

Human rights as a new development paradigm: A think piece on implications for monitoring and evaluation

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In the 1960s, development paradigms considered only economic growth. In the 1980s and the 1990s, development paradigms added social development and then human development. This set the tone for the types of goals later embodied in the Millennium Development Goals and Sustainable Development Goals. A third change is now taking place. Human Rights Instruments have generally recognised that a modern developed society also needs political processes that are transparent and participatory, good governance, a belief that justice will be served, and requires that all forms of discrimination should be recognised and eliminated.

International Human Rights Instruments, such as the Convention for the Elimination of Discrimination against Women and the Convention on the Rights of the Child require regular reporting on progress to independent monitoring bodies in Geneva. Currently, there is low awareness, and low participation, of evaluators in these reporting processes.

This article flags some of the conceptual and operational differences between the human rights approach and a 'development goals' approach. In each area of difference, it identifies some of the subjects of analysis that will require evaluators to develop new methods, new allies and even new conceptual frameworks to operate in this new paradigm.

Introduction – A brief history of rights

There have been three major national development paradigms in the post-war period. Each change has kept the core content of its predecessor while adding additional objectives. The first paradigm emphasised economic growth (UNGA 1962). The second added social development, including basic needs, social services, social welfare and social protection. The Millennium Development Goals (MDGs, UNGA 1989) and Sustainable Development Goals (SDGs, UNGA 2015) fit into this second paradigm.

A third transformation is currently in process. It is including the realisation of human rights. So it also covers issues such as empowerment, justice, accountability and governance. Goals become mechanisms or instruments to ensure benefits are realised. Rights are benefits that individual 'rights holders' can claim as an entitlement. Rights are also benefits that 'duty bearers', such as governments, are obliged to provide. In some cases, these rights are justiciable: the rights holder may hold the bearer of the duty (to provide for that entitlement) to account in a court of law. Justiciable claims can be adjudicated by legal principles or ruled upon by a judge in a court of law. In this scenario, the rules of evidence that assessments must adhere to can be quite different from those that we traditionally apply (Jonsson 1999; Jonsson et al. 2001; Kent 2005).

In this new paradigm, good governance is a human right. And many components of societal progress are no longer merely highlighted in SDGs or national development plans with defined expiration dates but rather are embodied in signed and ratified international conventions, and in constitutions of the nations, with no expiration dates.

While the text of human rights conventions and national constitutions may incorporate language on equality, justice and freedom, measuring up to those noble aspirations is commensurately demanding. Measuring the degree of that attainment, and speaking truth to power, is truly a worthwhile challenge for politically aware evaluators. New methods and techniques will be required. So far, very little has been done to evaluate progress towards 'freedom', for example.

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Human rights to good governance and to participation open a window for parliamentarians to engage in national development processes through novel and powerful channels, as will be described later.

Rights as the new goal of development

It has been said that the whole of history has been a struggle between the 'haves' and the 'have nots'. It has also been stated that economics is the basis of all wars. Elaborating this a bit, the whole panorama of human history, the wars, the conquests and liberation, the noble causes, have all been a series of conflicts over territory – in other words over the allocations of 'rights' of ownership of material and human resources.

Over this sweeping timespan, there has been a gradual but inexorable extension of human rights to previously powerless groups. In roughly historical order, one could consider the broad evolution of human rights in Europe as:

- demise of the 'Divine Rights' of kings; earlier, only kings had rights
- abolition of slavery; so all people had the right to not to be owned by another
- extension of the right to vote to men without property
- evolution of trade unions and the right to assembly
- extension of the right to vote, and other rights, to women
- extension of some rights to children as people rather than subjects.

As can be seen by considering the issues covered by this brief list, human rights exist in frameworks based on evolving concepts of freedom, ethics and rights. And the direction of that evolution has been, in historical terms, overwhelmingly positive and consistently inclusive. More and more people are, successfully, having their human rights recognised. This is, perhaps, one of the most important aspects of human progress, and is one that the discipline of evaluation has done little to promote.

International human rights conventions

Some of these human rights have been enshrined in internationally agreed Human Rights Instruments (HRIs) including conventions, covenants and national legislation. A number of important HRIs preceded the establishment of the United Nations. The Slavery Convention (1926) was created through the League of Nations, the predecessor of the United Nations (League of Nations 1926). But sustained and progressive codification of natural rights into human rights conventions truly started after the Second World War. In this regard, the leadership of the United Nations was key. The General Assembly of the United Nations adopted the Universal Declaration of Human Rights (UDHR) in 1948, with the famous opening (UNGA 1948b):

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. (Article 1)

Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (Article 2)

The UDHR became the foundation for a series of more specific conventions, including the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The same year saw the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide (UNGA 1948a), which could be considered the foundation for the subsequent high-profile prosecutions of some former heads of state and senior officials. This has special relevance for Africa. The first time the 1948 law was enforced was on 02 September 1998 when the International Criminal Tribunal for Rwanda found Jean-Paul Akayesu, the former mayor of a small town in Rwanda, guilty of nine counts of genocide. The lead prosecutor in this case was Pierre-Richard Prosper. Two days later, Jean Kambanda became the first head of government to be convicted of genocide. This erosion of impunity of heads of state is itself a fine example of both the increasing power of the human rights approach and the growing role of courts in enforcing human rights law.

So the question arises 'Do evaluators wish to be part of, or stand apart from this important aspect of human progress?' Many may consider that we do not have the tools, as a profession, to participate. But perhaps there is sufficient interest to innovate.

Well-known and historically significant conventions include:

- 1957: Abolition of Forced Labour Convention (AFLC)
- 1965: International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD)
- 1966: International Covenant on Economic, Social and Cultural Rights (ICESCR)
- 1966: International Covenant on Civil and Political Rights (ICCPR)
- 1975: Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 1979: Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- 1985: International Convention against Apartheid in Sports (ICAS)
- 1989: Convention on the Rights of the Child (CRC)

Successive elaborations of human rights have codified, in international and then national legislation, an ever-increasing portion of what some consider to be 'natural rights'. These conventions may contain significant areas of overlap, and mostly are more specific comprehensive elaborations of the broad categories defined in the UDHRs. The intent of each new convention has been to more specifically formalise these rights, while maintaining consistency with previous international legislation. Although the 1948 UDHR was

certainly comprehensive, the range of specific rights considered relevant to the notion of 'equality' of position of women is probably more broadly understood now than it was then. Perhaps there should be a strategy to obtain some revisions.

Clearly, more progress is needed. For sure the cup is still only half full. Though, as evaluators, we might wish to question whether it is a bit less than half, or a bit more! And we might rightly ask for evidence of progress – and some indication of whether or how more could have been achieved. In a deeper sense, we might also ask what should be included in potential future evaluations of national legislation, and even national constitutions, to bring them up to date with evolving national concepts of human rights. And, especially, what we can do to make more progress, more rapidly.

New, rights-based monitoring and evaluation activities

New objectives, goals and targets to monitor

A number of articles have set up various tables depicting similarities between MDGs and SDGs on the one hand and HRIs on the other (see Appendix 1). Clearly, these frameworks share a lot of common ground and these commonalities are important. But the author considers that the amount of literature on these commonalities is vast, and does not wish to add to that. The differences, especially at a conceptual level, are far more interesting. And it is in the differences that evaluators may find both important work to be done and interesting skills to acquire. To do justice to some of the more subtle aspects of these differences, the elaboration of the 'problem definition' in this think piece is slightly extended, and its implications for evaluators are interwoven.

In terms of scale of aspiration, SMART goals are by definition time-bound and realistic. Percentage coverage targets are central to that approach. Not all SDGs are SMART but most aim to be. Human rights instruments however do not have goals that are final end points and focus instead on:

- universality – everyone should be included and no one left behind
- non-discrimination – those not currently covered should not have been systematically excluded by virtue of culture, ethnicity or other characteristic
- non-retrogression – any right, once achieved, should not subsequently be lost (UDR).

These are quite different from the criteria recommended in the 'SMART'. The 'A' for achievable, the 'R' for realistic and the 'T' for time-bound do not necessarily apply to any human right.

Their longer-term perspectives, frameworks of universality and adherence to individuals make HRIs more similar in some ways to national constitutions, as evidenced by brief extracts from the South African and Kenyan constitutions as

presented below. The extracts selected effectively contrast the familiar socio-economic development goals of the MDGs, SDGs and South African Constitution, with the more political and cultural goals of the Kenyan constitution, which was prepared almost 15 years later.

Constitution of South Africa (Government of South Africa 1996)

Chapter 2: Health care, food, water & social security; Article 27:

1. Everyone has the right to have access to:
 - (a) health care services, including reproductive health care
 - (b) sufficient food and water
 - (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

The emphasis in a rights-based approach is on rights held by individuals, rather than characteristics of a population such as coverage percentages. A significant component of initial action to be undertaken is the preparation of legislation. Compulsion to act, for example by allocating resources, is generally a requirement of that legislation. Traditionally, SMART goals more typically focus on capacity development or service provision. Human rights instruments operate at a different level.

The Constitution of Kenya just over a decade later added a set of higher-level rights, or 'fundamental freedoms', to the more conventional objectives such as rights to health and education that had their roots in the social development paradigm of the 1970s.

Constitution of Kenya (Government of Kenya 2010)

Part 2 – Rights and fundamental freedoms:

- 27 – Equality and freedom from discrimination
- 32 – Freedom of conscience, religion, belief and opinion
- 33 – Freedom of expression
- 34 – Freedom of the media
- 36 – Freedom of association
- 44 – Language and culture
- 46 – Consumer rights
- 48 – Access to justice

The African Charter on the Rights and Welfare of the Child adopts a similar high-level, fundamental-freedoms approach in some paragraphs, including *inter alia* 'the right to privacy' (OAU 1990). It is evaluation of progress in areas such as this that will pose methodological challenges to evaluators that are quite different from those involved in measuring progress in the numbers of children in school on the basis of household cluster survey data.

While not directly challenging current M&E methodology, the growing interest in these more subtle issues, as expressed in national constitutions and ratified conventions, does shift areas of interest across national and international systems as a whole – and this shift is posing some challenges. So far, most attention has focused on monitoring. It would seem appropriate that, as programmatic investments in the rights approach increase, attention will shift to evaluation of progress. And here, even the word ‘evaluation’ poses some challenges. Human rights are not a thing to which value can be attached. The word ‘assessment’ may prove to be more suitable.

Conventional survey and enumeration data can be combined to create an index that can be a useful proxy indicator. One good example is ‘The African Report on Child Wellbeing 2008: How Child-Friendly Are African Governments?’ (ACFF 2008). An earlier and perhaps more familiar example of this methodology is the human development index. This is not a new methodology, but it may provide useful proxy measures relevant to the human rights world.

As succinctly summarised by Theis (2003):

A rights-based approach to development combines human rights, development and social activism to promote justice, equality and freedom. It holds duty bearers to account for their obligations, empowers people to demand their rightful entitlements, promotes equity and challenges discrimination.

Theis (2003) goes on to say:

As much as possible, rights-based monitoring and evaluation should draw on existing tools for measuring change.

That recommendation was especially appropriate at the turn of the millennium, in the earlier days of human rights reporting. This article, while paying respects to Theis’s seminal work, presents the argument that a more adventurous approach is also needed. As mentioned above, HRIs and the SDGs do share common ground. But HRI goals are not entirely ‘business as usual’. And it is these differences that are exciting and interesting. Assessment of progress, or retrogression, towards some of the quite abstract rights and freedoms listed above will require the development of new methodologies and techniques. Evaluators should not shy away from these challenges but embrace them with an innovative and creative spirit.

Periodic formal monitoring, systems and feedback

Human rights conventions now mostly have specific reporting systems, as do some covenants (e.g. the ICCPR). There are differences between these instruments. A declaration is a moral statement. Conventions, treaties and covenants are considered legally binding. At present, each convention has its own formal reporting process. Monitoring of progress is not yet integrated as an activity. It may be that a greater level of integration in monitoring of convention implementation is achieved in the future. Interestingly,

national monitoring of many social development parameters is increasingly being integrated in the United Nations Inter-Agency framework of the ‘Common Country Assessment’.

States that sign and ratify conventions now typically undertake specific obligations to achieve the realisations of those rights and recognise that their progress will be monitored.

The original Universal Declaration of Human Rights (1948b) did not incorporate any reporting requirements at all. Subsequent early HRIs specified that reporting should take place but did not specify reporting intervals. One example is the International Covenant on Economic, Social and Cultural Rights (1966).

Later HRIs often required an initial report only, usually covering a review of improvements in conformity of national legislation, submitted within 1 year of ratification by ‘states parties’ – governments of countries that have ratified the instrument. Further reports were due only on the specific request by the committee or claims by another state party that an obligation is not being fulfilled. An example of a convention of this type is the International Covenant on Civil and Political Rights (December, 1966). Monitoring of progress of these conventions was very limited.

More recent conventions often have specified reporting intervals. The Convention on the Elimination of All Forms of Discrimination against Women (1979) requires an initial report after 1 year and then every 4 years. The Convention on the Rights of the Child (1989) requires an initial report after 2 years, and then every 5 years.

Monitoring requirements vary between conventions, as described in Table 1. But these differences are minor compared to the differences between convention reporting and MDG or SDG goal monitoring. Even the language used is different. For the MDGs and SDGs, the language used is ‘monitoring progress’. Tracking of HRIs normally uses language such as ‘reporting on progress’.

Most of these conventions require reports on progress from national governments. Two require national reports at

TABLE 1: Conventions, reporting intervals and monitoring bodies.

Convention (date)	Reporting interval	Monitoring body
1948: Universal Declaration of Human Rights	No reporting required	Not applicable
1966: International Covenant on Economic, Social and Cultural Rights	‘In stages’	Secretary General – Economic and Social Council
1966: International Covenant on Civil and Political Rights	Within 1 year, thereafter whenever the committee so requests	Human Rights Committee
1973: International Convention on the Suppression and Punishment of the Crime of Apartheid	‘Periodic’ reports	Commission on Human Rights plus national courts. Apartheid defined as a crime
1979: Convention on the Elimination of All Forms of Discrimination against Women	Initial report after 1 year, and then every 4 years	Committee on the Elimination of Discrimination Against Women
1989: Convention on the Rights of the Child	First report at 2 years, and then every 5 years	Committee on the Rights of the Child

specified and predictable intervals. One also invites reports from non-profit organisations (NGOs) and civil society organisations (CSOs). Having evaluators involved in reviewing progress, and reasons for success and failure, would be very helpful to those involved in preparing reports. But, so far, the evaluation profession has remained mostly uninvolved.

Sustainable development goals ‘voluntary monitoring’ versus human rights instrument ‘compulsory reporting’

As part of its follow-up and review mechanisms, the 2030 Agenda for Sustainable Development encourages member states to ‘conduct regular and inclusive reviews of progress at the national and sub-national levels, which are country-led and country-driven’ (paragraph 79). These national reviews are expected to serve as a basis for the regular reviews by the high-level political forum (HLPF), meeting under the auspices of ECOSOC. As stipulated in paragraph 84 of the 2030 Agenda, regular reviews by the HLPF are to be voluntary, state-led, undertaken by both developed and developing countries, and shall provide a platform for partnerships, including through the participation of major groups and other relevant stakeholders.

Sustainable development goals monitoring is voluntary. For human rights conventions, reporting is compulsory. These differences are important. Monitoring of progress towards MDGs and SDGs is primarily an internal governmental affair. Human rights reporting is increasingly to an external, international monitoring body, often in Geneva. In the case of the CRC, the monitoring body then comments on those progress reports, effectively judging the adequacy of progress made by governments. Comments on government performance towards achieving the rights in the CRC are available on the Internet.

In some cases, there is more than one report. For all HRIs, the government submits a report. In the case of the CRC, NGOs and CSOs are invited to submit their own reports. In these instances, the monitoring body will consider the claims and evidence presented by potentially conflicting reports from varied groups of stakeholders, and then make judgments on their validity.

As the amount and significance of work in this area has increased, responsibility for monitoring has shifted from the Secretary-General and the Economic and Social Council of the United Nations to specialised monitoring bodies with constitutionally defined powers, supported by the Office of the High Commission on Human Rights.

One does not wish to stress differences to the exclusion of all commonalities. ‘Goal monitoring’ and ‘rights reporting’ are both focused on upward and external accountability. Both currently stress monitoring over evaluation, arguably to their detriment. Again, while similarities exist, at least for the author, it is the differences that are analytically more

challenging and make the future more interesting. One of those differences relates to reporting systems.

Evaluation utilisation: The impact of reporting systems

Monitoring has become more frequent. And the societal impact of feedback has been increasing. The human rights paradigm is one that people increasingly recognise as meaningful – people increasingly feel they have rights that should not be denied. As this awareness and sense of entitlement has grown, the embarrassment that an external monitoring body can cause has become more acute. And the real power of these HRIs, as development objectives and tools, has increased.

The increased prominence of reporting as a monitoring process is partly because of the increasing number of agencies involved in preparation and submission of reports. Earlier, reports were prepared and submitted only by national governments. Monitoring bodies met and considered reports behind closed doors. Now, NGOs, civil society and other interested parties are often invited to submit their own reports. These often diverge from official governmental reports.

The increasing societal power of HRIs may also be related to changes in global communication infrastructure. The text of early conventions was simply printed. Now, the text of the Convention on the Rights of the Child is available on the Internet, and is taught in primary and secondary schools. This easy availability and familiarity with the content of the CRC empowers children, as future rights holders, to more effectively claim their rights.

For more recent conventions, the range of information on reports that is publicly available has also increased. National reports to Monitoring Bodies such as the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination against Women are available on the Internet. The committees that review these reports do not merely read them. They assess progress and comment, often adversely. These ‘Concluding Observations of the Committees’, produced after their assessment of the national reports, including reports from non-governmental and civil society organisations, are then made publically available, including on the Internet. Concluding observations of these committees are regularly seized upon by, and discussed in, national media, and have required governments to defend their records and adjust their priorities.

New types of evaluative evidence

Development agencies such as UNICEF, UNDP and the WB have been quite reliant on inferential statistics (a strictly defined form of evidence that uses appropriately collected numerical data to make inferences concerning some unknown aspect of a population) in the form of household surveys to assess changes in key indicators of the SDGs

and MDGs. This form of evidence is quite well suited for providing percentages and quantitative trends that can be illustrated in a formal report on progress. But household surveys are far weaker when reporting on rare events. Precision is high when the indicator comes in at 50%, as in '50% of children complete secondary school'. Precision is very low when the indicator has extremely high or low values, as in '99% of children are immunised'. For human rights purposes, where universality is required, tools that are better at reporting on small fractions of populations, and on exceptions, will be required.

The advent of the human rights paradigm also requires disaggregation and structuring of data in ways that were not envisaged previously. Few have considered the possibility of structuring household responses to distinguish, as the African Charter notes, between the characteristics of children who have, and who do not have, privacy.

There are indicators of interest that households may not be competent to report on. Reports on some types of improvements in governance might be included in a report on implementation of components of the CRC on juvenile justice (such as incarceration of children with adults, or treatment of children as minors in courts). Changes in freedom of assembly, or the kinds of liberties elaborated in the Kenyan constitution, will require data that are not easily collected by household surveys.

In human rights cases, evidence may sometimes resemble that presented in a court of law. In that paradigm, there are clear laws of evidence that govern the collection and use of testimony (oral or written statements, key informant interviews) and exhibits (physical objects) or other documentary material (e.g. newspapers) in a court of law or other judicial proceeding.

Indeed, on reflection, rules of evidence are not uniform across all disciplines. The criterion of repeatability of an experiment, so fundamental to a chemist, occupies quite a different world from criteria used in astronomy, or that would be used to determine if a newspaper report should be published or to judge a spiritual text.

The human rights revolution has opened up some of these issues. The ball is in the court of evaluators to take up the challenge and respond with new and innovative methods and approaches. Exciting times!

Different conceptual frameworks for progress evaluation

In objective and goal-based development paradigms, such as the MDGs and SDGs, the primary conceptual structure used was, for a long time, that of the logical framework, or 'log-frame'. The roots of the log-frame lie in the planning processes – inputs and outputs. All other causal factors are dumped into a column labelled 'assumptions'. Even in more

modern restatements of input–output analysis that invoke the problem tree and theories of change, the primary logical structuring of information is Newtonian – in terms of cause and effect.

In the rights-based development paradigm, a more nuanced and more structural set of causal factors is linked in specific ways to various types of interventions, accountabilities and capacities.

States parties, nations whose governments have signed and ratified a HRI, have three specific types of obligations with respect to human rights conventions, all of which should be reviewed and assessed in any reporting process:

Respect: The obligation to respect requires states to refrain from interfering directly or indirectly with the enjoyment of the right.

Protect: The obligation to protect requires states to take measures that prevent third parties from interfering with the enjoyment of the right.

Fulfil: The obligation to fulfil requires states to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realisation of the right, and further to directly provide assistance or services for the realisation of these rights.

In log-frame approaches, emphasis is on causality, or more precisely on cause and effect. In human rights approaches, the emphasis is on responsibilities, types of accountabilities and obligations of the state.

If state duty bearers have not already achieved the objective of satisfying some claims, this failure is considered to usually be because of some underlying and identifiable constraint or lack of capacity. The classical three capacities required for the satisfaction of claims on duty bearers are:

Responsibility: The duty bearer accepts responsibility for the satisfaction of the claims by rights holders.

Authority: State and society recognise that the duty bearer has that responsibility and have afforded the duty bearer with the authority to act. That authority may include legal, moral, spiritual or cultural responsibility. It may extend to mechanisms that provide motivation to act.

Resources: The duty bearer has access to, and control over, sufficient financial resources, human resources, skills and institutional capacity to satisfy those claims.

The separation of these distinct aspects of capacity of duty bearers provides useful analytical traction to the identification of failures of – or successes in – rights realisation.

It is necessary to recognise that the human rights approach does not limit duties and obligations to the state. The rights holders have the responsibility to actively claim their rights from the state. And non-governmental agents may be duty bearers as well. For example, in their interactions with children, parents are duty bearers (e.g. parents are required to send their children to school) and children are rights holders (have the right to be taken to school).

It is not my contention that this primary logical structuring of information by responsibility and capacity, rather than by cause and effect, is better. Nor that it is worse. The important thing is that it is different in an interesting, and potentially useful, way. And the very important thing is that we evaluators will need to stretch our concept frameworks a little, if we are to rise to the challenge of evaluating progress in the areas covered by HRIs.

Targets and instruments: New counterparts and stakeholders

Some social problems that existed during the time of an emphasis on goal-based planning frameworks were not very much noticed. The existence of corporal punishment in schools is a good example. In a goal-based planning framework, corporal punishment may not emerge as a problem at all. If the issue of corporal punishment did arise, then it might be considered in relation to its effects on the output of schools, or its effects on educational attendance. In a human rights framework, it is more visible as an infringement of rights, and is undesirable simply because it is wrong as it infringes the human rights of children.

(This year, there was a wonderful cartoon circulating on Facebook on this topic. It goes; 'When I was a child I was beaten, and I turned out alright'. To which the reply is; 'No you did not. You turned into the kind of person who thinks it is ok to hit a child!')

At the same time, recognition of the societal power of the role of legislation on this issue offers a tool by which these problems can relatively easily be resolved, although there are some potential tensions between those who consider that 'Law shapes society' and those who think that 'Law should reflect society'. When hitting children becomes illegal, and that right is justiciable (meaning that teachers can be sued by parents, or tried in courts of law for violating their conditions of employment), then corporal punishment in schools tends to disappear (UNICEF 1998). And this shows one of the wonderful features of so many rights-based goals. There is no cost involved. And getting there, achieving that right, just makes the world a better and safer place. All that is needed are a few evaluators (courtesy of UNICEF or a similar organisation) to assist with the evidence that shows that when children are not beaten at school attendance and performance improve – and a few parliamentary champions!

The utility of the rights-based tool of legislation is not limited to issues that emerge as problems only when a rights-based problem identification process is used. If it were, the utility of a rights perspective would only be additive. The rights approach is transformative. Legislation can be useful to resolve problems identified from a goal-based framework. Conversely, planning tools such as national development plans can be the appropriate vehicle for resolution of issues identified through a rights-based problem analysis.

Iodine deficiency disease was identified as a public health problem through technical and analytical rather than societal processes. The deficiency was considered an epidemiologically derived and disease-based 'need', rather than seen (at the time) as a 'right requiring realisation'. But the primary intervention required for its elimination was not a complex exercise in programme planning but rather a relatively straightforward piece of legislation, followed by the development of enforcement capabilities.

Table 2 is intended to be illustrative rather than to present an exclusive or tight categorical classification. It is naturally acknowledged that rights now include needs. The purpose of this distinction is to illustrate, not to define. Clearly, development is most effectively achieved when planning tools and implementation of legislation are deployed together in support of common goals. The purpose of the table is to show that, in some cases, one mode of problem identification may be primary and that in some cases either national development planning or legislation may take the leading role in the alleviation of that problem.

The figure depicts economic development as a goal of national development, one that would largely be solved through traditional planning tools. While inequalities within a country may be radically diminished by legislation, the average income of a low-income country is not highly tractable to legislation, at least in the short term. However, a recent court ruling in South Africa has flagged the poverty-reducing social grants system as being inappropriately administered and is an excellent example of how courts are beginning to play an increasingly direct role in national development processes and objectives (York 2017).

Elimination of corporal punishment in schools was not identified as a goal in earlier economic or social development paradigms. Nor is it something that can primarily be resolved through traditional development planning processes, or by taxes or subsidies. The problem emerged mostly once people started looking at development through a rights-based lens. And it is likely to be resolved mostly through legislation and then enforcement.

Of course, these are not tight categories. It is rare in development that only a single arrow can impact on any given target. Causality is usually more complex. Minimum wage legislation or judicial decisions on entitlements may significantly influence poverty even while long-term solutions would generally rely on equitable economic development. Child labour may require both developmental and legislative

TABLE 2: Examples of problem identification and primary modality of resolution.

Problem identification	Implementation instrument	
	Legislation enforcement	National development plan
Problems seen 'through a human rights lens'	Corporal punishment in schools, incarceration of children with adults and child marriage	Child labour, child-friendly schools and right to work
Economic and social development problems	Iodine and iron deficiency diseases, ARVs and breast milk substitutes	Economic growth, social services and employment

solutions if the underlying cause is household poverty. Universal salt iodination may require use of planning techniques, even if the initial steps required to combat iodine deficiency disease are usually related to legislation on the import and sale of non-iodinated salt.

The human rights approach, with legislation, is not a panacea for all ills. If salt production is fragmented between a myriad small producers, then legislation may be unworkable. If parental brutality is widespread and integrated in culture, legislation on violence against children may be ineffective. And yet, the counter instances do exist, and in those situations, consideration of the human rights approach, and making use of legislation as an implementation mechanism, can be effective. In these instances, evaluators should be prepared to provide reports that could be considered as evidence in a court of law. At the very least, this requires that we understand the rules of what is admissible evidence in a judicial proceeding.

Conclusions

Social goals established and social changes achieved through the vehicle of national plans, and those achieved through the vehicle of legislative reform, have been following parallel tracks. Differences between rights in national constitutions and goals of national development plans include that constitutions (1) are more inclusive in their architecture, (2) generally are more durable documents, (3) are the product of a more elaborate internal process of consultation and (4) bring the legislature in as a player with specific responsibilities. The legislature may be required to help defend the constitution. It may also be required to help achieve its objectives by, for example, legislating on education or protecting the environment. Assessing the extent to which national legislatures are discharging these responsibilities is a whole new, and quite untouched, area for activity by evaluators!

The introduction of the human rights paradigm does not require the replacement of goal-based planning with something else. Rather it provides a complementary perspective, as social development earlier provided a complement to economic development. The human rights perspective reveals problems of which we were unaware. It also offers supplementary problem-solving tools, some of which can be applied to the 'old' problems. Evaluators participating in reporting to monitoring bodies must be ready to explore new territory, consider issues previously ignored and work with new definitions of evidence.

National reporting schedules on major human rights conventions are available on the Internet. Often, UN Women or UNICEF will be assisting the government in making a report on CEDAW or the CRC. To do that, they will be looking for consultants. Professional evaluators could offer to help. In the case of the CRC, national NGOs may be making their own reports. Instead of giving money

to your favourite NGO, perhaps professional evaluators could offer to contribute their skills and assist an NGO report on progress towards the goals of the CRC.

And here, with one last point, I rest my case. It has been mentioned that some interpretations of human history consider it to have been driven by conflicts over allocations of rights over material and human resources. Rights to property, commonly referred to as property rights, are often formulated in a manner that is relatively favourable to those who already have, or have more, property. This creates a certain amount of social tension. There are also tensions between 'property' rights and human rights.

Often, property rights appear to take precedence over human rights. The rights of financial institutions to repayment of debts often take precedence over the rights of children to be free from hunger. In extreme, but not uncommon circumstances, these 'debt' rights take precedence over children's right to life. Many highly indebted poor countries are subject to controversial 'conditionalities' that may require decreased expenditure on basic social services. Such conditionalities are predicated on the assumption that 'property' rights must take precedence over human rights. It could be argued that 'property' does not have rights. Only human beings have rights. But the substance of this argument is little affected by the reinterpretation of the situation as one in which the rights of human beings to property take precedence over the rights of human beings to survival, or alternatively that 'property-related rights' take precedence over 'survival-related rights'.

The focus of this article is more on monitoring and evaluation than on economic issues. The reader may however wish to consider for a moment what kind of place the world would be if rights of adults to financial resources (property rights) did not take precedence over rights of children to survival.

As evaluators, the human rights approach gives us a whole new agenda that includes developing new methodologies. As citizens, it instructs us to, in the words of the indomitable Bob Marley, 'Get up! Stand up! Stand up for Your Rights!'

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As the founder and first president of the African Evaluation Association and a former employee of UNICEF for 25 years, I remain strongly committed to defending the human rights of children.

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The author declares that he has no financial or personal relationships that may have inappropriately influenced him in writing this article.

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Appendix starts on the next page →

Appendix 1 : A comparison of goal-based and rights-based programming.

Development plans	Human rights instruments
Goals and objectives	
Goals are commonly encouraged to be SMART (simple, measurable, achievable, relevant and time-bound)	Ultimate goals can be aspirational, universal and need not be quantifiable (objectives may be SMART)
Focus on disparities and the poorest of the poor	Focus on universality of rights, marginalisation and exclusion processes
Monitoring and reporting	
Internal (primarily governmental) assessment of progress in target achievement, often in collaboration with donors	Independent international external bodies review governmental and civil society reports on rights realisation
Review of plan implementation, planning systems, capacities and resource allocations	Review of conformity of legislation and policies with conventions and implementation
Analysis of underlying causes and production processes (causal analysis)	Consider responsibilities and obligations to respect, protect and fulfil (facilitate and provide for) rights realisation
Funding often the focal constraint to implementation	Review of resource availability and duty bearer capacity and resource gaps in terms of human, institutional and financial resources
Participation and processes	
Participation may reduce non-compliance	Participation is a right and a responsibility
Poor governments can be bypassed and ignored	Good governance is an essential component of progress
Implementation, in partnership with counterpart government ministries such as health and education, may often be top-down	All duty bearers, including parents, local and national governments, civil society organisations and the judiciary, have roles and responsibilities