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## A Human Rights Based Approach to Market Development

### Purpose and framework

The purpose of this Brief is to provide guidance to staff on how to apply a human rights based approach when supporting market development initiatives and processes, be it in terms of private sector development, financial sector development, trade, employment or other. The brief briefly looks at synergies between HRBA and market development approaches, explains the key concepts of a HRBA and clarifies their relevance to market development, while providing examples of how the two approaches may go hand in hand.

The brief demonstrates that there can be strong synergies between – on the one hand - the objectives, processes and methods relating to Sida’s approach to market development, and – on the other – a human rights based approach. The Brief shows how the main elements in the human rights based approach may help country teams to improve the preparation, assessment and monitoring of market systems interventions.

Most donors have developed methods and guidelines for practical application of HRBA. In Sweden the interpretation of a HRBA has been elaborated in the [Policy for Global Development \(PGD\)](#)<sup>1</sup> and the government’s [Aid Policy Framework](#)<sup>2</sup> (section 3.2.2.).

Applying a human rights based approach entails

- Assessing how the initiative will further the realisation of human rights as laid down in the UN Human Rights Conventions and how it will ensure to do no harm.
- Planning and monitoring how the values and principles underpinning these UN Conventions (non-discrimination, participation, accountability and transparency) are applied in the programme design and processes
- Empowering men, women, girls and boys (with hope, assertiveness, knowledge, skills, tools, communication channels, legal mechanisms, etc.) to enable them to address their situation and claim their rights individually and collectively
- Developing capacities of those who have power and formal obligations to protect, respect and fulfil human rights obligations

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<sup>1</sup> <http://www.government.se/sb/d/14232>

<sup>2</sup> <http://www.regeringen.se/sb/d/18761/a/242899>

## **HRBA and market development approaches – synergies**

The Government's aid policy framework specifies six sub-objectives for Swedish development cooperation, one of them is – “Better opportunities for people living in poverty to contribute to and benefit from economic growth and obtain a good education”. Special attention is given to the creation of more and better jobs and to the development of more inclusive and efficient markets and more liberalised trade.

There are obvious synergies between HRBA and the “pro-poor growth” and “inclusive markets” concepts. Market-based development programmes will often focus on developing the capacity of the state to provide a conducive and predictable market environment (duty bearers) and on increasing the power of marginalised women and men (rights holders) to access information, services, loans etc. and to organise themselves to be able to negotiate better conditions such as prices, working conditions etc. Market-based programmes also focus on addressing barriers in systems and practices to ensure non-discriminatory, transparent and predictable conditions and rules. This shows that there are strong synergies with the human rights based approach and its guiding principles.

Sida's approach to market development is based on the M4P approach (“Making markets work for the poor”). This approach underlines the importance of systemic change: understanding where market systems are failing to serve the needs of the poor, and acting to correct those failings. The M4P principles have a number of commonalities with the human rights based approach such as (i) making systems better at including poor and marginalised people in the long term (ii) using capacity development and incentives to build capacity of systems, functions and players and (iii) starting with an analysis of the causes of system failures and acting to correct these failings.

Sida is learning from on-going programmes and new research in order to adapt and develop market based approaches (for example Oxfam, the Donor Committee for Enterprise Development (DCED), ILO). As a result of this learning, many development agencies have increased their focus on empowerment of poor men and women – and their collective organisations (e.g. support to producer's organisations, pre-commercial investments and facilitation of access to information and government support mechanisms).

## **International human rights treaties, agreements and policy guidance**

There are a number of international legally binding human rights conventions that are relevant to the development of market systems such as; the Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (ICESR, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (1981), and the Convention on the rights of persons with disabilities (2008) etc. The ICESCR has been signed and ratified by most states. Furthermore, the Convention against Corruption specifies the requirements of the private sector (art. 12) and prescribes participation of society in monitoring activities (art 13). 140 countries have signed it. Using these commitments as a basis for dialogue and programming are often helpful as they provide internationally agreed standards and goals.

It has however been noted that the present international and national laws are not sufficient to protect and fulfil the rights of the poor in the market systems. For example: In most poor countries only a fairly small share (often not more than 20%) of all economically active women and men are engaged in the formal economy. A UN commission argued in 2008 that

“four billion people around the world are robbed of the chance to better their lives and climb out of poverty, because they are excluded from the rule of law” (The Commission on the Legal Empowerment of the Poor, 2008). The commission identified four pillars of action based on the following observations: “the sources of legal exclusion are numerous and very often country-specific. However, four common threads stand out. **First**, legal empowerment is impossible when poor people are denied access to a well-functioning justice system. **Second**, most of the world’s poor lack effective property rights and the intrinsic economic power of their property remain untapped. **Third**, poor people, in particular women and children, suffer unsafe working conditions because their employers often operate outside the formal legal system. **Fourth**, poor people are denied economic opportunities as their businesses are not legally recognised. Hence they face difficulties in accessing credit, investment, and markets.”

Increasing international food prices and the rush for agricultural land by international investors (including south-south investors) have triggered strong international criticism and debate on “land grabbing” in developing countries. In a report published by the Institute for Human Rights and Business<sup>3</sup> the linkages between land and human rights are described as follows: “Whereas international legal instruments have not adequately considered the considerable role that land plays in the international human rights framework it is clear with even a brief analysis that land is a fundamental element in access to numerous international human rights. Where land policies are carried out by both governmental and private bodies, a number of underlying rights can be affected, even where governments are acting under eminent domain or engaging in rural development programs, and states must consider and abide by their international human rights obligations.” (Wickeri, xxxx). More information on land and human rights may e.g. be found in a study published by the International Land Coalition: “Land Rights and the Rush for Land” (Anseeuw, 2012).

To address the shortcomings of international and national law, a range of tools and voluntary agreements have been developed to supplement the UN Convention such as:

- The Donor Committee on Enterprise Development (DCED) has highlighted the importance of taking the rights of poor people working in informal economic activity into account when supporting business environment reforms (see “Supporting Business Environment Reforms. Practical Guidance to Donors, Annex How Business Environment Reform can promote Formalisation”, DCED, 2011).
- The ILO’s Global agenda for decent work which includes a legal framework with minimum standards as well as policies to promote employment creation, social protection and social dialogue.
- Good practices in trade between rich and poor countries developed by the 3DThree program and through Fair trade agreements.
- The UN Global Compact is outlining 10 human rights principles for companies to embrace, support and enact, within their sphere of influence.

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<sup>3</sup> Land Rights Issues in International Human Rights Law”, Institute for Human Rights and Business; [http://www.ihrb.org/pdf/Land\\_Rights\\_Issues\\_in\\_International\\_HRL.pdf](http://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf)

Finally, in order to provide a practical illustration on how Sida may promote the realisation of human rights law through market-based approaches, we refer to a project carried out by the International Rescue Committee in Northern Uganda ("The post-conflict recovery and economic empowerment of returnees through private sector development"). This project was justified by the right to food and decent living conditions for destitute refugees in northern Uganda. This project demonstrates that it is possible to apply market development approaches successfully to situations with people who have been totally excluded from access to markets and economic exchange.



Larisa Cojocari in Moldova has developed her business with support of "Women in Business programme" supported by Sweden and EBRD. The programme supports women through training, advisory services and starting capital. The programme also works to improve the regulatory conditions for small companies and address discriminatory practices. So far 24 businesses driven by women have been able to access the market. Photo: Nicolae Cushchevici

## **Applying a HRBA to market system interventions**

The questions below may guide staff to further improve the preparation, assessment and monitoring of initiatives and ensure that human rights are enhanced, respected and protected both in programme design and processes. First there are questions related to human rights instruments (L) and to empowerment and capacity development (E), followed by specific questions related to the four human rights principles of non-discrimination (N), transparency (T), participation (P) and accountability (A).

### **Linking to human rights instruments (L)**

As described above, there are a number of binding and voluntary international agreements and standards related to sustainable rural livelihoods. Ensuring that these are informing and guiding initiatives supported is an important part of a HRBA. Key issues to monitor and analyse in assessing support for market system interventions are:

- Has an analysis been made of the intervention in relation to its expected human rights improvements for the poor e.g. economic and social rights, land rights, labour rights, fair trade policies etc.?
- Does the analysis include identification of existing obstacles and underlying causes of lack of access to rights?
- Has an analysis been made of the possible risks of human rights violations?

### Empowerment and capacity development (E)

An important element in a human rights based approach is to carry out an analysis of the causes of non-fulfilment of rights of poor women and men. Just like the M4P approach this means that the analysis should reveal the underlying reasons why poor women and men are not accessing markets and economic opportunities – and focus the support on addressing these obstacles. Obstacles are often complex and inter-related, such as unfavourable policy frameworks, poor governance/corruption, lack of information about opportunities, rules and regulations (concerning domestic, regional as well as international markets), limited access to credits or farming inputs, discriminatory practises, and lack of skills/education and so on. These obstacles often relate to limited capacity among duty bearers and disempowered rights holders.

The analysis of market systems often show that there are large discrepancies between what is prescribed by laws and regulations (the “de jury” situation) and how things work in practise (the “de facto” situation). It is not uncommon that well-intended efforts to modernise laws and regulations do not lead to any real world changes. In order to understand the underlying reasons for such lack of impact and to design more effective interventions, donors have to improve their understanding of power relations and how the political economy works in practise. A paper published by the Donor Committee for Enterprise development (DCED) provides a useful introduction: “The Political Economy of business environment reform: an introduction for practitioners” (Davis, 2011).

Oxfam research (2011) has shown that several of the obstacles are not identified, addressed, or even considered, by most development actors’ interventions, such as: access to land and productive resources, time poverty, mobility, transport, and “restrictions from husbands and/or community” on women’s actions and roles. The World Bank (2013) has specifically looked at challenges facing women involved in trade<sup>4</sup>.

Key issues to monitor and analyse in assessing support for market development interventions:

- Is the intervention based on an analysis of how the current political economy and power relations may affect its implementation and impact?
- What are the major capacity gaps in terms of government performance (regulations, systems, monitoring mechanisms)?

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<sup>4</sup> Women and Trade in Africa – Realizing the potential  
[http://wlsme.org/sites/default/files/resource/files/Women%20and%20Trade%20in%20Africa%20Realizing%20the%20Potential\\_0.pdf](http://wlsme.org/sites/default/files/resource/files/Women%20and%20Trade%20in%20Africa%20Realizing%20the%20Potential_0.pdf)

- What are the major obstacles experienced by poor and marginalised persons in their access to markets and economic empowerment (access to information, skills, services, land, capital, time, transport, free movement etc.)?

### Non-Discrimination (N)

The exclusion of large groups of poor people from market access is an important obstacle to economic growth in general and economic empowerment of the poor in particular. The reasons for market exclusion vary, from cases of clear-cut discrimination to situations where poor people, women in particular, are excluded from markets and economic opportunities due to remoteness, lack of information, knowledge etc. **World Bank research shows that women in trade face barriers, discrimination, and harassment to a greater degree than men do. (Women and Trade in Africa, 2013).** There are strong arguments from an economic as well as from a human rights perspective for interventions supporting inclusion of excluded groups. This requires explicit measures which empower and build capacity (information, skills, capital, tools, etc.) of excluded groups (such as women, ethnic minorities and people with disabilities).

The financial sector provides an illustrative example of strategies to deal with exclusion. In most poor countries more than 50% of households (and an even greater share of women, rural households and ethnic minorities) do not have access to any kind of financial services. Usually less than 20% of households have access to formal banks, while less than 30 % rely on semi-formal or informal services, like micro-credit organisations and various kinds of group savings schemes. Special efforts have been made based on modern telecom technology, to improve the methods for money transfer to destitute households. The aim is to gradually help excluded and vulnerable women and men to gain access to financial services and economic opportunities.

Women are often in majority among farmers and small scale traders. At the same time the means of production are often owned by men who also often represent the family in consultations and dialogue. It is of key importance that women are specifically targeted and empowered in programmes supported by Sida. The Agriculture programme supported in Zambia<sup>5</sup> is a good example.

Key issues to monitor and analyse in assessing support for market system interventions:

- Is the intervention based on an analysis of the causes of exclusion from markets of marginalised groups (women, ethnic minorities, people with disabilities etc.)?
- Are actions taken to address discriminatory policies, laws, regulations, practises and other power imbalances that exclude poor women and men from markets?
- Have targeted support to excluded groups of women and men been considered (e.g. persons with disabilities, minorities, women)?

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<sup>5</sup> <http://www.sida.se/Svenska/Om-oss/Sa-arbetar-vi/Utvardering/Avslutade-utvarderingar/Study-of-Sida-supported-Agri-Programmes/>



- Are measures taken to make information and opportunities accessible to marginalised groups?

### Transparency (T)

Stakeholders have the right to information about the purpose, the opportunities, and the monitoring and complaints mechanisms of development interventions. Openness and transparency could in many cases be improved. Programme documents are often lengthy and complex and budgets are not disclosed. Tailor-made information may be required for groups of stake-holders e.g. those who are not able to read English or lack access to mass media. Sida may offer special funding for initiatives to improve communication strategies and enhance openness and transparency. The agricultural extension programme NALEP in Kenya is a good example.

Openness and transparency are not only important in relation to the process of implementation of projects, but may also be seen as outcomes of projects. One example is the Sida-supported FIT-SEMA commercial radio market project in Uganda. The project triggered an impressive expansion of local commercial radio stations and helped to empower poor micro-entrepreneurs (both women and men) to expand their business as a result of putting into practice what they learned on the radio.

Key issues to monitor and analyse in assessing support for market system interventions:

- Have effective communication strategies been put in place, which specifically consider accessibility of unbiased information for poor and marginalised groups?
- Have opportunities been considered to enhance openness and transparency by providing support to local monitoring mechanisms, like civil society monitoring?

### Participation (P)

Relevance and effectiveness of programs supported will depend on meaningful and inclusive consultative planning process with stakeholders. This means that information, meeting places and dialogue methods need to be accessible to all stakeholders (means and format of communication) and that deliberate efforts are taken to accommodate poor women and men and their representatives. Consultations take time and effort. Some stakeholders may need some preparation before being able to understand the issues and participate in consultations.

Oxfam argues that giving marginalised groups a voice in governance and investment is crucial for their access to and benefit to growth and markets. Where regulations and public investment address the needs of small-scale and female producers, this can bring new producers into the market and level the playing field for women. It is essential to support marginalised groups in dealings with governments, helping them to access public pre-commercial investment in technologies such as irrigation. It is also important to influence policies that have an impact on women, such as those covering land rights.

Experience show that Business Environment Reforms cannot succeed without a continuous dialogue with all actors affected by changes in the regulatory environment. Unfortunately, not all government ministries and agencies in developing countries are well equipped and have sufficient incentives to organise meaningful participation of stakeholders.

The web site <http://www.publicprivatedialogue.org> provides useful information on public-private dialogue.

As a majority of micro-entrepreneurs and small holders are not formally registered, they may not be considered as valid stakeholders in business environment reforms. In reality they are often indirectly affected and should therefore be given a fair chance to influence the design of such reforms. Organisations that are set up to represent informal entrepreneurs, like the Sida-supported Amhara Women Entrepreneurs' Association (AWEA) in Ethiopia, may help to give small entrepreneurs a voice in reform processes. <http://www.oecd.org/dac/gender-development/47563146.pdf>

Key issues to monitor and analyse in assessing support for market system interventions:

- Are effective platforms for public-private dialogue in place?
- Do these platforms give space to representatives of informal actors to raise their voice?
- Has support to capacity development of associations which represent informal actors been considered?



Farmers in the Niassa-province in northern Mozambique are trading their produce. They are supported by the Malonda Foundation, a foundation for increased employment and economic growth, which is operating in Niassa with Swedish support. Photo: Kajsa Johansson



## Accountability (A)

Accountability is first about identifying those with legal and moral responsibilities to ensure that poor women and men are: a) protected from rights violations by e.g. discriminatory laws, regulations and practices or by foreign and domestic investors or businesses; b) empowered to “take part in, contribute to and benefit from economic growth” and accessing market systems on fair terms. Second, it is about monitoring that those responsible fulfil their obligations in accordance with international laws, principles and agreements.

Those who could be held legally accountable in market development programmes are foreign governments and donors who engage in bilateral agreements, national and local governments who are responsible for laws/regulations and rule of law and large international and national businesses that are responsible to adhere to the national and international laws/regulations, contracts and agreements (labour rights, fair compensation etc.).

It is important to note that the significance of accountability varies substantially between different types of businesses involved in Sida support. On one end of the spectrum there are large international companies to which OECD’s Guidelines for Multinational Enterprise apply (as well as ISO’s Corporate Social Responsibility Program and the monitoring and complaints mechanisms outlined in the new ISO 26000). Many of these companies have committed themselves to the UN Global Compact outlining 10 human rights principles for companies to embrace, support and enact, within their sphere of influence.

At the other end of the spectrum there are a wide range of medium-sized and small formal and informal businesses, some of which operate outside the formal economy, either because they are excluded from access to formal institutions or because they have chosen to distance themselves from, or are not familiar with formal laws and regulations. For market system interventions targeted at these kinds of companies, the concept of accountability is challenging. To meet these realities, and enhance the moral accountability of such partners, Sida could use contracts (including Terms of reference) with organisations (“facilitators”) implementing market interventions to introduce human rights principles. In their turn, these organisations may e.g. include human rights criteria when they enter into partnerships with and provide support to local market players.

Support to market systems development also involves many actors outside government and private sector actors. A broad spectrum of actors including business associations, civil society organisations, micro-finance organisations, academic think-tanks, individual businesses and associations of informal entrepreneurs are involved. Some of these actors represent rights holders rather than duty bearers, such as trade unions, small holders associations and civil society.

There has been considerable international discussion on the linkages between human rights and trade policy. This applies e.g. to international trade negotiations under the WTO framework, as well as to negotiations of regional and bilateral trade agreements. Sida provides substantial support to capacity building of developing country representatives e.g. aimed at strengthening their position in international trade negotiations. This could be supplemented with capacity building of Swedish representatives to contribute with the pro-poor and human rights perspective in trade policy discussions. A useful source of information on the links between human rights and trade is the Fair trade agreements.



Key issues to monitor and analyse in assessing support for market system interventions:

- Have assessments been made of the capacity of agencies involved in business environment reforms to deal with challenges related to formalisation?
- Are complaints mechanisms in place through which stakeholders affected by reforms and/or projects may challenge decisions or actions that affect them negatively?
- Could human rights perspectives be promoted through contracts with market facilitators or in criteria for selection of firms applying for grants from competitive so called “challenge funds” (like the Sida-supported Africa Enterprise Challenge Fund, AECF)?
- Does the intervention build capacity and monitor adherence of national and local authorities, investors and businesses to legal and voluntary human rights instruments and agreements?

## Useful links and references

Donor Committee for Enterprise Development <http://www.enterprise-development.org/page/m4p>

M4P Hub, "Sharing knowledge on making markets work for the poor":  
<http://www.m4phub.org/what-is-m4p/introduction.aspx>

The Sida-supported FIT-SEMA commercial radio market project in Uganda:  
[http://www.m4phub.org/userfiles/resources/2532011145516104-M4P\\_Hub\\_Case\\_Interview\\_FIT-SEMA\\_full.pdf](http://www.m4phub.org/userfiles/resources/2532011145516104-M4P_Hub_Case_Interview_FIT-SEMA_full.pdf)

The Agriculture programme supported in Zambia is a good example of empowerment of women: <http://www.sida.se/Svenska/Om-oss/Sa-arbetar-vi/Utvardering/Avslutade-utvarderingar/Study-of-Sida-supported-Agri-Programmes/>

Example of an initiative to improve communication strategies and enhance openness and transparency: the agricultural extension program NALEP in Kenya: <http://www.sida.se/Svenska/Lander--regioner/Afrika/Kenya/Program-och-projekt/500-000-smabrukare-far-hjalp-att-utveckla-sina-jordbruk/>

Public Participation: International Best Practices Principles:  
[http://www.iaia.org/publicdocuments/special-publications/SP4\\_web.pdf](http://www.iaia.org/publicdocuments/special-publications/SP4_web.pdf)

ISO's (International Standardisation Organisation) Corporate Social Responsibility Program:  
<http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935096/home.html>

ISO's (International Standardisation Organisation) Guidelines for Cooperate Responsibility:  
[http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935837/ISO\\_DIS\\_26000\\_Guidance\\_on\\_Social\\_Responsibility.pdf?nodeid=8385026&vernum=0](http://isotc.iso.org/livelink/livelink/fetch/2000/2122/830949/3934883/3935837/ISO_DIS_26000_Guidance_on_Social_Responsibility.pdf?nodeid=8385026&vernum=0)

The UN Global Compact:  
<http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>

Fair trade agreements: <http://www.fairtrade.se/>

The Convention against Corruption specifies the requirements of the private sector (art. 12) and prescribes participation of society in monitoring (art 13):  
<http://www.unodc.org/unodc/en/treaties/CAC/>

The ILO's Global agenda for decent work: <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm>

ILO's global agenda for decent work is being implemented in a large number of countries. Regional and country progress reports:  
<http://www.ilo.org/public/english/bureau/program/dwcp/countries/index.htm>

Anseeuw, W. et.al. (2012), "Land rights and the Rush for Land", International Land Coalition: [http://www.landcoalition.org/sites/default/files/publication/1205/ILC\\_GSR\\_report\\_ENG.pdf](http://www.landcoalition.org/sites/default/files/publication/1205/ILC_GSR_report_ENG.pdf)

Ashley, C., "Harnessing core business for development impact", 2009, ODI Background Note

Commission on the Legal Empowerment of the Poor (2008), "Making the Law Work for Everyone"

CGAP (2011), "Reaching the Poorest: Lessons from the Graduation Model", Focus Note No. 69: <http://www.cgap.org/gm/document-1.9.50739/FN69.pdf>

Davis P. (2011), "The Political Economy of business environment reform: an introduction for practitioners", Donor Committee for Enterprise Development

Donor Committee for Enterprise Development, DCED (2011), "Supporting Business Environment Reforms. Practical Guidance to Donors, Annex How Business Environment Reform can promote Formalisation"

Foresti, M. et al (2010), "Human rights and pro-poor growth", Overseas Development institute (ODI) Project Briefing No. 34

Jones, L. (2012), "How can the making markets Work for the Poor Framework work for poor women and poor men", Springfield Centre for Business in Development

Ministry of Foreign Affairs (2010), "Policy for economic growth in Swedish Development Cooperation 2010-2014, <http://www.sweden.gov.se/sb/d/574/a/142150>

OECD (2007), "Promoting Pro-Poor Growth: Policy Guidance for Donors"

OECD (2011), "OECD Guidelines for Multinational Enterprises"

Oxfam (2011), "Making markets empower the poor", Programme perspectives on using markets to empower women and men living in poverty.

Sida (2011), "Market Development in Swedish Development Cooperation"

Wickeri, E. and A. Kalhan (xxxx), "Land Rights Issues in International Human Rights Law", Institute for Human Rights and Business; [http://www.ihrb.org/pdf/Land\\_Rights\\_Issues\\_in\\_International\\_HRL.pdf](http://www.ihrb.org/pdf/Land_Rights_Issues_in_International_HRL.pdf)

Study on land rights for the poor by the International Land Coalition: <http://www.landcoalition.org/cpl/CPL-synthesis-report>

Read more in the German development Agency HRBA fact sheet documents: [http://www.bmz.de/en/publications/topics/human\\_rights/BMZ\\_Information\\_Brochure\\_7\\_2010e.pdf](http://www.bmz.de/en/publications/topics/human_rights/BMZ_Information_Brochure_7_2010e.pdf)