countries legally entitle them to automatic integration into domestic law, provided they have been published in the Official Gazette. Further parliamentary and legislative interventions would be important, but are not a sine qua non for the implementation of a treaty. This enables lawyers and judges to invoke them directly in cases brought before the courts. For instance, countries such as Timor-Leste, Ukraine and Venezuela



with civil law systems can begin enforcement of international human rights law once ratified.

In many other countries with civil law systems where there is a well-established tradition of codified law, harmonising legislation with a particular international treaty takes the form of a comprehensive overhaul of all relevant legislation by means of a single omnibus Code. For example, this method is often used for taking care of the obligations under the CRC. Guatemala and Nicaragua have formulated comprehensive Children's Codes.

Some other countries use a number of different laws dealing with various aspects of an international treaty, to incorporate it gradually over time. For example, although Morocco includes the civil law tradition as part of its legal system, it also follows Islamic law. In this case, the nature of its monarchical constitution makes the law-by-law approach more appropriate.

The common law tradition is derived from the English legal tradition.

In most countries of the common law tradition, international law is considered a separate system that governs conduct amongst States. International law does not acquire domestic status upon ratification unless formal legislative action is taken. In some cases, this may be done through a constitutional amendment.

Thus, in common law countries, even if an international instrument such as the CRC or CEDAW has been ratified, specific legislative or administrative measures are required to incorporate its provisions into domestic law. Examples include Ghana, Ireland, etc.

However, in a few common law countries, international treaties have been used by judges for making decisions and have thus influenced case law. For example, the CRC is a key component of the definitive Canadian reference on all laws affecting children.

In the common law tradition, the understanding of human rights (generally preserved in the national constitution or a bill or charter of rights) may also be redefined or expanded through interpretation by the courts, as judicial decisions establish legal precedents which have the force of law in common law countries.

But in some situations, governments severely undermine the enforcement of rights by failing to implement binding decisions by national and regional courts.

You can find a detailed discussion of different legal traditions and systems and how they impact the compliance of national legislations with international human rights treaties in Chapter 2 of UNICEF (2008) Handbook on Legislative Reform: Realising Children's Rights, Volume 1, pages 23-37. [http://www.unicef.org/crc/files/Handbook\\_on\\_Legislative\\_Reform.pdf](http://www.unicef.org/crc/files/Handbook_on_Legislative_Reform.pdf)

The formulation of laws with equitable rights is not sufficient for meeting a State's human rights obligations. State's obligations under IHRL require it to ensure equality in the implementation of laws. Laws cannot restrict access to certain services or facilities on the basis of age, sex, race, belief or any other criteria. For instance, legislation may

mandate equal access to health care, but also require that patients pay for the care they receive. This would limit the access for those whose financial resources are extremely limited. Thus, laws need to be assessed and reformed in a comprehensive manner, keeping in mind the fundamental human rights principles.

This is evident with respect to child rights and religion: Religious personal laws are deeply personal to the communities they govern. In South Asia, where Islam, Hinduism and Buddhism are the source of a number of laws and edicts affecting children, bringing “religious personal” law in conformity with children’s rights is a priority. Some Islamic States do not allow certain child rights. In some Muslim countries such as the Maldives, a child can only be a citizen if both parents are Muslims. Similarly, in Bhutan, children only have citizenship only if their parents are Buddhists. This would mean that Hindu children are not citizens and cannot go to secondary school.

To be in conformity with human rights principles, laws should benefit all members of society and pay special attention to those who are the most marginalised. These may include migrants, HIV-affected people, the disabled, or people in remote and inaccessible areas, and also children and women. There may be other marginalised or excluded groups, depending on the country under consideration.

In the specific context of children’s rights, State’s obligation also involves keeping in mind the four principles of the Convention on the Rights of the Child, including keeping children’s interests at the heart of the law, and involving children and women in the law reform process.

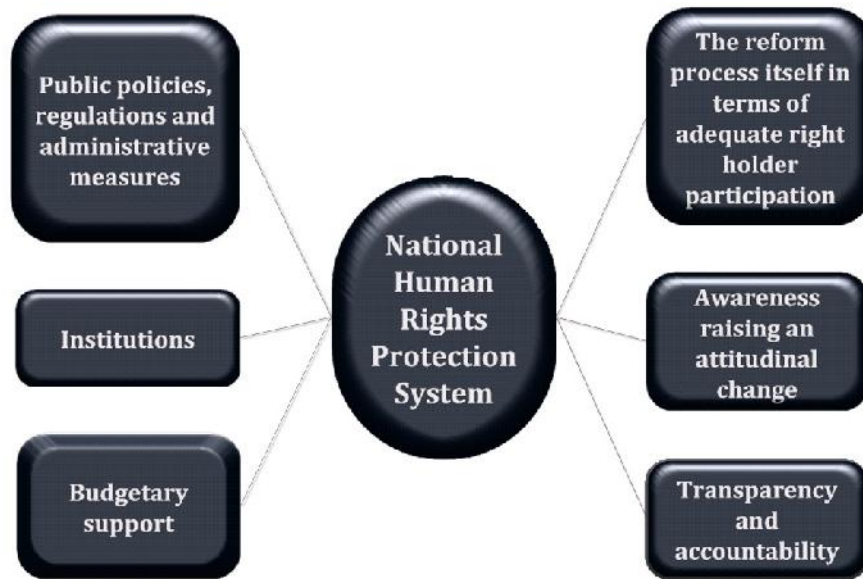
You can read more on legislative obligations in the context of the CRC in, UNICEF (2007), *Protecting the World’s Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems*, Cambridge.

**Think about it:** How did the government of the country you work fulfil its obligations under international treaties through legislative reform? Are there contradictory elements within its legal and policy frameworks, which have prevented the equitable realisation of various rights?

### **An Enabling National (Implementation) Framework**

Clearly, national legislative reform is not sufficient for the effective implementation of the obligations of governments under human rights treaties.

Apart from the domestic legislative framework, national human rights protection system must encompass all the necessary public policies and measures for enabling and ensuring effective and equitable implementation of laws for the realisation of rights.

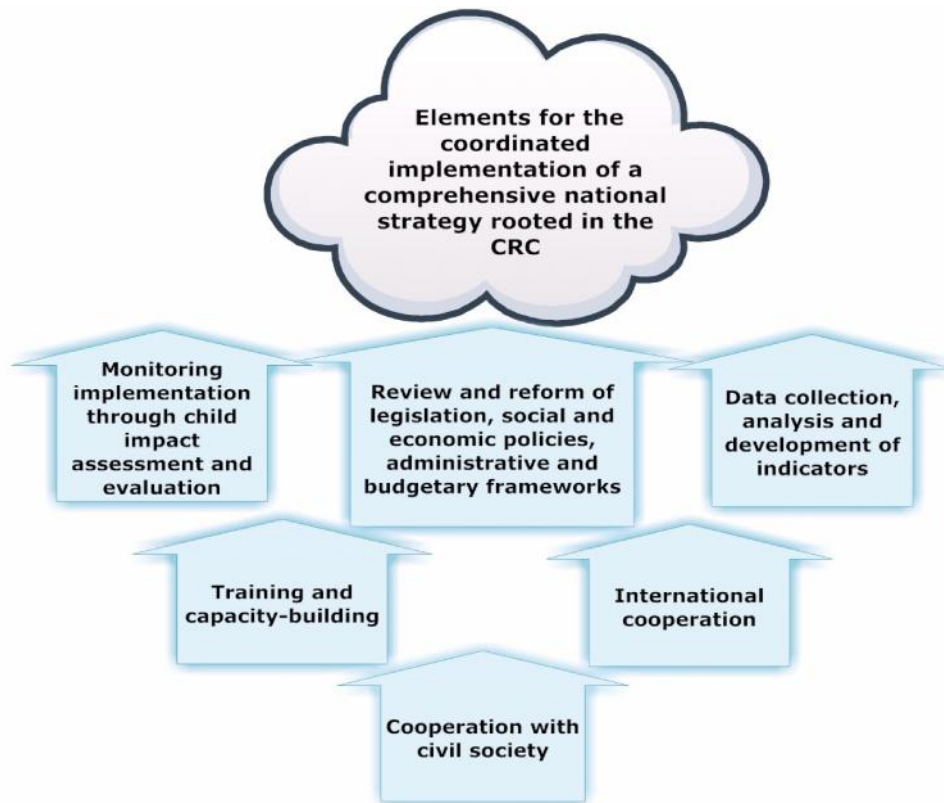


In each of these elements, the State has to ensure that the measures and their implementation benefit and involve all members of society and pay special attention to those who are the most marginalised.

Implementation of human rights treaties also calls for the creation of national human rights institutions, which usually take the form of Ombudspersons or Human Rights Commissions. Some of these provide avenues for redressal to rights holders. The standards and procedures to be used in the setting up and operations of such national institutions are provided in the Principles Relating to the Status of National Institutions (The Paris Principles).

National Human Rights Institutions play crucial role in promoting and protecting human rights within countries. For example, in Guatemala, the Human Rights Ombudsman prepares an extensive annual report and submits it to the National Congress. These reports highlight the findings of investigations into human rights violations such as gender-based violence, the denial of fair trial rights, denial of access to food, education and healthcare, etc. and organises its findings by region, by affected group (for example, women, indigenous people, or migrant populations), and by category of human rights violation. These help in effecting necessary legislative and administrative changes to reverse the rights violations.

The Committee on the Rights of the Child has recognised the special barriers children face in accessing justice, and has emphasised the role of specialist child rights institutions. A comprehensive national strategy rooted in the CRC is necessary for coordinated implementation of children's rights.



Governments are obliged to take all necessary steps to ensure that the minimum standards set by the CRC in all these areas are being met. Legal, economic and social planning as well as budgetary decisions have to be undertaken in a non-discriminatory manner, with the best interests of children as a primary consideration for ensuring child's rights to survival and development, and through children's participation.

States' obligations for protecting and promoting children's rights and women's rights are closely intertwined and operate through the integral links between children's rights to protection, health, education, etc. and women's rights to equality, health, education, maternity benefits, etc.

The rights of children with special needs and the rights of the most disadvantaged children also have to be ensured. Among other groups, this will include the girl-child, abandoned children, street children, economically and sexually exploited children (including children exploited through child pornography, child prostitution or sale of organs), child victims of diseases including HIV AIDS, indigenous children, refugee and displaced children, children in detention, children in armed conflict, as well as child victims of natural disasters like drought and other emergencies.

These are not exclusive categories. For instance, a girl who has a disability may also be indigenous. That is, individuals may face multiple types of discrimination and this has to be considered in the policy framework.

Meeting these various obligations of the State requires data collection as well as development of indicators and analysis to assess the impact of particular economic, social and other public measures/policies on children, women and other vulnerable

groups specifically. This also requires an understanding of the multidimensional impacts of poverty, especially on women and children, which is discussed in Module 3. The obligation to realise the rights of marginalised and disadvantaged groups of children and women requires collecting disaggregated data.

Monitoring implementation through child impact assessment and evaluation has to be continuous and the domestic legal, policy, administrative and budgetary frameworks have to be re-assessed on the basis of such monitoring and evaluation.

Egypt's National Child Rights Observatory (launched in January 2009) is one example of a one-stop-shop to help promote child-friendly policies. It is a tripartite initiative of the Egypt Cabinet Information and Decision Support Centre, the National Council on Childhood and Motherhood, and UNICEF. The project will strengthen the NCCM and its ability to coordinate, develop, monitor and advocate for more accountable, transparent and participatory public policies for children.

Since implementation of government's legislative goals requires allocations through the national budget, meeting a State's human rights obligations also means that the policy making and budgetary process should be intimately interlinked for making adequate resource allocations.

No State can tell whether it is fulfilling children's economic, social and cultural rights "to the maximum extent of ... available resources", unless it can identify the proportion of national and other budgets allocated to the social sectors and to children, both directly and indirectly. Some States have analysed national budgets in this way and have published annual "children's budgets" or/and undertaken gender budgeting initiatives (described in Module 4). This enables States to put in place mechanisms to ensure that women and children are protected from the adverse effects of economic policies or financial downturns.

Further, in any process of devolution of fiscal powers to sub-federal levels (by allocating certain areas of government expenditure to states, districts, municipalities, etc.), States have to make sure that the devolved authorities do have the necessary financial, human and other resources to effectively discharge responsibilities for the implementation of the Convention. There must also be safeguards to ensure that decentralisation or devolution does not lead to discrimination in the enjoyment of rights by children and women in different regions.

The Committee on the Rights of the Child has recognised that the process of privatisation of services can have a serious impact on the recognition and realisation of children's rights. It has therefore clarified that the legal obligation to respect and ensure the rights of children includes governments' obligation to ensure that non-State service providers operate in accordance with its provisions. This creates indirect obligations on such actors.

The Committee has also emphasised that enabling the private sector to provide services, run institutions and so on, does not in any way lessen the State's obligation to ensure

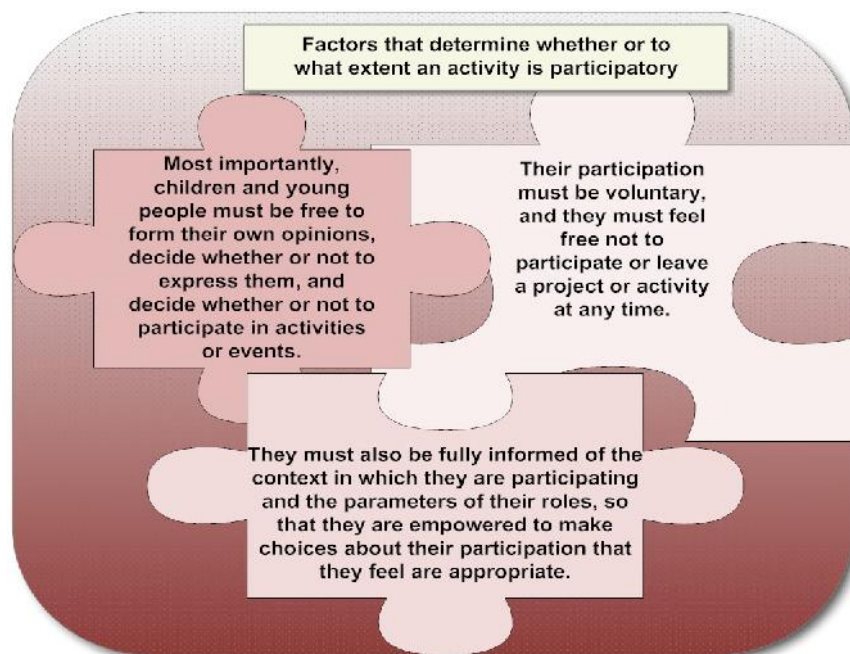
the full realisation of all the rights for all children within its jurisdiction. The best interests of the child shall be a primary consideration in all actions concerning children, whether undertaken by public or private bodies.

**Think about it:** Under the administrative system that your country follows, have there been instances when policies of the federal government or international development organisations adversely affected the ability of sub-federal bodies to implement their obligations towards children? Did this process occur through changes in budgetary allocations? Has a child budget ever been prepared in the country where you work?

You can also read the report by the Sub-Commission on the Promotion and Protection of Human Rights, Commission on Human Rights (2002), 'Liberalization of Trade in Services and Human Rights: Report of the High Commissioner', E/CN.4/Sub.2/2002/9, 25 June, United Nations Economic and Social Council: New York, available at: [http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/32f8a4ad6cc5f9b9c1256c05002a87f8/\\$FILE/G0214114.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/32f8a4ad6cc5f9b9c1256c05002a87f8/$FILE/G0214114.pdf) In this report, the Commission notes that a human rights approach to trade, among other things, seeks consistency between the progressive liberalisation of trade and the progressive realisation of human rights.

Effective reform for the implementation of all State duties towards the realisation of rights also requires that such reform and implementation must be participatory.

This includes the participation of children and women, particularly taking into account the views of vulnerable and marginalised stakeholders, in all processes of review, assessment and reform of legislative, policy, budgetary and administrative or institutional requirements for effective implementation.



To find out more on participation, see UNICEF (2009), 'The participation of children and young people in UNICEF country programme and national committee activities', Desk Review,

[http://www.unicef.org/adolescence/cypguide/files/ADAP\\_desk\\_study\\_on\\_child\\_participation-FINAL-23APR2009.pdf](http://www.unicef.org/adolescence/cypguide/files/ADAP_desk_study_on_child_participation-FINAL-23APR2009.pdf)

Here are some examples of successful outcomes of youth participation:

- In Amuahia, Nigeria, adolescent students aged 10-16 from the child rights club at Williams Memorial Secondary School went from house to house and mobilised parents to bring their children in for immunisation.
- Adolescents have been allowed to attend community meetings for helping to install running water in Pachen village, Papua New Guinea.
- To date, more than 150 countries around the world have established children's parliaments. In Timor-Leste (East Timor), the Student Parliament was born from a campaign to educate young people about democracy as the nation moved towards independence.
- The South African Law Commission consulted young people throughout the country in preparing a draft Children's Bill in 2002.
- Nepal has a vibrant set of child clubs, whose members range from 10 to 18 years of age. UNICEF and local non-governmental organisations have partnered to support the children's clubs. The clubs have evolved from single-issue organisations – focused on improving local sanitation or tackling gender discrimination, for example – to multi-issue groups that make sure children's voices are heard at the local, regional and national levels. Such clubs have become key development partners in many areas of Nepal. They have also secured a role in the drafting of Nepal's new constitution.
- In Tanzania, UNICEF supports adolescents to educate their communities about HIV/AIDS through community theatre, art and video. Older adolescents are also trained as community justice facilitators.

UNICEF also uses interactive websites such as Voices of Youth ([www.unicef.org/voy](http://www.unicef.org/voy)) to allow adolescents' experiences to be shared globally.

Children's participation in UNICEF programmes is more developed in some sectors/areas than in others. UNICEF's Child and Youth Participation Resource Guide ([www.unicef.org/adolescence/cypguide/resourceguide\\_intro.html](http://www.unicef.org/adolescence/cypguide/resourceguide_intro.html)) provides a user-friendly directory of resources from the diverse literature on children's participation in different sectors.

A more detailed discussion and other case studies can be found in the toolkit Commonwealth Secretariat (2005), *Participation in the Second Decade of Life: What and Why?*, [http://www.thecommonwealth.org/shared\\_asp\\_files/uploadedfiles/9C041EDE-14F5-4DA7-AF21-EAF03F7C4A55\\_One-ParticipationintheSecondDecadeofLife.WhatandWhy.pdf](http://www.thecommonwealth.org/shared_asp_files/uploadedfiles/9C041EDE-14F5-4DA7-AF21-EAF03F7C4A55_One-ParticipationintheSecondDecadeofLife.WhatandWhy.pdf).

National efforts to implement the CRC need to be complemented by sustained multilateral cooperation, because violations of children's rights often involve trans-border activity. This is applicable especially in policies and measures for the prevention of HIV/AIDS, exploitation and trafficking of children. These require cross-border strategies and the synchronisation of national actions.

A number of CRC articles specifically call for international cooperation, including those concerning the child's rights to health, to special care when disabled, to education, to protection against abduction and trafficking, etc.

Apart from non-discriminatory laws, participatory policymaking processes and international cooperation, policies and measures for civic education and training on human rights as well as legal literacy are indispensable elements for changing individual behaviour and societal attitudes for ensuring equality in the realisation of human rights.

This is because social behaviour and cultural practices can result in significant discrimination and violation of human rights. For instance, even when legislation provides for equal access, girls may be excluded because social customs prevent them from attending schools with male teachers. Similarly, even when the law requires all public services to be readily accessible to people with disabilities, schools may be effectively closed to children with physical handicaps because they cannot enter the building. Children with learning disabilities may also face discrimination because there are no programmes or trained staff to help them learn or because of societal attitudes.

Accountability, participation and transparency also require information.

The Right to Information Act in India empowers every citizen to seek any information from the Government, inspect any Government documents and seek certified photocopies thereof. Some laws on the Right to Information also empower citizens to inspect any Government work or to take samples of material used in any work.

## **Civil Society Organisations and Change Agents**

Effective partnerships involving government and key stakeholders, civil society organisations and the media are also critical, as these groups are well positioned to monitor States' human rights obligations and promote legislative, policy and budgetary reforms.



Civil society organisations (CSOs) come in a diverse range of forms: non-profit corporations, development organisations, community-based organisations, religious congregations and faith-based organisations, hospitals, universities, mutual benefit groups, sports clubs, advocacy groups, women's organisations, arts and culture organisations, charities, trade unions and professional associations such as lawyers groups, non-profit service providers, charitable trusts, etc.

CSOs play many significant roles as follows:

- ✚ They can ensure that policy dialogue and decision-making is informed by the perspectives of all rights holders, particularly by supporting the concerns and voices of children, women and others who are often forgotten and marginalised in policy formulation.
- ✚ They can increase public awareness of questions relating to human rights and fundamental freedoms, through activities such as education, training and research.
- ✚ They provide crucial avenues for partnerships for human rights protection and promotion by national and international human rights bodies and organisations.

The international human rights law recognises these roles and the associated rights. See the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, available at: <http://www2.ohchr.org/english/law/freedom.htm>

Where litigation strategies for achieving particular rights have led to successful outcomes of human rights realisation, this has often been because they were integrated within wider social mobilisation processes in those countries involving the civil society.

Some successful CSO initiatives include:

- ❖ In Brazil's 'comunidades populares' – the informal urban settlements that are also known as 'favelas', the NGOs work together with the Government to guarantee the rights of the children and adolescents.
- ❖ The legislative reform process in Jamaica for the realisation of children's rights was led primarily by the non-governmental organisation, Jamaica Coalition on the Rights of the Child, although legislators and government ministries played important roles in the later stages.
- ❖ In India, citizen activists and CSOs have used Public Interest Legislation to push for the realisation of child rights in cases relating to the universalisation of the Integrated Child Development Scheme and the provision of school meals in primary schools. Visit: [http://www.crin.org/docs/resources/treaties/crc.37/FORCES\\_New\\_Delhi\\_India.pdf](http://www.crin.org/docs/resources/treaties/crc.37/FORCES_New_Delhi_India.pdf)

- ❖ In Haiti, a community network of women health agents links health centres to hospitals. Identified by community leaders, they visit pregnant women in their homes and refer them for HIV testing. They assist HIV-positive pregnant women with adherence to treatment and try to ensure that newborns are placed on prophylaxis within 72 hours of birth. They accompany mother and baby to hospital when the birth takes place at home. For more details, go to: [http://www.uniteforchildren.org/files/Children and AIDS Fourth Stocktaking Report EN 120209.pdf](http://www.uniteforchildren.org/files/Children_and_AIDS_Fourth_Stocktaking_Report_EN_120209.pdf)
- ❖ Another major area of civil society participation has been in budget monitoring and development of alternative budget proposals to increase literacy on economic and social rights and to enable rights holders to make their claims. There are also groups which examine government budgets from the point of view of gender equality and children's rights.

In all these cases, NGOs or/and individuals coordinated, lobbied government, conducted media promotion and public education and created space for public engagement in the process of getting rights realised.

**Think about it:** Did civil society organisations play a role in initiating the legislative reforms in the country where you work? Does the UNICEF country office partner with CSOs that play a role in issues that affect children? How do you think their role needs to be strengthened?

## **Implications of the Human Rights-based Approach to Development for UNICEF's Country Programming**

For UNICEF, the human rights-based approach to programming means that:

- ✚ The aim of all Country Programmes of Cooperation, including in humanitarian situations, is to further the realisation of the rights of all children and women;
- ✚ Human rights and child rights principles guide programming in all sectors and in all phases of the programme process; and
- ✚ Programmes of Cooperation focus on developing the capacities of duty-bearers at all levels, to meet their obligations to respect, protect and fulfil rights; as well as on developing the capacities of rights-holders to claim their rights.

UNICEF programming is guided by the principles of the CRC, CEDAW and other human rights treaties. In situations of conflict, natural disasters and other types of emergencies, the following humanitarian principles will also apply:

- The humanitarian imperative;
- Neutrality;
- Impartiality;
- Do no/less harm; and
- Respect for culture and custom.

You can find detailed information and documents related to humanitarian principles at: [www.humanitarianreform.org](http://www.humanitarianreform.org)

You can also read UNICEF (2010), Core Commitments for Children in Humanitarian Action, [http://www.unicef.org/lac/CCCs\\_EN\\_070110.pdf](http://www.unicef.org/lac/CCCs_EN_070110.pdf)

Rights tend to be violated because claim holders lack the capacity to claim the right, and/or duty bearers lack the capacity to meet their duties.

Capacity development is thus at the core of the human rights-based approach to programming. It is the process through which individuals, organisations and societies obtain, strengthen and maintain the capabilities to achieve their own development objectives. For UNICEF, children are no longer seen as passive beneficiaries of transfers of services and commodities, but are recognised as key actors in their own development.

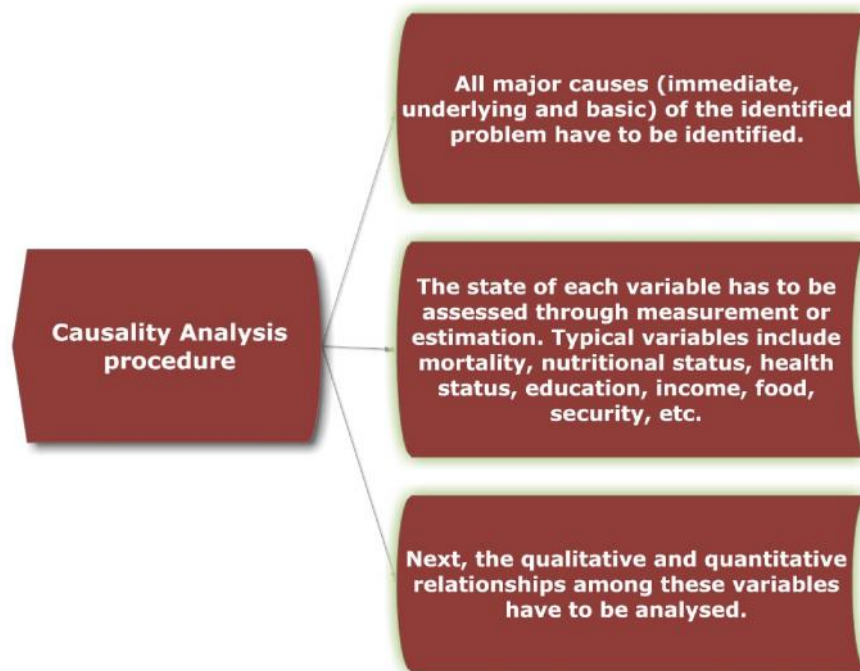
UNICEF's approach to capacity development in each country is built on a consensus achieved among partners on priorities related to the realisation of the rights of children and women, and on analysis of the immediate, underlying and basic causes of the capacity gaps.

It involves the following steps.

I. The first step in programming is to achieve agreement on the priority issues related to the realisation of children's and women's rights, and to reach agreement on the analysis of the underlying and basic causes of those priority issues.

Assuming that there is recognition of a problem to be addressed through programming, situation analysis is the first step in identifying areas of action. Situation analysis can be supported by causality analysis, role/pattern analysis, and capacity gap analysis.

**Causality Analysis** results in the identification of a set of rights that are either being violated or are at risk of being violated, together with the major causes of these violations.



A problem tree supported by a conceptual framework can be used whenever a new causal analysis of a specific problem is required. A generic conceptual framework commonly used by UNICEF is contained in the PPP Manual.

For more information, also see UNICEF (2003), Understanding Results Based Programme Planning and Management, Evaluation Office, [http://www.unicef.org/evaluation/files/DevelopingCapacities\\_CountryEvaluationSystems\\_final.pdf](http://www.unicef.org/evaluation/files/DevelopingCapacities_CountryEvaluationSystems_final.pdf)

Role/Pattern Analysis identifies key claim-holder/duty-bearer relationships for each specific right.

Pattern analysis is a means for understanding the complex web of relationships between claim-holders and duty-bearers.

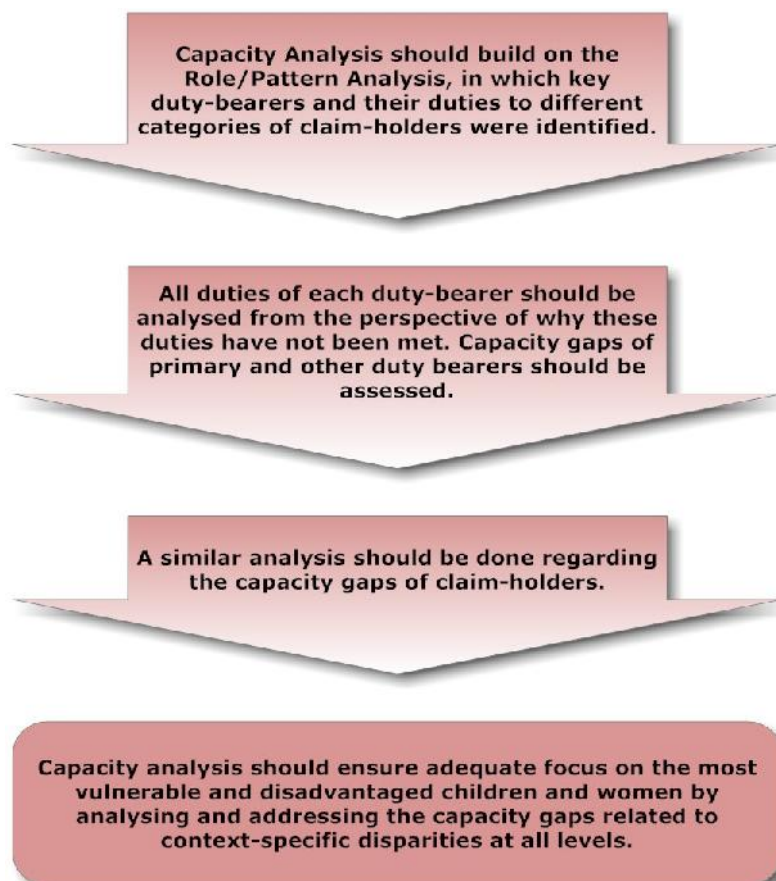
Causality analysis facilitates the work of identifying individuals or groups of individuals in their roles as claim-holders and duty-bearers at higher levels of society.

For example, low school enrolment may be caused by a lack of schools or excessive school-fees, which in turn may be a result of unequal allocation of funds to a particular area or a policy of imposing school fees. These resource and policy decisions are themselves a result of other basic causes.

Pursuing this type of analysis will help to identify claimholder/ duty-bearer relationships at different levels of society.

Capacity Analysis defines the capacity gaps of claim-holders to claim their rights and of duty-bearers to meet their duties.

After the key claim-duty relationships for a specific right have been identified, the next step is to analyse why the right is being violated or is at risk of violation. The analysis of capacity gaps is called Capacity Analysis.



Situation analysis forms part of the UNICEF contribution to country analytic work, including the Common Country Assessment (CCA).

UNICEF supports programme countries to conduct a comprehensive analysis of children and women within the country programme or national planning cycle. The assessment and analysis shows child-relevant dimensions of national development problems and points the way to possible solutions and priority actions.

Situation analysis also supports national reporting to the Child Rights and CEDAW Committees. Alternatively, situation analysis should take into account State Party reports as well as the Concluding Observations and Recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women.

Examples of recent situation analyses are given at: [http://www.unicef.org/sitan/index\\_43351.html](http://www.unicef.org/sitan/index_43351.html)

The analyses and the methodology of the UNICEF-led Global Study on Child Poverty and Disparities can be used as tools within the situation analysis process. For more information, visit: <http://unicefglobalstudy.blogspot.com/2010/12/global-study-on-child-poverty-and.html>

II. The second step in programme preparation is to decide which child rights problems (or causes) should be addressed.

While it is necessary to look holistically at the full range of children's rights, in some programme contexts, scarcity of resources and institutional constraints demand that actions to realise rights must be prioritised. While UNICEF advocates the realisation of all rights for all children everywhere, it may be necessary to set priorities for addressing violations of children's rights in a specific programming context.

The principle of non-discrimination means that everyone has the same right to develop to their full potential. Therefore, for rights-based programming decisions, steps have to be taken immediately to identify the most disadvantaged with respect to proposed policy measures such as women, children, elderly, internally displaced, HIV-infected, lower castes, etc.

To understand what the application of these principles mean in a specific country-context, you can read Christian Salazar-Volkman (2004), 'A Human Rights-Based Approach to Programming for Children and Women in Viet Nam: Key Entry Points and Challenges', [http://www.unicef.org/vietnam/resources\\_1224.html](http://www.unicef.org/vietnam/resources_1224.html).

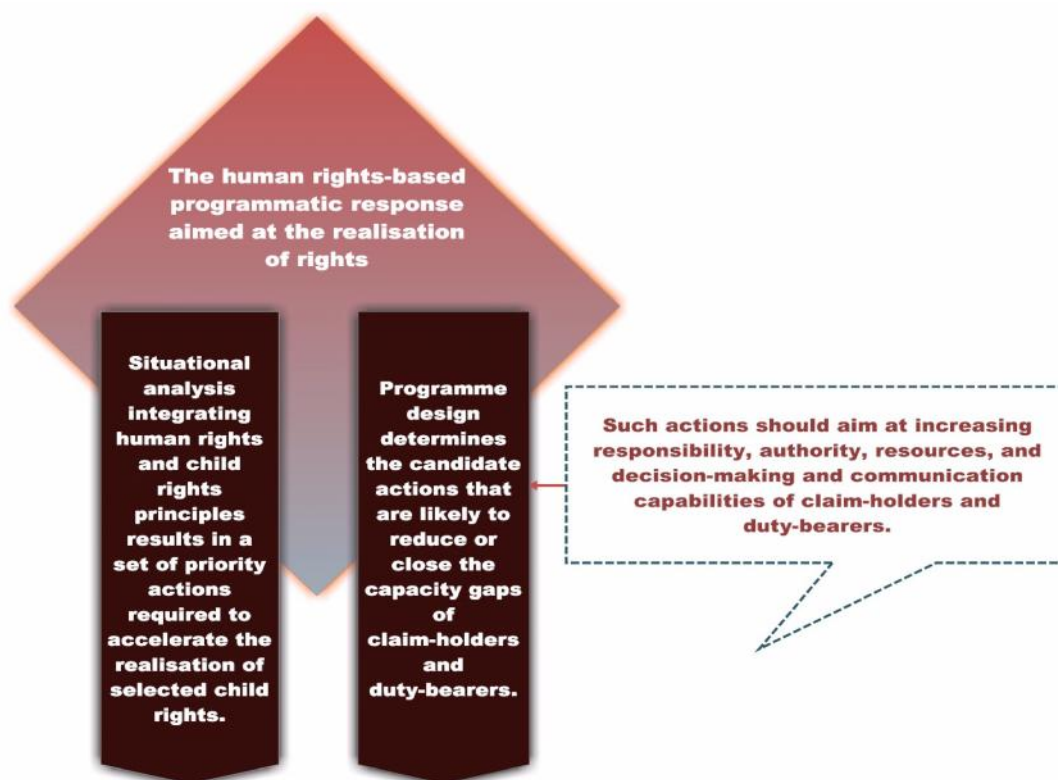
The prioritisation of rights should be arrived at through negotiation and consensus building. The principle of the "best interests of the child" helps to resolve confusion between different rights. The options should be discussed with all claim-holders and duty bearers at all levels of society, in a bottom-up approach.

For UNICEF, broad participation of women and children, especially in family and community activities that directly influence their well being, is both a means and an end.

Participation is a critical process of the HRBA for the realisation of children's rights in all circumstances, including situations of conflict, emergency and natural disaster.

Since active, free and meaningful participation of the claims holders require access to information and organisational capacities, creating capacities for participation is integral to UNICEF's approach.

III. The third step in programming is the human rights-based programmatic response aimed at the realisation of rights.



Experience shows that these responses generally fall into one of five generic types of interventions:

1. Advocacy and Social Mobilisation;
2. Information;
3. Training;
4. Education; and
5. Service-delivery.

The priority actions or activities selected are aggregated into projects and programmes, described in the Country Programme Action Plan (CPAP).

UNICEF's activities should be situated within a broad strategy that draws on the contributions of a range of ministries, local governments, private sector agencies, CSOs and community actors. It is important for donors to develop and work through country systems such as MDG-focused National Development Strategies, Poverty Reduction Strategies and sector approaches.

In order to use data strategically during programme implementation, an integrated Monitoring and Evaluation Plan should also be prepared.

Monitoring is the periodic oversight of the implementation of an activity which seeks to establish the extent to which input deliveries, work schedules, other required actions

and targeted outputs are proceeding according to plan, so that timely action can be taken to correct deficiencies detected.

Evaluation is a systematic process which attempts to determine as objectively as possible the relevance, effectiveness, efficiency and impact of activities in the light of specified objectives.

As a practical matter, UNICEF recommends that monitoring should focus on project progress. While a few outcome indicators such as nutritional status of project beneficiaries might be monitored, formal assessment of overall impact and cost effectiveness is best handled by conducting evaluations.

See UNICEF Guide for Monitoring and Evaluation: Making a difference?, <http://preval.org/documentos/00473.pdf>

Monitoring and evaluation should be country-owned and country-led, so that the country (rather than donors or international agencies) determines:

- what policy or programme will be evaluated;
- what evaluation questions will be asked;
- what methods will be used;
- what analytical approach will be undertaken;
- how the findings will be communicated; and
- how the findings will be used ultimately.

Some examples of good practices in country-led monitoring and evaluation systems can be found in UNICEF, DevInfo, IDEAS, IOCE, MICS, UNECE and World Bank (2009), Country-led monitoring and evaluation systems: Better evidence, better policies, better development results, available at

[http://www.childinfo.org/files/Country led ME systems.pdf](http://www.childinfo.org/files/Country_led_ME_systems.pdf)

You can also read Michael Bamberger and Marco Segone (2012) *How to Design and Manage Equity-focused Evaluations*, UNICEF.

## **Human Rights Indicators**

Implementing and monitoring a human rights-based approach to programming requires a variety of indicators to monitor States' compliance with human rights treaty obligations.



## **The Economic and Social Rights Fulfilment Index**

Measurement of economic and social rights by relying on socio-economic indicators reflects the perspective of only the rights holder. The Economic and Social Rights Fulfilment Index developed by Fukuda-Parr, Lawson-Remer and Randolph (2009) addresses this weakness and incorporates the compliance of duty bearers. The Index takes into account five core economic and social rights: the right to food, education, health, adequate housing and decent work. The country scores and rankings of the ESRF Index are available in Susan Randolph, Sakiko Fukuda-Parr and Terra Lawson-Remer (2009), "Economic and Social Rights Fulfilment Index: Country Scores and Rankings", The Human Rights Institute, University of Connecticut Working Paper No. 11, <http://ideas.repec.org/p/uct/ecriwp/11.html>.

Given the complexity of assessing compliance with human rights standards, all relevant qualitative and quantitative information is potentially useful.

DevInfo (<http://www.devinform.org/>) is a user-friendly, customisable database system used by the UN Development Group (UNDG) to support national monitoring of human development. It can be customised to link data to the national development framework, the World Summit outcome document, the MDGs and the UNDAF, as well to as other plans of high national priority.

UNICEF maintains a series of global databases for tracking the situation of children and women globally. The website <http://www.childinfo.org/> contains UNICEF's statistical information and provides links to the technical resources for conducting UNICEF-supported Multiple Indicator Cluster Surveys (MICS), which are a major source of global development data.

UNICEF programme contribution should build on what already exists in the country to help establish baselines, identify trends and data gaps, and highlight constraints in country statistical systems. Disaggregation of data and any research that reflects the situation and views of people who suffer from discrimination have to be given particular attention.