Situation analysis from a HRBA

Master class 3

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Raya Marina Stephan

Reminder

Master class 1 Investment in the rights-based approach for sustainable water solutions

➢ Challenges to achieving 100% equitable access to water and sanitation
➢ The responsibilities for businesses, water authorities, utilities and ministries for protecting human rights, with a focus on water and sanitation
➢ The business case for taking a human rights-based approach, e.g. community support and innovation
➢ How monitoring human rights indicators improves sustainability

Master class 2: The human rights to water and sanitation and corporate due diligence for sustainability

➢ Relevance of international human rights law for different types of institution,
➢ What are corporate due diligence laws for water and the environment,
➢ Why it is important to integrate into national law and policy

Outline

1. Introduction to the Human Rights

2. The HRBA concept

3. Integrating HRBA in programing

4. Relevance of HRBA to the HRWS

5. Concluding remarks

Introduction to the Human Rights

Human rights are rights inherent to all human beings

➡️regardless of race, sex, nationality, ethnicity, language, religion, or any other status.

Foundations:

UN Charter (1945)

Universal Declaration of Human Rights (1948)

➜ common standard of achievements for all peoples and all nations.

➜ sets out, for the first time, fundamental human rights to be universally protected.

Introduction to the Human Rights

UDHR complemented by:

➤ <u>International Covenant on Economic, Social and Cultural rights (171 Parties)</u>
➜ *the right to food, the right to work in just and favourable conditions, the right to social protection, to an adequate standard of living, the right to education and the enjoyment of benefits of cultural freedom and scientific progress.*

➤ <u>International Covenant on Civil and Political Rights (173 Parties)</u>
➜ *freedom of movement; equality before the law, the right to a fair trial, presumption of innocence, freedom of opinion and expression; protection of minority rights.*

Both adopted in 1966, in force 1976

Introduction to the Human Rights

➢Other international human rights treaties expand the body of international human rights law:

Convention on the Prevention and Punishment of the Crime of Genocide (1948),

International Convention on the Elimination of All Forms of Racial Discrimination (1965),

Convention on the Elimination of All Forms of Discrimination against Women (1979),

Convention on the Rights of the Child (1989)

Convention on the Rights of Persons with Disabilities (2006),

➢Regional instruments:

European Convention on Human Rights (1950)

American Convention on Human Rights (1969)

African Charter on Human and People's Rights (1981)

Introduction to the Human Rights

Result:

☞ corpus of international norms and standards for a better life of dignity and well-being for all

☞ basis for the human rights based approach

The HRBA concept

Close relationship between human rights and development

Vienna Declaration and Programme of Action (1993):

➜ democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

➢ Development creates the conditions for the effective enjoyment of human rights for all

➢ the fulfilment of human rights is essential to achieving sustainable development in its three dimensions: economic, social and environmental.

☛ Link between human rights and development strenghtened and confirmed with the 2030 Agenda for Sustainable Development

The HRBA concept

➢ conceptual framework for the process of human development

➜ *poverty considered as a lack of the basic capabilities, opportunities, freedoms and rights, not a lack of income*

➢ normatively based on international human rights standards

➢ operationally directed to promoting and protecting human rights

➢ seeks:

- to analyse inequalities at the heart of development problems

- to redress discriminatory practices and unjust distributions of power that impede development progress and often result in groups of people being left behind.

The HRBA concept

UN Inter-Agency Common Understanding on a human rights-based approach to development (2003)
➔ common approach to the development cooperation and development programming by UN agencies

1. All programmes of development cooperation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights,and other international human rights documents

The HRBA concept

2. 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.

Universality and inalienability: All people everywhere in the world are entitled to HR.
Indivisibility: All HR are inherent to the dignity of every human person, they all have equal status.
Inter-dependence and _Inter-relatedness:_ the realization of one right often depends, wholly or in part, upon the realization of others
Equality and Non-discrimination: All individuals are equal as human beings and they are all entitled to their human rights without discrimination
Participation and Inclusion: Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.
Accountability and Rule of Law: States and other duty-bearers have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

The HRBA concept

3. 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.

The HRBA concept

HRBA

➜ a shift from more common approaches, such as charity and needs based.

Aim: to ensure that the respect, protection and promotion of human rights for all are integrated into public policies and development programmes

Focus :
➢ building holistic processes and empowering individuals to claim their rights ≠ charity and needs approaches → focus primarily on input and short-term solutions.
➢ duty-bearers (State) to fulfil their human rights obligations → strengthening the concerned institutions and stakeholders

The HRBA concept

People and communities are recognised as having a key role to play in the realisation of their rights

- ➢ no longer passive recipients of assistance
- ➢ rights-holders, actors in their own development,
- ➢ should be supported with claiming these rights.

HRBA ➜ facilitate the process by which people are able to hold their government to account

Public action is no longer seen as an «assistance» tool but as a way of implementing and sustaining rights for all

The HRBA concept

<u>Distinguishing feature:</u> HRBA deals with the realisation of human rights outcomes AND with how those outcomes are achieved.

➢the process used to secure rights is just as important as the outcome.

➢Drawback/obstacle: HRBA needs time ➔ capacity-building initiatives for concerned people and communities + continuing support during an adaptation period

☞ sustainable result

≠ needs-based approach

      ➔ quicker to implement,

      ➔ outcome: providing a service to beneficiaries

☞ for a given time, sustainability not ensured

| Charity Approach	Needs Approach	Rights-Based Approach
Focus on input not outcome	Focus on input not outcome	Focus on process and outcome
Emphasises increasing charity	Emphasises meeting needs	Emphasises realising rights
Recognises moral responsibility of rich towards poor	Recognise needs as valid claims	Recognise individual and group rights as legal and moral duty bearers
Individuals are seen as victims	Individuals are objects of development interventions	Individuals and groups are empowered to claim their rights
Individuals deserve assistance	Individuals deserve assistance	Individuals are entitled to assistance
Focuses on manifestation of problems	Focuses on immediate causes of problems	Focuses on structural causes and their manifestation

A human rights based approach (Human Right 2 Water 2021)

SDC Fragility, Conflict and Human Rights Network
https://www.shareweb.ch/site/Conflict-and-Human-Rights/startpage-tools/human-rights-based-approach

Integrating HRBA in programing

Four recognised stages
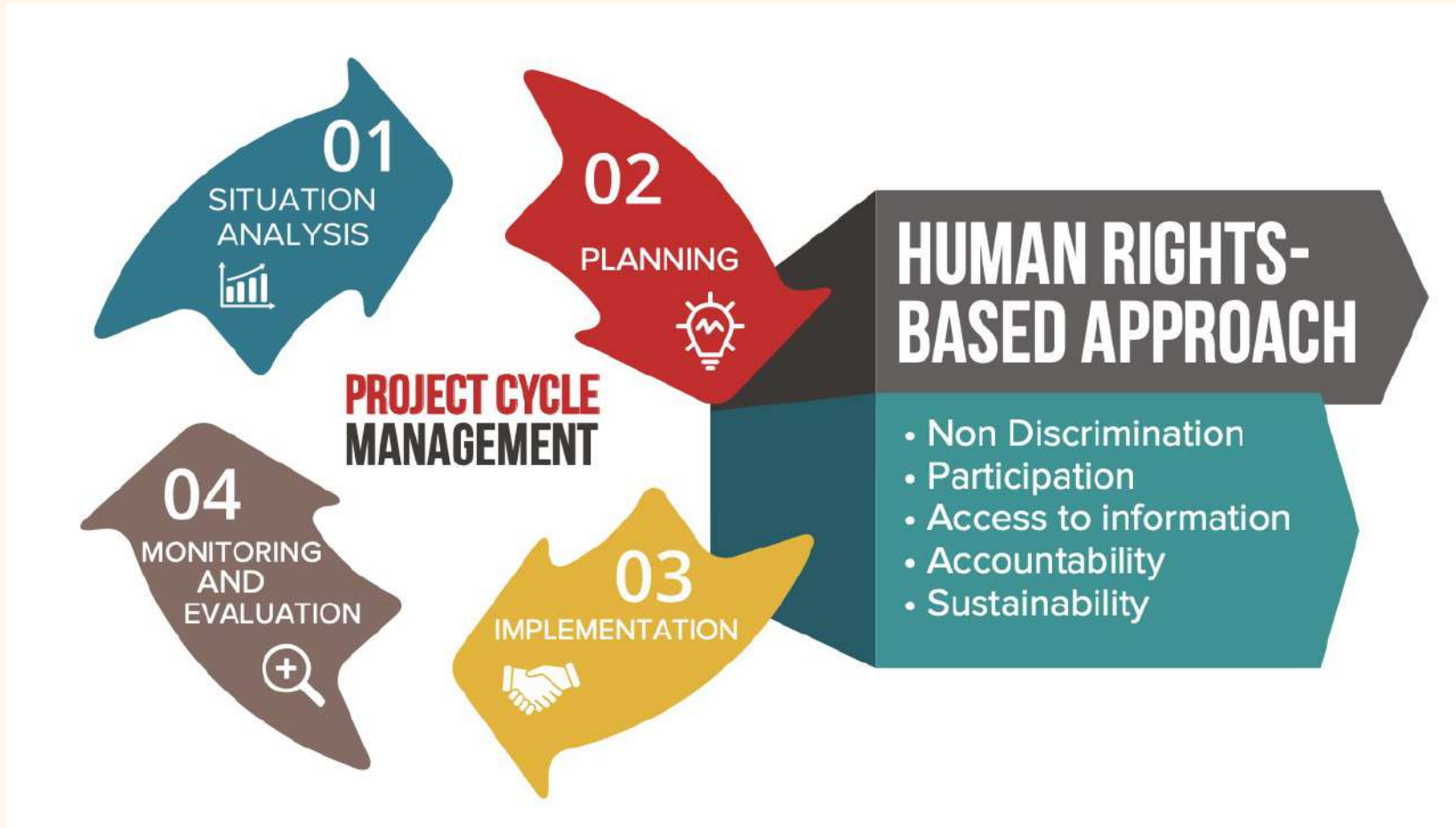
Integrating HRBA in programing

Stage I: Situation Analysis

Objective: identify HRWS issues and the causes which hinder their realisation in a **causality analysis.**

➔ 4 steps process:

➢ *1st step: recognize the issue*
1. Identify State's international obligations related to human rights to water and sanitation
2. Analyse national framework on water and sanitation
3. Evaluate the level of implementation of human rights to water and sanitation in the country

➢ *2nd step: Stakeholder mapping*

- rights bearers : all humans are rights bearers, but pay specific attention to vulnerable groups such as migrants, people in informal settlements, refugees, women and girls, children, prisoners, indigenous people etc

- duty bearers: First duty bearer = the State ➔ duty extends to all its bodies: government, parliament, national and local authorities…Non-state actors can be duty bearers

Integrating HRBA in programir

> ## *3rd step: Causality analysis*

1. Identify immediate, underlying and root causes, for the violation or non-realisation of the rights to water and sanitation.

    ➔ beyond immediate causes and problems

    ➔ factors that shape people's lives: policies, laws, norms, practices, and knowledge.

2. Have a holistic and integrated understanding of the water related issues, which includes social, cultural, and economic issues, as well as accessibility and discrimination concerns.

> ## *4th step: capacity gaps analysis*

Examine the extent to which the stakeholders involved in the issue have the capacity to fulfil their roles

➔ either duty-bearers or rights-holders.

Integrating HRBA in programing

Stage II: Planning

➜ improving the HRWS by targeting the root causes of the lack of access to water and sanitation and building the capacities of both rights-holders and duty-bearers

➢ *Step 1: Define objectives and results*

- Based on the findings of stage I
- Integrate HR ➜ implications for the content and formulation process
- Align objectives with the country's HR commitments, and priorities
- Progressive realisation

Integrating HRBA in programing

➢ *Step 2 Defining activities*

Streghtening activities

- Awareness about HR: rights holders and duty bearers

- How to implement HR: duty bearers

- Advocacy : broader reforms and changes

Integrating HRBA in programing

Stage III Implementation

➜ programmes or projects contribute to further the HRWS,

➜human rights principles and standards consistently being respected throughout the implementation process.

➢ *Step 1: Ensuring non-discriminatory practices*

➜ all people are being fully considered and are able to participate on an equal footing.

➢ *Step 2: Realising meaningful participation*

➜ involve people in decision- making, providing real opportunities to influence the planning process

Challenge: organisation of a truly participatory process.

Examples of groups that should have opportunities to participate : civil society organisations, community-based organisations, national human rights institutions, academia and research institutions, the private sector and, above all, the communities and people concerned themselves, with a special emphasis on facilitating the participation of women and people in vulnerable situations.

Integrating HRBA in programing

Step 3: Accountability and transparency

→keeping people informed

☞ Information about the project must be made publicly available to all

☞ especially to the local population and local authorities.

Integrating HRBA in programing

Stage IV: Monitoring and evaluation

aligned with human rights standards provides a way to determine progress

➤ **Step 1: Designing a monitoring process integrating HR principles**

(non-discrimination, access to information, participation, accountability, sustainability...)

Defining HRBA indicators to measures processes and outcomes

➜ Reference OHCHR manual on Human Rights Indicators

➤ **Step 3: Evaluating results**

➤ **Step 4: Evaluate the HRBA throughout the whole intervention**

Relevance of the HRBA to the HRWS

HRBA facilitates:

➢ Implementation of international commitments

For the HRWS :

➔ Public policy and service provision standards should meet the criteria of this right (availability, accessability, affordability, quality & safety, acceptability)

➔ States should act and ensure that the measures taken to fulfil the HRWS are not scaled down or changed

➔People should be able to engage in legal proceedings to claim their right, and if necessary take the case to regional or international courts

Relevance of the HRBA to the HRWS

➢ Ensuring the government plays a central role in the accountability process

State must assume its responsibilities: establish dialogue, transparency and accountability with its citizens

Other relevant stakeholders such as development partners, the private sector, service operators and civil society

➔ Primary responsibility rests with the state or the need to build state capacities for action.

➔ Identify each stakeholders obligations

Relevance of the HRBA to the HRWS

➢ Institutionalising participation and accountability mechanisms

Building capacities of people who become rights holders rather than passive recipients of support

➢ Targeting the most vulnerable

Under HRBA:

➔ Vulnerable population at the core of development policies

➔ WASH interventions: not only the number of the target people but also the extent of their empowerment and participation in the relevant service and resource management processes.

Recognise the HRWS for all, regardless of whether people live in informal housing, are migrants or refugees, or are socially isolated, and regardless of their legal status.

Relevance of the HRBA to the HRWS

➤ A holistic approach that helps advance other sectors

➤ Sustainability

An issue in the WASH sector

Progress often measured in terms of access

Retrogressions are not systematically monitored and recorded

HRBA ➔ mechanisms for regulation, monitoring and sector oversight, assess the impacts of their actions on the realisation of human rights and adjust their measures should their policies not lead to sustainable results

Concluding remarks

HRBA adopted by

➢UN agencies in their development programs

➢Bilateral cooperation agencies Sweden, Germany, United Kingdom, Norway, France (Strategy (2019), Law (2021))

Concluding remarks

Challenges for implementing the HRBA

➢ **Change required in strategic and organisational positioning**

HRBA represents a shift

➢ **Identifying the most vulnerable people**

Difficulty the lack of data

Progressive realisation of the universal HRWS: no choice but to exclude categories of people and start with the most vulnerable

⚠ Challenge:

➔ avoid perpetuating these exclusions or creating new ones (vulnerable people who were not targeted)

➔ ensure non-vulnerable people are not included in the place of vulnerable groups

Concluding remarks

➢ **Limitations of current funding mechanisms**
- Significant amount of work has to be carried out upstream of the project design phase to ensure all stakeholders are involved.
    ➔ new financial resources need to be secured
    ➔ under current funding mechanisms, donors are not always able to obtain prior to project implementation.
- Donors & developing agencies in the process of integrating HRBA

⚠ Challenge : Ensuring the effective participation of people and the authorities from the programme design stage

➔ funding mechanisms and programmatic strategies remain overly focused on a goods and services- based approach

➔paradigm shift is required to overcome concerns about funding costly activities whose outcomes are difficult to discern over the short-term

For WASH:

Most funding continues to be allocated to infrastructure and technological innovation

Little financing available for ensuring authorities uphold their commitments, for conducting situation analyses, or for mobilising rights-holders

Concluding remarks

➢ **Lack of a judicial, legal and regulatory framework for the sector**

- Framework not always in place, or not clear or accessible:

➜ overall policy instruments includes commitments for realising the HRWS

➜ no action plans or monitoring mechanisms

➜ responsible authorities can be fragmented

⚠ difficulty: to identify how to coherently fit into national dynamics, and which authorities to target with capacity-building activities or advocacy campaigns, for instance.

Long-term efforts to improve sector governance requires strong commitment and the coordination of all stakeholders:

☞ effectively defining roles and responsibilities,

☞ ensuring the participation of communities

Concluding remarks

➢ **The HRBA's holistic approach**

Each organisation has its own specific areas of expertise and a wide range of technical skills

➔ developin partnerships and work in close cooperation

☞ to address the specific characteristics of the most vulnerable and their environment in the most holistic way possible

Interdependence of rights and the SDGs:

WASH sector practitioners need to look outside the «WASH world» to ensure that no one is left behind and to address as many issues and challenges as possible, particularly those relating to inclusion, gender, participation, disability, education

Achieving the SDGs requires considering the most vulnerable

☞ the HRBA has the practical operational scope for addressing access to services currently struggling to meet solvent demand.

Thank you for your attention