

**Downside of the Human Rights-Based Approach  
to Disability in Development**

**By Hisayo Katsui**  
(hisayo.katsui@helsinki.fi)

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Helsinki University**

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## **Abstract**

This study is part of a research project, “Human Rights-Based Approach to Disability in Development: Interplay of Disability-Sensitive Development Cooperation and National Policy in Uganda<sup>1</sup>” funded by Academy of Finland (2007-2010). This paper focuses on the downside of the human rights-based approach (HRBA) to disability in development. The aim is to provide critical insights into the approach which has increasingly gained visibility, especially after the enforcement of the Convention on the Rights of Persons with Disabilities. The first chapter clarifies two countering approaches, namely the HRBA and charity-based approach. The Chapter Two summarises the criticisms towards this approach in general at three levels. The Chapter Three elaborates the downside of the approach in the specific context of disability in development around the following four themes: 1) tackling “disability,” 2) rights not charity, 3) national obligation and 4) transnational obligation. In the concluding chapter, two implications are drawn from the previous arguments: 1) need of good definition for the HRBA when using this term and 2) need of more critical reflection of the approach to be useful and usable on the ground.

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<sup>1</sup> The objective of the research project is to investigate the implementation of a human-rights-based approach to disability in development in Uganda, with particular focus on non-discrimination and empowerment of persons with disabilities. Thus the project devotes special attention to one of the most marginalised categories of people in development. It is timely to study this theme during the African Decade of Disabled Persons 1999-2009. The whole research project uses participatory research approach and two of the three primary researchers are persons with disabilities. For more about the research project, please visit the project homepage:

<http://disability-uganda.blogspot.com/>

## Introduction

On 3<sup>rd</sup> of May 2008, the United Nations Convention on the Rights of Persons with Disabilities entered into force, which exemplifies the era where human rights have entered into the arena of both disability and development discourse as a key concept. Human rights-based approach (HRBA) has become increasingly important in tackling existing inequality at different settings. This paper focuses on the emerging approach of the HRBA so as to eventually articulate the feasibility of this approach in the context of disability in development or in Southern countries. The arguments are based more on the theoretical level at this stage but with the intension to elaborate further the operationalisation of this approach in practice in the future research. To attain the objective, the paper particularly investigates the downside of the approach to understand its possible pitfalls to avoid in the operationalisation process. In this paper, the main criterion of the “downside” is analysed through its operational values on the ground.

## Human Rights-Based Approach and Charity-Based Approach

This section introduces and compares the human rights-based approach (HRBA) and its counter approach, charity-based approach. In the discourse of development, the HRBA is one of the new approaches that highlight cross-cutting issues. For instance, environment-based approach is one of the emerging approaches in development. Incorporating human rights terminologies has increasingly become popular as well as other cross-cutting issues. The following example of the Swedish Agency for International Development Cooperation (SIDA) is illustrative for this trend:

*In the past, the terms used were aid or development assistance, or that Sweden sent money to the poor. Today, the term used is development cooperation since it is a matter of cooperation rather than providing money: cooperation between people, between international bodies such as the UN and EU, and between the peoples and governments of countries. **It is not a matter of charity, but a matter of the right of people** to avoid being poor (SIDA, 2005) (emphasis added).*

Both “charity” and “rights” are often taken for granted, which leaves significant space of interpretation and thus difficult for analysing more concretely the actual impact of the selection of both the terminology and the approach as a practical tool beyond the general image of them. This section, therefore, firstly defines historically predominant charity-based approach, which follows the definition of the HRBA both in narrow and wider senses. This section elaborates these two key approaches so as to better understand the general setting of the following main part.

The charity-based approach has a long history. It can go as far back as Medieval time, for instance in England, when religious groups established hospitals for “people in need” (Brenton, 1985). More modern use of the word, charity, means benevolent giving by those who have more to those who have less. The important implications here lie in the power relationship between the givers and receivers where givers voluntarily make decisions to fill the gaps of the needs of the receivers or so-called “beneficiaries.” The decision making power of the beneficiaries, therefore, hardly exists in this approach. Despite the positive image of charity, charity organisations and the charity-based approach that have historically served to innovatively fill the gaps of existing needs. Nevertheless, this approach has been heavily criticised because it gives the impression that the problems have been solved, and does not challenge the fundamental structure which is the root causes of the situation and also because of the mechanism to take away the decision making power and/or ownership from the beneficiaries. The criticism is found both in Disability Studies (Barnes, 1991 etc.) and in Development Studies (Murphy, 2000 etc.).

The HRBA is rapidly replacing the charity-based one, at least in the discourse, to overcome the shortcomings and to change the paradigm of any intervention with various significances, at least in theory. The HRBA is often understood in the legal framework in a narrow definition. For instance, discriminated and awared people file a court case when their rights are violated. This justiciability is mentioned often as a core part of this approach (Teranaka, 2006: 81). It is often understood as a normative strategy based on the international laws as norms (Seppänen, 2005:8). Thus when the HRBA is narrowly defined, it has a strong linkage to international law (ibid.33) as well as national legislations. On the one hand, the linkage to international law is a powerful tool when all countries have ratified at least one of the seven core United

Nations human rights treaties and 80% of states have ratified four or more (Office of the UN High Commissioner for Human Rights, 2006:5). On the other hand, the linkage to national laws also demands certain procedure to the involved actors.

Wider definition conceptualises the HRBA in a variety of ways in the operationalisation outside of law discipline. It could be both means (Frostell, 2006:3), and goal (Uvin, 2004:123). The process is prioritised (ibid. 165), which is catered to the principles of empowerment, participation, non-discrimination and accountability with the priority on vulnerable people (Lundström-Sarelin and Mustaniemi-Laakso, 2007). That is, the process becomes participatory and transparent with equality in decision making and sharing of the outcomes of the process among involved stakeholders (Sengupta, 2000b: 21-22 cited in Uvin 2004). The analysis with the HRBA can give an insight into the distribution of power as a result (OHCHR, 2006:27). Office of the United Nations High Commissioner for Human Rights (OHCHR) is one of the main actors promoting the HRBA to development cooperation. This paper reflects the definition of the HRBA by the OHCHR (2006).

The distinction between the charity-based approach and the HRBA can be simplified and summarised in the following Table 1. However, as Lundström-Sarelin and Mustaniemi-Laakso (2007) also cautiously claim that the dichotomy is not crystal-clear, one has to bear in mind that there is a great risk of over-simplicity and even the question of dichotomy in itself, which are to be argued further in the following main part of the text.

**Table 1. Distinction between the Charity-based Approach and the HRBA**

	<b>Goal</b>	<b>Individuals</b>	<b>Responsibilities based on</b>
<b>Charity-Based Approach</b>	Filling the gaps of (often material) needs	Objects of charity, “Beneficiaries”	Discretion of givers, no obligations
<b>Human Rights-Based Approach</b>	Fulfilling aimed human rights in a human rights-sensitive manner	Subjects as rights-holders as well as duty-bearers in different contexts	National and international law-oriented obligations and accountability for fulfilling the rights of individuals

Inspired by (Lundström-Sarelin and Mustaniemi-Laakso, 2007) and created by the author.

## **Downside of the Human Rights-Based Approach in General**

Despite the theoretical strength of this approach as was mentioned in the previous section, this approach is not free from pitfalls. This section explores the downside of this approach in general terms without any specific context, while chapter four will elaborate further the downside of this approach in the context of disability in development. The criticisms towards this approach in general are mainly three-fold: 1) its origin, 2) problems in its operationalisation, and 3) negative consequences of its operationalisation. This section analyses these three main pitfalls.

### **Possibility of Cultural Imperialism**

Although principles of human rights concepts such as non-discrimination and equality are not exclusive values only for Western countries, it is feared that human rights discourse is not as effective elsewhere as in Europe due to its origin in the West (Kennedy, 2004:18, Uvin, 2004:17). This part introduces the development of this approach, which is the foundation of the criticism.

Human rights era is said to have started with the United Nations Declaration on Human Rights in 1948 (Seppänen, 2005:10) when peace and prosperity were on the agenda after the World War Two. Due to the Cold War between East and West, human rights were too bound to the political ideologies until the end of the Cold War. For instance, Uvin (2004: 14) categorises three generations of human rights: first generation is on civil and political rights which is also cited as “negative rights” not to degrade rights particularly by the states as duty-bearers around civil and political rights. This generation was centred to the West. The second generation, on the other hand, is on economic, social and cultural rights which are cited as “positive rights” including adequate standard of living. This was USSR-centred. Both generations were meant for individual rights. The third generation of human rights is collective or solidarity rights such as rights to development and self-determination, latter of which is to do with decolonisation from the 1960s onwards and both of which subsequently entered into non-Western context and into the realm of development particularly after



the 1990s. The emergence of the HRBA coincided with the demise of neo-liberal policies (Seppänen, 2005:13) as a criticism against economic-centred development policy and practice. The HRBA finally became mainstream in 2000 with United Nations Development Programme (UNDP)'s "2000 Report on Human Rights and Human Development" where human rights became development objectives rather than an instrument for economic growth (ibid. 15).

Due to its origin outside of development context, application of the HRBA to development is criticised as "globalization of policy making" with the use of Western power (Kennedy, 2004:111), while various modalities of development interventions themselves are criticised for their cultural imperialism. The state-centred discourse is also partly explained due to the origin in the West where the states have the obligation for their "citizens". This Eurocentrism has not paid enough attention to cultural relativism, which is thus criticised due to its possibility of cultural imperialism. This point is articulated further in the following sub-chapter on operationalisation-related downsides.

### **Challenges of Operationalisation**

Kennedy (2004) and Uvin (2004:19) are sceptical to the human rights and further criticise the HRBA due to the little operationalisation of this approach despite the wide recognition and mainstreaming of this theme. Kennedy (2004:21-22) claims that "rights conflict with one another, rights are vague, rights have exceptions, many situations fall between rights." Batliwala (2007) also argues that the approach lacks the transformative power of the real thing. In this sub-chapter, the practice of the HRBA is investigated to clarify the downsides in its operationalisation process. Criticisms are mainly three-fold: 1) irresponsibility for intervention, 2) priority making and 3) cultural insensitivity.

Firstly, human rights talk is criticised for its irresponsibility for intervention (Kennedy 2004:30). Human rights language is absolutism. Few would oppose the idea (Seppänen, 2005:85). Nevertheless, the discourse itself does not provide operational guidance for making the aimed change (Uvin, 2004:30-31). For instance, "human rights are indivisible and interdependent (OHCHR, 2006:2)" in principle. However, when it comes to practice, operationalisation mechanism is weak (Seppänen, 2005:34).

The International Covenant on Economic, Social and Cultural Rights, for instance, states “appropriate” measures to be taken with “available resources (article 2)” and “in the context of the full use of the maximum available resources (CESCR, 1990).” This allows significant room of interpretation without practical implications. When certain context is taken into account for the operationalisation process, this weakness becomes the fundamental challenge right away because situational analysis, identification of structural problems and other important analysis are all left behind to the implementers. Such analysis is extremely complex (Alston, 2005:803) but yet undermined. Without implementation tools, this approach is criticised to remain in the “moral high ground” (Uvin, 2002&4).

Secondly, priority making is also a challenge. “The priority must be given to the most marginalized (OHCHR, 2006:24)” in principle. All rights are equally important, whereas “the principle of ‘progressive realisation’ recognizes that some rights may have to be given priority over others, because not all rights can be fulfilled at the same time or at the same place (ibid.12).” This argument is particularly valid when the context is resource-constraint Southern country. In reality, “trade-offs” at the expense of the less privileged often takes place (Kennedy, 2004:17). Human rights systems have historically benefited the well-off because human rights depend very significantly on the power relations that exist within the society or the group (Alston, 2005:806). Frostell (2006) indicates the male-dominant or gender-neutral understanding of human rights is the mainstream, while Seppänen (2005:93) points out the states’ legal power over people. That is, already powerful actors such as the states have possibility to misuse this approach (Alston, 2005:767). This priority making processes and outcomes on the basis of the existing power relationship has the possibility to reinforce the status quo because the most vulnerable people are out of reach to the activities of the HRBA. Negative consequence of its operationalisation is further mentioned in the next sub-chapter.

Thirdly, human rights are vague (Seppänen, 2005:96) and culturally insensitive although cultural sensitivity is demanded for the operationalisation (OHCHR, 2006:5). In practice, the HRBA tends to be a top-down, one-size-fit-all-approach (Alston, 2005:767) and little attention is paid to background social, political and historical conditions (Kennedy, 2004:12; Batliwala, 2007:89). For instance, international policy,

declaration and convention making has been destructing the implementation (Kennedy, 2004:118) when the policy making becomes an end in itself and does not follow its operationalisation in a culturally sensitive manner. This tendency of human rights to generalise has been heavily criticised (ibid.13).

These general downsides subsequently follow negative consequences in practice if enough attention is not paid to avoid these pitfalls.

### **Possible Negative Consequences of Its Operationalisation**

When operationalisation of the HRBA has not been elaborated, negative consequences easily follow in practice. The room of diverse interpretation means different sets of consequences. This part analyses possible negative consequences particularly when narrow definition of the HRBA is applied.

When the HRBA is narrowly conceptualised as the legal formalisation, possible negative scenarios are the followings. Firstly, legal formalisation becomes the end in itself and not means. That is, “not health, but a right to health; not engagement, but declaration (Kennedy, 2004: 61)” are aimed at. After the law, convention and declaration making particularly at international level, no change might follow in practice when making of policy itself becomes the aspiration. For instance, in India, education for all is guaranteed by law and policy, while girls still dropout from schools (Batliwala, 2007). After all, demonstrating the consequences of international policies remains difficult (ibid. 123). Another negative consequence of narrowly defined HRBA in practice would be professionalisation for making needed changes. Kennedy (2004: 23) claims that human rights professionals benefit more rather than actually making changes such as decrease of violence against women, poverty and mass slaughter. When changes rely too much on professionals and lawyers, that consequently “alienate people from themselves and from the vocabulary of their own governance (ibid. 22).” When the professionals are from abroad, namely Western countries, then they “remain safely distant from” the concerns (ibid. 80) and eventually go back to home (ibid. 78) without dealing with series of possible unintended, negative consequences of their interventions. In this regard, the expected “emancipatory” impact of the HRBA cannot reach the emancipation of the concerned people by making necessary changes in practice. Particularly when the most

disadvantaged groups of people are concerned, legal system and court are too often inaccessible due to their illiteracy, lack of information, unawareness of rights, financial deficiency and/or physical inaccessibility (see health issues for Lundström-Sarelin, 2007:470). The availability is then far from the concerned people who are supposed to benefit from the changes the most according to the rule of prioritising the most disadvantaged in the operationalisation of the HRBA.

More widely conceptualised HRBA also has possibility of negative consequence when human rights talk justifies and legitimises the use of force to another states and individuals (Kennedy, 2004: 25). The human rights as absolutism are also dangerous as it undermines other possibly legitimate means for making the aimed changes (ibid. 9, 14). This danger of actual disempowering of the people concerned and other possibly efficient means is predictable in theory if not enough attention is paid. Having understood these general theoretical pitfalls of the HRBA, the next chapter deepens the understanding further in the specific context of disability in development.

## **Downside of the Human Rights-Based Approach to Disability in Development**

Kennedy (2004:5) points out that the downside (and benefits) must be analyzed in particular cases under specific conditions at particular times. For instance, “adequacy” of rights cannot be discussed without particular context (Frostell, 2006:3). Therefore, this chapter elaborates further the possible downside of the approach in the framework of disability and development. The existing literature tends to focus on the HRBA with a positive image and rarely critically look at it. Therefore, it was hard to find a supportive literature on the following arguments except for a few. Hence the arguments of this part are based on my observation in my previously conducted research works in the field of disability in development (Katsui, 2005, 2006-a, b & forthcoming; Katsui & Kumpuvuori, 2008).

Prior to the challenges, theoretical significances of this approach to disability in development are summarised. The first significance of this approach is that it involves all human beings into the mainstream discourse including the most vulnerable groups

of people such as disabled people. Secondly, the approach requires rights-based actions instead of charity which has been predominant in disability in development. Thirdly, the approach stipulates state obligation to secure the human rights of concerned people. Fourthly, this approach demands transnational obligations. These four significances are the most prominent ones for disabled people in the South towards the ultimate goals of equality and equal opportunity (Katsui and Kumpuvuori, 2008). These very significances, however, imply difficulties in its operationalisation. The following arguments clarify the possible challenges and downsides for this specific context.

### **Tackling “Disability”**

The first significance that this approach sheds light on disabled people means that disability has to be tackled. Disability is a complex phenomenon that requires positive changes at all levels to be tackled (Katsui, 2005), lack of which has reinforced the vulnerability of disabled people. The disability-specific complexity in relation to the operationisation of the HRBA approach is explained here in terms of the diversity of “disability” and “disabled people.” It takes a long time to even partially understand what disability is and who disabled people are. Therefore and secondly, one-fit-all approach in practice in the specific context of disability and development in a certain country does not work out. The third point is the identity issue, all of which indicate challenges in implementing the HRBA to disability in development in practice.

Post-modernist scholar, Shakespeare (2006), argues the danger of essentialism by categorising and generalising “disabled people” as homogenous group. Essentialising the diversity of “disabled people” by labelling them with negative connotation is problematic. For instance, the common image of “disable person” is a man in a wheelchair, which is partly due to the fact that many leaders of disabled people’s organisations (DPOs) fit into the image (Shakespeare, 2006:75). In other words, the representation of “disabled people” is a central question to ask when the diversity of disabled people is not necessarily represented by their leaders with certain characteristics. In reality, “disability” accommodates so many experiences of people with different impairments and conditions around them, which makes the understanding of disability rather difficult and complex. For example, the needs of people with hearing impairments are very different from those of people with visual

impairments or people with learning difficulties. “Just because someone is disabled does not mean they have an automatic insight into the lives of other disabled people (ibid. 195) (emphasis added).” Thus it takes a long time to even partially understand what disability is. The concept is further complicated by the context in development such as urban-rural, gender, race and other power dimensions.

Therefore and secondly, one-fit-all approach is not recommendable in this specific context. All different needs have to be paid different attention. DPOs, thus, often work for people with specific impairments to deal with certain needs of them. On the one hand, disagreement among different DPOs on the modality of their intervention is observed in many countries, while on the other hand certain impairments immediately connect people across the borders. This diversity needs to be paid well attention to fulfil their rights. For instance, information has to be disseminated to different groups of people with suitable arrangements such as Braille for blind people and clear language for a group of people with learning difficulties. Moreover, disabled people in the South face discrimination at many different levels in their lives starting from their own family to their government. Disability is a social taboo in many places, which further complicates the approach to be operationalised. In addition, they are too often poor in multiple ways to be integrated. Consequently, many are not officially registered due to the feeling of shame and thus difficult to be identified for participating in any available activity. That means intervention to disabled people in the South takes long time to make a positive impact. At the same time, it also means that interventions are hardly self-evidently sustainable when they are withdrawn. Therefore, when the complexity of disability is understood to some extent, it can be even harder to start any intervention because intervention for only a short period of time tends not to be enough.

Furthermore, the self-identity and self-determination of disabled people are important concepts to understand in this context both because of the diversity of “disabled people” and because of the negative connotation in the label of “disabled people”. These concepts are relevant also in this human rights framework. The diversity of disabled people was mentioned already in the first part of this sub-chapter. The essentialisation is also not correct due to the not neutral characteristic of impairment when one is labelled as “disabled person” at present (Shakespeare, 2006:79). Majority

of disabled people do not belong to DPOs, while increasing number of young disabled people in United Kingdom refuse to be labelled that because they do not want to be dominated by the disability (Watson, 2002 cited in Shakespeare, 2006). Impairment sometimes dominates other characteristics of people, which then lead people to feel that they are disabled. Under the Southern circumstance, people with impairments often feel they are disabled due to the severe discrimination against them coupled with poverty (Katsui, 2005 & 2006-a). The tendency, however, is not a good enough reason to essentialise certain group of people as “disabled people” as they might change their identity for instance to mothers and farmers according to different time, place and occasions. In addition, the concept of “disability” is different from culture to culture. When disability issues are politicised, then this self-determination is often undermined. However, particularly to disability in development, it is a relevant and valid argument to include this aspect of self-determination. All these three arguments indicate that operationalising the HRBA to disability in development needs careful attention.

### **Rights not Charity**

The charity-based approach is easier because it does not challenge structural problems that reinforce the status quo of discrimination but focuses on meeting the (often material) needs of the concerned people. Whereas the HRBA is expected to identify and tackle the underpinning structure that assists violation of rights towards the ultimate goal of ratified human rights in international conventions in each country. In the context of disability in development, the application of the HRBA means the need of consideration of the following points: 1) removal of the existing barrier of poverty for disabled people, 2) political feature of the approach, and finally 3) problems of the dichotomy between rights and charity.

Firstly, the HRBA requires removing of barriers that prevent rights to be fulfilled. In Western countries, gradual approach has been taken to gain the existing social policy that meets some of the basic and fundamental rights of disabled people in each country, although there are still lots of room to improve the reality. The HRBA to disability in Western context is powerful in negotiating for the unfilled rights which are important for disabled people. Obviously there are many not self-evident and/or controversial rights for the mainstream actors and/or the concerned people themselves

to understand such as right to leisure and right to terminate own life. However, in the context of Southern countries and thus in development, the rights that should be fought for are basic rights such as food, clothes, shelters and medications when non-disabled peers also need those. Poverty, therefore, needs to be a central focus in the discussion of disability in development. Poverty is also a complex phenomenon caused by various international, national and local factors. How a single actor can appeal to remove barriers of these widely and complexly intertwined root causes of poverty and actually remove them? Existing barriers for disabled people in the South are hard to be removed neither alone nor over a short period of time.

Secondly, changing discriminating structures often means political action to challenge the existing power relationship when “power and dominance is an unavoidable issue (Padden & Humphries, 2005:9)” for disabled people. Mobilising people to oppose the powerful itself requires various conditions according to social movement theory. Mobilisation of disabled people for their rights is already a difficult task in Western countries (Shakespeare, 2006). When it comes to disabled people in the South, they too often cannot mobilise themselves easily. For instance in Uganda, poor people are out of the reach of mobilisation (Whyte and Muyinda, 2007:307). On top of the individual difficulties due to the severe discrimination and unfilled basic needs, DPOs have their own challenges to oppose the powerful. Cooperation among different impairment-specific DPOs for the actual operationalisation is also a challenge due to the diverse needs of disabled people as previously mentioned. That is, putting already unheard voices together is challenging due to the disability-specific factor. When it comes to the external challenges, negative consequence of political action is predictable. When civil and political rights are not secured as is often the case for many Southern countries, opposing existing governmental structure can lead negative consequence as “political criminals” and be tortured. Under such circumstance, going against the powerful needs more nuanced way of approach. This political feature of this approach in practice also needs careful attention.

Finally and thirdly, the dichotomy between rights and charity itself is problematic for the context of disability in development. One study (Hakkarainen & Wilska, 2007: 55) reveals the local definition of poverty in the South, which clarified that lack of most basic material necessities is conceptualised as poverty particularly among the



most vulnerable people. When poverty is quite relevant to each disabled people particularly in the South (Oliver, 1996; Yeo, 2003; Katsui, 2005 etc.), interventions consequently lead to needs-based material and service provision except for the ones which are more ideologically-based. In other words, charity type of activities is also inevitable for improving the quality of life of disabled people in the South. The HRBA tends to undermine this aspect (Katsui, 2005: 20). In such cases, the line between rights and charity becomes blurred partly due to the Southern context of overall poverty and also due to the disability-specific tendency of poverty. Even in the Western context, the dichotomy started to be criticised because so-called “charity organisations” are changing and because historical and present context where the organisations locate are often forgotten (Katsui, 1999; Shakespeare, 2006: 153-166). Both the HRBA and charity-based approach aim at human development where both approaches often co-exist to compensate each other’s weaknesses to create synergy effect, particularly in the specific context of disability in development at least in theory. Therefore, this dichotomised framework is not quite applicable for differentiating the approach from the “evil” charity-based approach and for operationalising it.

### **National Obligation**

This third significance is the very reason whereby “beneficiaries” turn into “right-holders” with the paradigm shift by articulating the duty-bearers including the states. Duty-bearers are not only states depending on the context. For instance, husbands, shopkeepers and disabled people themselves become duty-bearers in different contexts to fulfil certain rights and not to degrade other rights. The states, however, are often called primary duty-bearers because they sign and ratify international conventions and/or enact national legislations and thereby promise certain rights for their citizens in the territory. This country-centred thinking was already pointed out above, which is also relevant in the context of disability in development. This significance also has the other side of the coin. They are three-fold: 1) resource constraint, 2) low priority to disability and 3) unidentified population.

Firstly, resource has to be elaborated because Southern countries do not have stable and plenty of money to spare for many issues including disability issues. In Western countries, the HRBA is a powerful tool in principle not to legitimatise the resource-

constraint as an excuse not to fulfil rights. However, the HRBA is not so powerful in practice both in West and South. As “appropriateness” and “adequacy” depends much on the interpreters as pointed out in Chapter 2, resource-constrained countries can legitimatise themselves for not fulfilling the rights of their citizens. Limited statutory interventions are taken for granted even when their constitutions are around human rights and/or they have ratified various international conventions. Practical guidance or tool for operationalising the HRBA is, therefore, particularly missing in the Southern context.

Therefore and secondly, prioritising disability issues over others become important to allocate and/or earmark already limited financial resources to the often most vulnerable group of population of disabled people. The priority to disability, however, is low in many countries. When the visibility of disabled people is limited due to physical and mental barriers and/or due to the socially created shame of family members who do not register disabled members to any official document in many of the Southern countries, disability rarely automatically become agenda for any state without pressure from DPOs and international organisations. When disability-specific diversity, poverty and limited mobility scatter the already unheard voices of disabled people in the South, pressure to Southern governments tends to be limited. Without frequent previous experiences for Southern disabled people to negotiate with the government officials and professionals, their voice tend not to reach properly to the decision making structure. Even in Uganda, one of the most progressive countries in terms of human rights of disabled people in the constitution, DPO representatives had difficulty in mainstreaming their issues in its Poverty Reduction Strategy Paper (PRSP) process (Dube, 2005). It is feared that the Southern countries would not spontaneously mainstream disability issues without pressure both from inside and outside.

The last challenge for national obligation in this context is somewhat different in kind but nevertheless important one to bear in mind particularly in Africa. As post-colonial legacy, country borders in Africa are not based on local logics. Border crossing is part of the livelihood of many people in the South as well as in the West. The difference, perhaps, is that those in the South who cross borders for their living and those who seek for better quality of life elsewhere within and beyond borders move without

formal documents. For instance, physically disabled people in Uganda move into Busia to seek for jobs available there as tricycle drivers at the border (Whyte & Muyinda, 2007). As a consequence, those people as well as many disabled people who are not registered in any official documents fall out from the scarce but anyways existing safety net of health care and education and/or live without right to vote. This worse statistical system in the South partly explains the lower number of disabled people in the Southern countries compared with the West (Katsui, 2005:24). Under this circumstance, responsibility of the states as primary duty-bearers to fulfil rights of disabled people would make less sense because the disabled population has not been identified correctly particularly when even the non-disabled population is not well-kept track with. Moreover, the definition of “disabled people” depends on different countries and Southern countries tend to recognise visible ones such as sensory and physical impairments but not newly diagnosed and mental disability and learning difficulties particularly moderate ones (ibid.). Thus the invisibility of disabled population directly affects the HRBA when potential right-holders are unidentified.

### **Transnational Obligation**

For the first time in the history of international conventions, international cooperation was included in one of the articles, Article 32 of the United Nations Convention on the Rights of Persons with Disabilities. In other words, transnational obligation was stipulated. International actors have officially become one of the important duty-bearers to fulfil the human rights of disabled people in the South across the borders of the states. This Convention is expected to tackle the reality where the support is limited for disabled population in the South on the one hand: only 2% of disabled people in the South receive some kind of support (United Nations, 2000) and 17% of the poor people are occupied by disabled people according to the World Bank (Haar, 2005). On the other hand, disabled people would need more support compared with non-disabled peers due to the severe discrimination against them and due to their impairments. The theoretical pitfalls of this significance are the followings if careful enough attention is not paid: 1) danger of legitimising inefficient interventions, 2) possibility of evaporation when coordinated, and 3) inequality when not coordinated.

Firstly, the absolutism of human rights talk carries the danger of legitimising inefficient or even degrading interventions. Uvin (2002) introduced three different

types of interconnection between human rights and development, and further developed them into four types in his later publication (Uvin, 2004). The first type is to incorporate human rights terminologies into classical development discourse by claiming that the development cooperation has been contributing to rights all the time. With this way of incorporation, the human rights terminology depoliticises the underpinning root problems but legitimize the status quo. The second type is political conditionality where human rights are imposed when aid is given especially practiced by massive aid agencies. In this type, self-determination of the South is badly ignored and thus the intervention itself is not human rights-based. The third type is called “positive support” approach where human rights can be “add on” by implementing new programmes that are specifically on human rights aims but they are mostly “stand-alone projects” (Uvin, 2004:84). In this approach, human rights are not mainstreamed but implemented in a limited context only. The fourth approach is what he calls “human rights-based approach” where human rights are seriously taken into account where the mandate of development itself is redefined in human rights terms and thus the social change takes place with this new paradigm of inseparable development and rights components. “Development as freedom” (Sen, 1999) exemplifies this fourth approach. The practice, therefore, shall change in this fourth approach but missing (Uvin, 2002:8). As a result, “vagueness dominates” due to the discourse remaining at theoretical level and not practical level. For instance, only 1% of the development business (50 billion USD per year) is allocated for human rights at present (Uvin, 2004:13). Furthermore, particularly the first two types can legitimise their less human rights-oriented modalities with the same human rights talk, which is a danger.

Secondly, the possibility of disability issues to evaporate is observed when different donor actors are coordinated (Katsui, forthcoming). The fourth significance implies that international interventions involve many actors who are from different countries under a different context. To respond to the criticism against not coordinated interventions among different donors including Western NGOs, direct budget support and sector wide approach started to attract attention among donors. However, such multilateral support often blur Western commitment to disability issues and allow enough room for the theme of disability to evaporate when Southern priorities are different from the Western and international policies. As disability is not a high

priority for most of the countries around the world, mainstreaming disability into implementation of development cooperation in the South is challenging.

Thirdly and in practice, therefore, empowerment-focused interventions have been implemented, which is categorised as the third type according to Uvin as above. They are often “stand-alone projects,” impairment-specific activities or “add on” to the current development practices without challenging the fact that disability has not been mainstreamed. Moreover, each intervention is mostly meant for limited number of people in a certain area, which is thus highly unequal. For instance, a group of disabled people in one village can benefit from an intervention, while the neighbouring villages frequently benefit nothing from it. Therefore, the operationalisation of the HRBA to disability in development is complex also in this term.

### **Implications for the Further Research: Concluding Remarks**

Having investigated theoretical pitfalls of the HRBA both in general and in the specific context of disability in development, implications learned from this analysis are two-fold. Firstly, when the HRBA is focused, it has to be defined and conceptualised well because it has enough room for diverse interpretation otherwise. Specific aspect of the HRBA has to be articulated as a focus rather than generally discuss about the HRBA or human rights which carry positive image but vague. Secondly, there is an acute need of more critical (self-)reflection of the HRBA to understand its both positive and negative sides in a particular context so that the HRBA is a helpful tool on the ground rather than in theory. Particularly, realistic look at downside is inevitable to avoid hitherto criticised aspects of the approach. It is high time to shift from the theoretical arguments to evidence-based arguments to make the approach useful and usable on the ground.

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