



# Human Rights Based Approach

TO

SUSTAINABLE  
DEVELOPMENT  
GOALS

AND

## The Process of Voluntary National Review



HRBA and The Process of VNR



**National Human Rights Commission**

Harihar Bhawan, Lalitpur, Nepal

2020



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*to*  
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## Abbreviations

AAAQ	Availability, Accessibility, Acceptability and Quality
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	The Convention on Elimination of All Forms of Racial Discrimination
CNI	Confederation of Nepalese Industries
CRC	Convention on the Rights of the Child
CRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CSOs	Civil Society Organisations
ECOSOC	Economic and Social Council
EDPs	External Development Partners
ESCR	Economic, Social and Cultural Rights
FNCCI	Federation of Nepalese Chambers of Commerce and Industry
GANHRI	Global Alliance of National Human Rights Institutions
GR	General Recommendation
HLPFs	High-Level Political Forum on Sustainable Development
HRBA	Human Rights-based Approach
HRBAD	Human Rights-based Approach in Development
HRE	Human Rights Education
IASC	The Inter Agency Standing Committee

ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organization
LNOB	Leave no one Behind
NCC	Chambers of Commerce
NHRIs	National Human Rights Institutions
NPC	National Planning Commission
OHCHR	The Office of the High Commissioner for Human Rights
SGDs	Sustainable Development Goals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Programme
VNR	Voluntary National Review
WHO	World Health Organization

## Key Terminology on Human Rights and HRBA

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<b>Accountability &amp; Rule of Law</b>	Using a HRBA requires identifying <i>who</i> are the <i>rights-holders</i> (the people claiming their rights) and who are the correlative <i>duty-bearers</i> . This identifies the duty-bearers answerable for the observance of human rights for rights-holders. Duty-bearers are accountable through budget allocation, through building capacity to work on realizing specific rights, as well as through rule of law and court mechanisms.
<b>Civil &amp; Political Rights</b>	Rights relating to participation in public life, such as right to life, liberty and security; equality before the law; freedom of thought, conscience and religion; freedom of speech; freedom from torture; juvenile justice; and right to vote and be elected.
<b>Concluding Observations</b>	United Nations human rights treaties stipulate that States Parties submit periodic reports to the respective treaty monitoring bodies (or ‘committees’) on the implementation of their ratified treaty obligations. The treaty body issues a set of ‘concluding observations’, containing its assessment of the State's record and makes recommendations for further implementation of the rights in question.
<b>Constitution</b>	The system of fundamental laws and principles that prescribes the nature, functions, and limits of a government or another institution.

<b>Duty-Bearer</b>	Duty-bearer is the specific role into which an individual, a group or an institution enters as a result of the existence of right-holders (individual, group or institution) who have <i>valid claims</i> against the duty-bearers by creating correlative duties of the duty-bearers. <i>The state</i> is often the ultimate duty-bearer.
<b>Economic, Social &amp; Cultural Rights</b>	Amongst other things the right to health, food, education, and adequate housing, the right to preserve and develop one’s cultural identity.
<b>Fulfill Rights</b>	<p><b>Fulfill (Facilitate)</b> – requires the duty-bearers to adopt appropriate legislative, administrative, budgetary, judicial, promotional, and other measures towards the full realization of the right;</p> <p><b>Fulfill (Provide)</b> – requires the duty-bearers to directly provide assistance or services for the realization of the right.</p>
<b>General Comments/ Recommendation</b>	The UN Human Rights Council issues documents known as General Comments or General Recommendations, which provide guidelines for States Parties on the interpretation of specific aspects of the human rights treaty of concern to the particular committee. Available at <a href="http://www.ohchr.ch">www.ohchr.ch</a>
<b>Human Rights</b>	The rights that everyone has just by virtue of the fact they are a human being.

<p><b>Human Rights-Based Approach (HRBA)</b></p>	<p>In a Human Rights-Based Approach to Development, human rights <i>standards</i> define benchmarks for desirable outcomes, while human rights <i>principles</i> represent conditions for the process. Process criteria include all human rights principles. They all specify a required minimum <i>conduct</i>. A Human Rights-Based Approach requires equal attention to outcome and process.</p>
<p><b>Human Rights Obligations</b></p>	<p>All governments are obligated to guarantee international human rights law. Most because they have ratified certain treaties. States that have not are still obligated to respect general principles of international <i>customary</i> law e.g. the right not to be held in slavery or servitude.</p>
<p><b>Human Rights Principles</b></p>	<p>Human rights principles guide programming in all phases of the programming process, including assessment and analysis, planning and design, implementation and monitoring and evaluation. These principles represent criteria for an acceptable <i>process</i> in a HRBA to Development. They include equality and non-discrimination, participation and inclusion, accountability and the rule of law.</p>
<p><b>Human Rights Standards</b></p>	<p>Human rights standards guide all development cooperation and programming in all sectors and in all phases of the programming process. These standards represent desirable <i>outcomes</i> in a HRBA to Development, e.g. universal basic education, access to health services, social protection, absence of torture, etc.</p>

<b>Indivisibility</b>	There is no <i>a priori</i> hierarchy among human rights, all rights are necessary for the dignity of every human being.
<b>Interdependency &amp; Interrelatedness</b>	The realization of one right, often depends on acknowledging and realization of some other rights. This helps contribute to a long-term human rights goal in projects and programmes.
<b>Equality and Non-Discrimination</b>	<p>All persons within a society enjoy equal access to the available goods and services that are necessary to fulfill basic human needs. There is an important difference between ‘<u>equality of opportunity</u>’ and ‘<u>equality of result</u>.’</p> <p>All individuals are equal as human beings...All human beings are entitled to their human rights without discrimination...such as race, religion, political or other opinion...disability, property, birth or other status as explained by the human rights treaty bodies;</p> <p>Non-discrimination applies to all state policies and practices, including healthcare, education, access to services, travel regulations etc.</p>
<b>Participation and Inclusion</b>	Every person is entitled to active, free and meaningful participation, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized. A HRBA to Development requires full participation of key <i>duty-bearers</i> and <i>rights-holders</i> .

<b>Progressive Realization</b>	There is an obligation to “move as expeditiously and effectively” as possible towards that goal with minimum core obligations to ensure the minimum essential levels of each of the rights, including health, education, housing etc.
<b>Ratified</b>	A country officially decides that it wants to become a State Party to a treaty. It then "ratifies" the treaty.
<b>Rights-Holder</b>	When a country has ratified a UN Treaty, all individuals or groups of individuals in that country whose rights are enshrined in the treaty enter into the roles of <i>right-holders</i> with valid claims against others, who have correlative duties, i.e. these enter into the roles of <i>duty-bearers</i> .
<b>Treaty</b>	An agreement under international law agreed between mostly states and international organizations (UN Covenants and Conventions are treaties).
<b>Treaty Monitoring Body</b>	A committee of experts mandated by the UN to oversee and monitor the implementation of a specific treaty (covenant or convention).
<b>Universal &amp; Inalienable</b>	A HRBA is grounded and guided by the fact that all people are born with human rights that cannot be voluntarily given up or forcible taken away, Article 1 of the UDHR, ‘All human beings are born free and equal in dignity and in rights.

**Universal  
Declaration of  
Human Rights**

Adopted by the UN General Assembly on December 10, 1948, and has increasingly been recognized as *international customary law* and all UN member states have agreed to adopt the principles and standards in the UDHR.

# Foreword

The year 2015 was a momentous occasion as governments came together to commit to a shared ambition and framework for a vision towards 2030 with the adoption of 2030 Agenda and accompanying SDGs. The 2030 Agenda and the SDGs must be seen as one of many opportunities to help fight against the inequalities in the various sectors. Governments and other duty-bearers should be accountable for not only delivery of the basic goods and services outlined throughout the SDGs, but also effectively working to secure and preserve the fundamental human rights and dignity of all people, in all contexts. On this front, the SDGs' commitment to leaving no one behind, and reaching those furthest behind are the most important promises to change the world.

National Human Rights Institutions (NHRIs) are key institutions that are independent from, yet work with, governments in promoting and protecting human rights. NHRIs can play a key role in helping to prevent inequalities; they advocate for the rights of minorities and the disadvantaged, and ensure respect for human rights. NHRIs equally play unique bridging roles – between international, regional and national spheres; between different government institutions; between government, civil society and rights holders; across a range of human rights and their State's corresponding international obligations and commitments. National Human Rights Commission of Nepal is an institution consistently accredited with 'A' status by GANHRI and its predecessor, International Coordinating Committee.

The Merida Declaration on the Role of National Human Rights Institutions in implementing the 2030 Agenda for Sustainable Development was adopted in 2015, in Mexico. The declaration explicitly recognizes that human rights instruments and mechanisms will provide an important framework for the implementation of the SDGs, and that implementation will contribute to the realization of human rights. The Declaration underlines that NHRIs are uniquely placed to play a bridging role between government, CSOs and other stakeholders. They promote transparent, participatory and inclusive national processes of implementation and monitoring of human rights. The

Declaration identified the role of NHRIs in the implementation of SDGs, in line with their mandates under the Paris Principles, to collaborate in mutual capacity building and sharing of experiences, and to consider the practical functions and to contribute to a human rights-based approach to the implementation of the 2030 Agenda.

This book outlines the human rights-based approach (HRBA) to SDG implementation and the process of Voluntary National Review (VNR) process. Human Rights based Approach segment particularly focuses on the HRBA methodology, HRBA and poverty reduction, HRBA to education, health, HRBA to gender equality, HRBA to natural disaster management, human rights based legislative process and policy reform, HRBA and rights of the indigenous people, HRBA and caste-based discrimination HRBA to development. Next segment deals with the process of Voluntary National Review of the SDG 2030 agenda.

Our aim for this book is to serve as a practical resource for both government and civil society members to adopt human rights-based approach for the implementation of the SDG 2030 agenda and to the monitoring institutions in the country. We hope that this book will provide a foundation for government's ongoing work to implement for the SDGs and other related human rights related commitments. Similarly, this also supports to the collective efforts towards SDG implementation at all levels, and I hope this resource book will be a useful stepping stone for this important work between now and 2030. More importantly, the book supports NHRIs, governments, parliaments, statistical offices, civil society and international partners to raise awareness of the SDGs, build capacities, and maximize limited resources. Finally, I want to thank Mr. Nava Raj Sapkota, Director at the NHRCN and Mr. Arjun Bishokarma, Project Officer of SPSP who collected materials and compiled this booklet in this form.

**Bed Bhattarai**

Secretary

October 2020

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## Chapter 1

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# Human Rights in the 2030 Agenda for Sustainable Development

In September 2015, 170 world leaders gathered at the UN Sustainable Development Summit in New York to adopt the 2030 Agenda. The new Agenda covers a broad set of 17 Sustainable Development Goals (SDGs) and 167 targets and will serve as the overall framework to guide global and national development action for the next 15 years. The SDGs are the result of the most consultative and inclusive process in the history of the United Nations. Grounded in international human rights law, the agenda offers critical opportunities to further advance the realization of human rights for all people everywhere, without discrimination.

The 2030 Agenda is unequivocally anchored in human rights: The new Agenda is explicitly “grounded in the UN Charter, the Universal Declaration of Human Rights, international human rights treaties” and other instruments, including the Declaration on the Right to Development (para 10). It states that the SDGs aim to “realize the human rights of all” (preamble) and emphasises “the responsibilities of all States... to respect, protect and promote human rights and fundamental freedoms for all, without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status”

(para 19). Importantly, the new Agenda is “to be implemented in a manner that is consistent with the... obligations of states under international law.”(para 18). This means that any gaps or ambiguities should be resolved in accordance with the requirements of international human rights law.

The SDGs offer a new, more balanced paradigm for more sustainable and equitable development: While the MDGs addressed only a narrow set of economic and social issues, the SDGs include 17 goals and 169 targets covering a wide range of issues that effectively mirror the human rights framework. Many of the SDGs relate closely to economic, social and cultural rights. Goal 16 on peaceful and inclusive societies also covers many dimensions of civil and political rights, including personal security, access to justice, and “fundamental freedoms”. Goal 17 and many of the international targets under each Goal address issues that are related to duties of international cooperation and the right to development.

The SDG targets are closely aligned with human rights standards: Although the SDGs themselves are not framed explicitly in the language of human rights; most targets explicitly reflect the content of corresponding human rights standards. For example, the SDGs address availability, accessibility, affordability and quality of education, health, water and other services related to those rights. There are targets on access to safe, nutritious and sufficient food for all, universal health coverage, free equitable and quality primary and secondary education, access to safe and affordable water, sanitation, hygiene and housing, and access to “safe, effective, quality and affordable essential medicines and vaccines for all.”

The 2030 Agenda aims to combat inequalities and discrimination and “leave no one behind”, and contains a strong commitment to the disaggregation of data: The 2030 agenda reaffirms the responsibility of all States, to “respect, protect and promote human rights, without distinction of any kind as to race, colour, sex, language, religion,

political or other opinions, national and social origin, property, birth, disability or other status” (para. 19). The SDGs include two dedicated goals on combating inequality and discrimination (Goal 5 on achieving gender equality and Goal 10 on reducing inequalities within and between States). The goals and targets aim to “leave no one behind” and “reach those furthest behind first” (para 4). The Agenda calls for the follow-up and review processes for the SDGs to be based upon evidence and data disaggregated by “income, gender, age, race, ethnicity, migratory status, disability, geographic location and other characteristics relevant in national contexts” (para 74, and Target 17.18).

The new agenda includes perhaps the most expansive list of groups to be given special focus of any international document of its kind. There is a strong focus on women and girls and gender issues, and the inclusion of children, youth, persons with disabilities, people living with HIV/AIDS, older persons, indigenous peoples, refugees and internally displaced persons and migrants (e.g. para 23). There is an important new commitment of Member States to welcome the positive contribution of migrants and ensure that migration takes place with “full respect for human rights and the human treatment of migrants regardless of migration status, of refugees and of displaced persons” (para 35). However, there are also major gaps such as the lack of explicit reference to minorities and LGBTI.<sup>1</sup>

## **A Human-Rights Based Approach (HRBA) to the SDGs**

The Agenda 2030 for Sustainable Development has been widely acknowledged as the most participatory process ever in the history of the United Nations. As a direct consequence of the inclusive process adopted for its conception, it became one of the most comprehensive and powerful instruments for sustainable development. Differing from the Millennium Development Goals (MDGs), the Sustainable

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<sup>1</sup> <https://www.ohchr.org/Documents/Issues/MDGs/Post2015/HRAndPost2015.pdf>

Development Goals (SDGs) – which are the “world’s to-do list to end poverty, reduce inequalities and tackle climate change” in the Agenda 2030 – incorporates a wide range of human rights principles and standards throughout its targets.

In this document, the United Nations Office of the High Commissioner for Human Rights (OCHCR) did a remarkable work in demonstrating how the SDGs cover all aspects of human rights, “including economic, civil, cultural, political, social rights and the right to development”. The significance of understanding the relationship between the SDGs and human rights is not just illustrative – it is rather a way of strengthening States’ accountability vis-à-vis their commitments to a human rights-based approach to development and to the SDGs themselves.

## **Introduction to HRBA**

A human rights-based approach is focused on conscious and systematic enhancement of human rights. It is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. The Universal Declaration of Human Rights (UDHR 1948) and other international human rights instruments form the core basis of the HRBA conceptual framework. The human rights-based approach has a twofold objective:

- 1) to empower people (rights-holders) to claim and exercise their rights, and
- 2) to strengthen the capacity of the actors (duty bearers) who have a particular obligation or responsibility to respect, protect and fulfill the rights of the poorest, weakest, most marginalized and vulnerable, and to comply with these obligations and duties. <sup>2</sup>

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2 Introduction to the Human Rights Based Approach, A Guide for Finish NGOs and their partners, UNICEF, 2015

Human rights-based approaches are about turning human rights purely legal instruments into effective policies, practices, and practical realities.

Human rights principles and standards provide guidance about what should be done to achieve freedom and dignity for all. A human rights-based approach emphasizes how human rights are achieved.

The human rights-based approach (HRBA) is a conceptual framework based on international human rights standards and directed towards promoting and protecting human rights. HRBA seeks to analyse the inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress. HRBA is concerned with empowering people to know and claim their rights and increasing the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights.

The HRBA approach aims to eliminate or at least diminish the impediments of existing exclusion and discrimination within the implementation of any programme or project. HRBA gives equal attention to both achieving development goals and to the processes that are chosen to achieve these goals. So, within HRBA, the processes that enable the participation and inclusion of all stakeholders are important.<sup>3</sup>

It is widely recognized that promoting and protecting human rights is crucial for achieving peace, sustainable human development, democracy and security, and that these aspirations and common goals are inseparably linked and interdependent. An approach based on human rights is more and more regarded as an essential tool for achieving sustainable development outcomes.

The many benefits of the *HRBA* can be summed up as follows:

- Promotes realization of human rights and helps government

3 <http://www.fao.org/3/a-i6808e.pdf>

- partners achieve their human rights commitments;
- increases and strengthens the participation of the local community;
  - improves transparency;
  - promotes results and aligns with results based management, which is used to ensure and measure aid effectiveness;
  - increases accountability;
  - reduces vulnerabilities by focusing on the most marginalized and excluded in society;
  - more likely to lead to sustained change as human rights-based programmes have been designed to have impact on cultural and social norms and values, structures, policy, and practice.<sup>4</sup>

In 2015, the world came together around an ambitious vision for a safer, healthier, and more prosperous world by 2030. That agenda, articulated across 17 Sustainable Development Goals (SDGs), was designed intentionally to represent a new approach to development – threading together economic, social, and environmental dimensions, while acknowledging that decisions and approaches are related and have both synergies and trade-offs with a commitment that no one will be left behind. The United Nations General Assembly passed the resolution, “Transforming our world: the 2030 Agenda for Sustainable Development.” There are 17 Sustainable Development Goals (SDGs) that are geared towards improving the world and the lives of its inhabitants, which can be categorised into the “five Ps”; people, planet, prosperity, peace and partnership. The 5 Ps highlight how the SDGs are an interlinked framework instead of a group of siloed goals. Progress on one ‘P’ must balance and support progress on another.

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4 Introduction to the Human Rights Based Approach, A Guide for Finish NGOs and their partners, UNICEF, 2015

## **People**

The SDGs on ending poverty, hunger, allowing for individuals to have good health and well-being, the provision of quality education, access to clean water and sanitation and striving for gender equality can all be included in the broad ambit of ‘people’. Improving the lives of people, as a collective and on an individual level, is one of the central focuses of the UN in the next ten years. It is hoped that by 2030, all member states will have made significant changes to provide people with these basic necessities. Beyond ending poverty and hunger, ensuring dignity and equality must also take precedence moving forward.

## **Planet**

Protecting the planet, “so it can support the needs of the present and future generations” is a fundamental priority of the UN, and by extension, its 193 member states in the next decade. This relates to both the preservation of resources for the use of future generation and working hard to prevent the disastrous effects of climate change becoming permanent. There is no doubt that the world is facing a climate emergency, and the SDGs to work on producing clean and affordable energy, protecting life on both land and in the sea, taking demonstrable actions to prevent the climate change and produce and consume as responsibly as possible would help in preserving the planet, if all member states adhere to these guidelines.

## **Prosperity**

“Ensuring prosperous and fulfilling lives in harmony with nature” perfectly embodies the kind of prosperity the world must look to strive for in the next ten years. A conscientious attempt to reduce inequality, improve employment opportunities and achieve economic growth, break new ground in industry, innovation and infrastructure and move towards making our cities and communities more sustainable is what is needed to improve the lives of everyone

around the world. The biggest challenge is working towards shared prosperity, which will be difficult to achieve if we cannot set aside personal differences.

## **Peace**

The world is still a long way away from becoming peaceful, but only through consciously working towards this goal can we making any progress in preventing violence and making communities more secure from top to bottom. This not only relates to wars and conflicts around the world, but issues on the micro-level as well. Each individual must be made to feel truly safe and be protected under the laws of the state they live in. Improper access to justice remains a potent issue across the world, and this is something states must work to counter in the coming decade.

## **Partnership**

Above all, it is important to recognise that none of these goals are achievable without working together. The international community must “implement the agenda through a solid global partnership”. These issues are faced by communities the world over, and none of them can be solved by one state alone. Many states including some in our immediate vicinity would rather look to divide in order to establish themselves as superior, but we must collectively call out such actions for what they are and look to usher in an era of unity and global community-building.<sup>5</sup>

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<sup>5</sup> <https://nation.com.pk/16-Feb-2020/the-2030-agenda-for-sustainable-development-and-the-five-ps>

## The 5 P's of sustainable development



Figure 1: the 5 Ps of Sustainable Development Goals<sup>6</sup>

### Rights vs. Needs

Before 1997, most UN development agencies pursued a 'basic needs' approach: They identified basic requirements of beneficiaries and either supported initiatives to improve service delivery or advocated for their fulfilment.

The government and other agencies now work to fulfil the rights

6 [https://www.google.com/search?q=sdgs+and+5+ps&rlz=1C1GCEA\\_enNP912NP912&tbm=isch&source=iu&ictx=1&fir=GaHPX5Q3sYXyTM%252CAGIqjx-OYGFWYM%252C\\_&vet=1&usg=A14\\_-kT6cK12uJ8a6\\_0QELV-lqdUPJrPdG&sa=X&ved=2ahUKEwiQvNiCrbDrAhXMyTgGHbtMBIwQ9QEwDHoECAoQFw&biw=1536&bih=754#imgrc=ZxBiE7Mu0ARnKM](https://www.google.com/search?q=sdgs+and+5+ps&rlz=1C1GCEA_enNP912NP912&tbm=isch&source=iu&ictx=1&fir=GaHPX5Q3sYXyTM%252CAGIqjx-OYGFWYM%252C_&vet=1&usg=A14_-kT6cK12uJ8a6_0QELV-lqdUPJrPdG&sa=X&ved=2ahUKEwiQvNiCrbDrAhXMyTgGHbtMBIwQ9QEwDHoECAoQFw&biw=1536&bih=754#imgrc=ZxBiE7Mu0ARnKM)

of people, rather than the needs of beneficiaries. It’s an important distinction, because an unfulfilled need leads to dissatisfaction, while a right that is not respected leads to a violation. Redress or reparation can be legally and legitimately claimed.

A human rights-based approach also seeks to reinforce the capacities of duty bearers (usually governments) to respect, protect and guarantee these rights. It aims to address development complexities holistically, taking into consideration the connections between individuals and the systems of power or influence. And it endeavours to create dynamics of accountability.

**Non HRBA Approaches and Human Rights-based Approaches<sup>7</sup>**

Non HRBA Approaches	Human Rights-based Approaches
Action is voluntary or optional.	Action is mandatory.
People have needs which should be met, and these needs can be prioritised.	People have legally established claims and entitlements.
Poor people deserve help as the object of charity.	Poor people are entitled to help as the subject of rights.
Some people may have to be left out (i.e. a target can be less than 100%).	All people have the same right to fulfil their potential and should be assisted to do so (i.e. the target is 100%).

<sup>7</sup> Child Rights Programming, How to Apply Rights-Based Approaches to Programming, A Handbook for International Save the Children Alliance Members, Sweden

People affected by development work are passive beneficiaries; they can be invited to participate in order to improve the effectiveness of programmes or projects.	People affected by development work are active participants by right.
Some needs may not be recognised in some cultures.	Rights are universal and inalienable, they cannot be diluted or taken away.
Power structures are too difficult to change and pragmatic ways need to be found to work within them.	Power structures that block progress in realising human rights must be effectively changed.
Development is a technocratic process and should be led by technical 'experts' who know best.	Development actors must empower rights holders to claim their rights and be involved in public decision-making.
There is a 'hierarchy' of needs and some needs are nearly always more important than others.	Rights are indivisible and interdependent, though in any situation some practical prioritisation may be required.
Rights are not discussed openly and directly.	Participants gain awareness of rights and how to demand their fulfilment, as well as, how to fulfill the obligations and duties towards rights holders.
Focus is on needs.	Focus is on violated, and unfulfilled rights.
Results are often seen more important than process.	Process is as important as result.

## Elements of Good Practices Under a Human Rights-based Approach<sup>8</sup>

- Programmes identify the realization of human rights as ultimate goals of development
- People are recognized as key actors in their own development, rather than passive recipients of commodities and services.
- Participation is both a means and a goal.
- Strategies are empowering, not disempowering.
- Both outcomes and processes are monitored and evaluated.
- Programmes focus on disadvantaged, marginalized and excluded groups.
- The development process is locally owned.
- Programmes aim to reduce disparities and empower those left behind.
- Situation analysis is used to identify immediate, underlying and root causes of development problems.
- Analysis includes all stakeholders, including the capacities of the state as the main duty-bearer and the role of other non-state actors.
- Human Rights standards guide the formulation of measurable goals, targets and indicators in programming.
- National accountability systems need to be strengthened with a view to ensure independent review of government performance and access to remedies for aggrieved individuals.
- Strategic partnerships are developed and sustained.
- Both top-down and bottom-up approaches are used in synergy.
- Situation analysis is used to identify immediate, underlying, and basic causes of development problems.
- Measurable goals and targets are important in programming.
- Programmes support accountability to all stakeholders.

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8 The Human Rights-based Approach to Development Cooperation as cited by <https://www.unfpa.org/human-rights-based-approach>.

## **Leave no one behind (LNOB) and Human Rights<sup>9</sup>**

**Leave no one behind (LNOB)** is the central, transformative promise of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs). It represents the unequivocal commitment of all UN Member States to eradicate poverty in all its forms, end discrimination and exclusion, and reduce the inequalities and vulnerabilities that leave people behind and undermine the potential of individuals and of humanity as a whole.

LNOB not only entails reaching the poorest of the poor, but requires combating discrimination and rising inequalities within and amongst countries, and their root causes. A major cause of people being left behind is persistent forms of discrimination, including gender discrimination, which leaves individuals, families and whole communities marginalized, and excluded. It is grounded in the UN's normative standards that are foundational principles of the Charter of the United Nations, international human rights law and national legal systems across the world.

LNOB compels us to focus on discrimination and inequalities (often multiple and intersecting) that undermine the agency of people as holders of rights. Many of the barriers people face in accessing services, resources and equal opportunities are not simply accidents of fate or a lack of availability of resources, but rather the result of discriminatory laws, policies and social practices that leave particular groups of people further and further behind.

The UN approach to leaving no one behind is set out in the Shared Framework on Leaving No One Behind: Equality and Non-Discrimination at the Heart of Sustainable Development, endorsed by the Chief Executives Board in November 2016. This includes a shared framework for action to ensure the UN System puts the imperative to combat inequalities and discrimination at the forefront of United Nations efforts to support implementation of the 2030 Agenda for Sustainable Development.

<sup>9</sup> <https://unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind>

Operationalizing the commitment to LNOB at the country level requires a comprehensive approach with a series of steps, including identifying who is being left behind and why; identifying effective measures to address root causes; monitoring and measuring progress; and ensuring accountability for LNOB. Ensuring free, active and meaningful participation of all stakeholders, particularly those left behind is a key component of all steps and phases of policy, planning and programming for LNOB. The UNSDG Operational Guide for UNCTs on Leaving No One Behind provides a framework for:

- Operationalizing the LNOB pledge to leave no one behind using a step-by-step approach.
- Adapting and employing relevant tools from across the UN System to assess who is left behind and why; sequencing & prioritizing solutions; tracking and monitoring progress; and ensuring follow-up and review.
- Integrating this methodology into UN programming and policy support for Member States.

Identifying inequalities and discrimination requires the generation of evidence and data collection and disaggregation that go beyond gender, geography and age, to include all grounds of discrimination prohibited under international law, ensuring that all forms of discrimination and other root causes of inequalities are identified and addressed. The human rights-based approach to data helps in ensuring the use of data and statistics is consistent with international human rights norms and principles, including for participation, self-identification, transparency, privacy and accountability.

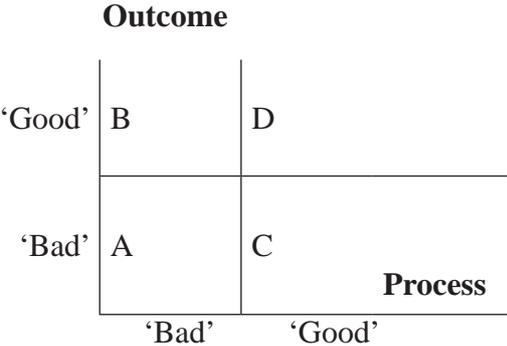
LNOB is one of the six Guiding Principles of the United Nations Sustainable Development Cooperation Framework. The Companion Piece on the Guiding Principles provides guidance to United Nations country teams on application of the LNOB in the context of the Cooperation Framework.

# What is a Human Rights Based Approach to Development and to Development Programming (HRBAP)?

## Development

Development requires the satisfaction of at least two conditions: the achievement of a desirable outcome and the establishment of an adequate process to achieve and sustain that outcome. Most of the health, education, and nutrition etc. goals reflected in the MDGs, for example, represent specific, desirable outcomes. Effective human development also demands a high-quality process to achieve such outcomes. Participation, local ownership, empowerment, and sustainability are essential characteristics of a high-quality process in achieving human development goals.

Level of outcome and quality of process define a two-dimensional space for social action, as illustrated:



## Pattern of Rights

Children, for example, have a valid claim (right) against their parents to be provided with adequate food. The parents are therefore the first line duty-bearers. Often, however, the parents cannot meet their

duties because they do not have access to cultivable land, salaries or other resources required for providing food for their children. In other words they cannot meet the duty to their children because as claim-holders some of the rights they have against, for example, the government have not been realized. This shows how the government (the state) becomes the ultimate or final duty-bearer. This is important because it is the state that has ratified the covenants and conventions and is legally bound to meet the obligations.

In this perspective claim-duty relationships in society are linked and form a pattern of human rights. The identification and analysis of such patterns form the core of a Human Rights-Based Approach to Programming. The identification of duty-bearers and a determination of the extent of their accountability are crucial to a human rights-based approach to programming.

## **HRBAP Methodology**

The UN Common Understanding<sup>10</sup> states that, “In a Human Rights-Based Approach human rights determine the relationship between individuals and groups with valid claims (right-holders) and State and non-state actors with correlative obligations (duty-bearers). It identifies *right-holders* (and their entitlements) and corresponding *duty-bearers* (and their obligations) and works towards strengthening the capacities of right-holders to make their claims, and of duty-bearers to meet their obligations.”

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10 The UN Agreed on a Common Understanding on Rights-Based Approaches at Stamford in 2003, with its main aim to further the realization of human rights using standards and principles set out in Universal Declaration on Human Rights, in order to specifically contribute to the development of the capacities of claim-holders and duty-bearers. For further information *see*, The Human Rights-Based Approach to Development Cooperation, Towards a Common Understanding Among UN Agencies.

The HRBAP methodology consists of 5 consecutive steps:

### **Step 1: Causality Analysis**

Once a consensus has been reached that a particular problem exists and needs to be addressed, the causes of the problem should be identified. The Causality Analysis should be undertaken by those actors who are likely to enter into the roles of claim-holding and duty-bearing in the required improvement process.

The result of the Causality Analysis will be the identification of the causes of the non-realization a specific human right a specific context, together with a list of candidate claim-holders and duty-bearers.

### **Step 2: Pattern Analysis**

The next step is to identify the most important claim-holder/duty-bearer relationships in the particular community or society that has been chosen. This analysis is called Role or Pattern Analysis. First, key actors, i.e. those who are likely to enter the roles of claim-holders and duty-bearers in relation to a specific right, should be identified. This will come from the Causality Analysis. It is important to realize that the same individual or group of individuals often may enter into the roles of both claim-holders and duty-bearers. The Pattern Analysis should be undertaken by representatives of the key claim-holders and duty-bearers. Further, each claim/duty (i.e. human right) relationship must be recognized as a right in a covenant or convention, ratified by the country.

### **Step 3: Capacity Gap Analysis**

After the key claim-duty relationships for a specific right have been identified, the next step is to analyse why the right is not realized. A basic assumption underlying the approach proposed here is that rights are not realized because claim-holders lack the capacity to

claim the right, and/or duty-bearers lack the capacity to meet their duties. The analysis of capacity gaps is called Capacity Gap Analysis.

Capacity is here defined in a broader sense, including the following five components: **(1) *Responsibility/motivation/commitment/leadership*** refers to the acknowledgement by an individual that he/she *should* do something about a specific problem. It means acceptance and internalisation of a duty, and is often justified in legal or moral terms, **(2) *Authority*** refers to the legitimacy of an action; when an individual or group feels or knows that they *may* take action, that it is permissible to take action. Laws, formal and informal norms and rules, tradition, and culture largely determine what is or is not permissible. The structure of authority in a society reflects its power relations, **(3) *Access and Control of Resources***. If an individual accepts that he/she *should* do something and *may* do it, it may still be impossible to act because the person lacks resources. Capacity must therefore also mean that the person in a position to act, or *can*, act. The resources available to individuals, households, organisations, and society as a whole may generally be classified into the following three types, human resources, economic resources and organisational resources, **(4) *Capability for Rational Decision-making and Learning***. Rational decision-making requires evidence-based assessment and a logical analysis of the causes of a problem. Actions should be based on decisions informed by the analysis. After action has been taken, a re-assessment of the result and impact will lead to improved analysis and better action in the next round. Such interactive learning-by-doing (Triple A) relies heavily on the capability to communicate, and **(5) *Communication Capability***. The capability to communicate and to access information and communication systems is crucial for individuals and groups of individuals in their efforts to claim their rights or meet their duties. Communication is also important in “connecting” various key actors in the social fabric into functional networks able to address critical development issues.

#### **Step 4: Identification of Candidate Actions**

*Candidate actions* are those actions that are likely to contribute to reduce or close the capacity gaps of claim-holders and duty-bearers. Such actions should aim at increasing responsibility, authority, resources, and decision-making and communication capabilities of claim-holders and duty-bearers.

#### **Step 5: Programme Design**

The priority actions should be clustered into specific projects and an objective be defined. Projects should be clustered into programmes with clear objectives. This is the reverse of most current programming practices, which disaggregate programmes into projects, and projects into activities. Activities can be clustered, or aggregated, according to the level of society in which claim-holders and duty-bearers operate. At each level some activities will aim at developing capacities of individuals as claim-holders, while others will aim at developing capacities of individuals as duty-bearers. Some activities will do both—sometimes even in relation to more than one right.

# SDGs and Human Rights-based Approach (HRBA)

## HRBA and Poverty Reduction<sup>11</sup>

*(Goal 1: End poverty in all its forms everywhere, and Goal 2: End Hunger, achieve food security and improved nutrition and promote sustainable agriculture)*

An HRBA ensures that poverty is understood and measured as a multidimensional phenomenon, combining lack of income (monetary poverty) and lack of access to the goods or services essential to the enjoyment of human rights (like adequate housing, education, healthcare, food, decent work and social security). While different international and regional frameworks and mechanisms recognise poverty in this way, many poverty reduction and measurement approaches in Europe continue to view poverty in narrow, monetary terms.

At the international level, the UN Committee on Economic, Social and Cultural Rights acknowledges the multidimensional nature of poverty, defining it as: ‘a human condition characterised by sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of

<sup>11</sup> <http://ennhri.org/wp-content/uploads/2019/11/Applying-a-Human-Rights-Based-Approach-to-Poverty-Reduction-and-Measurement-A-Guide-for-NHRIs.pdf>

living and other civil, cultural, economic, political and social rights’.

Similarly, the 2030 Agenda recognises that poverty reduction strategies shall not only focus on reducing monetary poverty, but that they must go hand-in hand with strategies to build economic growth and address a range of social needs, such as education, health, social protection and job opportunities, while tackling climate change and providing environmental protection.

## **HRBA in Poverty Reduction**

1. The human rights approach underlines the multidimensional nature of poverty, describing poverty in terms of a range of interrelated and mutually reinforcing deprivations, and drawing attention to the stigma, discrimination, insecurity and social exclusion associated with poverty. The deprivation and indignity of poverty stem from various sources, such as the lack of an adequate standard of living, including food, clothing and housing, and the fact that poor people tend to be marginalized and socially excluded. The commitment to ensure respect for human rights will act as a force against all these forms of deprivation.
2. The essential idea underlying the adoption of a human rights approach to poverty reduction is that policies and institutions for poverty reduction should be based explicitly on the norms and values set out in international human rights law. Whether explicit or implicit, norms and values shape policies and institutions. The human rights approach offers an explicit normative framework—that of international human rights. Underpinned by universally recognized moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation of national and international policies, including poverty reduction strategies.

3. The application of human rights to poverty reduction reinforces some of the existing features of anti-poverty strategies. For example, anti-poverty strategies that demand transparent budgetary and other governmental processes are congruent with the right to information, while the insistence that strategies are “country-owned” corresponds to the right of peoples to self-determination. The value added by the human rights approach to poverty reduction consists both in the manner in which it departs from existing strategies and in the manner in which it reinforces them.
4. One reason why the human rights framework is compelling in the context of poverty reduction is that it has the potential to empower the poor. As is now widely recognized, effective poverty reduction is not possible without the *empowerment* of the poor. The human rights approach to poverty reduction is essentially about such empowerment.
5. The most fundamental way in which empowerment occurs is through the introduction of the concept of rights itself. Once this concept is introduced into the context of policymaking, the rationale of poverty reduction no longer derives merely from the fact that the people living in poverty have needs but also from the fact that they have rights—entitlements that give rise to legal obligations on the part of others. Thus, the human rights perspective adds legitimacy to the demand for making poverty reduction the primary goal of policymaking. The human rights perspective draws attention to the fact that poverty signifies the non-realization of human rights, so that the adoption of a poverty reduction strategy is not just desirable but obligatory for States which have ratified international human rights instruments.
6. Most of the salient features of the human rights normative framework can contribute to the empowerment of the poor in

one way or another. These features include the principles of universality, non-discrimination and equality, the principle of participatory decision-making, the notion of accountability, and the recognition of the interdependence of rights.

7. The twin principles of *equality and non-discrimination* are among the most fundamental elements of international human rights law. Recognition of these principles helps to highlight the fact that a great deal of poverty originates from discriminatory practices—both overt and covert.

This recognition calls for the reorientation of poverty reduction strategies from a tendency to focus on narrow economic issues towards a broader strategy that also addresses the socio-cultural and political-legal institutions which sustain the structures of discrimination. Thus, the human rights approach to poverty reduction requires that the laws and institutions which foster discrimination against specific individuals and groups be eliminated and that more resources be devoted to the areas of activity with the greatest potential to benefit the poor.

8. While the human rights approach imposes an obligation on duty-bearers to work towards poverty reduction, it recognizes that, due to resource constraints, some human rights may have to be realized over a period of time. Making trade-offs among alternative goals in the light of social priorities and resource constraints are an integral part of any approach to policymaking. The human rights approach, however, imposes certain conditions on the act of prioritization which protect the poor against certain trade-offs that may be harmful to them. In particular, it cautions against any trade-off that leads to the retrogression of a human right from its existing level of realization and rules out the non-achievement of certain minimum levels of realization.

9. Unlike earlier approaches to poverty reduction, the human

rights approach attaches as much importance to the processes which enable developmental goals to be achieved as to the goals themselves. In particular, it emphasizes the importance of ensuring the active and informed *participation* by the poor in the formulation, implementation and monitoring of poverty reduction strategies. It draws attention to the fact that participation is valuable not just as a means to other ends, but also as a fundamental human right that should be realized for its own sake. Effective participation by the poor requires specific mechanisms and arrangements at different levels of decision-making in order to overcome the impediments that people living in poverty, and marginalized groups in general, face in their efforts to play an effective part in the life of the community.

10. The human rights approach to poverty reduction emphasizes the *accountability* of policymakers and others whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability. It is therefore, an intrinsic feature of the human rights approach that institutions and legal/administrative arrangements for ensuring accountability are built into any poverty reduction strategy. While, duty-bearers must determine for themselves which mechanisms of accountability are most appropriate in their particular case, all mechanisms must be accessible, transparent and effective.
11. In many countries, poverty reduction strategies are bedevilled by corruption. However, corruption is unlikely to flourish where there is access to information, freedom of expression, participation and accountability-all key human rights features. Therefore, a human rights approach has the power to protect a poverty reduction strategy from being undermined by the corroding effects of corruption.
12. Yet another feature of the human rights approach is that

poverty reduction becomes a shared responsibility. While a State is primarily responsible for realizing the human rights of the people living within its jurisdiction, other States and non-State actors also have a responsibility to contribute to, or at the very least not to violate, human rights.

13. The international human rights framework also broadens the scope of poverty reduction strategies by recognizing the *interdependence of rights*. Although poverty may seem to concern mainly economic, social and cultural rights, the human rights framework highlights the fact that the enjoyment of these rights may be crucially dependent on the enjoyment of civil and political rights.
14. The human rights approach thus dispels the misconception that civil and political rights and freedoms are luxuries relevant only to relatively affluent societies, and that economic, social and cultural rights are merely aspirations and not binding obligations. Accordingly, it demands that civil and political as well as economic, social and cultural rights are integral components of poverty reduction strategies.
15. In sum up, the human rights approach has the potential to advance the goal of poverty reduction in a variety of ways: (a) by urging the speedy adoption of a poverty reduction strategy, underpinned by human rights; (b) by broadening the scope of poverty reduction strategies so as to address the structures of discrimination that generate and sustain poverty; (c) by urging the expansion of civil and political rights, which can play a crucial instrumental role in advancing the cause of poverty reduction; (d) by confirming that economic, social and cultural rights are binding international human rights, not just programmatic aspirations; (e) by cautioning against retrogression and nonfulfillment of minimum core obligations in the name of making trade-offs; (f) by adding legitimacy to the

demand for meaningful participation of the poor in decision-making; and (g) by creating and strengthening the institutions through which policymakers can be held accountable for their actions.

The following rights should also be considered for poverty reduction:

- Right to work
- Equal pay for equal work
- End of forced labour
- Right to freedom
- Right to adequate food
- Right to adequate housing
- Right to health
- Right to education
- Right to personal security and privacy
- Right of equal access to justice
- Political rights and freedoms<sup>12</sup>

#### **Box 1**

**For poverty reduction the ESCR Committee in 2014 stressed Nepal the need to take account of the following initiatives to poverty reduction:**

**The Committee recommends that the State party:**

- **Adopt a human rights-based approach to poverty eradication;**
- **Strengthen its efforts to reduce poverty, in particular among the most marginalized and disadvantaged groups, such as Hill and Terai Dalits, as well as women in rural and remote areas and indigenous peoples, including by expanding its programmes under the Poverty Alleviation Fund;**
- **Facilitate access to, and ownership of, land for those groups and access to income-generating activities.**

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12 Office of the United Nations High Commissioner for Human Rights, Principles and guidelines for a Human Rights Approach to Poverty Reduction Strategies

## **Causality Analysis in Poverty Reduction**

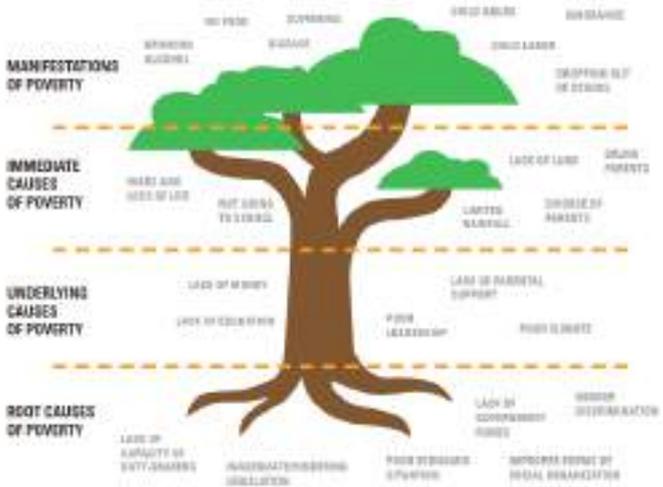
Once a consensus has been reached that a particular problem exists and requires addressing, the causes of the problem need to be identified. The causality analysis should be carried out by those actors who are likely to enter into the roles of rights-holders and duty-bearers in the required improvement process. Hence, the result of the causality analysis will be the identification of multiple causes of unfulfillment of a specific human right in a particular context, together with a list of candidate rights-holders and duty-bearers.

Causality analysis is used to specify the major consequences of the problem and identify the key immediate, underlying and basic/structural causes. In causality analysis, it is assumed that there is an awareness of the problem being analyzed among the people whose rights are affected. If this awareness is missing, as may be the case, the people involved must be sensitized to the issue before further steps are taken.

Causality analysis should start from the main manifestation of the problem and continue down the hierarchy of its causes. Hence, causality analysis is carried out in the following order:

- 1) the analysis starts by first looking at the inter-dependence between the severity of the problem and the immediate causes;
- 2) the second step of the analysis concentrates on the relationships between immediate causes that are most relevant to the problem and its underlying causes;
- 3) as the third step, the relationships between the identified key underlying causes and the basic, structural, or “root” causes are analyzed.

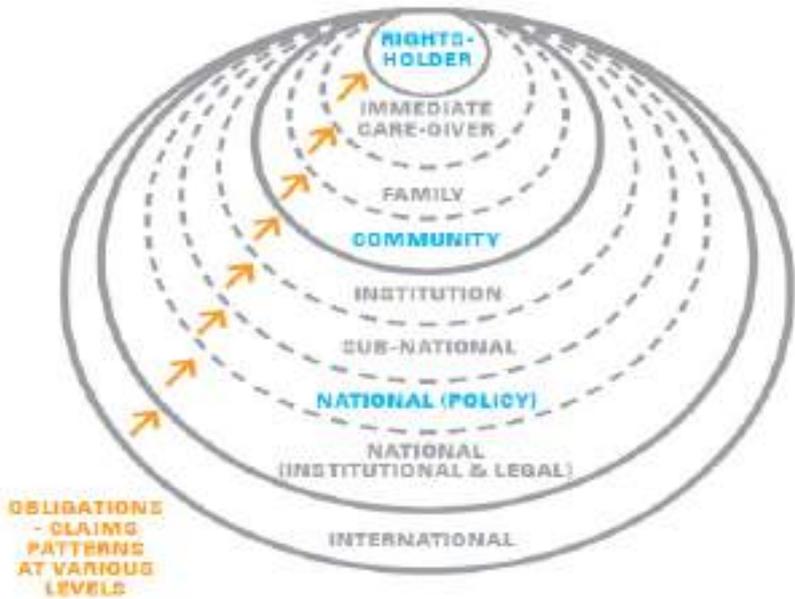
Results of the causality analysis are often visualized in a form of a 'problem tree'.



**Figure 2:** An Example of Poverty Causality Analysis from the Perspective of Out of School Boys Aged 11-14 in Rural Uganda.

**Capacity Gap Analysis**

The purpose of the capacity gap analysis is to identify obstacles that the rights-holders have in claiming their rights as well as the duty-bearers’ capacity gaps in meeting their obligations. Ideally, this list should be made by different categories of capacity, such as responsibility, authority, resources. The result of the analysis is a list of capacity gaps of both the rights-holders and the duty-bearers with regards to the cause and the rights related to the issue. Individuals in their duty-bearing role should be held accountable to the rights-holders. However, they may only be held accountable if they have the capacity to carry out their role. Capacity defined in a broad sense includes five components as follows:



**Figure 3: Capacity Gap Analysis between and among the rights holders and duty bearers**

**Responsibility/motivation/commitment/ leadership** is related to the acknowledgement of an individual that s/he should do something about a specific problem. This refers to the acceptance and internalization of a duty and is often justified in legal or moral terms.

**Authority** is related to the legitimacy of an action; when an individual or group feels and/ or knows that they may take action or that it is permissible to take action. Laws, formal and informal norms and rules, tradition, and culture largely determine what is or is not permissible in a given society. The power relations reflect the structure of authority in a society.

**Access and Control of Resources** If an individual accepts that s/he should do something and is capable of acting, it may still be impossible to act because the person lacks resources. Capacity must therefore also mean that the person is in a position to act or has the power to act. The resources available to individuals, households, organizations, and society as a whole may generally be classified into the following three types: human resources, economic resources and organizational resources.

**Capability for Rational Decision Making and Learning**

Rational decision making requires evidence-based assessment and a logical analysis of the causes of a problem. Actions should be based on decisions informed by the analysis. After action has been taken, a reassessment of the result and impact will lead to improved analysis and better action in the next round. Such interactive learning-by-doing relies heavily on the capability to communicate.

**Communication Capability** The capability to communicate and to access information and communication systems is crucial for individuals and groups of individuals in their efforts to claim their rights or meet their duties. Communication is also important in “connecting” various key actors in the social fabric to functional networks able to address critical development issues.

These five dimensions of capacity should be taken into account in the capacity gap analysis as they provide understanding why duty-bearers are often unable to meet their obligations. The relationships between rights-holders and duty-bearers form a pattern that links individuals and communities to each other, and, further on, to the higher decision-maker levels of the society. In this perspective, right-duty relationships.

## Adopting HRBA to Food

### *(Goal 2: End hunger, achieve food security and improved nutrition and promote sustainable agriculture)*

According to Article 11.1 of the ICESCR, “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

Further, Article 11.2 lays down, “The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

- a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;
- b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

The Committee on Economic, Social and Cultural Rights (CESCR) has clarified the normative elements of the right to adequate food and the corresponding state obligations.

To comply with obligations related to the right to adequate food, states must immediately tackle hunger and progressively ensure that “every man, woman and child, alone or in community with others,

has physical and economic access at all times to adequate food or means for its procurement”.

The Committee considers that the core content of the right to adequate food implies:

- o The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;
- o The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

**Dietary needs** imply that the diet as a whole contains a mix of nutrients for physical and mental growth, development and maintenance, and physical activity that are in compliance with human physiological needs at all stages throughout the life cycle and according to gender and occupation. Measures may therefore need to be taken to maintain, adapt or strengthen dietary diversity and appropriate consumption and feeding patterns, including breastfeeding, while ensuring that changes in availability and access to food supply as a minimum do not negatively affect dietary composition and intake.

**Free from adverse substances** sets requirements for food safety and for a range of protective measures by both public and private means to prevent contamination of foodstuffs through adulteration and/or through bad environmental hygiene or inappropriate handling at different stages throughout the food chain; care must also be taken to identify and avoid or destroy naturally occurring toxins.

**Cultural or consumer acceptability** implies the need also to take into account, as far as possible, perceived non-nutrient-based values attached to food and food consumption and informed consumer concerns regarding the nature of accessible food supplies.

**Availability:** possibilities either for feeding oneself directly from productive land or other natural resources, or from well-functioning

distribution, processing and market systems. This includes obligations of the state when acting internationally to ensure respect for the right to food in other countries, to protect that right, to facilitate access to food, and to provide the necessary aid when required.

Accessibility encompasses both economic and physical accessibility:

**Economic accessibility** implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at a level such that the attainment and satisfaction of other basic needs are not threatened or compromised. Economic accessibility applies to any acquisition pattern or entitlement through which people procure their food and is a measure of the extent to which it is satisfactory for the enjoyment of the right to adequate food. Socially vulnerable groups such as landless persons and other particularly impoverished segments of the population may need attention through special programmes.

**Physical accessibility** implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and Acceptability: “The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill. Victims of natural disasters, people living in disaster-prone areas and other specially disadvantaged groups may need special attention and sometimes priority consideration with respect to accessibility of food. A particular vulnerability is that of many indigenous population groups whose access to their ancestral lands may be threatened.

As emphasized by the CESCR, some core minimum elements (for example, freedom from hunger, guarantee of non-discrimination, access to safe drinking water) of the right must be regarded as seeking immediate effect. Even where the available resources are demonstrably inadequate, the obligation remains for a state party to

strive to ensure the widest possible enjoyment of the core minimum elements of the right.

The right to adequate food is also a part of other binding treaties ratified by Nepal. The right to life guaranteed under Article 6 of the International Covenant on Civil and Political Rights (ICCPR) has been interpreted by the UN Human Rights Committee as requiring the state parties to take positive steps “to reduce infant mortality and to increase life expectancy especially by adopting measures to eliminate malnutrition and epidemics”.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) establishes the right of women to adequate nutrition during pregnancy and lactation and the right of rural women to have “access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes”.

The Convention on Rights of the Child (CRC) recognizes the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development and obligates the state party to combat disease and malnutrition including through “the provision of adequate nutritious foods and clean drinking-water”.

Similarly, International Labour Organization (ILO) Convention No. 169 contains a number of provisions supportive for ensuring that Indigenous peoples fully enjoy their right to food. Relevant articles include: Article 2 (full realization of social and economic rights of Indigenous and tribal peoples with respect to their social and cultural identity, their customs and traditions, and their institutions), Articles 2 and 6 (participation and consultation), Article 7 (right to determine priorities and exercise control over economic, social and cultural development), Article 15 (right to control of resources), Articles 13 to 17 (protection of Indigenous peoples’ right to land) and Article 24 (social security). The right to food is also protected

under international humanitarian law.<sup>13</sup>

## **Adopting HRBA to Education**

***(Goal 4: Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all)***

Right to education can play a key role on a number of issues. First, as stated by the UN Committee on Economic, Social and Cultural Rights, education is both a human right in itself and an indispensable means of realizing other human rights. Education is a primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities (ESCR Committee 1999). Consequently, it becomes critical for migrants and their families' integration to destination countries, as well as for realizing some of their envisaged purposes before migrating.

In addition, ensuring education to all children, regardless of their nationality, ethnic origin and migration or residence status, among other social conditions, is an essential step for promoting human development, sustainable livelihoods, and equitable growth. The ESCR Committee recalled also that this right must be fulfilled in line with the non-discrimination principle: "article 2 of the Convention on the Rights of the Child and Article 3 (e) of the UNESCO Convention against Discrimination in Education confirms that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status" (ESCR Committee 1999:34).

As such, needs-based development approaches to education have, to date, failed to achieve the Education for All goals because it

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13 The Right to Food in Nepal, An analysis of the Right to Food and Food Sovereignty Act, 2018, Amnesty International 2019 and CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)

is inclusive and provides a common language for partnership, a rights-based approach – although certainly not without tensions and challenges – has the potential to contribute to the attainment of the goals of governments, parents and children. Girls’ right to education, for example, can be achieved more effectively if measures are also implemented to address their rights to freedom from discrimination, protection from exploitative labour, physical violence and sexual abuse, and access to an adequate standard of living. Equally, the right to education is instrumental in the realization of other rights. Research indicates, for instance, that one additional year of schooling for 1,000 women help prevent two maternal deaths.

The right to education, according to the Convention on Economic, Social and Cultural Rights, as well as the standards developed by the ESCR Committee general comment no. 13, encompasses the following interrelated and essential features:

- a) **Availability.** Functioning educational institutions and programmes have to be available in sufficient quantity within the jurisdiction of the State party. What they require to function depends upon numerous factors, including the developmental context within which they operate; for example, all institutions and programmes are likely to require buildings or other protection from the elements, sanitation facilities for both sexes, safe drinking water, trained teachers receiving domestically competitive salaries, teaching materials, and so on; while some will also require facilities such as a library, computer facilities and information technology.
- b) **Accessibility.** Educational institutions and programmes have to be accessible to everyone, without discrimination, within the jurisdiction of the State party. Accessibility has three overlapping dimensions:
  - **Non-discrimination** - education must be accessible to all, especially the most vulnerable groups, in law and fact,

without discrimination on any of the prohibited grounds;

- Physical accessibility - education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a “distance learning” programme);
  - Economic accessibility - education has to be affordable to all. This dimension of accessibility is subject to the differential wording of article 13 (2) in relation to primary, secondary and higher education: whereas primary education shall be available “free to all”, States parties are required to progressively introduce free secondary and higher education;
- c) Acceptability - the form and substance of education, including curricula and teaching methods, have to be acceptable (e.g. relevant, culturally appropriate and of good quality) to students and, in appropriate cases, parents; this is subject to the educational objectives required by article 13 (1) and such minimum educational standards as may be approved by the State;
- d) Adaptability - education has to be flexible so it can adapt to the needs of changing societies and communities and respond to the needs of students within their diverse social and cultural settings. (source: CESCR General Comment No. 13: The Right to Education (Art. 13), OHCHR).

In addition, specific components of the right to education (though not exhaustive) include:

- The right to primary education
- The right to secondary education
- Technical and vocational education

- The right to higher education
- The right to fundamental education
- The right to educational freedom, and
- A school system; adequate fellowship system; material conditions of teaching staff.

These attributes of the right to education must be respected, protected, and fulfilled for all individuals. Indicators directed at measuring the level of compliance with such obligations must include all of these elements. Nonetheless, a limited set of indicators are proposed in this paper to better assess several social aspects of migration, particularly the level of enjoyment of key social rights, such as the right to education. Therefore, according to the circumstances briefly described below, a number of indicators are suggested.<sup>14</sup>

## **1. The Right to Access to Education**

### **Obligations to ensure the right of access to education**

- Provide free and compulsory basic education.
- Develop forms of secondary education that are available and accessible to everyone, and introduce measures to provide free education and financial assistance in cases of need.
- Provide higher education that is accessible on the basis of capacity by every appropriate means.
- Provide accessible educational and vocational information and guidance.
- Introduce measures to encourage regular attendance and reduce drop-out rates.
- Provide education on the basis of equal opportunity.
- Ensure respect for the right to education without discrimination of any kind on any grounds.

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<sup>14</sup> Human Rights Indicators for Migrants and their Families, KNOMAD Working paper 5: April, 2015

- Ensure an inclusive education system at all levels.
- Provide reasonable accommodation and support measures to ensure that children with disabilities have effective access to and receive education in a manner conducive to achieving the fullest possible social integration.
- Ensure an adequate standard of living for physical, mental, spiritual, moral and social development.
- Provide protection and assistance to ensure respect for the rights of children who are refugees or seeking asylum.
- Provide protection from economic exploitation and work that interferes with education.

## **2. The Right to Quality Education**

### **Obligations to ensure the right to quality education**

- Develop children’s personalities, talents, and mental and physical abilities to their fullest potential.
- Promote respect for human rights and fundamental freedoms, and prepare children for a responsible life in a spirit of peace, tolerance, equality and friendship.
- Promote respect for the child’s, his or her parents’ and others’ cultural identity, language and values.
- Promote respect for the natural environment.
- Ensure the child’s access to information from a diversity of sources.
- Ensure that the best interests of children are a primary consideration.
- Promote respect for the evolving capacities of children in the exercise of their rights.
- Respect the right of children to rest, leisure, play, recreation, and participation in arts and culture.

### 3. The Right to Respect in the Learning Environment

#### **Obligations to respect children's rights in the learning environment include:**

- Respect every child equally without discrimination on any grounds.
- Teach respect for human rights and fundamental freedoms, for difference and for life in a society where there is understanding, peace, tolerance, equality and friendship.
- Give primary consideration to the best interests of the child.
- Respect the evolving capacities of the child.
- Respect the right of children to express their views on all matters of concern to them and have those views given due weight in accordance with children's age and maturity.
- Recognize the right to freedom of expression, religion, conscience, thought and assembly.
- Respect the privacy of children.
- Take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's dignity and all other rights in the Convention on the Rights of the Child.
- Protect children from all forms of physical violence, injury or abuse, neglect or negligence, maltreatment or exploitation, including sexual abuse.<sup>15</sup>

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15 A Human Rights-Based Approach to Education, United Nations Children's Fund/ United Nations Educational, Scientific and Cultural Organization, 2007

## **Adopting HRBA to Health**

*(Goal 3: Ensure healthy lives and promote well-being for all at all ages, and*

*Goal 6: Ensure availability and sustainable management of water and sanitation for all)*

A human rights-based approach to health uses a combination of support and pressure to urge government departments to make basic health care accessible and affordable for all people in the country. It supports people and organizations in demanding better health services from the government and from other duty bearers: allocating the health budget in a way that benefits the poor rather than the rich, making health services more patient friendly, making health insurance affordable for all people, providing access to safe drinking water, or controlling polluting industries. Far from creating dependency, such an approach empowers people to take action to claim their due, rather than passively accepting whatever the government is willing to give them.

The HRBA emphasizes that the ultimate goal of all health policies, strategies and programmes is to further advance the realization of the right to health and other health-related human rights as laid down in national and international human rights legislation. Human rights standards provide guidance in defining the precise elements of a health objective.

If the right to health and other health-related human rights are to be fully realized, policies and plans need to systematically integrate and further these rights. Among other essential points, General Comment No. 14 highlights that the right to health extends to both timely and appropriate health care and to the underlying determinants of health, 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. These points highlight the importance of inter-sectoral action to effectively realize the right to health.

The Committee interprets the right to health, as defined in article 12.1, as an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health. A further important aspect is the participation of the population in all health-related decision-making at the community, national and international levels.

The notion of “the highest attainable standard of health” in article 12.1 takes into account both the individual’s biological and socio-economic preconditions and a State’s available resources. There are a number of aspects which cannot be addressed solely within the relationship between States and individuals; in particular, good health cannot be ensured by a State, nor can States provide protection against every possible cause of human ill health. Thus, genetic factors, individual susceptibility to ill health and the adoption of unhealthy or risky lifestyles may play an important role with respect to an individual’s health. Consequently, the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health.

Similarly, General Comment No. 14 explains that the four elements of availability, accessibility, acceptability and quality (AAAQ) are essential to the enjoyment of the right to health by all.

- a) Availability. Functioning public health and health-care facilities, goods and services, as well as programmes, have

to be available in sufficient quantity within the State party. The precise nature of the facilities, goods and services will vary depending on numerous factors, including the State party's developmental level. They will include, however, the underlying determinants of health, such as safe and potable drinking water and adequate sanitation facilities, hospitals, clinics and other health-related buildings, trained medical and professional personnel receiving domestically competitive salaries, and essential drugs, as defined by the WHO Action Programme on Essential Drugs;

- b) Accessibility. Health facilities, goods and services have to be accessible to everyone without discrimination, within the jurisdiction of the State party. Accessibility has following four overlapping dimensions:
- Non-discrimination: health facilities, goods and services must be accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds;
  - Physical accessibility: health facilities, goods and services must be within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous populations, women, children, adolescents, older persons, persons with disabilities and persons with HIV/AIDS. Accessibility also implies that medical services and underlying determinants of health, such as safe and potable water and adequate sanitation facilities, are within safe physical reach, including in rural areas. Accessibility further includes adequate access to buildings for persons with disabilities;
  - Economic accessibility (affordability): health facilities,

goods and services must be affordable for all. Payment for health-care services, as well as services related to the underlying determinants of health, has to be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable for all, including socially disadvantaged groups. Equity demands that poorer households should not be disproportionately burdened with health expenses as compared to richer households;

- Information accessibility: accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality;
- c) Acceptability. All health facilities, goods and services must be respectful of medical ethics and culturally appropriate, i.e. respectful of the culture of individuals, minorities, peoples and communities, sensitive to gender and life-cycle requirements, as well as being designed to respect confidentiality and improve the health status of those concerned.
- d) Quality. As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality. This requires, inter alia, skilled medical personnel, scientifically approved and unexpired drugs and hospital equipment, safe and potable water, and adequate sanitation.

### **The Right to Health - Water and Sanitation**

The most important human rights instruments for the water/sanitation sector are contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Access to “safe and clean drinking water and sanitation” was explicitly recognised as a human

right by the UN General Assembly in July 2010 and by the Council for Human Rights in September 2010. It is part of the right to an adequate standard of living and the right to health (articles 11 and 12 of the ICESCR). The UN committee monitoring the ICESCR implementation has clarified in Comment on 15, 2002 that the right to water means:

### **Availability**

The water supply for each person must be sufficient and continuous for personal and domestic uses. These uses ordinarily include drinking, personal sanitation, washing of clothes, food preparation, personal and household hygiene. According to the World Health Organization (WHO), between **50 and 100 litres** of water per person per day are needed to ensure that most basic needs are met and few health concerns arise. There must be a sufficient number of water outlets to ensure that collection and waiting times are not unreasonably long. Likewise, a sufficient number of sanitation facilities have to be available to all.

### **Accessibility**

Water and sanitation services must be accessible to everyone in the household or its vicinity on a continuous basis (maximum 1 km or 30 minutes round trip). Physical security must not be threatened when accessing facilities and must be within reach also for elderly and persons with disabilities. Accessibility of information on water and sanitation issues is also essential.

**Non-discriminatory access:** by law and in practice, water and water facilities and services must be accessible to all, including the most vulnerable or marginalized population groups, without discrimination on any grounds; States should take steps to ensure that women are not excluded from decision making processes concerning water resources and entitlements, and that the disproportionate burden on women to collect water is alleviated. As per the Ministry of

Water Supply, in Nepal only 19 percent of the total population has access to processed and safe drinking water. This has happened as the government was more focused on expanding the water supply coverage earlier.

### **Affordability**

Access to sanitation and water must be affordable to all including for disadvantaged persons and groups. Expenditure may not compromise the ability to pay for other essential necessities guaranteed by human rights such as food, housing and health care. The United Nations Development Programme (UNDP) suggests that water costs should not exceed **three per cent** of household income. A bench mark of five percent of income available to the household has been established for water and sanitation.

### **Acceptability**

Sanitation facilities, in particular, have to be culturally acceptable. This will often require gender-specific facilities, constructed in a way that ensures privacy and dignity.

### **Quality**

Water has to be safe for consumption and other uses, so that it poses no threat to human health (refer to WHO guidelines for drinking water quality). Sanitation facilities must be hygienic, technically and environmentally safe to use. To ensure hygiene, access to water for cleansing and hand washing after use is essential.

A state is obliged to undertake whatever is necessary and within its power to gradually realise the right to water and sanitation for all, especially for those who have insufficient/no access. The right to water does not mean that water is to be provided free of charge, however, individuals are entitled to water that is affordable. Water should be treated as a social and cultural good, a public good, and not primarily as an economic good. This point has been stressed by

the UN Committee for Economic, Social and Cultural rights. Any payment for water services must be based on the principle of equity, ensuring that these services, whether privately or publicly provided, are affordable to all, including socially disadvantaged groups.

According to international human rights law, as far as economic, social and cultural rights are concerned, countries are obliged to take steps to the maximum use of its available resources, with a view to achieving progressively the full realization of the rights recognized in the treatise by all appropriate means. In the analysis of the capacity gaps of duty-bearers, it is therefore important to determine whether resource allocations are adequate and consistent with the State's obligations under international law.

## **Adopting HRBA to Gender Equality**

*(Goal 5: Achieve gender equality and empower all women and girls)*

Gender equality is central to development. It is specifically established as goal 5 of the Sustainable Development Goals (SDGs) and included as a target in other SDGs. The key gender equality considerations to be observed by FAO staff when pursuing SDGs 1, 2 and 5 are the following (United Nations, 2015):

**Goal 1 of the SDGs:** End poverty in all its forms everywhere.

**Target 1.4 By 2030,** ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to basic services, ownership and control over land and other forms of property, inheritance, natural resources, appropriate new technology and financial services, including microfinance.

**Goal 2 of the SDGs:** End hunger, achieve food security, improve nutrition and promote sustainable agriculture.

**Target 2.3 By 2030**, double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment.

**Goal 5 of the SDGs:** Achieve gender equality and empower women and girls. Target 5.a Undertake reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources, in accordance with national laws.

Linked to these SDGs and of particular relevance is article 14 of CEDAW (UN General Assembly, 1979) on the rights of rural women, which establishes that:

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the nonmonetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.
2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
  - a. To participate in the elaboration and implementation of development planning at all levels;
  - b. To have access to adequate health care facilities, including information, counselling and services in family planning;

- c. To benefit directly from social security programmes;
- d. To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- e. To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
- f. To participate in all community activities;
- g. To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- h. To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

The overarching aim of the policy on gender equality is, “to achieve equality between women and men in sustainable production and rural development for the elimination of hunger and poverty. The policy establishes the following objectives to be achieved;

- Women participate equally with men as decision-makers in rural institutions and in shaping laws, policies and programmes.
- Women and men have equal access to and control over decent employment and income, land and other productive resources.
- Women and men have equal access to goods and services for agricultural development, and to markets.
- Women’s work burden is reduced through improved

technologies, services and infrastructure.

- Provide equal access to and control over productive resources, services and markets.
- Strengthen women and men's participation in decision making in rural institutions and policy processes.
- Ensure that all stakeholders benefit equally from development interventions and that inequality is not reinforced or perpetuated.<sup>16</sup>

Accordingly, the General Recommendation 34 on the rights of the rural women explores the links between article 14 and other Convention provisions. As many of the Sustainable Development Goals (SDGs) address the situation of rural women and provide an important opportunity to advance both process and outcome indicators, this GR specifically intends to guide States parties on the implementation of their obligations with respect to rural women. While the GR focuses on rural women in developing countries, some of its recommendations also pertain to the situation of rural women in developed countries. It is recognized that rural women, even in developed countries, suffer discrimination and challenges in various areas, including economic empowerment, participation in political and public life, access to services, and labor exploitation of rural migrant women workers. GA 34 particularly focuses on the Rural women's right to participate in and benefit from rural development, Health care services, Economic and social life, Education, Employment, Political and public life, Land and natural resources, Adequate living conditions.

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<sup>16</sup> <http://www.fao.org/3/a-i6808e.pdf>

## Box 2

The CEDAW Committee in 2018 recommends that the State party, in line with its general recommendation No. 23 (1997) on women in political and public life:

- Adopt targeted measures, including targeted scholarships, in line with article 4 (1) of the Convention and the Committee’s general recommendation No. 25, to achieve substantive equality between women and men in the judiciary, law enforcement and the diplomatic service, in particular at the decision-making level;
- Enforce and monitor the implementation of electoral quotas and the composition of State entities at the local, district and federal levels and consider adopting sanctions against political parties that do not comply with the regulations;
- Introduce a proportional representation system (sometimes referred to as a “slide” or “zipper” system) of placing candidates on an electoral list, in which women and men are alternated, in order to achieve parity and enhance targeted training and mentoring programmes for women who stand for election and women elected to public office and programmes on leadership and negotiation skills for current and future women leaders (CEDAW/C/NPL/CO/4-5, para. 24);
- Raise the awareness of public officials and society as a whole of the importance of the full and equal participation of women from all groups of society, including Dalit and indigenous women, in decision-making (CEDAW/C/NPL/CO/4-5, para. 24).

ICCPR Committee in 2014 recommended that Nepal should take all necessary measures to effectively implement and enforce the existing legal and policy frameworks on gender equality and non-discrimination, pursue its efforts to increase the representation of women in decision-making positions, and develop concrete strategies to eliminate gender stereotypes on the role of women, including through public awareness campaigns. It should also take appropriate measures to (a) explicitly prohibit all forms of harmful traditional practices in domestic law and ensure its effective implementation in practice; (b) conduct awareness-raising campaigns on the prohibition and negative effects of such practices, particularly in rural areas; and (c) encourage reporting of such offences, investigate complaints from victims and bring those responsible to justice.

## **HRBA and the Natural Disaster**

*(Goal 13: Take urgent action to combat climate change and its impacts, and*

*Goal 15: Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss)*

Natural disasters are traditionally seen as situations creating challenges mainly related to the provision of humanitarian assistance. Less attention has been devoted to the need for human rights protection in this particular context.

In particular, the flood, landslides, earthquakes affect people in Nepal. The tsunamis, hurricanes and earthquakes, which hit parts of Asia and earthquake, highlighted the fact that affected persons may face multiple human rights challenges in the aftermath of natural disasters, such as:

- Lack of safety and security (e.g. rampant crime, secondary impacts of natural disasters, etc.);
- Gender-based violence;
- Unequal access to assistance, basic goods and services and discrimination in aid provision;
- Abuse, neglect and exploitation of children;
- Family separation, particularly for children, older persons, persons with disabilities and other individuals who may rely on family support for their survival;
- Loss/destruction of personal documentation and difficulties to replace it, in particular due to inadequate birth registration mechanisms;
- Inadequate law enforcement mechanisms and restricted access to a fair and efficient justice system;
- Lack of effective feedback and complaint mechanisms;

- Unequal access to employment and livelihood opportunities;
- Forced relocation;
- Unsafe or involuntary return or resettlement of persons displaced by the disaster; or
- Lack of property restitution and access to land.

## **General Guarantees for the Persons Affected with Natural Disaster**

- I.1 Persons affected by natural disasters (affected persons) should be recognized and treated as persons entitled to enjoy the same rights and freedoms under international human rights law as others in their country, and to not be discriminated against on the basis of their race, colour, sex, disability, language, religion, political and other opinion, national or social origin, property, birth, age or other status. Targeted measures to address specific assistance and protection needs of women and children and particular categories of affected populations, including but not limited to older persons, persons with disabilities, persons living with HIV/AIDS, single heads of households and child-headed households, internally displaced persons or members of ethnic or religious communities and indigenous peoples, do not constitute discrimination if, and to the extent that, they are based on differing needs.
- I.2 Persons affected by a natural disaster or facing an imminent risk of being affected should be provided with easily accessible information in a language they understand concerning:
- a) The nature and level of disaster they are facing;
  - b) The possible disaster risk and vulnerability reduction measures that can be taken;
  - c) Ongoing or planned humanitarian assistance, recovery

- efforts and their respective entitlements; and
- d) Their rights under international and domestic law.
- I.3 Affected persons should be informed and consulted on measures taken on their behalf and given the opportunity to take charge of their own affairs to the maximum extent and as early as possible. They should be able to participate in the planning and implementation of the various stages of the disaster response. Targeted measures should be taken to include those who are traditionally marginalized from participation in decision-making.
- I.4 Affected persons should be entitled to and supported in claiming and exercising their rights and provided with effective remedies, including unimpeded access to the justice system, in case of violations.
- I.5 In all decisions and actions concerning children, the best interest of the child should be a primary consideration.
- I.6 Persons who have been ordered or forced to flee or to leave their homes or places of habitual residence or who have been evacuated as a result of a natural disaster or its effects, or were obliged or forced to leave in order to avoid them, and have not crossed an internationally recognized State border are internally displaced persons in accordance with the 1998 Guiding Principles on Internal Displacement and should be treated accordingly.
- I.7 The human rights of the affected persons and the impact of humanitarian activities on these rights should be regularly monitored. To this effect, existing monitoring mechanisms should be strengthened or new mechanisms established. Monitors should be given access to areas where humanitarian operations take place as well as to all affected persons.

- I.8 Protection activities should be undertaken and prioritized on the basis of identified needs of affected persons. Such needs should be identified and assessed on the basis of non-discriminatory and objective criteria, and in consultation with the affected population. Collected data should be disaggregated by age and gender.
- I.9 Protection activities should be carried out in a manner that respects the cultural sensitivities prevailing in areas affected by the disaster, providing that they do not contravene existing international human rights standards.

### **HRBA to Managing - Pandemic**

The COVID-19 crisis is a brutal reminder of the importance of ensuring lasting progress with respect to social rights enjoyment, particularly through the development of universal public health services. The pandemic shows in practical terms the indivisibility of human rights. As governments around the world are declaring a state of emergency in response to the COVID-19 outbreak, it is of crucial importance to ensure that any exceptional measures introduced do not undermine any of the human rights enshrined in the International Conventions.

### **Approach Preventing and Treating COVID-19 as a human rights obligation**

- a. Provide all healthcare services related to COVID-19, including testing, triaging, treatment and possible vaccination, without stigma or discrimination based on the grounds of Indigenous ancestry, race, ethnic origin, place of origin, citizenship status, age, disability, sexual orientation, gender identity, social condition, etc.
- b. Make sure healthcare systems have the resources, personnel and

equipment necessary to provide equitable, non-discriminatory services to all communities and vulnerable groups, including Indigenous and racialized communities whose healthcare needs have been impoverished and neglected in the past.

- c. Provide funding and resources to support community health and mental health, with a priority focus on vulnerable groups to counter the health impacts of physical distancing, isolation, quarantine and other restrictive measures.
- d. Take steps to mitigate potential impacts on rights that are interdependent with the rights to health and life.

### ***Right to an adequate standard of living (food, clothing)***

- e. Take steps to ensure the right to adequate social security by providing financial assistance that prioritizes vulnerable groups, low-income households and caregivers.
- f. Implement a guaranteed universal basic income to allow people to protect their health and secure housing and food during and after the COVID-19 pandemic, and again during any future emergency.
- g. Ensure the availability and affordability of food and other critical household goods such as soap and sanitary products, especially for vulnerable groups.
- h. Make sure public transportation services offer sufficient service and implement measures to reduce overcrowding, allowing for safe physical distances between people.

### ***Right to work***

- i. Ensure the right to just and favourable working conditions for all workers by strengthening employment standards related to terminations, layoff provisions, leave benefits and unemployment insurance, especially and including for workers who must self-isolate or quarantine due to COVID-19.
- j. Provide employers with financial assistance to mitigate

business reductions and closures and other economic impacts due to the COVID-19 pandemic, with a focus on impoverished communities, vulnerable groups and precarious employment.

- k. Given ongoing gender-based discrimination, less than average earnings and disproportionate burden of family care, take steps to support women who may be forced out of the labour force to fulfill caregiving responsibilities.
- l. Make sure that measures designed to assist workers affected by the pandemic also assist workers in informal work and service industries, who are predominantly women.
- m. Adopt special measures to locate and assist foreign-temporary workers to prevent abusive labour conditions and provide assistance relating to management of COVID-19.

### ***Right to housing***

- n. Take steps to prevent the discriminatory treatment of residents who have, are perceived to have, or are associated with persons who have COVID-19, where such treatment is not consistent with public health guidance.
- o. Provide greater protection for renters' and owners' security, including relief, reductions or deferrals on rent, condo fees, utilities, property taxes and mortgages; and maintain these protections for a reasonable time after the pandemic.
- p. Provide further protection for, and set a moratorium on, evictions, particularly for low-income families and families with children, elderly or disabled members. Protect persons living in rooming houses who are not covered by eviction protections or suspensions.
- q. Make available vacant short- and long-term units for persons who are homeless or at risk of becoming homeless.
- r. Purchase or reallocate distressed assets and other buildings to be used as public housing to address immediate short- and longer-term – including post pandemic – needs of people who

are experiencing homelessness or who are at risk of becoming homeless.

- s. Take steps to limit transmission of COVID-19 in emergency shelters, migrant worker bunkhouses and other forms of group living, including providing access to frequent hand washing with soap and implementing physical distancing or isolation.
- t. Provide supports and avoid criminalizing vulnerable people who cannot self-isolate due to housing or living situation (e.g. people experiencing homelessness, women and youth living in abusive homes).
- u. At all levels of government, legislate and implement the right to housing, with a particular focus on housing for Indigenous peoples both in urban areas.

### ***Right to education***

- v. Provide all students who are required to stay home during the COVID-19 pandemic with equitable and flexible distance learning options through the Internet or other means, in a way that supports and does not aggravate the already deep educational inequalities that exist for vulnerable groups.
- w. Where education is provided through the Internet, ensure access to reliable and affordable Internet services, especially for vulnerable groups, Indigenous peoples, and people in remote communities.
- x. Adopt strategies to support all students during school closures, with a focus on students at risk of dropping out and students with disabilities.
- y. Make sure that online learning tools incorporate appropriate safeguards to protect children's rights and privacy.<sup>17</sup>

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17 <http://www.ohrc.on.ca/en/actions-consistent-human-rights-based-approach-managing-covid-19-pandemic>

## Displacement and HRBA<sup>18</sup>

The Inter Agency Standing Committee (IASC) Manual adopts a strong rights-based approach, stating that: “Neglecting the human rights of those affected by natural disasters means overlooking the fact that such people do not live in a legal vacuum, but in countries with laws, rules and institutions that should protect their rights.” The IASC Guidelines acknowledge that while human rights should be furthered in all instances, the practical circumstances associated with disaster relief and recovery efforts mean that it may be impossible to simultaneously guarantee all rights to all individuals at all times. The Guidelines therefore divide human rights into four categories of rights, which may be prioritized in order to ensure the fundamental needs of all persons are met in the immediate response. The four groups are:

- Group A: Rights related to the protection of life, security, physical integrity, and family ties;
- Group B: Rights related to basic necessities, such as food, health, shelter, and education;
- Group C: Rights related to more long-term economic and social needs, such as housing, land, property, and livelihoods; and
- Group D: Rights related to other civil and political protection needs (such as documentation, movement, the re-establishment of family ties, freedom of expression and opinion, and participation in elections).

The first two categories are understood to be most relevant during the initial emergency phase, but the Guidelines make clear that all four categories are essential in order to ensure that human rights are adequately protected for all those affected by natural disaster. In respect of promoting the rights of displaced persons, the IASC

18 A Human Rights-based Approach to Disaster Displacement in the Asia-Pacific, Asian Journal of International Law

Guidelines specifically recognize in the opening general principles that people displaced by disasters should be treated in accordance with the 1998 Guiding Principles on Internal Displacement. Furthermore, the Guidelines specifically recognize the following instances where a rights-based approach should be applied to assist displaced individuals or communities in the disaster context:

In respect of **Group A** rights, it is recommended that regular visits be made to displacement camps by national human rights bodies to monitor the conditions with a particular focus on preventing gender-based violence. Furthermore, the Guidelines provide that any temporary displacement camps that are established should be civilian in nature and that those residing in these camps should have freedom of movement.

In respect of **Group B** rights, the Guidelines emphasize the importance of non-discrimination in the provision of humanitarian assistance to those displaced, and focus on preparing the host community for the settlement of those persons.

In respect of **Group D** rights, the Guidelines lay out some conditions for finding “durable solutions” and provide that those displaced by disasters should be able to choose freely whether they want to return to their homes and places of origin, to integrate locally in the area to which they have been displaced, or to settle elsewhere in the country. Appropriate measures, such as consultation, information campaigns, and go-and-see visits should be taken to enable such persons to take an informed decision in this regard. Such solutions are considered to be “sustainable” if the individual feels safe and secure, has access to adequate housing, and can return to normal life with access to water, basic services, schools, livelihood, employment, and markets without discrimination.

The Guidelines draw from a number of existing international instruments, and they establish a framework for allocating responsibility among the affected state, assisting actors, and

other states, as well as specifying the division and intended use of resources. The Red Cross plays a large role in co-coordinating the actions of all institutions involved in disaster response, and the Guidelines were created to address issues associated with the quality and co-ordination of disaster relief, as well as procedural aspects and “red tape”. In relation to procedural matters, the Guidelines address:

- Restrictions and delays in customs clearance for relief goods and equipment;
- Imposition of duties, tolls, and other taxes on relief items and activities;
- Difficulties and delays in obtaining and renewing necessary visas and permits for humanitarian personnel;
- Problems obtaining legal recognition of foreign professional qualifications for specialized personnel (particularly medical staff); and
- Difficulties in legal registration for foreign humanitarian organizations, leading to restrictions in opening bank accounts and hiring local staff.

In relation to the quality and co-ordination of internationally provided disaster relief, the Guidelines address:

- Importation of unnecessary or inappropriate relief items;
- Failure to co-ordinate with domestic authorities and other relief providers;
- Use of inadequately trained personnel;
- Failure to consult with beneficiaries; and
- Culturally unacceptable behaviour and proselytizing.

## **Human Rights-based Legislative Process and Policy Reform (Law Review)**

*(Goal 16: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels)<sup>19</sup>*

There is no single definition of legislative *reform*. Experts working in this field have usually defined the concept for themselves and it is often understood in a narrow sense, as merely changing laws. However, legislative reform encompasses more than merely “putting the law in place.” It involves reviewing and reforming not only laws (i.e. legislation already in place) but also those measures necessary to effectively implement them - regulations, institutions, policies, budget allocations and the process of reform in the country. It is an approach that demands full public participation in the drafting, debate and approval of legislation by all those directly or indirectly affected by the legislation. A human rights-based approach (HRBA) to legislative reform may be defined as a framework for ensuring full compliance of national legislation with international human rights norms and concrete realization of human rights.

### **Human Rights Principles and Legislative Reform**

The core human rights principles guide legislative reform initiatives. These principles are: a) universality of rights; b) interdependence and inter-connectedness of rights, (holistic vision with emphasis on priorities and strategies to secure rights in the context of available resources); c) non-discrimination and equality; d) participation of all stakeholders as a right (ownership and sustainability); e) accountability of all duty bearers for human rights obligations and the rule of law. In addition, an HRBA to legislative reform related to the respective convention takes into account the guiding principles of the Convention.

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<sup>19</sup> Handbook on Legislative Reform: Realising Children’s Rights, Vol.1: UNICEF 2008

## Universality of Rights

An approach to legislative reform based on human rights recognizes that all human rights apply equally in all cultures, traditions and political systems, without adjustment or mitigation. An HRBA to legislative reform requires the development of a legal framework that effectively protects and fulfils the rights of all. Legislative reform that captures the principle of universality of rights should be aimed at ensuring inclusiveness, especially in favour of traditionally excluded groups. Thus, it calls for the abolishment of “any distinction, exclusion, restriction or preference” which has the effect of nullifying or impairing the recognition, enjoyment or exercise of all the rights set forth in the respective convention. At the same time, if we take the case of children, universal enjoyment of rights implies taking positive measures, through the adoption of legislative provisions in favour of children in vulnerable situations (e.g., asylum seekers, migrant children, children with disabilities, children in conflict with the law etc.).

### Box 3

**Universality of rights the CEDAW Committee in 2018 stressed Nepal the need to take account of the principle of universality in legislative reforms initiatives:**

- (a) Amend or repeal all discriminatory provisions in its Constitution that are contradictory to article 9 (2) of the Convention in order to guarantee that Nepali women may transmit their nationality to their children, as well as to their foreign spouses, under the same conditions as Nepali men, whether they are in the country or abroad, in accordance with commitments made in the context of the universal periodic review.**

## Interdependence of Rights

An HRBA to legislative reform recognizes that each right is dependent on the fulfilment of all the other rights and that therefore all rights must be respected. Thus, translating the principle of interdependence of rights requires adopting a comprehensive and balanced approach

that focuses on the full range of rights. All laws (constitutional, civil, penal, labour, social ), as well as all components of the judicial system must to be reviewed and, if necessary, amended in light of this understanding. This requires a revision of the entire legal framework so as to ensure that it is coherent and does not contradict itself. For instance, from a rights perspective, preventing child marriage requires ensuring that the minimum age for marriage is higher than the minimum school-leaving age and the minimum age of employment. Children's access to justice and implementing agencies (including the courts), through the development of legal assistance programmes, accessible complaints mechanisms and child-friendly and gender sensitive court procedures, also requires adequate attention.

An HRBA to legislative reform logically leads to the realisation of the other human rights instruments that a country has ratified. The CRC and the CEDAW are, for example, interrelated in several aspects. These aspects include *inter alia* the protection against gender-based discrimination, rights to health, nutrition and education, and protection from sexual abuse, including sexual trafficking. In other areas, such as marriage and protection from violence, respect for the provisions of one Convention strengthens the protections set out in the other. Therefore, the implementation of one will in many cases facilitate implementation of the other.

#### Box 4

**Indivisibility and Inter-connectedness of rights** The CEDAW Committee in 2018 stressed Nepal the need to take account of the principle of indivisibility in legislative reforms initiatives:

The Committee recommends that the State party accord priority to its legislative reform process, taking into consideration the links between articles 1 and 2 of the Convention and target 5.1 of the Sustainable Development Goals, to end to all forms of discrimination against all women and girls everywhere, and also recommends that the State party:

- a. Adopt comprehensive anti-discrimination legislation that includes a definition of discrimination against women, encompassing elements of direct and indirect discrimination and multiple and intersecting forms of discrimination in the public and private spheres, and guarantees effective remedies for victims;
- b. Repeal all remaining constitutional and legal provisions that discriminate against women and girls, in particular in the areas of nationality, distribution of marital property upon divorce and access to employment abroad.

### Non-discrimination and Equality

An HRBA to legislative reform helps tackle the root causes of discrimination and strives to eliminate the gaps and obstacles responsible for exclusion and discrimination. It is one of the most effective strategies to counter laws and cultural and traditional practices that affect and disempower certain individuals and/or groups.

An HRBA to legislative reform entails abolition of laws that openly discriminate against women and girls. It also prompts an examination of laws that, while textually ‘neutral’ have a disproportionately negative impact on women and girls. An HRBA to legislative reform promotes equality not just in terms of formal equality (lack of distinction between women and men in the text of laws and policies)

but also substantive equality (i.e. the rule's results or effects). Promoting substantive equality requires examining laws and policies to determine their *impact* on women, looking for disproportionately negative impacts on women or a lack of equality in practice.

#### Box 5

**Nondiscrimination and equality of rights** The CEDAW Committee in 2018 stressed Nepal the need to take account of the principle of substantive equality:

**The Committee recommends that the State party, in line with its general recommendation No. 23 (1997) on women in political and public life:**

**(A) Adopt targeted measures, including targeted scholarships, in line with article 4 (1) of the Convention and the Committee's general recommendation No. 25, to achieve substantive equality between women and men in the judiciary, law enforcement and the diplomatic service, in particular at the decision-making level..**

## Participation and Inclusion

In a human rights-based approach, individuals are central to their own growth and advancement. Legal illiteracy, defined as lack of knowledge of laws or of the legislative process, has a substantial impact on access to rights. Thus, education and awareness-raising are essential in order to ensure that participation is possible. Creating the conditions for children to fully participate in the decisions that affect their lives can lead to a better understanding of their rights and their concerns by all members of society.

The process prescribed by the CRC as a whole and particularly in Article 4 for realising children's rights constitutes a departure from traditional practices of lawmaking. A human rights approach to legislative reform supposes that reforms are conducted in a participatory manner (including vulnerable and marginalized stakeholders) that pays particular attention to the views of children

and women in all stages of developing legal frameworks. Systematic involvement of all sectors of society and government is an important step to ensuring that legislation in compliance with the CRC and CEDAW is both adopted and implemented. Direct participation by all those concerned shifts legislative reform from a traditional technocratic exercise (at best allowing input from designated ‘experts’) to a process that enables individuals and encourages the realisation of their rights.

### **Accountability and Rule of Law**

Laws are important for ensuring the implementation of rights, defining responsibilities and obligations, and holding duty bearers accountable. However, laws merely create the legal framework for the exercise and enjoyment of rights. A human rights-based approach to legislative reform supposes that the process of “putting the law in place” also enhances a State’s capacity to fulfil and honour commitments undertaken by ratification of human rights treaties. A rights-based approach to legislative reform emphasizes empowerment and accountability of those responsible for compliance with international obligations.

The ‘rule of law’ means that laws, not individuals (including government leaders), have the ultimate power and that these laws must be easy to understand. A human rights-based approach to legislative reform provides an additional set of codes that bind governments, ensuring the accountability of legal systems, though, for instance, an autonomous legal order that establishes regulation of government power. Such an approach also works under the assumptions of equality before law and a legal system with fixed, fair, published rules of procedures that are consistently and transparently applied.

### **Box 6**

#### **Benefits of a HRBA to legislative reform**

- Promotes holistic and comprehensive reform.
- Stimulates discussion of barriers to reform.
- Addresses gender inequality and discrimination against women and girls.
- Ensures that laws contribute to strengthening women's and girls' capacity to exercise their rights.
- Promotes broad participation in political life.
- Promotes broad dissemination of international human rights instruments and increased legal literacy.
- Promotes effective implementation, in conformity with human rights principles and norms.
- Ensures special protection for vulnerable and marginalized children.
- Combats social practices negatively affecting children and women and promotes positive change.
- Promotes an effective, reliable and predictable judicial system that is accessible to all.
- Includes adequate and institutionalized monitoring.
- Promotes adoption of redress mechanisms.
- Ensures that law contributes to children's and women's well-being to the full extent possible.

### ***Harmonising National Legislation with International Human Rights Norms***

One of the ultimate goals of an HRBA to legislative reform is the harmonisation of national legislation and local traditions and customs with international human rights standards and norms, particularly the international human rights treaties in which state is a party. The starting point for such harmonisation is a close examination of the text/substance of national (or sub-national) legislation against the backdrop of the human rights treaties. This should be followed by meaningful analysis of the gaps and obstacles in legislation that lead to inequality and non-realisation of rights.

The process of harmonisation also requires an examination of the social and cultural contexts in which laws are implemented. These contexts are important to effective harmonisation of human rights standards as there are often gaps between law and practice. In some cases, social norms can have an important influence on the development of legislation, while in others laws may not be implemented because they do not correspond to social values and practices. Identifying social and cultural values that support legislative initiatives to realise the rights of women and children (girls and boys), as well as highlighting social and cultural practices that compromise human rights-based legislative reform, are critical to the adoption and implementation of effective initiatives. Work in this area, therefore, often requires an emphasis on education and shaping of cultural values.

**Box 7**

**The CEDAW Committee in 2018 stressed Nepal the need to take account of harmonizing National Legislation with International Human Rights Norms.**

- (a) Amend or repeal all discriminatory provisions in its Constitution that are contradictory to article 9 (2) of the Convention in order to guarantee that Nepali women may transmit their nationality to their children, as well as to their foreign spouses, under the same conditions as Nepali men, whether they are in the country or abroad, in accordance with commitments made in the context of the universal periodic review;**
- (b) Bring the bill to amend the Citizenship Act and the related rules, as well as the draft birth, death and other personal event registration act, into line with the Convention, including by removing requirements regarding consent and assistance of the husband or the husband's family and documentation of the whereabouts and identity of the husband.**

***Mainstreaming the Principle of Gender Equality in Legislative Reform***

“In most societies, the formulation of laws has been affected by women’s relationship to children. And historically, the

implementation of law has been equally affected by the position of women in society and their relationship to children.” Addressing gender issues in the legal framework is critical for the simultaneous realisation of both women’s and children’s rights, as gender plays a crucial role in the ordering of our social, economic, and political lives. Adopting a gender perspective to legislative reform opens up discussion on cultural and religious traditions and leads to a greater understanding of the critical indivisibility of civil and political, social, economic, and cultural rights. Focusing on gender equality is necessary in reviewing and reforming laws and policies in order to overcome social stereotypes and discrimination against women and girls in the socio-economic and political arenas. It requires paying special attention to women and girls both as subjects of rights and marginalized groups. The CRC and CEDAW have introduced a gender perspective in legislative reform, which enables us to have a closer look at laws that disempower and disadvantage women and girls, preventing them from enjoying their rights. Addressing gender issues in the legal framework is critical for the simultaneous realisation of both women’s and children’s rights.

### ***Implementation and Enforcement of Legislative Measures***

While explicit textual consistency between national laws and provisions of international human rights instruments is a foundation for effective realisation of rights, it is not sufficient. Laws do not function in a vacuum, and the greater challenge is often their implementation and enforcement.

Laws, if properly implemented, should benefit *all* members of society and pay special attention to those most marginalized. Hence, laws may require specific implementation measures or tools (such as regulations, codes of conduct or professional guidelines) or additional policies, budgets, or institutions in order to be effective. For instance, issues such as trafficking and exploitation in labour cannot be addressed effectively by solely putting in place legal

standards that criminalize children’s exploitation. The process of ‘putting the law in place’ (i.e. enacting/promulgating the law) should be accompanied by implementation measures, including the development of institutions that support law enforcement and prevent exploitation and the adoption of policies that ensure the sustainability of these mechanisms. Equally important is the dissemination of the laws to stakeholders and the general public, training of judges, awareness-raising activities, and legal education.

## **HRBA and Right to Indigenous People**

*(Goal 13: Take urgent action to combat climate change and its impacts)*

### **The United Nations Declaration on the Rights of Indigenous Peoples**

The Declaration is the most comprehensive instrument detailing the rights of indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights. While not uniformly or consistently implemented, the Declaration regularly guides States and indigenous peoples in developing law and policy that have an impact on indigenous peoples, including in devising means to best address the claims made by indigenous peoples. Some of the most important substantive rights contained in the Declaration and under international law and policy more broadly are outlined below.

#### **Self-determination**

The United Nations General Assembly has, through the adoption of the Declaration, affirmed that indigenous peoples have the right to self-determination and, hence, the right to freely determine their political status and freely pursue their economic, social and cultural development. Article 3 of the Declaration mirrors common article 1

of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Indigenous peoples see self-determination as a central right recognized at the international level. The implementation of the right to self-determination also complements the implementation of other rights.

All rights in the Declaration are indivisible and interrelated, and the right to self-determination is no exception. It colours all other rights, which should be read in the light of indigenous peoples' self-determination, such as the right to culture, which can include indigenous peoples' autonomy over cultural matters.

In relation to indigenous peoples' right to autonomy or self-government, article 4 states: "indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions." Related to their right to autonomy, indigenous peoples have the right, under article 34 of the Declaration, to "promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs ...."

The right to self-determination is closely related to indigenous peoples' political rights. These include their right to participate in decision-making in matters that would affect their rights and States' duties to consult and cooperate with them to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. In both cases, and consistent with their right to self-determination, indigenous peoples have the right to participate through their own representative institutions (see art. 18).

## **Rights to lands, territories and resources**

The Declaration recognizes indigenous peoples' rights to their lands, territories and resources, including to those traditionally held by them but now controlled by others as a matter of fact and also of law. For many indigenous peoples, their relationship to their lands, territories and resources is a defining feature. The Inter-American Court of Human Rights has stressed:

- The close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations.
- Supported by developing and authoritative interpretations of existing human rights law by United Nations human rights treaty bodies and regional human rights mechanisms, article 26 (1) of the Declaration acknowledges, in general terms, indigenous peoples' right to the lands, territories and resources they have traditionally owned, occupied or otherwise used and article 26 (2) refers to the lands, territories and resources that they possess under indigenous customary conceptions of "ownership". Article 26 (3) requires States to give legal recognition and protection to these lands, territories and resources. Article 27 requires States to establish and implement processes recognizing and adjudicating indigenous peoples' rights in relation to their lands, territories and resources.

## **Economic, social and cultural rights**

The provisions of the Declaration and ILO Convention No. 169 are consistent with interpretations of economic, social and cultural

rights by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. Like the International Covenant on Economic, Social and Cultural Rights, the Declaration and ILO Convention No. 169 affirm indigenous peoples' rights to health, education, employment, housing, sanitation, social security and an adequate standard of living. The Declaration's article 3 is of particular importance, articulating their right to freely determine their economic, social and cultural development.

To the outside world, and oftentimes also within indigenous communities, indigenous peoples' cultural distinctiveness is considered to be one of their defining features. Giving expression to the right to cultural equality, the Declaration contains numerous provisions to protect against discriminatory and adverse treatment on cultural grounds as well as positive measures to support indigenous peoples' cultures. These include their right not to be subjected to assimilation or destruction of their culture; the right to practise and revitalize their cultural traditions and customs, to teach their cultural mores, and to the repatriation of human remains; and the right to "maintain, control, protect and develop" their cultural heritage, traditional knowledge and traditional cultural expressions. Given the centrality of culture to many indigenous peoples' identity, the Declaration also recognizes the right of indigenous individuals to belong to an indigenous community or nation in accordance with their community or nation's traditions and customs.

### **Collective rights**

Indigenous peoples' rights are, by definition, collective rights. In other words, they are vested in indigenous individuals that organize themselves as peoples.

While also including rights of individuals, the extent of recognition of collective rights in the Declaration is groundbreaking. Prior to the Declaration, the international human rights system had been slow to endorse the concept of rights vested in groups, with the exception of

the right to self-determination. It had been generally perceived that individuals' rights would be sufficient to ensure adequate protection and promotion of rights with a collective dimension, such as the right to culture. However, with the adoption of the Declaration, the international community clearly affirms that indigenous peoples require recognition of their collective rights as peoples to enable them to enjoy human rights.

### **Equality and non-discrimination**

Equality and non-discrimination are significant objectives of, and underpin, both the Declaration and ILO Convention No. 169 on Indigenous and Tribal Peoples. Indeed, the Declaration's articles 1 and 2 articulate the right of indigenous peoples, as a collective or as individuals, to all human rights. Indigenous peoples and individuals are:

- free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

The recognition of their rights overall is fully justified from an equality and non-discrimination perspective, taking into account the discrimination they have experienced historically as peoples and individuals. An equality and non-discrimination approach also support the recognition of their collective rights to their lands, territories and resources as being equivalent to the rights of non-indigenous individuals to their property, as the Inter-American Court of Human Rights has found.<sup>20</sup>

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20 Indigenous Peoples and the United Nations Human Rights System Fact Sheet No. 9/Rev.2, United Nations, New York and Geneva, 2013

### **Box 8**

The ESCR Committee notes that the process of consideration of the claims for recognition by some indigenous peoples has not yet been completed. The Committee is also concerned at information that indigenous peoples have been deprived of their traditionally owned lands, territories and resources due to development projects carried out by the State party without seeking their free, prior and informed consent. The Committee is further concerned that, although the State party has ratified International Labour Organization (ILO) Convention No. 169 (1989) concerning indigenous and tribal peoples in independent countries, there is no legal provision that recognizes community ownership of lands by indigenous peoples (art. 1).

**The Committee in 2014 recommends that the State party:**

- **Complete, as soon as possible, the process of recognition of indigenous peoples whose claims are under consideration;**
- **Ensure that indigenous peoples are represented through their own chosen representatives in the work of the Constituent Assembly and in the decision-making process on all issues that affect them;**
- **Guarantee the right of indigenous peoples to own, use and develop their ancestral lands, territories and resources, so as to enable them to fully enjoy their economic, social and cultural rights;**
- **Seek their free, prior and informed consent before launching any development project;**
- **Continuously monitor the projects being developed so as to take corrective measures, if necessary;**
- **Provide displaced families and groups with fair and adequate compensation;**
- **Incorporate the provisions of ILO Convention No. 169 in its domestic law.**

## HRBA to Development

*(Goal 9: Build resilient infrastructure, promote inclusive and sustainable industrialization and foster innovation, and*

*Goal 11: Make cities inclusive, safe, resilient and sustainable)*

**Article 1 of the Declaration on the Right to Development 1986 defines right to development as:**

1. The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.
2. The human rights to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

The HRBA is underpinned by five key human rights principles, also known as PANEL: Participation, Accountability, Non-discrimination and Equality, Empowerment and Legality.

- **Participation and Inclusion:** Require full participation of stakeholders including duty-bearers and rights-holders. Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development through which human rights and fundamental freedoms can be realized.
- **Accountability and the Rule of Law:** Duty-bearers are accountable for the observance of human rights for rights-

holders. Duty-bearers may be accountable in a variety of ways, through budget allocation, through ensuring an enabling environment for independent media to function, through building capacity to work on realizing specific rights, as well as providing mechanisms for redress by applying the rule of law and enabling functioning court systems.

- **Empowerment** – everyone is entitled to claim and exercise their rights. Individuals and communities need to understand their rights and participate in the development of policies which affect their lives.
- **Legality** – approaches should be in line with the legal rights set out in domestic and international laws.
- **Equality and Non-discrimination:** All individuals are equal by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind on grounds such as race, religion, political or other opinion, national or social origin, disability, sex, sexual orientation, property, birth or other status as explained by the human rights treaty bodies. Discrimination and inequality are often crosscutting themes that affect several human rights, e.g. migrant women workers from ethnic minority groups living with HIV.<sup>21</sup>

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21 <https://humanrights.gov.au/our-work/corporate-responsibility-developing-principles-resource-development-indigenous-land-human>

## Advantages with a HRBA to Development

1. A HRBA rules out some trade-offs, which are acceptable in conventional development approaches; promotes the rule of law (reducing impunity and corruption, and increasing the social access to justice); gives more attention to exclusion, disparities and injustice, and addresses the basic causes of problems; gives more attention to legal and institutional reforms and national policy review.
2. A HRBA aims at empowering right-holders to claim their rights. Often people who are poor have valid claims as right-holders on people who are less poor and much more powerful, who are the duty-bearers. This is why in a human rights-based approach, power can be challenged and impunity rejected much more effectively than in any other conventional development approach.
3. A HRBA implies clear accountabilities, not just ‘promises’. Defining and operationalising the accountability of duty-bearers is therefore essential for the practical application of HRBAP. How accountability is operationalized depends on programme issues, level of programming and country context. Greater accountability leads to certain changes in societies, communities and families. Accountabilities should be established by setting human rights-based criteria (standards and principles) for service provision and government institutions practices. As far as economic, social and cultural rights are concerned, the state should be held accountable for meeting the obligations to respect, protect and fulfil these human rights.
4. Equality is a very important and controversial human rights principle. A HRBA to Development promotes *equality of opportunities*, but goes further in also promoting *equality of results*. A HRBA also favours achieving equality through the

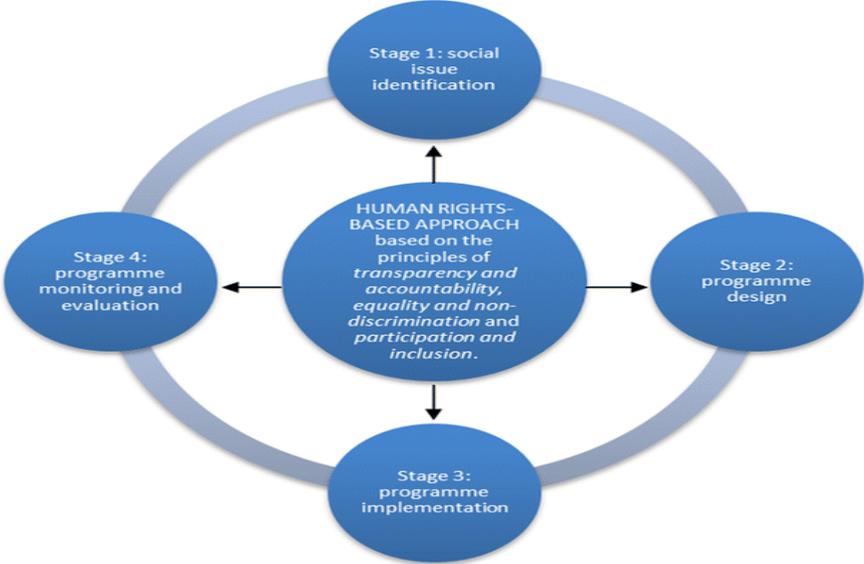
reduction of disparities, which allows for actions to redistribute resources from people who are rich to people who live in poverty, something that most economics-based development approaches reject or avoid considering. A HRBAP aims at empowering people as right-holders individually and collectively. The strengthening of civil society is a pre-requisite for such a democratisation.

5. One of the most common capacity gaps of right-holders is that they are not aware of their rights. A HRBA to Development therefore employs simultaneously top-down advocacy and awareness raising approaches and bottom-up approaches driven by the valid claims or demands of the right-holders. It is the very synergy of these that makes the difference. Civil society organisations can play a very decisive role in this empowerment.
6. There is an international human rights monitoring system in place, with obligatory regular reporting by ratifying states to the Treaty Monitoring Bodies in Geneva that after review issues *Concluding Observations*. These observations, together with any reports from Special Rapporteurs, are very useful in country level policy and programme development. It is important that the SDG reporting system includes human rights assessments in the SDG Reports.<sup>22</sup>

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22 A Human Rights Based Approach to Development and Development of Programming based on Capacity Development by Urban Jonsson, Executive Director, The Owls (Former Regional Director, UNICEF: 2010)

Human Rights Based approach to Development is often shown in the following figure.



**Figure 4: Human Rights based Approach**<sup>23</sup>

### Human Rights to Environment

The environmental right confirms the right of people to self-determination and development, and 50 addresses the linkage between human rights and the environment. It states that “human rights violations lead to environmental degradation and that environmental degradation leads to human rights violations”

23 [https://www.google.com/search?q=HRBA+to+development+graphics&rlz=1C1GCEA\\_enNP912NP912&tbm=isch&source=iu&ictx=1&fir=n58iGL3ILvYvuM%252CJZKNKIBO2IWxo1M%252C\\_&vet=1&usg=AI4\\_-kTRNIJLIC8mijAloU\\_IMhgzdUL8ig&sa=X&ved=2ahUKewjI0pyS86jrAhVTxjgGHVyNAnkQ9QEwAHoECAoQBQ&biw=1536&bih=754#imgrc=IBTKTIKIGVvqM](https://www.google.com/search?q=HRBA+to+development+graphics&rlz=1C1GCEA_enNP912NP912&tbm=isch&source=iu&ictx=1&fir=n58iGL3ILvYvuM%252CJZKNKIBO2IWxo1M%252C_&vet=1&usg=AI4_-kTRNIJLIC8mijAloU_IMhgzdUL8ig&sa=X&ved=2ahUKewjI0pyS86jrAhVTxjgGHVyNAnkQ9QEwAHoECAoQBQ&biw=1536&bih=754#imgrc=IBTKTIKIGVvqM)

## Substantive Rights

- o All persons have the right to freedom from pollution, environmental degradation, and activities that adversely affect the environment or threaten life, health, livelihood, well-being and sustainable development within, across or outside national boundaries.
- o All persons have the right to protection and preservation of the air, soil, water, sea-ice, flora and fauna, and essential processes and areas necessary to maintain biological diversity and ecosystems.
- o All persons have the right to the highest attainable standard of health free from environmental hazard.
- o All persons have the right to safe and healthy food and water adequate for their well-being.
- o All persons have the right to a safe and healthy working environment.
- o All persons have the right to adequate housing, land tenure, and living conditions in a secure, healthy, and ecologically sound environment.
- o All persons have the right not to be evicted from their homes or land for the purpose of, or as a consequence of, decisions or actions affecting the environment, except in emergencies or due to a compelling purpose benefiting society as a whole and not attainable by other means.
- o All persons have the right to participate effectively in decisions regarding the environment, to negotiate their eviction due to environmental activities and, if evicted, to timely and adequate restitution, compensation, and/or appropriate and sufficient accommodation of land.
- o All persons have the right to timely assistance in the event of natural or technological or other human-caused catastrophes.
- o All persons have the right to benefit equitably from the

conservation and sustainable use of nature and natural resources

- o Indigenous peoples have the right to control their lands, territories and natural resources, and to maintain their traditional way of life. This includes the right to security in the enjoyment of their means of subsistence.

### **Procedural Right**

- o All persons have the right to information concerning the environment.
- o All persons have the right to hold and express opinions and to disseminate ideas and information regarding the environment.
- o All persons have the right to environmental and human rights education.
- o All persons have the right to active, free, and meaningful participation in planning and decision-making activities and processes that may have an impact on the environment and development. This includes the right to a prior assessment of the environmental, and developmental and human rights consequences of proposed actions.
- o All persons have the right to associate freely and peacefully with others for purposes of protecting the environment.
- o All persons have the right to effective remedies and redress in administrative or judicial proceedings for environmental harm.

### **Responsibility and Obligation**

- o All persons, individually and in association with others, have a duty to protect and preserve the environment.
- o All states shall respect and ensure the right to a secure, healthy and ecologically sound environment.
- o These measures shall aim at the prevention of environmental

harm, at the provision of adequate remedies, and at the sustainable use of natural resources:

- ✓ collection and dissemination of information concerning the environment
- ✓ prior assessment and control, licensing, regulation, or prohibition of activities and substances potentially harmful to the environment
- ✓ public participation in environmental decision-making
- ✓ effective administrative and judicial remedies and redress for environmental harm and the threat of such harm
- ✓ monitoring, management and equitable sharing of natural resources
- ✓ measures to reduce wasteful processes of production and patterns of consumption.<sup>24</sup>

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24 Human Rights based Approach to Environmental Protection, 2011 developed by International Union for Conservation of Nature (IUCN)

## Chapter 3

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### **Role of NHRIs on SDGs and HRBA**

#### **NHRIs Support in the Context of SDGs (Monitoring HRBA)**

The 2030 Agenda for Sustainable Development explicitly references human rights throughout its text, and the 17 Sustainable Development Goals (SDGs) and the related 169 targets directly or indirectly reflect human rights standards. The SDGs are designed to “leave no one behind”, and the Agenda integrates crosscutting human rights principles such as participation, accountability and non-discrimination. In other words, the 2030 Agenda and human rights are inevitably tied together. Given their unique mandate and role, National Human Rights Institutions (NHRIs) can play a key role in the implementation and follow-up of the Agenda, and are at the core of the SDG ‘web of accountability’.

NHRIs are independent state institutions that operate from an unbiased and strong position between the State, civil society and international institutions. Their monitoring mandates give them a unique position to act as both watchdog and advisor, to uphold the human rights embedded in the SDGs.

#### **Mérida Declaration on NHRIs and SDGs**

In October 2015, GANHRI met in Mérida, Mexico, to discuss the various roles and functions that NHRIs can undertake to make human rights the foundation for the implementation of the 2030 Agenda for

Sustainable Development and help translate the SDGs into reality on the ground. The Mérida Declaration outlines some of the activities that NHRIs can undertake.

Given the convergence between the SDGs and human rights standards, NHRIs can play a key role in translating the SDGs into reality on the ground. Their diverse functions enable them to act as accountability actors in the implementation of the SDGs framework.

A human rights-based approach (HRBA) puts human rights standards at the centre of planning, policy and practice. It includes the principles of:

- **Accountability:** NHRIs can hold states accountable to their human rights obligations by monitoring the implementation of poverty reduction strategies, measurement tools and National Action Plans on SDGs, while also ensuring that these approaches have a basis in human rights.
- **Equality and non-discrimination:** NHRIs can insist on the prohibition of discrimination on the grounds of social and economic condition. They also help ensure that poverty impact assessments feature in human rights impact assessments and that data is disaggregated.
- **Participation:** NHRIs can facilitate dialogue between people living in poverty and state authorities. They can set up participatory processes to give people living in poverty a voice in the choice of human rights indicators and can ensure their representation on NHRI advisory bodies.

Due to their broad human rights mandate and position as interlocutors between civil society and the state, National Human Rights Institutions (NHRIs) are ideal actors in supporting this approach.

The Sustainable Development Goals (SDGs) incorporate human rights and formulate indicators that can reinforce an HRBA to implement SDGs indicators. With the SDGs as a basis, NHRIs can

cooperate with national statistical offices and other actors, including those living in poverty, in the development of human rights indicators to measure relative and absolute poverty, with reference to the SDGs framework.

As Merida Declaration provides direction that an individual NHRIs, in line with their mandates under the Paris Principles, to collaborate in mutual capacity building and sharing of experiences, and to consider the practical functions they can assume to contribute to a human rights-based approach to implementation of the Agenda. Such functions and activities include but are not limited to the following:

- Provide advice to national and local governments, rights-holders and other actors, to promote a human rights-based approach to implementation and measurement of the Agenda, including by assessing the impact of laws, policies, programmes, national development plans, administrative practices and budgets on the realization of all human rights for all.
- Develop and strengthen partnerships for implementation by promoting transparent and inclusive processes for participation and consultation with rights-holders and civil society at all stages of the implementation of the Agenda, such as the development of national and sub-national strategies to achieve the SDGs, including reaching out to those who are furthest behind.
- Engage with duty-bearers, rights-holders and other key actors, including government agencies, parliaments, the judiciary, local authorities, national statistical offices, civil society, major groups, marginalised groups, mainstream and social media, the UN and other international and regional institutions, to raise awareness and build trust and promote dialogue and concerted efforts for a human rights-based approach to implementation and monitoring of the Agenda, and safeguarding space for engagement of rightsholders and civil society.

The Mérida Declaration, adopted by the Global Alliance of NHRIs (GANHRI), further outlines how NHRIs can apply their unique mandate and functions to support the integrated realisation of human rights and sustainable development. In accordance with the Mérida Declaration, NHRIs can contribute to the Agenda by:

- Monitoring progress at the local, national, regional and international levels, including by building on existing human rights reporting and monitoring mechanisms;
- Assisting in the shaping of national indicators and sound data collection systems, including by providing advice and expertise on a Human Rights-Based Approach to Data;
- Promoting transparent and inclusive processes for participation and consultation in the development of national strategies to achieve the SDGs, including by reaching out to those who are furthest behind and collaborating with civil society and other actors;
- Supporting capacity-building and sharing of experiences on a Human Rights-Based Approach to the SDGs through regional and global NHRI networks.

## **HRBA to Data Collection and Monitoring**

### **NHRIs and Data**

In order to fulfil the promise of the 2030 Agenda to realise the human rights of all and to “leave no one behind”, it is crucial to ensure efficient, innovative and adjustable approaches to monitoring and data collection, which can supplement statistical data based on global indicators.

In response to this data challenge, the Mérida Declaration proposes that NHRIs should:

- Assist in the shaping of global and national indicators and sound data collection systems to ensure the protection and promotion of human rights in the measurement of the Agenda, including through seeking collaboration with national statistical offices, where appropriate, and other relevant national institutions, and by building on existing international and regional human rights mechanisms.

### **NHRIs as data providers and advisers**

Given their monitoring mandate, independent status and focus on the range of human rights that underpin the SDGs, NHRIs have a significant potential for serving as credible data providers that can provide context-specific analysis and advice, as well as information about vulnerable groups and sensitive issues that are hard to capture through common statistical data.

Additionally, NHRIs have the potential to be key partners to contribute to a diverse ecosystem of data, along with other data providers.

### **National Human Rights Institutions and National Statistical Offices**

The Office of the High Commissioner for Human Rights (OHCHR) has initiated an initiative that reaffirms NHRIs as credible data providers and advisers. The objective of the initiative is to establish a programme of cooperation between NHRIs and National Statistical Offices (NSOs) in order to collect human rights-sensitive data on sustainable development. The rationale is that partnerships between NSOs and NHRIs at a national level can ensure a Human Rights-Based Approach to Data (HRBAD) with a focus on transparent, disaggregated data that ‘leaves no one behind’.<sup>25</sup>

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25 [https://nhri.ohchr.org/EN/Themes/SustDevGoals/Documents/GANHRI\\_NHRIs%20engaging%20with%20the%20SDGs\\_UpdatedVersion.pdf](https://nhri.ohchr.org/EN/Themes/SustDevGoals/Documents/GANHRI_NHRIs%20engaging%20with%20the%20SDGs_UpdatedVersion.pdf).

A preliminary set of principles, recommendations and good practices were formulated under the following headings of an HRBAD:

- Participation
- Data disaggregation
- Self-identification
- Transparency
- Privacy
- Accountability

## **Participation**

Participation of relevant population groups in data collection exercises, including planning, data collection, dissemination and analysis of data

Participation is central to a human rights-based approach. It is instrumental to the realization of all components of the HRBAD, as well as retaining trust in official and other relevant data and statistics.

All data collection exercises should include means for free, active and meaningful participation of relevant stakeholders, in particular the most marginalized population groups.

Where appropriate, CSOs, National Human Rights Institutions and other relevant stakeholders should participate on behalf of these groups to provide relevant perspectives and information (provided they are competent to represent the group's interests).

### **Data collectors should proactively consider participation options and groups to be represented**

To facilitate the participation of population groups at risk of being left behind, it is necessary to identify vulnerable groups, namely the groups most at risk of not enjoying their human rights. This

should be done proactively through discussion with National Human Rights Institutions, CSOs and other relevant experts. The form of participation should be decided on a case-by-case basis. Options may include:

- Online consultations, with appropriate access provisions and publicity to ensure relevant groups are aware of the consultation process.
- Public meetings, in locations that are easily accessible for vulnerable groups and with appropriate publicity and engagement to encourage participation.
- Community visits, which may incorporate public meetings, meetings with key stakeholders and representatives and discussion with community members about issues relevant to data collection.
- Public submissions processes (for instance, for topic development), with clear and transparent information about use of information submitted and decision-making processes.
- Ongoing engagement and relationship-building with communities to encourage participation, establish dialogues and incorporate perspectives in data collection processes.
- Including relevant CSOs in thematic or advisory boards or committees convened by the data collector.
- Creating advisory groups to facilitate regular engagement with vulnerable groups and frequent input on data collection processes.
- Establishing focal points within data collection organizations who are responsible for seeking information and perspectives from groups of interest.
- Formal memoranda of understanding among organizations or departments, including between national statistical offices and human rights institutions, to facilitate information sharing and collaborative work.

A participatory approach should enhance the relevance and reliability of collected data and compiled indicators. An HRBAD should help address concerns expressed by the target population groups themselves in accordance with international human rights standards. These groups may be, for example, women; children; indigenous peoples; minorities; persons with disabilities; migrants; homeless persons; older persons; the youth; lesbian, gay, bisexual, transgender and intersex (LGBTI) persons; refugees; people living with human immunodeficiency virus (HIV); people who use drugs; sex workers, etc.

### **Data disaggregation**

Data collection and disaggregation that allow for comparison of population groups are central to an HRBAD and forms part of States' human rights obligations. Disaggregated data can inform on the extent of possible inequality and discrimination.

### **Disaggregation allows more detailed data analysis to identify inequalities**

An HRBAD requires a move from traditional data collection and analysis, which concentrate on national averages and risk masking underlying disparities. An HRBAD incorporates data on the most disadvantaged or marginalized in national/ large-scale data collections. As a result, it provides data that identify and measure inequalities among population groups. Capacities and partnerships should be developed to enable States to meet their obligation to collect and publish data disaggregated by grounds of discrimination recognized in international human rights law. These include sex, age, ethnicity, migration or displacement status, disability, religion, civil status, income, sexual orientation and gender identity.

Where possible, data should be published in a format that permits identification and analysis of multiple and intersecting disparities and discrimination. Individuals may experience discrimination and

inequality along multiple axes (for example, gender and disability). Analyzing data at the subgroup level allows for understanding of multiple and intersecting inequalities.

### **Self-Identification**

The respect and protection of personal identity is central to human dignity and human rights. Categorization of populations in statistics, and the detailed data collection that makes disaggregation possible, are important in identifying and addressing inequality and social issues. These processes are not norm- or value-neutral, however, and data collectors should remain cognizant of the norms and values that inform their decision-making in relation to personal identity characteristics.

### **Data collection activities should not have a negative impact**

The overriding human rights principle do no harm should always be respected. Historically, there have been cases of misuse of data collected by National Statistical Offices (and others), with extremely detrimental human rights impacts. Other principles outlined in this guidance note address the measures that data collectors must take to ensure that data on personal characteristics, when collected for reasonable statistical purposes, is kept safe and used only for the benefit of the groups it describes and society as a whole.

### **Populations of interest should be self-defining**

In order to allow disaggregation of data, groups and/or categories must be defined prior to data collection. Many populations of interest for data collection are, by necessity, self-defining. That is, the parameters of the population cannot be imposed by an external party. Rather they are set by the members of the population and communicated via their (individual) decisions to disclose, or not disclose, their personal identity characteristics (For example their indigenous status, religion or sexual orientation). Any categories of identity should be developed through a participatory approach,

to ensure respondents with these characteristics are optimally able to engage with the data collection. In some contexts, applying the principle of self-identification may involve including categories of identity beyond those currently listed in international treaties or recognised by national law.

## **Transparency**

### **Transparency of public information**

The principle of transparency is closely linked with those of participation and accountability in an HRBAD. Also referred to as the right to information, it is a fundamental attribute of the freedom of expression. The freedom to seek, receive and impart information is specified in international human rights treaties.

The United Nations Fundamental Principles of Official Statistics state that statistics play a fundamental role in the information system of a democratic society, and beyond serving the Government and the economy, in honouring a population's entitlement to public information.

CSOs' access to data and reports informing them of existing inequalities among population groups is essential to the realization of the right to information, and the monitoring and realization of human rights more generally. Such data may relate to, for instance, access to education, health, protection from violence, work, participation, social security and justice.

The legal, institutional and policy frameworks under which national chief statisticians and statistical systems operate should be publicly available. This helps ensure trust in the statistical information produced.

Data should be disseminated as quickly as possible after collection. Dissemination should be in an accessible language and format, taking into account considerations such as disability, language,

literacy levels and cultural background.

## **Privacy**

Data collected to produce statistical information must be strictly confidential, used exclusively for statistical purposes and regulated by law. As stated in the International Covenant on Civil and Political Rights, No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

- Privacy and confidentiality must be considered alongside access to information
- Information that identifies individuals or discloses an individual's personal characteristics should not be made public as a result of data dissemination
- Data collectors must have robust data protection mechanisms and procedures
- When personal data is released, this should only be done with the permission of the individual concerned (or their appropriate representatives)

The right to privacy is closely linked with self-identification and personal identity issues. The Human Rights Committee defined privacy as a sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone.

Data should not be published or publicly accessible in a manner that permits identification of individual data subjects, either directly or indirectly.

## **Accountability**

Accountability from a human right perspective means that the State,

or those in authority, must be held accountable to the population affected by their decisions and actions. This relates to the obligations of the State, or those in authority, under international human rights law (duty bearers) and the corresponding rights of the population (rights-holders) under the same standards. Accountability is central to a human rights-based approach. In the context of the HRBAD, it refers to data collection for accountability as well as accountability in data collection.

### **National Statistical Offices are accountable for human rights**

As State institutions, national statistical offices are themselves human rights duty-bearers. They have obligations to respect, protect and fulfil human rights in their daily exercise of statistical activities. Independent statistics, free from political interference, are fundamental tools to inform and hold those in power accountable for their policy actions (or inactions). This can be done through measuring their impact on the protection and realization of human rights.

To improve measurement of human rights and implementation of the 2030 Agenda, adequate budgets at national and international levels should be allocated to support national statistical offices. This will enable them to undertake data collection for marginalized groups, ensure participatory and gender-sensitive approaches, and provide capacity strengthening to alternative data collectors.<sup>26</sup>

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26 A Human Rights based Approach to Data, Leaving no one behind in the 2030 agenda for Sustainable Development Goals, United Nations 2018

## Chapter 4

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### **Voluntary National Review (VNR) Process and Human Rights**

Voluntary national reviews (VNRs), are an important innovation as a United Nations process for follow up to the adoption of development agendas. Such reviews are part of the follow-up and review of the 2030 Agenda for Sustainable Development. VNRs make possible the sharing of experiences, including successes, challenges and lessons learned, with a view to accelerating the implementation of the 2030 Agenda. This review focuses on the themes of ‘leaving no one behind’, trade-offs and means of implementation which are some of most important principles that are the core elements of the agenda, along with universality and commitment to human rights.

Voluntary national reviews are carried out by the High-Level Political Forum on Sustainable Development (HLPF) under the auspices of the Economic and Social Council (ECOSOC). They are to be voluntary, state- led, undertaken by both developed and developing countries, and provide a platform for partnerships, including through the participation of Major Groups and other stakeholders. VNRs allow the sharing of experiences, including successes, challenges and lessons learned, with a view to accelerating the implementation of the 2030 Agenda.

Once a country has decided to carry out a review, the decision is communicated to the President of ECOSOC by means of a letter from the Permanent Representative or another official of the country concerned. There are several of other steps that countries should consider when organising and preparing the review.

VNRs are state-led, prepared by government in a consultative, inclusive and participatory process involving all Major Groups and other stakeholders. This includes all sectors and levels of government, civil society, private sector, members of Parliament and other institutions. At the national level, Member States decide on which institution will lead the VNR. They are also encouraged to involve stakeholders in the national voluntary reviews in accordance with paragraphs 78 and 79 of General Assembly resolution 70/1. The specific modalities for engagement are likely to vary from country to country and are to be decided by the national governments. At the global level, the HLPF supports effective and broad participation of Major Groups and other stakeholders in the follow-up and review processes at the HLPF in line with resolution 67/290. Representatives from civil society, academia, private sector, and parliament have been included in the delegations of some countries to the previous HLPFs. Major Groups and other stakeholders also commented and asked questions during the VNR presentations.

### **Stakeholders Engagement for VNR Process<sup>27</sup>**

State should Identify key stakeholders, methods of engagement and consider online and other means through which stakeholder contributions could be gathered. All sectors and levels of government, civil society, private sector, trade unions, members of parliament and national human rights institutions, should be considered (see Figure 4). The identification of a focal point to liaise with stakeholders can

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<sup>27</sup> Handbook for countries in preparation of presenting voluntary national reviews (VNRs), Prepared and updated by DESA, November 2019

facilitate communication and follow up. It can also be considered to establish a more institutionalized mechanism to engage stakeholders, which can be used for future involvement in the implementation of the 2030 Agenda. The following figure shows the key stakeholders:



**Figure 5: Stakeholders Engagement in the VNR Process<sup>28</sup>**

28 <https://sdgaccountability.org/working-with-formal-processes/contributing-to-voluntary-national-reviews-vnr/>

## NHRI's Role on SDGs and Particularly VNR Process<sup>29</sup>

The Paris Principles explicitly mandate NHRIs to work closely with civil society, promoting cooperation and coordination to enhance the protection and promotion of human rights. In line with the *Mérida Declaration*, there are a number of ways that CSOs can engage with NHRIs to promote accountability for the 2030 Agenda, including the following:

1. **Determine whether the country has an accredited NHRI and review its status** – As a starting point, CSOs should determine whether there is an accredited NHRI and review its status in terms of compliance with the Paris Principles. GANHRI classifies NHRIs as “A” (fully compliant), “B” (partially compliant) or “C” (non-compliant) with the Paris Principles.
2. **Engage with NHRIs to:**
  - a. *Secure or safeguard space for civil society* – As a prerequisite for accountability for the 2030 Agenda, NHRIs may be able to play a role in safeguarding space for civil society actors to engage in SDG implementation and review processes. Such a role will, of course, depend upon the NHRI’s independence and autonomy from the country’s government. CSOs concerned about a lack of safe space to engage with the SDGs should contact their respective NHRI to determine what kind of support, if any, can be provided.
  - b. *Raise awareness of the SDGs* - The *Mérida Declaration* recognizes the role of NHRIs in engaging with stakeholders to raise awareness of the implementation and review of the SDGs. Accordingly, CSOs should seek to determine what actions NHRIs are taking to raise awareness of the SDGs and explore

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29 <https://sdgaccountability.org/working-on-oversight-for-accountability/engaging-with-national-human-rights-institutions-nhris/>

potential partnerships with NHRIs. For example, while NHRIs may have greater resources to promote awareness of the SDGs, some CSOs may be in a better position to reach vulnerable or marginalized groups with awareness-raising messages or activities.

- c. ***Ensure transparent, inclusive and participatory national review processes*** – NHRIs can play a critical role in ensuring that national review processes engage with citizens, including those who are the furthest behind. CSOs should urge NHRIs to act as an advisor and convener of national review processes and mechanisms – including in relation to Voluntary National Reviews (VNRs) – and ensure that all processes are inclusive, participatory and engage marginalized groups and communities.
- d. ***Provide independent reports on a country’s human rights situation in relation to the SDGs*** – CSOs should urge NHRIs to use their mandate to report on the SDGs to both human rights bodies as well as at SDG-specific forums such as the UN High-level Political Forum on Sustainable Development (HLPF). NHRIs can provide information on the general human rights situation, unequal progress and the situation of those furthest behind, as well as information on procedural aspects of national consultations, including their transparency and stakeholder participation.
- e. ***Promote participatory approaches to data-collection and monitoring the SDGs*** – NHRIs can use their existing mandate to facilitate participatory data collection processes<sup>13</sup> in order to identify inequalities that might otherwise be overlooked by official government data sources. Accordingly, CSOs should consider partnering

with NHRIs on third-party data initiatives that engage vulnerable or marginalized groups that may be excluded from traditional data collection and monitoring methods.

- f. Conduct independent research and publish reports on SDG implementation* – CSOs should encourage NHRIs to conduct independent research and publish reports that document and assess the impact of laws, policies, programmes, national development plans and budgets in relation to SDG implementation, especially for vulnerable or marginalized groups. Research and reports may be produced individually by NHRIs or jointly with CSOs in order to assess the contribution, or lack thereof, of governments as well as other development actors engaged in implementing the 2030 Agenda.
- g. Investigate and respond to individual human rights complaints and facilitate access to justice in the context of SDG implementation* – Some NHRIs may have the ability to investigate individual complaints or pursue legal action for human rights violations that occur in the context of SDG implementation. Where NHRIs have such functions, CSOs should consider bringing individual cases to the attention of NHRIs, in order to assist individual complainants as well as to potentially affect change for a wider group of people.

### **An independent NHRI is an indicator of sustainable development<sup>30</sup>**

The ‘existence of independent NHRIs in compliance with the Paris Principles’ is a global indicator for the achievement of **SDG 16** on peace, justice and strong institutions. This reaffirms that sustainable development cannot be achieved without a strong and



<sup>30</sup> [https://ganhri.org/wp-content/uploads/2019/12/A4-Guarantors\\_Adrian.pdf](https://ganhri.org/wp-content/uploads/2019/12/A4-Guarantors_Adrian.pdf)

independent NHRI.

NHRIs are part of the State apparatus and are funded by the State. However, in order to comply with the Paris Principles, they must operate and function independently from government.

The Paris Principles constitute authoritative and reliable metrics, adopted by the UN General Assembly, to measure the independence, investigatory powers, mandate and capacity of NHRIs. All NHRIs are regularly assessed and awarded with either A, B or no status depending on their compliance with the Paris Principles by a Sub Committee of GANHRI, under the auspices of the Office of the High Commissioner for Human Rights. Based on this transparent, periodic and internationally agreed peer review procedure, the existence of an independent NHRI in compliance with the Paris Principles, (A-status), is the global indicator for **SDG target 16.a**.

### **Guiding Principles of VNR Process**

In paragraph 74 of the 2030 Agenda, Member States identified a number of principles to guide the follow-up and review process at all levels. In preparing the voluntary national reviews, it is important that these principles be taken into account:

**Follow-up and review of SDGs (source: General Assembly Resolution adopted by the General Assembly on 25 September 2015), para 72, 73 and 74.**

We commit to engaging in systematic follow-up and review of the implementation of this Agenda over the next 15 years. A robust, voluntary, effective, participatory, transparent and integrated follow-up and review framework will make a vital contribution to implementation and will help countries to maximize and track progress in implementing this Agenda in order to ensure that no one is left behind.

Operating at the national, regional and global levels, it will promote accountability to our citizens, support effective international cooperation in achieving this Agenda and foster exchanges of best practices and mutual learning. It will mobilize support to overcome shared challenges and identify new and emerging issues. As this is a universal Agenda, mutual trust and understanding among all nations will be important.

Follow-up and review processes at all levels will be guided by the following principles:

- a) They will be voluntary and country-led, will take into account different national realities, capacities and levels of development and will respect policy space and priorities. As national ownership is key to achieving sustainable development, the outcome from national-level processes will be the foundation for reviews at the regional and global levels, given that the global review will be primarily based on national official data sources.
- b) They will track progress in implementing the universal Goals and targets, including the means of implementation, in all countries in a manner which respects their universal, integrated and interrelated nature and the three dimensions of sustainable development.
- c) They will maintain a longer-term orientation, identify achievements, challenges, gaps and critical success factors and support countries in making informed policy choices. They will help to mobilize the necessary means of implementation and partnerships, support the identification of solutions and best practices and promote the coordination and effectiveness of the international development system.
- d) They will be open, inclusive, participatory and transparent for all people and will support reporting by all relevant stakeholders.
- e) They will be people-centred, gender-sensitive, respect human

rights and have a particular focus on the poorest, most vulnerable and those furthest behind.

- f) They will build on existing platforms and processes, where these exist, avoid duplication and respond to national circumstances, capacities, needs and priorities. They will evolve over time, taking into account emerging issues and the development of new methodologies, and will minimize the reporting burden on national administrations.
- g) They will be rigorous and based on evidence, informed by country-led evaluations and data which is high-quality, accessible, timely, reliable and disaggregated by income, sex, age, race, ethnicity, migration status, disability and geographic location and other characteristics relevant in national contexts.
- h) They will require enhanced capacity-building support for developing countries, including the strengthening of national data systems and evaluation programmes, particularly in African countries, least developed countries, small island developing States, landlocked developing countries and middle-income countries.
- i) They will benefit from the active support of the United Nations system and other multilateral institutions.

### **Institutional Arrangement for the SDG Implementation in Nepal**

At the apex level, a Steering Committee for the implementation and monitoring of the SDGs has been established under the chairmanship of the Rt. Hon. Prime Minister. The committee is comprised of the Vice Chair of the NPC as Deputy Chairperson; the Foreign Minister; the Finance Minister; Chief Ministers of all provinces; the Chief Secretary; presidents of associations of rural municipalities, municipalities and district coordination committees as members; and the Member Secretary of the NPC as the Member-Secretary. The SDG Implementation and Monitoring Committee, which is under

the Steering Committee and is chaired by the Vice-Chair of the NPC, consists of all members and the Member-Secretary of NPC; secretaries of all ministries related to the SDGs; the Vice-Chair of the Planning Commission or Secretary of provincial Ministry of Economic Planning; representatives of associations of rural municipalities, municipalities and district coordination committees, presidents of FNCCI, CNI and NCC from the private sector; the president of National Cooperative Federation and the President of National NGO Federation as members; and Joint Secretary of the NPC as Member-Secretary. The committee provides guidelines to the federal ministries for implementing and mainstreaming the SDGs at provincial and local levels. It also monitors implementation and prepares the status of progress.

Provincial-level steering committees coordinate and facilitate the implementation of the SDGs in the provinces. There are seven thematic committees, each coordinated by the respective members of the NPC. The committees consist of representatives from concerned ministries, sub-national level, the private sector, cooperatives and CSOs. These seven committees are expected to provide trimester reports to the Implementation and Coordination Committee.

1. Coordination Committee (Goal 17).
2. Economic Development Committee (Goal 8, 10 and 12)
3. Agriculture Development and Drinking Water Committee (Goal 1, 2 and 6)
4. Social Development Committee (Goals and 4)
5. Infrastructure Development Committee (Goal 9 and 11)
6. Energy Development and Climate Change Committee (Goal 7, 13 and 15)
7. Governance and Gender Empowerment Committee (Goal 5 and 16)

The 2017 and 2020 VNR process highlighted that Nepal has a strong focus on adding resilient, sustainable infrastructure. It also found the country is prioritizing budget allocations and other resources towards the SDGs. Several additional lessons were learned through the creation of Nepal's first VNR. These included (1) the essential nature of cross-sector partnerships for accelerating progress, (2) the need of private sector to catch up with the public sector and civil society in embracing its commitment to integrate the SDGs with their strategies and operations, (3) the monitoring challenge created by the lack of disaggregated data, (4) the need to align SDG indicators with work programs throughout Nepal's government, (5) the need to revisit many master plans, medium-term plans, and strategies that were developed prior to the SDGs, (6) the requirement of developing appropriate collection mechanisms wherever gaps exist in data for the SDGs, and (7) the need to develop the capabilities and systems necessary for monitoring and evaluating progress at the provincial and local levels.<sup>31</sup>

Systematic and disaggregated data are requirements for the SDGs. To have the opportunity to achieve such lofty goals as leaving no one behind, current gaps in data collection and analysis must be bridged. Nepal may also need to revamp its existing surveys or create new ones to fill these data gaps. And macroeconomic policy needs to be audited to ensure that the desired outcomes are being achieved.

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31 [https://sdghelpdesk.unescap.org/sites/default/files/2018-08/VNR%20Nepal\\_0.pdf](https://sdghelpdesk.unescap.org/sites/default/files/2018-08/VNR%20Nepal_0.pdf)

## **Principle of Multi-Stakeholder Participation in the VNR Process<sup>32</sup>**

One of the founding principles of the 2030 Agenda is the requirement for all implementation and follow-up processes to be participatory and inclusive, including all levels and sectors of government, civil society and the private sector, members of parliament national human rights institutions, among others. This participation and consultation build wider societal ownership of the 2030 Agenda. The 2030 Agenda has a revitalized partnership for sustainable development at its core, and stakeholders are recognized as valuable partners in implementing the goals and raising public awareness. Stakeholders have been actively engaged throughout the process of design, implementation, monitoring and review of the 2030 Agenda at all levels in many countries around the world.

The participation of stakeholders promotes effective decisions, by giving groups affected by those decisions the opportunity to communicate their needs and interests and support governments in tailoring, implementing and reviewing public policies. Participation and consultation also build ownership of the 2030 Agenda, and therefore contributes to a whole-of society approach to the implementation of the SDGs. The 2030 Agenda calls upon stakeholders to be actively engaged throughout the process of design, implementation, monitoring and review of the 2030 Agenda.

A stakeholder engagement plan can be used, among other things, to frame the strategic purpose for consultations; set up a process to identify stakeholders to be consulted; means; techniques and methods for consultation (face-to-face workshops, online platforms, focus groups, written comments); and how the consultation process will be documented. Consideration could be given throughout the process as to how to support reporting by relevant stakeholders and how those contributions will be reflected in the final report, and how ongoing stakeholder involvement will be reflected in the

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<sup>32</sup> Handbook for countries in preparation of presenting voluntary national reviews (VNRs), Prepared and updated by DESA, November 2019

implementation of the 2030 Agenda. Efforts could include reaching out to legislative bodies, subnational and local governments, the public, civil society and the private sector, and communicating entry points for stakeholder participation in VNR preparation and implementation of the 2030 Agenda. Additionally, efforts could be taken to identify representative voices from marginalized groups and to enable their meaningful engagement in the process. Awareness raising efforts encompass a range of activities such as simplifying and translating the SDGs into local languages and including the SDGs in school and university teaching programmes.

### **VNR Report Preparation Methodology 2020 in Nepal<sup>33</sup>**

The methodology for the preparation of the report includes literature review, discussions with relevant stakeholders and key - informant interviews. The preparation of the Voluntary National Review (VNR) was carried out adopting an open and participatory approach.

#### **Literature Review**

Review of relevant literature on the SDGs was carried out- for example, the handbook for the preparation of VNR, and the VNR reports of other developing countries. The SDGs Progress Assessment Report 2016-2019, prepared by the NPC, was primarily referred to review the progress. Medium- and long-term plans and strategies were reviewed in order to establish their alignment with the SDGs. These included Nepal's 14<sup>th</sup> and 15<sup>th</sup> Plans; the Needs Assessment, Costing and Financing Strategy for the SDGs of Nepal; the Economic Survey and the plan documents of the provincial level. Sectoral strategies, plans and policies, such as the Agriculture Development Strategy (2015-2035), the Nepal Health Sector Strategy, and the Energy Sector Strategy, were also reviewed. Some of the relevant publication and recommendation of the civil society, youth, women, Dalit, indigenous communities, Nepal SDGs Forum, and development partners were also considered. Country reports submitted to the international

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33 VNR 2020 report of Nepal

bodies, including reports related to human rights, the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on Elimination of All Forms of Racial Discrimination (CERD) and the reports on disaster risk reduction, climate change and biodiversity were reviewed as well.

### **Key Informant Interview**

Key informant interviews were conducted focusing on specific goals and the progress that Nepal has made in each goal. Policymakers from the Sustainable Development and Good Governance Committee of the National Assembly, inclusion experts and other related stakeholders were also interviewed.

### **Consultation with Different Stakeholders**

A series of consultations with key stakeholders were undertaken in a virtual setting in view of the COVID-19 lockdown. Key government officials from the concerned line ministries were consulted on the efforts of the government towards the implementation of the SDGs. Similarly, consultations were held with parliamentarians, and representatives of provinces and local levels. They included heads and members of the planning commissions from all provinces, and representatives of Association of District Coordination Committees, Nepal (ADCCN), Municipal Association of Nepal (MuAN) and National Association of Rural Municipality in Nepal (NARMIN).

Discussions were also held with representatives of the private sector. Participants included officials from the Federation of Nepalese Chambers of Commerce and Industry (FNCCI), Confederation of Nepalese Industries (CNI), Nepal Chambers of Commerce (NCC), Federation of Nepal Cottage and Small Industries, and National Business Initiative. Consultations were held with representatives from the cooperative sector. Discussions were also carried out separately with NGO Federation of Nepal, SDGs National Network Nepal, women's groups, Dalit groups, SDG Forum and other members of

civil society. Consultations were held with the representatives of multilateral organizations and development partners. Some other consultations were also carried out with the rest of the major groups.

Once the draft VNR report was ready, it was presented to the SDG Implementation and Coordination Committee. Efforts were made to get inputs from stakeholders with whom one to one consultation could not be held. The report was finalized after addressing the relevant inputs and comments.

### Way Forward

The Government of Nepal in the very initial phase accepted that the SDGs are comprehensive, ambitious and challenging goals which require huge resources and capacity enhancement to achieve them within the given 15 years. Now, five years' time has already been elapsed, and for the Universal access to basic goods and social services; reduced inequality and structural changes in production and consumption patterns require unprecedented national efforts and international cooperation. Hence, the government should review its national implementation plan with priority even including the actions that could not be implemented in the previous five years duration. This plan should also reflect the human rights-based approach in its implementation.

Similarly, the SDGs are not standalone goals, and the achievement or underachievement of many goals has implications for the achievement of several other goals. As there are already overlaps between goals and targets, it is necessary that goal-specific and cross-cutting interventions are human rights friendly, properly specified, implemented and monitored. The United Nations Office of the High Commissioner for Human Rights (OCHCR) did a remarkable work in demonstrating how the SDGs cover all aspects of human rights, “including economic, civil, cultural, political, social rights and the right to development”. The significance of understanding

the relationship between the SDGs and human rights is not just illustrative – it is rather a way of strengthening States’ accountability vis-à-vis their commitments to a human rights-based approach to development and to the SDGs themselves.

Moreover, a large number of surveys have to be conducted to fill the data gaps and data should also be collected pursuing the HRBA approach. Some SDG-related targets also require intra-household information such as on nutrition, hunger, poverty, education, health, consumption and income distribution. As part of the 2030 Agenda, Nepal explicitly reaffirmed their commitment to international law and emphasized that the Agenda is to be implemented in a manner that is consistent with the rights and obligations of States under international law. Nepal also pledged to 'leave no one behind' and for more systematic data disaggregation to help achieve and measure the goals. Since devising disaggregation of indicators (or not) is not a norm or value neutral exercise, and the risks associated with this operation for the protection of the rights of data subjects should not be denied, an HRBAD has much to offer in this context. An HRBAD has to be used to help bring together relevant data stakeholders and develop communities of practice that improve the quality, relevance and use of data and statistics consistently with international human rights norms and principles.

Equally, Government partnership with the private sector and community organizations is crucial for implementing and monitoring the achievement of the SDGs. The level of partnership for the implementation of the SDGs should also be increased so that they can feel their ownership in the implementation. External development partners (EDPs) have a particularly important role to play in supporting the country to develop SDG-based periodic plans, and supporting and monitoring implementation.

Additional assistance in finance, technology, and capacity building are vital for achieving the SDGs. Currently, though the total

government revenue as a proportion of GDP has increased and the target set for 2019 has been achieved, there still lies a huge gap to finance the achievement of the SDGs. Additionally, the socio-economic shock of COVID-19 has caused unprecedented disruption in transportation, service sector, tourism, hospitality industry, revenue, and remittances. The fallout will be in the areas of income, poverty, employment, and economic growth, while the existing financing gap widens. This is sure to have a bearing on Nepal's ambition for smooth and sustainable graduation from LDC category. Other prominent challenges include localization of SDGs, lack of adequate data, and coordination and follow up. Therefore, closer cooperation, coherence and coordination among governments, development partners, civil society, business community, volunteers, and people will be critical. Enhanced level of global partnership is equally important.<sup>34</sup>

Likewise, reliable infrastructure is a precondition for urban development which is obviously lacking in our country even in the capital city. In this context, experts have raised their concerns over insufficient infrastructure and amenities befitting the urban needs. Haphazard development without pursuing the human rights-based approach in the name of urbanisation only invites more problems like natural disasters, environmental degradation, crimes, scarcity of basic necessities, rise of squatter settlements and urban poverty. Therefore, we have to move in a planned manner with sustainable approach which requires a long-term vision and strict implementation of plans and projects. Similarly, newly inducted municipalities are reeling under absence of infrastructure and resources. The new municipal authorities as they have the obligation to fulfill the rights of the people, are also in need of capacity building to meet the needs and aspirations of the citizens. As population continues to swell in the cities like the capital, water supply has emerged as a critical problem. Waste disposal is another perennial problem that has affected public health, urban sanitation and hygiene. Lack of adequate open space,

<sup>34</sup> <https://sustainabledevelopment.un.org/memberstates/nepal>

which is vital in the event of a natural disaster, is lacking in the capital city and other municipalities. Hence, we should not hesitate to implement the HRBA approach to solve these problems which is also necessary to achieve the sustainable development goals.

The implementation of human rights education (HRE) is quite necessary in Nepal, both for teachers and for policy-makers as HRE is an important tool to internalize human rights-based approach. The UN Convention on the Rights of the Child confirms the right to HRE including learning to live together, stressing gender equity but this is still challenging in the context of Nepal. The challenge for education policy-makers is not only to make good the damaged educational infrastructure and ensure that schools are staffed with effectively trained teachers who are human rights friendly but also it requires to ensure appropriate educational measures to support other societal priorities, such as anti-corruption measures and guarantees for the rights of women and minorities. Education needs not only to prepare young people for successful economic integration but also to play a full and active part in shaping society in accordance with democratic ideals that embody equity, social justice and human rights. In other words, the education system has a key role to play in strengthening democratic development and human rights. In such backdrop, Nepal's federal, provincial, and local governments should take care to consider their constraints and priorities in looking to optimize the use of limited resources. Important factors like the impact on other SDGs, the contribution to minimizing disparities, the cost-effectiveness and sustainability of programmes should be carefully weighed.

Considering that the National Human Rights Commission, Nepal (NHRC) is a constitutional body providing wider jurisdiction for the promotion and protection of human rights in Nepal, NHRC Nepal in collaboration and cooperation between other thematic commissions can lead for the capacity development programmes for the implementation of HRBA approach. More particularly, the

NHRC will focus on the following areas:

1. NHRC Nepal will provide technical assistance and advisory services to strengthen capacity of the relevant stakeholders in the promotion and protection of human rights, more particularly capacity enhancement for the implementation of HRBA focusing on SDG indicators.
2. Activities relating to technical assistance and promotion of human rights including education, training, publications and dissemination of information and educational materials in collaboration or independently.
3. NHRC-Nepal shall provide technical support to the relevant stakeholders which may include training for own staff, human rights orientation to government officials, law enforcement and judicial officials, civil society members, human rights defenders, and other capacity building endeavours.
4. NHRC and other stakeholders will hold regular meetings at the national and provincial levels to share information, undertake collaborative protection advocacy and promotional activities including business sector, facilitate HRBA implementation, address issues of rights violation and analyse the human rights situation.
5. NHRC and development partners shall cooperate in developing strategy, procedural guidelines, or checklists to monitor and take other action in relation to the Government of Nepal's compliance with international human rights treaties to which Nepal is a party.
6. NHRC and development partners shall cooperate in the transfer of technical assistance and advisory services to further their effective engagement with the regional and international human rights system.
7. NHRC Nepal shall cooperate in regard with SDG related rights

violations and legal matters of the victims.

8. NHRC Nepal, as and when required, identify and extend further areas of cooperation with the government and other stakeholders including business sector.
9. NHRC Nepal also provides human rights related data for the Voluntary National Review Process and play active role for the implementation of the HRBA.

As the pandemic throws us years back from achieving the SDGs, this is a long-term agenda; an entire decade is remaining us for its implementation and we are doing something for the next ten years and beyond. In addition, while progress is likely to slow down for the next few years, COVID – 19 has also affected the preparation of VNRs, such as by creating obstacles to meaningful consultations with state (including the NHRIs), non-state stakeholders and national statistical offices. In this case, Nepal could not be the exception but the governments have been holding electronic consultations with thematic working groups for the VNR.

Notably, the severity of impacts has been seen by the pre-pandemic factors, many of which are at the heart of the SDGs. For instance, access to clean water (SDG 6) is a pre-requisite for being able to handwash frequently; living in substandard, unsanitary and overcrowded conditions such as slums, scatters community (SDG 11) increases the risk of exposure to the virus. The same is true for the impacts of crisis response measures. Past progress in promoting formal employment (SDG 8); increasing access to quality health care (SDG 3); being covered by social protection floors (SDG 1) ICT availability (SDG 9) that facilitates participation in a virtual classroom to name a few, help mitigate the severity of adverse impacts.

## Annex 1

### Resolution adopted by the Economic and Social Council on 24 July 2013 [on the recommendation of the Statistical Commission (E/2013/24)]

#### Fundamental Principles of Official Statistics

**Principle 1.** Official statistics provide an indispensable element in the information system of a democratic society, serving the Government, the economy and the public with data about the economic, demographic, social and environmental situation. To this end, official statistics that meet the test of practical utility are to be compiled and made available on an impartial basis by official statistical agencies to honour citizens' entitlement to public information.

**Principle 2.** To retain trust in official statistics, the statistical agencies need to decide according to strictly professional considerations, including scientific principles and professional ethics, on the methods and procedures for the collection, processing, storage and presentation of statistical data.

**Principle 3.** To facilitate a correct interpretation of the data, the statistical agencies are to present information according to scientific standards on the sources, methods and procedures of the statistics.

**Principle 4.** The statistical agencies are entitled to comment on erroneous interpretation and misuse of statistics.

**Principle 5.** Data for statistical purposes may be drawn from all types of sources, be they statistical surveys or administrative records. Statistical agencies are to choose the source with regard to quality, timeliness, costs and the burden on respondents.

**Principle 6.** Individual data collected by statistical agencies for statistical compilation, whether they refer to natural or legal persons, are to be strictly confidential and used exclusively for statistical purposes.

**Principle 7.** The laws, regulations and measures under which the statistical systems operate are to be made public.

**Principle 8.** Coordination among statistical agencies within countries is essential to achieve consistency and efficiency in the statistical system.

**Principle 9.** The use by statistical agencies in each country of international concepts, classifications and methods promotes the consistency and efficiency of statistical systems at all official levels.

**Principle 10.** Bilateral and multilateral cooperation in statistics contributes to the improvement of systems of official statistics in all countries.

## **Annex 2**

### **The Mérida Declaration**

#### **The Role of National Human Rights Institutions in Implementing the 2030 Agenda for Sustainable Development**

1. The Twelfth International Conference of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) took place in Mérida, Yucatàn, Mexico, from 8 to 10 October 2015. It was hosted by the National Human Rights Commission of Mexico (CNDH) and organised in collaboration with the Office of the High Commissioner for Human Rights (OHCHR) and the ICC. The focus of the Conference was “The Sustainable Development Goals: What Role for National Human Rights Institutions?”
2. National Human Rights Institutions (NHRIs) expressed their gratitude to the CNDH for the excellent organisation and warm hospitality. They also thanked the ICC, the OHCHR, and the United Nations Development Programme (UNDP) for their contributions to the organisation of the Conference. Participants appreciated the opening statement of Lic. Luis Raúl González Pérez, President of the CNDH; Adv. Mabedle Lourence Mushwana ICC Chairperson; Ambassador Miguel Ruiz Cabañas Izquierdo, Under-Secretary of Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs; Lic. Roberto Campa Cifrián, Under-Secretary

of Human Rights of the Ministry of the Interior; and of Lic. Rolando Zapata Bello, Governor of the State of Yucatán. Participants further welcomed the statements of the United Nations High Commissioner for Human Rights, the President of the Human Rights Council and the Resident Coordinator of the UN-system in Mexico representing UNDP, and other keynote speakers and the valuable contributions from UN agencies, non-governmental organizations and academic institutions from around the world to inform deliberations. The interactive and productive discussions, which reflected the experience and perspectives of NHRIs from all regions, were highly appreciated. The Twelfth International Conference adopted the following Declaration:

3. Participants recalled the inherent dignity, equality and inalienable rights of all human beings and the universality, indivisibility, interdependence and inter-relatedness of all human rights, as expressed in the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights.
4. Participants further recalled that human rights, development, and peace and security are central, inter-related and mutually reinforcing pillars of the United Nations system, as reflected in the United Nations Charter, and, while acknowledging the progress made under the Millennium Development Goals, participants noted that these were not rights based and failed to reach all.
5. Participants welcomed the adoption by United Nations Member States of the 2030 Agenda for Sustainable Development (hereinafter: the Agenda) as a result of a global process that brought together millions of diverse actors in constructive dialogue and inclusive consultation at an unprecedented

scale. The Agenda constitutes a transformational framework applicable to all countries, which unites the environmental, social and economic dimensions of development, aiming at re-establishing harmony with nature. Participants called on all States to implement it.

6. Participants welcomed in particular that the Agenda is firmly grounded in the United Nations Charter, the Universal Declaration of Human Rights and international human rights treaties and instruments, and informed by other instruments such as the Declaration on the Right to Development. References to human rights are included throughout the Agenda with the explicit recognition that implementation must remain consistent with relevant international rules and commitments and contribute to their realisation. The 17 Sustainable Development Goals (SDGs) and their 169 targets directly or indirectly reflect human rights standards, and integrate cross-cutting human rights principles such as participation, accountability and non-discrimination. Whilst acknowledging country-specific challenges, participants affirmed that if adequately implemented, the Agenda will have a significant impact on the enjoyment of human rights by everyone, everywhere.
7. The Agenda is comprehensive and sets ambitious goals for the range of issues that affect people and the planet. For example, it builds upon economic and social rights, when aiming to end poverty (Goal 1) and hunger (Goal 2), and ensure access to health care (Goal 3), education (Goal 4), water and sanitation (Goal 6), as well as employment and decent work (Goal 8). Goal 16 aims to achieve peaceful and inclusive societies, access to justice and accountable and inclusive institutions and reflects a range of civil and political rights.

8. Participants emphasised that eradication of poverty and inequalities and the realization of human dignity are among the key objectives of the Agenda, and that the pledge to leave no one behind, and to reach those who are furthest behind first, represents a commitment to the human rights principles of equality and non-discrimination. These principles are strengthened through the stand-alone goals of reducing inequality within and among countries (Goal 10), and achieving gender equality (Goal 5) as well as explicit references to indigenous peoples, persons with disabilities, children, migrants and other rightsholders, including Afro-descendant communities in the Americas. Participants stressed the need for addressing inequalities based on prohibited grounds of discrimination, and reaffirmed the commitment reflected in the 2012 ICC Amman Declaration and Programme of Action on the role of NHRIs in promoting gender equality.
9. Participants affirmed that the SDGs will be relevant for all rights-holders everywhere and engage a variety of key role players at global, regional, national and local levels, including women and girls, indigenous peoples, persons with disabilities, children, youth, older persons, farmers, workers, as well as Parliament and local authorities, business, academia, non-governmental organisations and civil society.
10. Participants strongly reaffirmed that civil society has a major role to play in contributing to the realisation of the Agenda. This opens opportunities for collaboration, partnership and synergies, and highlights the need to ensure full civil society participation in monitoring and implementation.
11. Participants also reaffirmed the important role that business can play in the fulfillment of the Agenda, and the possibilities for partnership that this offers. They highlighted the need to align implementation with the UN Guiding Principles on Business

and Human Rights and welcomed the explicit reference to these Principles in the Agenda. They recalled the 2010 ICC Edinburgh Declaration on the role of NHRIs in relation to business and human rights, whilst reaffirming the importance of ongoing work of the ICC and NHRIs in this area.

12. Human rights instruments and mechanisms will provide an important framework for the implementation of the SDGs, and the implementation of the SDGs will contribute to the realization of human rights. This points to the potential of using international and regional human rights mechanisms, including the Human Rights Council, Special Procedures, the Universal Periodic Review, and treaty bodies, as well as the International Labour Organization's supervisory bodies, to assess and guide SDG implementation. Participants further stressed the need for the SDG monitoring and review mechanisms to consider human rights and to take into account the recommendations of international, regional and national human rights mechanisms.
13. Whilst recalling that States are the primary duty-bearers and accountable to their people, participants urged all stakeholders to adopt a human rights-based approach to all stages of planning, programming and implementation, in line with international human rights instruments and mechanisms. The rights-based approach should always prevail, also in case of seemingly conflicting development objectives and approaches. Participants stressed the need to devise solid public, participatory, broadly accessible, and evidence-based monitoring and review mechanisms. They acknowledged the process undertaken under the auspices of the UN Statistical Commission to develop an indicator framework for measuring the new Agenda, and emphasised the importance of defining indicators that will uphold the human rights commitments reflected in the goals and targets.

14. Target 17.18 aims at significantly increasing the availability of disaggregated data by income, gender, age, race, ethnicity, migratory status, disability, geographic location and other relevant characteristics. Participants recalled that it is widely recognised that the collection and dissemination of data disaggregated by prohibited grounds of discrimination play an important role in realising human rights, and highlighted the experience and potential of NHRIs in this area. They welcomed the efforts of statisticians in building a ‘data revolution’ and partnerships with new data producers and users at global, regional, national and local levels. This has the potential of enhancing data disaggregation and development of inclusive and sound data collection systems to be conducive to the respect, protection and fulfilment of human rights.
15. Participants emphasised that NHRIs in all regions are already addressing issues of crucial importance to the Agenda in their regular work. Strengthening NHRIs in all regions, including their technical and financial independence, is thus an effective means of promoting the realisation of the Agenda. NHRIs are uniquely placed to play a bridging role between stakeholders and promote transparent, participatory and inclusive national processes of implementation and monitoring. Participants encouraged NHRIs in particular to address all forms of exclusion, poverty and to prioritise and mainstream the human rights of women and girls and gender equality in their work.
16. Participants endorsed the establishment of the ICC Working Group on the 2030 Agenda for Sustainable Development as a vehicle for collaboration among, and a global voice of, NHRIs on these matters.
17. They further encouraged ICC Regional Networks and individual NHRIs, in line with their mandates under the Paris Principles, to collaborate in mutual capacity building and

sharing of experiences, and to consider the practical functions they can assume to contribute to a human rights-based approach to implementation of the Agenda. Such functions and activities include but are not limited to the following:

- 1) Undertake workshops on human rights and sustainable development in each ICC region, in collaboration with the ICC Working Group on the 2030 Agenda for Sustainable Development, and develop regional action plans that will also identify and address NHRI capacity needs. Regional Chairs are encouraged to report thereon to the ICC General Meeting in March 2016 and to subsequent regional and international meetings of NHRIs.
- 2) Provide advice to national and local governments, rights-holders and other actors, to promote a human rights-based approach to implementation and measurement of the Agenda, including by assessing the impact of laws, policies, programmes, national development plans, administrative practices and budgets on the realization of all human rights for all.
- 3) Develop and strengthen partnerships for implementation by promoting transparent and inclusive processes for participation and consultation with rights-holders and civil society at all stages of the implementation of the Agenda, such as the development of national and sub-national strategies to achieve the SDGs, including reaching out to those who are furthest behind.
- 4) Engage with duty-bearers, rights-holders and other key actors, including government agencies, parliaments, the judiciary, local authorities, national statistical offices, civil society, major groups, marginalised groups, mainstream and social media, the UN and other international and regional institutions, to raise awareness and build trust

and promote dialogue and concerted efforts for a human rights-based approach to implementation and monitoring of the Agenda, and safeguarding space for engagement of rightsholders and civil society.

- 5) Assist in the shaping of global national indicators and sound data collection systems to ensure the protection and promotion of human rights in the measurement of the Agenda, including through seeking collaboration with national statistical offices, where appropriate, and other relevant national institutions, and by building on existing international and regional human rights mechanisms.
- 6) Monitor progress in the implementation of the Agenda at the local, national, regional and international levels, to disclose inequality and discrimination in this regard, including through innovative approaches to data-collection and partnerships with rights-holders, vulnerable and marginalized groups for participatory and inclusive monitoring, and by identifying obstacles as well as actions for accelerated progress.
- 7) Engage with, and hold governments to account for poor or uneven progress in the implementation of the Agenda, including by taking implementation progress and obstacles into consideration when reporting to parliaments, the general public and national, regional and international mechanisms, such as the Human Rights Council and its mechanisms, including the Universal Periodic Review, the Special Procedures, treaty bodies, as well as the International Labour Organization's supervisory bodies, UN regional commissions and the High-level Political Forum.
- 8) Respond to, conduct inquiries into, and investigate allegations of rights violations in the context of

development and SDG implementation, including in relation to discrimination and inequality that can erode the trust between the State and the people.

- 9) Facilitate access to justice, redress and remedy for those who experience abuse and violation of their rights in the process of development, including by receiving and processing complaints, where NHRIs have such functions. The Conference also agreed that the ICC should:
- 10) Continue advocacy for the independent participation of Paris Principles compliant NHRIs, and their international and regional coordinating bodies, in relevant UN mechanisms and processes, including in the Follow-up and Review Processes of the Agenda, such as the High-Level Political Forum, as also called for by the UN Secretary-General.
- 11) Support capacity-building, sharing of experiences and good practices, as well as knowledge management with and among NHRIs in relation to the Agenda, and mobilise resources to that effect. Build on the UNDP-OHCHR ICC Tripartite Strategic Partnership to provide support to NHRIs, regional networks and the ICC in this regard.

**Adopted in Mérida, Yucatàn, on 10 October 2015**

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