

# **HUMAN RIGHTS DEVELOPMENT: Legal and operational perspectives**

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**\*Presenter's personal views, not necessarily reflecting those of the institution for which she works.**

**Harvard SPH – Jindal Summer School**



# INTRODUCTION

# Purpose of this lecture

- Offer legal and policy perspectives to the interface of human rights and development - *what*
- Consider rationales for integrating human rights into development – *why*
- Explore the means, tools and metrics for such integration – *how*
- Share thoughts on future orientations – *where to next?*

# Proposition:



- **HR and dev are fundamentally compatible**
- **But persist along parallel tracks**
- **Claims of mutual reinforcement: overused**
  - ▣ ***As communities we do not even speak the same language:***

# The language of development

**“Outcome: The extent to which the operation’s major relevant objectives were achieved or are expected to be achieved efficiently. The rating has three dimensions: relevance of objectives, efficiency and efficacy. Efficacy: the extent to which the project achieved or is expected to achieve a return higher than the opportunity cost of capital and benefits at least cost compared to alternatives. The efficacy dimension is generally not applied to adjustment operations .**

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**ኃ**ጢ■**ጢ**□**ፍ**●●**ፍ** ■□◆ applied to adjustment  
 operations

# The language of human rights

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. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**(Article 2, UDHR)**

# The language of human rights (as heard by a traditional development practitioner)



Source: Victor Madrigal

# As such:

- **Alston's 2005 “ships in the night” metaphor still holds**
- **True engagement needs fundamental change from both sides**
  - **HR community has moved some**
  - **Dev. community has not as much**

# Differences in goals; outlook

## Development economics

- Assume rational, free actors
- Emphasize competition
- Focus on preferences
  
- Market will correct itself
- Economic Growth
- Maximize utility
- Value added

## Human rights

- Rights-holders and duty-bearers
- Emphasize fairness; justice; redress
- Focus: right or wrong
- HR violations are often rooted in political decisions not just resource scarcity
- Value change

# Differences in approach

## Development economics

- **Emphasize competition**
- **Market will correct itself**
- **Positive science**
- **Hypothesize about causalities, prove with statistics, design informed policies and regulations to maximize utility**
- **More or less efficient**
- **Trade-offs**
- **Strength: prioritization**

## Human rights

- **Emphasize rights / obligations**
- **Infuse market w/ fairness, equity**
- **Normative;**
- **Protect people from the excesses of state (or private) power (CPR)**
- **State should provide support for basic services**
- **Directly influence behavior w/ law**
- **Compliance or not**
- **Strength: ensure basics for life of dignity**

# **Rapprochement between HR and development**

Seymour and Pincus (2008)

- **Need for constructive dialogue between rights-based and economic approaches**
- **Each can address the shortcomings of the other**
- **Inherent complementarity: each needs the other**
  - ▣ **Both prioritize the individual**
  - ▣ **Economists should be concerned with negative consequences of growth: HR can help align the tools of economics with international law**
  - ▣ **HR perspectives should consider practical implications and business choices and difficult choices about resources or different rights claims: economics can help pursue HR realization more effectively**

# **Complex relationship between HR and dev.: 5 vectors:**

- ☐ **1. Law and policy divergence**
- ☐ **2. Elements of convergence**
- ☐ **3. Metrics and operational tools**
- ☐ **4. Challenges**
- ☐ **5. Opportunities**



# **1. LAW AND POLICY DIVERGENCE**



# What are HUMAN RIGHTS?

- **Set of indivisible and interdependent entitlements inherent to all human beings without discrimination**
- **Place focus on governments' obligations owed to individuals and groups within their jurisdiction or 'effective control'**
- **Guaranteed by *law* in the UN Charter, treaties, custom, general principles, domestic law**
- **Based on *principles* of equality/non discrimination accountability/rule-of-law, participation and empowerment**

# Sources of Human Rights Obligations

UN Charter

UN human rights treaties

Regional human  
rights treaties

Thematic  
human  
rights  
treaties  
(ILO,  
UNESCO)

Customary  
international law

General principles  
of international law

Domestic legal  
frameworks human  
rights protection  
(constitutions)

Customary or Informal  
law protection of  
human rights norms

# What is DEVELOPMENT?

- ❑ **Economic growth / GNP?**
- ❑ **Expanding markets / trade?**
- ❑ **Human development?**
- ❑ **Social development?**
- ❑ **Removal of unfreedoms?**
- ❑ **Increasing capabilities**
- ***Evolving***
- ***Now concerned with process and outcome***

# Source of development norms:

- ❑ **Development goals (MDGs, SDGs)**
- ❑ **Development frameworks (WB CDF; Twin Goals)**
- ❑ **Aid effectiveness agendas (PD, AAA, Busan OD)**
- ❑ **Declarations (Millennium Decl, RtD Decl)**
- ❑ **Bilateral and multilateral agency strategies and policies**
- **NOT TREATIES!**

# Governing frameworks: qualitative differences

A purple circle containing the letters 'HR' in white.

HR

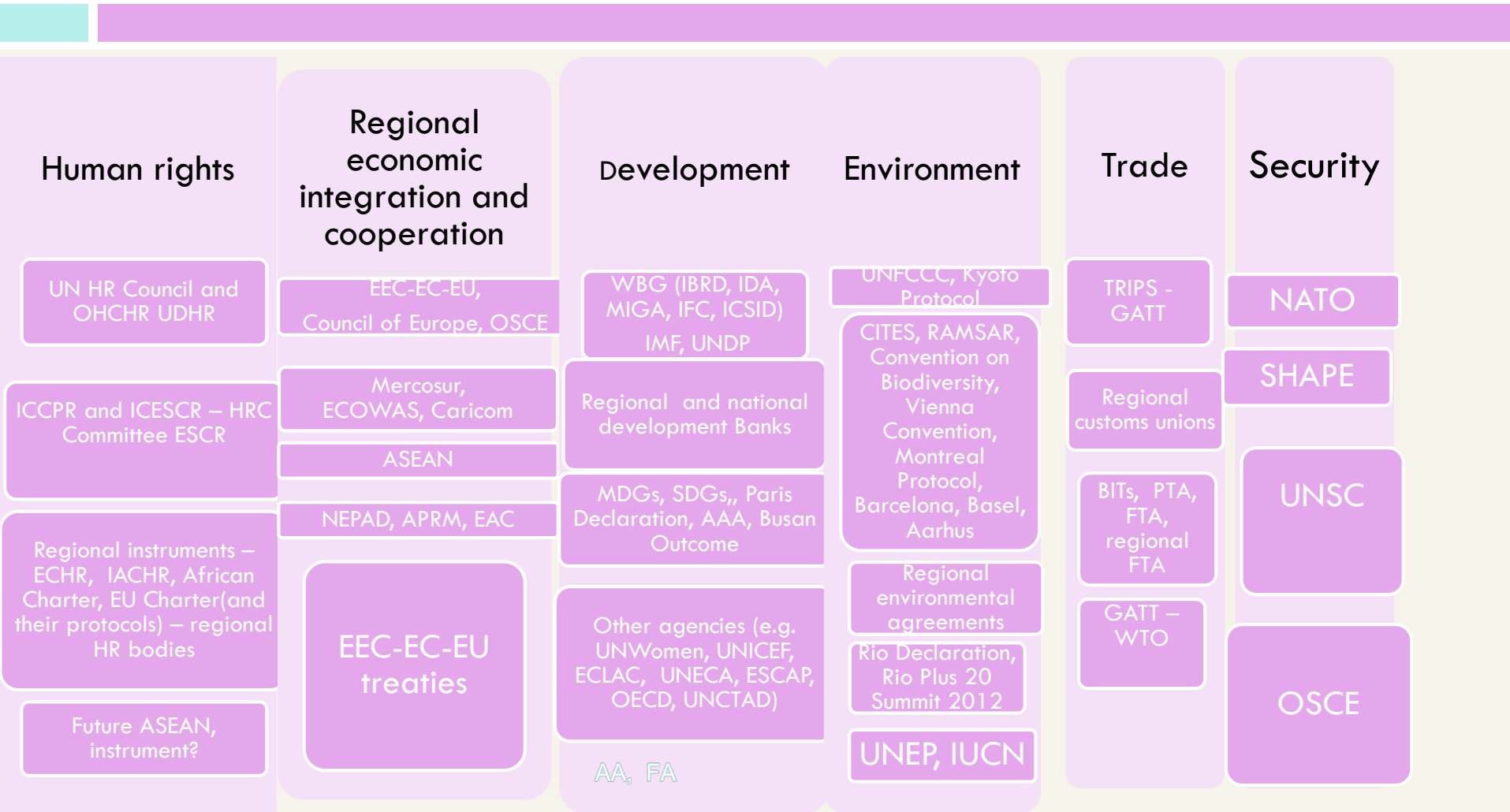
- \* Public international law and binding international treaties
- \*HARD LAW & LEGALLY BINDING
- \*Retrospective view
- \*Redress for harms
- \*Non-compliance
- \*individualistic
- \*Vertical application (states -citizens)

A purple circle containing the letters 'DEV' in white.

DEV

- \*Goals, frameworks, action agendas
- \*SOFT & NOT LEGALLY BINDING COMMITMENTS
- \*Prospective
- \*Programmatic, strategic
- \*incremental change
- \*Collective
- \*Horizontal (state-state)

# FRAGMENTATION OF INTERNATIONAL LAW





# **DIVERGENCE: EXAMPLE OF THE MDGS / SDGS**



# Millennium Development Goals (MDGs) (2000)





# Significance of the MDGs

- 1. Internationally agreed poverty reduction goals, targets**
- 2. Wide political consensus; maybe more aid**
- 3. Global compact and benchmarks**
- 4. Some influence on national development plans**
- 5. Improved statistics, monitoring, cross-country comparisons, evidence-based policy-making**
- 6. Harness the power of numbers, & simple ideas, to mobilise public opinion & political will**

# HR criticisms of MDGs

1. **Absence of human rights (esp CPR): no legal accountability, not obligations based**
2. **Technocratic, not focused on discrimination or social transformation**
3. **Focus on “average” progress: MDGs can be achieved at the expense of the poorest**
4. **Do not address growing inequalities within and between countries**
5. **Do not enshrine DNH**
6. **NOT LEGALLY BINDING**

# SDGs (2015)



# **HR-related requirements of SDGs; must**

- Based on Agenda 21**
- Fully respect all the Rio Principles**
- Be consistent with international law**
- Build upon commitments already made**
- Contribute to the full implementation of the outcomes of all major summits in the economic, social and environmental fields.**
- Include active involvement of all relevant stakeholders, as appropriate, in the process.**

# Critiques of the SDGs

- ❑ **Over-inclusive, long list**
- ❑ **Impossible to achieve**
- ❑ **Vague and aspirational**
- ❑ **Insufficient focus on absolute poverty**
- ❑ **Contradictory: growth  $>$   $<$  redistribution**
- ❑ **SDGs want to reduce inequality, while leaving the wealth and power of the global 1 percent intact.**
- ❑ **Does not challenge pathologies of accumulation and global inequalities**
- ❑ **Replicates neoliberal assumptions and premises**
- ❑ **NOT LEGALLY BINDING**
- ❑ **Toothless: no accountability (same as MDGs)**



# SDGs more “HR friendly” than MDGS BUT:

- ❑ Some references to HR in SDGs –Declaration / Vision
- ❑ No general reference to HR obligations
- ❑ No free-standing HR goal among 17 Goals
- ❑ No substantive inclusion of HR in the Goals themselves
- ❑ Some references to HR in Targets
  - Target 1.4 on women’s equal rights to economic resources;
  - Target 4.7 by 2030 ensure all learners acquire knowledge and skills needed to promote sustainable development, including among others through education for sustainable development and sustainable lifestyles, human rights;
  - Target 5 .6 ensure universal access to sexual and reproductive health and reproductive rights a;
  - Target 5.a undertake reforms to give women equal rights to economic resources;
  - Target 8.8 protect labour rights

# Some HR principles

## □ Participation

- **Process: better experience elaborating the SDGs (crowdsourcing, my World)**
- **Content: Goal 16 : access to justice**

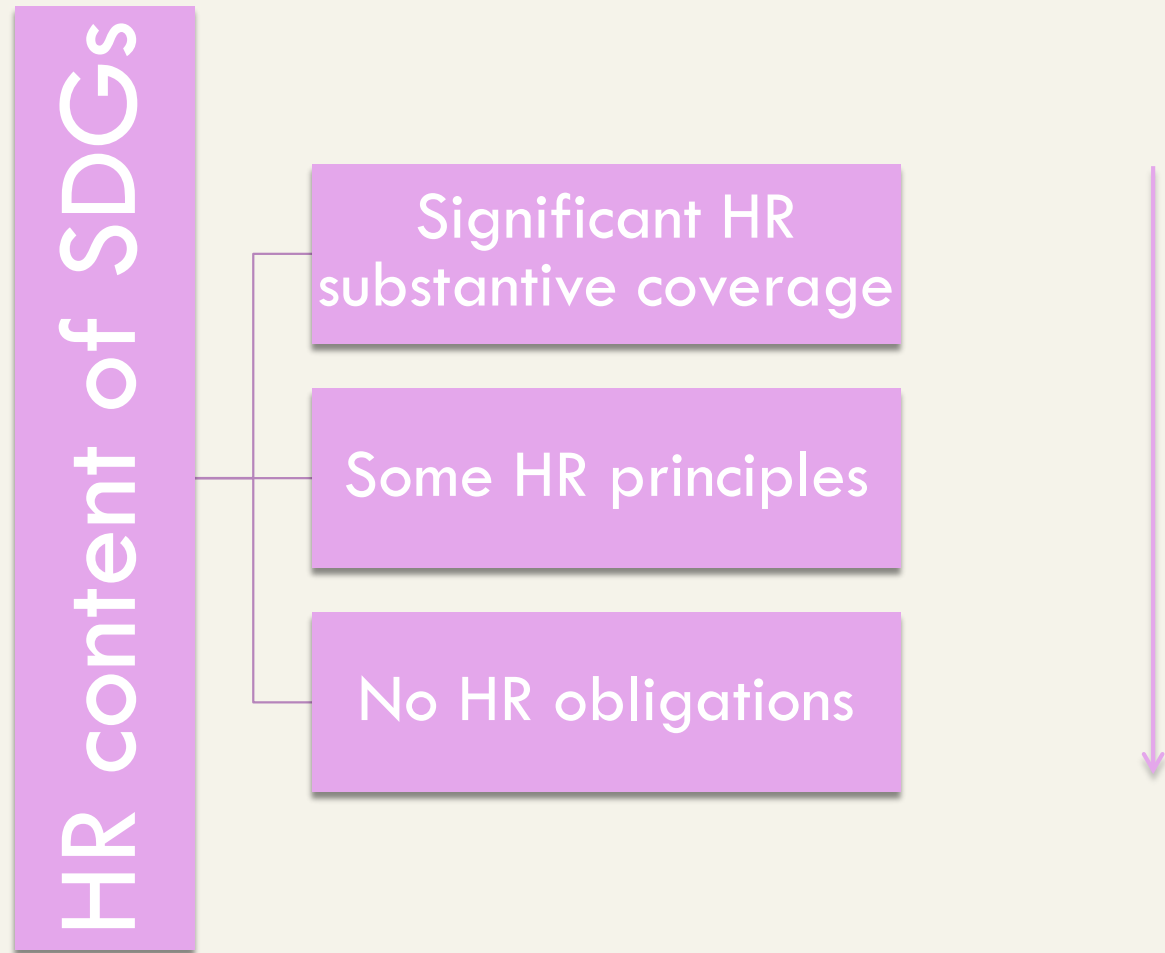
## □ Equality / inclusion

- **Goal 5 – inclusive and equitable education**
- **Goal 8 – inclusive ec. growth**
- **Goal 16 – inclusive institutions**
- **Goal 11 – make cities inclusive**
- **Goal 16 – peaceful and inclusive societies**

## □ Accountability

- **Goal 16-accountable institutions**

# CONCLUSION: HR content of SDGs





## **2. ELEMENTS OF CONVERGENCE**





**“Human rights and human development  
are overlapping and mutually  
reinforcing”**

**(UNDP, HDR 2000)**

# CONVERGENCE EXISTS, BUT...

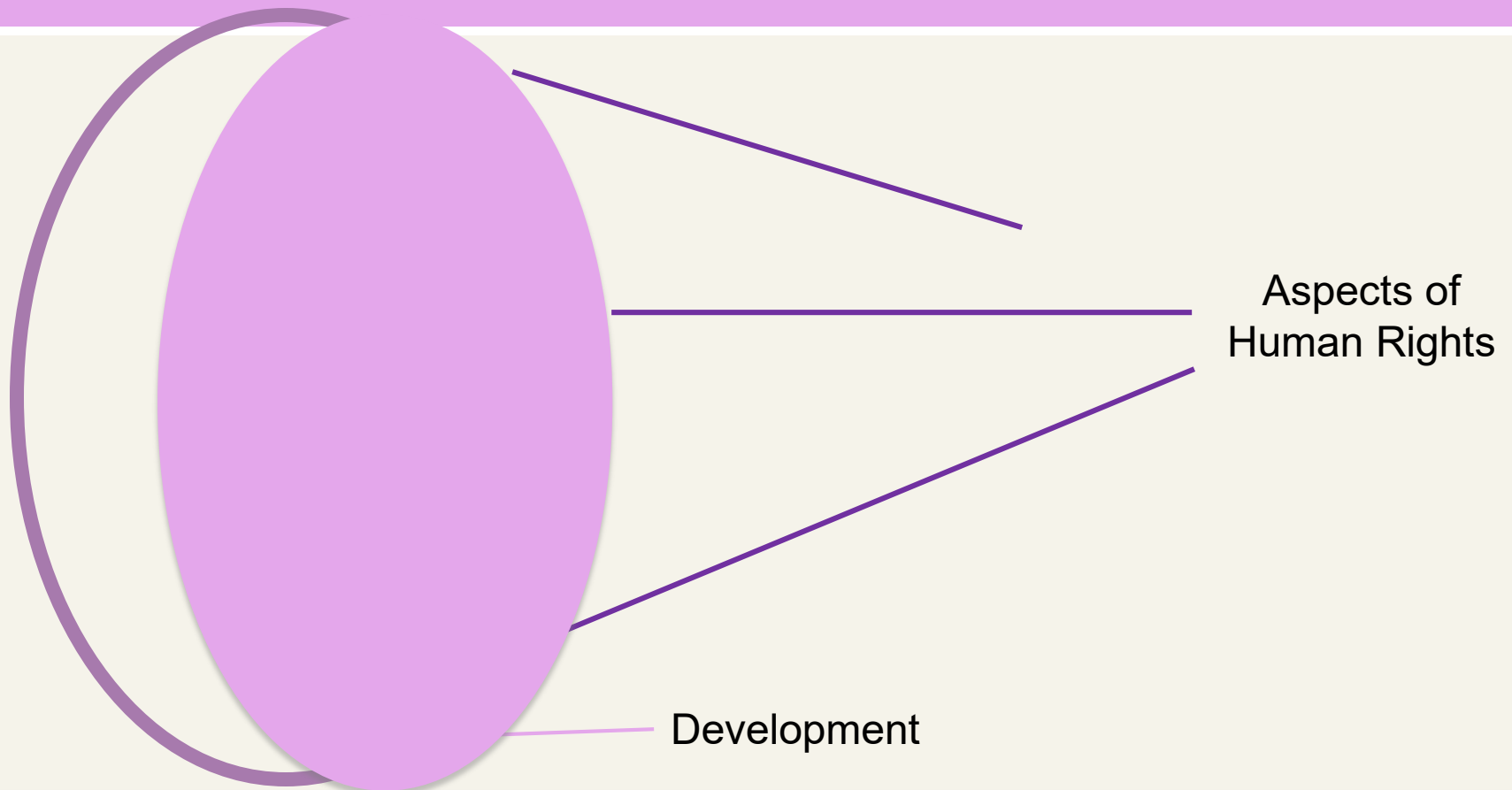


**DISTINGUISH:**

- **Substantive overlap**
- **Systematic efforts to integrate human rights into development policy**



# HR and Development substantive overlap: 80%



**Human Rights and Development**

# CONVERGENCE: SUBSTANTIVE OVERLAP

- **Substantive, subject matter coverage of development**
  - **focus on poverty**
  - **inclusion**
  - **social sectors: health, education, social protection**
  - **water, food, nutrition**
  - **institutional reform and governance**
  - **situations of conflict and state fragility**
  - **cultural heritage**
  - **Interventions targeting specific groups**
    - **Women**
    - **Children**
    - **Persons with disabilities**
    - **Indigenous Peoples**
    - **LGBTQI**

# SYSTEMATIC INTEGRATION

- ❑ **Deliberate policy integration of HR in development**
- ❑ **Different development actors and agencies have different operating modalities, mandates, organizing principles, internal rules, policies and procedures**
- ❑ **This results in**
  - **different emphasis in justifications and rationales for dev**
  - **different approaches (HRBA etc)**
  - **different operational applications**
- ❑ **Often a combination of the above**



**Different donor approaches to  
integrating human rights in  
development**

**HR as  
primary  
goal**

**HR as  
implicit  
outcome**

**Human Rights-  
based  
Approaches**  
Human rights  
consider  
constitutive of  
the goal of  
development,  
leading to a new  
approach to aid  
and requiring  
institutional  
change.

**Human Rights  
Mainstreaming**  
Efforts to ensure  
that human  
rights are  
integrated into  
sectors of  
existing aid  
interventions  
(e.g., water,  
education). This  
may include “do  
no harm”  
aspects.

**Human Rights  
Dialogue**  
Foreign policy and  
aid dialogues  
include human  
rights issues,  
sometimes linked  
to conditionality.  
Aid modalities and  
volumes may be  
affected in cases  
of significant  
human rights  
violations.

**Human Rights  
Projects**  
Projects or  
programmes directly  
targeted at the  
realization of specific  
rights (e.g. freedom  
of expression)  
specific groups (e.g.  
children) or in  
support of human  
rights organizations  
(e.g. in civil society).

**Implicit Human Rights  
Work**  
Agencies may not explicitly  
work on human rights issues  
and prefer to use other  
descriptors (“protection”  
“empowerment” or general  
“good governance” label).  
The goal, content and  
approach can be related to  
other explicit forms of  
human rights integration  
rather than “repackaging.”

# CONVERGENCE: SYSTEMATIC POLICY EFFORTS – A RANGE OF APPROACHES EXISTS TO INTEGRATING HR INTO DEVELOPMENT



# RATIONALES FOR INTEGRATING HR INTO DEV

- **1. Normative or intrinsic (moral / ethical basis)**
- **2. Instrumental (sustainability and ownership; better governance; economic growth; economic returns on ESCR investments)**
- **3. Legal rationales**

# 1. Normative or intrinsic rationales - “value change” – the right thing to do

HRBA (UNDG 2003 Common Understanding)

Explicit linkage to rights

Accountability

Participation

Equality and non-  
discrimination

Inclusion

Attention to the most  
vulnerable /  
discriminated groups

## 2. Instrumental rationales – “value added”

- **“Better” development outcomes**
- **More sustainable results**
- **Better risk mitigation**
- **Do no harm – less harm = less cost**
- **Legitimacy = good for business!**
- **Social license to operate**
- **Long-term financial returns**
- *But what is the empirical evidence for these instrumental arguments?*
- *Hathaway / Simmonds – does HR treaty ratification make any difference?*

# 3. Legal rationales

- International policy coherence
- Convergence around *obligations* – states are parties to many of the same treaties
  - UN HR treaty obligations
  - Regional HR treaty obligations
- *Structural considerations* underpinning international law
  - UN Charter obligations related to HR
  - Vienna Convention on the law of treaties: presumption against conflict
  - Avoidance of ‘fragmentation in international law’
  - ILC proposal for ‘systemic integration’
- Convergence around *principles* derived from human rights law
  - Accountability, Participation, Inclusion, Non-discrimination
  - Do no harm
  - Duty to cooperate

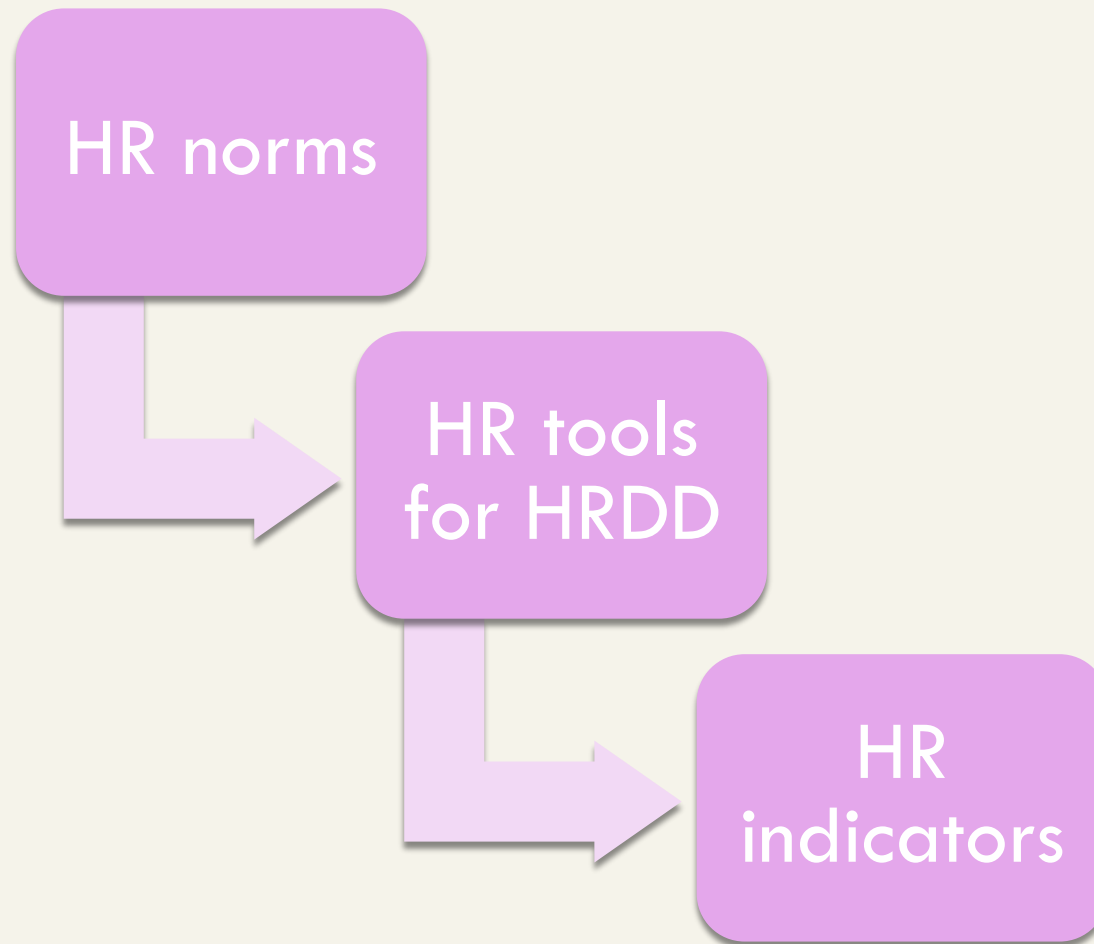


# **3. METRICS AND OPERATIONAL TOOLS**

# **Why are metrics important to the context of HR and development?**

- ❑ 1. Link HR obligations and development data**
- ❑ 2. Link normative and empirical**
- ❑ 3. Demonstrate feasibility of HR in policy**
- ❑ 4. Illustrate budget and policy implications of HR**
- Essential for monitoring the realization of human rights**
- Supports accountability of duty-bearers**

# Elements of HR metrics



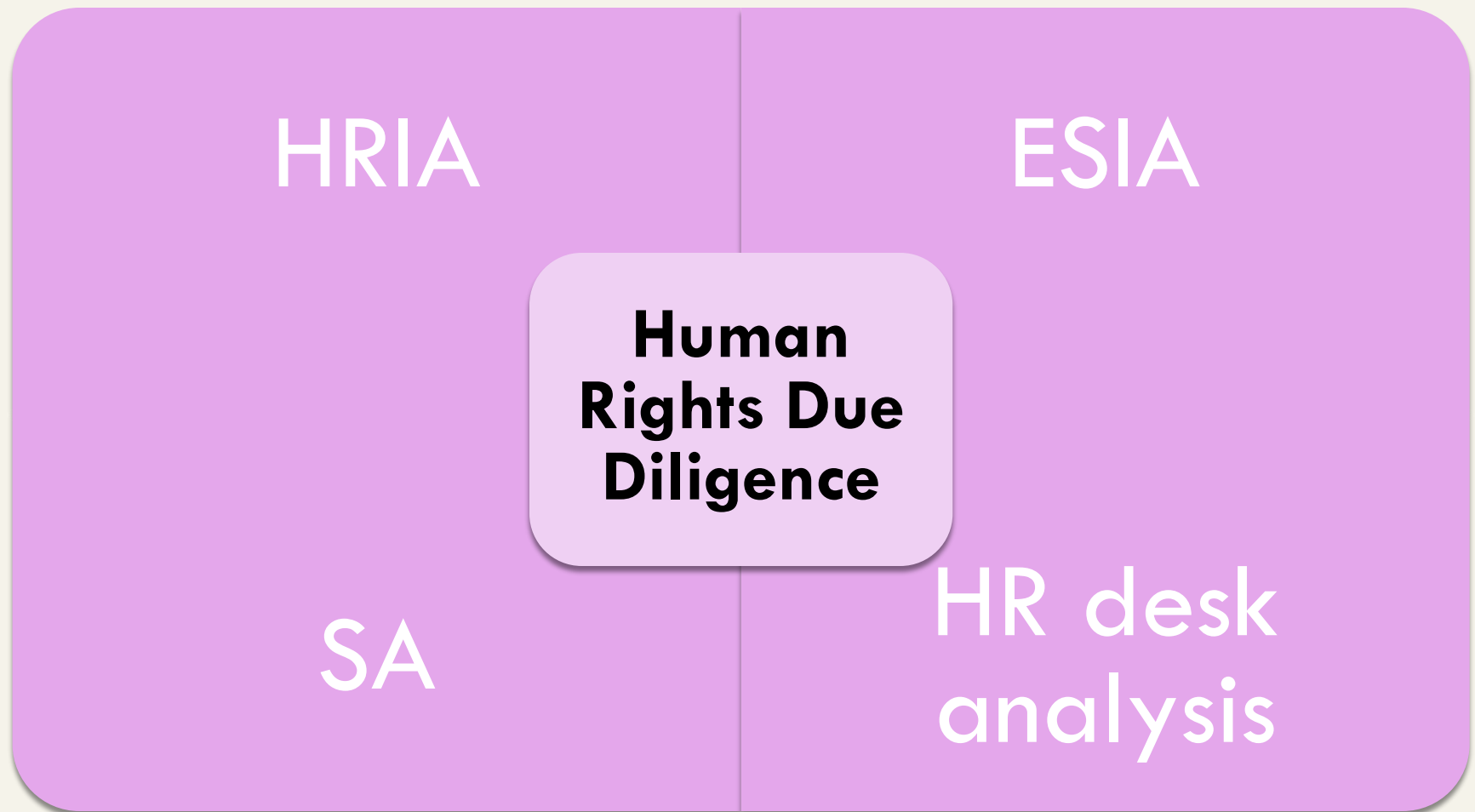
# HRDD asks



# What is HRDD?

- **An ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts**
- **Implements a principle of “do no harm”**

# HRDD: can be carried out using different tools depending on context



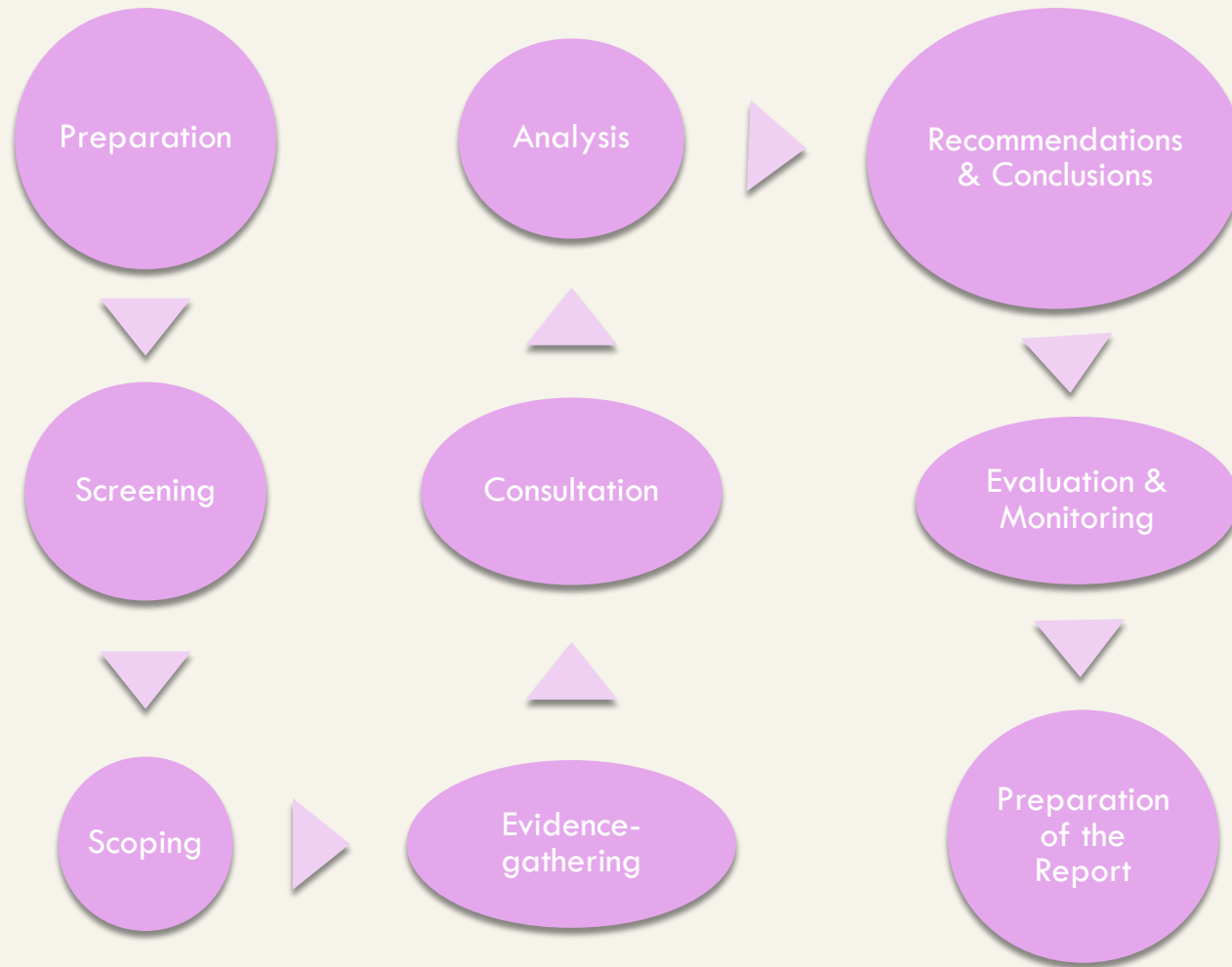
# Example: HRIA

- **Human Rights Impact Assessment (HRIA) is an instrument or process for examining policies, legislation, programs and projects to identify and measure their effects on human rights.**
- **HRIAs provide a reasoned, supported and comprehensive answer to the question of “how does the project, policy or intervention affect human rights?”**
- **NB: assumes legitimate use of HR as a baseline for assessment**

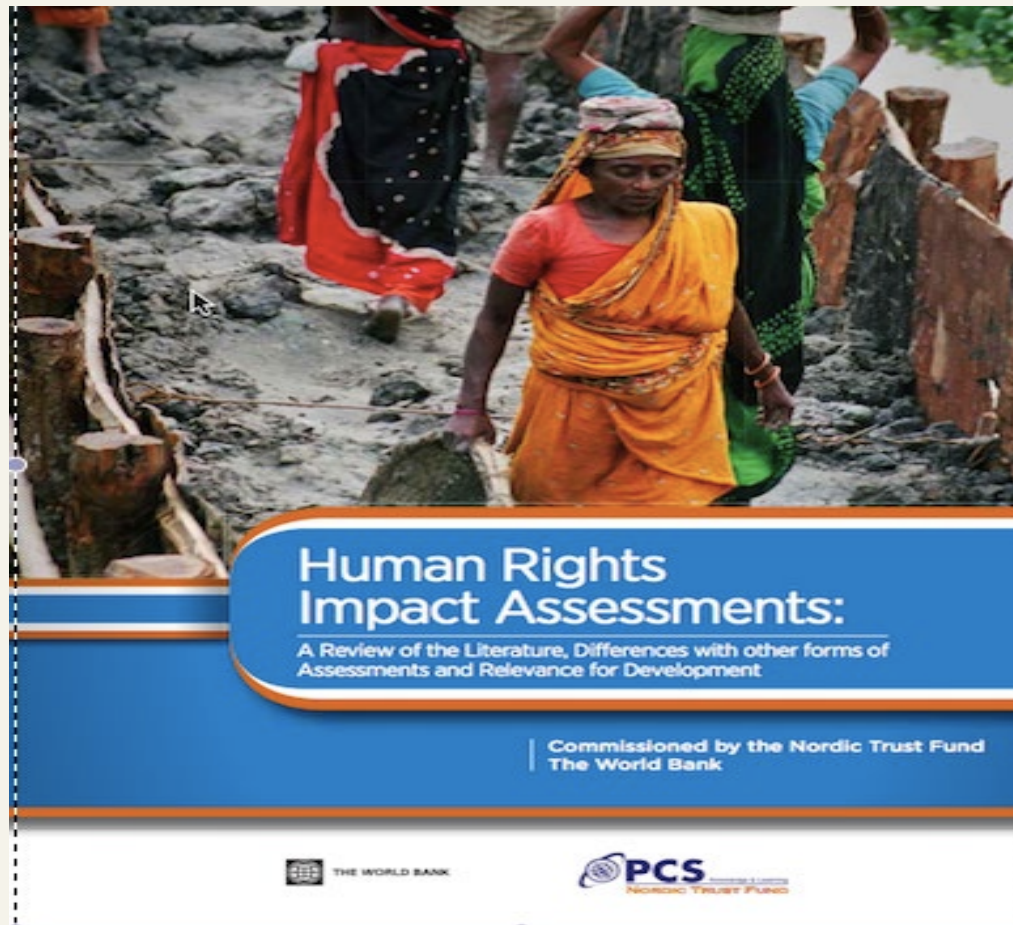
# Purpose and uses of HRIA

- **Help prevent negative effects and to maximize positive effects.**
- **Part of a growing effort by the human rights community to operationalize the relevance of human rights; advance an understanding of the ways in which public policies and development projects affect the enjoyment of people's rights**

# 9 Steps of HRIA



# HR assessment WB project 2013





# IFC Sustainability Framework

**POLICY AND PERFORMANCE STANDARDS ON  
ENVIRONMENTAL AND SOCIAL SUSTAINABILITY  
ACCESS TO INFORMATION POLICY**

Effective January 1, 2012



**IFC**

**International  
Finance Corporation**  
World Bank Group

# IFC 2012 Sustainability Policy and HR

- **IFC recognizes the responsibility of business to respect human rights, independently of the state duties to respect, protect, and fulfill human rights. This responsibility means to avoid infringing on the human rights of others and to address adverse human rights impacts business may cause or contribute to. Meeting this responsibility also means creating access to an effective grievance mechanism that can facilitate early indication of, and prompt remediation of various project-related grievances.**

# IFC and human rights due diligence (fn 12 of PS 1)

- **12. In limited high risk circumstances, it may be appropriate for the client to complement its environmental and social risks and impacts identification process with specific human rights due diligence as relevant to the particular business**

# IFC Guide to HRIA



The header features a dark grey background with a red and grey wavy line graphic. The IFC logo and other institutional logos are in the top right corner. The main title 'GUIDE TO HUMAN RIGHTS IMPACT ASSESSMENT AND MANAGEMENT' is centered in white text.

**IFC**  
International  
Finance  
Corporation  
World Bank Group

**GUIDE TO HUMAN RIGHTS IMPACT  
ASSESSMENT AND MANAGEMENT**

**ABOUT THE GUIDE**   GUIDE TO HRIAM   RESOURCES   COMMUNITY   SIGN IN

**WELCOME**

Video demo

ABOUT THE GUIDE TO  
HRIAM – IN BRIEF

ABOUT THE GUIDE TO  
HRIAM – IN DETAIL

WHAT ARE HUMAN  
RIGHTS?

*"I am pleased to join the International Business Leaders Forum, the International Finance Corporation, and the United Nations Global Compact in welcoming you to the revised Guide to Human Rights Impact Assessment and Management (HRIAM) online tool.*

*Having companies assess the actual and potential human rights impacts, through their own activities and through their business relationships, are a critical component of human rights due diligence, enabling companies to know and show that they are meeting their responsibility to respect human rights. I hope that companies will find this Guide useful in doing so"*

**John Ruggie**  
The former UN Secretary-General's Special Representative on Business & Human Rights

# World Bank 2016 ESF Vision Statement

**“In this regard, the World Bank’s activities support the realization of human rights expressed in the Universal Declaration of Human Rights. Through the projects it finances, and in a manner consistent with its Articles of Agreement, the World Bank seeks to avoid adverse impacts and will continue to support its member countries as they strive to progressively achieve their human rights commitments.”**





# **HUMAN RIGHTS INDICATORS**



# Defining human rights indicators

- **Criteria to assess human rights realization, both qualitatively and quantitatively**
  - **Assess validity from a human rights perspective**
  - **Measure compliance with human rights norms**
  - **Link data with human rights obligations**

# Examples of HRI

## Structural HRI:

capture acceptance, intent, commitment

- **Right to adequate housing** – ratification of the ICESCR
- **Right to education** - time frame and coverage of the plan of action to implement compulsory primary education free of charge for all
- **Right to work:** existence of a domestic bill of rights in the constitution or other forms of superior law protecting workers; adoption of labor laws

## Process HRI

State's efforts, through its implementation of policy measures and programmes of action (eg budget).

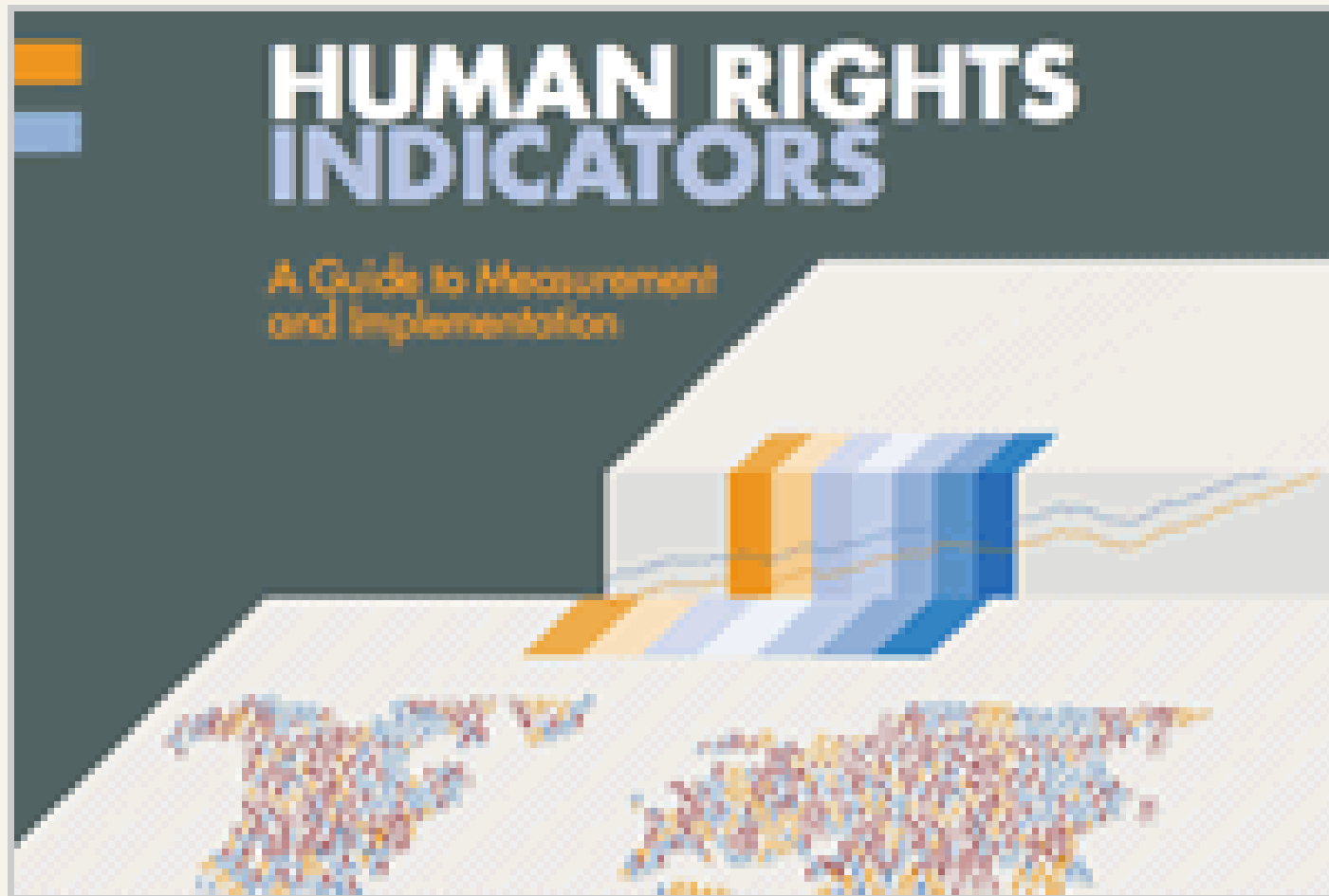
- **Right to social security:** percentage of targeted population groups under public programmes;
- **Right to fair trial:** human rights complaints received and the proportion redressed;
- **Right to health:** proportion of schoolchildren educated on health and nutrition issues

## Outcome HRI:

individual and collective attainments reflecting the enjoyment of a human rights

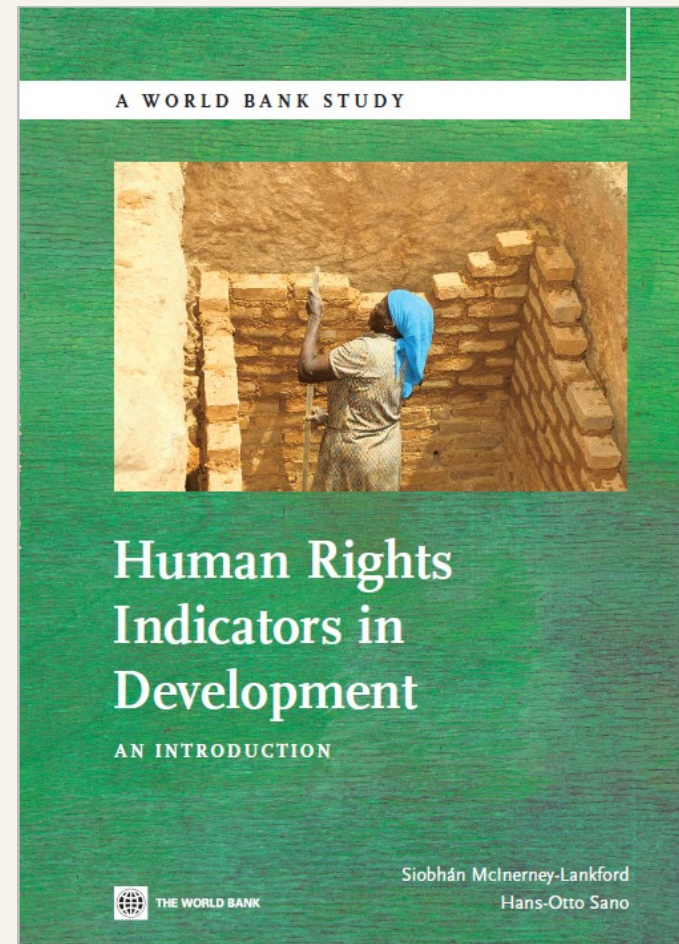
- **Right to food:** per capita availability of food grains
- **Right to liberty and security of person:** number of persons reported to be arbitrarily deprived of their liberty at the end of the reference period.
- **Right to social security:** proportion of labour force participating in social security scheme(s)

# OHCHR GUIDE TO HR INDICATORS (2012)



# World Bank Human Rights Indicators Project

- Begun as partnership with the DIHR in 2005-2010
- Explored different types of indicators / their uses
- Explored relevance of HR for development
- Typology of OHCHR indicators framework used, combined with 3 level conceptual understanding of interface of development & HR
- Not prescriptive, no assessment, ranking etc.
- Not applied, remained a general analysis
- Begin to explore the “how” – human rights methodology in development



# CONSTRAINTS for HRI AT 3 LEVELS

## STRUCTURAL LEVEL

- \*Uneven ratification of HR treaties
- \*Issues with treaty monitoring
- \*Coherence within HRL
- \*Separate frameworks

## PROCESS, POLICY AND OPERATIONAL LEVEL

- \*Legal, political, institutional constraints
- \*Politicization –ranking
- \* Subjectivity (despite claims of objectivity)
  - \*Entry points in instruments, analysis
  - \*Causality

## PRACTICAL, OUTCOME LEVEL

- \*HR Data demand
- \*Dearth of data
- \*Limited stat capacity
- \*Coop. national HR and Statistical agencies

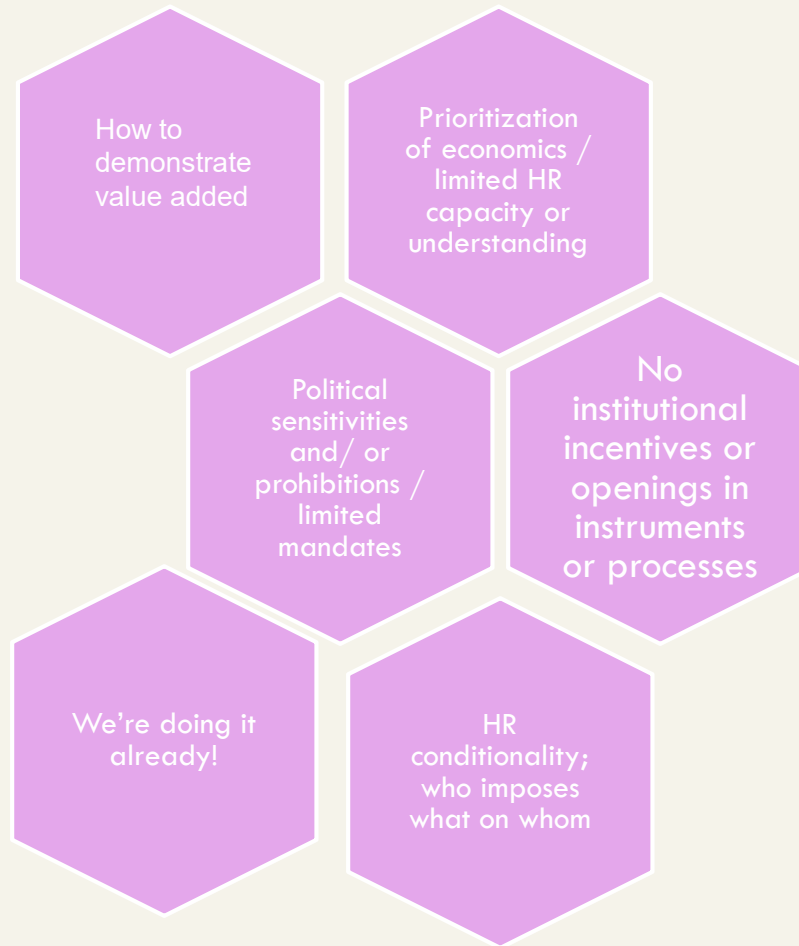


# 4. CHALLENGES

# General challenges

- ❑ **Legal and regulatory disconnects persist**
- ❑ **Lack of international policy coherence (despite same MS)**
- ❑ **Resistance to accountability**
- ❑ **Weakness of operational tools and guidance**
- ❑ **Lack of empirical evidence / tools on HR side**
- ❑ **Lack of clarity around rationales; “why?”**
- ❑ **Power dynamics within and between countries**
- ❑ **Sovereignty, independence, colonialism, global power imbalances**
- ❑ **Law vs. economics discourse**

# Reasons why HR integration is sometimes resisted by development actors





# 5. OPPORTUNITIES

# CHALLENGES YIELD OPPORTUNITIES FOR HR LAWYERS

- ❑ **Forge a better narrative;**
- ❑ **Go beyond “convergence”; “we’re doing it already”**
- ❑ **Articulate rationales (“why?”)**
  - **IT’S THE LAW!**
- ❑ **Explain “what is the value added?”**
  - **ACCOUNTABILITY**
  - **INTERNATIONAL POLICY COHERENCE**
- ❑ **Exploit the existence of common legal frameworks and existing obligations**
- ❑ **Development is not a “HR free zone”**



# **Thank you**

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