Issue Paper:
What Constitutes a Rights-based Approach?
Definitions, Methods, and Practices

Defining the Issue

To shed light on the different ways a human rights based approach (HRBA) is understood, this paper draws on the statements made by the UN system, and selected UN agencies, donor governments and international NGOs on how they define HRBAs and how they use them in their work. Because the UN and bilateral donor assistance agencies work under the broad umbrella of development, attention to "human rights based approaches" to development are also explored. The focus is however on how HRBAs are defined, and how they affect (or not) HIV/AIDS programming, and not on development policies *per se*.

Background

There is no one source that defines HRBAs, nor is there a uniform approach. In addition, how HRBAs are implemented appears to have more to do with the mission and objectives of an agency or organization than the definition of the approach. This is true for NGOs, donor governments, and UN agencies, separately, and together as the UN system. Agencies and organizations have often improvised in defining for themselves what constitutes a rights based approach. While these definitions are generally based on international human rights norms (taken from the UDHR and international human rights treaties), concepts from other discourses are also imported -- ethics (notions of equity), good governance (rule of law), development and social justice (inclusion).

At some point in the 1990s, a number of UN agencies, international NGOs, and donor governments had explicitly embraced HRBAs in their development and humanitarian programmes. As a result of the 1997 UN reforms, interest increased across the UN in integrating human rights into programming. Within the UN system, some agencies, such as UNICEF, already had much experience in "human rights based" programming; others had a steeper learning curve. UN reforms at the country level required agencies to collaborate on a common analytical and programmatic framework (UNDAF) and approaches to reporting (CCA); the CCA/UNDAF was to be human rights based. The UN embarked on an internal review and analysis of what each agency meant by a HRBA, which led in 2003 to its issuance of a "common understanding,"[1] intended to frame all UN agency development cooperation and programming. Its elements (or pillars) are:

- All programs should intentionally further international human rights[2]

- All development efforts, at all levels or programming, are guided by human rights standards and principles found in international human rights law[3].

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- All development efforts must build capacity of "duty bearers" to meet obligations and/or "rights holders" to claim rights.[4]

In other words, all parts of the UN system (including UNAIDS) that claim to be implementing a rights based approach should be working towards the realization of human rights as articulated in international human rights law, informed by a range of human rights principles, and fostering human rights capacity in all relevant actors. The "Common Understanding" document is appended here. A Plan of Action, pursuant to the UN Secretary General's 2002 Reform report[5] --Action 2 inter-agency plan—was later issued to guide UN action at the country level, primarily in relation to its work on "national human rights promotion and protection systems."

Partners: Donor governments and International NGOs
A number of national government foreign assistance programs are known to favor HRBA in their programming. Although there is often clear commitment to HRBAs in the language, it is sometimes difficult to determine how the strategy itself is a "human rights based approach". Other times, although there may not be a succinct policy statement on human rights, the promotion and protection of human rights appears to be articulated more through notions of good governance, democratization, inclusion and participation.

Humanitarian and development NGOs also have turned to human rights based approaches to further the objectives of their mandates. Most organizations are however loose in their definition of HRBAs, and apparently weak in connecting these to their programmatic work.

Key Issues
In reviewing various definitional statements of leading actors , some general observations about HRBAs can be ventured.

- First, there are attempts to come to a consensus on the meaning of a HRBA based on the empirical policy statements of leading actors (UN agencies, governments and international NGOs). Certain core concepts have been identified, principles articulated, and objectives stated, that could be endorsed as a "prevailing consensus view" of HRBAs:

  o An explicit reference to a human rights framework --presenting a normative, legal foundation, that frames "demands" as legitimate claims on governments and society, through participatory processes, as well as legal/quasi-legal ones.
  o An emphasis on capacity building shifting the focus from only a "violations" approach to a "fulfillment" one, where governments and donors work to implement respect for, protection of, and realization of rights.
  o Attention to a core set of principles drawn from international human rights, good governance and social development frameworks. These principles are organized into 4 clusters.
    a) Vienna Consensus principles relevant to human rights:
      - Universality
      - Inalienability

- Indivisibility
- Inter-dependence
- Inter-relatedness

b) Equality, non-discrimination, equity, and inclusion (inclusive of society)

c) Participation, empowerment and inclusion (inclusive of participatory processes)

d) Accountability, transparency, and the rule of law.

- Second, what emerges is that HRBAs have elements of substance and process. Substantively, HRBAs are based on international human rights treaties and objectively work towards the realization of rights contained in those treaties. At issue here is ensuring that all agencies and organizations rely on internationally agreed interpretations of rights and not "invent" their meanings. Procedural principles relating to human rights in themselves (universality, interdependence, indivisibility), and their implementation (participation, accountability, nondiscrimination/equality, progressive realization) are just as indispensable as the substance.

- Third, a distinction needs to be made between work to strengthen legal accountability through international (or national) human rights mechanisms per se, such as technical assistance by UN agencies to UN treaty bodies (directly or via national ministries of foreign affairs, etc.) and human rights based approaches to programming.

- Fourth, having a consensus definition may be necessary, but it is inadequate in terms of discerning what difference HRBAs have made to actual programming. In this respect, it may be too early to gauge the impact the "Common Understanding" will have for UN agencies. A few agencies, such as UNICEF and UNESCO have recent policy statements that, for the most part, reiterate the 3 pillars of the common understanding[6]. In addition, UNDP has consciously articulated a rights-based approach to development, seeing human rights "integration" as necessary to achieve the MDGs, as well as other international development goals.[7] It has begun to lay out a strategy with some practical steps in a recent "Practice Note.[8] Mention should also be made of the World Bank and its attempts to articulate its overall mandate to alleviate poverty and promote empowerment and inclusion as consistent with human rights based approaches.[9]

The extent to which HRBAs have made an operational or programmatic impact on the work of the UN system, among donor governments, or NGOs is not clear. It appears that human rights based approaches may for some organizations be window dressing more than substantial reconceptualizations of missions or mandates. There are a few efforts to move concretely into programming but these are not widely known. [10]

The following questions are raised:

- Should HRBAs only be concerned with internationally "agreed to human rights" or should the evolving understanding of rights/advocacy (e.g. the right to access life saving treatments) be part of the framework/strategy?

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- Must programming be explicit about rights objectives (i.e. must the programme name the right it seeks to implement? Does "indivisibility" complicate this notion?)

- Finally, how can the definition of HRBAs be less "rhetorical" and more implementable?

Supporting Documents
- "A Human Rights –Based Approach to Development" (compilation of sources from UN agencies, donor governments, and international NGOs) prepared for HURIST (Anna Uggla, intern). Available at http://www.undp.org/governance/huristadvoc.htm
- UNICEF: "Rights and Results" available at www.unicef.org/rightsresults
- UNDP: Poverty Reduction and Human Rights. A Practice Note (NY, UNDP 2003) available at http://www.hshr.org/hrpovertyresources.htm
- UNESCO: "Draft UNESCO Strategy on Human Rights" (2003) available at http://unesdoc.unesco.org/images/0013/001316/131627e.pdf

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[1] "The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies ('Common Understanding')" (outcome document from an Interagency Workshop on a Human Rights based Approach in the context of UN reform 3-5 May 2003).

[2] All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments

[3] Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process." These principles are
- o universality and inalienably
- o indivisibility
- o inter-dependence and inter-relatedness
- o equality and non-discrimination
- o participation and inclusion
- o accountability and rule of law

[4] Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

[5] "Strengthening of the United Nations: an agenda for further change" (A/57/387).

[6] For UNICEF see also, Caroline Moser and Annalise Moser, Moving Ahead with Human Rights: Assessment of the Operationalisation of the Human Rights Based Approach in UNICEF Programming in 2002 (NY: UNICEF, 2003), cited in Report, Sub-Commission on the Promotion and Protection of Human

Rights (56th session) "The right to development: study on existing bilateral and multilateral programmes and policies for development partnership" E/CN.4.Sub.2/2004/15 (3 August 2004), fn.75.

[7] http://www.undp.org/governance/humanrights.htm

[8] UNDP, "Poverty Reduction and Human Rights. A Practice Note" (NY, UNDP 2003) available at http://www.hshr.org/hrpovertyresources.htm

[9] See discussion in Report, Sub-Commission on the Promotion and Protection of Human Rights (56th session) "The right to development: study on existing bilateral and multilateral programmes and policies for development partnership" E/CN.4.Sub.2/2004/15 (3 August 2004) p. 21.

[10] Two exceptions known to us are collaborative efforts between NGOs and government/intergovernmental agencies. The first is the Canadian HIV/AIDS Legal Network's (for CIDA)" Promoting a rights-based approach to HIV/AIDS internationally (David Patterson), the second the International Health and Human Rights Program, FXB Center for Health and Human rights, with WHO/RHR,"Using human rights for maternal and newborn health: a tool for strengthening laws, policies and practices." (S. Gruskin, MJ Roseman, J Cottingham, A Martin Hilber, O Lincetto, E Kismodi)