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# Applying Rights Based Approach (RBA) to Development within the EU Development Cooperation

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Fostering Human Rights among European Policies

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# **Applying Rights Based Approach (RBA) to Development within the EU Development Cooperation - Reality or Rhetoric? A Case study of Nepal**

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# Applying Rights Based Approach (RBA) to Development within the EU Development Cooperation - Reality or Rhetoric? A Case study of Nepal

Shiva Datta Bhandari\*

**Abstract:** *Ensuring full respect of human rights is one of the key features of the EU development cooperation. It is expressed either as a targeted human rights programme/project or as a cross cutting aspect of the development cooperation. In 2012 the EU adopted Rights-Based Approach to Development (RBAD) that all institutions including the EU Delegations are obliged to apply in each process of the development cooperation. As there has not been any review done by the EU, this paper assesses the EU policies, approaches and institutional readiness for the RBAD application from two aspects. First, the political rationale of the RBAD in development cooperation and their reflection in binding EU documents; and second, application of those binding provisions and the underlying challenges in terms of their full application. More specifically, the paper focuses on the RBAD as a new approach to the EU Development Cooperation and the situation or the potentiality of their application within the EU Delegations. The EU Toolbox developed in April 2014 (Commission staff working document, which aims at integrating human rights principles into EU operational activities for development) is referred to in detail to assess the full application of the RBAD in EU development cooperation. The political preference of this fairly new approach of the EU development policy expects a synchronisation of the human rights principles and norms in all development cooperation activities both at the HQs and in the field. However, this paper concludes that the application of the RBAD is not yet the case in each process of the EU development cooperation, which is largely due to the intra-institutional and external challenges. This paper briefly presents the major challenges identified and the potential measures required for full application of the RBAD principles within EU development cooperation.*

## 1. Introduction

Human rights and democracy are the founding principles of EU development cooperation. In principle they are supposed to be reflected in the cooperation agreements that the EU signs with partner countries.<sup>1</sup> After entering into force of the Lisbon treaty EU cooperation has put more emphasis on human rights. Now the issues of human rights are in the centre of development cooperation. Various tools and action plans are developed for the full application of promoting democracy and human rights globally. The EU has developed various means and mechanisms to foster the founding principles. This paper will focus only on one of them: the Rights-Based Approach (RBA) as the operational tool

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1 Human rights and democracy has been included in all cooperation agreements including the first Lome Agreements to the bilateral cooperation agreements that the EU has signed in 1990s. See further: the Lome Peace Agreements and Bilateral cooperation Agreement signed between the EU and Nepal in 1996 available at: [www.eeas.europa.eu/delegations/nepal](http://www.eeas.europa.eu/delegations/nepal) accessed 15 December 2015.

of the EU development cooperation.

Since its insertion into the Strategic Framework and Action Plan,<sup>2</sup> the RBAD has become a new and obligatory approach to be adopted in the EU development cooperation. In April 2014, the Commission developed a Toolbox to operationalise RBA's application.<sup>3</sup> Now, all the EU institutions are obliged to apply the RBAD in each programming step (identification, implementation, monitoring and evaluation) of development cooperation. This approach is coherent with the UN Human Rights-Based Approach (HRBA) that conceives of human rights as the ultimate goal and a guiding process in all phases of the programming cycle.<sup>4</sup> However, as claimed in the toolbox, the RBAD is a much broader concept that includes additional other rights e.g. intellectual property rights, sexual and reproductive, health rights etc.<sup>5</sup> It is based on the principles of the right Rights, participation, non-discrimination, accountability and transparency.<sup>6</sup>

Despite the obligatory provisions of the EU development cooperation to apply the RBA, the actual application is full of challenges. Taking into account the strategies and actual situation of the RBAD application within the EU, this paper will analyse the underlying challenges. The strategic and principled approach of the EU development cooperation including the RBAD will be analysed based on the publicly accessible EU official documents and secondary sources. In order to verify further the general challenges of the RBAD application this contribution focuses on Nepal as a case study. The case study is based on the analysis of various programmatic documents and interviews held with the EU Delegation staff, a beneficiary representing the civil society organisation and a government official managing the EU funded programme. The paper will conclude with recommendations for full application of the RBAD at the Delegation level.

## 2. Rights-Based Approach to Development: the concept and general features

The RBAD is related to both the process and outcome of international cooperation. Not only do the international human rights standards define benchmarks for the desirable outcomes (the minimum acceptable level of an outcome), but they also inform the processes designed to achieve the outcomes.<sup>7</sup> The 2003 UN Development Group meeting developed the RBAD as a common understanding amongst the UN Agencies. It evokes

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2 Council of the EU, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' 11855/12 (Luxembourg, 25 June 2012). Available at: <[https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)> accessed 15 December 2015.

3 European Commission, 'Commission Staff Working Document: Tool-Box', European Commission, SWD (2014) 152, Brussels, 30 April 2014.

4 UN Statement of 'Common Understanding on Human Rights Based Approach to development Cooperation and Programming' adopted by the UNGA, 7 May 2003, available at: <<http://hrbaportal.org>> accessed 15 December 2015.

5 supra note 3, 7.

6 Donor approaches to integrating human rights into development includes: human rights-based approach, human rights mainstreaming, human rights dialogues, human rights projects, and implicit human rights work, 'Integrating Human Rights into Development. Donor Approach, Experiences and Challenges' World Bank and Organisation for Economic Cooperation and Development, Second Edition, 2013, 24.

7 Paul G. and Jonathan E. (eds), *Reinventing Development? Translating Right-based Approaches from Theory into Practice* (Zed books Ltd., London, 2005) 10

the principles of human rights as universal, inalienable, indivisible, interdependence and interrelatedness, equality and non-discrimination, participation and inclusion, accountability and the rule of law.<sup>8</sup> The statement issued by the UN Development Group further refers to the three components of the HRBA: i.) development cooperation furthers the realisation of human rights as per the Universal Declaration of Human Rights and other international human rights instruments; ii.) human rights principles guide all development cooperation and programming in all sectors and in all phases of the programming process; and iii.) development cooperation contributes to developing the capacities of duty bearers to meet their obligation and rights holders to claim their rights.

Gready and Ensor featured RBAD as the means of addressing the root and structural causes of poverty and conflict. Poverty is understood as a symptom of deep-rooted inequalities and unequal power relationships; in short, as a state of powerlessness and rightlessness. Furthermore, human rights abuses are conceived as symptom and structural causes for conflicts.<sup>9</sup> The ultimate aim of the RBAD is a systemic change, independent of external support that achieves lasting gains in ensuring human rights and poverty reduction.<sup>10</sup>

RBAD is criticised for its overarching attempt to address concerns that range from moral and political ambition to operational skills and capacity. It requires complementarity and coordination. It has to deal with a number of challenges including the complementarity between human rights and other agendas, and the capacity of NGOs and IGOs to operationalise the RBAD. Politicisation of NGOs' work is yet another problematic aspect of the RBAD as is offering the false hopes. The success of human rights in abstract terms is dependent on their capacity to provide legitimacy and accountability. Criticisms include the assertion that the RBAD creates a new identity, adds new value, without altering the essence of what the aid agencies do. This means that the RBAD appears linked to the need to reinvent a new identity periodically in an increasingly competitive and sceptical world. At the same time, the changes that the RBAD supposedly brings can be considered as purely rhetorical.<sup>11</sup>

Podstawa, for instance, points to the fact that in principle, the common understanding has introduced a forward-looking perspective for the realisation of human rights through development cooperation. However, the lack of accountability of the development agencies and their agents is considered as a serious shortcoming of the HRBAD. The political nature of the development agencies and their operational incapacity to implement the HRBAD approach are referred to as the reasons for the lack of accountability.<sup>12</sup> In fact, a bilateral development agency's primary accountability is to citizens/tax payers in its own country through the treasury. Accountability to the recipient state's government is of a loose diplomatic nature rather than a legal one. Direct accountability to the ultimate

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8 Stamford Meeting, *The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Amongst UN Agencies, 2003*, available at: <<http://hrbaportal.org>> accessed 16 December 2015.

9 Paul G. and Jonathan E. (eds), *supra* note 7,25.

10 *ibid*27.

11 *ibid* 30.

12 Podstawa K., 'EU Reflection of the Human Rights and Development Nexus – imitating or innovating the international methodology?' in *Development and Human Rights*, 163.

beneficiaries is non-existent.<sup>13</sup>

The RBAD should be considered as complementary to other tools employed for human rights purposes. Though all the ‘political dialogue’, ‘political conditionality’, and ‘RBA’ are used for integrating/promoting human rights, the RBAD is a different instrument in terms of its application in each stage of the operations. Political dialogue and conditionality is invoked when the conditions are breached or unfulfilled and they are used as leverage to encourage compliance with the principles of democracy and human rights. RBAD is invoked in each stage of the programming cycle towards fulfilling human rights obligations.<sup>14</sup> In addition, it focuses on preventing further occurrence of human rights violations. Hence the RBAD is considered as treating the root causes of governance problems, and not merely the symptoms.<sup>15</sup> While the political conditionality and dialogues reiterate largely the state obligations and roles, RBAD redefines the role of both the rights and duties holders.<sup>16</sup> Political conditionality primarily focuses on civil and political rights, whereas the RBAD principle is ‘applying all rights (based on legality, universality and indivisibility)’.<sup>17</sup> These terms are also complementary to each other. Depending on the human rights situation of a particular country, RBAD could follow the political dialogue or the political dialogue/conditionality may apply if RBAD application is not possible.

## 2.1 History of the development of Rights-Based Approach to Development

The RBAD emerged after the 1993 Vienna Conference, which had endorsed the Right to Development. Earlier it had not been taken into account despite the provisions of the UN Charter that included international cooperation for solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all.<sup>18</sup>

Until 1980 the development approach was purely guided by economic perspectives and based on need. As a result, development support was referred to as charity or benevolence and as such it has been criticised for being patronising towards aid recipients and reflected a lack of their participation in the process. Consequently, it resulted in development cooperation being inefficient.<sup>19</sup> However, Kofi Annan formally institutionalised first steps towards the Human Rights-Based Approach to Development (HRBAD) in 1997. This principle was a part of the background of the 2000 Millennium Development Goals.<sup>20</sup> On these foundations the Stanford meeting in 2003 developed Common understanding that provided the foundations for what was to become the HRBAD.

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13 Cornwall A. and Nyamu-Musembi C., ‘Putting the Right Based Approach to Development into Perspective’ in *the Third World Quarterly* [2004] 25, 1415. Accessible at: <<http://www.jstor.org/stable/3993794>> accessed 16 December 2015.

14 supra note 3, 20.

15 ibid 6.

16 ibid 4, 5.

17 ibid 16.

18 Art. 1.3, Charter of the United Nations, San Francisco, 1945.

19 Podstawa K., supra note 12, 165.

20 UN Millennium Development Goals at: <<http://www.un.org/millenniumgoals>> accessed 16 December 2015.

The established human rights-development nexus is described as an arrangement in which development serves to attain the human rights objectives and human rights principles assist in reaching development goals. However, the UN Millennium Development Goals (MDGs) set in 2001 have not clearly reflected the RBA. In 2010 the review of the MDGs introduced for the first time the rights related accountability principles for the development outcome and the development process.<sup>21</sup>

### **3. Adoption of the RBAD to EU Development Cooperation: the source of EU institutional obligations**

In the meantime, the EU outsourced the enforcement of methodology to the third parties failing at the same time to develop sufficient scrutiny mechanisms and thus to respond to the call for accountability for its own actions.<sup>22</sup> Upon the entry into force of the Treaty of Lisbon, the general legal framework of EU external relations changed. The EU external human rights policy remained, however, as it had been even without mentioning the RBAD and the HRBAD that can be traced in the EU approach to pursuing the development policy goals.<sup>23</sup>

In fact, all the above-mentioned conclusions were true before the EU made explicit reference to the RBAD in 2011 through a Joint Communication.<sup>24</sup> Since then the EU has an explicit strategic provision on the RBAD as a working methodology stating '(...) human rights based approach should ensure that human rights and democracy are reflected across the entire development cooperation process, and ensure continuity between political and policy dialogue on human rights issue and development cooperation'.<sup>25</sup> Unlike the UN, the EU institutions decided to omit word 'human' in their Rights Based Approach (RBA), even though the meaning remained the same.<sup>26</sup> This paper will, therefore, use the same term, so as to maintain consistency.

Earlier, the development practices document within the EU demonstrated that the RBAD is not explicitly applied towards development. On this basis it is stated that the EU had largely neglected the appearance of RBAD to development.<sup>27</sup> EU communications and policy documents included some components of the RBAD with the references made

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21 Podstawa K., *supra* note 12, 173.

22 *ibid* 163.

23 *ibid* 187.

24 The Joint Communication to the European Parliament and the Council by the European Commission and High Representative of the EU for foreign Affairs and Security policy "Human Rights and Democracy at the Heart of EU external action – towards a more effective approach." COM (2011), 886, Brussels, 12 December 2011.

25 *ibid* 11.

26 The term –HRBAD is not used within the EU, it is rather referred to as the Rights-Based Approach to Development (RBAD). It is justified in explaining that "the disappearance of 'H' should not be understood as a downgrade in terms of human rights and a weakening of the EU commitment towards upholding them. On the contrary, the reference to the RBAD goes beyond the formally recognised human rights to include other types of rights such as intellectual property rights, basic economic and social delivery rights, as well as sexual and reproductive health rights. An RBAD therefore is an approach covering a broader category of rights than those covered by an HRBA." Council of the European Union, Commission Working Document Toolbox, A RightsBased Approach, encompassing all human rights for EU Development Cooperation, European Commission, Brussels, 2014, 7.

27 Podstawa K., *supra* note 12, 183.

to accountability, participation etc. The Treaty of Lisbon, European Charter of Human Rights, and enabling of the EU to accede to the European Convention of Human Rights through the introduction of Art. 6 TEU enhanced the importance of human rights in the EU. Art. 3 (5) of the TEU referred to 'promoting and upholding [EU's] values in relation to the wider world'. Art. 21 of the TEU has also provided the value framework for the EU external actions. However, the lack of explicit reference is no more an issue with the adoption of the RBAD as a working tool for development cooperation.

Since 1995 the EU has introduced human rights clauses in political framework agreements with third countries, which was reaffirmed in 2010. The clause provides the basis for cooperation on human rights and promotion of human rights in relation to all areas covered by these agreements. The clauses also form the legal basis for measures taken in response to the violation of human rights.<sup>28</sup> Since then the council conclusions on Increasing the impact of EU development policy: an Agenda for Change (14 May 2012) calls for the 'Right-Based Approach, promoting in particular the right to universal and non-discriminatory access to basic services, participation in democratic political processes, transparency and accountability, justice and the rule of law and with a focus on poor and vulnerable groups'.

Council conclusions adopted further the EU strategic framework and Action plan on Human Rights and Democracy (25 June 2012). The framework has incorporated human rights in all EU external policies stating – *'Develop a toolbox for working towards a right based approach to development cooperation, with the aim of integrating human rights principles into EU operational activities for development covering arrangements both at HQ and in the field for the synchronisation of human rights and development cooperation activities.'*<sup>29</sup> This way, the RBAD has become a new and obligatory approach of the EU development cooperation. The strategic framework requires the EU to prevent violations of human rights throughout the world and, where violations occur, to ensure that victims have access to justice and redress and that those responsible are held to account. From this perspective the EU is expected to make efforts to promote human rights, democracy and the rule of law across all aspects of external action.

Following the EU move towards the RBAD based on the adoption of the Agenda for Change and the strategic framework and plan of action in 2012, the European Commission together with the European External Action Services (EEAS) developed a RBAD toolbox in 2014.<sup>30</sup> The toolbox describes the meaning of the RBAD and methods for its application. It also provides a checklist for ensuring its application in each programmatic process. From the perspective of its application the concept of human rights-based approaches (RBA) has contained five legal principles that requires - expressed application of the international human rights framework; empowerment of rights holders; participation in one's own development (as of right and not just as best practice); non-discrimination and prioritisation of vulnerable groups; as well as accountability of duty-bearers

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28 EU Joint Communication, 2011, supra note 13, 11.

29 Council of the EU, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' 11855/12 (Luxembourg, 25 June 2012). Available at: <[https://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)> accessed 15 December 2015.

30 Commission Staff Working Document, supra note 3, 3.

to rights-holders (for process and impact).<sup>31</sup>

The adoption of the toolbox in April 2014<sup>32</sup> and the Council conclusions 2015 have made the RBAD application obligatory to all EU institutions in each programmatic step (identification, implementation, monitoring and evaluation) of the development cooperation. This approach is coherent with the UN Human Rights-Based Approach (HRBA) that consists of international human rights standards as the ultimate goal and human rights principles as the guiding processes in all phases of the programmatic cycle.<sup>33</sup> However, the EU claims RBAD as a much broader term since it includes other rights, such as intellectual property rights, sexual and reproductive health rights, etc.<sup>34</sup> It is based on the principles of the right to participation, non-discrimination, accountability and transparency. While in the past the EU has been adopting the other approaches of human rights,<sup>35</sup> the RBAD is the new approach to apply in development cooperation.

In order to give further emphasis to the RBA, the Council of the EU (19 May 2014) has welcomed the presentation of the Commission toolbox on RBA.<sup>36</sup> It underlines that the RBAD to development cooperation can contribute to the realisation of human rights, which is the prerequisite for sustainable development. The council also noted that the application of the principles of RBAD should be central to EU development cooperation. The council has stressed on the coherent political and policy dialogue with all relevant stakeholders at the country level for the implementation of the RBAD to development cooperation. In this respect, the council has emphasised on supporting the efforts of partner countries for strengthening their capacity to fulfil their human rights obligations. At the same time, the council stresses the need to continue supporting civil society with regards to their contribution to empowerment of right holders, awareness raising and fostering accountability and transparency. The Council was also expected to look at assessing in 2016 the integration of RBAD in development cooperation and implementation of the RBAD toolbox.

A new action plan on human rights and democracy developed in early 2015 included RBAD to development as the means to fostering better coherence and consistency, including to;

- a. 'Implement the EU commitment to move towards RBAD by pursuing its full concrete integration into all EU development activities, using training, capacity support and monitoring with a view to achieving a full integration within the mid-term review; EU MS to adopt and implement a RBAD to development cooperation;

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31 International human rights network, available at: <<http://www.ihrnetwork.org>> accessed 17 December 2015.

32 Commission Staff Working Document, supra note 3.

33 UN Statement, supra note 4.

34 supra note 2, 7.

35 Donor Approaches for Integrating HR into Development includes: HRBA, HR mainstreaming, HR dialogues, HR projects, and implicit human rights work. *Integrating Human Rights into Development - Donor Approach, Experiences and Challenges* World Bank and Organisation for Economic Cooperation and Development, Second Edition, 2013, 24.

36 Council of the European Union, Council Conclusions on a right-based approach to development cooperation, encompassing all human rights, Brussels, 2014 available at: <[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/foraff/142682.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/142682.pdf)> accessed 17 December 2015.

- b. Assess the implementation of the Annex 12 of the 2012 EU budget support policy that set up a 'fundamental value assessment' as an essential element for budget support (bilateral cooperation with third countries) and in particular in this context the full integration of RBAD into sector reform contract; and
- c. Explore the possibility to further implement a RBAD into non-development related external activities, analyse the consequences of the right to development and assess the results of the post-2015 development agenda.<sup>37</sup>

#### **4. General challenges for the RBAD application to Development Cooperation within the EU**

As indicated earlier, the application of RBAD within EU external relations is more than simply a political preference but also an institutional obligation. With reference to the above-mentioned documents, the EU is now required to look into the possibilities of realising applying RBAD in development cooperation with respect to the underlying challenges for the effective practice of RBA.

In 2008 a review concluded that the EU development policies do not systematically meet the first requirement of RBAD that development be framed in human rights terms, with explicit, accurate and consistent use of human rights language.<sup>38</sup> The review further concludes that the second principle of empowerment, and the third principle of participation, both fail to be ensured in the development aid process as a right, despite the requirement articulated in the policy documents.<sup>39</sup> While language such as 'consultation', 'ownership' that are used to denote empowerment, they are applied as cost-effective benefits but not as a right. Similarly, participation is used from an aid effectiveness perspective. There is no application of the "active, free and meaningful" participation.<sup>40</sup> The fourth RBAD principle 'accountability' includes accountability for transparent decision-making – both political and administrative. It requires appropriate human rights based benchmarks by which progress is measured and the reward and sanction is imposed for the success and failure in human rights changes.<sup>41</sup>

The EU accountability is highlighted as a clear tension between upward accountability towards EU Member States and citizens, and downward accountability towards partner governments and ultimately poor communities. This results in a focus on accountancy over accounting for impact.<sup>42</sup> In order to apply the RBAD principles, the report further suggests that EU development policy must ensure not only the capacity of right holders

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37 Joint Communication (28 April 2015) of the European Commission and the High Representative of the European Union for foreign affairs and security policy to the European Parliament and Council related to Action Plan on Human Rights and Democracy (2015-2019) – "Keeping human rights at the heart of the EU agenda", Brussels 2015.

38 Patrick T., 'International Human Rights Network' in *Human rights-based approaches and European Union Development aid policies* (Brussels, July 2008) 26.

39 *ibid* 30

40 *ibid*.

41 *ibid* 33.

42 *ibid* 32.

to claim and exercise their rights, but also the capacity of duty bearers to fulfil human rights obligations – including EC officials. It must ensure the allocation of necessary resources, capacity building and accountability for delivery of RBA. There is the need to address the lack of capacity to interpret policies in line with applicable human rights law, to develop and apply indicators for measuring human rights change and to ensure that contracted experts design, deliver and evaluate in line with RBA.<sup>43</sup> The review further suggests that the European Commission should conduct an organisational review to identify steps needed to give effect to RBAD in policy formulation and implementation. This should encompass the selection and training of staff, performance appraisal/promotion, monitoring and evaluation system and tools to systematically document the human rights impact of development aid, processes for ensuring active, free and meaningful participation by right holders, etc. Advancing accountability for human rights-based development requires designated, resourced and visible responsibility at appropriate levels. This might include a senior HRBAD champion, to mirror the personal representative on human rights to the high representative on Common Foreign and Security Policy.<sup>44</sup>

While applauding the adoption of the toolbox on RBA, CONCORD recommended to develop a practical training package with a view to build and strengthen an inclusive project cycle management.<sup>45</sup> Another challenge as indicated in a working paper is that while human rights-based governance at sector level can be constructive, it is clear that the potential of the RBAD is limited where the overarching political context is authoritarian or autocratic and rule of law is absent.<sup>46</sup>

As with mainstreaming policies, the RBAD aims to undo the soiling of human rights as a specialised “niche” in development policy. However, evaluations indicate that mainstreaming efforts have been unsystematic and fragmented, with “downstream implementation” remaining problematic as few incentives or guidance are provided to staff. Arguably, there are several internal and organisational disincentives within donor institutions which impede a substantive rethinking of development programming from a human rights perspective. The so-called “input bias”, whereby donors emphasise the importance of financial inputs rather than investing in systematic process and output evaluation, discourages staff to reconsider and critically review the processes and impacts of programmes. This is compounded by evaluation procedures which often do not integrate a human rights impact assessment, further discouraging staff to engage with the implications of a RBA. The lack of evaluation frameworks which are adapted to a human rights-based understanding of development also implies that empirical evidence on the impact of implementing a RBAD has remained limited to date.<sup>47</sup> This working paper elaborates further that several of these challenges relate to operational issues, such as the effective use of conditionalities, the “deep” involvement of local actors, and investing in the neces-

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43        *ibid* 34.

44        Patrick T, *supra* note 38,37.

45        CONCORD – European NGO Confederation for Relief and Development, *From Vision to Action: Operationalising the EU Rights Based Approach Toolbox Encompassing All Human Rights in EU Development*, Position Paper, June 2014.

46        D’Hollander D., Marx A. and Wouters J., ‘Integrating human rights in eu development cooperation policy: achievements and challenges’ (Frame Working Paper No. 134 – April 2014) 12.

47        *ibid*.

sary in-house capacity to roll out an ambitious human rights-based approach.<sup>48</sup>

Apart from the operational challenges, tensions between the concept of human rights-based development and the increasingly important notion of aid effectiveness will have to be addressed. The Commission's Agenda for Change reiterates that poverty reduction remains the primary goal of EU development cooperation. Currently, little is known on how the adoption of human rights based-policies has an impact on results and outcomes in terms of poverty reduction. Not surprisingly, within the international development community questions linger about the instrumental value of focussing more strongly on integrating human rights and democratic governance in development cooperation policies. Such doubts are enhanced by donors demanding clear quantitatively measurable results on poverty reduction outcomes within limited timeframes. It is clear that fostering institutional change and accountable modes of governance in partner countries is an incremental, long term and locally embedded process driven by committed local actors. The policy measures adopted by the EU and highlighted in this contribution signal an increasing willingness to engage in such complex transition processes. Protecting human rights constitutes a key component of these dynamics. How to do this most effectively is a key challenge for the EU's development cooperation policies, which aim to balance poverty reduction, economic growth and the progressive realisation of all human rights.<sup>49</sup>

All these challenges reveal the complexities with the effective application of the RBAD in EU development cooperation. However, the EU institutions do not have the option of not applying the overarching principles of RBAD as they are now the political agenda for the EU institutions.

## **5. Case study of Nepal: assessing RBAD application and challenges**

### **5.1 General country context**

Economically, Nepal belongs to the Least Developed Countries and remains as one of the poorest countries in South Asia. Gross National Income (GNI) per capita stands at USD 700. Key internal challenges include insufficient number of jobs, severe food insecurity, high prevalence of chronic and acute malnutrition, and limited access to quality education, poor infrastructure and connectivity including rudimentary water management systems, a poor business climate and therefore lack of economic opportunities outside subsistence agriculture and poor governance. Some inequalities persist between groups and communities on the basis of caste, ethnicity or gender. Although the newly promulgated 2015 Constitution (the Constitution of Nepal 2015) and number of legal provisions and policies stipulate equal rights for men and women and prohibit discrimination on any grounds, discrimination in practice is not yet completely eliminated. Migration pressures resulted in heightened vulnerability of some groups such as women, children and elderly population. The Government of Nepal is determined to address these challenges by establishing the necessary post-conflict foundations to increase economic growth

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48 D'Hollander D. et al, *supra* note 46, 13.

49 *ibid* 14.

through increased investments in key sectors and making growth more inclusive to help equalise opportunities amongst groups and communities.<sup>50</sup>

## 5.2 The EU Engagement in Nepal

The European Union's political and economic relations with Nepal were established in 1973 and are guided by its fundamental principles to achieve peace, stability, democracy, human rights and prosperity. The Delegation, which formerly represented the European Commission to Nepal, is now a fully-fledged diplomatic mission and has become the Delegation of the European Union to Nepal.<sup>51</sup> Political relations between the EU and Nepal have also progressed over the past decades to become an increasingly relevant partnership focusing on mutual respect. Bi-annual Joint Commissions are the most visible feature of an ongoing dialogue following the entry into force of an EU-Nepal Co-operation Agreement on 1 June 1996. During meetings of the Joint Commission, the Government of Nepal and their EU counterparts exchange views on issues of common concern such as peace and stability, development, human rights and trade. They also take the opportunity to review current projects being implemented through EU assistance, as well as any new ones in the pipeline. Political relations are further strengthened through regular visits of EU Parliamentarians to Nepal and exchange of visits of high-ranking officials and political personalities between Nepal and the EU's headquarters.

The European Union - the EU Delegation together with the EU Member States<sup>52</sup> - is the biggest provider of development aid to Nepal. There has been a significant increase in the volume of aid over the last four decades of EU-Nepal cooperation. Through the years the EU-Nepal cooperation has seen important changes, reflecting the constant assessment and adoption of appropriate strategies required to maintain an effective development agenda. This is translated, among other things, in a move from individual project support, to a more holistic sector budget support, which the EU is currently pursuing in Nepal. The overall development cooperation strategy has been worked out in mutual consultation with the Government of Nepal. The Country Strategy Paper, which covers a period of seven years, guides the development assistance of EU to Nepal. Education, peace and stability, as well as economic capacity building were the core areas of the EU engagement under the 2007–2013 strategy periods. Since 2014 the EU cooperation in Nepal is guided by the Multiannual Indicative Plan (MIP) Nepal 2014-2020. It includes three focal sectors – sustainable rural development, education, and strengthening democracy and decentralisation.<sup>53</sup> The EU Delegation to Nepal has been working through UN agencies and civil society to implement a broad spectrum of development cooperation activities in the areas such as poverty reduction, integrated rural development, human rights promotion and protection, preservation of the culture of indigenous com-

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50 Multiannual Indicative Programme (MIP) Nepal 2014-2020, EU Delegation to Nepal, available at: <[www.eeas.europa.eu/delegations/nepal](http://www.eeas.europa.eu/delegations/nepal)> accessed 17 December 2015.

51 For more references please see at: <[www.eeas.europa.eu/delegations/nepal](http://www.eeas.europa.eu/delegations/nepal)> accessed 17 December 2015.

52 There are five Member States (MS) that have a representation in Nepal. They include Denmark, France, Finland, Germany, and the UK.

53 For details please visit: <[http://eeas.europa.eu/delegations/nepal/documents/press\\_corner/2014.10.28\\_en.pdf](http://eeas.europa.eu/delegations/nepal/documents/press_corner/2014.10.28_en.pdf)> accessed 17 December 2015.

munities, environmental conservation and sustainable development, basic and primary education, urban development, food security, conflict mitigation, economic capacity and peace-building among others.

As indicated in the Nepal MIP the EU's main strategic interest in Nepal is to invest in the socio-economic development of the country through development aid, including focusing on support for democratisation, human rights, rule of law and domestic accountability of state and non-state actors. This has aimed at responding to the preoccupations of Nepal's citizens for sustained long term economic development and enhanced employment opportunities.<sup>54</sup> The MIP further elaborates that the support to strengthen the democracy and decentralisation will also offer an opportunity for the EU to align with the Government itself as reflected in the Government's own National Development Plan. The Government's Plan has also recognised the importance to promote human rights and to improve the status of marginalised and disadvantaged groups, which is critical for inclusive development. The MIP has indicated that these issues will be directly addressed by all programmes implemented under the three proposed focal areas as well as by parallel 'thematic cooperation activities' under other instruments such as the European Instrument for Democracy and Human Rights (EIDHR).<sup>55</sup> Furthermore, the MIP has mentioned the overall objective of the MIP to contribute to deepening democracy and promoting human rights and rule of law in Nepal by strengthening fundamental processes and institutions for good governance and accountability in the country.<sup>56</sup>

As described in the EU Delegation to Nepal website, the EU has been funding around 90 projects in the areas of human rights in Nepal under the EIDHR instrument itself. In addition to the specific allocations that have been made available to Nepal since 2001 the country has also been eligible for a number of global allocations as well. Nepal has continued to benefit from more projects as it remains eligible for global calls and the country-based allocations under the EIDHR. So far projects have addressed a wide variety of human rights issues such as combating discrimination, promoting access and opportunities of marginalized communities, preventing torture, making the general public aware of human rights, community empowerment and also the sensitising of authorities to national and international provisions/commitments. Projects have also addressed ensuring equitable distribution of resources and opportunities, institutional capacity building, community mobilization, networking, the strengthening and mobilization of the media and promoting political participation of marginalized communities. EU funding has allowed project partners (e.g. international organizations, national entities like the National Human Rights Commission and the Nepal Bar Association and civil society organizations registered in Nepal) to carry out these activities. These projects have also been instrumental in complementing and making effective the EU cooperation in Nepal through increased monitoring, participation in the processes as well as by promoting equitable distribution of resources and opportunities at the local level.<sup>57</sup>

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54 MIP Nepal 2014-2020, 4.

55 *ibid* 9.

56 MIP Nepal 2014-2020, 16

57 Impact evaluation of the EIDHR projects in Nepal, EU Delegation to Nepal, 2014, An unpublished report received from the EU Delegation to Nepal.

Following the devastating earthquakes that happened in Nepal on 25 April and 12 May 2015 (with many small scale aftershocks afterward), the EU pledged 105 million Euros for recovery and reconstruction (EU Action for Recovery and Reconstruction (NE-ARR) budget support programme).<sup>58</sup> The Delegation staff interviewed indicated that the document does not explicitly refer to the RBA. However, the human rights aspects are reflected in the programme documentation in the form of cross-cutting issues. Gender and social equity are the cross-cutting issues that the programme will be included. In addition, the programme will include a complementary action in partnership with civil society, which will focus on promoting transparency and developing accountability at the local level. The complementary measure is expected to help the local population in their social oversight of a transparent, accountable, equitable and effective use of funds for the recovery and reconstruction process.

In this way EU development cooperation in Nepal has broadly covered the notion of human rights within the broader ‘democratic governance’ policy agenda. As analysed in the Working paper no 134, the EU Delegation in Nepal has addressed the human rights issue in three ways: i) refining the use of human rights as conditionality to induce greater compliance by partner country; ii) scaling up direct support to actors, structure and processes to promote compliance with human rights and democratic reforms; and iii) developing a more coherent transversal policy whereby human rights become embedded within each area of cooperation.<sup>59</sup>

The discussion in this section highlights that EU development cooperation in Nepal has not explicitly incorporated the principles of a human rights-based approach. However, human rights standards and related issues have become an integral part of the development cooperation. The following section will look into the implementation of the ongoing programmes and the substantive changes that these programmes have expected or managed to bring.

### 5.3 EU Development Cooperation in Nepal from the RBAD perspective: existing practices, opportunities and challenges

Despite having a long engagement of EU development cooperation in Nepal there is no specific reference to the RBAD in the EU–Nepal development cooperation documents. A number of new programmes developed after 2012 have made no reference to the RBAD as their working methodology.<sup>60</sup> However, the programmes have covered a number of

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58 The pledges was made during a conference that took place in Nepal in June 2015. For more information about the pledges that the EU press statements have included, see: <[http://europa.eu/rapid/press-release\\_IP-15-5258\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5258_en.htm)> accessed 17 December 2015.

59 D’Hollander D. et al, supra note 46, 13.

60 The EU has developed at least four new programmes between 2012 and mid- 2015. They include the Stability and Peace Building Programme (2012-2017); Election Support Programme (2012-2016) Technical and Vocational Education Training Programme – recently decided (2015-2019), Rural Agricultural Development Programme - under development (2015-2019), State Building Contract for the Recovery and Reconstruction of the damages caused by the Earthquake in April 2015 – under development (2015-2017) at the bilateral and multilateral level. The Delegation has also launched a number of calls for proposals and new projects signed with civil society organisations through the allocations made available under the EIDHR, Non-state Actors in Development, Migration, Instrument for Stability and other global calls on thematic issues. Information for this research was

components of the RBAD principles including participation, non-discrimination, promoting all rights, including accountability, the rule of law, transparency, etc. Interestingly, the Human Rights Country Strategy that the EU Delegation and EU Member States in Nepal have adopted in 2012 as the joint strategic approach has made reference to the RBA.<sup>61</sup>

In order to verify further the actual practices of the RBAD application in development cooperation and looking at underlying challenges, the EU Delegation Task Manager for programmes, a representative of the civil society organisation – a recipient of the EU funding, and a government official responsible for managing the EU funded programme were interviewed.<sup>62</sup> The following assessments are based on the interviews held by the author.

The EU Delegation staff shared the lack of specific knowledge neither on the RBAD nor on the EU obligations to apply the RBAD in each programming process. In the absence of her knowledge about the RBA, the author couldn't verify further the practices in terms of the RBAD application. It was clear that the policy, strategies, action plans and the information with regards to the compliances required by the EU Delegations were not sufficiently communicated to all relevant staff in the Delegation.

With reference to the EU documents that oblige the EU Delegations to fully realise the RBAD approach to development cooperation, the member of Delegation staff shared an inability to apply it without having prior training and an enhanced capacity to implement, together with the practical tools to apply the RBAD in practice. The member of the Delegation staff spoke of the need to ensure having the entire staff fully trained first, together with providing the availability of an elaborated guidelines and methods for the full application of RBA. For the interviewee, the existing toolbox is simply a statement of the EU obligations and principles rather than an operating tool guiding the EU staff for having them fully reflected in each programmatic process. The interviewee also referred to the limited number of Delegation staff with a huge portfolio of programmes and projects that makes them unable to pay sufficient attention to the application of the RBA.<sup>63</sup>

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gathered during interviews with Delegation staff, with further information about the ongoing projects being available at the EU Delegation's website: <[www.eeas.europa.eu/delegations/nepal](http://www.eeas.europa.eu/delegations/nepal)> accessed 17 December 2015.

61 In line with the Joint Communication of the Commission and the High Representative for Common Security and Foreign Policy 2012, the EU Missions in Nepal (EU Delegation and the Member States) have jointly developed the human rights strategy paper for Nepal as an internal document. The Strategy paper (EU restricted and not accessible publicly) has referred the human rights-based approach *"to strengthen the impact of the support for development programmes and to identify the structural and underlying causes for slow and sometimes adverse development"*.

62 Interviews were held with a Programme Manager in the governance sector in the EU Delegation office in Nepal and with the Programme Advisor and Team Leader at CARE Nepal in September 2015. The government official managing the EU funded programme related to the stability and peace building was interviewed in December 2015 in Kathmandu (name not included as requested by the interviewees).

63 During the interview the Delegation staff informed that she is taking care of the two ongoing and upcoming programmes with the Government of Nepal. One project is coordinated with the UN, at least 10 other projects with civil society organisations. In addition, the staff member is taking care of the call for proposals that requires intensive engagement. Thematic coordination with Member States and various actors that require organising or attending a number of meetings is also taking place. The headquarters also require the drafting of periodic thematic documents and other documentation. The drafting of periodic reports, internal documentation, the reception of various stakeholders and evaluators/ external actors also take place on a daily basis. Furthermore, staff frequent high level visits from headquarters and carry out field visits. In view of all these considerations the interviewee referred to the difficulty of the Delegation staff to pay specific attention to the RBA's application as required in EU

The interviewee suggested further that the responsible officials in the Delegations should be held accountable first for the application of the RBAD. Until the Head of the Delegations, the Heads of the Cooperation, Heads of the Finance, Contract and Audit section and Heads of the Political Section are fully aware about the RBAD to development and until they are held accountable for full implementation of the RBA, it is not possible to comply fully even if the Programme Managers are sufficiently empowered. It is a matter of willingness within the senior management of the Delegation, availability of resources, preferences and flexibility in the programming process. The interviewee further added that the EU headquarters should make the authorising officials in the Delegation accountable and encourage effective application. The interviewee also highlighted that full application of the RBAD requires prudent dialogue with project partners and counterparts, whereas the reality at that particular point in time was that there is hardly any dialogue; rather a monologue due to the donor-recipient relationship. Applying fully the RBAD is a challenge in the country context as well. Since the country and the authorities do not place an emphasis on human rights, applying RBAD would require enormous efforts to ensure that it is fully realised in each process of the programme. The observations of the EU Delegation staff correspond to the necessary organisational changes, which need to be applied according to the RBAD. They include the limitation of the staff's understanding of RBAD; conceptual confusion between the focus on equity and RBAD; the location of the focal point for gender and human rights within the Division for Policy and Practice (rather than in the Programme Division), which creates some distance between policy and programming; insufficient practical guidance on the approach for sector-specific application; human resources-management practices that neither emphasises nor supports competency in RBAD; minimal and informal accountability for RBAD; lack of attention paid to effective implementation of RBAD in staff performance reviews; lack of support from management; and lack of systematic reporting on RBAD implementation.<sup>64</sup>

The EU Delegation attempted to ensure the inclusion of human rights requirements in its activities. It specifically requires following the application of the human rights principles. One practice is that the programme document includes accompanying measures together with the indicators for compliance with human rights principles. These are assessed during the periodic review and in programme monitoring and evaluation. Some of the human rights principles and standards are set as the criteria for releasing tranches (instalments) of the EU's commitment. The Nepal Delegation has included this component particularly to the gender specific, conflict sensitive and equity-based support and participation of the marginalised communities in the Stability and Peace Building Programme.<sup>65</sup> Another practice is that the bilateral programme includes a complementary action, which is executed through civil society or technical assistance. The role of this complementary action is to ensure effectiveness of the bilateral cooperation through the participation in decision-making, access to information, and to highlighting the specific concerns of the final beneficiaries, etc. Ultimately, this is the process of improving capac-

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policies.

64 Vandenhoe W. and Gready P., 'Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective' in *Nordic Journal of Human Rights*[2014] 32 291..

65 Further details available with respect to the Stability and Peace Building Programme are available: <[www.eeas.europa.eu/delegations/nepal](http://www.eeas.europa.eu/delegations/nepal)> accessed 17 December 2015. Additional references are available at the Ministry of Peace and Reconstruction of Nepal <<http://www.peace.gov.np>> accessed 17 December 2015.

ity on the demand side. The Delegation staff interviewed shared that the forthcoming EU support for the post-earthquake recovery and reconstruction (state Building Contract) will include a complementary action. This means civil society contracted under this programme will work with the final beneficiaries (the earthquake-affected families and individuals) of the bilateral support and promote transparency, equity in addition to promoting accountability of the service providers.<sup>66</sup>

The third component of the Delegation's practice is financing actions to civil society in parallel with other bilateral action that the EU Delegation has signed with the partner government. Such parallel funding is generally channelled through the thematic budget lines. The EU's support to the education programme is such an example of this. While the EU Delegation has had a long engagement in the education sector, a number of complementary projects are funded to civil society under the thematic budget line dedicated to non-state actors in development. Some of the projects funded under the EIDHR have also complemented the education programme as well.<sup>67</sup> However, the interviewees were not explicit as to how effective the complementary action have been in terms of promoting human rights principles in the bilateral cooperation. An impact evaluation carried out by the EU Delegation Nepal on the EIDHR projects elaborates and discusses the impact of some EIDHR projects. It reveals the contribution of such projects to making the bilateral programme effective through the promotion of equity, increasing access of the targeted groups and beneficiaries, promoting participation of the targeted groups and communities in the decision making process. These projects have contributed to promoting transparency and accountability of the authorities as well.<sup>68</sup>

One best approach that the EU Delegation staff suggested for effective application of the RBAD principles is to make the RBAD a part of the result-oriented monitoring and evaluation that is carried out by external assessors. Programmes that are already developed could incorporate the RBAD components, explicitly through the mid-term reviews.

The civil society representative interviewed for this study alleged the lack of internalisation of the RBAD within the EU Delegations. Referring to the EU call for proposals for civil society support, the civil society representative mentioned that the RBAD application within the EU was simply rhetoric. In order to realise fully the RBAD application the civil society representatives suggested first to integrate the RBAD in the processes of developing the programme. A specific reference was made to the short timing (a maximum 3-years period) of projects funded under the thematic budget line, in particular the EIDHR. A project of three years can hardly contribute to the realisation of RBAD application in all processes. Another concern was the lack of possibility to replicate the positive lessons learned by a project. As described in the published call for proposals available in the Delegation Websites, the EU funding does not allow for automatic extension/expansion.

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66 Since the programme is still in the development stage this information is based on the information provided by the EU Delegation staff interviewed for the purpose of this research.

67 Refer to: <[www.eeas.europa.eu/delegations/nepal](http://www.eeas.europa.eu/delegations/nepal)> accessed 17 December 2015 for details as to the Education programme and the complementary projects funded in the areas of education programme.

68 For more details about the documentary based on an impact evaluation of the EIDHR projects see: <<http://youtu.be/yJvnrgKhmws>> accessed 17 December 2015 (short version) and <[http://youtu.be/R98C\\_LUERLc](http://youtu.be/R98C_LUERLc)> accessed 17 December 2015 (detailed version).

sion or replication of the project learning. In addition, they referred to the lack of flexibility of the EU programming in terms of modification and accommodating the concerns related to RBAD application.

The government official interviewed shared a rather positive perception on the RBAD application in the EU development cooperation. He, however, shared his lack of familiarity with the principles of the RBAD. While referring to the RBAD practices within the EU programming processes, the government representative argued that the EU requires the programming documents to make explicit reference to human rights principles and norms. As a result, the strategy document of the Nepal Peace Trust Fund (2014-2017) has made specific references to the human rights norms and standards, particularly with regard to sexual and gender-based violence and on the transitional justice processes.<sup>69</sup> Based on this approach the ten projects funded for developing and promoting the National Action Plan on the UN Resolution 1325 and 1820 relating to women's security and peace and the project for supporting the Election Commission of Nepal explicitly referred to the human rights provisions.

The government official further added that the EU has practiced more effectively the principles of 'participation' and 'non-discrimination' as it requires ensuring inclusion of all stakeholders and beneficiaries in the programming process. Furthermore, the EU promotes indivisibility of human rights and puts equal emphasis on the economic, social and cultural rights in addition to civil and political rights. However, in terms of the principles of accountability there is little focus on the EU programmes. While the government programmes have emphasised participation and non-discrimination, the accountability component seems lacking.

In terms of the challenges posed, the government official highlighted that there is the need for systemic change to ensure effective RBAD application. Civil society is primarily strengthening the demand side by equipping the beneficiaries with advocacy tools and support for claiming rights. On the supply side, the government mechanism is not sufficiently sensitised about their role and responsibilities, and are not capable enough to deliver even the limited supplies and services available in an effective manner i.e. so as to be entirely sensitive to the needs of the RBAD. As a result, the services that the government mechanisms are delivering to the beneficiaries do not reflect citizens' rights, they instead constitute a welfare scheme.

In terms of addressing the existing challenges, the government official suggested to provide financial incentives for the application of the RBAD and linking the effective RBAD application to carrier development/training. Furthermore, the official added the need to provide additional logistic support including follow up, monitoring and back up support for ensuring the RBAD's application. The government official referred to the fact that the recent Constitution of Nepal of 2015, together with existing laws, policies and directives has required the application of RBAD in each programming process. However, this not happening in practice, due to the lack of awareness and orientation as well as

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69 For details about the NPTF strategy document, visit: <[http://www.nptf.gov.np/downloadfile/Nepal%20Peace%20Trust%20Fund%20Strategy%20Stratragy%20compile\\_1449048269.pdf](http://www.nptf.gov.np/downloadfile/Nepal%20Peace%20Trust%20Fund%20Strategy%20Stratragy%20compile_1449048269.pdf)> accessed 17 December 2015.

existing system in place, and the mindset of person responsible for applying the RBAD in practice. The official suggested that civil society, including INGOs, national institutions and staff college (the official agency that orients and trains newly recruited and existing officials of the government of Nepal), could prove to be instrumental in terms of enabling those responsible to apply the RBAD. He further added that working with universities will help to identify existing gaps and address them through the revised policies and operating tools for an effective practice of the RBAD.

This analysis indicates that the normative framework provided by the EU strategy paper, action plan and tools to orient the development cooperation has set out a vision of what ought to be the development cooperation from a RBAD perspective. As stated by Andrea and Celestine, the stipulation of an internationally agreed set of norms backed by international law provides a stronger basis for citizens to make claims on their states, and for holding states to account for their duties to enhance the access of their citizens to the realisation of their rights.<sup>70</sup> However, these are not in essence practiced, due to the internal and external challenges as elaborated earlier.

## **6. Conclusion**

EU policies and strategies oblige all institutions, including the EU Delegations, to apply RBAD in all stages of development cooperation. Various mechanisms, tools and means of verifications are developed to ensure the application of RBAD in each programmatic process. All these guidelines and requirements, together with the EU legal commitments including the European Convention on Human Rights, Lisbon Treaty provisions, etc., have encouraged the EU to promote the RBAD to development. However, there are various individual, institutional and structural limitations impeding full application of the RBAD in practice. The case study of the EU Delegation to Nepal is an example of such practices.

Effective and full application of the RBAD by the EU institutions is merely rhetoric until the prerequisites are fulfilled i.e., improving capacity and equipping the institutions; and holding the authorities accountable. It requires that the EU institutions internalise first the principles and methods of their application. For this purpose the institutions need to be availed with minimum facilities required for ensuring the RBAD application; setting the accountability standards for ensuring the RBAD application; and assessing periodically the application and enforcing with incentives/penalties.

Familiarisation of the staff with the concept and methods of the RBAD application and their accountability are prerequisites for the full application. However, the responsible task managers for different programmes in the Delegation and, more specifically, responsible authorities within the EU Delegations (e.g. the Head of Cooperation, Head of the Delegations etc.) are neither fully trained nor held accountable for the application of the RBAD. Institutionally, the application of the RBAD requires a significant increase in existing human resources of the EU Delegations for ensuring closure follow up and engagement in each programmatic process. The human resources allocated to the Dele-

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70 supra note 13, 1416.

gation, which is already overloaded with a huge portfolio, are so limited that they are not able to realise the RBAD application and having a closure follow up of the RBAD application in each process of the programme. Furthermore, existing tools and mechanisms are incomplete to address the needs of the Delegations. The EU instruments such as the “Commission Staff Toolbox” on RBAD do not provide sufficient methodological guidance for staff to apply the RBAD in a programme’s processes. More importantly, the staff concerned needs to be made aware of the RBAD principles and be trained on application of the RBAD.

Some of the mechanisms are already in place within the EU Delegation that may contribute to ensure the RBAD’s application, at least at the design stage. They include the provisions of ‘fundamental value assessment’ required for budget support modality; the needs to complete checklist provided in the ‘Commission Staff Toolbox’; and the ‘Quality Support Group’ review and inputs to the programme documents. The need to include the assessment of the RBA’s application and its inclusion in the mid-term review, as required in the ‘Joint Communication’ may make all relevant persons accountable. However, in the absence of strict accountability and with overloaded responsibility, the requirements may remain limited to ticking the box for fulfilling the formalities required.

The practices of complementary action within bilateral support appears interesting from the perspective of applying the RBAD. However, it requires first trained human resources for its full realisation and willingness within senior management in the Delegation. Another challenge in terms of realisation of the RBAD application is the lack of flexibility in the EU’s programmes. RBAD application in each process might require accommodating particular concerns of the stakeholders. However, the structured, complex and rigid modification processes of the EU programme documents do not provide much room for effective application of the RBAD. In order to realise the political commitment of the RBAD application, the following matters need to be taken into account:

- The Commission staff working with the toolbox needs to be engaged further, or the guidelines need to be developed for facilitating the Delegation staff to apply the RBAD in each programming process.
- Delegation staff needs to be trained and equipped with knowledge as to the significance of RBAD’s application and the methods/tools for their application. Wherever required staffs should be mentored and encouraged to apply the principles. At a minimum, responsible authorising officials of the EU Delegations need to be held accountable for applying RBAD in the area of development cooperation.
- Its important that in addition to the Delegation staff, the other actors including consultants, experts, and those responsible for reviewing the programming documents in the headquarters also internalise the application of RBAD in the programmatic process.
- In order to ensure immediate follow up of the RBA’s application, it is important that they are incorporated into result-oriented monitoring and evaluation of the EU Delegation programmes, and strictly followed up, in the programming process.

- Approaches of developing the EU development programme needs to be more flexible to accommodate concerns in each programmatic stage.

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