

## Human Rights Shorthand

### **Equality vs Equity<sup>1</sup>**

*Equality* and *equity* are two different concepts increasingly used without recognition of the significant differences between them. Equality is a human rights principle meaning ‘the same’, while equity is a concept of justice, which means ‘fair’. There is no reference to equity in the United Nations Charter or in the Universal Declaration of Human Rights.

The difference between equality and equity can be illustrated with the following example: two individuals who do the same job and produce the same results should receive an equal salary, whilst individuals who do different jobs which require different skills should receive different salaries for reasons of fairness or justice. In other words, they should receive an equitable pay. Whilst in the first scenario a scientific comparison can be made, this is not possible in the second.

The preferred terminology within the United Nations, according to CEDAW General Recommendation 28, is equality, rather than equity.<sup>2</sup> This is shown in OP22:

*22. The principle of equality between men and women, or gender equality, entails the concept that all human beings, regardless of sex, are free to develop their personal abilities, pursue their professional careers and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. States parties are called upon to use exclusively the concepts of equality of women and men or gender equality and not to use the concept of gender equity in implementing their obligations under the Convention. The latter concept is used in some jurisdictions to refer to fair treatment of women and men, according to their respective needs. This may include equal treatment or treatment that is different, but which is considered equivalent in terms of rights, benefits, obligations and opportunities.*

This recommendation was made specifically with respect to the rights of women, yet represents the spirit of the United Nations in relation to the important differences between the two terms.

### **Security of Tenure<sup>3</sup>**

Tenure takes a variety of forms, including rental (public and private) accommodation, cooperative housing, lease, owner-occupation, emergency housing and informal settlements, including occupation of land or property. Notwithstanding the type of tenure, all persons should possess a degree of security of tenure which guarantees legal protection against forced eviction, harassment and other threats. States parties should consequently take immediate measures aimed at conferring legal security of tenure upon those persons and households currently lacking such protection, in genuine consultation with affected persons and groups.

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<sup>1</sup> UN-Habitat Programmatic Guidance Note for Staff, on the Human Rights Based Approach

<sup>2</sup> Committee on CEDAW, General Recommendation 28

<sup>3</sup> CESCR General comment 4

## **The UN Common Understanding on the Human Rights Based Approach (2003)<sup>4</sup>**

The UN Statement of Common Understanding on Human Rights-Based Approaches to Development Cooperation and Programming (the Common Understanding) was adopted by the United Nations Development Group (UNDG) in 2003. The purpose behind developing a common understanding was to ensure that UN agencies, funds and programmes apply a consistent Human Rights-Based Approach to common programming processes at global and regional levels, and especially at the country level in relation to the CCA and UNDAF. This was made in three key points:

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
3. Programmes of development cooperation contribute to the development of the capacities of duty-bearers to meet their obligations and of 'rights-holders' to claim their rights.

### **Rights-Holders and Claims-Holders<sup>5</sup>**

Given the universal nature of human rights, every individual is a rights-holder and entitled to the same rights 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. Rights-holders are persons holding legitimate claims toward duty-bearer(s).

However, a distinction can be made between rights-holders and claims-holders. Following a state's ratification of a certain treaty, rights-holders become 'claims-holders,' with valid claims on correlative duty-bearers. This is a legal distinction because if a state has not ratified the relevant treaty, then a citizen cannot legally claim that right, nor is the duty-bearer legally obligated to respect and fulfil it.

Rights-holder is the most common term within the UN system, in order to simplify and maintain consistency. On occasion, agencies use claims-holders interchangeably. For the purposes of current UN-Habitat work, the term rights-holders will be used to coordinate with the OHCHR and to streamline its use.

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<sup>4</sup> <http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies>

<sup>5</sup> UN-Habitat Programmatic Guidance Note for Staff, on the Human Rights Based Approach

## Duty-Bearers<sup>6</sup>

Duty-bearers are primarily State actors and institutions who have obligations to fulfil in response to the entitlements and claims of rights-holders. The HRBA focuses on the capacity of the State at all levels (all branches of the State and all sectors of government, at the national, provincial, municipal level) to meet its obligations to respect, protect and fulfil human rights. While the State is the most common Duty-Bearer under International Law, human rights obligations can also attach to private individuals, international organizations and other non-State actors.

## Vulnerable Groups vs People in Vulnerable Situations

While the HRBA maintains an explicit focus on disadvantaged, marginalized and excluded groups, the UN-Habitat preferred language is 'people in vulnerable situations.' This distinction is made because the term 'vulnerable groups' implies that the people themselves are inherently disadvantaged and unable to look after themselves. The use of this term reinforces traditional views of these groups as being 'weaker' and disempowers them. By contrast, 'people in vulnerable situations' are not inherently vulnerable and can be brought out of these situations.

People in vulnerable situations may include children, youth, elderly, persons with disabilities, displaced persons and migrants, indigenous people, homeless persons, minorities, people living with HIV/AIDS, and especially women in these categories.

## Human Rights Standards<sup>7</sup>

Human rights standards define the core content of human rights (housing, education, water, food, etc.). In dealing with economic, social and cultural rights, it is common to qualify the human rights standard by referring to four key dimensions, often referred to as AAAQ:

**Availability:** Facilities, goods and services need to be available in sufficient quantities and equipped with the necessities required to function.

**Accessibility:** Facilities, goods and services need to be accessible for all sections of the population, especially vulnerable or marginalized groups, such as ethnic minorities and indigenous peoples, women, children, adolescents, older persons or persons with disabilities.

**Affordability:** Facilities, goods and services must be affordable and expenses must not disproportionately burden poorer households. This also requires the removal of administrative barriers that can prevent the poor from accessing facilities, goods and services.

**Quality:** Facilities, goods and services need to be relevant, culturally appropriate and of acceptable quality.

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<sup>6</sup> UN-Habitat Programmatic Guidance Note for Staff, on the Human Rights Based Approach

<sup>7</sup> UN-Habitat, Programmatic Guidance note for UN-Habitat Staff

## Human Rights Principles<sup>8</sup>

There are six principles that underline and explain Human Rights:

**Universality and Inalienability:** Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The universality of human rights is encompassed in the words of Article 1 of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.”

**Indivisibility:** Human rights are indivisible. Whether they relate to civil, cultural, economic, political or social issues, human rights are inherent to the dignity of every human person. Consequently, all human rights have equal status, and cannot be positioned in a hierarchical order. Denial of one right invariably impedes enjoyment of other rights. Thus, the right of everyone to an adequate standard of living cannot be compromised at the expense of other rights, such as the right to health or the right to education.

**Interdependence and Interrelatedness:** Human rights are interdependent and interrelated. Each one contributes to the realization of a person’s human dignity through the satisfaction of his or her developmental, physical, psychological and spiritual needs. The fulfilment of one right often depends, wholly or in part, upon the fulfilment of others. For instance, fulfilment of the right to health may depend, in certain circumstances, on fulfilment of the right to development, to education or to information.

**Equality and Non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. No one, therefore, should suffer discrimination on the basis of race, colour, ethnicity, gender, age, language, sexual orientation, religion, political or other opinion, national, social or geographical origin, disability, property, birth or other status as established by human rights standards.

**Participation and Inclusion:** All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, indigenous peoples and other identified groups.

**Accountability and Rule of Law:** States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in international human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law. Individuals, the media, civil society and the international community play important roles in holding governments accountable for their obligation to uphold human rights.

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<sup>8</sup> UNFPA: <http://www.unfpa.org/resources/human-rights-principles>

### Hard Law

Hard law is that which is contained in a legally binding treaty or convention. Traditionally these treaties were bilateral between two countries. However, with the development of the UN system, these treaties have become multilateral. For these international treaties and conventions to be legally binding they must first be signed by a state. The state in question must then pass the convention through its national legislature. Only then is the convention ratified and only then are the laws contained in it legally enforceable. Once a state has ratified a convention it is legally obligated to uphold the right contained in it, and the citizens of that state can legally claim their rights.

### Soft Law

By contrast, any right that is not contained in a legally binding treaty or convention is considered 'soft law.' There is a wide-range of UN mechanisms that promote and apply these rights, but they are not legally binding and a state is not legally obligated to fulfil them. These rights hold varying levels of normative strength. For example, rights contained in the Universal Declaration of Human Rights, whilst not legally binding, have become universally accepted and have very strong normative value. As a result, they are often enshrined in national or regional legislature, but are still not internationally legally binding. Other rights, such as the right to development, may have been promoted in UN Declarations or General Comments, but have not reached the same level of normative force.

### The Three Pillars of the UN

The Three pillars of the UN are the foundation of the UN and underlie all of our work. They are explained here:

'Since the establishment of the United Nations in 1945, promoting and encouraging respect for human rights for all without distinction as to race, sex, language, or religion, as stipulated in the United Nations Charter, has been one of the fundamental goals of the organization. We are tasked with mainstreaming human rights within the United Nations, which means injecting a human rights perspective into all United Nations programmes. This is to ensure that peace and security, development, and human rights -- the three essential pillars of the United Nations system -- are interlinked and mutually reinforcing.'<sup>9</sup>

The agreed upon language in the modern era is the three pillars, as outlined above. However, these are not specifically outlined in the UN Charter. The Charter outlines 4 principles within the Preamble:

1. To unite our strength to maintain international **peace and security**,
2. To reaffirm faith in fundamental **human rights**, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small
3. To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained (**Justice**)
4. To promote social progress and better standards of life in larger freedom (**Development**)

<sup>9</sup> <http://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>

## Disaggregated Data<sup>10</sup>

Relevant data should be disaggregated by all grounds of discrimination prohibited by international human rights law, as enshrined in the 1948 Universal Declaration of Human Rights and subsequently elaborated upon by international human rights mechanisms. Such grounds include ethnicity, Throughout this paper, disaggregation by “ethnicity” should be broadly defined in line with international human rights law, as already reflected in the UN Principles and Recommendations for Vital Statistics Systems, which defines the concept of ethnicity as including “ethnic nationality (in other words country or area of origin as distinct from citizenship or country of legal nationality), race, colour, language, religion, customs of dress or eating, tribe or various combinations of these characteristics.” sex, age, income, geographic location, disability, religion, migratory or displacement status, This includes both nationality and status within the country of residence, e.g. refugee status, type of visa (student, working), documented/undocumented, internally displaced person, etc. civil status, sexual orientation and gender identity.

Data disaggregation is an obligation, not a desirable add-on: the collection or disaggregation of data for specific populations forms a part of existing State obligations under international human rights law.

### Secretary General Quote

“There is virtually no aspect of our work that does not have a human rights dimension.

Whether we are talking about peace and security, development, humanitarian action, the struggle against terrorism, climate change, none of these challenges can be addressed in isolation from human rights.”

- Ban Ki-moon, Secretary-General of the United Nations

### ED Foreword for Guidance Note

Human rights are at the heart of the work of the United Nations. Most recently, the UN Secretary-General has re-affirmed this commitment in his *Human Rights Up Front* initiative, and UN-Habitat is fully engaged in and committed to its implementation.

Under my leadership, UN-Habitat has reinvigorated its thinking on how the promotion, protection and respect for human rights inextricably intertwine with its mandate on sustainable urban development. In 2013, I was met with full support from our Governing Council when I decided to elevate human rights to become a cross-cutting issue for all our substantive thematic areas, to be integrated in every policy, planning and project cycle of UN-Habitat. My appreciation goes to the UN Office for the High Commissioner of Human Rights whose support at the highest levels has been instrumental in the development of our strong human rights policy. The then UN Special Rapporteur

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<sup>10</sup> OHCHR's draft discussion paper on 'Proposed indicators and metadata for SDGs 10 and 16'

on the Right to Adequate Housing, Ms Raquel Rolnik, also deserves special mention as do a range of human rights experts.

The necessity of increasingly engaging in sustainable urban development from a human rights perspective is evident in every city where UN-Habitat currently engages. From the drawing boards of the new master plans, over the municipal planning offices, to the urban residents themselves, it is clear that if we want to reverse the alarming trend of urbanization equating increasing inequalities, we must strengthen the engagement of urban residents in shaping the future of our cities.

We will need to innovate and think afresh in many cities where we work and throughout the many projects in which we are engaged. The emphasis on human rights-based sustainable urban development requires UN-Habitat staff to familiarize themselves with the international human rights protection system in general and those human rights most relevant to UN-Habitat in particular. I hope that this Guidance Note on the Promotion and Protection of Human Rights provides staff of UN-Habitat and its partners with exactly such an overview. I am sure it will lead to an increased awareness of the importance of human rights based approach to sustainable urban development, and more importantly, see it reflected in all of our work.

- Dr Joan Clos, Executive Director, UN-Habitat

### Useful Links

- The International Covenant on Economic, Social and Cultural Rights:  
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>
- OHCHR Dashboard for ratification status by treaty and country:  
<http://indicators.ohchr.org/>
- UNDG Human Rights Working Group  
<https://undg.org/home/undg-mechanisms/undg-hrm/>
- UNDG Human Rights Guidance and Policy  
<https://undg.org/home/guidance-policies/country-programming-principles/human-rights/>