



SUMERNET 4 All

Human Rights-Based Approach Guidelines





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Human-Rights Based Approach Guidelines

A rights-based approach is a “process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights”.

Mary Robinson, 2001

Former UN High Commissioner for Human Rights

International human- rights standards

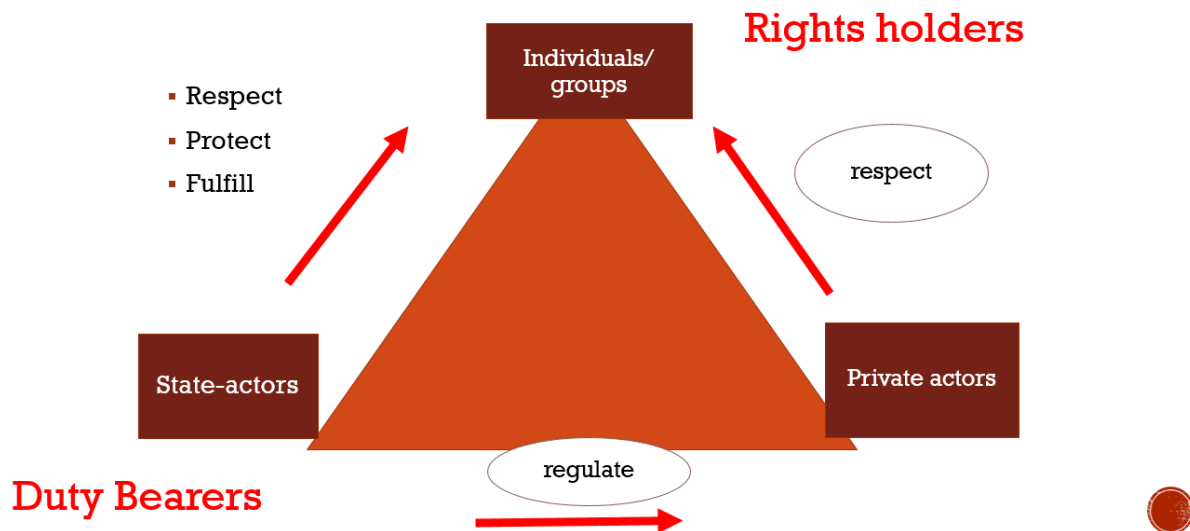
International human rights standards are norms which have been agreed upon by the international community. They prescribe fundamental rights in civil, political, social, economic and cultural spheres that every human being is entitled to. We have the right not to be tortured or arbitrarily arrested, and the right to participate in political activities, for example. At the same time, we have the right to get an education, to work, to have an adequate standard of living, and to enjoy and celebrate our culture. These rights are important because they enable us to live with dignity. Realizing these rights requires obligations and accountability on the part of what we call ‘duty bearers’ to ensure that these rights are realized. Although the duty bearers are predominantly States and their agencies, individuals and private sector also have responsibility to respect the rights of everyone who are ‘rights-holders’.

Rights-based approach and research on sustainable Mekong

From a human-rights perspective, water is a human right. The right to water is not only indispensable for a life with dignity but also a prerequisite for other rights. The International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the right to water as essential for securing an adequate standard of living. This means that State/the government has an obligation to ensure that everyone is entitled to “sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses” (GC 15 E/C.12/2002/11). At the same time, it is recognized that water is necessary to ensure other human rights including the right to adequate food (water for food production) and the right to health (water for environmental hygiene).

Aside from ICESCR, other human rights treaties namely the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) also require State parties to ensure the realization of the right to water, specifically for women and children.

OBLIGATIONS UNDER THE RIGHTS-BASED FRAMEWORK



Using the human rights norms as a guiding principle for research on sustainable Mekong means that the problems of water shortage or flooding, for example, should not be seen as only technical issues.

In applying the human rights lens or the rights-based approach as a conceptual frame, the following broad questions can be asked of your project:

- Does this research consider water as a human right i.e., individuals and communities have the right to water?
- Does this research consider who have the power, responsibility or accountability to make decisions/ adopt policies and practices that affect the right to water of people and plan to engage with those bodies?
- Does this research consider it the obligations of State(s) to respect, protect and fulfill the right to water e.g., by looking at policies & practices which may positively or negatively affect how water is available, accessible, managed & used?

What are States obligations to ensure the right to water?

Obligation to respect – The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. Some of the obligation to respect includes:

- Refraining from engaging in any practice or activity that denies or limits equal access to adequate water.
- Arbitrarily interfering with customary or traditional arrangements for water allocation.
- Unlawfully diminishing or polluting water, for example through waste from State-owned facilities or through use and testing of weapons.
- Limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts- which is in violation of international humanitarian law.

Obligation to protect - The obligation to *protect* requires States parties to prevent third parties from interfering in any way with the enjoyment of the right to water. Third parties include individuals, groups, corporations and other entities as well as agents acting under their authority. Examples of the obligation to protect includes:

- Adopting the necessary and effective legislative and other measures to restrain third parties from denying equal access to adequate water; and polluting and inequitably extracting from water resources, including natural sources, wells and other water distribution systems.

Obligation to fulfil - The obligation to *fulfil* requires States parties to adopt the necessary measures directed towards the full realization of the right to water. This obligation includes:

- According sufficient recognition of the right to water within the national political and legal systems, preferably by way of legislative implementation.
- Adopting a national water strategy and plan of action to realize this right.
- Ensuring that water is affordable for everyone.

- Facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.

To ensure that water is affordable, States parties must adopt the necessary measures that may include:

- (a) use of a range of appropriate low-cost techniques and technologies;
- (b) appropriate pricing policies such as free or low-cost water;
- (c) income supplements. Any payment for water services 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 water expenses as compared to richer households.

States parties should adopt comprehensive and integrated strategies and programmes to ensure that there is sufficient and safe water for present and future generations. Such strategies and programmes may include:

- (a) reducing depletion of water resources through unsustainable extraction, diversion and damming;
- (b) reducing and eliminating contamination of watersheds and water-related eco-systems by substances such as radiation, harmful chemicals and human excreta;
- (c) monitoring water reserves;
- (d) ensuring that proposed developments do not interfere with access to adequate water;
- (e) assessing the impacts of actions that may impinge upon water availability and natural-ecosystems watersheds, such as climate changes, desertification and increased soil salinity, deforestation and loss of biodiversity;
- (f) increasing the efficient use of water by end-users;
- (g) reducing water wastage in its distribution;
- (h) response mechanisms for emergency situations;
- (i) and establishing competent institutions and appropriate institutional arrangements to carry out the strategies and programmes.

Key principles of the rights-based approach

1. Non-discrimination

Non-discrimination is a fundamental principle in the international human rights laws/standards. Thus, the HRBA holds that policies and practices should not discriminate against anyone. Individuals have been discriminated against (by means of exclusion, distinction or restriction) because of their sex, race, age, language, religion, political or opinions; national or social origin, physical or mental disability, health status, and sexual orientation. In other words, any acts of exclusion, distinction or restriction on the basis of the above grounds which have the intention or the effect of nullifying or impairing the recognition, enjoyment or exercise of human rights of individuals concerned, constitute discrimination.

Because certain groups have been historically excluded or discriminated against, HRBA pays special attention to disadvantage groups and individuals.

In applying non-discrimination principle in your project, the following questions may be asked:

- 1.1 Is the project addressing discriminatory policies/practices?
- 1.2 Is the project addressing the needs of vulnerable and marginalized individuals and groups? Please note that although the communities identified may be considered marginalized e.g., poor communities, there may be specific members of the group who are more vulnerable because of their status (age, sex, health conditions etc.) and thus need special attention.
- 1.3 Who benefit from the project? Who are included and excluded in the research?
- 1.4 How do you ensure that the outcomes of the project, especially in terms of policy recommendations do not directly or indirectly exclude individuals' right to water on the basis of their particular backgrounds or identities?

2. Participation & empowerment

HRBA takes the stand that individuals and communities are the rights holders who should not be merely “informed” about projects that will have an impact on their lives. Rather, they should be able to participate meaningfully in the project. Access to information at each stage of a project cycle should be made in a timely manner so that meaningful input can be solicited as to influence decisions at various levels. Particular consideration should be given to when providing information and seeking views from the elderly, people with disabilities and other disadvantaged groups so that they will be able to reflect on and provide input meaningfully.

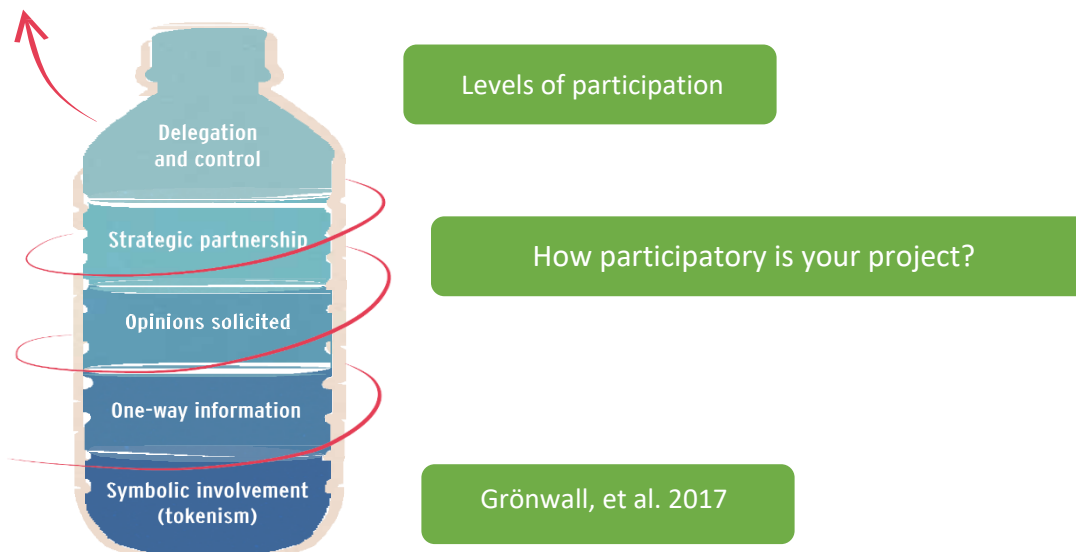
In applying the principle of participation and empowerment, the following questions may be considered:

2.1 How will the individuals and communities (rights holders) participate in the different stages of the development and implementation of the research?

2.1 What will be the level and the quality of their participation?

2.2 What role will they play during and after the research process?

2.3 How will they be supported and empowered to articulate their concerns and needs?



3 Accountability & transparency

"Accountability refers to sets of controls, counterweights and modes of supervision that make public and private-sector officials and institutions answerable for their decisions and actions—and for the lack of the same." On the part of the citizens and civil society, "accountability requires [their] ability and preparedness to scrutinize leaders, public institutions, governments and others, and to decide to hold them accountable when warranted" (Grönwall, et al., 2017:26). On the part of institutions and actors including those implementing projects, accountability and transparency is concerned with the relationship between the researchers and different stakeholders especially the affected communities. It is related to ethical conduct including the principle of 'do not harm' and 'safeguarding' of the research participants. It is also concerned with making information available and accessible for the affected communities.

In applying the principles of accountability and transparency, the following questions may be considered:



- 3.1 What procedures/practices are put in place to ensure that research participants/concerned communities are not negatively affected?
- 3.2 What steps will be taken to ensure that the information related to research objectives, process, output/outcomes are shared/accessible to the concerned communities?
- 3.3 Is there a channel for concerned individuals/communities to raise concerns about the project?
- 3.4 How does your project help build capacity for people to hold duty bearers accountable?

References

- GC 15 E/C.12/2002/11 Committee on Economic, Social and Cultural Rights. General Comment No. 15 (2002). The Right to Water. Available at: https://www2.ohchr.org/english/issues/water/docs/CESCR_GC_15.pdf
- Grönwall, et al. (2017). *Human Rights-Based Approach to Integrated Water Resources Management: A Training Manual and Facilitator's Guide.*, Cap-Net, WaterLex, SIWI and REDICA. Available at: www.cap-net.org

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