

A HUMAN RIGHTS BASED APPROACH TO DEVELOPMENT COOPERATION

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I Introduction

On 5 April 2002, the Minister of Foreign Affairs and the Minister for Development Cooperation asked the Advisory Council on International Affairs (AIV) to produce an advisory report on the practical application of the human rights based approach to development cooperation (see Annexe I). The government's request for advice starts by listing the most important recent developments. It then poses a number of general questions concerning the place and significance of human rights in the development debate and in development cooperation. The rationale of these questions is that it would be useful for the government to possess concrete strategies and measures that can be applied in the everyday practice of development cooperation and can strengthen the coherence between development cooperation and human rights policy. The human rights based approach to development cooperation may provide a means to achieve this aim. In its request, the government asked the AIV to address the following issues:

- the way in which the human rights based approach to development can be applied in the everyday practice of development cooperation in general and the sector-wide approach in particular;
- possible problems arising from the sensitivity of certain human rights issues in a number of countries (e.g. the rights of women in relation to reproductive health) and ways in which these problems can be addressed;
- ways in which the human rights based approach can be promoted in UN specialised agencies and UN funds;
- the relationship between the human rights based approach and the IMF/World Bank concept of PRSPs (Poverty Reduction Strategy Papers), particularly how the latter can contribute to the former; and
- specific ways in which the right to development can be promoted. In this context, reference might be made to the activities of the UN's Independent Expert on the Right to Development, Professor Arjun Sengupta.

In order to gain a clear insight into the question how a number of other European countries have applied the human rights based approach to development cooperation, the AIV ordered a background study. Most of the conclusions of this study, which was carried out by consultants *Organisatie, Evaluatie en Advies (OrEA)*, have been incorporated into Chapter III of this report. The AIV is grateful to H. Smulders for compiling the background study. In preparing its report, the AIV also took note of many reports and documents on the human rights based approach to development cooperation. In addition, the specially appointed subcommittee held a number of meetings with representatives of civil-society organisations and other experts. In this context, particular mention should be made of M. Meijer (HOM), M. Brouwer (NOVIB) and Professor A. Sengupta (the UN's Independent Expert on the Right to Development). During the advisory process, the AIV's Development Cooperation and Human Rights Subcommittee (COM) was also able to call on the knowledge of Dr C.J.M. Arts (ISS), regarding European development policy, and the knowledge and experience of various officials from the Ministry of Foreign Affairs, including K.S. Adhin (DMV/MR), H. Docter (DMV/MR) and H.W. van der Veen (DMV/VG). The AIV is grateful to the above-mentioned persons and institutions for their input.

Chapter II of this report devotes attention to a number of important developments in the field of human rights and development cooperation since the appearance of the

1987 report of the Advisory Committee on Human Rights and Foreign Policy (ACM) on development cooperation and human rights, as well as to developments in Dutch development cooperation policy. Chapter III then considers a number of conceptual issues regarding human rights and development cooperation, particularly the place and significance of human rights in the development debate and development cooperation, and the ways in which the fight against poverty can demonstrate what indivisibility and access mean in practice. Chapter IV takes a closer look at the application of the human rights based approach to development cooperation and examines the reasoning behind and problems associated with this approach. Chapter V examines these problems in greater depth and also devotes attention to some important principles regarding the application of a human rights based approach to development cooperation. The report ends with a number of conclusions.

In drafting this report, the AIV started from the idea that the widespread existence of extreme poverty makes it impossible for certain people to realise their human rights effectively. This means they do not participate in decision making and have insufficient or no access to primary health care, education, housing, clean water and food. The international community must therefore continue to prioritise the reduction and eventual eradication of poverty.

In its request, the government poses a question concerning the relationship between the IMF/World Bank concept of pro-poor growth and the human rights based approach and the way in which the former can contribute to the latter. In January 2003, the AIV completed an advisory report on this issue in relation to Sub-Saharan Africa. The AIV therefore decided not to discuss this question in its present report, but to devote attention to it in the other report instead.¹ Obviously, the AIV has aimed for good coordination between the two reports.

The report was prepared by a specially appointed subcommittee of the Human Rights Committee (CMR) and the Development Cooperation Committee (COS) of the AIV, which consisted of the following persons: Professor P.R. Baehr (CMR), Professor C.E von Benda-Beckmann-Droogleever Fortuijn (CMR), Professor T.C. van Boven (CMR), Dr O.B.R.C. van Cranenburgh (COS), T. Ety (CMR), Professor C. Flinterman (CMR, chair of the subcommittee), Professor B. de Gaay Fortman (COS), C. Hak (CMR), Professor A. Niehof (COS) and Professor N.J. Schrijver (COS, chair of the subcommittee). Dr M.C. Castermans-Holleman (CMR) en Professor E. de Kadt (COS) participated mainly as corresponding members. The secretary was T.D.J. Oostenbrink (secretary of the CMR). He was assisted by B. Frequin, S. Bonjour en C. van der Sanden (trainees).

The AIV adopted this report on 4 April 2003.

1 See AIV, 'Pro-Poor Growth in the Netherlands' Bilateral Partner Countries in Sub-Saharan Africa: An Analysis of Poverty Reduction Strategies', Advisory Report no. 29, The Hague, 2003.

II Developments since 1987 and Dutch policy

The government's request for advice refers to the advisory report of the now defunct Advisory Committee on Human Rights and Foreign Policy (ACM) on development cooperation and human rights, which was published in 1987.² In this report, the ACM presented a number of recommendations aimed at increasing the coherence between the promotion of human rights and development cooperation, on the basis that the two are directly linked. In its response to the report, the government noted that it agreed with the ACM on the basic principles. On other issues, however, the government chose to distance itself from the report, particularly with regard to recommendations aimed at improving the assessment and consistency of its policies and improving coordination between human rights and development cooperation activities within multilateral forums.

These differences of opinion have not prevented the human rights issue from playing a lasting role in Dutch development cooperation. This has manifested itself mainly in two ways: (1) in the form of explicit conditions (especially in the field of civil and political rights) for the provision of aid, although this form of conditionality was not always applied in a consistent manner,³ and (2) by implicitly making poverty reduction one of the two main objectives of Dutch development cooperation policy and later, under Minister for Development Cooperation Jan Pronk, the main objective.

To place this report in the right context, this chapter describes the most important developments in the relationship between human rights and development cooperation. This description is also important because, without these developments, the climate that led to the further conceptual and practical elaboration of the human rights based approach to development cooperation by international organisations such as the UNDP, UNICEF, the ILO, the World Bank, the IMF, the European Union and a number of important donor states would not have emerged (see further Chapter IV).

II.1 Developments

Influential developments during this period include the end of the Cold War and the fall of the Berlin Wall. These events led to an increase in the interdependence of and interaction between societies, as well as to the emergence of new approaches to human rights.⁴ Until the mid-1980s, the human rights debate was dominated by the conflict

2 See ACM, 'Development Cooperation and Human Rights', Advisory Report no. 5, The Hague, 1987. For an extensive discussion of this report, see N.J. Schrijver, 'Mensenrechtenbeleid en ontwikkelingssamenwerking: een gecompliceerde relatie' (Human Rights Policy and Development Cooperation: A Complicated Relationship), *Internationale Spectator*, vol. 42-9, September 1988, pp. 565-572.

3 See for example ACM, 'Supporting Human Rights: Considering Human Rights in Suriname', Advisory Report no. 2, The Hague, 1984 and P.R. Baehr, M.C. Castermans-Holleman and F. Grünfeld, 'Human Rights in the Foreign Policy of the Netherlands', Intersentia publishers, Antwerp/Oxford/New York, 2002.

4 Some commentators speak of the rise of a new ideology based on the idea that market economies automatically lead to democracy and, thus, to respect for human rights. See for example, Francis Fukuyama, *The End of History and the Last Man*, Avon Books, New York, 1992. However, see also Samuel P. Huntington, 'The Clash of Civilisations', *Foreign Affairs*, vol. 72, no. 3, summer 1993, pp. 22-49.

between East and West, which had a significant impact on developments within the UN's human rights system. Global protection against the violation of human rights was a key issue, but the nature of the debate was largely determined by the strong emphasis of East and West on, respectively, economic, social and cultural rights and civil and political rights.⁵ The transition to democracy that started in many countries after 1989 brought about substantial changes, especially in the field of civil and political rights. Democratisation processes also started (or continued) in a number of Latin American and Asian countries. This was a positive development, but it is important to determine whether these transformations actually produced a change for the better in each individual case.⁶ During the 1990s, the independence of Namibia and, eventually, East Timor completed the decolonisation process, while apartheid was abolished in South Africa. These developments formed the first step towards the further strengthening and embedding of human rights in all policy areas, including development cooperation.

The above-mentioned developments had a significant impact on the international human rights debate. The ideologically tinted debate regarding the hierarchy of various categories of human rights was overtaken by a debate on the relative nature of cultural values. Among other issues, this debate focused on the relationship between democracy and the right to political participation on the one hand, and economic and social development on the other. It was also concerned with cultural and religious differences. In addition, globalisation has played an important role: traditional government systems and decision-making processes, and thereby the balance of power between governments and citizens, no longer form a fixed framework. The role of non-state actors, including multinational corporations and non-governmental organisations (NGOs), has therefore increased. Chapter III addresses some of these issues in greater depth.

An important benchmark for the changes in the international human rights debate can be found in the conclusions of the Second World Conference on Human Rights (Vienna, 1993). While the First World Conference on Human Rights (Teheran, 1968) established an implicit connection between human rights and poverty,⁷ the Vienna Declaration and Programme of Action made this connection more explicit and articulated the most recent international thinking on human rights.⁸

Among other things, the Vienna Declaration and Programme of Action states that the international community must strive for the full realisation of the Universal Declaration

5 See for example ACM, 'The Role of the Sub-Committee for the Prevention of Discrimination and the Protection of Minorities', Advisory Report no. 20, The Hague, February 1996 and 'UN Supervision of Human Rights', Advisory Report no. 22, The Hague, October 1996.

6 In this context, for example, the literature of political science often refers to 'illiberal democracies', where change has brought little improvement in the area of economic, social and cultural human rights, and economic programmes have even led to a deterioration.

7 See the Proclamation of Teheran of 13 May 1968, Arts. 12-19.

8 See for example the inaugural lecture delivered by Professor C. Flinterman, entitled 'Soevereiniteit versus humaniteit' (Sovereignty versus humanity), on taking up the position of professor of human rights at the University of Utrecht on 19 January 2000.

of Human Rights and provides that 'all human rights are universal, indivisible, interdependent and interrelated' and that human rights must be treated in a fair and equitable manner, on the same footing, and with the same emphasis. The Declaration goes on to state that 'while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms'.⁹ The issue is thus not so much whether or not human rights are universally accepted, but whether states, bearing in mind their own culture and circumstances, are free to interpret and apply human rights independently at the national level. Article 8 provides that 'democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world'. Article 10 further states that 'the World Conference on Human Rights reaffirms the right to development, as established in the 1986 Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights'. The World Conference on Human Rights also affirmed that extreme poverty and social exclusion constitute a violation of human dignity. According to Article 25, 'it is essential for states to foster participation by the poorest people in the decision-making process by the community in which they live'.

During the 1990s, a number of major international conferences helped strengthen the direct relationship between human rights and development. In this context, reference should be made to such UN world conferences as the Rio Conference on Environment and Development (1992), the International Conference on Population and Development (Cairo, 1994), the World Summit for Social Development (Copenhagen, 1995), the Fourth World Conference on Women (Beijing, 1995), the World Habitat Conference (Istanbul, 1996) and the World Summit on Sustainable Development (Johannesburg, 2002). The final declarations of these conferences provide a detailed explanation of the significance of human rights in relation to the policy area in question and include obligations and commitments that contribute to the credibility of human rights policies and the continued legitimacy of the human rights idea, especially among citizens in developing countries. The UN conferences have drawn significant attention to the position of women and have demonstrated that they have fewer economic opportunities, less power and political influence and less access to resources than men, despite the fact that their participation in socioeconomic and political development is essential for the economic development and welfare of states. In addition, the World Summit for Social Development agreed that donor countries and recipient countries would spend 20 per cent of their development budgets on social projects, while the Plan of Implementation of the World Summit on Sustainable Development states that good governance is essential for sustainable development. According to the Plan, sound economic policies and sound democratic institutions that are responsive to the needs of the people form the basis for sustained economic growth, poverty eradication and employment creation. It also states that 'freedom, peace and security, domestic stability, respect for human rights, including the right to development, the rule of law, gender equality, market-orient-

9 See the Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, 14-25 June 1993, UN Doc. A/CONF.157/24, Art. 5.

ed policies and an overall commitment to just and democratic societies are also essential and mutually reinforcing'.¹⁰

During the 1990s, significant attention was also devoted to the close connection between maintaining international peace and security and respect for human rights. On 17 June 1992, the Secretary-General of the United Nations published 'An Agenda for Peace'.¹¹ This report on preventive diplomacy, peace-making, peacekeeping and post-conflict peacebuilding explicitly addresses the importance of human rights in relation to the achievement of global stability. This issue has since assumed a prominent place on the agenda of the United Nations Security Council and has led to a number of decisions concerning UN operations on the basis of Chapter VII of the UN Charter. The conflicts and numerous casualties in Rwanda, the former Yugoslavia, Kosovo and Chechnya, for example, confirm the importance of this issue.¹² Another report by the Secretary-General, entitled 'An Agenda for Development', encouraged the United Nations as a whole to focus on all categories of human rights.¹³ The above picture may be supplemented by reference to such important initiatives as the appointment by the UN Commission on Human Rights of Special UN Rapporteurs and Experts on violence against women, the right to adequate housing and the right to development, the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the establishment of ad hoc international criminal tribunals for the former Yugoslavia and Rwanda and, recently, the International Criminal Court. In addition, various countries have sought to put past human rights violations behind them by means of peace and reconciliation commissions (e.g. South Africa, Nigeria and Chile) or criminal proceedings (e.g. Sierra Leone and East Timor).

II.2 Role of and developments in Dutch development cooperation policy

The Netherlands has been closely involved in the aforementioned developments. From the 1980s onwards, for example, increased attention to women's rights, environmental protection and democratisation had a major influence on ideas and actions in the everyday practice of Dutch development cooperation as well as in international forums.¹⁴ At the beginning of the 1990s, the Dutch government outlined the objectives of its devel-

10 See 'Report of the World Summit on Sustainable Development and Plan of Implementation', UN Doc. A/CONF.199/20, Johannesburg, South Africa, 4 September 2002, para. 120 bis. See also paras. 4, 5, 97, 121 and 152.

11 See UN Doc. A/47/277- S/24111 of 17 June 1992.

12 On this issue, see also AIV and the Advisory Committee on Issues of Public International Law (CAVV), 'Humanitarian Intervention', Advisory Report no. 13, The Hague, April 2000 and the Security Council's decision on the grounds of Chapter VII of the UN Charter concerning action to promote human rights in Haiti (Security Council resolution S/Res/940 (1994) of 31 July 1994).

13 See UN Doc. A/48/935 of 6 May 1994.

14 For example, the many Dutch human rights related activities and projects in Chile and South Africa. However, see also AIV, 'Violence against Women: Legal Developments', Advisory Report no. 18, The Hague, February 2001 and 'Integration of Gender Equality: A Matter of Responsibility, Commitment and Quality', Advisory Report no. 25, The Hague, January 2002.

opment cooperation policy in two policy documents.¹⁵ The first, published in 1990, identified the fight against structural poverty as a key policy objective. According to this document, promoting human rights was not just a condition for development programmes, but also one of their objectives. In 1993, the second policy document followed up on the policies introduced by its predecessor. It strongly emphasised the importance of peace-making and peacekeeping. At the policy level, this meant the provision of emergency aid and support of the police and the justice system, democratisation (elections) and human rights organisations (so-called 'positive linkage') in the context of good governance. For a long time, and certainly since the introduction of the first official grant regulations (the 1980 framework agreement), the government used cofinancing organisations (MFOs) to make the promotion of civil and political rights and economic, social and cultural rights a key objective of development policy and, thus, of future NGO development programmes, except in the field of bilateral (official) development cooperation.

As a result of policy changes introduced by the second Kok government at the end of the 1990s, the number of countries with which the Netherlands maintains intensive bilateral relations in the field of development cooperation was reduced from roughly 50 to 19+3. During this government's term of office, the Netherlands also started to strive for better donor coordination and wider multilateral aid channels and placed an even greater emphasis on good governance and good policy. The 2001 Memorandum on Human Rights Policy noted that Dutch development cooperation policy focused mainly on universal compliance with human rights norms and on strengthening the capacity of states and international monitoring mechanisms to promote the protection of human rights.¹⁶ The memorandum highlighted the close connections that exist between human rights and conflicts on the one hand, and human rights and development on the other. In addition, the memorandum noted that the Netherlands was looking for a better conceptual and operational link between human rights policy and development cooperation, in order to pursue objectives in both policy areas as effectively and coherently as possible.

The promotion and protection of human dignity is the common denominator of Dutch policy in the fields of human rights and development cooperation.¹⁷ An environment needs to be created in which the poor have a voice and can be protected. Poverty is not only regarded as a lack of income and inadequate or non-existent access to basic services, but also as a lack of knowledge, information and power. The 2001 Memorandum on Poverty Reduction observed that poverty does not just involve a lack of food or other material goods. 'Poverty encompasses economic, political, social and psychological factors. It also concerns access to and control of human, natural, physical, financial and social factors that make life tolerable and should be regarded as a form of basic rights: land, primary health care and education, a clean environment, natural

15 See the following policy documents regarding development cooperation: 'Een Wereld van Verschil, nieuwe kaders voor ontwikkelingssamenwerking' (A World of Difference: New Frameworks for Development Cooperation) (1990) and 'Een Wereld in Geschil. De grenzen van de ontwikkelingssamenwerking verkend' (A World in Conflict: Exploring the Boundaries of Development Cooperation) (1993).

16 See the 2001 Memorandum on Human Rights Policy, Ministry of Foreign Affairs, The Hague, 2001.

17 See for example the lecture by R.V.M. Jones-Bos (Dutch Human Rights Ambassador) on the human rights based approach to development, Poelgeest, 5-8 November 2001.

resources such as water, peace, reliable government and the absence of discrimination on the basis of race, religion or gender'. In its recent advisory report on pro-poor growth, the AIV listed the five key aspects of poverty that are frequently employed in international forums.¹⁸

As the protection and promotion of human rights are primarily the responsibility of nation states, the latter are explicitly obliged to make an effort to realise these rights on their own. They may not make their efforts dependent on the provision of international aid. The main international human rights treaties provide a framework for confronting governments regarding compliance with the above-mentioned obligation in relation to their citizens.

In recent years, Dutch policies on good governance have focused mainly on improving the integration of human rights into Dutch development programmes. In the framework of the human rights based approach, the willingness of governments to work towards good governance and the rule of law, including respect for human rights, serves as the foundation of development relations. The Netherlands supports a number of countries in this area, providing specialised assistance when so requested. Dutch policies regarding good governance focus mainly on democratisation, decentralisation, fighting corruption and public finances,¹⁹ although significant attention is also devoted to maintaining and strengthening the rule of law by encouraging legislative activities, facilitating training for judges and lawyers and supporting NGOs with a legal orientation.²⁰ In addition, the Netherlands has launched a pilot project that measures the development of good governance according to five criteria:

- the functioning of parliaments;
- the independence of the judiciary;
- the role of the military and the police;
- the level of corruption; and
- the effectiveness/power of local government.

With the possible exception of the last one, these criteria are all broadly related to human rights, but are not always approached from a human rights perspective. In fact, the further integration of human rights – a positive development in itself – is hampered by a lack of purpose and direction. The decentralisation of the bilateral development

18 See the 2001 Memorandum on Poverty Reduction: 'Nederlands beleid in kort bestek' (Dutch policy in brief), Ministry of Foreign Affairs, The Hague, December 2001, pp. 8-9. For a detailed description of the various aspects of poverty, see AIV, 'Pro-Poor Growth in the Netherlands' Bilateral Partner Countries in Sub-Saharan Africa: An Analysis of Poverty Reduction Strategies', Advisory Report no. 29, The Hague, 2003.

19 For a critical commentary on Dutch policies regarding good governance, see for example WRR, 'Ontwikkelingsbeleid en goed bestuur' (Development policy and good governance), The Hague, 2001. See further Uta Seela, 'Corruptiebestrijding in het Nederlandse ontwikkelingsbeleid' (The fight against corruption in Dutch development policy), *Internationale Spectator*, vol. 57, no. 2, February 2003, p. 76 et seq. and AIV, 'Commentary on the 2002 Memorandum on Human Rights Policy', Advisory Report no. 23, The Hague, September 2001.

20 For a commentary on policy proposals in this area, see AIV, 'Comments on the Criteria for Structural Bilateral Aid', Advisory Report no. 7, The Hague, November 1998.

cooperation budget has provided a clearer picture of the activities and results achieved at local level in recipient countries. At the same time, however, there is not enough insight into this branch of development cooperation, partly due to inadequate feedback to the ministry in The Hague. This makes it difficult to set general policy priorities. In the AIV's opinion, however, it is essential to set such priorities. Better feedback mechanisms should therefore be provided in the future.

It appears from the above that the Dutch government has already taken several steps towards the implementation of a human rights based approach in the everyday practice of development cooperation, with varying degrees of success. The next chapter of this report considers in greater depth several issues that have arisen in the international debate on the human rights based approach.

III Human rights and development cooperation: issues

This chapter considers several important aspects of the debate on human rights and development cooperation in greater depth and devotes attention to a number of questions from the government's request for advice. In particular, it considers the indivisibility of human rights, the alleged proliferation of human rights norms, access to legal remedies and problematic nature of the right to development.

III.1 Indivisibility and universality

Human rights are relevant to poverty reduction in a number of ways, both directly and indirectly. This applies, for example, to the right to life, food and health, but also to the observance of civil and political rights, such as the rights to freedom of assembly and association. One (poverty reduction) cannot exist without the other (human rights).²¹ Poverty reduction requires a step-by-step approach. As noted in the AIV's recently published advisory report on pro-poor growth, this approach presumes that the various aspects of poverty are recognised. In fact, poverty can be characterised as a sum of unrealised human rights.²² It should thus be possible to identify the basic conditions of a dignified existence. However, a discussion paper on human rights and poverty reduction strategies drafted by the Office of the UN High Commissioner for Human Rights (OHCHR) in 2002 argues that the identification of these basic conditions can only be validated by a process of social consultation that involves people from all walks of life.²³

The role played by human rights within the framework of poverty reduction has an historical explanation. The UN Charter identifies the protection and promotion of human rights as one of the UN's main objectives. Since 1945, the United Nations has striven to develop a system of values and norms aimed at securing freedom and a dignified existence for all mankind.²⁴ This can only be achieved if a large number of human rights, including civil and political rights and economic, social and cultural rights, are respected. For many years, a distinction was made between these two categories of rights in the debate concerning the further elaboration of these norms. Since the Second World Conference on Human Rights (1993), however, the indivisibility, interdependency and equality of both categories of human rights have become a fundamental principle of international human rights law that also serves as the guiding principle of Dutch policy.²⁵

21 See, for example, Amartya Sen, 'Development as Freedom', Alfred A. Knopf, New York, 1999.

22 Ibid., p. 9, note 1.

23 For other examples, see P. Hunt, M. Novak and S. Osmani, 'Human Rights and Poverty Reduction Strategies: A Discussion Paper', Office of the High Commissioner for Human Rights, Geneva, 28 February 2002, pp. 9-10.

24 See for example the International Bill of Rights, which encompasses the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

25 See, for example, the 1979 Memorandum on Human Rights in Foreign Policy, House of Representatives of the States General, 1978-1979, 15571, nos. 1 and 2.

The debate concerning the above-mentioned distinction focused mainly on the status of economic, social and cultural rights and their relation to civil and political rights. The cause of the distinction was hardly discussed. The common argument was that both categories of human rights had different legal consequences and could not be compared from a legal point of view. The AIV has already spoken out on this issue and has pointed out that it does not endorse this distinction. Both categories of rights are sources of positive and negative legal obligations for states. This also follows from state practice in the UN Commission on Human Rights and the aforementioned UN world conferences, as well as from the legal practice of supervisory bodies (such as the UN Human Rights Committee, the UN Committee on Economic, Social and Cultural Rights, the African Commission on Human and Peoples' Rights, the European Court of Human Rights and the Committee of Experts of the European Social Charter) and other judicial and semi-judicial institutions. In this context, reference may also be made to the way in which the International Labour Organisation (ILO) and other specialised organisations and UN agencies, for example, have further elaborated the economic, social and cultural rights that fall within the scope of their activities. This has obviously not occurred in a uniform manner, as each right has its own legal consequences. An indication of this can be found in the General Comment on the right to adequate housing (1991) of the UN Committee on Economic, Social and Cultural Rights, which rightly admits that not every aspect of a universal human rights norm needs to be implemented in a uniform manner in all states. In other words, states have a certain amount of policy freedom with regard to the implementation of the right to adequate housing, although they are obliged to report to the UN Committee on Economic, Social and Cultural Rights on how they have utilised the policy freedom at their disposal. In this manner, a contribution has been made to refining the different aspects of the right to adequate housing in different societies, states and cultures.²⁶

The AIV does not share the frequently voiced opinion that, once such human rights as the right to education, food and primary health care and other economic rights have been guaranteed, the observance and realisation of civil and political rights will follow automatically. Countries often display an increase in wealth without experiencing a commensurate improvement in the field of civil and political rights. In contrast, the observance of civil and political rights can be an important step towards realising economic, social and cultural rights, as freedom of expression, association and assembly allows citizens and organisations to actively promote these rights. In addition, these freedoms can be used to expose the improper use of appeals to cultural diversity to justify the violation of the rights of women or indigenous peoples. In many cases, the only purpose of such justifications is to protect the incumbent regime from criticism, or restrict the scope of certain fundamental human rights in order to strengthen the position of political elites. Human rights are not luxury items that countries can only afford once they have reached a certain level of development.

In practice, however, the question of whether this emphasis on the indivisibility of all human rights represents anything more than lip service is justified. Political debate has often stalled due to the slow realisation of economic, social and cultural rights and the selective approach of states, according to which the aforementioned rights are not civil

²⁶ See also AIV, 'Universality of Human Rights and Cultural Diversity', Advisory Report no. 4, The Hague, June 1998 and 'The Functioning of the United Nations Commission on Human Rights', Advisory Report no. 11, The Hague, September 1999. See also the 2001 Memorandum on Human Rights Policy, Ministry of Foreign Affairs, The Hague, 2001, p. 5.

rights, but merely policy principles at state level. The fact that the United States does not support the equitable treatment of both categories of human rights, which is clear from its failure to ratify the International Covenant on Economic, Social and Cultural Rights, is a matter of great concern. The AIV has noted previously that since 1993 the Dutch government has taken a more positive approach to these developments in its policies. Nevertheless, it remains essential – also for the Netherlands – to strive specifically for a truly equitable approach to both categories of rights. In this regard, the development of claims procedures that make it possible to monitor gradual implementation, such as the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which includes an individual right of petition in the field of economic, social and cultural rights, deserves serious consideration. On this issue, the Netherlands wrongly continues to pursue a wait-and-see policy.²⁷

III.2 Proliferation

In its request for advice, the government asks whether there is a risk that the concept of human rights will become inflated if all development issues are also regarded as human rights issues. It specifically highlights the danger of ‘paper rights’ that have no roots in society and are difficult or impossible to realise. The government also emphasises that development policy often relates to a general situation in which many people’s rights cannot be realised, due to a general lack of resources or the absence of a fair and efficient legal system, rather than tangible and specific violations of human rights.

Since its foundation, the United Nations has adopted a large number of conventions and declarations aimed at protecting human rights. In the AIV’s opinion, this legislative activity does not constitute inflation of the concept of human rights, but rather the specialisation and refinement of substantive human rights norms and the development of a system of monitoring mechanisms. Material and procedural developments in the legislative field generally focus on the further elaboration of universal norms, such as those laid down in the International Bill of Rights, and hardly, if at all, on the formulation of new ones. The continuing debate on collective rights likewise focuses on the search for solutions to structural factors that stand in the way of the full enjoyment of specific human rights.²⁸ In spite of these restrictions, the sheer number of developments in the field of human rights still makes it difficult for many people to obtain a balanced overview.

The government’s question concerning the proliferation of human rights and so-called ‘paper rights’ also refers to the crucial fact that, in addition to political will, the implementation of human rights usually requires substantial financial investment as well. Poor countries, which often possess limited resources and lack well-trained officials, face significant problems in this regard, as a serious approach to human rights nevertheless requires the governments of developing countries to invest these limited resources in social policies and poverty reduction. Implementation levels depend on such factors as socioeconomic circumstances, political will and the existence of a

27 See also AIV, ‘Commentary on the 2001 Memorandum on Human Rights Policy’, Advisory Report no. 23, The Hague, September 2001, p. 9.

28 See for example ACM, ‘Collective Rights’, Advisory Report no. 19, The Hague, 1995 and AIV, ‘Universality of Human Rights and Cultural Diversity’, Advisory Report no. 4, The Hague, June 1998.

human rights culture in the country in question. These factors can mean that full implementation is only possible in the long term. In such cases, the United Nations and the industrialised nations should make a substantial contribution to the implementation of these rights, by means of financial and material aid, as provided by the International Covenant on Economic, Social and Cultural Rights. It is also important that countries consistently honour agreements and commitments in the field of human rights and development cooperation (such as the Copenhagen agreements, the Millennium Development Goals (MDGs) and the Monterrey Consensus on financing for development) once they have been concluded. Good governance and respect for human rights are also necessary to ensure that development cooperation actually benefits the people it targets.

III.3 Access to legal remedies

The realisation of human rights depends to a large extent on the existence of a functioning legal order based on the proper protection of interests and offering adequate provision for the settlement of disputes. An efficient, non-corrupt and effective legal system is absolutely essential for this purpose. In addition, by adopting measures aimed at granting the poor access to legal remedies and to the courts, such as continuous education in the field of human rights and the creation of effective legal protection procedures through the establishment of national human rights agencies and ombudsmen, it is possible to prevent the claims of dominant groups in society from prevailing over the claims of non-dominant groups. This problem is an all pervasive one and demands a vigilant eye, as legal certainty and justice are closely connected. Economic development that is based on protection against the inequitable distribution of wealth can only succeed in states with efficient legal systems. In this context, it is also very important that internationally recognised human rights are embedded in the relevant national legislation.²⁹ In such cases, however, individual rightholders still have to act independently to secure the international human rights that have been incorporated into national law in order to realise their entitlement to the fulfilment of their basic needs.

Participation – in the form of co-determination, access to legal remedies and legal protection – is therefore of the greatest importance.³⁰ A lack of participation, in particular the inability to obtain rights or secure the practical implementation of judicial decisions, is often regarded as one of the main causes of poverty.³¹ Consider, for example, the right to primary health care. This right implies that people should have access to clean drinking water and sanitary facilities. However, in the framework of the prevailing balance of power, including the existing distribution of wealth and income, hundreds of millions of people cannot realise this entitlement. They cannot rely on legal remedies to ensure their legal protection, and human rights provide them primarily with

29 See for example T. Carothers, 'Promoting the Rule of Law Abroad: The Problem of Knowledge', Working Paper, Carnegie Endowment, Washington, Rule of Law series, no. 34, January 2003 on the development of national human rights institutions on the basis of the so-called Paris Principles.

30 See for example Deepa Narayan, 'Voices of the Poor', The International Bank for Reconstruction and Development, Washington DC, 2000.

31 On the right to adequate housing, see for example *Government of RSA and other v. Grootboom and others*, South African Constitutional Court, CCT11/00 (4 October 2000).

a normative weapon in their social and political struggle to improve their living conditions.³² This is not about the inflation of human rights, but reflects the importance of improving access to and conditions for the implementation of such rights.

States have a certain amount of policy freedom to determine the scope of various human rights. The extent of this freedom largely depends on the relevant international treaties and monitoring mechanisms. It should also be noted that states have no policy freedom whatsoever in relation to a number of basic, mainly non-derogable rights.³³ In cases in which they do possess such policy freedom, a single right – or even a particular aspect of a right – can differ from state to state as a result of cultural differences. In each case, a balance has to be struck between the importance of the full realisation of the right and the importance of other social issues. In this regard, there is a certain amount of flexibility. The final balance must be accounted for, first at national level and later at international level, before judicial, semi-judicial and political bodies. If a decision is made to curtail a right, then the restriction in question should be as limited as possible and must always be in accordance with international law.³⁴

In order to establish and maintain an effective legal system, it is very important that all states become party to the main international human rights conventions and their additional protocols. Many countries still refuse to do this, making it harder or even impossible for their citizens to assert their internationally recognised human rights. These countries thus evade the direct supervision of the convention-based monitoring mechanisms. This seriously impairs the efforts of independent institutions to monitor compliance effectively.

III.4 The right to development

Since a Senegalese lawyer named Kéba Mbaye first introduced the idea of a right to development in 1972, the existence and relevance of such a right have been debated extensively at international level. From the mid-1970s onwards, on the assumption that development constituted the basic component of any attempt to improve the quality of life of individuals and peoples, and partly influenced by the debate on the New International Economic Order, the right to development was often characterised as the most important element of the widely promoted structural approach to the realisation of human rights. It was this, however, as well as the debate on the new generation of human rights, that rendered the right to development controversial from the very start.

Although it does not use the term as such, the Universal Declaration of Human Rights offers a basis for an individual right to development, but does not contain any specific provisions on a collective right to development.³⁵ In contrast, both the human rights covenants of 1966 state in Article 1 that by virtue of their right to self-determination,

32 See also the Johannesburg Plan of Implementation (2002), para. 120 bis.

33 See for example Art. 4 of the International Covenant on Civil and Political Rights, which applies, for example, to the right to life, the right to freedom from torture and other cruel treatment, freedom from slavery and freedom of conscience and religion.

34 See for example AIV, 'Universality of Human Rights and Cultural Diversity', Advisory Report no. 4, The Hague, June 1998, pp. 15-20 and 36-37.

all peoples 'freely pursue their economic, social and cultural development'. The fact that the right of development was included in these covenants mainly in a protective sense is also apparent from the last sentence of the paragraph on the control of natural resources: 'In no case may a people be deprived of its own means of subsistence'. The most far-reaching provisions on the right to development appear in the African Charter on Human and Peoples' Rights (Banjul, 1981).³⁶

Since 1977, the UN Commission on Human Rights has devoted attention to the right to development, in particular as an instrument for the realisation of socioeconomic human rights. A UN working group established in 1981 did not succeed in drafting a declaration on this subject, but the United Nations General Assembly nevertheless adopted a Declaration on the Right to Development in December 1986, on the basis of proposals by Yugoslavia, which was then a non-aligned state.³⁷ According to Article 1 of the Declaration, '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 realised'. The article thus distinguishes between a human right and a peoples' right, albeit in an ambiguous manner.

The Declaration also emphasises the indivisibility of civil, political, economic, social and cultural human rights, thereby implying that the promotion of certain rights (e.g. the right to development) does not constitute a justification for the denial of other rights (e.g. civil and political rights). It further states that the right to development implies the full realisation of the right of peoples to self-determination, including their right to full sovereignty over all their natural wealth and resources. Initially, however, the ideological positions adopted on this issue by several country groups contributed to the Declaration's controversial nature. The right to development was incorporated in the Vienna Declaration of 1993.³⁸ This resulted in the subsequent establishment of the Working Group on the Right to Development by the UN Commission on Human Rights and Professor Arjun Sengupta's appointment as Independent Expert on the Right to Development in 1998.

The Independent Expert regards the right to development primarily as a right to participate in a process of development in which all human rights and fundamental freedoms can be realised.³⁹ The term 'process' derives from the Declaration on the Right to

35 See the Universal Declaration of Human Rights: Art. 25 (right to an adequate standard of living), Art. 26 (right to education), Art. 27 (right to participate in the cultural life of the community) and Art. 28 (entitlement to a social order in which human rights can be realised). See also the International Covenant on Economic, Social and Cultural Rights: Art. 11 (right of everyone to an adequate standard of living).

36 African Charter on Human and Peoples' Rights (Banjul, 1981), Art. 22.

37 The result of the vote on UNGA resolution 41/128 of 4 December 1986 was 146 votes in favour (including the Netherlands), 1 against (the United States) and 8 abstentions (Western countries).

38 A number of introductory clauses were also added at the instigation of the United States.

39 In this context, the following definition is used: 'The definition of the right to development as a particular process of development in which all human rights and fundamental freedoms can be realized'. See the Fourth Report of the Independent Expert on the Right to Development, UN Doc. E/CN.4/2002/WG.18/2 of 20 December 2001, Art. 2.

Development and implies, first and foremost, that human rights should be realised gradually. The realisation of rights has two aspects: the *availability* and *accessibility* of goods and services. Where the long-term realisation of all human rights is concerned, the problem of limited resources increases in importance. In the Independent Expert's view, the solution to this problem is economic growth, provided this growth is also beneficial to human rights. This is the key difference between the right to development and the classic approach to development, which focused exclusively on economic growth. In the context of the right to development, economic growth remains important, but is no longer the decisive factor.⁴⁰ Economic growth can only be achieved by means of an all-embracing human rights based approach that encompasses participation, good governance and an equitable distribution of resources.

According to Professor Sengupta, the international community is obliged to act in the field of development cooperation. In his opinion, if a developing country is willing to conduct its development policy in accordance with a human rights based approach, it can conclude an agreement with donor countries that lays down their mutual obligations. On the basis of this agreement, the developing country and the donor countries can then initiate a dialogue in which they may call each other to account regarding their responsibilities. The donor countries thus possess a mechanism that makes it less likely that the resources they provide will be used for something other than what they are intended for. This will encourage states to stick to the agreed norm of 0.7 per cent of GNP. From their point of view, developing countries can rest assured that the committed resources will actually be available as long as they uphold their side of the agreement. The guarantee that projects will not need to be halted due to a lack of financial resources will also make it easier to attract investors from the private sector. In order to operationalise the right to development, Professor Sengupta therefore recommends the application of the implementation model described above. This model, which he refers to as the 'development compact', is controversial and cannot count on much support at international level.⁴¹ It closely resembles the cooperation mechanism that the Netherlands introduced in its Sustainable Development Agreements with Benin, Bhutan and Costa Rica in 1993 and 1994. These agreements, which are based on such key concepts as participation, reciprocity and equality, have now been evaluated. In the context of this evaluation, much criticism was directed at the 'development compact'.⁴²

The AIV notes that it has proved extremely difficult to elaborate the right to development. The debate on this issue sometimes appears to have subsided, only to erupt again later with great intensity. This often depends on the level of ambition of those involved, including the Independent Expert, with regard to the right to development. The AIV agrees that the question of whether there is enough legal and political backing for

40 See the Fifth Report of the Independent Expert on the Right to Development, UN Doc. E/CN.4/2002/WG.18/6 of 18 September 2002, Arts. 8-13.

41 For a description of the development compact, see, *inter alia*, Arjun Sengupta, 'On the Theory and Practice of the Right to Development', *Human Rights Quarterly*, vol. 24, no. 4, 2002, pp. 837-889. The idea of the development compact was originally introduced by the former Norwegian Minister of Foreign Affairs, T. Stoltenberg. It was explained, *inter alia*, in 'Towards a World Development Strategy', OECD, 1989.

42 See ITAD, Ltd., 'Evaluation of Sustainable Development Agreements: Final Report', March 2001.

a broad initiative is justified. To date, there has been little progress in the field of law, and it cannot be said that the right to development has been firmly entrenched in binding legal provisions. In addition, the political desirability of such an initiative is still the subject of much dispute, especially among Western countries. The main donor countries and the World Bank have now opted for an initiative based on the pro-poor growth approach.⁴³

In the AIV's opinion, the true value of the right to development thus resides mainly in its connective character, that is to say, its ability to unite the unconnected human rights to life, food, primary health care, education and participation in political and cultural life as well as to connect the rights of individuals and peoples. Recognition of the right to development also contributes to the universal acceptance of human rights as a whole.⁴⁴ Through the combined impact of these effects, the right to development can thus play a positive role in the promotion of respect for the entire corpus of human rights.

43 See AIV, 'Pro-Poor Growth in the Netherlands' Bilateral Partner Countries in Sub-Saharan Africa: An Analysis of Poverty Reduction Strategies', Advisory Report no. 29, The Hague, 2003.

44 See also UNGA resolution A/57/556/Add.2, Draft Resolution XXI, of 4 December 2002 (text with final code still to be published).

IV A closer look at the human rights based approach

The human rights based approach to development cooperation is a relatively recent phenomenon. Initial steps towards the practical elaboration of the approach were taken at the beginning of the 1990s by the Human Rights Council of Australia, among others.⁴⁵ The concepts proposed at that time were subsequently refined and implemented by the United Kingdom and other countries and international organisations. The UNDP's Human Development Report 2000 focused on presenting a more coherent approach.⁴⁶ Because it emerged only recently, experience with this approach is only partially susceptible to examination and assessment. What can be said, however, is that donor countries that have adopted this approach generally treat participation, co-determination and 'giving the poor a voice' as the basic principles and objectives of their development cooperation policies and poverty reduction programmes.⁴⁷ In the space of just a few years, human rights policies have thus acquired a central place in the international development cooperation debate. In the context of this debate, these policies are no longer just about preventing human rights violations (especially in relation to civil and political rights) and helping the victims of such violations, but increasingly about finding an approach to development issues and the implementation of socioeconomic policy that takes account of the entire corpus of international human rights norms.

The human rights based approach to development cooperation has many perspectives. This chapter starts by discussing how a number of international institutions and organisations have implemented the approach. It then examines how the European Union and three large donor countries (Germany, the United Kingdom and Sweden) have applied the approach in their development policies.⁴⁸

IV.1 The UN system

IV.1.1 OHCHR

After the Second World Conference on Human Rights called for the appointment of a High Commissioner for Human Rights, the post was established by the United Nations General Assembly in 1993. Since then, the Office of the UN High Commissioner for Human Rights (OHCHR) has played an important role in the coordination of UN activities in the field of human rights. So far, three High Commissioners have worked, with

45 In 1995, the activities of this Australian NGO led to the publication of a report entitled 'The Rights Way to Development'. In 2001, a revised and supplemented version of the report was published under the title 'The Rights Way to Development: Policy and Practice'.

46 See UNDP, 'Human Development Report 2000 – Human Rights and Human Development', Oxford University Press, New York, 2000.

47 For a critical assessment of this model of participation and co-determination, see AIV, 'Pro-Poor Growth in the Netherlands' Bilateral Partner Countries in Sub-Saharan Africa: An Analysis of Poverty Reduction Strategies', Advisory Report no. 29, The Hague, 2003, pp. 45-46.

48 These countries were selected on the grounds that they make substantial contributions in the field of development cooperation and also claim to apply a human rights based approach in their policies.

mixed results, to place a human rights stamp on the UN's programme. Their efforts mainly concerned the integration of human rights throughout the UN system in general and in the fields of conflict prevention, peacekeeping and peacebuilding in particular, as well as attention to the status of women and activities aimed at preventing human rights violations and impunity. With regard to the latter, the OHCHR has developed many activities to promote the establishment of national human rights institutes and has established human rights offices in 17 countries and regions.

Since 1998, the OHCHR has engaged in structural cooperation with the UNDP's field offices in connection with information sharing and the operation of those offices. Initially, the development of activities focusing on economic, social and cultural rights and the right to development was achieved through the reorganisation of the OHCHR and the design and implementation of a three-year plan.⁴⁹ The OHCHR subsequently integrated the human rights based approach to development into its other activities. It also incorporated the aforementioned discussion paper on human rights and poverty reduction strategies into an expanded policy document. This document, entitled 'Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies', was published in September 2002 at the request of the Committee on Economic, Social and Cultural Rights, and is meant to foster debate on the issue. This interesting document, which discusses the operationalisation and evaluation of the human rights based approach, will be revised in 2003 on the basis of comments and practical experience. The basic principle underpinning the draft guidelines presented in the document is that the national policies of institutions operating in the field of poverty reduction should be based on the norms and values defined in the internationally accepted human rights treaties. This principle is further elaborated in the draft guidelines.

IV.1.2 UNDP: Human Development Report

The UNDP's Human Development Report 2000 discusses the many aspects of the human rights based approach to development at length. In fact, the approach forms the theme of the entire report.⁵⁰ Among other things, the report observes that 'equitable social development is most likely to succeed if citizens are entitled to participation in public administration, accountable government institutions and an independent judicial system that is accessible to all'.

According to the human rights based approach promoted by the report, human rights are an intrinsic part of development, while development is also a means of realising human rights. These two approaches share a common motivation and a common purpose: to secure freedom, well-being and dignity for all. According to the report, human rights add the following to development:

- the concept of duties (including concepts like accountability and responsibility);
- instruments that provide a clearer insight into the relationship between policy intentions and policy effects; and
- an enhanced assessment of social progress and a greater realisation of the vulnerability of individuals and groups in society.

49 For more detailed information, see B.G. Ramcharan: 'The United Nations High Commissioner for Human Rights: The Challenges of International Protection', Martinus Nijhoff Publishers, The Hague, 2002.

50 Ibid footnote 46.

In addition, development adds the following to human rights:

- experience in articulating definite and concrete analyses;
- the explicit and direct evaluation of policy effects;
- a clearer insight into relevant social conditions; and
- a dynamic view of the issue.

The report provides a large number of recommendations that are meant to lead to greater social justice. For example, it argues that legislation must be supplemented by social measures; that a new, inclusive definition of democracy must be developed; that poverty reduction must be regarded as a human rights challenge; that global justice is a necessity; that more use should be made of the available statistics and indicators for measuring progress; that all important civil-society actors must be actively involved in the process; and that more vigorous international action is needed.

The report concludes that much progress can be achieved by confronting deep-rooted economic and political interests. To this end, international action needs to be undertaken in five priority areas:

- strengthening the human rights based approach to development cooperation without immediately thinking of negative conditionalities (sanctions);
- mobilising the support of international corporations for human rights obligations;
- strengthening regional strategies;
- taking initiatives in the field of peace negotiations, peacebuilding and peacekeeping; and
- strengthening international human rights organisations.

UNDP established the Human Rights Strengthening (HURIST) programme to increase capacity at national level in the field of human rights, in the form of concrete projects, and to gain practical experience in relation to different approaches. The HURIST programme thus supports national human rights action plans and promotes the integration of a human rights based approach in development cooperation programmes. Experience in relation to the application of this approach is still limited. What is clear is that, in order to succeed, it must be applied throughout the programme cycle (from analysis and the identification of purposes and needs up to and including evaluation). In addition, the evaluations note that the analytical frameworks that have been used so far devote insufficient attention to the interaction between the legislative process, the development of government policy and development cooperation choices, which directly and indirectly influence individuals. Follow-up discussions are taking place within UNDP concerning the further elaboration of a strategy concerning the human rights based approach to poverty. In this context, UNDP is cooperating with all the UN's key organisations and agencies, mostly in the framework of the ongoing debate concerning the MDGs. These debates, like the recent one between 19 key UN agencies in October 2002, devote a lot of attention to the importance of the human rights based approach in relation to development in general, and the realisation of the objectives of the MDGs in particular. By encouraging closer cooperation (at national and international level), using existing reports on human rights and development as a benchmark for progress and providing an independent platform for action and debate, the United Nations can further enhance its role as the engine of the human rights based approach at national level.

IV.1.3 UNICEF

As far as the United Nations International Children's Emergency Fund (UNICEF) is concerned, the human rights based approach is first and foremost an expression of its duty as a UN organ to promote human rights. The main instruments in this regard are the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).⁵¹ The human rights based approach also dovetails with UNICEF's approach to development cooperation, the main purpose of which is sustainable development. UNICEF seeks to establish long-term projects to tackle the root causes of poverty and human rights violations.

In this context, the two main concepts are participation and accountability. According to UNICEF, participation means that children should be able to make their voices heard, because they are the subject (not the object) of the rights that apply to them. In addition, participation also implies that not just states, but local authorities and civil-society organisations, should be involved in development projects. Accountability means that, by ratifying the CRC and CEDAW, states have voluntarily entered into obligations to which they should be held by their citizens and organisations like UNICEF. As far as UNICEF is concerned, the human rights based approach is a method, not a goal in itself – it does not concern *what* needs to be done, but *how* it is done. This entails a thorough examination of the structural causes of poverty in a country or region, including an analysis of the roles of different actors, the available resources, existing legislation and cultural/traditional patterns of behaviour.

As the human rights based approach has been integrated throughout UNICEF's programme, it does not appear as a separate item in the organisation's budget. Recent annual reports also provide little information on the actual results of the approach. In contrast, UNICEF's basic philosophy, with its specific focus on the rights of the child, is clear and appealing. As the human rights based approach seeks to achieve a structural change in people's living conditions, its effects are difficult to quantify. It is also a long-term objective. In its most recent annual reports, UNICEF has devoted a substantial amount of attention to the participation of children. It does this by supporting a large number of projects in which children and teenagers are able to make their voices heard. Although the connection between these projects and the human rights based approach is not identified specifically, the emphasis on participation clearly dovetails with the new approach to development cooperation, of which the human rights based approach is also a part. However, it is clear from the fact that the term does not actually appear in the organisation's annual reports that the human rights based approach is a politically controversial issue within UNICEF.⁵²

IV.1.4 ILO

The International Labour Organisation (ILO) is mainly known for setting standards in the field of labour and social policy, and much less for its development cooperation activities in this area. The ILO refers to these activities as technical cooperation.

Eight of the over 180 conventions that appear in the ILO's international labour codex count as 'fundamental' or 'human rights' conventions. These conventions concern key

51 See for example: Carol Bellamy, 'Unicef Guidelines for Human Rights-Based Programming Approach', 1998 and 'Annual Reports 2000, 2001 and 2002'.

52 According to reports, this is mainly due to opposition by the United States.

employee and employer rights, such as freedom of association (e.g. the right to join a trade union) and the right to collective bargaining (Nos. 87 and 98), as well as such issues as forced labour (Nos. 29 and 105), discrimination (Nos. 100 and 111) and child labour (Nos. 138 and 182). In addition to setting standards and operating a relatively effective system for monitoring compliance with its conventions, the ILO has for the last 50 years carried out extensive development cooperation activities with the governments and employers' and employees' organisations of its member states. Roughly 60 per cent of the ILO's budget goes towards technical cooperation.

The linkage of these activities has sometimes left much to be desired. The ILO's field offices in developing countries were often very reluctant to burden their working relations with governments with a discussion on human rights, even if the country in question was violating one or more of the human rights conventions it had ratified. This has changed during the last 15 years. The ILO's field offices are now run by multidisciplinary teams, which usually include a special legal expert whose task is to ensure that technical cooperation incorporates a human rights based approach.

The World Summit for Social Development (Copenhagen, 1995) provided a strong incentive for the linkage of human rights and development cooperation within the ILO's activities. In 1998, the Summit's conclusions and recommendations led to the publication of the Declaration on Fundamental Principles and Rights at Work. This declaration obliges member states to respect the key elements of the ILO's eight human rights conventions, even if they have not yet ratified them.⁵³

As a rule, the ILO does not exclude governments that systematically violate its human rights conventions from technical cooperation. The organisation generally takes the position that it does not want employers and employees to suffer as a result of the bad practices of their governments, but this is not always the case. In 2000, Burma (Myanmar) was excluded from technical cooperation after perpetrating grave violations of a number of conventions, including the convention on forced labour (No. 29), for many years.

IV.1.5 World Bank and IMF

For many years, an intensive debate took place in the World Bank regarding the question of whether grave human rights violations should have consequences for the approval and continuation of loans. For a long time, the premise of this debate was that such linkage should not be made. The Netherlands also supported this view. Opponents of linkage often referred to the World Bank's statutes, which exclude such linkages (only economic considerations apply), and emphasised that a human rights criterion would have a predominantly political character, which would be undesirable in the light of the World Bank's main goals. A number of countries, including the United States and the Scandinavian countries, did apply a human rights criterion in their decision making, for a variety of reasons.

The World Bank's development philosophy has evolved from a reasonably limited concept (economic growth) to a broader approach (poverty as 'a pronounced deprivation in well-being') based on the principles of opportunity, empowerment and security. In this context, concepts such as participation, empowerment, accountability and equitable

53 ILO, 86th Session, Geneva, June 1998, Report VII.

growth are important factors.⁵⁴ Economic and social rights play a particularly important role in the World Bank's decision making, although the organisation cannot afford to ignore civil and political rights altogether. As early as 1991, Ibrahim Shihata, vice president and general counsel of the World Bank during the 1980s and 1990s, argued that grave human rights violations that (a) have economic repercussions or (b) lead to binding resolutions from the United Nations Security Council should also have consequences for the World Bank.⁵⁵ In contrast, doctoral research conducted by MacAlistair Darrow in May 2002 revealed that international human rights norms and conventions have had very little practical impact on the formulation of World Bank policies and programmes, the way in which the World Bank has developed its role as a guarantor of social rights and its evaluation procedures, and the research agenda and general policy development of the World Bank.⁵⁶ The results of the policies conducted since 1999 are still insufficiently clear. At any rate the powers of the Inspection Panel, which became operational in 1994, could be strengthened if the World Bank supported the inclusion of human rights clauses in its operational policies. In this way, international human rights law could also serve as a frame of reference for the evaluation of policy.⁵⁷

In emulation of the World Bank, the International Monetary Fund (IMF) has also set processes in motion to develop policies that take account of the social consequences of macroeconomic policy and strive for equitable distribution of resources. The IMF was criticised for a long time for ignoring the socioeconomic status of vulnerable groups when drafting and adopting structural adjustment programmes,⁵⁸ while there is no reason to assume that a majority of the member states would have opposed an active policy in this area. Since 1996, the IMF has therefore devoted attention to good governance, especially with regard to law and order, the efficiency and accountability of the public sector and the fight against corruption.⁵⁹ In contrast, the above-mentioned research by MacAlistair Darrow reveals that, for many years, the IMF also accorded a negligible amount of weight to human rights norms in its decision making.

54 See for example Maria Aycrigg, 'Participation and the World Bank: Success, Constraints and Responses', Social Development Papers no. 29, November 1998. See also 'Development and Human Rights: The Role of the World Bank', The World Bank, 1998, available at: www.worldbank.org/html/extdr/rights.

55 See for example Ibrahim F. Shihata, 'The World Bank in a Changing World', Martinus Nijhoff Publishers, Dordrecht, 1991, p. 79 and H.M.G. Denters, 'IMF conditionaliteit, juridische aspecten van betalingsbalanssteun door het IMF' (IMF conditionality: legal aspects of balance of payments support by the IMF), T.M.C. Asser Instituut, The Hague, 1993, p. 165. See also 'World Development Report 2000/2001 – Attacking Poverty: Opportunity, Empowerment and Security', World Bank, Washington D.C., 2000.

56 See for example MacAlistair I. Darrow, 'Between Light and Shadow: The World Bank, the International Monetary Fund and International Human Rights Law', Hart Publishers, Oxford/Portland (Oregon), 2003.

57 See for example 'Tilburg Guiding Principles on World Bank, IMF and Human Rights', Tilburg University, 21 November 2002, Principle 38.

58 Ibid. See also H.M.G. Denters, 'IMF Conditionaliteit, juridische aspecten van betalingsbalanssteun door het IMF', T.M.C. Asser Instituut, The Hague, 1993, p. 169.

59 See for example 'The IMF and Good Governance – A Factsheet', 31 August 2002, available at <http://www.imf.org/external/np/exr/facts/gov.htm> and 'IMF Guidelines for Good Governance'.

In 1946 the World Bank and the IMF concluded an agreement with the United Nations (on the basis of Article 63 of the UN Charter) according to which they operate as independent international organisations within the UN system. Both organisations are thus legally bound to comply with the goals outlined in the UN Charter. According to Article 103 of the Charter, the obligations of the member states of the United Nations under the Charter, including their obligations in the field of human rights, shall prevail over their obligations under any other international obligations.⁶⁰ Furthermore, the World Bank and the IMF are obliged to respect international law in general, just like their members. In practice, this means that the two organisations must do what they can to ensure that their activities do not have a negative impact on the capacity of their borrowers to implement the human rights obligations they have taken upon themselves. To this end, in the AIV's opinion, the World Bank and the IMF must interpret their mandates more broadly than they have done to date.

IV.2 The European Union

The European Union has applied a certain human rights based approach in its development cooperation for a long time. Since about 1980, human rights have played an important role in the EU's relations with developing countries in Africa, the Caribbean and the Pacific (the ACP states), in the framework of the Lomé Conventions (1975-2000) and the Cotonou Agreement (2000-2020). Initially, the focus on human rights in the cooperation between the ACP states and the European Union was not uncontroversial. The ACP states regarded it primarily as an unwelcome interference in their domestic affairs, while they criticised European countries for their support of South Africa's apartheid regime and their treatment of foreign workers. During the 1990s, however, the two sides were able to reach agreement on increasingly detailed provisions on the role of human rights in their relations. There was also more scope for a positive approach to human rights issues, namely support instead of sanctions.

In principle, all the EU's external cooperation agreements contain human rights provisions,⁶¹ but the extent to which human rights are actually dealt with in relations with other developing countries varies. The basic principles of EU policy in the field of human rights and development have been set out in a series of policy documents, which reveal that EU development cooperation policy has undergone major changes in relation to content and structure.⁶² As to content, the policy was embedded in the Treaty of Maastricht by means of the addition of a new title on development cooperation, which identifies the promotion of respect for human rights, democracy and the rule of law as one of the key objectives of EU policy in this area. In November 2000, the Council and the Commission issued a joint declaration to flesh out the new objectives and priorities of EU development cooperation. In the EU's view, these objectives imply support for sustainable economic and social development, which should focus on the gradual integration of developing countries into the world economy and on the fight

60 See 'Tilburg Guiding Principles on World Bank, IMF and Human Rights', Tilburg University, 21 November 2002, Principles 6 and 8.

61 M. Bulterman, 'Human Rights in the Treaty Relations of the European Community. Real Virtues or Virtual Reality?', Intersentia publishers, Antwerp, 2001.

62 See for example European Commission, '2001 Annual Report on EC Development Policy and the Implementation of External Assistance', Office of Publications, Luxembourg, 2002, pp. 10-35.

against inequality.⁶³ The promotion of human rights, gender equality, the environment and conflict prevention are four related issues that should form an integral part of all EU development cooperation activities.⁶⁴

The most notable and interesting practice has occurred in the context of the EU's relations with the ACP states. Over the years, the two sides have created an increasingly clear and strict legal framework for the integration of human rights issues in development cooperation.⁶⁵ In an interactive process, the European Union, the Commission, the individual member states and the ACP states have developed treaty provisions that emphasise a positive approach but also allow for negative measures, if this should prove necessary. At the insistence of the ACP states, the parties have also gradually developed a mandatory consultation procedure that must be followed if one of the parties is thinking about restricting or temporarily suspending cooperation in part or in full.⁶⁶ In a recent development, the Council now publishes its findings at the end of the consultation procedure. These developments have increased the transparency and coherence of policy making and policy implementation.

The European Initiative for Democracy and Human Rights (EIDHR) also offers opportunities for funding activities in the fields of human rights, democratisation and conflict prevention. As a rule, such funding requires the establishment of partnerships with NGOs or international organisations. In 2001, EUR 110 million in funding was available in the framework of the EIDHR. Approximately one-third of these funds was earmarked for democratisation and strengthening the rule of law, one-sixth for conflict prevention and peace-making, and smaller amounts for promoting and protecting human rights, including human rights education, and for rehabilitation centres for victims of torture.⁶⁷

Although the EU's official policy in this area has existed for quite a long time and is fairly well developed, many problems still occur during its implementation. A lack of

63 The European Union also selected seven priority areas: trade and development; regional integration and cooperation; macroeconomic policy and access to amenities (health care and education); health, AIDS and population policy; transport; food security and sustainable rural development; and institutional capacity building.

64 In practice, the priority areas and themes are selected according to the needs of the developing countries. The Cotonou Agreement dates from before November 2000 and provides a different list of common themes, including gender, environment and natural resources, and institutional development and capacity building. The agreement raises human rights to the much higher standard of an 'essential element' of EU-ACP cooperation. See also European Commission, 'Compendium on Cooperation Strategies', DE 110, Office of Publications, Luxembourg, November 2001, which further elaborates and operationalises a number of aspects of the Cotonou Agreement.

65 See Karin Arts, 'ACP-EU Relations in a New Era: The Cotonou Agreement', 40 *Common Market Law Review* 2003, pp. 95-116 and Karin Arts, 'Integrating Human Rights into Development Cooperation: The Case of the Lomé Convention', Kluwer Law International, The Hague/Boston/London, 2000.

66 See the Cotonou Agreement, COM (2000) 324 final, Brussels, 23 May 2000, Arts. 9, 96 and 97, available at <http://europa.eu.int/comm/development/Cotonou>.

67 European Commission, '2001 Annual Report on EC Development policy and the Implementation of External Assistance', Office of Publications, Luxembourg, 2002, p. 39.

coherence between EU policies in the fields of human rights and development, trade and agriculture stands in the way of effectiveness. Due to the shared nature of competences in the fields of foreign policy and development cooperation, there is often friction between the policies and decisions of the EU's institutions and those of the individual member states. This is an important factor that all too frequently leads to inconsistent policy. Under pressure from the expanding role of human rights in EU development cooperation and the ever-increasing demand for results, the European Union has acknowledged the importance of developing indicators that measure the effectiveness of its development policies more accurately. The Commission recently introduced a number of initiatives for this purpose, largely on the basis of the MDGs.⁶⁸ In this regard, however, it should be noted that the existing range of tools that are essential for implementing and supporting an effective human rights policy (e.g. tools for collecting and analysing data and increasing the human rights expertise of relevant staff) is still inadequate. Recent efforts to increase cooperation with the United Nations and join forces where desired and possible are also advisable on the grounds of these practical considerations.⁶⁹

IV.3 The German experience

Since 1991, Germany has employed five key objectives in its development cooperation policy. One of these objectives reflects a desire to 'strengthen political stability by means of conflict prevention and support for democratisation processes and human rights'.⁷⁰ Although German development cooperation policy is related to human rights in various ways, it is still too soon to speak of a clear human rights based approach. Germany has occasionally established projects that have human rights as a primary or secondary objective. These projects generally focus on the rights of women and children.

Aktionsprogramm 2015 identifies poverty reduction, with a particular emphasis on democratisation, the promotion of the rule of law and peaceful conflict resolution, as the 'umbrella task' of German development policy. According to this programme, poverty should not only be regarded as a lack of income, but also as a lack of choice and participation in economic and social life, as well as a denial of human dignity and human rights. In the context of the programme, Germany devotes specific attention to a number of human rights issues.

The first issue is the promotion of the right to adequate food, as laid down in Article 11 of the International Covenant on Economic, Social and Cultural Rights. In addition to providing direct aid through the Food and Agriculture Organisation (FAO), Germany also gives priority to abolishing European agricultural protectionism, supporting land reform programmes in developing countries and strengthening the capacity of rural development organisations. Secondly, Germany regards the non-observance of the ILO's

68 Ibid., section 2.3: 'Measuring effectiveness through results indicators', pp. 22-23.

69 Communication from the European Commission, 'Building an Effective Partnership with the United Nations in the field of Development and Humanitarian Affairs', COM (2001) 231, Brussels, 2 May 2001.

70 Other objectives include halving the number of people living in extreme poverty by 2015, promoting a socially conscious and just international economic order, promoting global environmental objectives and ecological balance and improving funding mechanisms and debt relief.

international standards on labour and labour conditions as a key cause of poverty. It therefore seeks to enforce such fundamental standards as the abolition of forced labour, the eradication of child labour, freedom of association and non-discrimination in its development cooperation policies. In this context, Germany gives priority to establishing an individual right of petition in relation to economic, social and cultural human rights and supporting ILO programmes that implement international standards on child labour. Thirdly, Germany emphasises the equal treatment of women, which it regards as a crucial issue in the fight against poverty. All development programmes are therefore assessed for their implications for the status of women. In this context, Germany gives priority to primary education for girls and women, support for networks that exert political pressure in support of human rights and the fight against trafficking in women and child prostitution. Fourthly, Germany focuses on the participation of all parties in decision making, as it regards such participation as the key to solving poverty on the ground. Good governance takes account of internationally accepted principles of participation (as laid down in human rights treaties) and is raised by Germany in negotiations with its partner countries. In this context, Germany gives priority to:

- democratisation programmes;
- the decentralisation of government authority;
- legal reform and legal aid programmes;
- support for tax reforms and government budgets that focus on poverty reduction; and
- promoting a powerful civil society.

The German experience reveals a number of problems. The relationship between human rights and development cooperation has yet to be formulated in a coherent policy document. Since 1991, the federal government has published a *Jahresbericht über die Menschenrechtspolitik*, which also devotes attention to development cooperation, but there is no coordination between this report and reports on development cooperation. The *Jahresbericht* recognises the importance of the work of human rights NGOs in developing countries and supports their activities, but notes that they focus mainly on monitoring human rights violations and providing victim support and that they are inadequately equipped to deal with economic, social and cultural rights as well. The *Jahresbericht* also notes that only part of Germany's relationship with and funding of developing countries flows through development cooperation channels. In this context, for example, it refers to the role of the private sector and the international financing institutions.

IV.4 The British experience

The White Paper on International Development (1997) identifies three specific objectives of British development cooperation policy.⁷¹ These objectives are:

- policies and actions which promote sustainable livelihoods;
- better education, health and opportunities for poor people; and
- protection and better management of the natural and physical environment.

71 DFID, 'Eliminating World Poverty: A Challenge for the 21st Century', 1997 White Paper on International Development. See also the International Development Act 2002. Remarkably enough, the concept of human rights does not appear anywhere in the Act.

In a policy document entitled *Realising Rights for Poor People* (2000),⁷² the Department for International Development (DFID) further elaborates its vision of the human rights based approach to development cooperation, which it defines as giving a voice to poor people and empowering them to make their own decisions and choices, instead of making decisions on their behalf. According to the DFID, governments should develop instruments to achieve this. British development cooperation policy further targets the realisation of economic and social human rights. In this context, the DFID notes that the achievement of development goals still depends in part on the extent to which civil and political rights are realisable. The DFID also regards the participation of all parties concerned as a condition for achieving the goals that it has set itself and argues that human rights provide the tools for achieving such participation. The DFID bases itself on the entire corpus of human rights declarations and conventions and on the principle that all human rights are universal and indivisible. It also emphasises the importance of effective legal systems and socio-legal involvement in the field. For the purpose of thematic policy making and evaluating the human rights situation in partner countries, the DFID makes use of embassy reports, information from human rights NGOs and reports from EU representatives.

The DFID has identified three principles in relation to the integration of human rights into development cooperation and the formulation of policy priorities. The first principle is participation. This manifests itself as the prioritisation of support for the ability of poor people to organise themselves, the promotion of research into the ways in which poor people interpret their human rights and support for the media. The second principle is inclusion, that is to say, the promotion of a society in which every human being can claim all his or her human rights. Priority is therefore given to the consideration of the human rights of vulnerable groups in the context of economic reform programmes and international policy coordination, measures designed to abolish discriminatory legislation and research into the causes of discrimination and exclusion. The third principle is the fulfilment of obligations by states, but also by multilateral and non-governmental organisations. Priorities in this context include:

- making sufficient funds available for realising the MDGs;
- promoting the signature and ratification of human rights treaties;
- helping to 'translate' international agreements at national level, so that they can be applied in the daily lives of the poor; and
- supporting international monitoring mechanisms.

In recent years, the DFID has organised many activities under the banner of the human rights based approach. Although there is still little clarity regarding the actual results of this approach, due in part to the DFID's limited number of years of practical experience in this regard, it is clear that large amounts of aid are being granted in certain areas for the purpose of poverty reduction, debt relief, health care and education.⁷³ In practice, however, it has become clear that there are certain problems and dilemmas associated with this approach. In a number of respects, the human rights based approach operates in a complex force field. Promoting the participation of the poor has an impact on social and political relations and can bring hidden conflicts of interest to the surface.

72 See DFID, 'Realising Rights for Poor people', October 2000, available at: <http://www.dfid.gov.uk>.

73 For more factual information, see DFID, Departmental Report 2002, available at http://www.dfid.gov.uk/pubs/files/DR2002_summary.pdf.

In addition, the legal framework, which often includes elements of traditional and/or customary law, is not always responsive to a human rights based approach, as social relations can differ significantly between developing countries and are often also entirely different to those in Western countries.⁷⁴

IV.5 The Swedish experience

The main objective of Swedish development cooperation is to improve the living conditions of deprived groups in developing countries. This objective is divided into six sub-objectives, including democratisation and the equal treatment of men and women. In 1997, the Swedish International Development Cooperation Agency (SIDA) published two policy documents, which together provide a foundation for the human rights based approach.⁷⁵ These documents regard poverty as a violation of fundamental human rights and observe that undemocratic government excludes the poor, leading to even greater poverty in the long term. Each individual human right places an obligation on government, which is responsible for taking adequate measures to realise human rights within society. SIDA regards development cooperation as an important instrument for promoting human rights.

According to SIDA, human rights should become a visible and intrinsic element of development cooperation in general. A human rights dimension should be incorporated into all development cooperation programmes by means of a political dialogue with partner countries. In order to arrive at an appropriate development strategy for selected countries, SIDA prepares country reports that focus on four basic elements: human rights, democratisation, participation and good governance.

The human rights component focuses on the six main human rights conventions.⁷⁶ In this context, it emphasises the principle of non-discrimination, the right to an adequate standard of living and the right to education. In a more general sense, it also examines whether the rule of law is upheld. The democratisation component focuses on institutional and constitutional issues, such as the separation of powers and regular, free and fair elections, and on cultural issues, such as traditional forms of consultation and public trust in political institutions. The participation component concentrates on the participation of people in decision making that has a direct impact on their own lives and welfare. This is both a condition and an objective of Swedish development cooperation programmes. The good governance component, finally, focuses on national budgets. The preparation of country reports is ultimately about identifying areas or sectors

74 Such differences can occur in many areas. Examples include the ban on land ownership by women, marriage and labour law and access to education.

75 These two policy documents consist of a programme of action entitled: 'Justice and Peace: SIDA's Programme for Peace, Democracy and Human Rights' (May 1997) and a policy memorandum entitled: 'Democracy and Human Rights in Sweden's Development Cooperation', Government Communication SKR, 1997/1998: 76.

76 The International Convention on the Elimination of all Forms of Racial Discrimination (1965), the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the Convention on the Elimination of all Forms of Discrimination against Women (1979), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) and the Convention on the Rights of the Child (1989).

that require specific attention from the point of view of poverty reduction, that are experiencing stagnation or regression and where democratisation and human rights can be promoted by means of external support.

SIDA's programme also experiences various problems and dilemmas. Although the main policy document suggests that a human rights based approach will be applied to the whole field of development cooperation, some of the country reports reveal that systematic information on the signature and ratification status of the main conventions is missing or incomplete. This may be attributed to the sheer number of partner countries, which amounts to over a hundred. In addition, SIDA has so far devoted little attention to the practical implementation of the human rights based approach. Thus, for example, the question how to proceed if a partner country is reluctant or unwilling to discuss its obligations under existing human rights treaties in the framework of the policy dialogue remains unanswered. Issues related to the dialogue are dealt with in the country reports and strategies, albeit in a fairly general way, and hardly feature in the evaluation memorandums concerning individual grants and projects. Finally, specific projects in the field of human rights generally appear to target advocacy, the promotion of human rights awareness, research, documentation and legal cooperation.

It is not clear to what extent these projects actually reach the poorest groups in society, but SIDA assumes that a majority of its contributions have an indirect impact on the policy of the institutions targeted by the cooperation. In addition, SIDA observes that cooperation in the field of human rights often involves efforts aimed at changing attitudes and customs (i.e. creating a culture of human rights), which require time and are difficult to measure. In general, SIDA observes that human rights remain a sensitive subject in certain development relationships.

Preliminary conclusion

The above description of the human rights based approach to development cooperation reveals that it is a very broad approach that is expected to have an impact on development policy as a whole. The approach is ambitious in nature. In the relevant international organisations and donor countries, it has led to a greater emphasis on participation, democratisation, good governance and the centrality of the individual within human rights policy, both as an objective and as a strategy. In this context, however, the issue of economic redistribution has remained largely in the background. A similar trend is visible in international organisations and the European Union, although it appears that all donor countries and organisations are struggling to define the core of the human rights based approach and to integrate and operationalise the approach in their overall policy. It also appears that none of the donor countries and international organisations examined devote sufficient attention to systematic data collection or to the monitoring of the human rights situation in the countries with which they maintain development relations.

The AIV concludes that human rights provide a legal and normative framework that can give direction to all areas of development cooperation policy. The human rights discourse identifies rightholders (i.e. the poor, in the case of economic and social rights), but sometimes has difficulty identifying the duty bearers (i.e. governments, organisations and companies) and the precise nature of their obligations. Human rights violations often involve specific violations with identifiable perpetrators (such as policemen or prison officers that violate the rights of suspects, or companies that violate the ILO conventions), but are frequently also the result of the structural non-observance of human rights, the causes of which may be found in the national or international, economic or political balance of power.

V Principles and conclusions

This chapter considers the practical value of human rights in poverty reduction and development strategies. From an instrumental point of view, first of all, human rights serve as *legal remedies* in support of claims that enable people to enjoy their fundamental freedoms and gain access to whatever they require to meet their basic needs. In addition, human rights serve as *political guidelines*, as general criteria for assessing the legitimacy of the use of power or as a political tool in the context of processes of social change.

From a functional point of view, human rights play a *protective* and *emancipatory* role. Within actual strategies, first of all, they fulfil a protective function by providing legal and political protection in situations in which human dignity itself is at stake. In addition, from an emancipatory point of view, they encourage people whose rights have been violated to take control and push for social change. The protective and emancipatory functions of human rights both involve other actors in addition to the rightholders themselves.⁷⁷

In many developing countries, the application and observance of human rights create certain tensions. The authorities argue that too much emphasis is placed on the individual and justify human rights violations by appealing to cultural diversity and arguing that economic and social improvements are needed before rights can be observed. In many cases, the only purpose of these justifications is to protect the incumbent regime from criticism or restrict the scope of certain fundamental human rights in order to strengthen the position of political elites. However, human rights are not luxury items that countries can only afford when they have reached a certain level of development.

The above-mentioned functions of human rights are based on the interrelatedness and interwovenness of civil and political rights and economic, social and cultural rights, as well as on the relevance of the rights of peoples. Against this background, this final chapter presents a number of policy principles, followed by the report's main conclusions. In the AIV's opinion, these principles and conclusions should all have repercussions on the government's overall policy in the field of development cooperation.

V.1 Principles

V.1.1 *Poor people as a priority*

The human rights based approach can serve as a strategy and a method in all development cooperation programmes. In this context, various forms of participation and accountability are incorporated into decision-making and implementation mechanisms, both in official development cooperation and in the development activities of NGOs. The implementation of the human rights based approach can thus give a voice to the poor and empower them to make their own choices. In everyday practice, it is all too often the case that only the governments of developing countries (or parts of these governments) and donor countries have a say in decision making. Government-led

77 See B. de Gaay Fortman, 'Persistent Poverty and Inequality in an Era of Globalisation: Opportunities and Limitations of a Rights Approach', paper presented at the Tilburg University Lustrum Conference, 26-28 March 2003, p. 14.

development processes often turn out to be ineffective and irrelevant in relation to the poor.⁷⁸ When it comes to making policy choices, people – not countries, governments or economic targets – should come first.

Poor people are rarely able to gain access to legal remedies, because they cannot afford legal aid, even if it is available, or because the legal framework does not lend itself to a human rights based approach. In addition to legal measures, social and political mechanisms also play an important role. Specific attention should be devoted to strengthening the institutional framework. Equitable social development is most likely to succeed if citizens can count on participation in public administration, accountable government institutions and an independent judicial system that is accessible to all. The human rights based approach must always be tailored to the situation in each individual country. The approach also implies that substantial attention should be devoted to regional differences within developing countries during the formulation of development programmes. The reason for this is that, in many developing countries, certain regions – and thus certain ethnic groups – are often deprived of such amenities as schools, hospitals, water and sanitation.

The experiences of the donor countries and international organisations discussed in this report demonstrate that poverty reduction and other objectives of development cooperation come together in the human rights based approach. Their programmes focus on supporting the interests of the poor. In light of the existing balance of power in society, poverty reduction is not a politically neutral issue, but can be legitimised on the grounds of internationally recognised human rights. The human rights based approach involves decision making processes that grant a role to all parties, which understandably bring conflicts of interest to the surface, between poor people themselves or between the poor and the rich. These unavoidable conflicts of interest call for an approach that makes the parties involved, including governments, accountable, both legally and otherwise. In this context, development also implies political struggle, which can put donor countries under a lot of pressure vis-à-vis the government representatives with whom they are negotiating. Donor countries must side with the poor, but doing so can bring them into conflict with the governments of developing countries. In such cases, an appeal to internationally recognised human rights is appropriate. In fact, as developing countries become better democracies, the possibility for closer cooperation increases. A 'neutral' human rights based approach is not an option: it is essential to focus on people and their rights.

V.1.2 The role of civil-society actors

In certain cases, support via socioeconomic interest groups and non-governmental channels can be more effective than support via government channels. This realisation is important in relation to developing countries as well as in relation to the donor countries' taxpayers. It also makes the deployment of development funds easier to justify. In the past, people-oriented aid in the field of human rights was almost never controversial, either in the eyes of recipient countries or in the eyes of donor countries and taxpayers. The Netherlands already provides a lot of aid, for example, through the cofinancing organisations (MFOs), but the majority of Dutch development cooperation flows through other channels. Specific projects aimed at strengthening the rule of law and

78 For a discussion of this issue, see for example Deepa Narayan, 'Can Anyone Hear Us?' (Voices of the Poor series), World Bank/Oxford University Press, 2000. In this context, the AIV however prefers the term 'counterproductive' to 'irrelevant'.

human rights do not always target the poorest groups in society, although they are relevant to the poor in the long term. This applies, for example, to programmes combating discrimination against women. This focus is not a problem, as long as care is taken to ensure that such programmes also take account of the interests of the poor. The human rights based approach can also contribute to the mapping of sectors and structures in order to facilitate focused policies.⁷⁹

The human rights based approach thus offers specific benchmarks (e.g. the access of the poor to clean water and sanitation or health care) for setting objectives and monitoring and evaluating progress in development programmes. Likewise, a commitment by donor countries to strengthen the economic and social rights of the poor should not only involve a choice of social sectors such as education and health care, but should also place a strong emphasis on the access of the poor to resources, such as land and credit, that allow them to provide for themselves. A lack of opportunity to participate (exclusion) and a lack of control over one's life are also aspects of poverty. Aid provided by current donor countries generally focuses on organisations that seek to strengthen civil and political rights. At the same time, human rights NGOs need to increase their awareness of the importance of human rights in development processes. There is often a substantial difference between the experience of NGOs dealing mainly with development issues and that of NGOs focusing mainly on civil and political rights. The same difference also occurs in relation to governments (or parts of governments) and international institutions. Investment aimed at increasing awareness of the role of human rights in development is therefore vital.

The question of whether all human rights and development organisations are adequately equipped to deal with civil and political rights as well as economic, social and cultural rights is justified. Civil-society organisations and NGOs should be targeted for investment, for example, via the MFO channel, to ensure that they are adequately equipped.⁸⁰ In order to shield the poor from further hardship due to lack of cooperation as well as from grave human rights violations, an even larger proportion of Dutch activities in the field of development cooperation should flow through non-governmental channels, including competent MFOs, NGOs and other socioeconomic interest groups, such as legal aid organisations.⁸¹

In this context, however, it is important to avoid situations in which NGOs are funded almost exclusively by foreign donors. Despite good intentions, an excess of foreign aid can sometimes impair the independent development of a broad range of socioeconomic interest groups and put great pressure on the relations between them, especially if there are substantial wage differences between employees funded by donor countries and the employees of NGOs that are largely dependent on local funding.

79 See also I. Boerefijn, M. Brouwer and R. Fakhreddine (eds.), 'Linking and Learning in the Field of Economic, Social and Cultural Rights', SIM-special 27, Utrecht, 2001.

80 See, for example, Oxfam's action programme, 'Towards Global Equity', 2000.

81 For a number of critical comments on the role of NGOs in general, see AIV, 'Commentary on the 2001 Memorandum on Human Rights Policy', The Hague, September 2001, pp. 13-14. See also AIV, 'Pro-Poor Growth in the Netherlands' Bilateral Partner Countries in Sub-Saharan Africa: An Analysis of Poverty Reduction Strategies', Advisory Report no. 29, The Hague, 2003.

V.1.3 Compliance with human rights conventions

Among other things, the earlier description of experiences in relation to the human rights based approach indicates that human rights conventions can provide a legal and normative tool in decision making regarding the provision of aid. In practice, the risk of the concept of human rights becoming inflated because all development issues are also regarded as human rights issues appears to have been contained. In fact, it would be more accurate to speak of the specialisation and refinement of substantive human rights norms and the development of a system of monitoring mechanisms. Not all development issues are related to human rights, but development cooperation policy as a whole is pervaded by human rights. In this context, it is also worth mentioning the value of the right to development, which lies mainly in its connective and integrative nature. By emphasising this nature, it is possible to achieve an even better correlation between development policy and the principle that the promotion and observance of human rights as a whole should form the basis of the human rights based approach to development.

An efficient national legal system is an important condition for compliance with international human rights obligations. Well-informed, well-trained, incorruptible and effective national judges are essential in this regard, as legal certainty and justice are closely connected. In addition, human rights courts (in America, Europe and – in due course – Africa) and commissions (in Africa and America) play an important complementary role in the development of legal protection. These institutions deserve support in the framework of the human rights based approach.

Besides compliance with international human rights obligations, compliance with reporting requirements under human rights conventions leaves much to be desired. Governments report late, incompletely or not at all, and the parliaments of recipient countries and donor countries are either not adequately equipped or not sufficiently vigilant to respond. This problem has already been identified and discussed in previous advisory reports of the ACM and the AIV.⁸² If the reporting process in recipient countries is hindered by a lack of expertise or resources, then this presents an opportunity for donor countries to provide temporary aid to remove such obstacles. Reports produced in accordance with UN human rights and ILO conventions – and their discussion in the relevant convention committees – can serve as a basis for analysing development requirements in human rights terms. This confirms the need for improvements in the exchange and linkage of databases and collections of reports. The information thus obtained can then be used to determine whether current development cooperation programmes are tailored to such an analysis and how to increase the focus on the monitoring of compliance with obligations. Civil-society organisations and NGOs can also help to improve compliance monitoring. One way of doing this is to create opportunities for these organisations to produce serious ‘shadow reports’ and circulate them widely in the relevant countries. Donor countries should make sufficient resources available for this purpose in their development programmes.

V.1.4 Human rights: positive and negative approaches

The literature on human rights and development cooperation distinguishes between positive and negative linkages of human rights and development cooperation. In the

⁸² See for example ACM, ‘UN Supervision of Human Rights’, Advisory Report no. 22, The Hague, October 1996 and AIV, ‘Commentary on the 2001 Memorandum on Human Rights Policy’, Advisory Report no. 24, The Hague, September 2001.

case of negative linkage, donor countries reduce or even discontinue aid at governmental level in response to grave and systematic human rights violations or the stagnation of democratisation (e.g. a refusal to hold multi-party elections).⁸³ In the case of positive linkage, donor countries use their development policies to promote human rights and democracy. This includes activities such as strengthening the rule of law by supporting programmes related to the police and the judiciary, supporting projects and programmes aimed at giving poor people a say in their own lives, supporting human rights organisations and providing financial and technical support for elections.

Although positive linkage has many advantages, the AIV is of the opinion that both approaches should continue to play a role in Dutch policy. In order for there to be negative linkage, grave or systematic human rights violations in partner countries must have consequences for official aid relations. There is consensus on this issue at international level, as expressed, for example, in the Cotonou Agreement. On the basis of this agreement, donor countries may suspend or terminate aid in response to human rights violations or widespread corruption. However, it is also vital that donor countries address these matters in the framework of their policy dialogue with the government of the recipient country in question. Experience further teaches that this kind of pressure can only be effective if donor countries act in unison.

With regard to the management of aid relationships, the human rights based approach implies that civil and political rights and economic, social and cultural rights should both receive a fixed place on the agenda for the dialogue between the governments of the donor country and the recipient country. This is because human rights can serve as a benchmark for evaluating the programmes funded by the donor as well as the socioeconomic policies pursued by the recipient country. In these policies, it should be clear how the government in question is prioritising sectors that can help to reduce poverty with the limited resources it has at its disposal (e.g. rather than spending them on defence). The human rights based approach also implies that the government of the recipient country can consult the donor concerning the choice of aid programmes. In practice, however, there is no real reciprocity in the aid relationship. In its recent advisory report on pro-poor growth, the AIV concluded that the PRSP process is heavily dominated by donors, too focused on countries and not sufficiently attuned to individual poverty and participation by directly involved parties. In addition, it appears that donor countries, including the Netherlands, do not always follow the priorities identified in the PRSPs when it comes to choosing sectors.

In the target country policy pursued by the Dutch government during the 1998-2002 period, the above-mentioned conditionality appears in the criteria for the selection of partner countries, as the criteria for good governance touch upon civil and political rights, and the pursuit of sound socioeconomic policy (in practice, a sufficient focus on poverty reduction) has an impact on the implementation of economic and social rights. Bilateral aid policy offers a particularly suitable framework for contributing to the promotion of human rights, provided that it is geared to this purpose. However, from the

83 Ibid., note 16. See also O.B.R.C. van Cranenburgh, 'Development Cooperation and Human Rights: Linkage Policies of the Netherlands', in P. Baehr, H. Hey, J. Smith and T. Swinehart (eds.), *Human Rights in Developing Countries*, 1995, p. 29 et seq. and K. de Feyter, K. Landuyt, L. Reydam, F. Reyntjes, S. VandeGinste and H. Verleyen, 'Ontwikkelingssamenwerking als instrument ter bevordering van mensenrechten en democratisering' (Development cooperation as an instrument for promoting human rights and democratisation), VLIR-ABOS, Brussels, 1995.

point of view of the human rights based approach, the Dutch government's choice of countries with which to cooperate deserves a fair amount of criticism.⁸⁴ In fact, the human rights based approach is almost non-existent in current policy. Based on the desirability of the human rights based approach, the Netherlands should seriously reconsider the criteria on which it has based its choices. The choice of criteria, and the manner in which they are subsequently elaborated, should be such that aid is only granted to countries where it can make a real contribution to the promotion of human rights.⁸⁵ These criteria and choices should be applied consistently in a manner that is also transparent for the recipient countries.

A shift in funding from specific projects and programmes to a collection of related activities in a specific area of government policy is characteristic of the sector-wide approach. This approach involves an emphasis on cooperation and dialogue with recipient governments and high levels of donor coordination. Since the sector-wide approach is only implemented in countries that qualify for a structural aid relationship (and thus meet the relevant criteria), the emphasis of the aid is thus rightly being transferred from donor-controlled projects and programmes to cooperation in a specific policy area with the government of the recipient country. With regard to the selection of sectors and the evaluation of the relevant policies, however, the human rights based approach implies that it is important to establish the extent to which the sectoral policies contribute to the promotion of human rights in general. The provision of aid for health care, water and sanitation, education or the judiciary is in harmony with the human rights based approach, if the objective of the policy is to grant poor people the widest possible access to facilities and services. For example, the provision of aid to (or within) the agricultural sector should focus mainly on granting poor people in rural areas access to land, tools and credit. These points call for a critical assessment of existing programmes in the above-mentioned partner countries. Such an assessment, based on a solid analysis, should produce clear guidelines for future policy.

It is also possible to make a connection between macroeconomic aid and human rights. While an unhealthy macroeconomic climate is bad for the private sector and reduces economic growth, it also has an impact on poor people's chances of survival. Macroeconomic problems such as double or triple-digit inflation hit poor people hard and, in extreme cases, can make it impossible for them to participate in the official economy. In the past, the frequent overvaluation of currencies had a negative effect on the export of farmers' agricultural crops, and shortfalls in the balance of payments had an impact on the price and availability of consumer goods. Macroeconomic aid, which by definition is provided to central governments, can increase poor people's chances of survival and thus also has a bearing on the economic and social rights of the poor. However, the human rights based approach to development cooperation requires that countries explicitly elaborate the relationship between macroeconomic aid and human rights and that they allow this relationship to influence the form in which such aid is provided. The Netherlands should try to meet these requirements in its own bilateral

84 See AIV, 'Comments on the Criteria for Structural Bilateral Aid', Advisory Report no. 7, The Hague, November 1998 and D.J. Koch, 'Herfkens' selectiviteitsbeleid onder de loep: een beoordeling en voorstellen ter verbetering' (Examining Herfkens' policy of selectivity: an evaluation and suggested improvements), *Internationale Spectator*, vol. 57, no. 2, February 2003, pp. 71-76.

85 For more detail, see also Humanist Committee on Human Rights, 'Matching Practice and Principles – Human Rights Impact Assessment: EU Opportunities', Utrecht 2002.

policy and in the relevant donor consultation bodies and financial institutions.

V.1.5 The role of international organisations and the European Union

The UN institutions and specialised agencies and the international financial institutions play an important role with regard to human rights and development. They have a lot of power when it comes to formulating and implementing policies in this area. The guidelines developed by the OHCHR are just one interesting example of this. The way in which the organisations are increasingly cooperating with each another is also a promising development. At present, not much can be said about the practical elaboration and results of this cooperation, as various programmes are still under development. In this context, specific mention should be made of the UNDP's HURIST programme, UNICEF, which has integrated the human rights based approach in all its activities, the ILO's technical cooperation programmes and the OHCHR's coordination activities aimed at integrating human rights throughout the UN system. These and other projects and programmes emphasise the participation of all sectors in society. This dovetails with the current approach to development cooperation, which also includes the human rights based approach. In addition, human rights have acquired a prominent position in the EU's development policy, even though there has been no explicit decision to adopt a human rights based approach. The World Bank and the IMF, finally, are legally obliged to ensure that their activities do not have a negative impact on the capacity of states to comply with their human rights obligations, although it is not always clear how these two institutions integrate this obligation into their programmes. The AIV's recent advisory report on pro-poor growth recommended a number of initiatives to improve this situation. If they are implemented, these recommendations will contribute to the further development of a human rights based approach by the World Bank and the IMF. The Netherlands should do its best to encourage these institutions to make human rights a more explicit theme of their development policies in the future.

V.1.6 Coherence

Even when the relationship between human rights and development cooperation is defined in coherent policy documents, it can be extremely difficult to implement in practice. Donor countries often lack good coordination and cooperation between relevant ministries at national level, and there is often also a big discrepancy between the experiences of the poor and the marginalised and the policy proposals formulated by the donor countries and the governments of developing countries. Donor policy should not only be coherent in the sense that it is free of contradictions, but also in the sense that all aspects of the policy support each other. Such policy therefore concerns all ministries. The objectives outlined in the MDGs are a good example of this, as they can only be achieved if all the parties involved, both in the donor countries and in the recipient countries, cooperate in a coherent manner. Although the Dutch government is in favour of policy coherence, a lot still remains to be done in this area.⁸⁶ Only part of its relations with and funding of developing countries flows through development cooperation channels. Transactions in the area of economic relations and arms exports do not suggest that coordination and cooperation, on the basis of human rights, is taking place between the relevant ministries. The lack of coherence between EU policies in the fields of human rights and development, trade and agriculture also stands in the way of effectiveness. Due to the shared nature of competences in relation to foreign policy and development cooperation, there is often friction between the policies and

⁸⁶ See for example the policy document on development cooperation and agriculture, House of Representatives of the States General, 2002-2003, 28318, no. 2, December 2002.

decisions of the EU's institutions and those of the individual member states. This is an important factor that often leads to incoherence. The continued existence of agricultural protectionism in the European Union, for example, is a major obstacle in this regard and should be terminated. Finally, the decision-making processes in such international bodies as the IMF, the World Bank and the WTO should aim not to undermine the objectives and effects of development cooperation.⁸⁷ To this end, the IMF and the World Bank should in any case interpret their mandates more broadly than they do today.

V.1.7 Improving human rights awareness within the system

The introduction of the human rights based approach will require an additional outlay for training officials, embassy staff and the staff of development organisations and other NGOs in the Netherlands and abroad on the subject of international human rights conventions and implementation and monitoring mechanisms. This is an investment that will pay off in the long term. It is vital for all concerned that a choice is made in favour of a human rights based approach that is implemented throughout the ministry.

Conclusions

In the AIV's opinion, the above-mentioned principles should have repercussions for the government's policy as a whole. The conclusions that can be drawn from these principles offer guidelines for development cooperation policy and Dutch policy in general. The main conclusions are as follows:

- Not all development issues are related to human rights, but development cooperation policy as a whole is pervaded by human rights.
- The human rights based approach forces actors to make choices. It is a broad and ambitious approach that has an impact on development policy as a whole. Human rights provide a legal and normative framework that can give direction to all areas of development cooperation policy. In this context, the observance of internationally recognized human rights should be the guiding principle.
- When it comes to making policy choices, *people and their rights* – not countries, governments or economic targets – should come first. Donor countries should side with the poor. Involving and supporting civil-society actors in developing countries is a crucial part of implementing the human rights based approach.
- Aid should only be granted to countries where it can make a real contribution to the promotion of human rights. This should be assessed on the basis of clear, uniform and transparent criteria that are applied in a consistent manner, as well as a coherent country analysis. For this purpose, sufficient attention must be devoted to systematic data collection and to monitoring and evaluating the human rights situation in each country.
- The decentralisation of the bilateral development cooperation budget has provided a clearer picture of the activities and achievements that take place at local level in recipient countries. However, there is not enough insight into this branch of develop-

⁸⁷ See for example L. van Maare, 'Coherentie in de ontwikkelingssamenwerking: hoe verder?' (Coherence in development cooperation: Where do we go now?), *Internationale Spectator*, vol. 57, no. 2, February 2003, pp. 81-87.

ment cooperation, partly due to inadequate feedback to the ministry in The Hague. This makes it difficult to set general policy priorities, which are essential.

- More resources should be invested in training ministry staff and the staff of development organisations on the subject of international human rights conventions and implementation and monitoring mechanisms. In this way, the knowledge and awareness of each individual regarding human rights can be increased, in order to introduce more synergy between development policy and the human rights based approach.
- Realising both civil and political rights and economic, social and cultural rights deserves a fixed place on the agenda of the dialogue between the governments of donor countries and recipient countries. Human rights can thus serve as a benchmark for evaluating the socioeconomic policies pursued by recipient countries as well as the programmes funded by donor countries.
- In general terms, the concept of human rights is not becoming inflated. Instead what we are witnessing is the specialisation and refinement of substantive human rights norms and the development of a system of monitoring mechanisms. Due to the sheer number of developments in the field of human rights, however, it is difficult to obtain a balanced overview.
- An efficient national legal system is an important condition for compliance with international human rights obligations. Well-informed, well-trained, incorruptible and effective national judges are essential for this purpose. Permanent human rights education and the establishment of national human rights agencies and ombudsmen should also be a top priority.
- It is very important that countries consistently honour agreements and commitments in the field of human rights and development cooperation (such as the Copenhagen agreements, the MDGs, the Monterrey Consensus and the Johannesburg Declaration) once they have been established. The United Nations, industrial countries and developing countries all have a role to play in this regard.
- The UN institutions and specialised agencies and the international financial institutions play an important role with regard to human rights and development. The Netherlands must make sure that these organisations and institutions maintain human rights as a key theme of their policies and help them in doing so. Contributions towards improving the effectiveness of the human rights policies of these organisations in the fields of data collection and analysis, increasing expertise and systematic cooperation are essential in this regard.
- Dutch development policy as a whole should be coherent. It should be free of contradictions and all aspects of policy should support each other. These principles apply to the policies and implementing activities of all Dutch ministries, but should also be followed by international organisations such as the IMF, the World Bank and the WTO.
- In the AIV's opinion, the true value of the right to development resides mainly in its connective character, that is to say, its ability to unite the individual human rights to life, food, primary health care, education and participation in political and cultural life as well as to connect between the rights of individuals and peoples. Through the

combined impact of these effects, the right to development can play a positive role in the promotion of respect for the entire corpus of human rights.

- The draft guidelines presented by the OHCHR in a document entitled ‘Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies’ are interesting and provide a useful tool for the further operationalisation and evaluation of future Dutch policy in the framework of the human rights based approach to development cooperation.
- In conclusion, the AIV wishes to emphasise the basic principle underpinning this advisory report, namely, that the widespread existence of extreme poverty makes it impossible for those affected to realise their human rights effectively. The international community must therefore continue to prioritise the reduction and eventual eradication of poverty. The common denominator of human rights policy and development cooperation policy is and must remain the promotion and protection of human dignity.

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Re: Request for advice on development cooperation and human rights: the practical application of the human rights based approach to development.

Dear Mr Korthals Altes,

In its Memorandum on Human Rights Policy 2001, sent to the House of Representatives on 14 May 2001, the government indicated that it was seeking to achieve better integration of the concept of human rights in the daily practice of development cooperation, with the aim of increasing the synergy between the two policy fields. The main concern is to give form and content in daily practice to concepts such as the transparency and accountability of government, and people's participation in decision-making and development processes. Development cooperation is an important instrument in achieving this objective.

The primary focus in development relations is the main aim of development policy: poverty reduction. In 1987, the Advisory Committee on Human Rights and Foreign Policy, the predecessor of the AIV's Human Rights Committee, produced an extensive advisory report on the role of human rights in development policy. In its response, the government concluded that the principles expressed in the report were the same as those underpinning government policy, i.e.:

- that development cooperation should help to promote the realisation of human rights;
- that promoting respect for human rights, including in the framework of development cooperation, should always be based on an integrated approach of both categories of human rights. In other words, activities to promote civil and political rights must not be separated from those to promote economic, social and cultural rights;
- that, in promoting respect for human rights through development cooperation, greater priority should be given to 'positive' than to 'negative' instruments.

In the course of time, the concept of good governance has become central to (the Dutch) development cooperation policy. Good governance encompasses the concepts of transparency and accountability of government and of people's participation mentioned above. In addition, it has become accepted that sustainable development requires both economic

growth and human development. Poverty is no longer seen purely in terms of a lack of income. Greater importance is being attached to security and to opportunities for people to develop themselves. The World Development Report 2000/2001 'Attacking Poverty' speaks of opportunities, empowerment and security.

In recent years, a number of UN agencies (including UNICEF, UNDP and UNIFEM) and bilateral donors (including the UK and Sweden) have introduced a human rights based approach to development in their work. This approach provides a conceptual framework for the empowerment of people by focusing on their participation in the development process and in the fair distribution of prosperity. There is a clear link here to the right to development, which places people at the centre, both in the development process and in the way the results of development are distributed. At the same time, this approach offers opportunities to integrate human rights into everyday practice. For example, a connection can be made between activities to improve health care and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, as contained in Article 12 of the UN Covenant on Economic, Social and Cultural Rights.

In the past year, several steps have been taken to achieve better integration of human rights policy and development cooperation. Sector specialists have been acquainted with the human rights based approach and an internal paper on poverty reduction and human rights has been drafted in the context of the Mainstreaming Poverty Reduction project at the ministry in The Hague. These are the first steps in a process that must ultimately lead to guidelines for embassies on justifying poverty reduction activities from a human rights perspective, as a supplement to existing strategies. Conversely, poverty reduction arguments can be used when broaching human rights issues. For example, in a country where there are concerns about the increase in genital mutilation, the importance of healthy and independent women to economic growth could also be emphasised.

That development is a matter of achieving respect for human rights and not of charity is beyond dispute. Yet the human rights based approach to development does raise a number of questions. Does the concept of human rights not become overinflated if everything to do with development is seen as a human rights issue? Is there not a danger of focusing on rights that exist on paper but which are not embedded in the social context? Generally speaking, poverty is not the result of a specific violation of a human right by a clearly identifiable perpetrator, but of a situation of general malaise in which it is difficult to point the finger of responsibility at or take legal action against individuals. Countries where the right to development is an issue often lack an efficient legal system. Does use of the term 'rights' in the context of development then not arouse expectations that cannot be fulfilled in practice? It is, however, perhaps useful to take a pragmatic view and see to what extent the human rights based approach can be translated into concrete strategies and measures which can be applied in everyday development practice to strengthen the coherence between development cooperation and human rights policy.

With all the above in mind, we would greatly appreciate the advice of the Council on this matter. We are not concerned here with the general question of the role that human rights should play in development policy. As mentioned previously, this has already been the subject of an advisory report. In addition to the questions posed above, we would like your advisory report to address the following:

- the way in which the human rights based approach to development can be applied in the everyday practice of development cooperation in general and the sector-wide approach in particular;

- possible problems arising from the sensitivity of a number of countries about human rights (for example, the rights of women in relation to reproductive health) and ways in which these problems can be addressed;
- ways in which the human rights based approach can be promoted in the specialised agencies of the UN (especially other than the aforementioned UNICEF, UNDP and UNIFEM);
- the relationship between the human rights based approach and the IMF/World Bank concept of PRSPs (Poverty Reduction Strategy Papers), particularly how the latter can contribute to the former;
- concrete ways in which the right to development can be promoted. In this connection, you might refer to the activities of the UN's Independent Expert on the Right to Development, Dr Arjun Sengupta.

Later in the year, an internal workshop is to be held, partly on the basis of the AIV's report, which should lead to the drawing up of guidelines to help the missions integrate human rights into the daily practice of development cooperation and to the mutual strengthening of policy on human rights and on development cooperation.

We look forward to your advice with interest.

Yours sincerely,

(Signed)

Jozias van Aartsen
Minister of Foreign Affairs

(Signed)

Eveline Herfkens
Minister for Development Cooperation

List of abbreviations

ACM	Advisory Committee on Human Rights and Foreign Policy
AIV	Advisory Council on International Affairs
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CMR	Human Rights Committee of the AIV
COM	Development Cooperation and Human Rights Subcommittee of the AIV
COS	Development Cooperation Committee of the AIV
CRC	Convention on the Rights of the Child
DFID	Department for International Development
DMV/MR	Human Rights Division, Human Rights and Peacebuilding Department
DMV/VG	Peacebuilding and Good Governance Division, Human Rights and Peacebuilding Department
EIDHR	European Initiative for Democracy and Human Rights
EU	European Union
FAO	Food and Agriculture Organisation
HOM	Humanist Committee on Human Rights
HURIST	Human Rights Strengthening Programme
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IMF	International Monetary Fund
ISS	Institute for Social Studies
MDGs	Millennium Development Goals
MFOs	Cofinancing organisations
NGO	Non-governmental organisation
NOVIB	Netherlands Organisation for International Development Cooperation
OHCHR	Office of the UN High Commissioner for Human Rights
OrEA	Bureau Organisatie, Evaluatie en Advies
PRSPs	Poverty Reduction Strategy Papers
SIDA	Swedish International Development Cooperation Agency
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations International Children's Emergency Fund

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