

Promoting Human Rights through Private Sector Development:

Summary Report of the Panel Discussion hosted by
The North-South Institute¹

May 26th, 2009

Canadian International Development Agency, Gatineau, Canada

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Table of Contents

<u>Acronyms</u>	3
<u>Introduction</u>	4
<u>Key Messages...and lessons learned</u>	5
<u>Presentations</u>	6
<u>Opening Comments</u>	
<u>Donor Agency Experiences:</u>	
The Human Rights-Based Approaches to Development Working Group	6
The CIDA Egypt Program	
<u>Experiences from the Field:</u>	
CARE Canada	7
Afghan Secure Futures	8
<u>Potential Entry Points: “Soft Law” Approaches</u>	9
<u>PPIC-Work: Rights-Based Approaches and “Soft Law”</u>	10
<u>Discussion</u>	11
<u>Agenda</u>	15
<u>Participants</u>	16

Acronyms

AED	Academy for Education Development (United States)
ASF	Afghan Secure Futures
BDSSP	Business Development Services Support Project (Canada)
CIDA	Canadian International Development Agency
CYES	Children, Youth, and Economic Strengthening (United States)
HRAD	Human Rights-Based Approaches to Development
HRAD WG	Human Rights-Based Approaches to Development Working Group
LFA	Logical Framework Analysis
MDG	Millennium Development Goals
MEDA	Mennonite Economic Development Associates
MFI	micro-finance institution
NSI	The North-South Institute
ODA	Official Development Assistance
PPIC-Work	Promoting and Protecting the Interests of Children Who Work
PSD	private sector development
RBA	rights based approach
RBM	Results Based Management
SME	small and medium enterprise
STRIVE	Supporting Transformation by Reducing Insecurity and Vulnerability with Economic Strengthening (United States)
USAID	United States Agency for International Development

Introduction

In 2008, The North-South Institute, with a financial contribution from the Canadian International Development Agency (CIDA), prepared a discussion paper on Promoting Human Rights and Private Sector Development². The study points out that while there have been decades of experience by development agencies with both private sector development (PSD) and human rights based approaches as tools for poverty reduction, the links between the two in the form of rights based approaches to PSD remain relatively undeveloped. There is a growing consensus, however, that development cooperation activities should promote human rights, and that human rights can promote development.

NSI and the CIDA Egypt Program have collaborated informally on some learning activities. In February 2009 a workshop on the theme of Human Rights and Private Sector Development was hosted by the CIDA Egypt Program and the Promoting and Protecting Children who Work project (PPIC-Work), which featured presentations from several CIDA-supported PSD projects that have taken a rights-based approach (RBA). This report covers a panel discussion held in May 2009 that was hosted by NSI, with the support of CIDA, PPIC-Work and the Mennonite Economic Development Associates (MEDA). The event brought together experts and practitioners in human rights and PSD to exchange views and experiences, and to inform official thinking on the linkages between human rights, private sector development and development.

The discussion is particularly relevant in light of Canada's new Official Development Assistance Accountability Act, Bill C-293. This Act sets a three-part test for Canadian aid: ODA may be provided only if the administering minister (not only the minister for CIDA) is of the opinion that it: a) contributes to poverty reduction; b) takes into account the perspectives of the poor; and c) is consistent with international human rights standards. At an operational level, this suggests that CIDA would need to have systems in place that would enable it to demonstrate that CIDA-supported PSD activities promote human rights. The agency would also need some ongoing process of human rights due diligence, which might include: having a human rights policy; assessing human rights impacts of agency-supported activities; integrating those values and findings into corporate cultures, and, tracking as well as reporting performance.³

The intersection of HR and PSD is also relevant to discussion on the Paris Declaration on Aid Effectiveness (March 2005), which addresses human rights principles of ownership, partnership, and mutual accountability. In addition, Millennium Development Goal 1B, the "Decent Work" Goal (decent working conditions, health and safety at work, equality), speaks directly to human rights principles which can be advanced through PSD initiatives.

² Heather Gibb, John Foster, Ann Weston, Human Rights and Private Sector Development, The North-South Institute, 2008.

http://www.nsi-ins.ca/english/pdf/HR_and_PSD_Discussion_Paper.pdf

³ These suggestions are drawn from: Promotion of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development, Business and Human Rights: Towards operationalizing the "protect, respect and remedy" framework. Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises.

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.13.pdf>

Key Messages from the Panel Discussion...

1. RBAs define “development” as being based on rights, rather than “charity” or “needs”, in contrast to CSR.
2. There are multiple layers of rights and laws, ranging from international to customary law. The creation of custom falls into the category of “soft law.” The development of soft law that is consistent with international human rights obligations should be encouraged. Soft law approaches should not be used to justify human rights abuses.
3. It is sometimes necessary to address less controversial rights within a given country first, and to build from there. One should think of a “progressive realization” of rights.
4. RBAs target the most marginalized by identifying power relationships between duty bearers and rights holders, and by working with the different actors to develop, implement, and monitor aid projects.
5. The categories “rights holders” and “duty bearers” can be broadened to include responsible non-state actors, such as micro-finance institutions (MFIs).
6. Creating “win-win” situations for business owners is essential to promote RBAs in PSD projects.

...and Lessons Learned

7. RBAs have the potential to provide a more integrated way of measuring programming results to show the combined impact of projects on human development; new indicators (qualitative and quantitative) may need to be developed.
8. When integrating a RBA in programming, it is important to budget time and money for training sessions and peer review sessions; such sessions are invaluable for capacity building.
9. Donor agencies must be clear about their values in discussions with governments of recipient countries. This helps create a safe space for HR discussion amongst stakeholders.

Presentations

Opening Comments

Heather Gibb, The North-South Institute, opened the afternoon event by presenting findings from the NSI's 2008 discussion paper, Human Rights and Private Sector Development.

The NSI study found there have been many assumptions about the relationship between PSD and growth, and between growth and poverty reduction, and that these assumptions have changed over time. These include assumptions guiding the structural adjustment programs of the 1980s and 1990s, and more recent assumptions about the contribution of SMEs to growth in developing countries. Donor approaches to PSD have also evolved, from an early emphasis on providing business development services, to more current concerns with supporting an appropriate business enabling environment. The study found inconclusive evidence on the impact of donor agencies’

PSD initiatives for poverty reduction. It suggested that the RBA, which focuses on process as well as outcomes, the structural causes of problems as well as manifestations, and the social, cultural, economic and political context, may offer entry points for donor agencies' PSD projects that could result in more sustainable poverty reduction and improved living conditions for poor people.

RBA's define "development" as being based on rights, rather than benevolence or "charity", or "needs". This distinction is in contrast to CSR, which is often characterized as being based on "charity", and may not be sustainable. The NSI study noted a shift in thinking about human rights-based approaches to development, from more legalistic approaches that emphasize capacity-development for governments to live up to human rights obligations they have signed on to, and for rights holders to claim them, to the less legalistic approaches that characterize the more recent RBA's. The question is what makes sense on the ground? What works in a context where poor people may be geographically remote from governance structures, or where governance structures are weak or inaccessible?

Donor Agency Experiences

David Matthey described the work of CIDA's Human Rights Approaches to Development Working Group (HRAD WG), as well as the CIDA Egypt Program's experience while experimenting with a RBA.

The Human Rights Approaches to Development Working Group

The HRAD WG was established in 2007 with an eighteen-month mandate to explore implications for CIDA of adopting a HRAD, share learning about human rights and development, and suggest options for the Agency to consider. The HRAD WG determined that there was considerable RBA activity already within CIDA; some programs were already applying many if not all RBA principles. It also found that a significant but achievable amount of training on RBAs within CIDA would need to be undertaken if CIDA were to officially adopt an HRAD policy. The WG found no real incompatibility between RBA and other foreign policy concerns; RBAs could help link and harmonize different policies.

The working group described a continuum of RBA integration with four or five milestones. Although the WG did not position CIDA at the (no integration) end of the continuum, they acknowledged that CIDA is far from a model of complete integration. The WG found that some programs are quite advanced, but RBAs are not systematically integrated across all CIDA programming. It concluded that within the current context of re-organization and renewal at CIDA, it may be some time before the RBA issue moves forward for decision. Nevertheless, CIDA is waiting for the opportune time to pursue a HRAD.

The CIDA Egypt Program

The Egypt Program decided to experiment with HRAD in 2001 for primarily operational reasons. The program had a budget of about CAD 30 million per year, and focused on two main portfolios, SMEs and basic education. In addition it needed to mainstream gender equality, governance, environmental sustainability, and child protection as four crosscutting themes. An RBA was adopted as a way of measurement that could, by linking these portfolios and themes, provide a better indication of the Program's cumulative impact on human development. The program specifically adopted principles and an analytical approach consistent with the RBA for new projects. The last two projects undertaken in 2008 by the Egypt program are PSD projects that were required to have a RBA framework. The Egypt program has also invested heavily in RBA training at all levels.



David Matthey

Among early impacts of the HRAD experiment, a large number of the field staff have reported that switching to an RBA has allowed the program to move forward on gender equality much more quickly because a rights based approach changed the understanding of gender equality from “increasing roles for women” to “equality for everyone”, and thereby avoided cultural and religious sensitivities. There was also a profound change in process towards a more participatory approach.

Experiences from the Field

CARE Canada

Kevin McCort spoke about CARE's use of a RBA, and how CARE links economic empowerment with advancing people's abilities to realize their basic human rights.

CARE's vision and mission aim to specifically link economic growth and human rights: “CARE seeks a world of hope, tolerance and social justice, where poverty has been overcome and people live in dignity and security.” CARE wants to promote sustainable change; to do so, it asks all country programs to look at all projects within the context of human condition, social position, and enabling environment.

CARE operates within the framework of the Universal Declaration of Human Rights, but does not explicitly call itself a rights-based organization, primarily due to concerns that it might be expelled from many countries, or endanger its partners, if it promoted itself in this way.

Futures (ASF), a pilot project that is being implemented by MEDA and the Academy for Education Development (AED).

The STRIVE initiative, funded by USAID's Displaced Children and Orphans Fund (DCOF), emerged from initial USAID research into good practices in economic strengthening and vulnerable children. The program will run for five years, and has five pilot projects working with very impoverished areas of Africa and Asia. The goal is to fill current knowledge gaps on effective approaches to reducing the vulnerability of children and youth.

While USAID does not use RBA language within its PSD programming, the Afghan Secure Futures Project (ASF) is an example of a non-explicit but still effective use of RBA principles: it targets the most vulnerable and marginalized, and includes clients in the monitoring process (youth have a role in measuring project outcomes and deciding how outcomes are determined). The project tracks and documents impacts of its interventions on children directly, in contrast with projects that measure results at the household-level, a strategy that can provide an inaccurate representation of the extent to which children benefit. ASF focuses on male youth apprentices in the construction sector. It links apprentice working conditions, remuneration, and business success. The overall goals of the project are to: increase SME revenues, increase child workers' wages, increase the number of youth employed, improve workplace safety conditions, and provide access to supplementary education. The project addresses the following rights: the right to livelihoods; the right to a safe workplace, and the right to education

The project sets up a “win-win” situation for participating business owners and workers by demonstrating how the productivity of youth labourers is increased when they have access to training and good working conditions, while helping the business owners increase their access to loan capital and build links with MFIs and the Afghan Builders Association.

Potential Entry Points: “Soft Law Approaches”

Lowell Ewart discussed “hard law” and “soft law” approaches, and described how “soft law” could provide entry points for PSD activities to promote HR, using the PPIC-Work Project as an example.

There are multiple layers of rights, and multiple layers of law represented by international, constitutional, federal, provincial, and municipal law, as well as by custom. The different systems of rights and law interact with each other as a living organism. All of the layers work together and are part of the overall structure that organizes society in a way that is meant to be beneficial for all. Although international conventions are critical, the layers of law that are “lower” down on the ladder are often more accessible to poor people in developing countries than are the layers that are at the top end. Almost all people can contribute to the development of the last three levels through the creation of custom or “soft law” principles. A RBA that seeks to harness the structure created by all layers of law has the potential to have a greater impact than reliance on an RBA model that is based on one layer of law only.

The International Court of Justice has stated that international law comes from: international conventions, international custom, general principles of civilized nations, and the teachings of the most highly qualified publicists.

Development interventions that are focused on creating change at the socio-political level are likely to “stick” longer and better than interventions limited to impacting the individual personal level. What this means is that leveraging RBA activities to create local standards, expectations or customs that are consistent with international human rights is more likely to result in lasting change. For example, PPIC-Work uses soft law as an entry point for the RBA by creating codes of conduct pertaining to their micro-lending program. By articulating standards, the intervention has percolated to the socio-political level and respect for HR by business owners has become more mainstream.



Lowell Ewert and Richard Carothers

PPIC-Work: Rights-Based Approaches and “Soft Law”

Richard Carothers described the origins of the PPIC-Work project, the reasons why the project adopted a RBA, and the project’s use of soft law and hard law approaches.

The PPIC-Work project grew out of two earlier CIDA-funded projects that supported low income families by helping them start and sustain businesses, and by creating employment. Although the projects were successful in creating new jobs through loans, the project directors began to realize that child workers filled 30% of the jobs created. PPIC-Work was developed to respond to the tension between the international denunciation of child work, and the reality that the children were important contributors to their families’ finances. Since removing the children from their employment was not a constructive option, PPIC-Work began to look for ways to interest the government and business owners in improving the children’s working conditions. At

the time, the Egyptian government was interested in trade with the United States, a country likely to boycott Egyptian products if unsatisfied with the country's labour standards. Improving children's working conditions was therefore in the government's interest.

PPIC-Work uses both "soft law" (for example, the creation of codes of conduct), and "hard law" approaches when promoting RBAs in their private sector initiatives. The project introduced Convention on the Rights of the Child (CRC) principles into a micro-finance program, focusing on Article 28 (the right to education), Article 32 (right to protection from economic exploitation), and Article 12 (the child's right to participate in consultations).

PPIC-Work recognizes a role for micro-finance institutions (MFIs) as "responsible non-state actors" that can promote human rights. PPIC-Work found that creating "win-win" situations is key to advancing HR in PSD. Addressing HR issues provides gains for MFIs through: improved social performance and social rating, branding, and social investment capital.

PPIC-Work also looked for other ways to effect change in working conditions. Through a participatory process involving both the children and the business owners, the project developed a code of conduct that is posted in workplaces. PPIC-Work has found that one of the results of such interventions is that children are more empowered to ask for their rights. Once the children understand their rights they realize that when asking, for example, for decent working conditions, they are not asking for a handout. The project has concluded that the engagement between the children and the business owners has brought about the biggest changes in working conditions.

Discussion

Operational considerations of RBAs

- A RBA needs to be built into the fundamental design of the project. It is important to take an approach that takes into account the resources, which will be needed to monitor the progress of the project, and engage in a peer-review.
- One of the challenges with RBM is that while discussion of the results of pre-project surveys is essential to the development of a project, the opportunity to do so is often lost because of administrative disagreement about whether the cost involved should be included in the project overhead or in project management.
- There is a risk of turning a management issue into a compliance issue. It is likely that a future human rights policy at CIDA would include compliance elements, but the emphasis would be on human rights as a management issue. There has been a clear evolution in development from charity approaches, to needs-based approaches, to rights-based approaches. CIDA will eventually follow, and there will be drawbacks and pluses.

- The tension between the possible bureaucratization of the RBA process and the emphasis an RBA places on meaningful consultation and tailored interventions could be resolved during the field research stage of a project, before the formulation of a project design proposal. This stage of a project is typically the most flexible, and could be used as space to consult with partners about possible issues, and to build responses into the project design.
- PPIC-Work had the advantage of emerging out of pre-existing projects. The participatory process that was used came out of discussions with, primarily, children and business owners. The project worked with a network of MFIs, and introduced the RBA not so much as “this is how you have to do this”, but as “this is what we have done and how it worked.” A RBA should not be imposed, but it can be encouraged by creating a “win-win” situation.



Heather Gibb, Ben Fowler, Kevin McCort

Other comments addressed practical considerations for RBA programming.

- The CIDA Egypt Program experimented with participatory processes. Information on which to base programming had to come from Egyptian partners. One of the biggest challenges was convincing management to focus on process instead of project goals; however, it is through the process that you generate the buy-in from the people who will have to deliver the outcome of the project. There is no need for applicants for CIDA funding to adopt a RBA at present, but perhaps there will be a RBA guideline for program officers, if not a specific policy statement, developed in the future
- In a micro-finance project, compliance with codes can be encouraged through the loan – the business doesn’t get the next loan if it doesn’t demonstrate some degree of change. If the loan is cut, however, links with the business owner and the children are also lost. Most often, PPIC-Work decided not to cut the loan, but see it as an incremental process, and as building a relationship. There was no legal process because the MFI was making the decision. In almost all cases, there were positive results despite limitations.

Addressing Risk

- There can be risks attached to working on human rights in some contexts. The Egypt Program used every opportunity to demonstrate to the Egyptian Ministry of Economic Cooperation that their goals are not uniquely Canadian; they are linked to international conventions that both Egypt and Canada have signed. The Program also reminded the government that they would be able to report more positively on their HR record if they supported programming that emphasizes the promotion of HR. The Program specifically does not go into areas that would have an unfavourable reaction from the Egyptian government; this is not weakness, it is recognition that there is a continuum of what rights can be addressed, and that the ones addressed must reflect the political, social, and economic context. When CIDA or any other official donor is explicit about its values with the government, (perhaps an NGO cannot be this way), it makes anyone who works with the donor safe. The Egypt Program also does a lot of non-project networking activities to demonstrate their knowledge when promoting human rights in the area of PSD.
- CARE asks officers to report on progress at the country level on RBAs. It is often possible to promote HR on humanitarian issues that are impartial, for example, the right to food. Codes of conduct can be quite helpful too, for example, having all actors sign the Red Cross Code of Conduct⁵ provides safety in numbers.
- When there is a fundamental basis of respect for rights, problems are generally more solvable.⁶ This point is also made in NSI's discussion paper: if the core human rights principles are respected you can advocate for these core principles anywhere. Utilizing these core HR principles as "soft law" can grow "soft law" into "hard law."

Government agencies and NGOs may use different types of law to promote human rights. Government agencies rely more on "hard law", while NGOs and individual projects working at the grass-roots level tend to use "soft law" approaches as useful entry points.

Some participants expressed concern about the use of the expression "soft law" by non-state actors, implying that they can create soft law by adopting, for example, codes of conducts. Both "soft law" and "hard law" belong to state actors. One participant highlighted the importance of the national constitutional framework, and queried whether a project should be pursued if the state declared that it ran contrary to constitutional values. Panellists commented:

- In some developing country contexts, the government will say it can't stop children from working. For a donor concerned about child labour, in practical terms, more children could be reached by engaging MFIs and having them work as "non-state actors" to address the worst forms of child labour.

⁵ The Red Cross Code of Conduct can be found at: <http://www.ifrc.org/publicat/conduct/>

⁶ This observation is similar to Nobel Prize winner Amartya Sen's statement: "no substantial famine has ever occurred in any independent and democratic country with a relatively free press" in: *Poverty and Famines: An Essay on Entitlement and Deprivation*, 1983.

- Soft law may be the wrong label for codes of conduct, but in terms of how quickly codes can become law, it can be an effective approach.
- Constitutions matter, because every international NGO usually needs official permission to operate in a country. However, constitutions are not really the problem: their contents have usually been developed to protect the citizens of a country. However, constitutions may not be enforced, or proposed changes may make them worse.
- Law exists in layers, with international law at the top and customary law at the bottom. The problem with constitutional law is that it is very distant from the people; the goal is not to discount constitutional law, but to bring legal protections down to the people. Civil society does not “create law” by itself, but it can have a huge impact as “humanity’s conscience”, for example, some companies have changed policies as a result of civil society pressure. There is no legal treaty that says that corporations have to observe international law, but they are increasingly doing so.

Agenda

Dialogue on Promoting Human Rights in Private Sector Development

Tuesday, May 26, 2006, 2:00 – 4:30 pm
Room 870, CIDA, 200 Promenade du Portage, Gatineau, Québec

- 2:00 pm Welcome and introduction: Heather Gibb, The North-South Institute
- 2:15 Donor agency experiences:
David Matthey, Egypt Program, CIDA
- 2:30 Experiences from the field:
Ben Fowler, Consultant: Afghan Secure Futures Project
Kevin McCort, CARE Canada
- 3:00 Discussion
- 3:20 Entry points: “soft law” approaches
Lowell Ewert, Conrad Grebel University College, University of Waterloo
Richard Carothers, Partners in Technology Exchange: PPIC-Work
- 3:50 Discussion
- 4:20 Wrap up and adjourn

Participants

Participant	Organization
Manon Arsenault	CIDA
Norman Bou Khalife	CIDA
Michael Bowles	Aga Khan Foundation
Richard Carothers	Partners in Technology Exchange
Lyse Cotebolanos	CIDA
Jennifer Denomy	MEDA
Lowell Ewert	Conrad Grebel University College, University of Waterloo
Christine Faveri	CIDA
Ben Fowler	Independent
Heather Gibb	NSI
Louise de la Gorgendiere	Carleton University
Lori Hollohan	CIDA
Lucie Lamarche	University of Ottawa
Joanne Lebert	University of Ottawa
Michel Leger	Atlantic Canada Opportunities Agency
Flora Leibich	CIDA
Norm MacIssac	Trade Facilitation Office Canada
Barbara MacLaren	Focal
Carissa MacLennan	Journalists for Human Rights
Erin Markel	Aga Khan Foundation Canada
David Matthey	CIDA
Kevin McCort	CARE Canada
Simeon McKay	CIDA
Haley Milko	McGill University
Fred Mooney	Business Development Services Support Project
Bill Morton	NSI
Ashley Mulroney	CIDA
Jared Penner	MEDA
Stephane Roberge	CIDA
Domenic Salotti	CIDA
Barbara Shaw	CIDA
Leslie Tinney	CIDA