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Lessons Learned From Rights-Based Approaches in the Asia-Pacific Region

Documentation of Case Studies

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PREFACE

Worldwide, there has been a proliferation of literature on the “architecture” of rights-based approaches and how the use of such approaches can help bring value in terms of assisting poor, vulnerable and marginalized groups of people realize their basic human rights. However, as mentioned above, a large volume of such literature has been dedicated to the “theory” and “usage” of rights-based approaches, viz. the classification of the principles of rights-based approaches and, how the application of such principles can be translated into developmental programming tools to help achieve outputs that can assist such groups realize their rights. Literature centered around how developmental agencies, civil society groups and citizens worldwide have *actually* used such approaches to demand and claim rights are few and far between.

This compendium of case studies is an attempt towards filling this space – through a documentation of experiences from select countries in the Asia-Pacific region, these case studies endeavors to demonstrate how various rights-based approaches/strategies have been used by developmental agencies and civil society groups, including by non-governmental organizations (NGOs), community- based organizations (CBOs) and citizens to successfully demand and claim rights for, and in participation with such poor, vulnerable and marginalized groups groups, often in conditions that can at best be termed challenging or at times, even inhospitable. From landless people in Bangladesh fighting for their right to land and a livelihood to poor farmers uniting to advocate for pro-poor farmers’ policies in Indonesia to starving people realizing their right to food in India to island communities accessing the legal and policy systems in the Pacific Islands, the cases documented culls together experiences that demonstrates that by using approaches that are not only rooted in the principles of participation, empowerment, accountability and transparency but that also looks at good governance, a receptive policy framework and access to justice as “non-negotiable” conditions that must exist in any country, marginalized and vulnerable groups *can* realize their rights.

And the above resonates in other cases studies documented - like the one where marginalized groups of children in India have started accessing education due to a receptive Government that implemented a very rights-based policy strategy to demanding and accessing education; similar is another case in India where groups of HIV positive women have successfully lobbied to demand and claim pro-HIV positive peoples’ polices and whose efforts have been particularly enhanced due to responsive policy makers and public institutions responding to demands on the supply/duty-bearer side. And in Laos, the Government actively worked with other stakeholders to make the right to water and sanitation a reality for interior rural mountainous communities – what is commendable is that these illiterate communities have worked with the Government stakeholders from inception in designing a water and sanitation system that is not only based on indigenous knowledge (and hence, viable and sustainable) but also hinged on Government (and other stakeholders’) accountability as a requisite; the strategies used have thus enabled the approach to be replicated on scale in other provinces in the country.

By capturing some such experiences in this compendium, it is hoped that a foundation will be made for the start of a serious engagement wherein all stakeholders will realize the added value that the use of rights-based approaches have in capacitating those who have often been left out of the larger social system or those who have not been able to access the benefits of developmental programmes and policies. At a more basic level, such approaches have assisted groups in realizing those rights that they are entitled to in the first place as have been stated under the Universal Declaration of Human Rights. And specifically for this reason, it is hoped that these experiences documented will start a conversation amongst all on how to further the use of such approaches for a more just and humane society.

Upala Devi Banerjee, Regional Coordinator, Asia-Pacific Lessons Learned Project

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The Project would like to acknowledge the support of the Asia Regional Governance Programme of the UNDP Regional Center in Bangkok in publishing this volume of case studies as well for supporting the Asia-Pacific Regional Consultation that will bring together leading human rights NGO representatives, grassroots practitioners, academics, interested donors, UN agencies and independent advocates from countries in the Asia-Pacific region as well as key focal points from UNDP and OHCHR offices in Geneva and New York to Bangkok in September 2005 to discuss the case studies and the lessons learned therein and how these can be culled, applied and used for future rights-based programming.

The Project would also like to thank all those who provided invaluable support and contributed while in the process of documenting and writing the case studies and they have been individually acknowledged in each of the case studies documented and included in this volume.

From January to June 2005 - as a part of the Project activities - the Lessons Learned Project held workshops and consultations in most of the countries where the case studies have been documented. Several people at the country-level deserve mention for making these workshops and consultations happen: they include Monjurul Kabir and Larry Miramis from UNDP Bangladesh; Imrana Jalal (and the entire Regional Rights Resource Team) from UNDP Fiji; Pradeep Sharma and Marie Louise Muff from UNDP India; Ewa Wojkowska and Chris Morris from UNDP Indonesia; Olivia Yambi, Abdulai Kaikai and Bandith Leuanvilay from UNICEF Laos and Waldemar Pickardt (formerly with UNICEF Laos and now based in UNICEF Myanmar); Shantam Khadka and Sharad Neupane from UNDP Nepal; Emmanuel Buendia from UNDP Philippines; Subinay Nandy and Jordan Ryan from UNDP Vietnam; and, Christian Salazar Volkmann from UNICEF Vietnam.

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Upala Devi Banerjee, Regional Coordinator, Asia-Pacific Lessons Learned Project.

1

Using Rights-Based Strategies to Secure Land Rights for Poor and Vulnerable Groups

The Nijera Kori Experience in Bangladesh

1. Using Rights-Based Strategies to Secure Land Rights for Poor and Vulnerable Groups: The Nijera Kori Experience in Bangladesh

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² Colin Gonsalves is National Executive Director of the Human Rights Law Network (HRLN) and Vinay Naidoo is a Senior Legal Advisor in the organization. HRLN is a New Delhi-based national human rights legal aid non-governmental organization.

The authors wish to thank Khushi Kabir, Coordinator of Nijera Kori, and staff of Nijera Kori for extending all cooperation while documenting this case study.

LIST OF ABBREVIATIONS USED:

CAT: Convention Against Torture

CEDAW: Convention on Discrimination Against Women

CRC: Convention on the Rights of the Child

BRAC: Bangladesh Rural Advancement Committee

DfID: Department for International Development

GB: Grameen Bank

HPSP: Health and Population Sector Projects

ICCPR: International Covenant on Civil and Political Rights

ICERD: International Convention on the Elimination of Racial Discrimination

ICESCR: International Covenant on Economic, Social and Cultural Rights

IDS: Institute of Development Studies

NGO: Non-governmental organizations

OHCHR: Office of the United Nations High Commissioner for Human Rights

RDRS: Rangapur Dinajpur Rural Services

1. Background and Rationale:

Country and Programme Context: The Constitution of Bangladesh, promulgated in 1972, clearly underlines the country's commitment of rights for all. However, in reality, the situation for its citizens is one of violations of basic rights as much as the observance of rights.³ These violations of basic rights or lack of respect for the rights of the citizens has serious repercussions in accessing justice or realizing the right to development for the vast majority of the country's population who are poor and vulnerable, and who rely for their survival on relationships that position them as dependent on more powerful patrons.

Such violations or constraints in realizing rights have been further exacerbated by a situation, far from unique to Bangladesh, but nevertheless especially prevalent and pervasive in Bangladesh – that of widespread *corruption and lack of transparency and accountability at various levels*. It is important to note at this juncture that a lack of any effective provisions for a 'right to information' law has further bred the endemic corruption and resultant lack of accountability and transparency present at virtually all levels of governance in the country, leading 'Transparency International' to have rated Bangladesh as the 'most corrupt country in the world'.⁴

Policy and Legal Framework: The 1972 Constitution of Bangladesh embodies the principles of democracy, nationalism, socialism and secularism and lays out the guiding principles related to the rights of the citizens. These include the fundamental right to life and personal liberty, privacy, equality, non-discrimination, freedom of movement, religion, expression, thought and conscience, and even of property. The Constitution further states that any law that is in contravention with these fundamental rights will be considered void, and that no law in conflict with fundamental rights can be enacted. The Constitution provides enforceability of fundamental rights by way of petition in the Supreme Court of the country. Also, the Constitution has provisions containing Fundamental Principles of State Policy that address the need for the State to ensure the availability of food, shelter, employment and education for all its citizens. It could thus be stated that the Bangladeshi Constitution is the guiding document that not only lays down the rights that the citizens are entitled to, but also provides the State's obligations towards the fulfillment of such rights by ensuring their justiciability of the same.

The international legal framework to which Bangladesh subscribes through its ratification of various international conventions on rights is also quite comprehensive – the country has acceded to the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the International Convention on the Elimination of Racial Discrimination (ICERD); the Convention on Discrimination Against Women (CEDAW); the Convention Against Torture (CAT); and the Convention on the Rights of the Child (CRC). The country has also ratified the CEDAW Optional Protocol and the two CRC

³ Naila Kabeer, IDS Working Paper 200, "Making Rights Work For The Poor: Nijera Kori and the Construction of Collective Capabilities in Rural Bangladesh", Institute of Development Studies, University of Sussex, England, United Kingdom.

⁴ 2001 'Corruption Perception Index', Transparency International.

Optional Protocols. However, as is common with many countries of the sub-continent, there is a limited respect paid to the international obligations voluntarily undertaken, including the 'reporting' imperative.

The Role of Civil Society in Securing Rights: Against such a backdrop, it is notable to mention that civil society in Bangladesh, particularly the non-governmental (NGO) sector, has sought to compensate for various deficits that characterize the lives of poor and vulnerable groups in accessing and realizing various rights, including the right to development. The incredible capital that these organizations bring into the country in the form of funds and services is reflected in their size, range of activities, geographical spread and coverage.⁵ In a country like Bangladesh, it not only shows a huge outreach to the people but also demonstrates the need for such activities. Many observers even state that the NGO movement (and the services they undertake) in the country are almost akin to what the Government of a country undertakes - many NGOs have primary constituency bases that are larger than the local Government constituency base in many areas across the country. Most of the Bangladeshi NGOs subscribe primarily to poverty reduction as their main thrust of work and empowerment of the poor through group-related activities.

There are broadly four types of NGOs present in Bangladesh⁶:

i) The first type of organizations are basically 'micro finance' organizations like the Grameen Bank (GB) that place their main emphasis on the economic dimension of empowerment through a method of providing financial services for the poor with a view to develop market access, enterprise development and economic accumulation.

ii) The second type of organization focuses on social service delivery such as health, education and welfare - such services has helped to an extent in promoting human capital in the context of the poor. The work of these types of organizations is reflected in the contributions of such NGOs like the Bangladesh Rural Advancement Committee (BRAC).

iii) The third type of the organization (in general, they are known as "social development organizations") are those that combine both of the previous two concepts. They have brought about a new dimension, which could be termed as the political dimension of empowerment. The work of such organizations is reflected in the work undertaken by NGOs like the Rangapur Dinajpur Rural Services (RDRS).

iv) The fourth type of organizations are called "social mobilization organizations". These emphasize the importance of political empowerment through challenging the power structures and accessing justice by promoting the rights of the people. They have a strategy of asserting that the most effective way to bring about change is through influencing the socio-political process.

⁵ Ibid. Refer to footnote No. 3.

There are around 22,000 NGOs in Bangladesh (Thornton et al, 2000); thus, 80% percent of the Bangladeshi villages have some form of NGO presence and about 35% of the country's population benefits directly from their activities.⁵

⁶ Ibid. Refer to footnote above

Prominent amongst this fourth type of organizations is “Nijera Kori”, which, in Bangla means: “*we will do it ourselves*”. As the name suggests, it is an organization that is striving to bring about social change through applying the strategy of social mobilization to bring about socio-political empowerment through its style of working and activities. While there is a considerable diversity amongst NGOs about their strategies for achieving the goal of empowerment, many focus on economic empowerment as the means and the ends to realize their rights. Few attempt to directly address the “*rights deficit*.” *Nijera Kori’s strategy is however different from the traditional empowerment strategies that often focus on economic empowerment – the organization seeks to build the capacity of the poor and empower them to mobilize in defense of their rights and in pursuit of justice. Its focus therefore is on “collective” rather than individual capabilities⁷ and is very much rooted in rights-based principles and is the subject of focus in this paper.*

2. The Study of the Nijera Kori Initiatives in Securing Land Rights for Poor and Vulnerable Groups, using Rights-Based Strategies

Case Study/Project Context - Land Rights Issues in Bangladesh: A study of the rights-based strategies used by Nijera Kori will not be complete without situating it in the context of land rights (and access to land and related livelihood security issues) in Bangladesh. The country’s unique location at the delta of the three major rivers of the sub-continent has resulted in a dynamic system by which land is continually lost or gained as a result of riverbank erosion and accretion. Land survey and settlement thus provide a means of recording changes in area and characteristics of land, registering deeds and issuing land titles.

Access to land in Bangladesh can be either through private or public transfers. However, private transfers tend to be restricted to the non-poor. For the poor, the main source of land rights is through the public distribution system and they have been given priority in the distribution of *khas* (un-allotted Government agricultural land) land. Such settlement operations are intended primarily for the poor, who do not have the time or money to mutate land records, and this process has resulted in the system of Record of Rights - when land rights are transferred, the transaction needs to be registered for updating the records. Land administration in Bangladesh thus entails: i) survey and settlement; ii) registration; and, iii) management of land records. There are, however, problems associated with each of these functions that have contributed to the disenfranchisement of the poor in relation to their land rights (see Box 1 below).

⁷ Ibid.

Box 1: Procedures and Systems that Hamper Access of Land Rights by Poor and Vulnerable Groups

The systems of land settlement, registration and management that have resulted in disenfranchisement of the poor are as follows⁸:

i) Land Settlement: There have been a number of settlement operations, the procedures of which have contributed to inconsistencies and errors in the recording of rights. These include:

- Creation of the original record of rights by the Cadastral Survey (1888–1940) - many are still accepted as evidence by Bangladeshi courts;
- The conducting of the State Acquisition Settlement in East Pakistan in 1956–64 - this concentrated on revising the record-of-rights, but without full-scale correction of existing village maps. Many records were handwritten, leading to large-scale forgeries and tampering. Large areas of *khas* land ended up being allotted to the rich;
- The starting of a Revisional Settlement in 1965–66 to rectify the above problems - there are however conflicting reports as to how near to full coverage the Settlement achieved;
- The launching of a Zonal Settlement operation in 1984 to undertake survey and settlement operations in 22 district headquarters simultaneously. However, budgetary constraints impeded this process and the scope of work was reduced to 5 districts. The work is still ongoing. The World Bank estimates that records of rights for the entire country will be available by 2015–20 (by which time the contents of this work will be obsolete).

ii) Land Registration: Land registration merely records isolated transactions. It does not prove titles, validates the transactions or even give the registration officer the authority to verify the authenticity of the deeds. The absence of a system of simultaneous mutation and registration increases opportunities for producing false deeds for multiple transfers of both private and Government *khas* lands.

iii) Land Records' Management: Some of the confusion in land rights system stems from the production and maintenance of different records for the same piece of land. At present, there are three sources of records:

- Registers kept under the Registration Act of 1908 and maintained by the Ministry of Law;
- Records of rights maintained by the Assistant Commissioner (Land);
- Publication of results of settlement and revisional settlement operations – this task is the responsibility of the Directorate of Land Records and Surveys.

This division of responsibilities for producing the initial record of rights and maintaining them over time results in inaccurate and incomplete records; moreover, these records are rarely updated. Finally, along with denial of access to Government *khas* land, (principally either because the land has not been surveyed, has been incorrectly surveyed, is under dispute or has been illegally occupied), the poor also face problems of proving how “poor” they are. Definitions of who is landless and qualifies for the purposes of settlement of *khas* land have undergone many changes over the past decades, breeding further confusion and allowing officials to exercise discretion that have proved detrimental to the poor.

⁸ Ibid.

Nijera Kori and the Genesis: Against such a backdrop, Nijera Kori started working with poor and vulnerable groups of landless peoples to help build their collective capacities so that they can demand and claim their rights. *While the organization works on diverse rights issues affecting the poor, its work in enabling landless groups to demand and access land rights has demonstrated significant results and the processes used to secure such rights will be the subject of inquiry in Section 3.*

Nijera Kori was started in an embryonic form to rehabilitate the famine stricken destitute women who had been migrating in flocks to the capital city of Dhaka city at the end of 1974. Initially a relief-oriented initiative providing food, shelter and income generating skills to women in distress, the organization has evolved with the times and situations. Initially, it had maintained its independence by avoiding funds from bilateral donors and multilateral lending agencies. Such independence was facilitated via building partnerships with smaller international NGOs, who were ready to provide funds without changing the direction and the beliefs of the organization. Due to fiscal constraints that hampered some of the organization's operations, Nijera Kori decided to partner with one bilateral donor - the UK Department for International Development (DfID); this partnership was based on a commonly agreed-upon Code of Conduct through a Partnership Agreement.

The organization's core programme is the '*Social Mobilization, Voice and Democracy Programme*' – this is currently operational in 17 districts and supported by DfID. The objective of the programme, in itself, is rights-based – “to increase effective pressure on Government, political and other elites to provide better access to decision-making processes, resources and services for poor men and women”.⁹

'Empowerment' in the Nijera Kori context is defined as a process of social change by which those who have been denied the capacity to make their choices or realize rights become enabled to do so. An evaluation by the Netherlands Ministry of Foreign Affairs (1998) suggested that the emphasis on social mobilization largely took place in response to national factors, namely the imposition of military rule between 1976 and 1991 and the subsequent curtailment of mobilization activities by NGOs. Nijera Kori has now evolved to gradually established itself as a non-conventional activist NGO that is different from others in its approach and understanding of the problems of the poor.

Stakeholders Involved: From its very inception, Nijera Kori's activities (as per the organization's long-term vision strategy) were started with those stakeholders in the areas that are densely populated by the poor who basically depend on the sale of their physical labor for their livelihood. Many of these working areas fell in the vicinity of the seacoasts and river basins. Additionally, Nijera Kori also works in some specific areas where most of the inhabitants belong to the vulnerable communities (slum-dwellers, weavers, blacksmiths, tobacco and sugarcane farmers and the like) and in the areas where fundamentalism, human rights abuses and violations against women are a typical phenomenon. By working with such disadvantaged groups and acting as a catalyst in helping them demand and realize rights, the organization has helped foster the principles of equity and non-discrimination.

⁹ <http://www.u4.no/projects/project.cfm?id=277>

Objectives of Nijera Kori: The primary objective of the organization is to help capacitate poor and vulnerable groups in realizing their rights by empowering them through various rights-based strategies, thus freeing them from the traditional service provider-client relationship that many NGOs perform.

3. Process:

Rights-Based Strategies Used in Securing Land Rights: Nijera Kori acts as a catalyst and uses strategies that mainly focus on socially and politically empowering the poor and vulnerable groups by making them understand (and thus, confront) the power structures that hamper their realization of rights. These strategies focus on the following principles that are rooted in rights-based standards, mainly those relating to empowerment, participation, equity and non-discrimination:

- * A focus on empowerment of poor and vulnerable groups;
- * Use of collective capital instead of individual capabilities using participatory techniques; and,
- * Use of social mobilization strategies that are rooted in equity and non-discrimination.

Its democratic management structure; non-credit policy (for instance, Nijera Kori does not give any material assistance to its target groups, but helps them to organize themselves and develop cooperation among the members based on mutual trust and confidence); and, pro-people role of the staff have further helped in fostering and implementing the above principles in practice.

While not necessarily opposed to a ‘supply of services’ approach – the organization believes that it is often possible to integrate a rights-based approach with a services approach in that the infrastructure and network and the goodwill generated by the supply of services can sometimes be creatively used for rights-based mobilization (for instance, Nijera Kori provides group members with some legal aid support when the groups are unable to cover the cost of cases themselves) – the strategies used primarily focus on enabling and building collective capabilities to achieve outcomes.

Such strategies are discussed below:

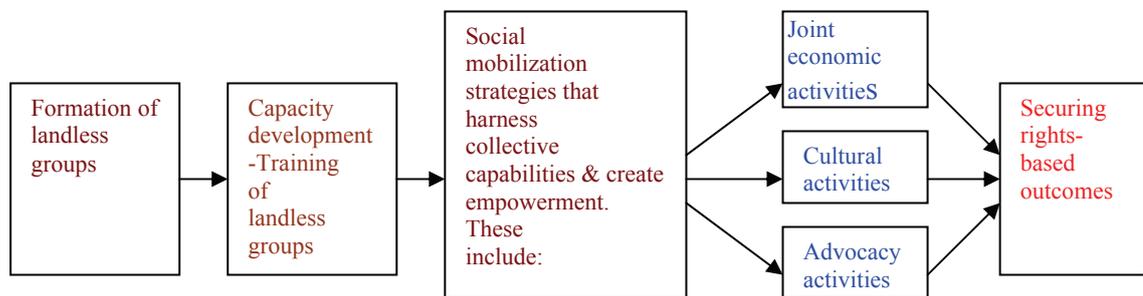


Figure: Using rights-based strategies to secure land rights for poor and vulnerable groups¹⁰

¹⁰ By Upala Devi Banerjee

Formation of landless groups: One of the main strategies Nijera Kori uses are to form (and consequently) empower the landless groups via various social mobilization strategies. The rationale behind formation of these groups is to gradually strengthen and achieve a reputable identity, which ultimately ensures its share in the local power structures, like the local union (the lowest and only democratically-elected level of local Government, consisting of 13 members)¹¹ or locally elected committees, such as *bazaar* (market) committees, school committees and so on. One interesting feature of the group formation is that there are separate groups for both women and men. The reason behind having separate groups is both for strategic reasons of giving space to women to enable them to empower themselves, and also due to the prevailing socio-religious bias, which stresses exclusion and seclusion of women from society. At a later stage, when both women's and men's groups are more receptive and able to work together as equals and when committees are formed at different organizational levels from both female and male members, the committees are integrated (since by then, they are assumed to be gender sensitized through an organizational process). The composition of these primary landless groups could be anything between 16 to 30 members.

Capacity development via training programmes: After the formation of the groups, Nijera Kori organizes various training programmes for such groups as mentioned above, basically under the following two types:

- Training for the landless groups;
- Human development training.

Training on issues like "Leadership Development", "Joint Production Management", "Right and Access to Information" and "Globalization and Sustainable Development" are being imparted to the landless groups comprised of 20-25 participants (both female and male) who were once given basic training and have shown promise in undertaking rights-based work. Furthermore, para-legal training is also provided in all the work areas where the group members fall victim to false cases, human rights abuses and other forms of harassment. The landless groups organize workshops for evaluating their activities, identifying strengths, weaknesses, local problems and remedial measures, for analyzing the issues of concern, and, above all, for formulating strategies for conducting their movements.

Human development training, at the basic level, is imparted to female and male members (who may or may not be landless but who are vulnerable) separately, while at the advanced level, the same is imparted jointly.

The strategies of social mobilization: The formation of landless groups and training is followed by capacitating them to undertake various social mobilization strategies to realize rights. Social mobilization is undertaken by the landless groups on various justice issues - corruption of union councils, money-based village justice systems

¹¹ Livelihoods Connect, Chars Organizational Learning Paper 3, "The Voice-responsiveness Framework: Creating Political Space for the Extreme Poor", March 2004, Institute of Development Studies, University of Sussex, United Kingdom". Source: <http://www.livelihoods.org/lessons/Asia/Chars3.doc>

(*shalishes*), corruption in the health and education sector, false cases against the landless and so on (see box below).

Box 2: Using Social Mobilization as a Strategy to Access Land Rights: The Case of Khaleda and Chaina Singha

The process of entering a village and organizing the people seems to invariably begin with allocating a young and dynamic activist to a set of villages. Khaleda and Chaina Singha are two such women activists that work on social mobilization in the *Comilla* region.

Land rights issues facing villages in this region are many and varied. In the *Dabidar Thana* of the *Comilla* region, for instance, the principal issue of concern is the eviction of tens of thousands of people who lost their lands on which they lived, due to river erosion from the embankment areas. The people had successfully resisted evictions for ten years, but the threat of eviction has not receded. In the *Chandina Thana* (local area police-jurisdiction) of the same region, landlords are exploiting poor landless laborers by not giving them their due wages.

Khaleda, working in the *Chandina Thana* of the *Comilla* region, focuses on organizing people to get better wages from their landlord. She faces tough resistance from the landlords who often ask as to why she is living as a single woman so far away from home. Her methodology is to use cultural tools like songs of freedom and liberation as a means of organizing the poor. Chaina Singha of *Comilla* region also uses such strategies. Such strategies have proved to be quite successful – villagers in this district have become more aware, outspoken and confident. Some of them were also involved in militant struggles for land against the landlords, who had for centuries taken control of all of the land and resources. What is striking is the collectivity nature of their decision-making processes. Issues such as child marriages, the problems related to *khas* land and other issues are discussed, and decisions minuted in a formal manner in a register maintained for the purpose.

Some of the important social mobilization strategies are:

i) Money saving drive and joint economic activities as an integral social mobilization strategy to access land rights issues: When the landless form a group, they determine their amount of monthly savings taking into account the financial ability (to contribute) of the poorest member of the group. The overall responsibility for collection and safekeeping of the savings lies with the landless organization. Nijera Kori staff provides necessary advice and technical support, if required, to the groups; the organization, however, neither plays the role of collector nor as a ‘bank’ for their savings.

When a group reaches a certain level of consciousness and accrues a reasonable amount from its savings, it starts undertaking ‘joint economic activities’. Joint

economic activity is an integral part of regular access to land rights activities of the groups. For instance, landless groups have been carrying out joint economic activities by taking lease of individually owned (khas) land, or acquiring khas land, water bodies, transportation, livestock, opening and running of schools, etc., depending on local conditions and opportunities available in the activity area.

ii) Undertaking social mobilization via the means of cultural activities: Cultural activities are an integral part of Nijera Kori's social mobilization process. The purpose of cultural activities is to develop social awareness about disparities, injustices and deprivations, removal of prejudices from society, and strengthening solidarity among the masses by promoting human rights values through cultural practices. For instance, cultural groups of Nijera Kori collaborate with landless organizations to organize a cultural 'padajatra' (procession) once a year – this procession, walking on foot around the villages for 3 to 7 days, organizes various cultural events in the open public places. The organization has found that universal appeal against inhuman disparities in the society generated through such cultural activities strengthens social resistance.

iii) Using advocacy as a social mobilization tool: As in any rights-based strategy, advocacy has been used as a social mobilization, awareness and pressure-building tool by the landless groups, both to create pressure on the duty-bearers (related Government departments) and in building awareness on land rights issues with various civil society stakeholders. Advocacy in the form of protests, campaigns, blockades and gheraos (spontaneous protest in which a large number of people besiege an institution to gain redress against a perceived injustice)¹² have been widely used for impinging on duty-bearers to undertake proper application of the existing laws; undertaking joint initiatives with multi-stakeholders (like journalists, lawyers, women activists, teachers and in collaboration with duty-bearers) for resolving local problems (like the campaign against commercial shrimp-farming); ensuring reciprocal accountability; et al. Such measures have also succeeded to an extent in bringing all these various stakeholders on a common platform to debate and dialogue on issues of related and common concern.

Capacity/Role of Duty-Bearers (including the Private Sector/Related Frameworks) in Addressing Demands: The social mobilization strategies and the struggles by landless groups have resulted in pressurizing the duty-bearers, especially at the local levels, to undertake some measures via which they can address demands. One such measure is the 5-year plan of the Government to ensure participation of grass-roots level people in implementing Health and Population Sector Projects (HPSP). To achieve such participation, stakeholder committees have been formed at union and thana levels, wherein landless group members have been invited to contest elections to become members of such committees. The objectives of such stakeholder committees include public awareness raising, identifying health problems and irregularities in the health system, and working with Government service-providers to overcome those problems.

At a macro-level, the Government has started acknowledging the empowering, capacity development and monitoring role that an organization like Nijera Kori has

¹² Ibid. Refer to footnote No. 11.

and has initiated their participation in various collaborative activities. For instance, in the Bagatipara Thana of Natore District, the Government has solicited Nijera Kori's participation for implementing the 'Strengthening the Election Commission for Improvement in the Electoral Process Project' of the Bangladesh Election Commission. The most important objective of this project is to give an idea about issues relating to democracy, election, accountability and basic rights of the voters.¹³

Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Strategies:

The organization has developed in-built organizational monitoring mechanisms to ascertain the outcomes of its strategies. Nijera Kori invests in maintaining detailed reports of all its meetings and discussions as well as publishes an annual report. Keeping track of change through qualitative reporting mechanisms contributes to its own internal learning processes by helping it to monitor which forms of change gather momentum over time, and which fade away, and why.

The organization also suggests a different way of achieving accountability – that of social auditing, wherein the organization uses such an audit system to ascertain the extent to which it has a stake in the activities undertaken and solicits the participation of all the people associated with or affected by such activities (to determine whether the activities undertaken are achieving its objectives, if it is living up to its values, and if those objectives and values are relevant and appropriate). Such a process of monitoring is two-fold – it determines the extent to which it, as an organization, has been able to achieve outcomes and how accountable it is to its stakeholders while achieving such outcomes; on the other hand, such a process also involves dialogue with the stakeholders and hence, the stakeholders are also better able to decide (and influence) how far the processes involved have helped them, as a group, to achieve outcomes.

4. Outcome (Results):

As a result of the rights-based principles that are inherent in the strategies adopted, landless groups across Bangladesh are not just accessing land (and related rights) issues but also have used such social capital to achieve and realize other rights outcomes:

➤ *Accessing education:* The landless groups, by coming together, have established schools on their own initiative, using group savings and collecting social subscriptions (outcomes that have come about from the money saving drive and joint economic activities). Through such initiatives, children of landless parents have been able to access basic education in areas where the Government sponsored educational institutions are not available.

➤ *Accessing other livelihood opportunities:* Livestock development activities, as a livelihood opportunity, is another initiative that has occurred due to the social mobilization strategies that has resulted in landless groups coming together. Such activities, undertaken, for instance, in the coastal regions of *Paikgacha* and

¹³ Ibid. Refer to footnote No. 3.

Charjabbar – two remote areas – have used indigenous methodology and are currently being carried out from the Noongola Training Center in *Bogra*.

➤ *Establishing land rights in the government khas lands:* The landless groups conducts movements on various issues like establishment of the rights of the landless on Government *khas* lands and water bodies; eviction of the illegal land usurpers; resisting looting of the crops produced by the landless; etc. Such collective energies have also resulted in landless and marginalized framers regaining lands from illegal usurpers.

Joining cudgels in the fight against commercial shrimp farming: The fight against commercial shrimp farming in Bangladesh has reached new proportions, especially as the violence against the paddy farmers (whose lands are being usurped by the more powerful shrimp farmers) has intensified. Nijera Kori has organized these farmers to unite and fight for claming back their lands.¹⁴ Saline water resistance committees have been formed with the participation of the representatives of various professional groups and landless group leaders to make the resistance movement into a social movement. In these committees, 50 per cent of the members are representatives from landless organization, while the remaining 50 per cent are representatives from various professional groups. Participation of women members is also ensured in these committees. To ensure justiciability of the rights of these effected peoples, Nijera Kori has also petitioned the High Court (the Court has since challenged the legality of the Government's decision to declare the south-western coastal areas of Bangladesh a shrimp cultivation zone, asking the Government to explain why the area could not be allotted to the landless).

➤ *Targeting violence and other prejudices against women and religious fundamentalism:* By coming together to fight against issues that affect them, the landless groups have not only succeeded in targeting land related issues but also addressed diverse gender-related prejudices and religious fundamentalism issues in their constituencies – issues relating to dowry, divorce, polygamy, rape, physical torture, and fatwa (legal ruling or decision given by an Islamic religious leader) being cases in point. Gender empowerment and equity has occurred in more ways than one. For instance, women may start out challenging the taboo about being heard in the public domain by appearing in group dramas along with men - one of the routine cultural activities carried out by the Nijera Kori cultural groups - and then find that the self-confidence they have gained operating in the public domain over time allows them to consider standing for local elections. These are secondary effects that occur over time in response to the direct effects of Nijera Kori's work.

¹⁴ Bangladesh being a land-hungry country, there is no additional land that could be brought under shrimp cultivation. Thus, paddy fields are being replaced for shrimp farms and have led to violent clashes between the shrimp farmers and the paddy farmers. The large owners of the shrimp ponds are supposed to take the land on lease, but in most cases, they are occupying it forcibly, forcing the original landowner to move out and hand it over for shrimp cultivation. This is the starting point for the conflict, further exacerbated by the bringing in of armed guards from outside these areas to protect the farms from stealing and looting. But in the process, these guards become protectors of the shrimp farmers and have used violence against the paddy farmers, who are protesting to claim back their lands." "Prawn farming threatens coastal communities", by Kim Hunter Gordon, Radio Netherlands, 15 July 2003. Source: <http://www2.rnw.nl/rnw/en/features/development/030715prawn.html>

➤ Fighting against other societal irregularities: The collective energies harnessed via social mobilization strategies have resulted in other gains too. The landless groups have been able to collectively wage protest movements against the irregularities and criminalized and corrupt loan systems; demand for just wages; issues detrimental to society (like gambling, paddling (and consumption) of drugs, and so on. In a way, it has thus been seen that the demand for accessing land and related rights have been harnessed to demand rights and address other issues of social concern.

➤ Ensuring Representation in Various Committees: The social mobilization and empowerment strategies have resulted in many landless group members getting elected to various Committees, thus ensuring that their voices are heard and reflected in decisions affecting them. For instance, some landless group and female members have contested and won seats in the union parishad elections in some areas. Quite a few male and female landless group members have also been elected to the management committees of Government/private primary schools and a fairly large number have been elected to village and *bazaar* management committees. Some members are being nominated in the working area civil committees that have been formed to prevent theft, dacoity, and other crimes. Finally, representatives of various professional groups, landless group male and female members are now being represented in various development committees, (like the Char Development and Settlement Project, road/culvert construction repair, etc).¹⁵

5. The Value Added of Using Rights-Based Strategies: Some of the insights gathered and elaborated in the following sections borrows from the work undertaken at the Institute of Development Studies (IDS) at the University of Sussex in the United Kingdom and such works/references are included in the Select Bibliography Section of this case study.¹⁶

Positive Lessons Learned:

➤ Focusing on building people's collectives capacities rather than on service delivery: Nijera Kori can be seen as an organization that embodies the organizational manifestation of the rights-based approach to development by its commitment and focus on building people's collective capacities to sustain rights outcomes (in this case, access to land rights and other related issues). It embodies a commitment to transforming the poor from clients to citizens who actively organize in pursuit of their rights and to hold accountable those who are responsible for upholding these rights. It does this by providing information about entitlements and rights (through its training programmes and by empowering them through the various social mobilization strategies), by promoting them in their struggles for justice and protecting them from some of the risks that this entails. It does this also through its own internal processes

¹⁵ Ibid. Refer to footnote No.3.

¹⁶ The two primary works from which some of the observations and conclusions have been made are Naila Kabeer's papers on "Making Rights Work For The Poor: Nijera Kori and the Construction of Collective Capabilities in Rural Bangladesh" and "Citizenship and the Boundaries of Acknowledged Community: Identity, Affiliation and Exclusion".

of participation and accountability (for instance, the use of social audits and the preparation of its own annual work plans according to the priorities of its members)¹⁷ and through life styles that do not remove its staff too far away from the world of those they work with.¹⁸ Within the limited area in which it is active, and taking note of the unevenness of the impacts generated by its activities (and which are dealt with in the Section dealing with “Challenges” below), it could be said that Nijera Kori has been part of the process of weakening the clientelist relations of domination that characterize Bangladesh society and of expanding the possibilities for political action by the poor (Westergaard and Hossain, 2002).

Such a view is also substantiated by the observation contained in some studies that suggest that the ability of NGOs to mobilize around rights to basic services and to build a culture of accountability for these services is often compromised by their own role in service delivery. A recent World Bank report on corruption in Bangladesh made this point, noting that while NGOs can play an important role in monitoring and checking Government corruption, they are likely to be most effective when they do not attempt to combine this watchdog role with participation in Government-funded development and service delivery programmes.¹⁹

This is precisely the rationale behind Nijera Kori’s decision from the outset to eschew any form of direct delivery role and to focus on building collective capabilities of - those groups who are hitherto left out of the Governmental service delivery systems (both intentionally and unintentionally) and who have no access to any rights or entitlements - to ascertain rights-based outcomes.

➤ *A strong history of civil society-led rights-based NGO movements a key to achieving outcomes:* The thriving NGO sector in Bangladesh has often been at the forefront of efforts where it has successfully mobilized civil society and social capital to produce rights-based outcomes. As mentioned elsewhere in this paper, Nijera Kori belongs to that category of “social mobilization” NGOs that have always engaged with the most poor and vulnerable sections of society in order to build their capacity to participate in these new opportunity of spaces and the terms on which they participate. By providing alternative models of social relations that are often empowering and participatory and involves the most vulnerable in achieving outcomes, NGOs can be credited with helping to democratize the processes of social change.

➤ *Donors willing to invest in rights-based outcomes:* Nijera Kori has, in the past, relied on international solidarity organizations that were clearly committed to the principle of rights, for support for its various activities. With the shift to a rights-based approach within a number of bilateral donor agencies, the organization has been able to forge new relationships with donor agencies like DfID to support its rights-based activities/programmes. Such partnerships underline the basic premise in development

¹⁷ Rachel Watergate and Maheen Sultan Haq, DfID Bangladesh paper on “Bridging the Divide: Lessons and Challenges from the Bangladesh Rural Livelihood Programme in Promoting Gender Equality”, November 2004. Source:

http://www.dfidbangladesh.org/publications/BridgingTheDivide_Nov2004.pdf

¹⁸ Ibid. Refer to footnote No. 3.

¹⁹ World Bank 2000 Report on “Corruption in Bangladesh: Costs and Cures”.

aid flows - that many donors are now veering away from aid delivery in pure service delivery initiatives and harnessing such aid delivery towards initiatives that are highly participatory, often involves the poorest of the poor and that aims at building capacities of such groups to produce outcomes that are often more sustainable and viable.

Challenges in Implementing Rights-Based Programming Strategies: Lessons Learned

➤ *Using confrontational means can invite resistance:* The landless groups often use advocacy methods rooted in confrontational means like blockades, *gheraos* and protests to raise awareness on their plight and to highlight service failures on the part of the duty-bearers. While such means have highlighted their cause, they have also met with resistance and obstruction from duty-bearers and other groups (like the powerful shrimp-farm owners). Many groups have met with violence for indulging in such forms of advocacy and protests.

➤ *Using the legal system still not widely undertaken:* Under a rights-based approach to realizing rights, the legal system is used to a large extent to access justice, especially for the poor, vulnerable and marginalized groups. Nijera Kori appears to be somewhat constrained when it comes to using the legal system on behalf of such groups.²⁰ Part of the reason of limited use of the courts to access justice lies in the inaccessible nature of the Bangladesh legal system itself. Additionally, part of the problem lies in the fact that the network of socially oriented lawyers faces constraints in reaching out to the remote rural areas of Bangladesh. Finally, such an approach would detract from the organization's approach of not undertaking any service-delivery initiatives. Revamping the legal system and making it people-friendly is imperative, especially since the poor in Bangladesh face insurmountable odds in accessing and using the legal system to demand and claim rights.

➤ *Focusing on social mobilization without any attendant service delivery mechanisms poses a challenge:* While it is true that the focus on social mobilization and on collective capabilities have resulted in many visible gains for the poor and vulnerable groups, the low priority accorded to service delivery aspects of the organization's strategy - especially in less-developed countries like Bangladesh - can have an impact on sustaining members' interests. This can pose a challenge to sustaining the struggles on a long-term basis. To guard against such a risk, quite a few strategies that focus on rights-based approaches²¹ and that are used by NGOs do have service-delivery components to them.

The fact that Nijera Kori hardly has any service delivery components in its strategy, while at the same time, encourages poor and vulnerable groups to break with past

²⁰ This is not to understate the fact that Nijera Kori does not use the legal system; its groups are currently involved in filing 733 cases and in 2005, 75 new cases were filed by the groups. The groups themselves are financially supporting 499 cases and Nijera Kori are helping support 234 more. Nijera Kori and the groups have also initiated four writ petitions in the courts.

²¹ Please refer to the case study of Sankaalp in the India Education Case Study in this volume of case studies. Other Indian NGOs like the MV Foundation or Pratham in India, while also applying rights-based approach to delivering education for poor and vulnerable groups of children, do have service-delivery aspects in their strategy like the setting up of non-formal schools.

relationships of dependency on patrons and to stand up for themselves, (often at some personal and economic cost), can have contradictory implications for who joins its groups and who stays within them. On the one hand, it can lead to a process of self-selection into Nijera Kori membership, in that it is unlikely to have a great deal of appeal for the better off sections of society. On the other hand, the absence of immediate economic gains may discourage the longer term participation of the very poor, particularly if landless groups membership jeopardizes precarious day-to-day survival strategies which depend on maintaining the patronage of powerful sections of village societies. An evaluation of Nijera Kori conducted by Z.Khan and M.Khan in 2000 suggests that more attention could be paid by the organization to addressing some of the basic economic dimensions of poverty, for instance, adult literacy and numeracy skills, better utilization of savings and a strong emphasis on the rights of the poor to local Government services as a way of maintaining their sustained involvement.²²

➤ *Focusing on mobilizing at the cost of capacity development initiatives like training can be a constraint at the micro-level:* Nijera Kori relies more on social mobilization than on capacity development initiatives like sustained training as a continuous strategy to achieve rights-based outcomes. Training is often provided only at the outset, after the landless groups have been formed. Though the social mobilization techniques have proved quite successful, the low focus on training may mean that capacities to secure and sustain the gains made under social mobilization at the micro-level (at the level of individuals) may be lost. For instance, while social mobilization has resulted in many landless farmers gaining access to land, training to build capacities in making large groups of such farmers knowledgeable about sustainable land use policies may mean that such farmers are not being better able to use their land for optimal productive purposes. To address this gap, Nijera Kori is initiating trainings on Joint Production and Management and Leadership Development to its groups.

➤ *Sustaining rights-based outcomes a challenge due to other macro-level constraints:* Directly related to the building and sustaining of community capacities to achieve and sustain such outcomes is the challenge of sustaining gains made on the macro-level due to other macro-level operating constraints. Some of these constraints relate to sustaining these changes at the *community levels* - specially sustaining a group's interest over time to undertake continuous struggles on a prolonged basis; the existence of lower power structures that undermine and even pose a threat to some of the groups' activities; the presence of too many NGOs in one single operating area; and, other ground realities that are context specific like the heterogeneous character of groups and their related traits – and can seriously undermine the struggles of these groups in accessing and claiming rights.

For instance, the achievements and impacts discussed in Section 4 above have not occurred uniformly across the different landless groups and areas of work (while in some areas, the pace of change has accelerated as the number of groups have achieved “critical mass”, in others, high levels of activity and engagement in an earlier period have given way to apparent apathy and inactivity) (Christensen 1999).

²²Z. Khan and M. Khan, “Field Assessment of Nijera Kori”, Dhaka, University of Dhaka, 2000.

Local power structures can also pose a challenge to the resistance posed by the organized landless groups. The extent to which the local configuration of power is dominated by a few powerful landlords rather than many smaller ones, the degree of factionalism which characterizes it and the ease with which these landless groups can get justice from the higher courts in Dhaka rather than from the more corrupt district magistrates' courts, are all factors which affect the capacity of the landless to mobilize on a sustained basis.

In addition, Rao and Hashemi (1999) suggest that Nijera Kori groups tend to be weaker in areas where *there exist other NGOs in operation*, particularly those distributing credit, since such activity undermines collective mobilization on the part of the poor. Other context-specific ground realities (like the difficulties of organizing in areas that are flooded for half of the year; areas where local employment opportunities are scarce; and, high out-migration prone areas; *et all*) can have an impact on sustaining these struggles at the macro-level. Impact may also vary with local context in that some issues generate far greater activism than others. Struggles over control of *khas* land are not merely a bread-and-butter issue for dispossessed groups, but also a matter of life-and-death. Resistance to local moneylenders, on the other hand, or exposure of corrupt Government officials has led to more incremental forms of change and less dramatic forms of group activity.

Unevenness of impact can also reflect some of the fall-outs from the organization's social mobilization strategy. The very poverty of its members means that most are earning subsistence incomes where a single day's loss of income translates into a day without food (Rao and Hashemi, 1999). In situations where landless groups have been struggling for many years without much success, where many have had to face arrest and even imprisonment, it is not surprising that individuals leave and groups become demoralized. Christensen (1999) cites the example of one of Nijera Kori's most effective group leaders in his study area who dropped out of the organization after spending a year in jail and subsequently incorporated himself into the local patronage system.

Finally, the success of rights-based approaches in terms of sustainability depends, to a large extent, on the *existing social capital in any community*. Several studies have found that many of the individuals who join the Nijera Kori groups display self-interested forms of behavior like anyone else. Some members prove to be disruptive to group solidarity; some women continue to suffer abuse at the hands of their husbands; communal prejudices do not get eradicated overnight; leadership qualities are exercised in different ways by different group leaders - some more democratic, others less so (Rao and Hashemi). It is therefore worth noting in the same evaluation of Nijera Kori by Z. Khan and M Khan in 2000 that there is a danger of a "class within a class"²³ emerging within the Nijera Kori groups because of the more developed forms of leadership that have emerged among group members who work on union and *thana* committees.²⁴

²³ It is to be noted that "class" in this context signifies groups based on social and political leadership and not groups based and divided on the basis of economic means.

²⁴ Ibid. Refer to footnote above.

SELECT BIBLIOGRAPHY:

Christensen, R., 1999, 'Social capital in Bangladesh: Prospects and Constraints', M.Sc. dissertation, Department of Political Science, University of Aarhus, Denmark.

Dunn, J., Gain, P., Hossain, S. and Hubert, D., 2000, "Human Rights and Democracy in Bangladesh: Context for a Strategy", prepared by Verulam Associates for the Royal Norwegian Embassy, Dhaka.

Gordon., Hunter, Kim., Radio Netherlands, 15 July 2003, article on "Prawn farming threatens coastal communities". Source:

<http://www2.rnw.nl/rnw/en/features/development/030715prawn.html>

<http://www.bangladoot.org/ngos-in-bangladesh-bangladoot.pdf>

<http://www.ids.ac.uk/dvccitizen/docs/wp200.pdf>

<http://www.u4.no/projects/project.cfm?id=277>

IDS Bulletin, 1999, "Micro-credit: Impact, Targeting and Sustainability", Vol. 29, No 4, Institute of Development Studies, University of Sussex, England, United Kingdom.

Kabeer, N., September 2003, IDS Working Paper 200, "Making Rights Work For The Poor: Nijera Kori and the Construction of Collective Capabilities in Rural Bangladesh", Institute of Development Studies, University of Sussex, England, United Kingdom.

Kabeer, N., 2002, "Citizenship and the Boundaries of Acknowledged Community: Identity, Affiliation and Exclusion", IDS Working Paper 171, Institute of Development Studies, University of Sussex, England, United Kingdom.

Khan, Z. and Khan, M., 2000, "Field Assessment of Nijera Kori", University of Dhaka, Dhaka, Bangladesh.

Livelihoods Connect, Chars Organizational Learning Paper 3, "The Voice-responsiveness Framework: Creating Political Space for the Extreme Poor", March 2004, Institute of Development Studies, University of Sussex, United Kingdom". Source: <http://www.livelihoods.org/lessons/Asia/Chars3.doc>

Nijera Kori *Annual Reports* of: 2003–2004; 2002–2003; 2001–2002; 2000a, Three Year Plan 2000–2003; 2000b, 1999–2000; and, 1998-1999.

Rao, A. and Hashemi, S., 1999, "Institutional take-off or snakes and ladders", INTRAC Occasional Papers Series 30, Oxford, United Kingdom.

Transparency International, 1997, "*Survey on Corruption in Bangladesh*", Dhaka, Bangladesh.

Watergate, Rachel., and Sultan Haq, Maheen., November 2004, DfID Bangladesh paper on “Bridging the Divide: Lessons and Challenges from the Bangladesh Rural Livelihood Programme in Promoting Gender Equality”, DfID Bangladesh. Source: http://www.dfidbangladesh.org/publications/ BridgingTheDivide_Nov2004.pdf

Westergaard, K. and Hossain, A., 2002, ‘Local Institutions in Bangladesh: An Analysis of Civil Society and Local Elections’, in L. Engberg-Pedersen and N. Webster (eds), *In the Name of the Poor: Contesting Political Space for Poverty Reduction*, Zed Books, London, United Kingdom.

World Bank, 2000, Report on “*Corruption in Bangladesh: Costs and Cures*”, Dhaka, World Bank.

Adopting Rights-Based Strategies in Conflict- Prevention and Resolution

The UNESCO-initiated Education for Peace and
Development Project in Kampot Province,
Cambodia

2. Adopting Rights-Based Strategies in Conflict-Prevention and Resolution: The UNSECO-initiated Education for Peace and Development Project in Kampot Province, Cambodia

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LIST OF ABBREVIATIONS USED:

ADHOC: Cambodian Association for Human Rights and Development
ALRC: Asian Legal Resource Center
CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment
CEDAW: Convention on the Elimination of Discrimination Against Women
CERD: Convention on the Elimination of Racial Discrimination
CLCs: Community Learning Centers
CLEC: Community Legal Education Center
CLO: Cambodian Labor Organization
CRC: Convention on the Rights of the Child
CSD: Center for Social Development
CSOs: Civil Society Organizations
ECCE: Early Childhood Care and Education
HRBAP: Human Rights-based Approach to Programming
ICC: International Criminal Court
ICCPR: International Covenant on Civil and Political Rights
ICESCR: International Covenant on Economic, Social and Cultural Rights
ICMW: International Convention on Migrant Workers and Members of their Families
IFIs: International Financial Institutions
INGOs: International Non-governmental Organizations
KID: Khmer Institute for Democracy
LAC: Legal Aid of Cambodia
LICADHO: Cambodian League for the Promotion and Defense of Human Rights
MDGs: Millennium Development Goals
NFE: Non-formal Education
NGOs: Non-governmental Organizations
OPDC: Organization for Peace and Development
UN: United Nations
UNDP: United Nations Development Programme
UNESCO: United Nations Educational, Scientific and Cultural Organization
UNTAC: United Nations Transitional Authority in Cambodia

1. Background and Rationale:

Country and Programme Context: Cambodia remains one of the poorest countries in South East Asia, plagued by its very recent history of war and genocide. Nearly 80% of the population resides in the rural areas, subsisting on under US\$2 a day. The United Nations Development Programme (UNDP) has placed Cambodia in the list of 32 top priority countries where urgent action must be taken in order to meet the Millennium Development Goals (MDG) deadline of 2015. In the past two decades, the country has received immense financial aid and technical assistance from various international financial institutions (IFI's), Governments and non-governmental organizations (NGOs). The Cambodian Government has also taken steps towards adopting the MDGs by laying out poverty reduction plans to donors, but development Projects remain centralized and the main impetus for action derives from external pressure from major donors, the IFIs and international NGOs (INGOs).

Thus, Cambodia's progress towards meeting the MDGs is mixed. Access to primary education has improved over the last decade (but progress is less than satisfactory and there is a fear that the country will be home to a large illiterate population) and HIV prevalence rates fell from 3.3 percent to 2.6 percent between 1997-2002. But, child mortality has risen over the past 10 years and progress on maternal mortality has been limited. The Cambodia MDGs Report states that for those particular goals to be met, decisive action needs to be taken to reduce the high rate of malnutrition, increase the number of trained health workers, improve access to health care, provide adequate funding to the health sector, and strengthen public financial management.²

Policy and Legal Framework: Cambodia's recent history has been dominated by the atrocities and violence perpetrated by the Khmer Rouge – that sought to create a utopian agrarian society and to rid the country of all foreign influences³ - between the years 1975-1979. The Vietnamese invasion in January 1979 over border conflict with the Khmer Rouge inflicted another 10 years of warfare and bloodshed before the United Nations (UN) intervened in 1989 and established the UN Transitional Authority in Cambodia (UNTAC) to oversee transition of power to a democratically elected Government.⁴ It was only in 1993 that the first democratic elections (sponsored by the UN) were held in the country; two more elections have been held since and at present, the country is classified as having a multi-party liberal democracy under a Constitutional Monarch, King Norodom Sihamoni. Rebuilding efforts in all spheres has been undertaken slowly since 1993 but progress has been slow and staggered.

Cambodia adopted a new Constitution and accepted rule of law principles as the basis for organization of a new society in 1993 after the UN-sponsored elections. It is party to six of the seven major international human rights instruments, i.e. the International

² "Crown Prince Haakon brings goodwill to Cambodia". Source: <http://www.scandasia.com/view.php?id=1161&im=kh>

³ "Cambodia: Revising the Land Law", by Srey Chanthly and Gabrielle Watson, in *"Advocacy for Social Justice: A Global Action and Reflection Guide"*, David Cohen, Rosa de la Vega and Gabrielle Watson, Advocacy Institute and Oxfam America.

⁴ "Cambodia Short Guide" by Thnam Kanha Net. Source: <http://www.oneworld.net/guides/cambodia/development>

Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of Racial Discrimination (CERD); the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Optional Protocol; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT); the Convention on the Rights of the Child (CRC), and its two Optional Protocols on i) the Sale of Children, Child Prostitution and Child Pornography; and, ii) on the Involvement of Children in Armed Conflict. It has not yet signed the International Convention on Migrant Workers and Members of their Families (ICMW). Cambodia ratified the Rome Statute of the International Criminal Court (ICC) on 11 April 2002, although it has yet to accede to any individual complaints mechanisms.⁵ The Cambodian Constitution has also incorporated all these international human rights covenants and conventions, including the ICCPR.⁶

However, the human rights record of the country remains poor and its willingness to meet its obligations under international treaties that it has signed in doubt as a result of its weak implementation of legal safeguards against torture; its failure to bring perpetrators of human rights violations to justice (as is demonstrated in the country's inadequacies in bringing the former Khmer Rouge leaders to trial); and, its policies towards asylum-seekers.⁷

Human Rights and the Role of Civil Society: The Khmer Rouge sought to halt any form of civil society presence in the country during their regime and controlled all activities. An estimated 1.7 million Khmer lives were lost due to arbitrary killings, torture and starvation; those who survived suffered long-term psychological and physical effects. There was an exodus of tens of thousands of refugees to neighboring countries, where some were permitted to resettle. All infrastructures in the country were destroyed. It was only in the early 1990s, under the UNTAC, that INGOs started working in the country, mostly in service delivery roles.

Currently, there exist a large number of national NGOs and several dozen Cambodian NGOs are active throughout the country, investigating violations, monitoring prison conditions, observing trials, and conducting human rights education.⁸ In addition, some NGOs are specializing in election monitoring roles, observing voter registration and the commune election processes. Overall, though it has been observed that the atmosphere for NGOs to function is now less threatening than ever before,

⁵ Status of ratification by country at <http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=29#29>

⁶ Asian Legal Resource Centre (ALRC), "Civil and Political Rights Including the Question of: Independence of the Judiciary, Administration of Justice, Impunity," written statement submitted to the Sixty-first Session of the Commission on Human Rights (E/CN.4/2005/NGO/39), p.2 at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/107/87/PDF/G0510787.pdf?OpenElement>

⁷ Amnesty International, *Annual Report 2004 – Cambodia*, at <http://web.amnesty.org/report2004/khm-summary-eng>

⁸ Some of the active human rights NGOs include the Cambodian League for the Promotion and Defense of Human Rights (LICADHO), the Cambodian Association for Human Rights and Development (ADHOC), the Khmer Institute for Democracy (KID), the Legal Aid of Cambodia (LAC), Center for Social Development (CSD), Community Legal Education Center (CLEC) and the Cambodian Labor Organization (CLO), among others.

Cambodian civil society is still weak and it will take a while before it emerges as a cohesive force engaged in the nations' developmental process.

The UN system is well-represented in the country and has played (and is still playing) a vital role in the country's development – from helping build the human assets of the poor - including in the areas of education and health - to helping raise agricultural incomes by promoting diversification into other rural activities, combined with efforts to support the mobilization and organization of the poor and promoting their livelihoods by ensuring access to productive assets, employment, income generating opportunities and credit. It also works to improve the nutritional status of the population and to empower Cambodians to fully develop their capabilities through greater and affordable access to quality basic social services and to reduce regional disparities in the area of HIV/AIDS, health, water and sanitation, reproductive health, education.⁹

Cambodia has no independent national human rights institution for the protection and promotion of human rights but there are a number of State institutions with some human rights responsibilities: two parliamentary committees have been created under the internal regulations of the Senate and National Assembly respectively; and a separate Cambodian Human Rights Committee - a Government committee staffed by civil servants that was created by royal decree in 2001 - has the principal responsibility for preparing initial and periodic reports under the human rights treaties to which Cambodia is party.

However, as mentioned at the outset, the country faces severe challenges in upholding the human rights of its citizens. Cambodians in the rural areas have no access to information and communication technologies. The media is largely Government-controlled and the people have limited rights to free speech. Few rural provinces can receive radio transmissions and newspapers.¹⁰ The situation is further exacerbated by challenges posed by poor infrastructure, low human resource capacity, poor governance issues, poor policy implementation and widespread corruption among the elite - these continue to hamper developmental progress and impede realization of basic rights.

Against such enormous challenges, this case study documents the strategies used by the United Nations Educational, Scientific and Cultural Organization (UNESCO) Cambodia in helping former Khmer Rouge communities to begin realizing their right to education by inculcating a culture of peace. Because this Project is still operational (it started operations since January 2004 and will conclude in end-December 2005), the final outcomes are not yet ascertained and what is presented is an analysis of the human rights-based approach to programming (HRBAP) strategies used and the interim outcomes visible as a result of the use of such strategies.

⁹ UN Development Goals, Cambodia 2001, Source: <http://www.undp.org/mdg/Cambodia.pdf>

¹⁰ Ibid. Refer to footnote No 4.

2. The Study of the UNSECO-initiated Education for Peace and Development Project in Kampot Province using Rights-Based Strategies

Case Study/Project Context: The collapse of what was South East Asia's most progressive education system, together with the killing of the country's educated class during the Khmer Rouge regime, has created a risk of building a large illiterate population in Cambodia, especially as 43% of the population is under 15 years of age. The challenge is formidable given that 35% of children aged 6-14 years were out of school in 1999, and between 38% and 48% of female children were out of primary and secondary schools in 2001. Literacy rates and quality of education varies between large cities and rural towns, with many rural provinces experiencing high student-teacher ratios. In 2001, only 33% of students finished grade 1-9. While the Government is working with donors to achieve the MDGs - including in the education-related goals - by measures like improving access to schools, reforming the nationwide curriculum in primary and secondary schools and so on, progress is slow as is demonstrated by the low salaries of teachers or by the limited attention paid to the large number of students seeking higher education and employment. Some parents turn to private schools to satisfy their educational needs but few can afford the high costs involved. Access to education by the poorest and most disadvantaged groups, particularly in rural and remote areas, continues to be limited. A more significant increase has not been achieved due to low public investment in the education sector.¹¹ The future of high school graduates is therefore bleak and may retard plans for economic growth.¹²

The right to education has a special significance in Cambodia as it is addressed in five of the six main international treaties that it has acceded to and these were also incorporated into the 1993 Constitution. Chapter 6 of the Constitution dwells on "the people's right to quality education at all levels" and the role of the State in the establishment of "a comprehensive and universal educational system throughout the country". Educational freedom is guaranteed, as is educational quality "so that all citizens have equal opportunity to earn a living". Primary and secondary schooling are to be provided free of charge and nine years of education are compulsory. Private schooling is allowed and Buddhist education promoted, subject to State control.¹³

In principle, the country is thus under an obligation to progressively provide all of the above so that citizens can realize the right to education by 2015 (as have been expressed by the Government). However, as mentioned elsewhere in this paper, progress has been very slow due to the attendant challenges. Against this backdrop, the UN system has played an important role in the rehabilitation of the Cambodian educational system. Most of the support has been targeted at developing the capacities of individuals, institutions and systems so that the interventions made can be self-sustaining in the longer time frame. Support has also been provided for strategic planning with wider stakeholder participation.¹⁴

¹¹ Ibid. Refer to footnote No. 9.

¹² Ibid. Refer to footnote above.

¹³ "The International Human Rights Framework for Education in Cambodia", by the OHCHR in Cambodia. Paper presented at the National Consultative Meeting of Rights-Based Education in Phnom Penh, Cambodia, 3-4 February 2005.

¹⁴ Ibid. Refer to footnote No 9.

The UNESCO-initiated Project “*Conflict Prevention and Resolution through Education – Education for Peace and Development*” in 18 villages in two communes (Trapeng Phleng and Taken) in the Koh Sla region in Kampot Province is one such initiative that uses strategies that have rights-based elements intertwined within (see Box 1 below) and have demonstrated how, through the use of education as an entry point into the communities, conflicts in a society (that have been hitherto dominated by conflict) can be mitigated.

Box 1: The Human-Rights Based Approach to Educational Programming

The Human-Rights Based Approach to educational programming involves an analytical and methodological framework that combines human rights norms and principles with good programming practices in the education sector as follows:

- *Builds on agreed norms and standards in international treaties, conventions, and declarations related to education;

- *Is a tool for identifying, planning, designing, implementing, and monitoring education development activities from a human rights perspective;

- * Integrates human rights norms, standards, and principles in all phases of the programming process;

- * Ensures that all programming activities further the realisation of the right to education;

- * Encompasses the importance of quality and relevance of education, as defined in the Dakar Framework for Action and which includes:

- 1.the well-being of learners*
- 2.relevance of content and outcomes*
- 3.quality of teaching and learning processes*
- 4.suitability of learning environments*

- * Ensures that programme activities contribute to the development of capacities of ‘duty-bearers’ and ‘rights-holders’;

- * Insists that a rights-based approach to education programming involves four key actors:

- the Government and its institutions, as duty-bearers*
- the child, as rights-holder/claimer*
- parents, as representatives of the child*
- teachers, as both rights-holders and duty-bearers*

- * Insists that no right can exist without a corresponding Governmental obligation – the obligation “to respect, protect, and fulfil the right to education”;

- * Builds on the 4-A scheme¹⁵ presented in the Manual on Rights-Based Education developed by UNESCO Bangkok and the UN Special Rapporteur on the Right to Education.

This initiative assumes more significance as it has been undertaken in participation with the public sector – relevant Government departments – and an NGO in an area

¹⁵ The 4-A Scheme involves government obligations to make education available, accessible, affordable and adaptable so that children worldwide can realise their right to education.

where groups of former Khmer Rouge people still reside. Koh Sla region is widely known as one of the last and biggest former Khmer Rouge stronghold in Cambodia and faces severe challenges due to its physical location, illiteracy, overarching poverty levels and lack of access to healthcare, schools, roads, food and safe drinking water. Women and girls in these communities are particularly disadvantaged in all aspects.

Stakeholders Involved: The Project is supported by the Belgium Government and UNESCO Cambodia is implementing Project activities in partnership with relevant public sector stakeholders – the Non-formal Education Department of Kampot Province, the Cambodian Ministry of Education, the District Education Office, the Engineering Institute of Cambodia - an NGO, Organization for Peace and Development (OPDC); and, the communities living in Trapeng Phleng and Taken communes in Koh Sla region in Kampot Province.

Objectives of the Project: Through the Project activities that are centered on the Right to Education and designed and implemented with participation of all stakeholders, the Project aims to achieve a long-term goal of building a culture of peace in the communities by preventing conflict in both the domestic and community spheres.

This long-term goal would be achieved through short-term goals that include:

- i) Enabling children to access non-formal education;
- ii) Helping communities realize the value of a culture of peace as a prerequisite to implement and sustain any developmental outcomes;
- iii) Enabling people in the communities to be economically empowered by training them in vocational skills;
- iv) Empowering people in the communities to be active partners in the developmental process rather than mere recipients of aid; and,
- v) Helping support equitable processes that would lead to gender empowerment.

3. Process:

The Project activities in both the communes to help achieve the above consists of:

- * A Project launch to initiate the Project in January 2004;
- * Holding of non-formal education (NFE) literacy-level 1 classes;
- * Undertaking early childhood care and education (ECCE) activities;
- * Opening mobile libraries;
- * Conducting baseline surveys;
- * Undertaking Vocational training for income generation;
- * Undertaking capacity development activities via training of the communities and officials of the related public sector departments;
- * Setting up Community Learning Centers (CLCs);
- * Introducing a Culture of Peace initiative in the communities via OPDC;
- * Documenting case studies to document lessons learned in the process of implementation of Project activities;
- * Using radio as a means of development communication; and,

* Networking amongst various stakeholders.

Rights-Based Programming Strategies Used: The capacities of all in-country stakeholders – the communities, the civil society organizations (CSOs) and the relevant public sector departments – are weak and severely constrained in undertaking any form of cohesive activity (due to the factors as elaborated throughout Section 1 of this case study). Hence, UNESCO Cambodia realized that to undertake activities that can help achieve the long-term Project goal, it had to play the role of a catalyst by helping develop capacities of its partners – the relevant public sector departments, the communities and the partner NGO – through the use of the various strategies that can be called rights-based as they i) involve stakeholder participation; ii) taps into the agency of the communities to have a stake in decisions that impact their lives; iii) looks at enhancing empowerment levels; and, iv) focuses on processes as well as outcomes (through one of the Project activities that involves documentation of case studies). This is in addition to the agency performing a service-delivery role, which is equally important in this particular country context.

➤ *Trainings as a capacity development strategy to build stakeholder capacities:*
As capacity development is the key to engage and co opt stakeholders and for any initiative to become sustainable and viable, UNSECO Cambodia focused on developing capacities of all key stakeholders as a key strategy from which would follow the envisaged Project outcomes. Most of such capacity development was mainly in the form of intensive trainings that have focused on how to effectively initiate activities as envisaged under the programme in a sustainable manner by involving the participation of all stakeholders (please see the following Section on one such capacity development initiative). These trainings also included capacity development in monitoring and evaluation tools. Of particular interest is the strategy of developing capacities of formerly illiterate individuals (hailing from the former Khmer Rouge) and training them as NFE and ECCE facilitators. The outcomes of such capacity development are documented in Section 4.

➤ *Enlisting stakeholder participation via conducting of the baseline surveys:*
Data on various indicators related to population, gender, literacy, health, water, livelihoods and so on that adequately reflects the status and needs of the local communities is imperative and an essential element to undertake effective grassroots programming. Thus, as one of the first steps in the process that involved developing capacities to undertake Project activities, UNSECO Cambodia helped develop the capacities of the local communities in the villages in the two communes to undertake baseline surveys. Realizing that these people did not possess the capacity to undertake such surveys, UNSECO prepared the questionnaire, taking care to ascertain that the survey reflects those issues that are representative of the communities. Thereafter, capacity development in the form of survey training was conducted for literacy facilitators, village supervisors and commune supervisors, who prepared plans for primary data collection. These people were also trained to write up the results of the village surveys. To an extent, UNSECO staff monitored the survey process as this was really the very first time that these communities were undertaking such an effort.

Box 2: Summary of survey conducted by the local community in the 18 villages¹⁶

Total number of population: 13, 142, of which 6, 237 are females.

Total number of households: 2,690

Total number of children under 6: 2,364, of which 972 are girls.

Total number of children aged 6-12 years are: 3, 273 of which 1, 585 are girls. Among these 3, 273 children, 1, 205 (of which 757 are girls) have never been to school for different reasons but mainly due to the long distances that they have to walk to reach school everyday.

Total number of illiterate people aged 13-45 years is 3, 911, of which 2, 403 are women,

Only about 13% of the population have access to pump water or open well water. Others obtain drinking water either from ponds, rivers or from rainwater collection.

More than a person per family have been suffering from malaria and almost a similar number of people have diarrhea problems. About half of the population go to traditional healers when they fall sick or buy medicines from local stores by themselves without getting checked by a doctor. There is no hospital in the area and only one health care center for 18 villages. However, there are 167 traditional healers that people have access to.

➤ Using a local civil society agency to help build inroads: As a local CSO is more familiar with the ground contexts and also often have more acceptability amongst the local population, UNSECO Cambodia started partnering with an NGO – OPDC - on one important Project activity – the Culture of Peace initiative. Realizing that for any outcomes to be effective, the local communities have to be well-rooted in a culture that promotes peace as a human rights standard and principle, OPDC have developed local context-specific training materials and begun educating the village chiefs, the commune authorities, the NFE facilitators, the school teachers and the parents on how peace is a prerequisite to live in a society and thrive. Such training has also been introduced in the NFE schools through the NFE facilitators. A population that have never been to school or who have been previously excluded from the formal education system are now slowly learning how peace building characters and their values (such as problem solving and conflict resolution) is an essential requirement to live harmoniously in a society.

➤ Using radio as a means of development communication: Realizing the positive role that community radio can play as a rights-based tool in undertaking advocacy, UNESCO Cambodia used Radio Kampot as an advocacy tool to publicize the activities and related outcomes under this Project. Hearing their own achievements broadcasted via the radio serves to only encourage the local communities and the public officials in the two communes to participate even more pro-actively in the

¹⁶ “Conflict Prevention and Resolution, Cambodia: Education for Peace and Development Project”, Kampot Project Office Project Report, UNESCO Cambodia, January-December 2004.

programme activities. It has also made public officials at the central level aware of the Project activities and outcomes and of the linkages of how accessing the Right to Education and training in culture of peace (and other associated activities) can help previously rights-unaware communities proactively participate in developmental processes.

➤ *Using the Community Learning Centers as a forum for participation:* The CLCs have been used by UNESCO Cambodia as a forum for the communities to participate in various roles. Firstly, the CLCs are built with community inputs in terms of labour, money, construction materials and land for the centers. Such inputs, in themselves, build in the communities' stake in ensuring that the CLCs function as per the role that was envisaged for it. Secondly, the CLCs are managed by the communities (CLC management committees are formed with community members and they are trained by UNCESO to perform their functions). Some of the important functions these committees play pertain to selection of contractors to build the centers; ensure that the centers are built based on the communities needs and choices; and finally, in managing the centers in terms of upkeep and facilities. Having a democratically elected committee manage the CLCs ensure accountability and transparency at all levels – from ensuring that the contractor is accountable in building a center that is reflective of the communities needs to making certain that the committee performs its functions as was envisaged for it.

➤ *Documenting process outcomes:* From the onset, UNESCO Cambodia identified the need of documentation of the Project activities and the impact these have had on the people in the communities. Such documentation, UNSECO realized, would be vital in the advocacy and lobbying process of enabling such communities realize their rights. For the communities, such documentation would also provide an opportunity to undertake evidence-based advocacy with the public officials and for UNESCO, this process would provide a framework wherein it could further its dialogue with diverse stakeholders. In this Project, such documentation is in the form of case studies written by the NFE and ECCE facilitators and supervisors themselves of their own experiences or experiences narrated to them by the individuals living in the communities, or even articles written by children with help from their teachers.

Capacity/Role of Duty-bearers in Addressing Demands: At the macro level, public sector officials – in this case, officials from related Government agencies who are Project stakeholders – have been trained to undertake monitoring and evaluation, write reports and in becoming active partners in the Project implementation process (for instance, in helping build the CLCs). At the micro level, duty-bearers like the village chiefs and commune authorities have also been capacitated via trainings to work collaboratively with the communities in meeting obligations (like participating in building the CLCs; in ensuring that the CLCs reflect the needs and choices of the local communities; in overseeing that the CLCs function as common community properties; and, at times, by functioning as community dispute mitigation authorities).

Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Strategies: In this Project, training of all stakeholders in monitoring and evaluation of ongoing Project activities (immediate outcomes as well as overall outcomes - this will be

undertaken at a later stage) forms an essential part of the capacity development process. For instance, training on monitoring and evaluation (on school learning, school attendance, etc.) for NFE facilitators in both the communes have been undertaken by UNESCO Cambodia; such training has also been undertaken for village supervisors (and facilitated by commune and district supervisors) to monitor the literacy classes on an ongoing basis.

Though UNSECO Cambodia finds that the capacities of the stakeholders to monitor and evaluate their activities and resultant outcomes are still at a rudimentary level¹⁷, it is a step in the right direction in the process of building stakeholder ownership and accountability in the process of determining the Project outcomes.

4. Outcome (Results):

As mentioned at the outset, this Project is still operational and hence, the outcomes documented below can only be viewed as interim outcomes. They however deserve documentation as they are culled from experiences of rights-unaware communities via the use of strategies that are rights-based in a country that has suffered from two decades of genocide, violence and political turmoil.

➤ Public sector being capacitated: A very important strategy and resultant outcome - particularly in the Cambodian context – has been the building of capacities of public sector stakeholders (the related Government departments at both the central and provincial levels). Building of such capacities by UNESCO Cambodia has not only enabled them to start collaborating with the stakeholders - communities and with UNSECO Cambodia - in discharging their obligations as duty-bearers but has also enabled them to be well-equipped technically on programmatic issues relating to health-service delivery; CLC construction and management; facilitating literacy and ECCE; undertaking monitoring and evaluation; and so on. Stakeholder participation and collective action of any kind is a new concept in the country since the idea of the public sector collaborating with the communities/civil society was non-existent during the Khmer Rouge and is only now emerging and finding a new space in developmental interventions. Such capacity development also provides an opportunity for the related public sector departments to gradually use these skills while implementing interventions or programmes of the same nature in other parts of the country.

➤ People becoming empowered to participate and gradually realize rights: Along with helping develop capacities of the public sector, another important outcome that has been witnessed since this Project was initiated has been the visibly growing empowerment levels of community members (including of women) in the two communes. Realizing the value of education and the imperative need to live in a culture of peace (through the UNESCO Cambodia capacity development initiatives), villagers are not only collaborating in helping build the CLCs (by contributing land, labor, materials and so on) but have contributed labor and materials in helping build the NFE schools; in some schools, villagers have even helped build the desks and benches. In one instance, they have collaborated with local public sector officials in

¹⁷ Ibid. Refer to footnote above.

helping repair six bridges; in another case, they helped build a road that would lead to the local NFE school; in yet another case, local women from one village (Monosok village) lobbied and received support from the Nepalese Women's Association in Cambodia to set up a water point in their village – around 62 families in this village are now able to collect water through this water point.¹⁸

The transition from a community of people that were previously only reliant on sporadic and erratic public sector service-delivery to those who are now collaborating and participating in community-focused activities with the public sector is also a step forward in making them more empowered and self-reliant and will hopefully lead to a scenario where they will start dialoguing with the public sector duty-bearers on claiming their rights. At a micro-level, such dialoguing has already occurred between community members and commune leaders (the local-level duty-bearers), an instance being the construction of the CLCs based on the communities' needs and choices.

➤ Conflicts mitigated to an extent: The communes where the Project activities have been initiated were previously dominated by violence – be it domestic violence and abuse, conflicts between community members and so on. This was due to the fact that these communities belonged to the former Khmer Rouge and hence lived a life dominated by conflict and violence. This Project (and its activities) have helped in mitigating conflicts to a large extent – commune and village chiefs have stated that incidences of violence in the communities have gone down and that community members have started resolving contentious issues through dialogue and discussions, often using the CLCs as a platform. Even incidences of abuse (or situations that leads to abuses) within families – like drinking, gambling, wife and child beating – have been reported at far lesser intervals than when the Project activities were originally initiated.

➤ Children realizing their right to an education: Children in these 18 villages have started availing of NFE – the changes are already visible in communities that have had no opportunity to avail of any form of education for the last two decades. The learning rate is high and 1036 children are attending classes; the quality of teaching is also of a good standard (UNESCO Cambodia – in keeping with the rights-based principles of educational programming that states that education should not only be available, accessible, affordable and adaptable but should also be of good quality – have ensured that teachers, through capacity development initiatives, are adequately trained to impart a good quality of teaching to the children. The outcome is that some of these NFE schools will receive formal school status as early as in the next two years. This is an accomplishment in itself as it implies that the public sector is coming forward to work together with the communities; it also has larger implications in terms of the public sector replicating such partnership models elsewhere in the country.

¹⁸ Ibid.

5. The Value Added of Using Rights-Based Strategies:

Positive Lessons Learned: At a very limited and basic level, against the enormous task of nation-building on hand and the challenges this entails, what the Koh Sla experience – via the interim outcomes – reveals is that with adequate capacity development initiatives (that is a combination of both service-delivery and a focus on developing the capabilities of both the public sector and the communities), a receptive public sector, donor support and the use of acceptable strategies as entry-points (in this case, using education as an entry-point) even countries in transition and communities dominated (and affected) by conflict can come together under a participatory framework to realize basic rights and start realizing the value of living harmoniously.

Challenges in Implementing Rights-Based Programming Strategies: Lessons Learned

➤ *Low capacity in using those rights-based strategies that have political overtones:* Cambodia is a country that is only just emerging from decades of political turmoil and violence. It is now heavily involved in nation-building and reconstruction efforts and as a fledgling democracy, is dealing with many attendant challenges, including a very lowly-capacitated public sector, a weak judiciary and a populace that is dominantly illiterate and poor. Corruption is also another factor that has eroded and hampered the effective functioning of the public sector. In such a scenario, the public sector, most NGOs and the donors focus on an aid delivery strategy that is more service-delivery reliant than on developing capacities. The general population, being poor and illiterate, is also more reliant on such service delivery and in meeting their basic needs. Thus, any agency that works on developing capacities under a rights-based framework will have to work under the assumption that only some strategies (like developing capacities to work under a participatory stakeholder framework) to realize rights will work; other rights-based strategies that are more politically oriented (like challenging the status quo; attacking corrupt public as well as local village/commune officials and leaders; using the platform of public hearings to bring such issues into public domain; and, undertaking political advocacy and lobbying) will not work or will require more enabling and sophisticated conditions to operate in (and which are not prevalent right now in the country).

➤ *Working with groups that belong to the former Khmer Rouge a challenge:* The UNSECO Cambodia-initiated Project partners with groups of people who belong to the former Khmer Rouge; these are groups who are still to be tried under both Cambodian and international law for war crimes. This situation restricts the abilities of these particular groups to demand and claim their rights. Moreover, the Project activities entails that the public sector work with these communities; however, the current Cambodian public sector officials do not have a shared history with the former Khmer Rouge that is based on the principles of trust and cooperation. Co-opting these officials to enable them to start partnering with those people who are to be tried for committing war crimes against their own people is a very big challenge that the agency faces in this Project.

At another level, the Project involves working with commune members who belong to the former Khmer Rouge; these local-level village heads are still very much entrenched in mindsets of power and domination; working with them in a manner so as to avoid elite capture (domination of power by only a select powerful few in the villages and communes), especially in this context, is a challenge that UNSECO Cambodia faces to quite a large extent while implementing this Project.

SELECT BIBLIOGRAPHY:

Amnesty International, *Annual Report 2004 – Cambodia*, at <http://web.amnesty.org/report2004/khm-summary-eng>

Asian Legal Resource Centre (ALRC), “Civil and Political Rights Including the Question of: Independence of the Judiciary, Administration of Justice, Impunity,” written statement submitted to the Sixty-first Session of the Commission on Human Rights (E/CN.4/2005/NGO/39), p.2 at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/107/87/PDF/G0510787.pdf?OpenElement>

Chanthy, Srey., and Watson, Gabrielle., 2001, “Cambodia: Revising the Land Law”, in *“Advocacy for Social Justice: A Global Action and Reflection Guide”*, David Cohen, Rosa de la Vega and Gabrielle Watson, Advocacy Institute, Washington D.C, and Oxfam America, Kumarian Press, Inc. Connecticut, USA.

<http://www.scandasia.com/view.php?id=1161&im=kh>

<http://www.unhchr.ch/tbs/doc.nsf/newhvstatusbycountry?OpenView&Start=1&Count=250&Expand=29#29>

Net, Thnam Kanha., “Cambodia Short Guide” Source: <http://www.oneworld.net/guides/cambodia/development>

Office of the High Commissioner for Human Rights in Cambodia (OHCHR), February 2005, “The International Human Rights Framework for Education in Cambodia”, paper presented at the National Consultative Meeting of Rights-Based Education in Phnom Penh, Cambodia.

UN Development Goals, *Cambodia 2001*, Source: <http://www.undp.org/mdg/Cambodia.pdf>

UNESCO Cambodia, January-December 2004, “*Conflict Prevention and Resolution, Cambodia: Education for Peace and Development Project*”, *Kampot Project Office Project Report*.

Using Rights-Based Programming Principles to Develop Capacities to Claim Rights

The Regional Rights Resource Team (RRRT)
UNDP Project in the Pacific Island Countries



3. Using Rights-Based Programming Principles to Develop Capacities to Claim Rights: The Regional Rights Resource Team (RRRT) UNDP Project in the Pacific Island Countries

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LIST OF ABBREVIATIONS USED:

ADB: Asian Development Bank
AusAID: Australian Agency for International Development
CBOs: Community-based organizations
CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women
CP: Community Paralegal
CRC: Convention on the Rights of the Child
CSEC: Commercial Sexual Exploitation of Children
CSOs: Civil Society Organizations
DfID: Department for International Development
ESCAP: Economic and Social Commission for the Asia-Pacific
EU: European Union
FWRM: Fiji Women's Rights Movement
HRBAP: Human Rights-Based Approach to Programming
ICESCR: International Covenant on Economic, Social and Cultural Rights
ICCPR: International Covenant on Civil and Political Rights
IJALS: Institute of Judicial and Applied Legal Studies
LRTO: Legal Rights Training Officer
MDGs: Millennium Development Goals
MPs: Members of Parliament
NGOs: Non-governmental organizations
NZAID: New Zealand Agency for International Development
OHCHR: Office of the United Nations High Commissioner for Human Rights
PDLP: Professional Diploma in Legal Practice Programme
PICs: Pacific Island countries
PRAJA: Poverty Reduction through Access to Justice for All
RRRT: Regional Rights Resource Team
UDHR: Universal Declaration of Human Rights
UNDP: United Nations Development Programme (UNDP)
UNICEF: United Nations Children's Fund
UNIFEM: United Nations Development Fund for Women
USP: University of the South Pacific
WCWCR: Women's Coalition for Women's Citizenship Rights

1. Background and Rationale:

Country and Programme Context: The last 20 years has witnessed limited economic growth and development in the countries³ of the Pacific Island region. Regional forums and development reports⁴ have attributed such lack of progress to poor governance, which indicates a need for development that addresses democracy and human rights rather than just focusing predominantly on economic growth. Across the region, however, human rights, good governance, democracy and the rule of law are often poorly understood - partly because Pacific Island countries (PICs) Governments have not placed due emphasis on civic and human rights education. Along with the lack of understanding and subsequent lack of emphasis on civic and human rights education and norms, Constitutions or laws adopted in most of these island nations place more emphasis on civil and political rights, often at the cost of economic, social and cultural rights. Most Governments regard such rights as being too “expensive” (time and resource intensive) to implement and are often unable to recognise that international law allows for the progressive realization of such rights.

Politically, some PICs, for instance, have shown tolerance towards the military, police and civilian militia who are willing to subvert the rule of law with the use of force when election results do not accord with the dominant ideology and group. This has resulted in racist nationalism in Fiji, ethnic tensions over local resources in the Solomon Islands and severe factionalism in Vanuatu. The potential of such civil conflict often puts the building of functioning (and at times, fledgling) democracies under threat. There have been incidences of suspension of rights during times of emergency of even non-negotiable rights such as free speech.

The small size of these island populations also makes it socially difficult for human rights activists to challenge the status quo and take an unpopular position against the State or chiefs in villages or settlements (most of the PICs follow a system of indigenous governance wherein, along with central Governments, there exists local and traditional forms of governance in the villages/settlements where local chiefs rule). Openly taking a different position is often seen as going against the culture or a betrayal of one’s culture.

Such political and cultural challenges manifests in some cross cutting common and recurring themes as far as abuse of rights is concerned in the PICs. These include growing threats to human security, a lack of livelihood opportunities and access to resources - such as land – and are linked to rising income disparity and growing poverty. Such lack of emphasis on rights is felt more acutely amongst the most disadvantaged and marginalized groups of people, especially women and children (who are often more vulnerable to various forms of violation of rights, including domestic violence and child abuse that exists in most spheres of Pacific Island societies due to traditional and cultural practices). This is further accentuated through

³ The Pacific Island countries are Fiji, Cook Islands, Marshall Islands, Nauru, Federated States of Micronesia, Kiribati, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu and the French administered territories of New Caledonia, French Polynesia and Wallis & Futuna.

⁴ According to Asian Development Bank and UNDP Human Development Reports.

discrimination that exists on the basis of race, ethnicity, gender and sexual orientation and which is evident in many of the PICs.

Policy and Legal Framework: As mentioned elsewhere in this paper, the indigenous traditional political structures in the PICs are rooted in patriarchal and hierarchical systems. Such a traditional system is strongly resistant to human rights interventions as the notion of rights is often seen as a “western imposition” on culture and identity. Thus, though most PICs have a Bill of Rights in their Constitutions, such a Bill, in most of the countries, often contain provisions relating to basic civil and political rights; only some are more advanced in terms of codification of such rights. For instance, Fiji, Papua and New Guinea and Tuvalu have Constitutions that contain advanced sections allowing for the application of relevant international human rights law/treaties where relevant (the Constitutional sections however contain no formal provisions about the need for ratification of such treaties).⁵

All the PICs have ratified the Convention on the Rights of the Child (CRC); all but Tonga, Palau, Nauru and the Marshall Islands have ratified the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). However, only Solomon Islands has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) and no PIC has ratified the International Covenant on Civil and Political Rights (ICCPR).

The Governments of most PICs are generally officially supportive of human rights but the dominant patriarchal and traditional culture/indigenous local governance systems are strongly resistant to implementing and abiding by a culture of rights. Such resistance is visible in the fact that except for some notable exceptions like the setting up of a Human Rights Commission in Fiji⁶ and the passing of the Bill of Rights and the passing of the Family Law Act in the country, no other PIC has set up a Human Rights Commission. A Human Rights Commission is included in the Draft Solomon Islands Constitution but is yet to be set up. Tuvalu is now giving some consideration to setting up an extra position within the proposed office of the Ombudsman to deal with rights. But much more progress apparently needs to be made to demonstrate the PIC’s commitment to upholding a culture of rights (as has been stated in the recommendations of the Pacific Islands Human Rights Consultation held in Fiji in June 2004 that stressed the need for PICs to reaffirm their commitment to human rights).⁷

⁵ (43(2) Fiji Constitution, s 15(c), Tuvalu Constitution) and s 39(3) of the Papua New Guinea Constitution.

⁶ The Fiji Human Rights Consultation has since hosted the Pacific Islands Human Rights Consultation in Suva, Fiji, in June 2004.

⁷ <http://66.102.7.104/search?q=cache:hcmvkjw26ygJ:www.humanrights.org.fj/pdf/ConcludingStatement.pdf+Status+of+human+rights+in+the+Pacific&hl=en>. Concluding statement and recommendation No. 25 of the Consultation “proposed that Pacific Islands Governments take a rights- based approach to development – that is participatory, accountable, not discriminatory, empowering and based on relevant human rights standards”.

Human Rights and the Role of Civil Society: The lack of well-defined legal frameworks for non-governmental organizations (NGOs) to function thus means that there is a consequent lack of strong civil society networks that can put pressure on the Governments to uphold rights of their citizens. NGOs often do not have the financial capacity, technical knowledge or wherewithal to undertake sophisticated rights advocacy strategies, with many of them only active in traditional service delivery roles. Many are also hesitant to assume a political watchdog role for fear of incurring official backlash. In some PICs like Tuvalu and Kiribati, NGOs are almost quasi-government entities, with their offices and secretariats located in Government departments.

Lately, there has however been the emergence of a number of national civil society organizations (CSOs), notably NGOs, in many of the PICs undertaking various types of human rights work (including human rights training and advocacy, though mostly focused on women's rights issues). In both Fiji and Solomon Islands, the loss of democracy and the overthrow of elected Governments in 1997 (Fiji) and 2000 (in both countries) has given rise to a new type of NGOs that perform "watchdog" functions, including challenging the traditional power structures and demanding accountability. The Millennium Development Goals (MDGs) "shadow" report in Samoa has been prepared by Samoan civil society. Many such organizations/groups are funded by development agencies such the European Union (EU), Australian Agency for International Development (AusAID) and New Zealand Agency for International Development (NZAID).

It is in such a changing and challenging scenario that the role of a regional project - the Regional Rights Resource Team (RRRT) Project - in the PICs assumes significance in using rights-based programming strategies to capacitate marginalized and vulnerable groups to gain rights-based outcomes and is the subject of study in this volume.

2. The Study of the Regional Rights Resource Team (RRRT) UNDP Project in the Pacific Island Countries using Rights-Based Programming Strategies

Case Study/Project Context: RRRT was initially established in 1995 in response to the need to promote the legal and human rights of women articulated by some PIC women's NGOs at a number of stakeholder meetings. Initially designed by a UK Department for International Development (DfID) lawyer and the Fiji Women's Rights Movement (FWRM) legal literacy team, it grew out of a legal literacy project conducted by FWRM and funded by the Economic and Social Commission for the Asia-Pacific (ESCAP) during 1992-1994. The FWRM mass media campaign on the rights of women in the law under this Project created a demand for further substantive research in this area. The resultant research project, funded by The Asia Foundation and DfID, grew into a substantive FWRM Handbook titled "*Law for Pacific Women: A Legal Rights Handbook*".⁸ The success of the FWRM Legal Literacy Project - together with other legal awareness campaigns in other PICs undertaken by a number of NGOs - created a groundswell of opinion amongst PIC women's NGOs that there is a dire need for legal literacy training for women. Several consultations involving

⁸ P Imrana Jalal, "*Law for Pacific Women: A Legal Rights Handbook*".

Government, donors, development agencies and NGO representatives were held for DfID to ascertain the need for a similar Project/organization that could provide such needed services to marginalized and vulnerable groups of women. There have since been three subsequent project designs that expanded the work of RRRT to broader target groups and to a wider range of human rights and poverty issues. During these manifestations of the RRRT Project, United Nations Development Programme (UNDP) and representatives from various partner PIC NGOs were involved at all stages of the project planning/implementation cycle. UNDP assumed management responsibilities for RRRT in April 2002 when DfID withdrew direct assistance to the region. The current three-year phase of the UNDP-RRRT Project, entitled Poverty Reduction through Access to Justice for All (PRAJA), is funded by DfID until September 2005.

From 1995 and till date, RRRT has been instrumental in capacitating vulnerable groups of people across the PICs to demand and claim rights. The Project was globally recognized when it received the United Nations Children's Fund's (UNICEF) Maurice Pate Award in 1998 for its role in promoting the human rights of women and children. The initial, narrower focus on women's rights and legal literacy has since expanded to wider human rights issues and education in response to the evolving global development and rights agenda and local needs and priorities.

RRRT is currently being incorporated in Fiji as a "not for profit" company. Though the current phase of the project will end in September 2005, it will continue to work in the region as an institute, developing the capacities of its partners at all levels to bring about human rights change at various levels.

Stakeholders Involved: RRRT consists of nine Trustees (or Members) and a seven-member Board of Directors who is responsible for organizational governance. The gender balance in the composition of the Members and the Board reflects the principle of gender equality that the Project seeks to achieve in all aspects. Its staff members belong to the countries of Fiji, Kiribati, Solomon Islands, Tonga and Vanuatu.

From the day it was first conceptualised as a project that aimed at providing legal literacy and training to women, it has grown today to become a full-fledged Pacific-based regional human rights organization that provides technical and policy advice, capacity- development and training on human rights at macro, meso and micro levels. RRRT partners with Governments, regional and civil society organizations to build capacities to deliver and claim rights. RRRT has programmes in the Cook Islands, Fiji, Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. Through regional partnerships, RRRT has also worked in Papua New Guinea, the Northern Pacific and the French Territories.

Objectives: RRRT's vision is: "*A socially just and equitable Pacific Islands society based on the principles of human rights, good governance and democracy*". The goal is "*To strengthen the capacity of the Pacific region to promote principles of human rights and good governance in order to achieve greater democracy based on social justice.*"

The objectives for achieving these goals include:

- Strengthening the capacity of policymakers to adopt and apply human rights principles and good governance practices;
- Strengthening the capacity of implementation-level agencies to develop, promote and apply human rights principles and good governance practices;
- Strengthening the capacity of civil society and marginalized groups to advocate, assert, monitor and defend human rights and good governance – with special focus on the poor, women and children; and,
- Strengthening the capacity of RRRT as a Project/organization to enhance its delivery of innovative and cutting edge human rights support and services to its partners in promoting good governance.

3. Process:

The Use of a Three-Tier Rights-Based Programming Strategy in RRRT for Developing Capacities: RRRT uses an approach wherein promotion and realization of human rights *per se* are a *focus and overall goal*. It should be noted at the outset that RRRT’s purpose is not just to promote human rights to build a Pacific Islands’ human rights culture but *to capacitate its stakeholders to deliver and claim human rights in all spheres* - whether they be civil and political rights or economic, social and cultural rights - and designs training specific to the needs of the requesting group or agency depending on the priority of the country or organization (for instance, responding to claims to: regain loss of free speech in Tonga; the loss of democracy in Fiji and Solomon Islands; constant political upheavals due to improper elections in Vanuatu and so on). Thus, training is designed to accommodate development needs that are country and context specific.

A goal of such training and capacity development is to integrate a human rights-based approach (HRBAP) to development. RRRT uses a multi-layered approach most effective in generating change. Focusing interventions at *three levels* through a *three-tier top-down and bottoms-up approach* creates opportunities for policy changes to be initiated by decision makers, whilst accommodating initiatives from the community. In this way, RRRT has not only assisted in empowering disadvantaged groups to demand and claim their rights, but also sensitised decision makers and delivery agents to use human rights conventions and principles in their work, thus ensuring a comprehensive, society-wide approach to advancing human rights and good governance.

The three –tier approach uses the following strategies to build capacities:

Tier One: This form of capacity development is undertaken at the macro level with Government ministers, judges, magistrates, Members of Parliament (MPs) and senior public servants through policy advice, technical support and training, both at the PIC level and regionally. Services ranges from ad hoc support upon request or systematic training working with the same groups of individuals who demonstrate support for human rights as reflected in their decision-making and policies;

Tier Two: Work at this meso level includes working with stakeholders such as magistrates, mid-level public officials, Law Reform Commissions, Legal Aid Commissions, Ombudsman offices, Human Rights Commissions or other national human rights institutions/desks, other Government departments, the University of the South Pacific's (USP) law programme (in Fiji), NGOs and local authorities. The police, social welfare and gender officers, teachers and health workers also fall within this cluster of partners. Because they are frontline service providers interacting with the wider population on a daily basis, meso level actors are instrumental in promoting and applying human rights principles and practices. By virtue of their positions, implementation agents can play an effective facilitative role between the policymakers and community and also effect improvements quickly.

Key partners at the meso level also include NGOs; in the past, RRRT has worked more with developmental and social sector NGOs whilst partnerships with commerce and employer organizations, professional groups and trade unions have been ad hoc. There is an abundance of NGOs in the region with great variation in the levels of capacities. Very few NGOs have the capacity to advocate, assert, monitor and defend human rights. Developing the capacities of such groups is one of the most important outcomes under this objective;

Tier Three: Work at this micro-level represent the largest group that RRRT works with and consists of community-based organizations (CBOs) such as village chiefs, village-based religious, women and youth groups and individual citizens. In the Pacific, churches and chiefs play a significant part in peoples' lives - because of their access to and influence on the socio-cultural framework of local communities, especially in rural communities – especially where the influence of central Government is sometimes limited. Activities to help achieve this objective include the *Community Paralegal (CP) Training Programme* and the *placing of a funded Legal Rights Training Officer (LRTO) in a CBO/NGO*. The LRTO receives intense training from RRRT and works at all the three levels of RRRT interventions - macro, meso and micro - to bring about strategic change (To gain more insight into how the Community Paralegal Training Programme helps build capacities to demand and claim rights, see Section below on "*Capacity/Role of Duty-Bearers (including the Private Sector/Related Frameworks) in Addressing Demands*").

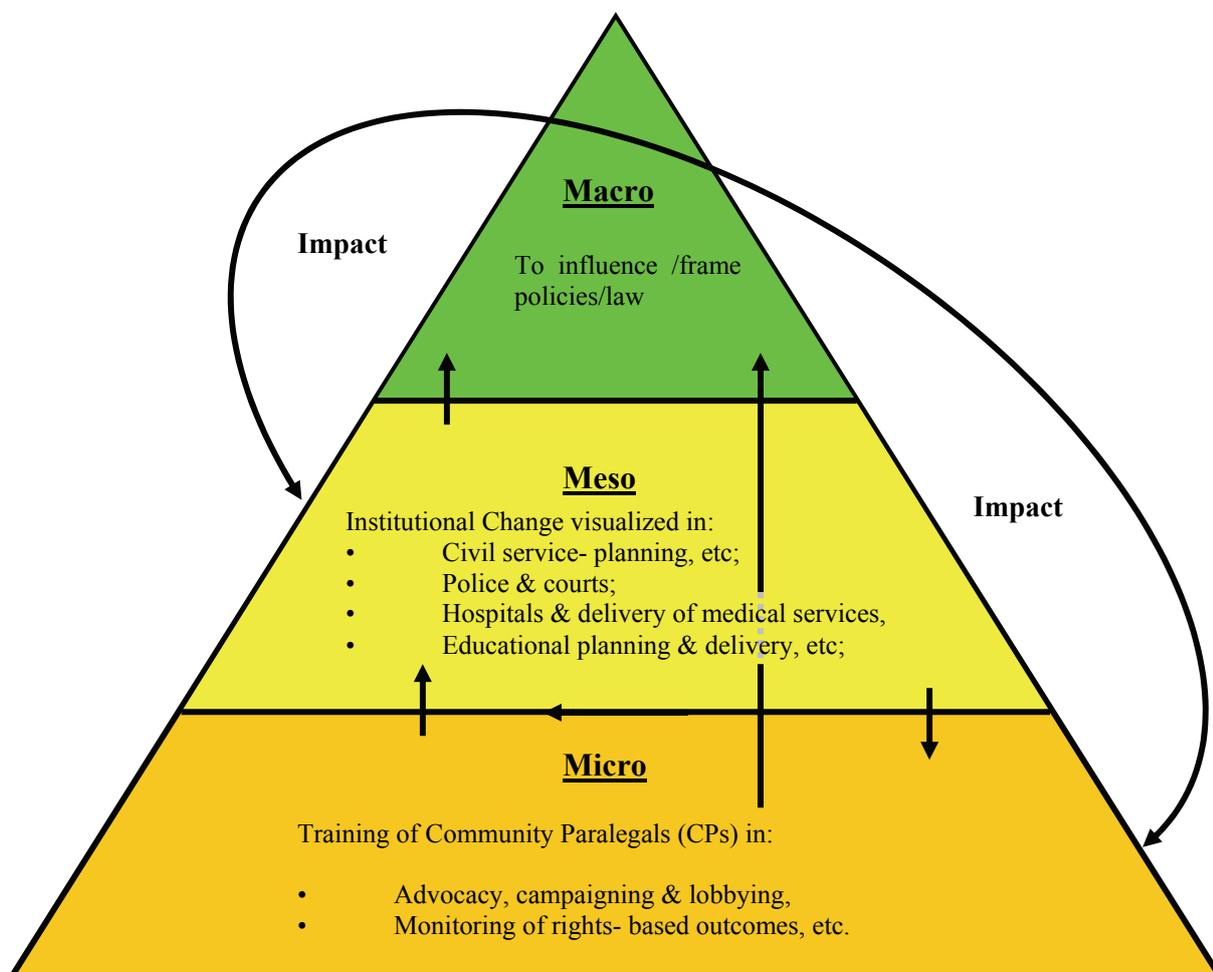


Figure: The three-tier approach in building capacities

Rights-Based Programming Principles under the RRRT Project – The 15 Principles: An analysis of RRRT’s programmes and work reveal that the Project has developed a multiplicity of rights- based principles that are central to programming and being used to demand and claim rights. These principles are:

1. Encourages the protection and realisation of human rights;
 2. Uses human rights conventions as a set of standards and common language;
 3. Operates on the principle of non-discrimination;
 4. Adds a legal focus to development;
 5. Enables access to policies and legislative frameworks;
 6. Encourages adherence to the rule of law;
 7. Facilitates participation and accountability;
 8. Empowers communities through capacity development;
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1. Changes the situation of the beneficiary or group from passive aid recipients to rights-holders;
 2. Enables development cooperation to contribute to the development of the capacities of duty-bearers to meet their obligations and/or of rights-holders to claim their rights;
 3. Focuses on how development outcomes are brought about;

4. Scrutinises poverty through a human rights lens and encourages a more structural approach to poverty alleviation;
5. Lays a base of mutual trust and cooperation to achieve viable and sustainable outcomes;
6. Integrates gender as an integral part, not an “add on”; and,
7. Adds value as a catalyst.

Rights- based outcomes under each of the 15 principles are elaborated in Section 4.

Capacity/Role of Duty-Bearers (including the Private Sector/Related Frameworks) in Addressing Demands: A key activity which has proved successful for RRRT in applying a rights- based approach to programming has been in its building up the capacities of stakeholders under its CP Training Programme and the LRTO Programme. Between 1996-2004, these two programmes trained and helped build up an extensive network consisting of seven LRTOs and over 250 CPs in seven PICs.

The CP training is targeted at Government officers (duty-bearers) and community leaders/activists in order to provide paralegal advice and human rights support to their local constituents. Training normally lasts between 6-8 weeks spread over 2 years, allowing participants the opportunity to apply the knowledge gained between modules. The partner organizations in PICs try to select participants and Government representatives from the local communities on the basis that they will be in strategic positions to mobilize and monitor around human rights issues. RRRT does not favor the “zoom-in-zoom-out” strategy, as it does not build a sustainable human rights culture; nor does such a strategy develop a strong indigenous capacity for human rights empowerment. RRRT therefore provides ongoing support, mentoring and technical advice long after the formal training ceases. Thus, the preference is for the CPs to be working in organizations or departments that are already focused on rights issues, so that their human rights knowledge and skills enhance their ability to be agents of positive change. A further objective is that such organizations are more likely to adopt a rights- based approach in their own programming.

Training is tailored depending on the needs of the country and organizations. The network of LRTOs and CPs keep RRRT abreast of the key issues in the islands and subsequently help RRRT work in several different contexts. What is significant about the training is that CPs learn not just how to use human rights to make gains in the law or in realizing their civil and political rights but also to assert and make gains under the various economic, social and cultural rights in accessing goods and services. Building up their capacities at mobilizing, advocating and lobbying are thus crucial factors that determine CPs as being the initial catalysts for bringing about change or are an important strategic step that ultimately brought about the change. Gains made are many and varied and cuts across sectors and have been delved into in Section 4.

Box 1: Community Paralegals – Developing their Own and Community Capacities to Address Demands and Claim Rights

At the community level, CPs have organized training workshops, visited communities and taught principles of human rights in their immediate surroundings and within the workplace. Other actions include reviving interest in conventions and committees like the CEDAW and CRC; unionising for labor rights; organizing human rights networking groups; etc. Some CPs have used their own capacities/skills to address demands on rights issues by setting up their own human rights groups – like the formation of an East Honiara Paralegal Association and the Task Force on Human Rights in Ysabel. In the Solomon and Cook Islands, radio broadcasts from trained CPs extend the understanding of human rights at the community level.⁹

Such capacity development strategies to demand and claim rights is further substantiated via RRRT's focused interventions at three levels – macro, meso and micro - through its top-down and bottoms-up approach and through the use of its 15 programming principles that creates opportunities for change to be initiated by decision makers, whilst accommodating initiatives from the community. As mentioned elsewhere in this paper, RRRT has not only assisted in empowering disadvantaged groups about their rights, but also sensitised decision makers and delivery agents to use human rights conventions and principles in their work, thus ensuring a comprehensive, society-wide approach to advancing human rights and good governance.

Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Programming Strategy: Monitoring is undertaken at all three levels/tiers of intervention. At the macro level, all programming is monitored through reporting, media releases and outcomes as a result of programming (such as the passing of the Fiji Family Law Act in 2003). Documenting outcomes at the macro level is also conducted through desk reviews of the use of international conventions in case law records. RRRT also maintains an “impact” folder in which positive impacts - be they speech notes from key leaders, interviews or even direct correspondence with RRRT - regarding the evaluation of their work are all recorded.

A similar monitoring approach is used at the meso level tier of intervention. For instance, RRRT maintains a register of all law graduates who have passed the Pacific Diploma in Legal Practice (PDL) and who have gone through RRRT's three week legal training in human rights. As this training and the work that the lawyers undertake as a result of such training is crucial, RRRT monitors the progress of these lawyers in their work and the cases they cover. RRRT also analyses the decisions/judgments of all PIC courts to assess whether human rights are being addressed by the lawyers and judicial decisions on an occasional basis - the lawyers and Judges who use human rights law are then targeted for further training.

⁹ From the RRRT Community Paralegal Training Review Report, by Sue Elliot and Diane Goodwillie, November 2004.

Monitoring outcomes at the micro level is far more challenging - as RRRT has trained over 250 CPs across the Pacific (all of whom are working at the community level), maintaining a register of their impacts has proven to be very time and resource intensive. The CPs are involved in a wide range of community activities, ranging from working with women's groups to building capacities of environmental lobby groups. Some of their impacts are easy to document, but others are more subtle, personal and therefore, more qualitative and thus, more complicated to monitor. In addition, the CPs also come from diverse backgrounds with a varying range of skills and capacities; many demonstrate limited capacities to document their activities and impacts in a concise written format. In order to strengthen this area, RRRT is currently embarking on a refresher training for its community paralegals that will focus on areas related to strategies for change, HIV/AIDS and the Law, monitoring human rights cases and basic media skills. It is envisaged that the combination of monitoring and media training will strengthen the CPs ability to record their impacts more effectively, and to disseminate them to others.

4. Outcome (Results):

The building of capacities through the use of the three-tier approach and the 15 programming principles has produced outcomes that cut across sectors. These outcomes assume even more relevance as they have produced results at all three levels of intervention. Only a few examples will be given to illustrate rights-based outcomes under each of the 15 RRRT programming principles. A more comprehensive version of the impact of RRRT's work (Impact Tables) can be found on their website www.rrrt.org or can be obtained by writing to info@rrrt.org.fj

➤ *Encourages the protection and realisation of human rights:* RRRT contributes directly to the protection and realisation of human rights through training and advocacy of the human rights international normative framework and by supporting the establishment of national human rights institutions. From 1995 to 1998, RRRT, with its Fiji in-country partners, lobbied for the establishment of the Fiji Human Rights Commission (the first such commission ever set up in a PIC) and for the inclusion of a comprehensive Bill of Rights and a non-discrimination clause in the proposed Constitution. This resulted in the 1997 pro-democratic Constitution that included a comprehensive Bill of Rights and a clause setting up the Commission. The RRRT Human Rights Advisor – a woman - became one of the two first independent part-time Commissioners in 1999, bringing to the fledgling Commission, much needed human rights expertise. This first Commission employed the (now) current Director, drafted the first National Action Plan and helped establish the Commission as a credible national human rights institution. RRRT, through its USP annual human rights training programme, trained the lawyers who currently staff the Commission.

RRRT also funded and supported the Women's Coalition for Women's Citizenship Rights (WCWCR) in 1996, spearheaded by RRRT's key NGO partner in Fiji - the FWRM - which brought about equal citizenship rights for women in Fiji's new 1997 Constitution.

The Solomon Islands draft Constitution contains a comprehensive Bill of Rights and a clause for the establishment of a Human Rights Commission. The draft Bill is a result of RRRT working at the macro level with UNDP at the Pacific level, MPs and senior civil servants, combined with advocacy from CPs who have been trained during the Solomon Islands CP programme to advocate for a Bill of Rights and a human rights commission.

The Project has also contributed directly to the realisation of both civil and political and economic, social and cultural rights, ranging from free speech mobilization in Tonga; the right to education in Vanuatu; the right to a fair trial in Fiji; and CRC rights in Vanuatu, Fiji and Samoa.

Uses human rights conventions as a set of standards and common language: At all three- tiers of intervention, the core human rights conventions are a subject matter of training and a means of verification for achieving of standards and a common language of networks. RRRT has been training duty-bearers like the judges, magistrates and lawyers on a regional basis since 1996 (See Box 2 below) and the outcomes have been positive.

Box 2: Developing Duty-Bearers Capacities to Develop Human Rights Standards in the Pacific

Training of relevant duty-bearers like judges, magistrates and lawyers has produced three regional declarations¹⁰ - *The Tanoa Declaration on Human Rights and the Law 1999*, *The Denarau Declaration on Gender Equality 1997* and *The Pacific Island Judges Declaration on Gender Equality in the Courts 1997* (committing judicial officials to apply gender equality measures and human rights in the courts). These declarations have resulted in numerous court decisions in which judicial officials have shown intolerance to domestic violence, greater willingness to order more realistic financial settlements to deserted women and children and to apply human rights conventions to decision making. Some 20 judgements in the courts of Fiji, Samoa, Vanuatu and Kiribati have used or referred to various conventions in the course of decision making through training of activists, lawyers and judges/magistrates.

During the lifetime of RRRT, five countries have ratified conventions either due to direct RRRT support or working in partnership with others (who have been trained by RRRT). This includes the Federated States of Micronesia, Tuvalu, Solomon Islands Kiribati and the Cook Islands. Ratification has also been a strong leverage for national improvements. For example, after NGO submissions in the Fiji Shadow report to the CEDAW Committee arguing for the need for the Family Law Bill to be revived, the Concluding Comments made direct reference to this argument. RRRT partners used the Comments to get the Bill back on the legislative agenda. The Bill subsequently became law in October 2003.

¹⁰ The Tanoa Declaration on Human Rights and the Law, 1999, by Chief and Senior Magistrates of the Pacific region; The Denarau Declaration on Gender Equality, 1997, by Fiji Magistrates; and The Pacific Island Judges Declaration on Gender Equality in the Courts, 1997, by Chief Justices and Senior Judges of the Pacific

Solomon Islands ratified CEDAW and Optional Protocols in 2002. RRRT had been working with NGO partners and Government agencies since 1997 towards this objective.

RRRT has assisted both the State and NGOs in the reporting of CEDAW and CRC in Tuvalu, Fiji, Samoa, Cook Islands, Solomon Islands and Vanuatu (by either writing the report or sections of the report; by providing technical advice for the report; or, in Samoa's case, assisting United Nations Development Fund for Women (UNIFEM) in a mock hearing to prepare the State for the oral hearing in New York in January 2005).

Human rights standards are also a compliance tool. UNICEF is currently working with RRRT to ensure that the proposed Child Rights Bill in the Solomon Islands be consistent with the CRC. In the Cook Islands, the LRTO and partner organization used the CRC to collaborate with the Ministry of Education to establish an Anti-Corporal Punishment policy in schools, in compliance with the CRC. RRRT also assisted UNICEF in coordinating a Commercial Sexual Exploitation of Children (CSEC) study in Solomon Islands, Vanuatu and Kiribati in compliance with the right of children to be protected as contained in the CRC.

As a result of partnership efforts, both the Fiji Constitution and draft Solomon Islands Constitution contain a progressive clause obliging the courts and State to apply international human rights law where relevant. In Fiji, this clause has been used to apply to non-ratified as well as ratified conventions

➤ Operates on the principle of non-discrimination: This principle operates at different ways in RRRT. Firstly, RRRT, on an organizational level, is based on the principle of non-discrimination - especially as it pertains to policy, functioning, hiring and management of human resources and outlook. Second, and more importantly, non-discrimination is a basic principle for providing technical advice, formulation of policy and preparing training material at all the three tiers of intervention.

The RRRT training manual has several modules either devoted or touching upon the principle of non-discrimination. Examples of RRRT impact in this area include the Tuvalu LRTO successfully mobilising against attempts to expose the privacy of individuals living with HIV/AIDS in Tuvalu using the relevant conventions and the Bill of Rights (and in particular, anti-discrimination provisions of the ICCPR and the ICESCR). The LRTO in Tuvalu has also used the principle of non-discrimination to increase access to justice by helping women file cases for unfair distribution of family lands in Tuvalu.

➤ Adds a legal focus to development: RRRT encourages the use of legal frameworks as a means of realising the right to development. The training module for the meso and micro levels devotes almost a week of training on strategies for change - part of which addresses how to use the law as an instrument of change (not just for changes within law but to gain access to goods and delivery of services). This module addresses the definition, identification and formulation of strategies of change,

advocacy, lobbying, planning and monitoring and evaluation. It encourages the use of law whilst recognising its limitations – that the law can be a tool of oppression as well as liberation. An example of using legal provisions as a rights-based tool is provided by a CP from Vatukoula - a rural mining town in northern Viti Levu, Fiji - who used international human rights law as a means of gaining access to piped water for the school. As a result of her efforts and in collaboration with the head teacher and Parents, Teachers & Friends Association of the Vatukoula Primary and Marist Convent School, the Government built a reservoir which now supplied treated water to the school. Advocacy efforts are now underway to enable provision of treated water to a mining community in that area.

➤ Enables access to policies and legislative frameworks: Capacity development under RRRT is aimed also at not only providing information about relevant laws and policies but also in helping build tools by which the community can make inputs into such laws and policies. This has allowed LRTOs and CPs in almost all target countries to influence and shape national gender policies and in some countries, frame gender sensitive budgets as well (like in Fiji and the Cook Islands). In Vanuatu, RRRT training of Vanuatu Women's Centre CPs and magistrates in 1996 enabled a policy commitment towards the issuing of restraining injunctions against violent husbands as matter of practice since there is no legislation providing for such protection orders. This initial policy commitment - which became a practice of the Court - is now a clause in the Vanuatu Domestic Protection Bill. Thus, one can trace, in the RRRT cycle, the evolution from training to impacting and making/changing policy to eventual law (if passed) and the impacts of such laws on the lives of people.

CP networks have used their knowledge to assist in the Constitutional reform process in Solomon Islands; for Constitution amendments in Fiji, Kiribati and the Solomon Islands; and, to make inputs into the Family Law Act 2003 (Fiji); the Domestic Protection Bill (Vanuatu); Child Rights Bill (Solomon Islands); the Social Justice Act (Fiji); the Industrial Relations Bill (Fiji); the Evidence Act 2003 (Kiribati) and, national gender policies in most PICs.

➤ Encourages adherence to the rule of law: Citizens of Fiji, Solomon Islands and Vanuatu have suffered in varying degrees as a result of major political upheavals and the temporary loss of democracy. RRRT contributes to encouraging democracy and respect for the rule of law in various ways. RRRT NGO partners were involved in challenging the unlawful abrogation of the Fiji Constitution in 2000 in the landmark decision, *Chandrika Prasad v The State*¹¹ This decision upheld the 1997 democratic Constitution, ushered in the return to democracy and paved the way for proper elections in the country in September 2001.

As mentioned elsewhere, RRRT stakeholders have been involved in the drafting of the post-conflict draft Constitution and draft Bill of Rights in Solomon Islands. The CPs in the Solomon Islands - in their awareness raising exercises at the community level - include democracy as a subject matter and relate it to how rights were being denied in the Islands when the rule of law was subverted.

¹¹ Fiji Civil Appeal No ABU 0078 of 2000.

RRRT's work with the AusAID Law and Justice Sector Project - which is aimed at building respect for the rule of law - has enabled it to influence policy in that the design of the Law and Justice Project should not only address the formal judiciary structures, but encompass the overall justice sector in the widest sense. Thus, components of capacity- development of civil and criminal courts are combined with access to justice and community crime prevention and safety components. This Project is currently being piloted in Fiji and Solomon Islands.

➤ *Facilitates participation and accountability:* RRRT enhances both participation and accountability and supports the legitimacy of key principles of democracy and citizen participation using rights- based programming approaches and tools. Participation and accountability are recurring themes at all levels of RRRT training and the impact of such training is reflected in the level of policy interventions and technical support that RRRT stakeholders provide. These principles are singled out as core principles of good governance and are of great value, especially in Pacific cultures that teaches acceptance of polices/decisions/laws/norms that emanate from the top levels/duty-bearers, rather than demanding accountability from such stakeholders.

RRRT has worked with its partners to ensure participation in lawmaking and the formulation of policy. The Fiji Family Law Act 2003, the draft Solomon Island Constitution, the Kiribati Evidence Act 2003 and the Vanuatu Domestic Protection Bill are examples of participation in governance. The Fiji Family Law Act has been heralded by the Government and civil society as being the only properly consulted law in Fiji's legislative history, "representing law making at its best".¹² The Solomon Islands draft Constitution consultations has been the only time the citizens have ever been involved in consultations at a policy level.

Box 3: Demanding Accountability – A Case Study in Solomon Islands

RRRT's work on demanding accountability has resulted in producing some landmark results. Of specific interest is a CP partner mobilizing with environmental groups against the dumping of toxic wastes by a Taiwanese company in Makira province in Solomon Islands. The female CP partner and local NGOs worked at the community and local provincial governmental level against the dumping of wastes in their province whilst RRRT worked with UNDP at the macro level to demand accountability and lobby politicians that allowing passage of toxic wastes and dumping in Pacific waters would be in breach of the regional Waigani Convention¹³ that the country was signatory to. The final decision led to the Government refuse the dumping of such wastes, notwithstanding the loss of a potential US\$40 million to the exchequer.

¹² Comments by the Attorney General of Fiji. Fiji Parliament's Hansard Reports, October 2003, Debate on the Family Law Bill.

¹³ Convention to Ban the Importation into Forum Island Countries of Hazardous and Radioactive Wastes and to Control the Transboundary Movement and Management of Hazardous Wastes Within the South-Pacific Region, adopted at Waigani, Papua New Guinea, 16 September 1995.

➤ Empowers communities through capacity development: That RRRT builds capacities of the stakeholders it works with have been documented at length throughout this case study. RRRT trained LRTOs and CPs gear their efforts towards mobilising for change through RRRT-led skills development in campaigning, lobbying and advocacy. More instances of a result of such capacity development include RRRT partners mobilising against a village decree which sought to deny women rights to access land in Malekula in Vanuatu; helping poor women gain custody of their children, enforce maintenance payments and in getting domestic violence orders in several PICs; and, helping migrant commercial sex workers in Tonga find decent jobs.

➤ Changes the situation of the beneficiary or group from passive aid recipients to rights holders: The work of RRRT and its partners is aimed at capacitating communities to assert their rights and not just be mere actors in the aid delivery and services processes. RRRT actively advocates rights as a strategy to challenge duty-bearers to deliver on their obligations. Such an approach encourages, for instance, poor women to gain access to goods, services and delivery through access to information and via using the language of rights and accountability. Such an approach has also resulted, for instance, in a CP establishing a new kindergarten in Malaita, Solomon Islands, after years of waiting for the State to do so, thereby realising the right of very young children to education and demonstrating an example that the State is duty-bound to follow. Similarly, CPs in Vanuatu, using their knowledge of governance processes, mobilized a village to begin its own education centre instead of relying on the State - when the State had not been responsive to demands for access to education. The community has since established a Community Training Centre, and a community and secondary school.

➤ Enables development co-operation to contribute to the development of the capacities of duty-bearers to meet their obligations and/or rights-holders to claim their rights:

The Review¹⁴ of RRRT conducted in September 2004 states that: “By a combination of persuading professional arguments and insights, sense for strategic alliances and critical mass support, RRRT manages to engage key duty-bearers and Government authorities in a constructive dialogue”. This RRRT trinity of intervention levels is a tested and proven model among several human rights organizations in the regions of Central America, Asia and South East Africa and signifies the recognition that systemic change requires a multi-layer and multi-stakeholder approach. It further states: “RRRT has, in many ways, been applying a rights- based perspective in the access to justice work. This focus on a rights- based approach highlights the crucial importance of strengthening the interface - the vertical relationship between duty-bearers and rights holders from the community level to the national level. RRRT’s record does hold examples of successful simultaneous intervention at all three levels around one specific issue. The Family Law Act in Fiji in 2003 is an example of such a long-term endeavour”.

¹⁴ “Review of the RRRT Project”, conducted by Hanne Lund Madsen and Bruce Sutton, UNDP, September 2004.

Throughout Section 4 of this paper, there are many more examples of how RRRT helped developed capacities of both duty-bearers and rights-holders to meet their obligations and claim their rights respectively.

➤ *Focuses on how development outcomes are brought about:* RRRT achieves outcomes by building alliances at all levels that has proven to be more sustainable in the long run. It has enabled RRRT to gain entry and help NGOs/civil society dialogue with decision makers on a common platform. This is mainly due to the project design that attempts to involve the duty-bearers and rights-holders at all stages of project cycle (strategic planning, partnership strategies and the drawing up of country plans/strategies for implementation).

An important and significant RRRT strategy is not to directly engage the State in conflict when human rights violations occur or when calling for human rights compliancy but to work through local partners (often, local CBOs/NGOs). This allows for the capacity- development of indigenous organizations, the profiling of local partners and the building of local credibility. Such a strategy has also helped considerably in building a sustainable relationship with local partners.

➤ *Scrutinises poverty through a human rights lens and encourages a more structural approach to poverty alleviation:* The 2004 Review of RRRT states that: “At the level of community paralegal training, we may trace the attention to poverty alleviation and sustainable development, which has resulted in training modules on the MDGs and poverty reduction at community level”. The RRRT training manual includes a module on poverty and development and the link with human rights. The module is based on the premise that poverty alleviation cannot be sustainable unless there is an inbuilt rights perspective in which the poor have rights and entitlements that must be met by the duty-bearers. The needs of the poor need to be met not because of the benevolence of the State but rather because it is the obligation and duty of the State. In this manner, RRRT encourages political engagement of necessity. This is explicitly a rights- based approach to poverty alleviation and has resulted in some interesting impacts.

For instance, this approach has helped in setting up of cement toilets in 28 households in Tebero village on Abaigang Island in Kiribati and the enforcing of maintenance for individual poor women in Samoa, Vanuatu and Fiji. In Fiji, scrutinising poverty through a human rights structural lens has led to the passing of the Family Law Act 2003, which, when implemented, will have a direct impact on poverty alleviation at a structural level because it imposes greater responsibility on the part of the rights-bearers - the State - to put in place better enforcement mechanisms for payments for women and children. Similar impact might occur if the Solomon Islands passes the draft Constitution and Bill of Rights in its current form as it addresses a number of economic, social and cultural rights.

➤ *Lays a base of mutual trust and cooperation to achieve viable and sustainable outcomes:* It has been stated by the independent reviewers in 2004 that RRRT: “has a fine tuned form of advocacy that is miles apart from the blaming advocacy often used by other human rights organizations ”. It also states: “Several Government and donor

officials have commended RRRT for adopting very wise and well-considered approaches, thereby succeeding in engaging with MPs and Director Generals, where other organizations' initiatives have failed." An example of laying the groundwork for such mutual trust and cooperation is found in the "Courts and Community Dialogue" initiative in Fiji (see Box below)

Box 4: "Courts and Community Dialogue" in Fiji Helps Facilitate Citizens' Access to Duty-Bearers

In 2005, for the first time, the entire Magistracy and Judiciary of Fiji (including the Chief Justice and President of the Court of Appeal) sat down to a one-day "Courts and Community Dialogue" with representatives of CSOs - an event organised by RRRT and a female judge involved with judicial education. It has taken RRRT and its partners many years of advocacy and dialogue to get the judiciary to agree to participate in such a process. This landmark event enabled members of the judiciary to listen to concerns of the community in areas relating to gender, poverty, disability, children, minorities and governance and their perceptions of justice. The evaluation of the event revealed that the judiciary was extremely receptive to this process as it enabled them to obtain a first-hand account of the manner in which citizens perceived the justice system. Although it is too early to tell whether the dialogue will translate into any significant changes at the policy and grassroots level, the process, in itself, enabled groups to gain access to influential decision makers.

➤ *Integrates gender as an integral part, not an "add on"*: RRRT started out as a gender project and won the UNICEF Maurice Pate Award in 1998 for its outstanding and pioneering work for women and children's rights. RRRT now has the largest pool of qualified, experienced human rights and gender experts (lawyers and development trainers) located within one Pacific regional organization. The benefit of this extensive knowledge base is reflected in the quality of its technical advice and in the relevance of its training and advocacy strategies.

All RRRT training materials are written with a gender perspective. Thus, gender is an inherent and ever present component in the delivery of training. At the macro level, several of RRRT's LRTOs sit on their respective national gender committees or are gender focal points. Quite a few RRRT staff and LRTOs sit on many local, regional and international bodies as gender experts, thereby contributing to regional and international policy, e.g. the Asian Development Bank's (ADB) External Forum on Gender. Through the ADB, RRRT influences regional financial policies in relation to poverty reduction strategies.

The gains made in terms of building capacities for disadvantaged and marginalized groups of women at the micro level to enable them to claim their rights have been documented throughout this Section. Some other instances of such gains made relate to gender equality international norms that have been used to gain access to speak at traditional tribunals that normally do not allow women to speak. RRRT intervention with partners on gender issues has resulted in contributing to "no-drop" policies for prosecution of wife beaters in domestic violence cases in Fiji and Kiribati. Most

LRTOs are housed in partner organizations that focus on the needs of marginalized groups, including. Non-discrimination is an inalienable provision in new legislation and policies and is reflected in the several pieces of legislation already mentioned throughout Section 4.

➤ Adds value as a catalyst: From inception, RRRT worked as a catalyst with the underlying principle of capacitating NGOs and civil society to campaign, lobby and advocate to claim rights. The LRTO and CP Programmes are key programmes that have enabled hundreds of community workers to be trained in identifying rights violations and in claiming rights, using various strategies. Of particular note in adding value as a catalyst is the RRRT initiative with the USP's PDLP programme - the USP is the only regional university serving all 16 PICs, except Papua New Guinea. Based in Fiji, the PDLP is designed to help prepare new law graduates for taking up legal practice with an emphasis on the practical elements of the law and is coordinated by USP's Institute of Judicial and Applied Legal Studies (IJALS). The programme has been running since 1997. IJALS now allows RRRT to undertake teaching related to the use of human rights in legal practice for three weeks every year to every graduating class consisting of, on average 40 students, from almost every country in the region. The PDLP course provides RRRT with an opportunity to set regional human rights standards and to develop the capacities of lawyers to promote and protect human rights.¹⁵ RRRT continues to provide lawyers who wish to use human rights in their work with additional material and other types of technical support long after they leave Fiji. This provides RRRT with an extremely important network of key strategic alliances. They have been key actors in building a nascent human rights culture in the Pacific.

5. The Value Added of Using Rights-Based Programming Strategies:

Positive Lessons Learned:

The lessons learned from the RRRT programming are context-specific and are valuable, especially for those countries where local traditions, culture and indigenous political systems play a major role in claiming (or in not being able to attain) rights. From this view point, RRRT has been able to build a culture rights in many of the PICs it is working in and this assumes significance as most PICs (as have been reiterated in this paper) still have only limited understanding, resources and mechanisms for claiming and delivering rights. It is in this context that the independent review of RRRT in 2004¹⁶ states that RRRT: "has a sound understanding of the national context/s, appreciation of the cultural reality and ability to work with 'Pacific solutions'".

➤ Developing capacities and acting as a catalyst: One of the positive lessons learned is that RRRT only acts as a catalyst in helping build capacities of rights-unaware PIC communities to demand and claim rights. Realising that all the PICs

¹⁵ The independent review of the PDLP programme undertaken by the University of New South Wales, Australia, in 2002, stated that the RRRT human rights component of the overall PDLP course was exceptional for its content and teaching methodology and complied with international standards.

¹⁶ Ibid. Refer to footnote No. 10.

operate under a culture of rights that are local and context-specific and also that a regional organization cannot be accepted *en masse* in all the PICs, RRRT identifies and helps train/build capacities of local NGOs/CBOs and community workers - such training is considered by local NGOs/CBOs and communities to be inclusive and interactive, using well tested and gradually developed training material and compilations of key texts to build a culture of rights. Such a strategy of building capacities adheres to the local contexts but also bears in mind that human rights are universal and all communities are entitled to the same set of rights as set out in the Universal Declaration of Human Rights (UDHR).

➤ *Upholding the culture of respect to demand and claim rights:* RRRT realized that working in the PICs on rights issues cannot be undertaken without observance of respect for the local cultures and traditions that are unique in the PICs. Thus, rights interventions were undertaken in a culturally appropriate manner - observing local dress codes and respect for protocol (including religion) are two obvious examples. Observance of such a culture of respect led to many rights- based gains that were previously thought of as impossible to attain.

➤ *Using dialogue based on mutual trust and cooperation to achieve viable rights- based outcomes:* RRRT has learned, through experience, that engaging in dialogue and bringing all stakeholders together on the same platform is more likely to achieve sustainable rights- based outcomes. Using this approach has resulted in many gains made and these have been documented in Section 4. Such an approach assumes particular importance in small island countries where people are closely connected in various ways through their social ties, land owning (*mataqali*) groups and tribal clans.

➤ *Tapping into “local elites” essential to achieve rights-based outcomes:* Following from the above, one important lesson Learned from RRRT’s programming is the *modus operandi* in which the local elites have been co-opted as important stakeholders to achieve outcomes. In dealing with the recurring ideological challenge that exists that respect and adherence of human rights and democracy are against culture, identity and the local governance systems of Pacific peoples, the RRRT follows a strategy wherein slowly and incrementally, local groups are being convinced that human rights are not against the local chiefly system *per se* but making the local chiefly system accountable. This has been a successful strategy in many instances. In many of the PICs, it is the local chiefs who dictate who local policies are framed and implemented (often, these are steeped in traditional patriarchal norms and beliefs). RRRT thus enlisted the participation of such local elites in all stages of project planning and delivery. For instance, in Malekula Island in Vanuatu, a local chief who attended two LRTO workshops ruled against a *kastom* (customary) practice in which women were prevented from inheriting land because of gender discrimination. New informal village policies in a number of villages in various PICs were initiated on how to deal with domestic violence in a way consistent with the human rights of women. That RRRT staff or its partners have never been refused access to decision makers/local chiefs speaks of the necessity of a well-thought out strategy in which the enlisting of local elites are an essential corollary to achieve rights outcomes.

Challenges in Implementing Rights-Based Programming Strategies: Lessons Learned

RRRT faces quite a few challenges in applying rights- based programming strategies, both internally (within the organization and via its partners) and externally (at the macro country level) as follows:

➤ *Limited knowledge of applying rights- based approaches within RRRT and its partners:* The level of knowledge of the understanding and use of rights-based approaches varies throughout RRRT (as an organization) and its networks/partner NGOs in the PICs it works in. Often, there is a lack of coherence on what rights-based programming actually means and what the value-added of using such a programming strategy can be to achieve sustainable outcomes. Applying rights-based approaches to demand and claim rights is a relatively new phenomenon in the development arena and more so in the PICs (where the level of sophistication of civil society to demand and claim rights and the capacities of the duty-bearers to respond to such demands is very limited). In such a scenario, there is no guarantee that using rights-based approaches can gain outcomes that are rights-based. Thus, RRRT and its partners are still “learning by doing” as far as applying their 15 principles on rights-based approaches are concerned.

➤ *Existence of limited or nascent forms of legal frameworks in guaranteeing and upholding rights:* While RRRT has helped build capacities of many PIC communities to demand rights, there is an attendant lack of responsive legal mechanisms that can guarantee and uphold such claims. This is mainly due to the fact that most of the PICs have only nascent forms of legal frameworks that are still not well-equipped to respond to claims made on them (this is in direct contrast to countries like India where a highly sophisticated civil society and an equally responsive legal framework exists and which is vital for a rights- based framework to operate).

➤ *Limited donors willing to invest in rights-based approaches:* As has been highlighted elsewhere in this volume of case studies, the use of rights- based approaches is often time and resource intensive (both in terms of time required to foresee outcomes and funds/staff necessary to undertake programming). DfID (and subsequently, UNDP Fiji) have supported RRRT; there exists a few other donors (like the EU, AusAID and NZAID) that have expressed interest in undertaking human rights programming in the PICs. However, the level of funding and continuing commitment necessary is not concomitant to the volume of work that is to be undertaken (considering that rights- based work in the PICs is still in its nascent forms) to bring the PICs to a level where it is universally recognized that rights for all are to be the norm than the exception. For instance, while RRRT has succeeded, to an extent, in convincing some PIC Governments to report on their commitments to various international conventions that they have ratified, the Governments are complaining about the financial and human resource burdens of reporting on these conventions. In such a scenario, some of the gains achieved through RRRT may be lost.

➤ *Dangers of “elite capture” while demanding and claiming rights:* While there are many positives of co-opting local elites to demand and claim rights and use rights-based approaches to guarantee sustainable outcomes, there is also the danger of “elite capture”, especially in the highly stratified PICs where the already empowered and powerful (like the tribal chiefs and their kith and kin) benefit from RRRT’s work by merit of being powerful political figures and spokespersons in their respective communities. An instance of such elite capture is that of a highly influential CP in a particular village in Malekula Island, Vanuatu, who occupied a position among the village council of chiefs. As a result of his involvement in the CP training programme, he was requested by the village council of chiefs to draft a “village by-law”. He used his knowledge of the language of rights to draft a village by-law that forces marriages amongst couple in his village who were living together for more than a year and garnered support of the village council of chiefs for this law. Another example is that of a powerful CP in the Solomon Islands, who, after undertaking the CP training, announced that realisation of human rights for women were inappropriate for “other” Solomon Islands women in that specific country context. Such instances of monopolisation of training and other capacity development tools to actually interpret rights and laws to suit individual or traditional contexts can lead to denial of rights and can prove to be a challenge while operating in a fledgling culture of rights, particularly in the PICs context.

SELECT BIBLIOGRAPHY:

Constitutions of Fiji, Papua New Guinea and Tuvalu.

Elliot, Sue., and Goodwillie, Diane., November 2004, *RRRT Community Paralegal Training Review Report*.

Fiji Civil Appeal No ABU 0078 of 2000.

Fiji Parliament's Hansard Reports, October 2003.

<http://66.102.7.104/search?q=cache:hcmvkjw26ygJ:www.humanrights.org.fj/pdf/ConcludingStatement.pdf+Status+of+human+rights+in+the+Pacific&hl=en>

<http://www.rrrt.org>

Jalal, P, Imrana., 1998, *Law for Pacific Women: A Legal Rights Handbook*, published by the Fiji Women's Rights Movement, Suva, Fiji.

Madsen, Hanne Lund., and Sutton, Bruce, September 2004, "*Review of the RRRT Project*", UNDP Fiji.

The Denarau Declaration on Gender Equality, 1997.

The Pacific Island Judges Declaration on Gender Equality in the Courts, 1997.

The Tanoa Declaration on Human Rights and the Law, 1999.

Accessing Primary Education The Sankalp and Madhya Pradesh Educational Guarantee Scheme Models

Case Studies of Rights-Based Approaches to
Designing an Educational System for
Marginalized and Vulnerable Children in India

4. Accessing Primary Education – The Sankalp and Madhya Pradesh Educational Guarantee Scheme Models: Case Studies of Rights-Based Approaches to Designing an Educational System for Marginalized and Vulnerable Children in India

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¹ A version of this paper entitled "Valuing education: Case studies of rights-based approaches to designing an educational system for the girl child in India – A documentation for possible replication models" was undertaken by the author as a Ford Fellow based at the International Center for Research on Women (ICRW), Washington D.C, September-October, 2002. The author is currently the Asia-Pacific Coordinator of the UN Inter-agency Lessons Learned Project, based at OHCHR in Bangkok.

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LIST OF ABBREVIATIONS USED:

ABONG: Brazilian Association of NGOs
BEP: Basic Education Project
CEO: Chief Executive Officer
CRC: Convention on Rights of the Child
District Primary Education Project (DPEP)
EFA: Education For All
EGS: Education Guarantee Scheme
GNP: Gross National Product
HRD: Human Resource Development
MDGs: Millennium Development Goals
MDMS: Mid-Day Meal Scheme
NCLP: National Child Labor Policy
NCW: National Commission for Women
NEP: National Education Policy
NGOs: Non-governmental organizations
NHRC: National Human Rights Commission
PRIs: Panchayati Raj Institutions
PTA: Parents Teachers Association
PRS: Poverty Reduction Strategy
RGSM: Rajiv Gandhi Siksha Mission
SCs: Scheduled Castes
STs: Scheduled Tribes
SSA: Sarva Shiksha Abhiyan
UEE: Universal Elementary Education
UNDP: United Nations Development Programme
UNICEF: United Nations Children's Fund
UPE: Universal Primary Education
VEC: Village Education Committee
WB: World Bank

Background and Rationale: Access to the Right to Education in India

Country and Programme Context: Primary education has been an elusive commodity for India's poor and more particularly for marginalized and vulnerable groups of children like the girl child, children belonging to scheduled castes (SCs) and scheduled tribes (STs), child laborers, street and working children, and so on. Such lack of access assumes even more significance because it obtains in the backdrop of a strong enabling framework of Constitutional guarantees, judicial and legislative support, one of the strongest and most well-equipped educational systems in the world (certainly in the developing world), powerful civil-society² driving energies as campaigners and in watch-dog roles, and finally, laudable proclamation of intent on the part of the executive arm of Government in bringing basic education to all – free of cost and compulsorily.

This strong framework is further buttressed by India's commitment to Education For All (EFA) including to gender equity and equality in education through a host of international conventions and pledges like the Jomtien and Dakar targets, the UN Millennium Development Goals (MDGs) and so on. India also has strong independent and semi-constitutional bodies like the National Human Rights Commission (NHRC) and the National Commission for Women (NCW) that further acts as watchdogs to ensure that rights of people – especially of the most marginalized and vulnerable – are not violated.

Yet, a host of factors militate against the actualization of the EFA and the equity/equality processes. Resource constraints (and attendant infrastructure implications – both hardware and software); transmission losses in the federal-State link with respect to education; poor grade management capacities in the education sector and lack of a commitment to manage effectively; social (gender, class and caste biases) in realizing EFA; and finally, the political economy surrounding primary education i.e. elite interests and priority skewed in favor of higher education, are among the more dominant reasons for poor performance.

The above causal factors however, need not militate in perpetuity against EFA. Indian civil society has led the way in demonstrating that a strong grassroots demand for education enjoins the obligation on Government to act and breaks the status quo. This is the essence of the rights-based approach to education. A Constitutional Amendment (the 93rd Constitutional Amendment on the Right to Education) to secure legal sanction for free and compulsory primary education has also cleared the final hurdle – the President's signature, which, in Indian parliamentary democracy, is more a matter of political will than of presidential privilege.

For the purposes of this paper that is centered on the right to education in the context of the vulnerable and marginalized children and an analysis of the role of civil society and the Government in delivering the same (through the documentation of some rights-based educational models), it is therefore imperative to monitor progress achieved. This is particularly relevant when the positioning of countries on the human

² Civil society encompasses the entire spectrum of citizens and citizens'-related bodies like NGOs, teachers' trusts, religious associations, lawyers' associations, trade unions, volunteers, etc.

development index is based on measuring their progress achieved in respect of education, income and life expectancy. Other development indicators like progress towards poverty eradication and promotion of gender equality/empowerment are inextricably linked with the right to (and access to) education.

Monitoring Progress made on Access to Education for Marginalized and Vulnerable Groups: *'The State shall endeavor to provide within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.'* Article 45, Directive Principles of State Policy, Constitution of India.

Although this urgency and compulsion as stated in the Constitution of India was established way back in 1950, elementary education³ for all as a basic right remained - and continues to remain - an elusive goal in India. And predictably enough, the last Indian Census taken in 2001 reinforces this belief with the often most disadvantaged group – girls - showing lower rates of enrollment and retention across the country. According to Census 2001, percentage of total literacy rates to the population stands at 65.38percent. (a growth in overall literacy rates from 51.63percent to 65.38percent - a quantum increase of 13.75percent over Census 1991). However, only approximately 59 percent of children between the ages of 5 and 14 attend school. Such statistics have been reinforced by the India's low rank of 60 in the Gender Empowerment Index in the United Nations Development Programme's (UNDP) 2002 Human Development Report – the greater the gender disparity in all aspects within a country, the lower a country's gender development index as compared to its human development index.

From Census 2001 figures:

- Of a primary school-age population of approximately 203 million, only 120 million children attend school.
- Literacy rates for women are significantly lower; while male literacy rates are 75.96percent, female literacy rates stand only at 54.28percent.
- The proportion of girls' enrollment to overall enrollment increased marginally by 14.87percent compared to the 1991 Census.
- However, 42percent of girls at the primary level and 58percent of girls at the upper primary level end up quitting school, the 2002 pre-budget Economic Survey of the Government conceded. Predictably enough, dropout rates are higher for girls than for boys both in the urban and rural areas.

The above does show that India still has a long way to go to be able to fulfill its goal of reducing gender gaps by 2005 and making EFA a reality as promised at the Dakar Summit.

³ 'Elementary education refers to the first eight years of schooling. Generally this is divided into 'primary' - grades 1 to 5 and 'upper primary' - grades 6 to 8.

In light of the above scenario, it would be useful to delve into the Constitutional provisions and policy frameworks in place in the education sector to assess progress made.

Constitutional Landmarks: The Indian Constitution has provided a framework through its Fundamental Rights and Directive Principles of State Policy within which provisions are available for the protection, development and welfare of children. There is an enabling provision in the Indian Constitution - Article 15(3) - by which the State can make special provisions for children and women without being constrained by technical interpretations of the broader concept of "equality before law" Beside the provision of Article 45 mentioned in the previous section, the 42nd Amendment to the Constitution (1976), made for education to become a joint responsibility of the Center and States. It was put on the Concurrent List from being an exclusively State List subject. Under the 73rd and 74th Amendments to the Constitution, powers have been provided to *Panchayats*⁴ and *Nagarpalikas*⁵, to *inter alia*, decide the location (or relocation) of existing primary and upper schools on the basis of micro planning and school mapping. Finally, the recent *93rd Amendment Bill to the Constitution* (passed by the Lower House of the Indian Parliament on 28th November 2001) seeks to make as a fundamental right, education free and compulsory to all citizens between ages 6-14 years. It also enjoins a fundamental duty on the parents/guardians children to provide such an opportunity to their children. This Bill thus also makes basic education a justiceable right. The passing of the Bill, in itself, is path breaking in the Indian context as it promises to bring all children under this age group within a formal education system.

Along with the Constitutional provisions, certain Government policy pronouncements have been emerging at the national level from the vast and mixed experiences of recent years on issues relating to children's rights and child protection:

- * The national planning process increasingly reflects the implications of a major lesson of experience- namely, economic and social progress must move in even step in support of human development;
- * Broad-spectrum public policies in support of children are taking shape across different social sectors;
- * The need has been recognized for co-coordinating at the political level decentralized developmental activities on behalf of children.

Other National Policy Frameworks: The Constitutional and binding instruments are also complemented by legislative and policy decisions undertaken from time to time by the Executive to achieve the various educational goals. Of special mention is the Kothari Commission constituted in 1964-66. This Commission set the goal of Universal Elementary Education (UEE) to be achieved by India by 1986. This goal was not achieved and hence, in 1986, the National Education Policy (NEP) was

⁴ Unit of government at the local village level.

⁵ Unit of government at the local town level.

formulated which set the goal of free and compulsory education for all (up to 14 years by 2000). The Ramamurthi Committee was set up in 1990 to review the NEP and in 1992, India ratified the UN Convention on Rights of the Child (CRC) by which it *inter alia* commits to remove children from work that interferes with their education and make primary education free and compulsory. Under the historic Unnikrishnan Judgment in 1993, the Supreme Court of India stated that every citizen has a right to free education till age 14. However, not much progress was made under this Judgment as can be seen by the setting up of the Saikia Committee in 1997 to examine the implication of making education a fundamental right. In subsequent years, other committees -- like the Committee of State Education Ministers, 1996; the Education Ministers' Resolve of 1998; and, the National Committee Report on the Resolve 1999 -- all recommended the making of education a fundamental right and renewed intent to pursue UEE in mission mode and to prepare district-level action plans for the same. At the policy formulation level, all of these initiatives pay special attention to increasing enrolment of disadvantaged and marginalized groups of children, improving educational outcomes, strengthening community involvement, improving teaching and learning materials and providing in-service teacher training.

Global landmarks: At the international level, pledges by the Indian Government for UEE and to remove gender gaps in education were first visible during the World Conference on EFA in Jomtien, 1990. This conference was commendable in that it linked education to poverty, human rights and democracy, eradication of exploitation, environmental protection and population stabilization. Moreover, a lot of emphasis was put on quality education. When the heads of the world's Governments met in Dakar in 2000, it was clearly visible that not many countries, including India, could meet their commitments as Stated in Jomtien. Thus, under the Dakar Declaration, individual Governments again renewed pledges to mobilize strong national commitment for education for all, develop national action plans and enhance investment in basic education.

Mention may also be made here of the UN MDGs - under Goal 2: "*Achieve universal primary education (UPE)*", Target 3 states that by 2015, children everywhere, boys and girls alike, complete a full course of primary schooling. India has stated its commitment to these Goals. Recent documentation on the website of the MDGs does show India as one of the countries most likely to achieve Goal 2 - of achieving UPE - and Target 3 - of ensuring that by 2015, all children will complete a full course of primary schooling. Census 2001 also reveals for the first time since independence that the absolute number of illiterates have shown a decline. The decline is as large as 31.96 million during 1991-2001. *However, this decline is more among males (at 21.45 million) compared to just 10.51 million among females.* The figures of Census 2001 shows that though the proportion of enrollment of girls to overall enrollment has increased marginally in the last 10 years, India still has a long way to go before gender gaps between boys and girls in relation to access to, enrollment of and retention in schools can be reduced.

Gaps in Policy Planning and Implementation: It is evident from the above sections that virtually every conceivable policy has been put in place and international commitments endorsed when it comes to Government policies relating to education.

However, policies are only a set of guidelines. Real decisions at the stage of implementation are taken at the time of preparation of action plans, projects or during budget allocations (and these are the areas where the country has not witnessed much progress). This accounts for the persistent gap between policy formulation and implementation in action (Ramachandran, 1998). The Central Government spends approximately 5.9 percent of its overall budget on education. The State Governments also spend part of their budgets on education, but no comprehensive figure of combined federal-State expenditure on education is available. All these factors have impact on social development and on survival, development and protection of children."⁶

Between the planning and delivery of educational services, huge gaps exist. For instance, policy discourse related to girl child education often focuses on the "supply side" (like enabling policies), which is gender-specific. But, what it completely fails to acknowledge is that even the "demand side" is gender-specific (like issues of access and infrastructure -like no toilets for the girl children). Thus, though a unique women-focused project - the Mahila Samakya - was implemented through the Government's 1992 education policy, the actual project on the ground did not touch upon issues like technical education and mainstream elementary education, which should have been the mainstays of the programme in the first place (Ramachandran, 1998). Therefore, the policy was not successful in parts in practice, more so since it did not involve civil society in both the planning and implementation stages. Civil society, in this role, could have guided the State in formulating a more needs-based policy that could have touched upon some of the real needs of the women as identified above.

Even policies which targeted specific groups of children like the National Child Labour Policy (NCLP) was a failure since it looked at education not as an alternative but more as an option - to guard against the worst effects of child labour (Boyden & Myers, 1995). As was evident in the massive failure of this policy, it did not make a dent in reducing child labour and keeping children in school. Making working children attend non-formal education instead of mainstreaming them into formal schools formed the nucleus of this programme. And this is when there has been a general tendency for the population to look at non-formal education as sub-standard as compared to formal schooling. Such a policy indicated the apparent low priority accorded to education while reducing child labour in the country.

The 93rd Constitutional Bill – A Chance for Demonstrating Intent on the Ground: It will therefore be interesting to gauge how the recently passed 93rd Constitutional Bill on the Right to Universal, Compulsory Education is implemented on the ground. This Bill became a reality as a result of massive policy advocacy efforts primarily led by non-governmental organizations (NGOs) and joined by a broad spectrum of civil society. It is the one recent and most binding judgment as far as the right to education for children is concerned. And the passing of the Bill led civil society to believe that the Government would inch closer to its goal of attaining education for all by 2015 (as stated in Dakar) through programmes on the ground with appropriate financial allocations reflecting the same.

⁶ US State Department, *Country Report on Human Rights Practices, 2001*.

Box 1: The 93rd Constitutional Amendment Bill and its Limitations

The Bill does have its drawbacks, chief amongst them being that it totally ignores the children between the age group of 0- 6 in all aspects, including cutting access to early care and development for this age group. International human rights law states that everyone has the right to education and that no one would be debarred from an education because of his/her age. By virtue of the amendment passed by Parliament, a new Article 21 has been inserted in the Constitution and consequently Article 45, which provides for compulsory and free education of children up to 16 years of age as a Directive Principle of State Policy, stands superseded. It had also diluted the historic verdict of the Supreme Court under the Unnikrishnan Judgment of 1994 that had declared education as a right for all children up to 14 years of age. Other flaws relate to the payment of fines by the parents in instances of not sending children to school and the issue of quality of education provided. The argument goes that if the parents can afford to pay fines for not sending their children to school, why would they send children to work in the first place? From a rights based perspective, the Bill falls short in many instances. But, with all its drawbacks, the Bill did offer hope to millions of children who would otherwise be left out of a school system.

From the viewpoint of a rights-based approach to development, the Indian Government could be held accountable as the Dakar Framework of Action did posit that individual Governments be held accountable for commitments made. The rights approach prioritizes law as the chief instrument in making Governments accountable and failure to uphold commitments made would tantamount to violations of the rights of citizens. This approach has been used very recently in the Indian context in the Right to Food campaigns in different Indian States when the Supreme Court (which is independent from the Executive and the Legislature) stepped in on behalf of the citizens and directed the concerned State Governments to release food to the starving millions (this case has been documented as a separate stand-alone case in this volume of case studies). Such a rights approach under law is and can now be applicable to realize the right to education.

2. Analysis of Factors Impeding Access to Education for Marginalized and Disadvantaged Groups: Going back on the Rights of Citizens

The gross figures for literacy as enumerated in the Section “*Monitoring Progress made on Access to Education for Marginalized and Vulnerable Groups*” reveal some complex truths. Firstly, there are wide regional (and caste disparities) in educational achievements. Some States have done excellently, some others poorly. Backward castes - especially *dalits*⁷ and scheduled tribes - have consistently lower access to education. In all these interplay of factors, girls, of course, continue to lag behind compared to their male counterparts.

Secondly, the financing of education is largely the responsibility of the States (except for centrally sponsored specialized schemes). The fiscal and budgetary health of

⁷ People belonging to the lowest strata of society according to the hierarchical Indian caste system.

individual States is directly correlated to the outlays on education. Even in cases where outlays are high, significant proportions are consumed by teacher salaries and therefore, do not impact the quality of education per sé.

In broad terms, there are **three** sets of factors that impinge on poor education performance, which in turn, affects the access, enrollment patterns and retention of marginalized and vulnerable groups in schools. The **first** of these is the poor ‘demand’ for education. This in turn is influenced by a host of factors (see table below).

Table 1: The Poor Demand for Education

All the factors related to the poor demand for education in the country have been analyzed numerous times by specialists on this issue. These are presented in a tabular form below:

Physical Factors	Role of parents	Economics of education	Role of Teachers	The Quality of Education
(Lack of) Access to schools	The low demand for education (especially for girls)	The hidden costs of “free” education Perception of “opportunity cost” of education	Work environment Quality of teachers Accountability (lack of)	Poor quality teaching aids Overloaded curricula Relevance in textbooks Oppressive teaching methods Mismatched pedagogy Exacting examinations High drop-out rates
Poor School Infrastructure				

The **second** set of factors has to do with more ‘macro’ aspects like the *financing and management of education*. Budgetary allocations for the education sector and spending under the same (as has also been reiterated elsewhere in this paper) is a very important indicator which can analyze whether the progress towards making education a fundamental right – an obligation of the State – is upheld in practice. Since 1976, elementary education is a “Concurrent List” subject i.e. a joint responsibility of the Central and State Governments. The bulk of finances for education (90 percent) however, come from State Governments with the center chipping in with occasional schemes like Operation Blackboard, the District Primary Education Programme (DPEP), the Mid-Day Meal Scheme (MDMS), Sarva Shiksha Abhiyan (SSA) and so on (see Box 2 below).

Box 2: Some Noteworthy Government Schemes

Sarva Siksha Abhiyan (SSA): This scheme, with a special focus on the girl child (especially girls belonging to marginalized and disadvantaged sections), is being launched on the suggestion of the National Committee of State Education Ministers under the chair of the Union Minister of Human Resource Development. This scheme will incorporate all the existing schemes and programmes in the elementary education sector and aims to bring a reduction in existing social, regional and gender gaps.

Operation blackboard: Launched in 1987-88, the aim was to ensure that all primary schools in the country have at least two *pucca*⁸ classrooms, two teachers and essential teaching tools like maps, charts and a library. In operative terms, the Government has fallen far short of these targets as can be seen in the preceding section.

District Primary Education Programme (DPEP): Launched in 1994 as a major initiative to achieve UEE, the DPEP programme aims at providing access to primary education, including reducing the dropout rates to less than 10 percent, increasing learning capacities of students by 25 percent and reducing gender and social inequities to less than 5 percent.

Mid-Day Meal Scheme (MDMS): This scheme was launched in 1995 with the aim of increasing enrollment and sustaining attendance rates in Government primary schools by providing an incentive in the form of one nutritional meal a day.

Free Education for Girls: This scheme was launched in 1998 with the major aim of empowering the girl child through provision of educational facilities and other incentives. Rooted in the concept of ensuring greater participation of women in the educational field, the scheme focuses on providing quality education.

The Government is committed to spending 6 percent of Gross National Product (GNP) on education -50 percent of which would go to elementary education. The current spending is around 4 percent of GNP. While the relative share of elementary education in the total budget has increased over time, the allocations still leaves a lot to be desired.⁹ For, though lack of resources is often cited for not universalizing education, there have been many instances where funds allocated for education have been returned back by State authorities to the center due to non-utilization¹⁰.

Lack of funds for education is also more a matter of spending priorities rather than an overall shortage of resources. Salaries and subsidies, for example, take away higher

⁸ Concrete brick structures.

⁹ Although the finance minister announced a total of Indian Rupees (Rs) 7,156 crore for elementary education in the 2005 budget, the Tapas Majumdar Committee report on financing primary education had suggested Rs 18,000 crore for the sector. 1 crore Indian Rupees is around US\$ 222,000.

¹⁰ In 1995-96, the Maharashtra State Government returned Rs. 12, 41, 30,000 – funds earmarked for education and which remained unutilized.

chunks of Government expenditure and cannot be curtailed due to the asymmetries of power in society. This has had a quantitative and qualitative impact on education. Among other things, the per-pupil investment by States on education has declined particularly in the poorer States.

Moreover, a very small corps of management staff manages a vast network of schools, thousands of teachers and millions of students. Service conditions, policies, transfers are arbitrarily handled - a damaging upshot is that many teachers are either agitating or are involved in litigation¹¹.

Among the incentive schemes, the MDMS (which in many States is now a scheme of providing dry rations to children) has been by and large a success in some States – but this also attributed largely to the “needs” aspect since for many children, the meal they would receive in the school is the only meal they eat in a day. Other schemes like free books and uniforms have fared worse. Where scholarships have been introduced, there are large lags in the ‘arrival’ of scholarship money leading to loss of motivation and the souring of parent-teacher relationships.

An important characteristic of the sector is the disparity in literacy across region, class, caste and gender¹². Literacy rates among urban Kerala males are 96 percent as opposed to 5 percent amongst SC females in rural Rajasthan. Literacy also tends to be lower among STs and Muslims. The gender gap in education is higher than in all but 5 countries of the world.

Although there has been an improvement in the overall education scenario, the pace of improvement is slow. This is highlighted by the number of countries that have overtaken India in this field, China being the prime example. Having started out with similar levels of literacy in the 40s, in 1991 only 7 percent Chinese in the 9-25 age groups were illiterate. India’s corresponding figure is seven times higher.¹³

The history of India’s political economy is also a factor. India’s post-independence policy of developing heavy industry (and the corresponding bias towards financing higher education) meant that education was geared to producing university graduates. India has been very successful in producing world-class economists, software professionals, doctors, engineers, etc. and there is therefore an almost rigid stance to not compromise on the quality of higher education, even if this is at the cost of school education. It explains why higher education in India is not only of a very high quality but heavily subsidized while elementary education has suffered due to lack of resources on all fronts. What policy makers have failed to realize is that a very high percentage of those who have fared so well at the higher level are those who did not avail of the Government school system¹⁴.

¹¹ Ibid. Refer to footnote above.

¹² Niloy Banerjee, "Analysis of the Basic Education Sector in India: A discussion draft", a policy draft paper produced for CIDA India.

¹³ Ibid.

¹⁴ Ibid.

It also meant uniform, rigid syllabi that have no space for local modification/needs and therefore, evoke no interest for many. Other factors have to do with under provision for education, inadequate supervision of the schooling system, lack of political commitment and official apathy¹⁵. Finally, other malfunctions in the management of education pertain to: the poor inspection system, inaccurate or fudged enrollment data, inaccurate or ‘cooked’ attendance data - all done to get around the system of incentives, checks and balances¹⁶.

The last set of factors is unique to the South Asian (and Indian) socio-cultural context and is vitally linked with the prevalent social mores and structures. While the first two sets of factors have an impact on the overall scenario of hindering lack of access, enrollment and retention in schools in which both boys and girls are affected (girls to a larger extent), the last set almost exclusively affects girls and attacks the very fundamentals of the rights-based approach to development.

Various endemic, social and systemic factors exist that obstruct girls from the so-called ‘lower castes’ – the SCs - or of those belonging to the STs as well as from the disadvantaged regions and communities to an education. The belief that investing in girls does not make sound economic sense (since they will be married at an early age) is one of the many beliefs that still remain dominant, even in urban areas. There is a social dimension to girls’ education. Many individual views are shaped by community views like ‘in our community, we don’t send girls to school’, or ‘in our community, we have never seen an educated woman’ (Banerjee, 2001). It is very common to see a household, which has an adult illiterate woman (the mother) will also have an illiterate girl child. These are reflections of a vicious circle where a disempowered (and illiterate) mother will not send her daughter to school because she has not been socially conditioned to do so. And an illiterate daughter will grow up to be an illiterate woman who will make the same uninformed choices in her life as her mother did.

Feminist literature is replete with examples of how the distinctions between the public and private sphere (Burra, 2001) have actually confined women to the narrow domestic sphere of household affairs while men have often enjoyed the benefits that accrue by virtue of them enjoying an "independent status". Labour burden on a girl (as can be seen from the higher prevalence of working girls in say, the match factories in Sivakasi in Tamil Nadu or in the cotton farms in Andhra Pradesh) can be even more because females have lower earning prospects as adults than males and hence, their returns from an education are low. Moreover, most of the girl child labourers work in the informal sector, where they are the most disadvantaged. If options are present to send children to school and if a family has both a boy and a girl, it will often be the boy who will be sent to school.¹⁷ In some Indian societies, girls are put off work as soon as they attain puberty; they are hence put to work early (Boyden and Myers, 1995).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ For a more detailed analysis of how various factors hamper access of Indian girls to an education, refer to the author’s paper entitled “Actualising the Right to Education: Participative Civil Society-led Approaches to Educational Interventions for Girl Child Labourers in India – The Road Ahead”. The paper is available online at <http://www.ids.ac.uk/ids/particip/networks/learnfellow/devi.pdf> and to Ms Neera Burra’s paper "Cultural Stereotypes and Household Behavior: Girl Child Labor in India" in the *Economic and Political Weekly*, Vol. XXXVI, Nos. 5 & 6, February 3-10 2001.

Then, there is the role played by popular media - which is a very powerful medium in India - even in the rural areas. With the advent of satellite television into even the remotest villages (hailed unanimously as the most entertaining medium by the villagers), there is often the presence of a TV set in a rich/powerful household where all the villagers gather after dusk¹⁸. Negative imaging of women shown thus on TV and cinema further reinforce the discriminatory and patriarchal attitudes in society and which has a massive impact on the day-to-day lives of the people.

From a rights-based perspective to education, all *three sets of factors* cannot be ignored. For, while the first two sets of factors directly relate to the obligations that duty-bearers have to realize the rights of the citizens, the third set impinges on the conduct of social capital to facilitate and secure these rights.

Following from the above, there are, however, some very innovative participatory civil society/Government collaborations centered around the right to education in the Indian context and which, under the overarching framework of the right to development, has paved the way for realization of other rights, especially as they pertain to disadvantaged and vulnerable groups. *In this backdrop, the next section will thus analyze two working rights-based models on the ground that has succeeded to an extent to mainstream vulnerable and marginalized children (and to a large extent, girls) into Government schools with Government collaboration/ support. A degree of success exhibited by these models following a rights-based approach reinforces the belief that these models of cooperation could provide some lessons learnt for replication in terms of effectiveness, accessibility and affordability, even under the most severe circumstances.*

3. The Study of Sankalp and the Madhya Pradesh Education Guarantee Scheme in Securing Access to Education for the Girl Child using Rights-Based Programming Strategies

The rights-based approach, besides being rooted in entitlements, involves practical cooperation, flexibility, and a willingness to learn in the pursuit of shared objectives. It calls for the involvement of civil society in governance - true governance, which involves all the stakeholders in the process, is always more sustainable. At the same time, the approach emphasizes on the moral obligation of the State to provide a foundation in which the rights of all citizens can be realized. As such, a strong rights-based framework then provides the base for realization of all sets of rights and can lead to progress in other spheres, more notably, overall poverty reduction and gender equality, under the overall framework of the right to development.

In the above backdrop, there are some very innovative experiments in the country relating to access, enrollment and retention of children in schools and which have had an impact on increasing child literacy to impressive levels. The case studies taken up for documentation in this paper as “good practice” models below are based on the

¹⁸ From my field observations, I have seen that the TV set is often present in the house of the most powerful person (often the Gram Panchayat leader). This is where the locals converge after dusk to watch images of women in some soaps being further marginalized by glorifying discriminatory attitudes like sex determination tests, virginity, demureness, etc.

communities demanding the right to education for their children and being involved in school administration and management. In a wider sense, accountability of the school administration to the communities represents a strong governance outcome, leading to realization of other civil, political, social and economic rights.

While it is true that there are no universally accepted blueprints for success - although there are some recipes for failure, such as Governments developing plans for building partnerships without true participation of the communities with local communities used as vehicles for service delivery¹⁹ - more successful approaches have evolved from a rights-based approach. And this has been amply proved by the approach initiated by one of the models documented below – the Education Guarantee Scheme (EGS) – where the public sector (the Madhya Pradesh State Government) has developed a rights-based approach to decentralize education to the local Government level, with the communities as equal stakeholders. The 2002 UNDP Human Development Report states that true development and progress is also possible when it is participatory and decentralized and offers some innovative models to substantiate its arguments. In this light, the models of participation between civil society and the public sector analyzed below do offer approaches that are not only replicable and sustainable but also rights-based and participatory. All of these approaches stand out like an oasis as they are based in the otherwise backward BIMARU²⁰ States and their effectiveness goes to prove that with necessary commitment and innovation both from the public sector and community's side and with minimum resources and community participation, the right to education can actually become a reality across the country.

A. Sankalp: Ensuring Education through Demanding Livelihood Security

Case Study/Project Context: In the two of the five BIMARU States - where innovative models of education for the disadvantaged and the marginalized has demonstrated success and which are reviewed in this paper - perhaps, the most disadvantaged in comparative literacy terms is the northern Indian State of Uttar Pradesh. At a literacy rate that stands at only 57.36 percent, only the States of Arunachal Pradesh, Jharkhand, Jammu and Kashmir and Bihar are ranked below Uttar Pradesh in the all-India literacy table. Literacy rates for women stand at a mere 42.98 percent to 70.23 percent for males.

The reasons for such gaps are obvious and many. Uttar Pradesh is a highly patriarchal State where caste and class considerations play a major role in determining access to rights. In such a scenario, the most marginalized are often the girls and women who have practically no (or very limited) access to any rights, including access to an education. All the factors preventing access of girls to schools and analyzed in Section 3 thus holds true for this State.

Against such a backdrop, the challenge of providing (access to) education for marginalized groups remains enormous. Thus, quite a few models of innovation - many of which have been initiated by civil society, particularly NGOs- have been

¹⁹ “Education Now: Break the Cycle of Poverty”, report by Kevin Watkins, OXFAM, 1999.

²⁰ The five BIMARU States are Bihar, Madhya Pradesh, Uttar Pradesh, Rajasthan and Orissa – these States exhibit the lowest indicators of development across all sectors.

born in this State in the last two decades to tackle the challenge of access and retention. Though by no means an exhaustive list, civil society efforts initiated by NGOs like ASHA, CREDA, Rugmark, Beti Foundation and Sankalp come to mind when discussing approaches relating to provision of education for marginalized and vulnerable children in this State. UN agencies like the United Nations Children's Fund (UNICEF) and UNDP have also initiated multilateral efforts in this sector in the last one decade, with encouraging results. Also showing degrees of success have been the Basic Education Project (BEP) initiated by the State Government in 1993 and the more recent World Bank (WB) funded DPEP that started in 1997.

The following section will analyze the efforts initiated on a micro-level by an NGO – Sankalp – in the Allahabad district of Uttar Pradesh. Formed in 1994 by a group of like-minded social activists with the main aim of taking up the cause of silica mineworkers living in Shankargarh, the approach initiated by this NGO in ensuring education for children in this poverty-stricken area – most of whom are child labourers – with community demand and participation and gradually roping in the State education authorities as a partner in the process provides sufficient grounds for it to be included as a case study on a rights-based approach to realizing the right to education in this paper.

Stakeholders Involved: Sankalp operates in the Shankargarh district of Uttar Pradesh. “This region has long been famous for its silica mines; however, the miners who mine these areas live in conditions of abject poverty. This is primarily due to the system of leasing which operates with the local ruler - the erstwhile *Raja* (King) of Shankargarh –who managed to get rights in perpetuity to the mines and then leased the mines to the contractors – the middlemen - who, in turn, employ local villagers” (Wazir, 2001),²¹ the majority of whom are landless and bonded labourers. The system of “middlemen” leads to blatant exploitation of the workers and this is reflected in the low wages that the workers would receive from the contractors. The “middlemen” system in India has also perpetuated child labour in quite a few States across the country²². And Shankargarh is no exception to this rule – there are a large number of children working in these hazardous mines – “spread out over 46 villages covering an area of 150 square kilometers that make up this area - at the cost of their health, education and at times, even lives. Along with illiteracy, the area is also characterized by rigid caste and class hierarchies” (Wazir, 2001)²³ and this is reflected in attitudes and practices towards women in all aspects.

²¹ Rekha Wazir, "Recent Report on Sankalp", and can be accessed at <http://hdrc.undp.org.in/childrenandpoverty/REFERENC/CASESTUD/SANKALP/sankalp.htm>

²² In the villages of Uttar Pradesh and towns/villages in Punjab, the author has seen that middlemen receives raw materials from the sports goods industries which they then source out to the families in the villages/towns to produce footballs and other sports goods. All produced for the export market, this practice has been found to perpetuate child labour to a large extent in these two States. The middlemen, to produce large volumes of goods at low costs, give out the raw materials to the families and the families in turn, to earn more, start initiating the children into work. This practice has also been observed to be widely prevalent in other export-oriented industries and factories like the home-based brass factories in Moradabad and the home-based carpet looms in Varanasi and Mirzapur (and surrounding areas) in Uttar Pradesh.

²³ Ibid. Refer to footnote No. 21.

Process: It was to combat such deep-set social attitudes and behaviours that Sankalp started adopting a rights-based approach that works towards making the people (particularly the mine workers and who are mostly tribals belonging to the *Kol* group) aware of their rights. In the review conducted by Dr Rekha Wazir for UNDP India in 2001²⁴, she observed that one of the most effective means of doing this was by “uniting the workers in their struggle for just wages, campaigning for leases to be given to the workers to form workers' co-operatives and empowering them to apply for mining leases. This also involved releasing many workers (and children) from bonded situations”. Sankalp played a role as the catalyst in the process in undertaking the above.

Dr Wazir’s review further notes that Sankalp soon realized that just releasing the children without having attendant support structures in place would not make the children go back to work again. This is when they decided that to tackle child labour and secure children (and particularly the girl child) an education, involvement of parents is necessary. And Sankalp tried to tackle this by not only trying to change societal attitudes and norms (through adult literacy and awareness/ sensitization programmes) but also through ensuring work security for parents. This is a novel approach and Sankalp’s experience shows that economic security in such deprived conditions is a necessary corollary to securing education for the children.

Unlike many other approaches on child labour and education - which do not recognize poverty as being the root cause of child labour and children being deprived of an education – “Sankalp tries to secure income and employment for the parents to take away the root cause of their inability to send their children to school” (Wazir, 2001). But this is done in a rights-based manner and not in a service-delivery mode. Parents are being empowered to demand better conditions, better wages and control over their livelihoods.

Box 3: The Formation of Mining Co-operatives- A Unique Approach

The formation of mining cooperatives²⁵ is quite a unique part of this approach and deserves mention. Using the same rights approach – where failure of the State to protect the rights of its citizens has led to the citizens demanding the right to work and the payment of minimum wages- Sankalp fought to ensure that “*pattas*”²⁶ are given by lease and not by auction and that miner's co-operatives are eligible to apply for them. Sankalp thus formed 48 self-help groups (called *samooh*) and 40 of these have already applied for leases. It goes to the credit of Sankalp and the commitment of the villagers who sold their meager belongings and their cattle to raise money to form the groups. If the system of lease works whereby miners’

²⁴ Ibid. Refer to footnote No. 21.

²⁵ Rekha Wazir, "Pathways from Child Labour to Education: A Selective Review of NGO Approaches" in G.K.Lieten, Ravi Srivastava and Sukhdeo Thorat (eds), “*Small Hands in South Asia: Child Labour in Perspective*”.

²⁶ Entitlement papers.

cooperatives are eligible to apply for leases to run the mines, it could be a model that could be demanded by mine workers elsewhere in the country and could be linked to the fight for eliminating child labour and bonded labour in this very exploitative industry²⁷.

The rights approach is further demonstrated by the fact that the organization decided to organize the villagers to fight for their rights as stated under the Indian Constitution in 40 villages. “In six villages, the mineworkers have captured lands under lease to the ruler and started mining because the middlemen – the contractors - refused to give them work. After attempts at negotiation failed, they decided to squat on the lands and start mining on the grounds that the lease in perpetuity to the ruler was illegal and was encouraging exploitation, bonded labour and child labour. With increased empowerment, incomes of the villagers increased, indebtedness decreased and children were being sent to school, as they were not required to work anymore. And this demand for the right to work spilled over to demands for rights in other spheres as well” (Wazir, 2001).

Capacity/Role of Duty- Bearers in Addressing Demands: Villagers started demanding that not only do their children have a right to go to school but also that the education should be of a quality which will secure them a stable future. The right to education for the girl child is especially emphasized. Hence, the villagers are also forming groups and monitoring the attendance rates of not only the students but also that of the teachers. Teacher training is being provided to ensure and maintain quality control. They are also forging a relationship with the teachers as they realize that to ensure quality education, it is far more strategic to form alliances. Alliance building will also ensure that other services– like repairing school buildings – are duly performed.

Sankalp initially used to run non-formal education centers for a number of hours each day. These are now running as full-time schools called “*bachpana kendras*”, offering a compressed primary school curriculum, in villages that do not have access to a school.²⁸ There are more than 25 such *kendras* at present. Their popularity and effectiveness can be gauged from the fact that even children from the Government schools have started attending the *bachpana kendras* now. “What is perhaps more significant is that Sankalp has opened *bachpana kendras* in 5 villages where it has not yet organised the mineworkers and there has been no action to demand minimum wages from the employers. These centres were opened in response to a demand from villagers who had seen how these schools functioned in neighbouring villages and wanted the same for their children”(Wazir, 2001)²⁹. Sankalp, however, does not want to build an alternative educational structure and it is now trying to complement Governmental efforts to this effect. To this end, it is now working towards building

²⁷ In a presentation by Dr Rekha Wazir at the IDPAD International Conference on Child Labour held in New Delhi, October 15-17, 2001.

²⁸ Rekha Wazir, “Eliminating Child Labour: Do NGO Interventions Add up to a Strategy”, *Indian Journal of Labour Economics*, Special Issue on Child Labour, Vol. 45, No. 3.

²⁹ Ibid. Refer to footnote above.

effective partnerships with the district education authorities and early indicators show that the authorities are interested to partner with Sankalp in the process.

With increased awareness and empowerment, the villagers also started to send their girls to school. Sankalp imbibed in the minds of the villagers the very simple truth that without investment in education, society will not be able to progress.

Monitoring to Ascertain Rights-Based Outcomes: As in any process that is not service-delivery oriented, the Sankalp “process of organising against the middlemen and the *Raja* has shown the mineworkers that if they are united they can demand their rights in other spheres as well. This feeling of empowerment has spilled over into the arena of monitoring education outcomes for their children even in Government schools. For instance, villagers now regularly check on the Government schools and complain if the teacher is absent. They have taken to locking the village school if the teacher fails to show up, in this way denying them access to the school premises in a very public way. By doing this, the villagers hope to bring teacher absenteeism to the attention of the education department”(Wazir, 2001).³⁰

Outcome (Results) - Changes that have Occurred as the Result of Application of using Rights-Based Strategies: The approach used by Sankalp is showing visible results as follows:

➤ *Securing the right to work and to an education:* The review conducted by Dr Rekha Wazir for UNDP India³¹, “found that in the six out of 46 villages in the Shankargarh area that have been successful in getting mining leases and where the villagers have occupied mining lands (and thereby securing the right to work and a livelihood) - through the efforts of Sankalp - all children are being sent to schools. And, adult literacy classes have also started” (Wazir, 2001).

➤ *Empowering girls:* The start of the process of sending the girls to school is also noteworthy for a community where no girls had ever been through any learning process before. The same review also states that “whether empowerment in one sphere is going to spill over automatically into positive changes for girls and women in other areas such as health, nutrition, status of women, dowry, child marriage, addiction, and expenditure on unproductive activities like marriage and deaths (which are one of the key reasons for indebtedness) will remain to be seen. However, one issue stands out clearly – that if people are empowered to fight for their rights in one sphere, changes in other spheres, following a “spill over effect” can take place” (Wazir, 2001)³².

Dr Wazir’s review notes that it will be a challenge to see if children will continue their education even if the mining leases are lost in the future. Sankalp approaches questions related to the right to work and right to a livelihood from the State as an entry point that will spill over to people demanding the right to education. And in a poverty-stricken area like Shankargarh where parents will continue to send their

³⁰ Ibid. Refer to footnote No. 21.

³¹ Ibid. Refer to footnote above.

³² Ibid. Refer to footnote above.

children to work if they are economically deprived, this approach has proved to be quite effective.

B. Education Guarantee Scheme (EGS), Madhya Pradesh – A Government-led Rights-Centered Approach to Universal Primary Education

Case Study/Project Context: The largest State in India in terms of sheer size, the central Indian State of Madhya Pradesh (also a BIMARU State) is characterized by having amongst the lowest human development indicators in all aspects and these are reflected more starkly in the literacy levels for girls and women, and for SCs and STs, especially in the rural areas. Thus, this State presents a formidable challenge in reaching out to every child of primary school age with a life-relevant, quality, basic education. However, in the backdrop of such low educational indicators, it is notable to view that the State has made commendable progress in literacy in the last one decade. While the total literacy rates in 1991 was 44.67 percent with literacy rates being 58.54 percent among males and a very low 29.35 percent among females³³, the 2001 Census shows a quantum jump in literacy rates. Total literacy rates now stand at 64.11 percent with a literacy rate of 76.80 percent among males and 50.28 percent among females. The Census 2001 figures further show that Madhya Pradesh recorded the third highest growth in literacy rates among the 29 States in the country (the first and second being Rajasthan and Chattisgarh respectively – Chattisgarh being a part of Madhya Pradesh till very recently). This is particularly commendable considering that the State ranked among the 8 most illiterate States/Union Territories in India in 1991 (just above Andhra Pradesh, Arunachal Pradesh, Bihar, Jharkhand, Chattisgarh, Dadra & Nagar Haveli, Rajasthan and Uttar Pradesh).

Clearly, some very effective and radical policies were implemented in the last decade to record such dramatic increases. Notable among them were the Shikshak Samakya (implemented as a separate project initially and then as a part of the DPEP and the EGS). The Rajiv Gandhi Siksha Mission (RGSM) also deserves mention. The most credible factor was that while most of the successful rights-based education initiatives implemented throughout the country often follows the model of “civil society initiated with Government in a supplementary or collaborative role (one such approach has been documented above), the educational initiatives in Madhya Pradesh, following the principles of decentralization, were mostly initiated by the State Government with civil society playing a partnership role/responsibility in implementation and have demonstrated viable success, thus providing the second rights-based model for documentation under this paper.

Stakeholders Involved: As mentioned above, radical changes have been witnessed in the last decade in the education scenario in Madhya Pradesh. It is in this scenario that in 1997, the Madhya Pradesh State Government made a break in the ethos of promoting UPE by introducing the EGS with the objective of making primary education a reality for every child in the State. Using a community-centered and rights-based approach, the Scheme aims to provide primary education to all children in a quick and time-bound manner with the State Government obligated under a guarantee to provide a primary schooling facility to the children in a habitation where there is no such facility within a kilometer within a period of 90 days of receiving a

³³ According to the 1991 Census.

demand for such a facility by the local community, provided the demand emanates from at least 25 learners in the case of tribal areas and at least 40 learners in the case of non-tribal areas in the age group of 6-14 years. It operates on a decentralized basis through collaboration of the State Government, local body (the *Panchayat*) and the community. The EGS has thus created a three-way partnership to ensure the right to primary education³⁴:

Process: The EGS follows a very unique rights-based demand-driven bottoms-up participatory process as highlighted by the figure below:

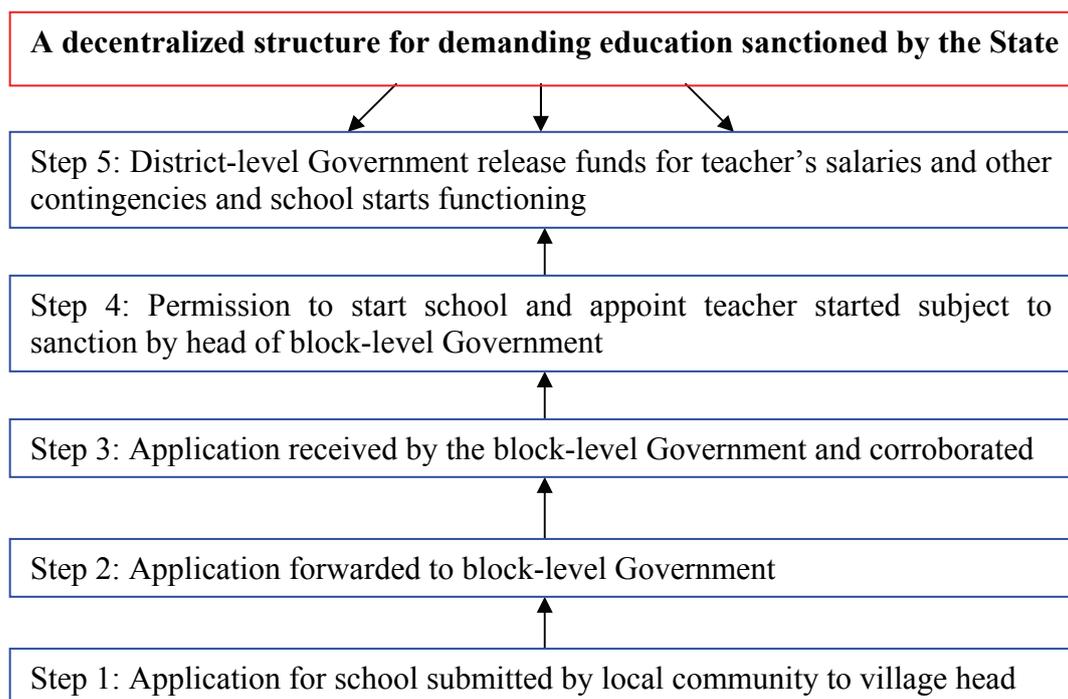


Figure: A demand-driven rights-based participatory approach to education³⁵

The process is explained in details below:

Step 1: The local community raises the demand for a school to the *Sarpanch*³⁶ of the local *Gram Panchayat*. The application should have to state the number of children, their names with ages, names of their guardians, the educational facilities available in the vicinity/distance from the habitation and the current scenario relating to provision of education in the vicinity. The community can also suggest the names and list qualifications of suitable local residents to be appointed as the teacher, called *guruji*³⁷.

³⁴ According to the official website of the Education Guarantee Scheme and can be accessed at www.fundaschool.org

³⁵ By Upala Devi Banerjee

³⁶ Village head.

³⁷ Teacher.

Step 2: Once the application is received, the *Sarpanch* of the Gram Panchayat will forward it to the Chief Executive Officer (CEO) of the *Janpad Panchayat*³⁸ within three days of receiving it. The rights approach is further highlighted by the fact that if the head of the *Gram Panchayat* does not forward the application to the CEO of the *Janpad Panchayat* within three days, the community has the right to send its demand directly to the CEO.

Step 3: A receipt register maintained for that purpose corroborates the application received by the *Janpad Panchayat*. The receipt acts as a statement of guarantee issued on behalf of the State Government that it is committed to take action to establish a school in that locality within 90 days of the receipt of demand, provided the demand is valid.

Step 4: The permission to start the school and the approval of appointment of the teacher is subject to a sanction issued by the CEO. The *Gram Panchayat* is entrusted with the powers to appoint such a teacher after necessary approvals.

Step 5: Following the appointment of the teacher, the CEO of the *Zila*³⁹ *Panchayat* would release the budget for the teacher salary and other contingencies. The local community or *Gram Panchayat* is expected to provide space for the teaching and the school starts functioning.

Box 4: Decentralization as a core in the Education Process

Decentralized planning and management of elementary education is a goal set by the NEP in 1986 to involve direct community participation in the form of Village Education Committees (VECs) for management of elementary education. The 73rd and 74th Constitutional Amendments also provide for decentralization of the activities and facilitate transfer of power and participation of the local self-Government institutions or the Panchayati Raj Institutions (PRIs). This has led to the creation of an atmosphere where PRIs are legally equipped to play a more dynamic and proactive role in the community affairs. The concept of decentralization holds special significance from the viewpoint of the right to development as it enjoins obligations on the States to evolve institutional arrangements both in rural and urban areas for undertaking these activities. At the same time, it bestows communities with both rights and responsibilities (for instance, deciding on location and relocation of existing primary and upper schools on the basis of micro planning and school mapping, community monitoring of the school system, etc.)

The decentralization structures have been providing voice to women, SCs and STs, other minority groups, parents and educational functionaries. In this regard, decentralization of school management to grassroots has resulted in some very innovative efforts in the field of education. For instance, the DPEP has shifted the planning mechanism from the State to the district level and the Madhya Pradesh State Government-initiated EGS has used the principles of decentralization to the utmost effect.

³⁸ Block-level government.

³⁹ District-level government.

Capacity/Role of Duty-Bearers in Addressing Demands: The decentralized structure of the Scheme is characterized by the manner in which each partner in the process comprising of the communities, *Panchayats* and the State Government has its own sets of roles and responsibilities, thus paving the way for a last-lasting relationship.

The State Government provides the funds for teachers' salaries as well as for teacher training. The training programme and training materials for the teachers have to be arranged by the district EGS Committee within 30 days of receipt of the approval letter from the *Janpad Panchayat*. A lot of emphasis is placed on quality teacher training and teaching commences only when the selected *Guruji* is provided 20-day induction training and at least 14 days of recurrent training each year.

Monitoring to Ascertain Rights-Based Outcomes: That this is an entirely a rights-based participatory approach can be seen from the *modus operandi* which involves the communities in not only demanding schools from the State but also in being responsible for implementing and monitoring the process. Accountability and transparency mechanisms from all the stakeholders involved - the communities, *Panchayats* and the Government – are strengthened in the process. The EGS School is today owned by and accountable to the Parents Teachers Association (PTA) and the VEC – who in-turn are elected by the *Gram Sabha*. The *Panchayat* manages funds allocated by the Government for the EGS program and allocations/expenditures are supervised by the PTAs of each school. The Government, the *Panchayat* and the school form three corners of the management pyramid. Other institutional reforms strengthen decentralized management and quality monitoring.⁴⁰ Such monitoring mechanisms are cost effective and community oriented; i.e. schools are invested with 'community shares' so that as dropout rates rise, funding will stop.⁴¹

Outcome (Results)- Changes that have Occurred as the Result of Application of using Rights-Based Strategies: The EGS is one of the very few successful educational innovations initiated by a State Government in making UPE accessible to all. More importantly and as has been mentioned elsewhere in this paper, it is one of the very first educational initiatives which is public sector led but involves the community as equal partners in the process and the outcomes are as follows:

➤ *Enabling marginalized communities to demand their right to education:* The Scheme recognizes the inherent strengths of the communities to demand their rights guaranteed to them under the Constitution – and this is apparent in the manner in which the right to education is being demanded by the communities across the State with success. The fact that 40 primary schools opened every day of 1997 showed the demand that existed and that was met⁴². After a tentative start, the program went to scale in a brief period. Between July 1997 and July 2000, a staggering 26,571 EGS Schools were created (42 percent of them in predominantly tribal areas) catering to 12,33,052 children (47 percent girls and 44 percent being tribal children) – out of which 91 per cent of children were from SCs, STs and other socially disadvantaged

⁴⁰ <http://www.worldbank.org/wbi/reducingpoverty/docs/newpdfs/case-summ-India-Community.pdf>

⁴¹

http://66.102.7.104/search?q=cache:ZSVIwo_vkvkJ:www.ids.ac.uk/ids/govern/citizenvoice/pdfs/educations-india.pdf+Education+Guarantee+Scheme+in+Madhya+Pradesh&hl=en

⁴² Ibid. Refer to footnote No. 34.

communities. As of June 2003, the program appointed a total of 31,815 *Gurujis* who were identified by the community and trained by the education department of the Government.⁴³ The most significant impact of EGS is a sharp reduction in the absolute numbers of out-of-school children from 1,315,000 (boys) and 1,604,000 (girls) in 1996 to 346,000 (boys) and 428,000 (girls) in 2002-03. Female literacy increased by 20.93 percent over the decade.⁴⁴

➤ *Guaranteeing quality education at low costs:* The Scheme also guarantees quality education at a low cost and tailors the teaching experience according to the needs of the children, thereby making education a joyful learning experience.

➤ *Curricula suiting local needs:* Within the broad parameters of 200 working days a year, timings of school, location and the academic calendar are all tailored and fixed by the stakeholders and are hence sensitive to the needs of the local situation. The curricula also differ according to the needs of the children and from community to community – this is based on recognition of the fact that children have different learning paces in terms of not only being separate individuals but also having different learning paces for various subjects⁴⁵.

➤ *Targeting vulnerable and marginalized groups:* Girl children and the STs (especially people belonging to the indigenous tribes) were specifically targeted. And this has helped in making primary education equitable and accessible to both girls and boys from all strata of society, thereby bridging prevalent class, caste and gender gaps and paving the way for social gender equality.

Though the Scheme has exhibited a few drawbacks in its eight years of existence⁴⁶, the positive features far outweigh the negatives, the most important being that it has made education accessible for all children between the ages of 6-14 across the State.

4. The Value Added of Using Rights-Based Programming Strategies:

⁴³ Ibid. Refer to footnote 41.

⁴⁴ Ibid. Refer to footnote above.

⁴⁵ “*Janshala*” – the newsletter of the joint Govt. of India-UN System Education Programme, Volume V, Issue 1: Jan –March 2002.

⁴⁶ Some recent studies have shown that in many cases, persons from outside a village has been selected as teachers despite educated and willing persons available in the village. Stories of favoritism and corruption (where payment is made to local government officials to secure the teaching jobs) are doing the rounds. Another drawback is that the Scheme only covers children between the ages of 6-14. There are many instances of either no quality schools available nor any schools available in the locality to cater to children from Class VI onwards. In such a scenario, drop out rates after the completion of primary education would be high and the lack of educational options to complete school forces many a parent to question whether it is worth to send their children to school at all in the first place. Local politics also affects development and education can suffer as a process. For instance, in a village where the EGC is being implemented, the local teacher is trying to mobilize the community in efforts to build one extra room in the school. Despite the fact that the community realizes the need for the extra room and is willing to help him, things are unable to move because they are caught in a political wrangle. A school of thought also voices the opinion that even though *Panchayati Raj* has now been operational for a while, people are yet to realize that there is very little that the *Panchayat* can actually do unless people themselves take the initiative. The devolution of powers to the *Panchayat* has also led to a situation where people assume it is the *Panchayat's* responsibility to shoulder the entire burden of the village.

Positive Lessons Learned

One key theme each emerges from the two cases. This paper argues that each of these themes can form the pillars of actualizing a rights-driven framework of gender equity while, at the same time, achieve the EFA goals. These key themes are:

- *Involving the target community is key:* In a rights-based model, involvement of the community in planning, design and ensuring accountability for education delivery – including curriculum design and teachers’ accountability – is key in creating ownership and buy-in. Such locally designed, appropriate, non-regimented, non-blueprinted, flexible approach to education delivery in a framework of constructive partnership between Government and civil society leverages disproportionate gains in enrolment and retention. This is highlighted in the both the cases and is a recipe for their successes on scale. This is delineation from a “top-down” policy approach and more in tune with the human rights approach to development. Thus, in both the models documented, it is the local people who have been consulted and who have come up with ideas for design and implementation – be it the tribal miners in the Sankalp case or the local communities who are consulted and involved in designing curricula for out-of-school children under the EGS. Such consultation also ensures that project design and implementation follows and addresses local needs throughout.
- *Linking education to livelihood options imperative:* The rights-based approaches used not only helped retain marginalized and vulnerable children in school but also helped prepare them for a life ahead of school. This has been especially true in the case of Sankalp where conditions were created not only for the children but also for immediate families to access education. In the Sankalp experiment, the issues surrounding livelihood security was found to be the strongest push-factor in education guarantee. Even in the EGS model, the curricula has been designed to accommodate the interests of working children in such a manner that working children can not only be educated in traditional literacy but be also capacitated in life skills.
- *Using a highly developed civil society capital to act as a catalyst and enablers of change:* A highly developed civil society exists in India and this has acted as the catalyst (under the rights approaches used) to bring about change through a "demand-supply mechanism". On the demand side, this role has been played through advocacy, lobbying and ensuring accountability and transparency- and perhaps the most telling of this was its success in getting the 93rd Amendment on the Right to Education passed. And on the supply side, this has been undertaken both by capacity development of: i) communities through training, awareness, sensitization, social auditing, and monitoring of Government services; etc. and, ii) of the Government by the training and sensitization of public officials, etc.
- *Using the enabling policy environment to ensure justiciability of the right to education:* A rights-based approach works best in an enabling policy environment. In the case of EGS, not only did the Madhya Pradesh State Government introduce a programme on realizing the right to education that entailed that duty-bearers respond to demands being made by claim-holders but this was further buttressed by the

enabling policy environment – the decentralized framework as well as the 93rd Constitutional Amendment Bill on the Right to Education While the decentralized framework shifted the planning and delivery mechanisms from the State to the district level and downwards to the Panchayat level, the Bill on the Right to Education ensured that this right is now justiciable and hence, claim-holders can now hold the duty-bearers accountable in case of non-realisation of this right. Such enabling frameworks thus demanded and ensured accountability and transparency mechanisms from the highest to the lowest levels in the planning and delivery hierarchy.

➤ *Self-sustaining the process:* One of the positive lessons learnt, especially from the EGS case, is that the process was created and then operationalised by the Madhya Pradesh State Government without any dependence from outside donor/funds. Such a process is locally owned, with the community participating through providing space for schools (this was also the case with Sankalp), designing and monitoring the process of educational outcomes and the Government paying for teachers' salaries and other material educational needs. Not only is such a process self-sustaining but it is highly participatory and ascertains rights-based sustainable outcomes as accountability of both the duty-bearers and claim-holders are intrinsic for the process to be viable.

Challenges in Implementing Rights-Based Strategies: Lessons Learned

In the education sector in India, various challenges exist before both the Government and the civil society in delivering their duties and claiming their demands as follows:

➤ *Challenges before the Government:* “The most *important challenge* is for the Government to undertake a reform/capacity development of its own administration, management and staff practices to implement participatory rights-based strategies. A very understaffed, underpaid and under-qualified cadre of staff manages India's education ministries and departments (called Human Resource Development – HRD – ministries and departments). Capacitating this cadre with training on management and pedagogy and sensitization with a special focus on gender equity is key to revamping the education sector. A further challenging aspect of reform is rationalizing personnel policy in the sector. Government teachers are used for census enumeration - as polling and electoral officers during elections and other such - and they also sit on various committees of the local Government. Actual instruction time available to teachers is further reduced by holidays, ‘casual leave’ and annual leave. Clearly these issues need to be addressed on a priority basis” (Devi Banerjee, 2002)⁴⁷.

“Reform to accommodate people-centred rights-based strategies is often also not politically easy since teachers' unions are powerful lobbies backed by political parties. However, the Government must pro-actively seek reform with or without the

⁴⁷ Upala Devi Banerjee, “Actualising the Right to Education: Participative Civil Society-led Approaches to Educational Interventions for Girl Child Labourers in India – The Road Ahead”, Institute of Development Studies, University of Sussex, England, United Kingdom. The paper is available online at <http://www.ids.ac.uk/ids/particip/networks/learnfellow/devi.pdf> and "Valuing education: Case studies of rights-based approaches to designing an educational system for the girl child in India – A documentation for possible replication models", ICRW Ford Fellow, Washington D.C.

cooperation of teachers' lobbies. In Bolivia, for instance, when similarly powerful teachers' unions threatened to derail the National Dialogue process in 1998, the Government clean bypassed the unions and dialogued with local Government structures (municipal bodies) instead and a more constructive input into the Bolivian Poverty Reduction Strategy (PRS) was the outcome. Teacher absenteeism, parallel 'tuition' and 'coaching classes' (tutorials) run by teachers on Government payroll must be severely cracked down upon. Part of the management reform is also to enhance capacities within the management cadre in education" (Devi Banerjee, 2002).⁴⁸

"Going beyond the historical mistrust that exists between Governments and civil society, the next *challenge* is to find common grounds of participation and partnership that would work" (Devi Banerjee, 2002).⁴⁹ In India, there have been some very good examples of such partnerships and specifically in the context of education, some of these partnerships have already been explored as case studies in this paper.

Box 5: The Case of Brazil: An Example of Government-Civil Society Participation in the Education Sector using Rights-Based Strategies

In the international scenario, the Brazilian Government model of implementing legislation on child rights and working with civil society groups to implement the right to education comes to mind. The Brazilian Constitution mandates compulsory education as a right and a legal duty. The standard of education in Brazil has improved dramatically in the last fifty years. From 1991 to 1997, enrolment has grown by 17 percent. The number of schools has increased eight times in the last five years. There was a six-fold increase in the number to teachers. In the last five years, the process of education reform has been intensified. This process has been led by the federal Government which advocates for strong collaboration between the Government at all levels of the decentralized administrative structure and representatives of civil society organizations. This is producing important changes in the public educational system.

At the same time, to tackle some of the inefficiencies in the public educational system, the Brazilian National Campaign for the Right to Education started in October 1999 with the objective to improve the quality of education. Led by Brazilian civil society, the Campaign is monitoring the Government's budget on education and has received support from several groups and public policy makers. The National Campaign for the Right to Education aims at restoring the concept of education as a "right" and that too, a legal right as stated in the Constitution and highlights measures on how civil society can implement this right. The four issues approached through the Campaign – quality; financial resources; valuing of teachers; and, democratic involvement of social actors -- are rooted and reflected in the Brazilian Constitution, thus giving them solid legitimacy. The Brazilian Association of NGOs (ABONG) has also been working actively to strengthen civil society participation in policy-making and in favour of the right to education. ABONG stresses the need for continuous evaluation of education policies and actions taken by different actors at the national and international levels and the need for monitoring indicators.

⁴⁸ Ibid. Refer to footnote above.

⁴⁹ Ibid. Refer to footnote above.

➤ *Challenges before civil society:* Ground realities in India could seriously hinder the process of creation of capabilities of communities in demanding and realizing the right to education. And this is where the main challenges before civil society will lie while actualizing this right (as well as any other right which communities are entitled to but have had to demand – like the right to food or the right to a livelihood).

“The *first set of challenges* would relate more to changing endemic societal attitudes and reforming traditional structures. Some challenges which present themselves before civil society in this context are rooted in the nature and level of existence of communities (or social capital) in different States - there are a number of States in India where the culture of a strong civil society does not exist (like the northeastern States of Assam, Meghalaya, Manipur, Tripura *et. all.*) or where civil society operate "at different levels of sophistication" – for instance, while the States of Assam, Arunachal Pradesh and Meghalaya are predominantly matriarchal States where women’s status is generally considered high culturally, the same States record lower level of literacy rates, including girl child literacy rates. In such societies, it is correct to assume that communities are not only “rights unaware” but also “education unaware”. It also goes to prove that a high status of women in society does not necessarily spill over to their obtaining or accessing an education. Such communities fail to realise the benefits of education, and more so when it relates to education of the girl child. Then, there are those communities where the patriarchal and traditional mind-sets are too deeply entrenched (situation of women and the girl child usually are at the lowest common denominator in these States). And in such societies, it is almost unthinkable to fight for education as a right. For instance, while States may record high levels of human development indicators (like Maharashtra, Karnataka or Tamil Nadu), some districts within the same such States are notorious in recording high levels of child labour and in practicing socially-sanctioned forms of gender discrimination like the *Devadasi*⁵⁰ system. It goes to prove that challenges on the ground for civil society are not only enormous but also complex” (Devi Banerjee, 2002)⁵¹.

In meeting the above challenges, the main challenge will be to engage rights-unaware communities in such local situations through capacity development using a rights-based approach. Using innovative approaches geared towards local challenges and needs (as was seen in the Sankalp case) and using advocacy, capacity development methods (awareness, sensitization, training, etc.) and participation as part of the approach, such hurdles could either be overcome or co-opted. Preparatory work to build conditions mobilizing citizens' voice for responsiveness and accountability is needed (Goetz & Gaventa, 2001) and could demonstrate results.

“The *second set of challenges* would relate to reforming and changing policy structures and mindsets. There are those "top-down policy" States like Bihar or Uttar Pradesh where the bureaucracy is too deeply entrenched. The underlying belief prevailing in such policy mindsets is that the right to an education is linked to power

⁵⁰ In some districts of Maharashtra and Karnataka, a ritualized form of girl child religious prostitution exists called the Devadasi system. Though banned under law, it still exists in a hidden form.

⁵¹ Ibid. Refer to footnote No. 48.

as education brings with it knowledge which is a powerful tool for the oppressed to fight for their rights. This poses challenges before civil society. For, those States where the bureaucracy is all too powerful will resist the successful implementation of the right or of reforming the education system for reasons of wanting to maintain a status quo. Also, policies are often made by bureaucrats who hail from elite and patriarchal backgrounds. This poses serious problems, especially when policies made or implemented are not gender-sensitive⁵².

The *final challenge* will be to go beyond the pattern of historical mistrust that exists between Government and civil society and find methods of mutual collaboration. Civil society has actually risen to this challenge and formed effective partnerships with Government collaboration and participation in some States in India. These initiatives and partnerships form the core in this paper and have served to highlight the argument that meeting these challenges through methods of demand-based participation as a right have worked to quite an extent. The challenge really will be to replicate and expand such models in States like Bihar, across other districts of Uttar Pradesh, Orissa and the northeastern Indian States.⁵³

⁵² Ibid. Refer to footnote above.

⁵³ Ibid. Refer to footnote above.

SELECT BIBLIOGRAPHY:

Banerjee, Niloy., 2001, "Analysis of the Basic Education Sector in India: A discussion draft", a policy draft paper produced for CIDA India.

Boyden, Jo., & Myers, William., 1995, "Exploring Alternative Approaches to Combating Child Labour: Case Studies from Developing Countries", Innocenti Occasional Papers, Child Rights Series, Number 8, ILO & UNICEF, New York, USA and Florence, Italy.

Burra, Neera., 2001, "Cultural Stereotypes and Household Behaviour: Girl Child Labour in India", *Economic and Political Weekly*, Vol. XXXVI, Nos. 5 & 6, February 3-10 2001, New Delhi, India.

Census of India, 2001.

Chaudhuri, D.P., 1997, "A Policy Perspective on Child Labour in India with Pervasive Gender and Urban Bias in School Education", in *The Indian Journal of Labour Economics*, Vol. 40, No. 4, New Delhi, India.

Cornwall, Andrea., 2001, *Beneficiary, Consumer, Citizen: Perspectives on Participation for Poverty Reduction*, SIDAstudies No. 2.

Devi Banerjee, Upala., 2001, "India: Child Protection Issues - An Analysis", a policy draft paper produced for CIDA India.

Devi Banerjee, Upala., 2002, "Actualising the Right to Education: Participative Civil Society-led Approaches to Educational Interventions for Girl Child Labourers in India – The Road Ahead", Institute of Development Studies, University of Sussex, England, United Kingdom. The paper is available online at <http://www.ids.ac.uk/ids/particip/networks/learnfellow/devi.pdf>

Devi Banerjee, Upala., 2002, "Valuing education: Case studies of rights-based approaches to designing an educational system for the girl child in India – A documentation for possible replication models", ICRW Ford Fellow, Washington D.C., USA.

Goetz, A. & Gaventa John., 2001, "Bringing Citizen Voice and Client Focus into Service Delivery", Institute of Development Studies Working Paper 138, University of Sussex, England, United Kingdom.

Haq: Centre for Child Rights, 2001, "*Elementary Education: India's Children and the Union Budget*", New Delhi, India.

<http://www.fundaschool.org>

http://66.102.7.104/search?q=cache:ZSVIwo_vkVkJ:www.ids.ac.uk/ids/govern/citizen+voice/pdfs/educationgs-india.pdf+Education+Guarantee+Scheme+in+Madhya+Pradesh&hl=en

"*Janshala*", Jan –March 2002, newsletter of the joint Govt. of India-UN System Education Programme, Volume V, Issue 1, New Delhi, India.

"*Public Report on Basic Education in India*", 1999, Center for Development Economics, Oxford University Press, New Delhi, India.

Ramachandran, Vimla., May 25-27, 2004, .A case study from "Reducing Poverty, Sustaining Growth -What Works, What Doesn't, and Why", A Global Exchange for Scaling Up Success", Scaling Up Poverty Reduction - A Global Learning Process and Conference, Shanghai, China. The paper can be accessed at <http://www.worldbank.org/wbi/reducingpoverty/docs/newpdfs/case-summ-India-Community.pdf>

Ramachandran, Vimla., 1998, "The Indian Experience" in "*Girls' and Women's Education in South-Asia*", ASPBAE-UNESCO, New Delhi, India.

Sengupta, Arjun., 2000, "The Right to Development as a Human Right", paper written at the Francois-Xavier Bagnoud Center for Health and Human Rights, Harvard School of Public Health, Cambridge, Massachusetts, USA.

Tomasevski, Katarina., *UNECOSOC 2001 Annual Report on Right to Education*.

US State Department, *Country Report on Human Rights Practices, 2001*.

UNDP Human Development Report, 2002, New York, USA.

Vawda, Ayesha., 1997, "BRAZIL: Stipends to Increase School Enrollment and Decrease Child Labor: A Case of Demand-Side Financing"; Human Development Network, The World Bank, Washington D.C, USA.

Watkins, Kevin., 1999, "*Education Now: Break the Cycle of Poverty*", Report, OXFAM, Great Britain.

Wazir, Rekha., 2001, "*Recent Report on Sankalp*", and can be accessed at <http://hdrc.undp.org.in/childrenandpoverty/REFERENC/CASESTUD/SANKALP/sankalp.htm>

Wazir, Rekha., 2002, "Eliminating Child Labour: Do NGO Interventions Add up to a Strategy", *Indian Journal of Labour Economics*, Special Issue on Child Labour, Vol. 45, No. 3. New Delhi, India.

Wazir, Rekha., 2004, "Pathways from Child Labour to Education: A Selective Review of NGO Approaches" in G.K.Lieten, Ravi Srivastava and Sukhdeo Thorat (eds), *Small Hands in South Asia: Child Labour in Perspective*, Monohar, New Delhi, India.

Weiner, Myron., & Omar, N., 1995, *The Child and the State in India and Pakistan: Child Labour and Education Policies in Comparative Perspective*, Oxford University Press.

The Right to Food Campaign in India

A Case Study of Entitlement-Oriented Rights-Based Strategies Used to Reclaim the Right to Food for Vulnerable and Marginalized Groups

5. The Right to Food Campaign in India: A Case Study of Entitlement-Oriented Rights-Based Strategies Used to Reclaim the Right to Food for Vulnerable and Marginalized Groups

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LIST OF ABBREVIATIONS USED:

AA: Action Aid
AAY: Antyodaya Anna Yojana
AIR: All India Radio
AS: Annapurna Scheme
AYJ: Anna Yojaana Scheme
BGVS: Bharat Gyan Vigyan Samiti
BNP: Balwadi Nutrition Program
BPL: Below Poverty Line
CEDAW: Convention on Elimination of all Forms of Discrimination Against Women
CoC: Code of Conduct
CRC: Convention on the Rights of the Child
EAS: Employment Assurance Scheme
EGA: Employment Guarantee Act
EGS: Employment Guarantee Scheme
ESCR: Economic, Social and Cultural Rights
FCI: Food Corporation of India
GDP: Gross Domestic Product
HRLN: Human Rights Law Network
HWG: Hunger Watch Group
ICDS: Integrated Child Development Schemes
ICERD: International Convention on Elimination of all Forms of Racial Discrimination
ICESCR: International Covenant on Economic, Social and Cultural Rights
JGSY: Jawahar Gram Samridhi Yojana
JSA: Jan Swasthya Abhiyan
MDMS: Mid-Day Meal Scheme
MKSS: Mazdoor Kisan Shakti Sangathan
MNCs: Multi-national Companies
NAC: National Advisory Council
NAPM: National Alliance of People's Movements
NCDHR: National Campaign for Dalit Human Rights
NCDO: National Conference of Dalit Organizations
NCPRI: National Campaign for the People's Right to Information
NCCRW: National Campaign Committee for Rural Workers
NFBS: National Family Benefit Scheme
NFFWP: National Food for Work Programme
NFIW: National Federation of Indian Women
NGOs: Non-governmental Organizations
NHRC: National Human Rights Commission
NMBS: National Maternity Benefit Scheme
NTUI: New Trade Union Initiative
OHCHR: Office of the United Nations High Commissioner for Human Rights
PDS: Public Distribution System
PILs: Public Interest Litigations
PMGY: Pradhan Mantri Gramodaya Yojana
PUCL: People's Union for Civil Liberties

RTI: Right to Information
SCs: Scheduled Castes
SGRY: Sampurna Gramin Rozgar Yojana
STs: Scheduled Tribes
UDHR: Universal Declaration of Human Rights
UPA: United Progressive Alliance
UTs: Union Territories

1. Background and Rationale: Accessing the Right to Food in India

Country and Programme Context: The Right to Food is a Right enshrined under Article 11, Part 2 in the International Covenant on Economic, Social and Cultural Rights (ICESCR) that the Indian Parliament ratified in 1979:

“The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge; by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; and, (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”

Taking the above into cognizance, the newly formed United Progressive Alliance (UPA) Indian Government that was elected in 2004 released its ‘*Common Minimum Programme,*’ which clearly states that:

“...The UPA will work out, in the next three months, a comprehensive medium-term strategy for food and nutrition security. The objective will be to move towards universal food security over time, if found feasible.

The UPA Government will strengthen the Public Distribution System (PDS), particularly in the poorest and backward blocks of the country, and also involve women and ex-servicemen's cooperatives in its management. Special schemes to reach food grains to the most destitute and infirm will be launched. Grain banks in chronically food-scarce areas will be established. Antyodaya cards for all households at risk of hunger will be introduced.

The UPA Government will bring about major improvements in the functioning of the Food Corporation of India (FCI) to control inefficiencies that increase the food subsidy burden.

Nutrition programmes, particularly for the girl child, will be expanded on a significant scale...”

Despite such statements and the Right now being a justiciable right (and this has gained even more legitimacy with the UPA keeping up its pledges via passing of the nation-wide Rural Employment Guarantee Act (EGA) in the Indian Parliament recently in August 2005), there is an extremely high prevalence of hunger in India. This is particularly visible amongst vulnerable and marginalized groups of people (especially people belonging to indigenous tribes, interior rural areas or those belonging to the Scheduled Castes {SCs} and Scheduled Tribes {STs}). And even amongst such invariably poor groups, women and children suffer the most. This is ironic in the backdrop of a country whose food stocks have increased to more than 65

million tonnes in recent years and where the total food subsidy neared Rupees 30,000 Crores³ as of March 2003.⁴

Several factors continue to plague the economic viability of the agricultural sector. Such factors include: the lack of political will (especially the functioning, and, in some cases, revamping of the distribution mechanisms relating to food so that such systems are more accountable and transparent); the pattern of growth of agriculture (that has brought about an uneven development across regions in its wake and which is characterised by low levels of productivity and degradation of natural resources in some areas); the lack of adequate capital and infrastructural support; and, demand-side constraints (such as controls on the movement, storage and sale of agricultural products). Consequently, agricultural growth has slackened since the 1990s. Agriculture has also become a relatively unrewarding profession due to a generally unfavourable price regime and low value addition, causing increased migration from rural areas as farmers abandon farming. Power structures in society wherein the rich and powerful have access to land (and the poor slave on the land) have an impact on food security and are inexorably connected to the issue of land rights. Recurring natural disasters like floods and droughts further exacerbate the situation (Bali Mahabal, March 2004).

As a result, the Right to Food is not realized in terms of availability, accessibility, adequacy and sustainability, and millions of people live in a state of perpetual hunger as many survive without even the minimum one meal a day as mandated by the Code of Conduct (CoC) on the Right to Adequate Food.⁵

Policy and Legal Framework: Fundamental to all modern day Constitutions - the Indian Constitution being no exception - is the “realisation of human rights” for all. Although there is no explicit mention of the Right to Food in the Constitution, there are several Articles that provision the realizing of this Right. For example, Article 19 enshrines the Right to “Freedom of Expression”; Article 14 enshrines “Equality before the Law”; and, Article 21 enshrines the “Right to Life”. Of particular importance, especially pertaining to the rights-based focus of this paper, is Article 19

³ 1 Crore Indian Rupees = US\$ 22,222. 1 US\$ is around Indian Rupees 46 at the current exchange rates.

⁴ *Comparative Case Law: Focus on India*, “Enforcing the Right to Food in India - The Impact of Social Activism”, by Kamayani Bali Mahabal, Community Law Center, University of the Western Cape, Socio-Economic Rights Project, Volume 5, No. 1, March 2004. Source: http://www.communitylawcentre.org.za/ser/esr2004/2004march_india.php

⁵ The Code of Conduct (CoC) as debated and arrived on a consensus upon by a plenary of the parallel NGO Forum at the World Food Summit in Rome (1996) has since been recognised by the UN Office of the High Commissioner for Human Rights (OHCHR). It states: “The right to adequate food means that every man, woman and child alone and in a community with others must have physical and economic access at all times to adequate food and nutrition. The CoC was debated at in expert meetings/consultations and reflected upon in studies that finally resulted in the publication in 1999 of the UN Committee on Economic, Social and Cultural Rights (ESCR) of its General Comment 12 (GC12). Generally considered as the most authoritative interpretation of the right to adequate food, this Comment, while reaffirming the definition of the CoC, added: “The right to adequate food shall, therefore, not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The Right to Food will have to be realised progressively” (“Right to Food in India”, S.Mahendra Dev, Working Paper No. 50, August 2003, Centre for Economic and Social Studies, Hyderabad, India).

on “Freedom of Expression”, with its incumbent and inherent attachment to “Freedom of Information” - this particular Right has always suffered from an almost blanket-like and in-grained lack of provision of information from State-run departments to the citizens. Such lack of freedom of information effectively prohibits, for example, the hundreds of millions - who live below the poverty line (BPL) and who are largely dependent on Government-run food programmes - from examining State-run food ration shop records to finding out “why” they do not receive the rations that they are entitled to. The Right to Information (RTI) Bill was recently passed in the Parliament and is a step in the right direction (nine individual States have already passed laws pertaining to the RTI). However, it remains to be seen whether the Bill is followed in spirit on the ground, especially as it pertains to enabling access to the Right to Food.

No nation’s Constitution safeguards the collective human rights of all people as comprehensively or as specifically as the body of international human rights instruments. Incumbent with the provisions of these instruments is the obligation to respect, protect, ensure and promote the rights enshrined. Becoming a state party to an international human rights instrument is therefore important in showing a nation’s evolving stance on human rights, as well as signaling the intention to place in the view of the global community the human rights situations as exists in the party nation (through the reporting obligations contained in most instruments). India is a state party to several of the plethora of international human rights instruments, which, whilst not comprehensive, is significant from the view of ensuring and enabling access to the Right to Food. These includes the Universal Declaration of Human Rights (UDHR), the ICESCR, the International Convention on Elimination of all Forms of Racial Discrimination (ICERD), the Convention on the Rights of the Child (CRC) and the Convention on Elimination of all Forms of Discrimination Against Women (CEDAW).

Finally, the constitutional stipulations and international commitments are complemented by various policy and welfare provisions in relation to food security and distribution in the country. Noteworthy among them are the various Five-Year Plans, the PDS, and related schemes like the Annapurna Scheme (AS) and the Anna Yojaana Scheme (AYS). Child-focused food schemes like the Mid-Day Meal Schemes (MDMS) and the Integrated Child Development Schemes (ICDS), are also integral to this framework. The PDS is a Government-run food distribution network that enables the poor to access limited quantities of food at subsidized prices and has, in fact, been billed as the largest non-emergency food distribution programme in the world.

Coupled with all of the above provisions is the recently passed Rural Employment Guarantee (Food for Work) Act (EGA). It will be noteworthy to monitor how this Act is implemented in practice on the ground (as India, with a record of a strong legislative history, has documented corresponding poor implementation in this regard).

The Right to Adequate Food and the Role of Civil Society in Enabling the Right: The Government has the obligation to provide food to poor, vulnerable and marginalized groups. It is also obligated to ensure direct provisioning of such food

during emergencies. However, inspite of such obligations and an enabling policy framework towards realising this right, India still has a long way to go before the Right to Food can be progressively realized by all its citizens. The lack of fulfillment of this very basic right has serious implications that demonstrate the lack of capacity of the Indian State to perform its basic obligations to its citizens under a human rights approach. This has resulted in the world witnessing starvation deaths and deaths relating to malnutrition in many parts of the country – a matter of immense concern for a country which has millions of tonnes of food rotting in its State-run *godowns* (storehouses).

Taking note of such deaths, Indian civil society (NGOs, human rights and legal organisations, activists and practitioners) has led a concerted effort since 2001 to enable realization of the Right to Food. Entitled “The Right to Food Campaign”, the approach used in progressively realising this right (under the GC12 Framework) for poor, vulnerable and marginalized groups of people has culminated in perhaps one of the strongest civil society-led nationwide rights-based movements ever witnessed in any country, particularly in the developing world.

This paper studies the progressive realisation of this Right under an entitlement-oriented rights-based framework, and the role of (and processes used by) Indian civil society nationwide in helping such groups realize the Right. Using a dual approach that uses the demand-supply mechanism (of developing capacities of vulnerable and marginalized groups using campaigning, advocacy and lobbying tools, networking and the instrument of public interest litigations (PILs) on the demand side and playing a monitoring and capacity development role on the supply side to ensure that the duty-bearer is accountable for fulfilling its obligations in an accountable and transparent manner), the study of such an approach and the tools used assumes immense importance as it is rooted in principles of justiciability, accountability, transparency and sustainability. In the process, it has succeeded, to a large extent, in making the Right to Food justiciable by lobbying to get the EGA passed and in also lobbying the Supreme Court – the highest legal authority in the country -in holding the State Governments accountable if this Right is not met and has, in the process, also assisted poor, vulnerable and marginalized groups realize other rights, like the Right to Education, the Right to a Livelihood and the Right to Information.

2. The Study of the Right to Food Campaign in India using Rights-Based Strategies

Case Study/Project Context: As noted in the previous section, against the backdrop of the Indian State not fulfilling its basic obligations to its citizens in relation to realization of the Right to Food, an informal network of Indian civil society organizations and individuals committed to the realisation of this Right started the “Right to Food Campaign” in 2001. The Campaign works under the overriding principle that everyone has a fundamental right to be free from hunger and under nutrition, and to enjoy a Right to Life that allows them a ‘life ‘with dignity’. Realising this Right requires not only equitable and sustainable food systems, but also entitlements relating to livelihood security such as the Right to Work and accessing land reform guarantees and social security schemes. It considers that the primary

responsibility for guaranteeing such entitlements rests with the State. Lack of financial resources cannot be accepted as an excuse for abdicating this responsibility. In the present context, where people's basic needs are not a political priority, State intervention itself depends on effective popular organisation. Thus, the Campaign asserts a commitment to fostering this process through all democratic means.⁶

The Campaign is an outgrowth of the Supreme Court hearing on the Right to Food, held in response to a writ petition filed in April 2001 by the People's Union for Civil Liberties (PUCL) - a human rights NGO - in the north-western Indian State of Rajasthan. This case, handled by the Human Rights Law Network (HRLN), is technically and popularly known as "PUCL Vs. Union of India and others (Writ Petition [Civil] No. 196 of 2001)". Briefly, the petition demands that the country's gigantic food stocks should be used without delay to protect people from hunger and starvation. Initially, the case was brought against the Government of India, the Government-run FCI, and six State Governments, in the specific context of inadequate drought relief. Subsequently, the case was extended to the larger issue of chronic hunger, with all States and Union Territories (UTs) as respondents.

The petition highlights two aspects of the State's negligence in ensuring food security: the breakdown of the PDS, and the inadequacy of relief programmes in drought-affected areas. The petition eliminated one official excuse for both of these problems, namely the lack of funds. The Supreme Court has held that shortage of funds cannot excuse the failure to fulfil Constitutional obligations. Following on this, the petition asked the Supreme Court to intervene, by directing the Government to: a) provide immediate open-ended employment in drought-affected villages; b) provide 'gratuitous relief' to persons unable to work; c) raise the entitlement to be received per family; and, d) provide subsidised food grain to all families. The petition also requested the Court to order the Central Government to supply free food grain for these programmes.

Supreme Court hearings have been held at regular intervals since 2001 (many more are expected during the next year or two); 45 interim applications have been lodged with the Supreme Court and significant "interim orders" have already been issued. For instance, the Supreme Court has passed orders directing the Indian Government to:

- Introduce mid-day meals in all primary schools;
- Provide 35 kilograms (kgs) of grain per month at highly subsidized prices to 15 million destitute households; and,
- Double resource allocations for the Sampurna Grameen Rozgar Yojana (SGRY), India's previously largest rural employment programme.

Interim PILs submitted from time to time by PUCL have further enlarged and consolidated these demands. The initial petition focused on the drought situation prevailing at that time, especially in Rajasthan, but the litigation now has a much broader scope. The main concern is to put in place permanent arrangements to prevent hunger and starvation. The interim applications thus advocate the introduction of a

⁶ <http://www.righttofoodindia.org/>

nation-wide, combined with social security arrangements for those who are unable to work.⁷

Box 1: The National Rural Employment Guarantee Act – India’s Largest Work Guarantee Plan

In August 2005, concerted efforts of the Campaign members (both groups and individuals)⁸ bore fruit when the National Rural EGA was passed by the Parliament and which promises wage employment to every rural household in which adult members volunteer to do unskilled manual work. Under this Act, the Government would be committed to spending ten billion dollars annually (slightly more than one percent of gross domestic product, (GDP) to ensure that impoverished rural households earn at least 60 rupees (about 1.50 U.S. dollars) a day for a minimum of 100 days a year. The legislation also enforces an obligation by the Government to provide employment or else pay an unemployment allowance, although the actual implementation would differ widely from State to State.

Deciding the minimum wages should have been left to each State, rather than fixing it at a flat 60 Rupees, since some progressive states like Kerala already had a fixed minimum wage that is more than twice that figure at around 134 Rupees (or more than three dollars).

A key feature of the new law is that it will be implemented through elected local bodies (like the Gram Panchayats)⁹ and NGOs, unlike earlier poverty alleviation programmes that were tightly controlled by the Central or State Governments.¹⁰

Some 200 districts, including 150 districts already covered by an existing "food-for-work" programme, would benefit initially. It would then be gradually extended over the next five years to cover all of the country's 600 districts. Deciding on what households will actually benefit is still vague because of differing assessments of poverty and deciding what exactly the poverty line is.

Yet, it soon became clear that just tapping the legal process would not take the movement very far on its own. This motivated the effort to build a larger public campaign for the Right to Food that would combine social action with a mix of entitlement and rights-based strategies. Thus, was born the Right to Food Campaign in India that would take up a diversity of aspects related to this Right.

⁷ <http://www.righttofoodindia.org/case/case.html>

⁸ The legislation is the brainchild of leading social workers and Indian economists, including Patnaik and Jean Dreze, a Campaign member, all of them grouped under the powerful National Advisory Council (NAC) that advises Mrs Sonia Gandhi, who chairs the ruling UPA coalition.

⁹ Unit of local self-government at the village level.

¹⁰ “India Passes World's Biggest Job Guarantee Plan”, Ranjit Devraj, Inter Press Service News Agency. Source: <http://www.ipsnews.net/news.asp?idnews=30004>

Box 2: Some Abiding concerns of the Right to Food Campaign

- * Effective implementation of all nutrition-related schemes;
- * Introduction of cooked mid-day meals in all primary schools;
- * Reform and expansion of the PDS;
- * Realization of the Right to Work, especially in drought-affected areas;
- * Social Security measures for the destitute.

Further issues are expected to be taken-up as the Campaign develops.

Stakeholders Involved: As mentioned above, the Right to Food Campaign functions on a decentralised level, that builds upon local initiative and voluntary cooperation. It consists of a range of NGOs and civil society groups and concerned individuals/activists/practitioners/professionals. The Campaign has a small "support group", a 'coordinating and facilitating' group and a Secretariat – the former effectively consists of members from 11 national organisations¹¹ and they convened the first "Convention on the Right to Food and Work" in Bhopal in central India in June 2004. This group also considers the Supreme Court hearings and plays a basic facilitating role in the larger Campaign in terms of organizing events, meetings. It is therefore effectively the 'steering committee' of the Right to Food Campaign, composed of principally Delhi-based organisations that are able to attend the meetings on a regular, monthly basis). All members of the support group participate in the Right to Food Campaign in their personal capacity, without remuneration.

Communications are mainly undertaken via e-group mails and at meetings (such as the National Convention which is held mid-year at a central location in India to enable access for all participating and concerned individuals and groups). Access to the 'Right to Food' network may be made through any of the participant organizations, numbering hundreds, and via the Campaign website that can be accessed at <http://www.righttofoodindia.org>. This website is maintained by the small group of volunteers who comprise the Secretariat. The Secretariat members may be accessed at: righttofood@gmail.com.

¹¹ The organizations include: Bharat Gyan Vigyan Samiti (BGVS), Parivartan, Action Aid (AA), HRLN, Jan Swasthya Abhiyan (JSA), People's Union for Civil Liberties (PUCL), National Alliance of People's Movements (NAPM), National Campaign for Dalit Human Rights (NCDHR), National Campaign Committee for Rural Workers (NCCRW), National Conference of Dalit Organizations (NCDO), National Campaign for the People's Right to Information (NCPRI), National Federation of Indian Women (NFIW) and former "support group" members of the Right to Food Campaign, such as Professor Jean Dreze and Harsh Mandar. Source: <http://www.righttofoodindia.org/contactus.htm>

Objectives of the Project: The Campaign works under the overriding principle that everyone has a fundamental right to be free from hunger and under nutrition. With this in mind, the Campaign's objective is to work towards putting in place permanent arrangements to prevent hunger and starvation, using multi-pronged entitlement-oriented rights-based strategies.

3. Process:

Rights-Based Strategies Used: The Campaign depended in part on formally petitioning the judiciary for the enforcement of the right of every Indian to adequate nourishment. In this, it was inspired by preceding rulings of the Supreme Court; the Court has held that in cases of Fundamental Rights, it was willing to give little latitude to governmental pleas of financial stringency (Murulidharan, 2004).¹²

Numerous activities undertaken under the umbrella of multi-pronged entitlement oriented rights-based strategies targeting various food-security related issues are organised under the umbrella of the Campaign (see figure below). They are almost entirely issue-based social-issues, and are designed to pursue and make progress on the specific issues concerned, bringing together the member organizations of most competence and concern with the issue, whilst attempting to bring in the rest of the campaign participants to lend their weight. While the scope of the Right to Food Campaign is potentially wide-ranging, some specific issues that have received special attention and which have especially broad and challenging rights-based implications, include demands for services that are a duty to be performed by the State (see Box 2).

What is commendable are that these strategies have been used with active participation of all concerned stakeholders on a nationwide level. It goes to the credit of the Campaign that the concerted use of such strategies have succeeded to a large extent in making the State accountable to the citizens and has now become an example that is generally acknowledged worldwide as one that is totally rights-based in methodology and practice.

¹² "Food for all", Sukumar Murulidharan, Volume 21 - Issue 13, Jun. 19 - Jul. 02, 2004, *Frontline Magazine*.

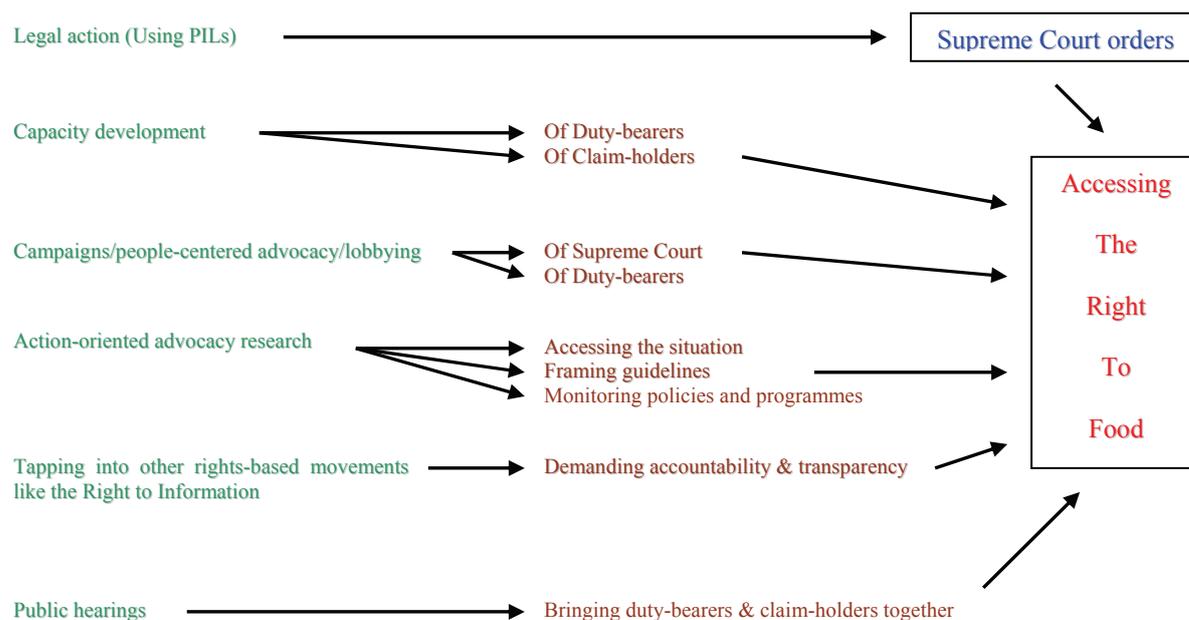


Figure: Entitlement-oriented rights-based strategies used to reclaim Right to Food¹³

➤ *Using the tool of legal actions:* In India, the Supreme Court is independent of the Executive and the Legislature and is vested with the power of making *suo moto* judicial decisions in which the State can be held accountable if it fails to uphold the rights of its citizens. The Campaign used such a framework to its greatest advantage that led to the Court making decisions that favour the millions of hungry people across the country – decisions that serve as an example worldwide of how the justiciability of a particular human right can be upheld by using a strategy that combines judicial activism with judicial action.

The Campaign believes that a powerful tool in the fight for the Right to Food is the use of legal action. Article 21 of the Constitution is a guarantee of the “Right to Life”, and imposes upon the State the duty to protect it. This Right is fundamental - the violation of which the Supreme Court is bound to protect - under Article 32 of the Constitution. The Supreme Court has held in previous cases that the Right to Life includes the Right to Live with Dignity and all that accompanies it - in this case, it related specifically of the Right to Food. The petition argued, in essence, that the response to the prevailing drought situation by Central and State Governments, in terms both of policy and implementation, constitutes a clear violation of this Right. As mentioned elsewhere in this paper, it is from this standpoint of logic that the case to the Supreme Court of India was taken by PUCL. As a result of the legal actions taken (through the instrument of PILs), the Supreme Court has ordered the Government to make the nationwide full implementation of these schemes and many others concerning the Right to Food. This is the most important tool that the Campaign has used, with enormous success (refer to Section 4 for the outcomes of the use of such legal actions).

¹³ By Upala Devi Banerjee.

➤ Capacity development strategies: The nationwide Campaign, involving many organisations and individuals, have realised that to make the duty-bearers accountable to deliver on their obligations and for the claim-holders to claim their rights, a dual capacity development strategy is imperative. At the level of work with duty-bearers, such a strategy entails building capacities of concerned State public officials at the district and block levels through trainings, workshops and enlisting their participation at the public hearings so that they are better able to respond to the claims made by the people. At the level of working with the claim-holders, such a strategy involves building capacities that create sustained empowerment by raising awareness amongst the affected people through trainings/workshops/consultations that help create consciousness about their legal rights and entitlements so that they can take recourse to legal action; participate in meetings/campaigns/public hearings; review implementation of policy guidelines on the various food security programmes that the Court has ordered the State Governments to implement; and, lobby effectively and knowledgeably for policy changes.

➤ Using the tools of campaigns, people-centred advocacy and lobbying: Campaigns, people-centred advocacy and lobbying have been used with maximum impact to raise awareness on the Right to Food and in lobbying the Supreme Court and related departments of the State Governments to meet their obligations in realising this Right. A multi-faceted strategy using street plays (for instance, on the MDMS), rallies, as well as promoting public education through the media, rallies, posters, booklets on issues like “Know Your Rights”, the EGS, etc. are undertaken on a nationwide basis so as to have the most impact. What is of importance is that all these activities are undertaken with active participation of all affected stakeholders, including women and children, and particularly those belonging to the poor and vulnerable sections.

For instance, on 9 April 2002, activities combining the above took place across the country as part of a “ National Day of Action on Mid-day Meals”. This event was instrumental in persuading several State Governments to initiate cooked mid-day meals in primary schools. Similarly, sustained lobbying activities by members of the Right to Food Campaign have played a major role in the introduction of a large-scale programme of food-based social security for destitute households, announced by the Prime Minister on 15 August, 2002. A countrywide "rozgar adhikar yatra" (Right to Work convoy) was launched from Delhi on 13 May 2005. The aim of this *yatra* is to consolidate the campaign for a full-fledged, universal and irreversible EGA. Beyond this, the *yatra* seeks to affirm the Right to Work as an aspect of the fundamental Right to Live with Dignity.

➤ Using action-oriented advocacy research: Research and surveys have played an important role in the Right to Food Campaign from inception - an informal survey of several villages in Rajasthan State was used to support the original PIL filed by the PUCL in April 2001. Realising the invaluable role such documentation played, field surveys have been used with optimum effect to supplement efforts in areas relating to:

- assessing the situation of food security in different parts of the country;
- guiding policy decisions on food schemes; and,
- monitoring the implementation of the various related Supreme Court orders.

➤ Tapping into the Right to Information movement: The Right to Information Movement was initially born in Rajasthan State as a result of the lack of accessibility of citizens to access public records and the lack of accountability (coupled with resultant inefficiency and lack of transparency) of Government officials to account for decisions made on spending public money on services that were supposed to be public/development oriented. As a result of a massive campaign spearheaded by a mass-based people's organization – the Mazdoor Kisan Shakti Sangathan (MKSS) - the Right to Information Movement was initiated and has since spread across the country, playing a vital role in enabling citizens to access public records, with evidences that suggest that the Movement has also been instrumental in reducing corruption in public life.¹⁴ Various Indian States have since enacted State-level Right to Information Acts and instruments of this type have been massively used by the Right to Food Campaign to facilitate rights and entitlements of the poor. For instance, the efforts of a Campaign member organisation - Parivartan – that used the Delhi Right to Information Act, led to targetting corruption by State-sanctioned ration shop owners and grain suppliers, with spectacular gains for the claim-holders.

➤ Using the vehicle of public hearings: As noted elsewhere in this volume of case studies,¹⁵ public hearings (or *Jan Sunwayis* as such hearings are called in India) have been used to optimal effect to claim rights. Such hearings on the Right to Food have been frequently held in those States that have witnessed starvation deaths in recent years – Orissa, Madhya Pradesh, Jharkhand, Maharashtra and Rajasthan being cases in point – or in instances where poor people have not been able to access the PDS. These hearings provides a vital platform for the poor and marginalized people to voice their demands to duty-bearers through personal testimonies, learn about their entitlements and plan further action to claim their Right to Food. Some of these hearings have witnessed the demands made by claim-holders resolved on the spot. For instance, in a hearing that was attended by the *Baigas* - one of India's "indigenous tribes" – in the State of Madhya Pradesh - one of the main complaints of the participants related to the fact that the Forest Department did not allow employment programmes in "forest villages" inhabited by this tribe. This complaint was immediately resolved as the District Forest Officer agreed to retract this embargo. Similarly, the District Collector agreed to ensure that all Baigas get Antyodaya Cards (Food Ration Cards for those living below the poverty line) within a month, as per the latest Supreme Court Order (2 May 2003).¹⁶

Capacity/Role of Duty-Bearers (including the Private Sector/Related Frameworks) in Addressing Demands: One of the best examples of where a duty-bearer has played an enabling role in addressing demands on claims made by the claim-holders is in the case of the claims made on the Right to Food in India. In this instance, the Supreme Court has played the most vital role in protecting the social and economic rights (especially of the poor and vulnerable groups of citizens) by progressively ruling that

¹⁴ Please refer to the UNDP India case study in this volume of papers for a more detailed exposition of the Right to Information Campaign in India.

¹⁵ Please refer to the OXFAM GB Indonesia case study and the UNIFEM India case study in this volume of papers.

¹⁶ <http://www.righttofoodindia.org/links/updates/update19.html>

the Right to Food in India is a justiciable right. Further, the State can be held accountable and face legal action if this Right (and other accompanying rights, like the Right to Work and to a Livelihood) is not realized. (See Box below on instances of how judicial intervention has helped deliver claims on demands made).

Box 3: The Supreme Court in India - Upholding the Rights of Poor, Vulnerable and Marginalized Citizens through Judicial Action and Protection

There have been other comparable instances where the Court has stepped in to protect the rights of the citizens. In the Court's landmark judgment in the Visakha' case (which are famously called the Vishakha Guidelines on Sexual Harassment at the Workplace), sexual harassment at the work place was recognized under the Indian jurisprudence for the first time as a crucial problem faced by women workers. It thus set out detailed guidelines for prevention and redressal of this malaise. In doing so, the Court relied upon the CEDAW that India has both signed and ratified.

The most recent instances of such *suo moto* judicial activism demonstrated by the judges are in environmental issues¹⁷ and in issuing orders related to the Right to Food and Right to Work.

Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Strategies:

The Campaign has adopted some strategies to monitor outcomes of the use of the rights-based strategies. Though not used nationwide and systematically, such strategies are a step in the direction towards developing formal monitoring mechanisms that could be used to monitor rights-based outcomes of the Campaign. For instance, it has developed extensive questionnaires for conducting detailed surveys that act as monitoring tools on all aspects relating to food security and detailed survey manuals accompany such questionnaires. What is of interest is that such tools have been used by claim-holders (the poor and vulnerable people who are the most affected and who have been trained to use them) to monitor outcomes and at times, in collaboration with the duty-bearer (in this case, the Supreme Court). The first such exercise was undertaken immediately after Supreme Court, in July 2001, ordered State Governments to ensure that all ration shops were open and functioning properly. A field survey was undertaken shortly thereafter by Campaign members to check the extent to which the order had been implemented.

In the case of monitoring of the MDMS, a regular system of monitoring the provision of such a daily meal (though not used nationwide) in the Government-run schools has been developed and is being used (for instance, in the central Indian State of Chhattisgarh, one of the Campaign member organizations - Bharat Gyan Vigyan Samiti (BGVS) - is trying to ensure regular monitoring of mid-day meals in a large number of schools by using a simple questionnaire. Such a system entails a visit to the

¹⁷ Upala Devi, Paper on "Actualising the Right to Education -Participatory Civil Society-led Approaches to Educational Interventions for Girl Child Labourers in India: The Road Ahead", Institute of Development Studies (IDS), University of Sussex, 2002. Source: <http://www.ids.ac.uk/ids/particip/networks/learnfellow/hradvoc.html>

local primary school without prior announcement, and enquiring about the mid-day meal from the teachers. The monitoring is done at the time the mid-day meal is served and the process is observed to ensure whether the food served has passed through several quality-control measures. All these questions are included in the simple questionnaire that the monitor fills up during the visit.¹⁸ In the same manner, a simple questionnaire has been prepared to monitor the performance of the ICDS by grassroots organisations associated with the Campaign. Questionnaires are available in several languages to make it more user –friendly.

In some instances, public hearings have been used as monitoring tools to actually ascertain whether the State Governments are abiding by the Supreme Court Guidelines on the Right to Food. For instance, following reports of "starvation deaths" in a village in the State of Jharkhand, members of the Right to Food Campaign conducted a survey of 21 randomly selected households in the village in June and July 2002. The survey results were used in a public hearing on hunger and the Right to Food in July 2002. At this public hearing, Campaign members also presented results of a survey of 36 villages in the block to which this village belonged. By making public the results of the survey findings, the duty-bearers (in this case, the block officials) were pressurized to act on why these deaths have occurred when the Supreme Court Orders has already issued orders on the Right to Food.¹⁹

Similarly, Hunger Watch Group (HWG) - an offshoot of Jan Swasthya Abhiyan (JSA) - one of the Campaign member organizations consisting of a group of medical professionals - is in the process of developing guidelines for rigorous assessment of "starvation deaths" and nutritional emergencies. The draft guidelines can be accessed at http://www.righttofoodindia.org/research/HungerWatch_guidelines.doc. It is expected that such a systematic documentation will help in taking up the issue with the local courts.

Finally, at the level of duty-bearers monitoring the outcomes, the Supreme Court has appointed another "Commissioner" for the purposes of monitoring orders relating to the Right to Food. This increases to two the number of Commissioners that are actively involved in monitoring the Court orders at the State levels who have since vigorously introduced various measures to ensure that such monitoring is undertaken in a transparent and accountable manner. For instance, when some Campaign civil society stakeholders - activists of New Trade Union Initiative (NTUI) - working in the Sonbhadra district of Uttar Pradesh State brought the issue of 500 starvation deaths that have occurred in the district since the closure of a cement factory due to a lack of food and access to medicines to the notice of the Commissioners, they immediately wrote to the Chief Secretary of the State, urging his attention into the matter. As a result, a high level meeting of concerned officials was held and a survey conducted among the affected families, as a result of which all affected families were sold 20 kgs of wheat and rice at subsidized prices. The State Government also agreed to provide

¹⁸ For a copy of the Mid-Day Meal monitoring questionnaire, please visit <http://righttofood.tripod.com/research/BGVSmmonitoring.html>

¹⁹ <http://www.righttofoodindia.org/research/research.html>

free medical facilities and issue 2000 additional Antyodaya cards for those who are very poor.²⁰

4. Outcome (Results): Many positive outcomes that enable poor and vulnerable people's access to adequate food have occurred as a direct result of the various strategies that has merged rights-based approaches with social activism and which are being used by the Campaign members. What is of even more significance is that such outcomes have had an impact at the policy level - with the Indian Parliament passing the EGA to be implemented in the rural areas across the country and the Supreme Court issuing interim orders that would enable accessing various new (and at times, even existing) policies to the Right, and in performing a "watchdog" role - and are, hence, hoped to have a sustainable impact.

➤ Targeting the most vulnerable and needy via food security programmes: The most positive (and rights-based) outcome of the Campaign has been its success in getting the EGA passed (the entitlements under the EGA have been documented in Box 1).

Other related successes abound. As mentioned elsewhere in this paper, as a direct result of the PUCL PIL, on 21st July 2001, the Supreme Court directed all the States to ensure that all the PDS shops, if closed, are to start functioning within a week from the day the order was issued, and that provisions are made for regular supplies in these shops. On 20th August 2001, the Court announced that it is the primary responsibility of the Government to prevent hunger and starvation.

Subsequently, Campaign efforts have resulted in the Court issuing orders to all State-run ration shops that all people living below the poverty line are entitled to a BPL Card through the PDS system. Holders of this Card must receive 35 kgs of grain per month at a subsidised price and the ration shops must remain open throughout the month to cater to this target group. Furthermore, to protect the misuse of the Cards, the Court stipulated that the Cards cannot be kept at the ration shops. What is of greater significance is the legal action that ration shops would face - licenses of those shops that cheat such people would stand cancelled. The Court also ordered that BPL Cards must be issued to all those on the BPL list immediately and that the new BPL survey that is to be conducted cannot be used to reduce the names of people already on the BPL list. BPL Card holders can also take recourse to law and can lodge complaints with the authorities if wrongly excluded from the BPL.

The Court further ordered implementation of the National Family Benefit Scheme (NFBS) under which every BPL family, on the death of the primary breadwinner, is entitled to a one-time payment of Rupees 10, 000 in cash.

Similarly, the Court ordered that all vulnerable and marginalized groups of poor people (the aged, sick, destitute, pregnant and Lactating mothers, widows, single women without support and people belonging to the indigenous tribes) are to receive the Antyodaya Anna Yojana (AAY) Cards. As with the BPL Scheme, cardholders

²⁰ <http://www.righttofoodindia.org/links/updates/update33c.html>

under this Scheme are also to receive 35 kgs of grain each month (at a highly subsidized price of Rupees 2 per kg for wheat and Rupees 3 per kg for rice).

All destitute and senior persons, 65 years and over, under the AS must be given 10 kgs of free food grain per month.

➤ Using the Mid-Day Meals Scheme to target the most needy and vulnerable Children: Another very important rights-based outcome of the Campaign is the Supreme Court order under the MDMS that all children in Government-assisted primary schools across the country are entitled to one free cooked hot and nutritious meal a day for at least 200 days per year (in drought areas, meals to be given even during the school vacation season) and that the State Governments are liable to action if this order is not met. Only a very few State Governments, if any, are yet to comply, but it is hoped that the Scheme would achieve universal coverage relatively soon. People belonging to the more vulnerable and marginalized groups like the SCs and STs are to be given preference as cooks/ helpers, and the meals are to be cooked in the school premises with the Central Government providing the funds for setting up the kitchen sheds and provisioning for the cooking materials. This landmark order was one of the first concrete achievements of the Campaign and the order has had far-reaching implications as many of these schools across the country are attended by students for whom this meal is the only meal they get in a day (for instance, in the drought-prone areas in Rajasthan State). The Scheme has also helped in increasing school enrollment and retention.²¹ At this point, the Campaign focuses not only on the implementation of Supreme Court orders but also on quality issues. In fact, quality issues are now the main concern in States where mid-day meals have been introduced.²²

➤ Implementing nutrition and food supplementation schemes: It is widely acknowledged that the young child is most vulnerable to malnutrition, morbidity, resultant disability and mortality. Recognising that early childhood development constitutes the foundation of human development, the ICDS was introduced in 1975 to promote holistic development of children under six years, through the strengthened capacity of communities and improved access to basic services, at the community level. The programme is specifically targetted to reach disadvantaged and low-income groups, for effective disparity reduction. Widely hailed as one of the world's largest and most unique programmes for early childhood care, the Scheme suffered at the implementation stages, as it was patchy and extremely selective in its coverage. As a result of the diverse PILs filed by several organisations, and various interim applications filed under the on-going PUCL case, regarding the effective implementation of this Scheme, the Supreme Court concluded (from figures that had been submitted by the two Commissioners appointed to assist in its deliberations) that

²¹ A study of the MDMS in three States of the Indian Union — Chhattisgarh, Rajasthan and Karnataka — conducted by the Centre for Equity Studies of the Delhi School of Economics indicates the nexus between improved student enrolment and retention and the free mid-day meal. A study of 81 schools in which free mid-day meals were introduced in July 2001, indicates class I enrolment rose by 15 percent within the year. Particularly impressive jumps were made in female enrolment in Chhattisgarh (17 percent) and Rajasthan (29 percent). “Groundswell for mid-day meal scheme”, by Kalpana Parikh & Summiya Yasmeen. Source: <http://www.indiatogether.org/2004/jan/pov-midmeal.htm>

²² http://www.righttofoodindia.org/mdm/mdm_intro.html

at the minimum, this required that the number of *anganwadi* (child care) centers administering the ICDS needed to be increased from 600,000 to 1.4 million. It noted that the ICDS was "perhaps the largest of all the food supplementation programmes in the world". The Scheme, though "elaborate", needed to be expanded considerably "to ensure that nutritious food reaches all those who are undernourished or malnourished". It directed the Central Government to "file within three months, an affidavit stating the period within which it proposes to increase the number of *anganwadi* centers" so that coverage is extended to all the intended beneficiaries.²³

Alongwith the ICDS, the Court also directed implementation of other supplementary feeding programmes like the Pradhan Mantri Gramodaya Yojana (PMGY), the Balwadi Nutrition Program (BNP) and the National Maternity Benefit Scheme (NMBS)- whereby every pregnant BPL woman must be given Rupees 500 per child for the first two births 8–12 weeks prior to delivery.

➤ Meeting food Security needs through livelihood-related initiatives: Before the recently-passed EGA, the National Food for Work Programme (NFFWP) was passed by the Supreme Court in 2002 that entailed that every person requiring work in famine/ drought/ scarcity affected areas must be given work in accordance with the terms of the State's Famine/ Relief/ Scarcity Codes, for which upto 5 kgs of food grains would be given per man-day. The Famine Codes are to be implemented in totality, failure to implement of which would result in the State facing legal action. This Programme was supposed to pave the way for the EGA.

Of the food-security livelihood-linked programmes, mention can also be made of the SGRY that stipulated that poor people (including daily-wage labourers, small farmers, people belonging to SC/ST groups and women) are to receive food in return for work at minimum wages, paid in grain and in cash. Payment must be made weekly to these people and the system of contractors is prohibited as is the use of machinery (as the use of such could substitute human labour). Moreover, the Scheme stipulated that the allocation of grain and cash are to be doubled for the months of May, June and July – these are the drought and famine-prone months in many parts of the country. Other similar programmes are the Jawahar Gram Samriddhi Yojana (JGSY) via which employment in the lean season is provided for rural workers below the poverty line; and, the Employment Assurance Scheme (EAS) that provides for 100 days of employment during the lean agricultural season for rural workers below the poverty line.

Linked to livelihood security is the issue of old-age pensions. These pensions assume immense importance for those BPL groups (for whom the monthly pensions are the only means of subsistence post-retirement). As a result of a Supreme Court Order, all destitute persons, 65 years and over, must receive Rupees 75 per month in addition to entitlements under the State Pension Scheme. Such payments are to be paid by the 7th of each month and no pension schemes are to be discontinued.

➤ Accessing Government programmes on food-security related issues through the Right to Information: Via the civil society networks (especially the RTI

²³ Ibid. Refer to footnote No. 9.

Movement) that the Campaign members are a part of, the RTI was effectively used by the Campaign, especially through the medium of public hearings, with optimal results. For instance, a Delhi-based member organization of the Campaign - Parivartan – is helping Delhi residents use the Act and states that using the Delhi State RTI Act provisions have made a considerable difference to demand proper functioning of the PDS system. Through awareness-raising initiatives spearheaded by Parivartan, many poor Delhi residents have filed RTI applications in Delhi's Food and Civil Supplies Department in relation to non-compliance of their entitlements under the PDS ration card scheme. Their efforts have met with much success. In Delhi, the irregularities have become public, people are becoming aware of widespread black marketing and are pressurising ration shopkeepers to provide proper rations at prescribed rates (for more instances on how public hearings using the Right to Information Act provisions in various Indian States have resulted in poor people voicing their demands and claiming rights, see Box below).

Box 4: Using the Right to Information through Public Hearings to Access Food Security Rights:

Using enabling rights-based legislative provisions like the RTI provisions have had far-reaching consequences in the Indian scenario and have attracted worldwide attention for the apparent successes in making duty-bearers accountable in cases of violation of rights. In a public hearing held in Delhi in October 2004, Janki, a slum dweller from Delhi testified on how, despite buying no rations from January to April 2004 (as was apparent from the blank sheets in her ration card), the ration shopkeeper's records shows that she took wheat and rice during these months. He produced cash memos against her name, bearing signatures of people she did not know. What the shopkeeper did was to produce false signatures and sold off the rations that were Janki's entitlements to other people at high rates. Several other residents from other Delhi slums had similar tales to tell.

Many participants spoke of how they were not able to access the PDS in their State. Participants from the eastern Indian State of Orissa testified that indigenous peoples in their area had no ration cards despite intense poverty and severe malnourishment. *Adivasis* (an indigenous tribe) from the State of Madhya Pradesh spoke of severe drought, famine and unemployment in their region; those who have ration cards did not have the money to buy even subsidised rations. One participant stated that wheat, which is sold to them at Rupees 5 per kg, is sold to multi-national companies (MNCs) at a lower Rupees 3 or 4 per kg. A few participants also talked about how they used the Right to Information Act in their States to expose corruption in the PDS.²⁴

In a backdrop where inadequate implementation of Government regulations (in this case those concerning the PDS and food security) is the norm, such hearings, using the legal provisions as stated under the State RTI Acts have played a vital role in mobilizing uninformed and often poor and illiterate groups, and in making duty-bearers accountable in bringing about a system of transparency.

²⁴ <http://www.indiatogether.org/2004/nov/rti-natlmeet.htm>

The Campaign has also used a Copy of Supreme Court orders relating to the RTI on food security issues (this also occurred as a result of the Campaign members filing PILs to the Court on how the RTI should be used in cases related to violation of the Right to Adequate Food) be translated and displayed in all local governance bodies at the village levels (the *Gram Panchayats*), Government schools and State-run ration shops. The *Gram Panchayats* have been ordered to display lists of beneficiaries under various food-security related schemes. Also, State-run media institutions like All India Radio (AIR) and TV (called *Doordasan*) are to give due publicity to these Schemes and the related Court Orders. Finally, all public documents relating to Right to Food and the Schemes - including muster rolls – are to be available for inspection by the public on request and photocopies of the same to be given at cost price to the public if requested for.

5. The Value Added of Using Rights-Based Strategies:

Positive Lessons Learned

➤ *Strategies used have involved the poor and marginalized groups and have led to their empowerment:* The Campaign used strategies that combined social action with rights-based approaches like demonstrations/rallies/issue-focused campaigns, awareness-raising through capacity development initiatives like training on legal rights especially as they pertain to the Right to Adequate Food, public hearings, etc. As such information and awareness spread and a rights-unaware people became gradually empowered through the various capacity development initiatives, they started using tools like public hearings and surveys to demand accountability from the duty-bearers for failure in meeting their obligations. As their demands slowly started getting met, they became more confident and realised that they had control in changing their own lives. At the same time, even the general public became aware of such rights through the public meetings, events and the various public education initiatives that the Campaign was undertaking. Many such members of the general public joined the Campaign and lent their voice to this cause. As the Campaign grew in strength and the Supreme Court lent its support to the cause through the various orders and the appointment of the two Commissioners, it became apparent that the demand for claims to be met pertaining to the Right to Food was finally too loud to be ignored.

Strategies used combined the inherent strengths of the Campaign members and interested quasi-governmental civil society stakeholders: It is apparent that this Campaign has been able to achieve far-reaching success at a national level due to the inherent individual strengths that the Campaign members brought in – while organizations like PUCL and HRLN filed PILs in the Supreme Court and used their legal training and skills to successfully lobby the Court to pass the landmark judgements/orders, other members like JSA and the National Alliance of People's Movements (NAPM) used their campaign, people-centred advocacy and mobilization strategies to effectively lobby and advocate and helped build people's capacities to demand the effective implementation of their rights. Yet other members like the National Campaign for Dalit Human Rights (NCDHR), National Campaign

Committee for Rural Workers (NCCRW) and the National Conference of Dalit Organisations (NCDO) used their mass constituency base with the most poor and vulnerable groups like the dalits²⁵ and indigenous populations (who are often the groups most left out of the Government schemes) to bring them together and unite and fight for their cause. And tapping into Government legally-mandated quasi-governmental agencies like the National Human Rights Commission (NHRC) (see Box below), other rights-based movements (and its networks) like the Right to Information Campaign, the active participation of individual NGOs like Parivartan and Action Aid (AA) and of concerned and individual civil society members like lawyers, academics, doctors and activists who lent their support to the cause in more ways than one, witnessed the harnessing of massive collective strength that led to the Campaign achieving such successes in a relatively short span of time.

Box 5: The National Human Rights Commission - A Natural Ally in the Struggle for Accessing the Right to Food

One of the most strategic allies that the Campaign has found in its struggle is the NHRC in India. A quasi-governmental organisation that has been set up by the State to redress rights violations, the Commission has put in place a Core Group on the Right to Food, that can advise on issues referred to it and also suggest appropriate programmes, which can be undertaken by the Commission. The Commission has, for instance, deputed officers to undertake independent investigations into starvation deaths in the State of Orissa and hearings were held as a result of which the Commission set out the concrete interim measures that were required to be undertaken, specifying their details in terms of location, time-frames and quantitative targets, the manner of their implementation and the monitoring mechanism that should be set in place in order to ensure the efficiency, integrity and accountability of the efforts that must be made.²⁶ The Commission has dispatched similar fact-finding missions to the State of Uttar Pradesh (in the light of incidences of starvation deaths occurring in several districts in the State).

➤ Using the Supreme Court to ensure justiciability, accountability and sustainability of the implementation of the Right to Adequate Food: The Campaign tapped the Supreme Court – the highest legal authority in the country – to ensure that the Right to Adequate food is justiciable. Citizens could file PILs as a recourse mechanism if this Right is not met. Moreover, as a result of the Supreme Court orders, the State Governments and the related local structures were not only accountable for delivering on its obligations (in meeting the demands on the right of all citizens to access adequate food), but the process also ensured that the obligations to be fulfilled (through the implementation of various policies and programmes on food security) were justiciable and hence, sustainable (see Box below).

²⁵ Often called the “untouchables” under the Indian caste system and who are at the lowest rung of this system. Such people have been relegated to undertaking the dirtiest of jobs, including scavenging and cleaning latrines.

²⁶ <http://nhrc.nic.in/impdirections.htm>

Box 6: Ensuring Sustainability of Gains made

In Delhi, Parivartan's struggle (see outcomes of such struggles elsewhere in this paper) has led the Government to agree to some systemic changes in the PDS. The shops were economically unviable due to very low commissions for the PDS dealers. The Government recently announced that they would raise the commissions to make the PDS shops viable. Following dramatic improvements in the PDS in Sundernagari (a poor resettlement colony in Delhi), the Government has agreed to throw open the records of all the PDS shops in Delhi for public inspection every Saturday from 1.00 pm to 4.00 pm. People will be able to go to any office of the Food Department in Delhi and inspect the records of any shop falling in the jurisdiction of that office, without paying any fee and without giving any prior intimation. This is to be implemented in phases, starting on 1 April 2005 in two districts (east and north-east), with the rest of Delhi also to be covered soon. If any discrepancy is found in the records during public inspection, the shop will be suspended immediately and criminal proceedings will be initiated.²⁷ Such a move that has been legally mandated with its implementation being the sole responsibility of the Government ensures that the gains made by the Campaign are also sustainable.

➤ Linking the Right to Food with livelihood security: It is a well-documented fact that access to or realizing the Right to Food is not achievable without guaranteeing livelihood security. The Campaign proponents are well versed of such linkages and have, from inception, vigorously lobbied for the passing of the EGA as this would provide a legal guarantee of at least 100 days of employment on public works to any able-bodied adult who is willing to undertake casual manual work at the statutory minimum wage and would help, to an extent, in guaranteeing employment to the poorest of the poor and enable their access to food. As documented in Section 4, the Campaign has already made progress in lobbying the Supreme Court in passing various other orders that obligates the States to implement the various Food for Work programmes and along with the passing of the EGA in August 2005,²⁸ could be stated as the most important step in making justiciable the Right to Work for poor people in the country, and will be the first step in such people realizing their Right to Food.

Challenges in Implementing Rights-Based Programming Strategies: Lessons Learned

➤ Addressing deep-rooted endemic social norms vital for the Campaign to be sustainable: The Campaign has achieved dramatic results in a relatively short span of time due to the multi-pronged rights-based strategies used. However, it is apparent that unless concerted efforts are made to challenge some of the deep-rooted endemic issues like prevailing socio-cultural norms (that are always more difficult to target), many of the gains made through the Supreme Court orders will be lost. A very good

²⁷ <http://www.righttofoodindia.org/links/updates/update39.html>

²⁸ For critiques of the Bill as it has been tabled before the Indian Parliament in December 2004, please visit <http://www.righttofoodindia.org/rtowork/ourcritiques.html>

illustration of such a challenge is the evidence that many parents have been found to not permit their children to eat food in the schools that has been cooked by SC/ST employees (the Court had ordered that where possible, preference should be given to people belonging to SC/ST groups to operate the kitchen under the Mid-day Meal Scheme). This is the result of the deep-rooted discriminatory attitudes that still hold sway over the vast majority of the population due to the caste system. Non-discrimination and substantive equality are fundamental human rights principles to be promoted in rights-based food security policies²⁹ and is an issue that must be addressed on an urgent basis under the Campaign as no system can prove effective if such deep-rooted and endemic cultural attitudes are allowed to hold sway.

➤ Monitoring of Supreme Court's orders and effective implementation of policies/programmes a challenge: The recently passed EGA, the Supreme Court's order on the Right to Adequate Food and the various policies and programmes pertaining to food security can only prove effective in implementation if proper monitoring is undertaken. In a country with such a huge geographical spread; millions of poor, illiterate and hungry populace who are not aware of their rights; widespread famines, floods and droughts; and, a bureaucracy that can often be highly unaccountable in terms of transparency, it is apparent that the gains of the Campaign can only be sustained if stringent monitoring of the rights-based outcomes that are a direct result of the Campaign interventions are undertaken. As of now, the Campaign has put in place some monitoring strategies (as outlined in the Section on "Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Strategies"). However, it is apparent that the Campaign faces huge challenges in monitoring and that unless some well-thought out monitoring strategies are devised that are not only based on quantitative (number of people accessing food-security or food-for-work programmes or on tonnes of food being distributed) but also qualitative indicators (the quality of food distributed and the quality/level of access to these programmes) and that is undertaken on a macro (national) level, there will be many a gap between policy intent and policy implementation in respect of realizing this Right.

²⁹ Intergovernmental Working Group For The Elaboration Of A Set Of Voluntary Guidelines To Support The Progressive Realization Of The Right To Adequate Food In The Context Of National Food Security, Food and Agricultural Organisation of the United Nations (FAO) Rome, "Implementing the Right to Adequate Food: The Outcome of Six Case Studies". Source: <ftp://ftp.fao.org/docrep/fao/meeting/008/j2475e.pdf>

SELECT BIBLIOGRAPHY:

Banister, J., 1987, China's Changing Population, Stanford University Press, USA.

Coale, A. J., 1984, Rapid Population Change in China, 1952-1982, National Academy Press, Washington, D.C., USA.

Deaton, A., January 25-31, 2003, Papers on "Adjusted poverty estimates for 1999-2000" and "Prices and Poverty 1987-2000", Economic and Political Weekly Volume 38, New Delhi, India.

Devraj., Ranjit, "India Passes World's Biggest Job Guarantee Plan", Inter Press Service News Agency. Source: <http://www.ipsnews.net/news.asp?idnews=30004>

Dev, S.Mahendra., August 2003, Working Paper No. 50, "Right to Food in India", Center for Economic and Social Studies, Hyderabad, India.

Devi, Upala., 2002, Paper on "Actualising the Right to Education -Participatory Civil Society-led Approaches to Educational Interventions for Girl Child Labourers in India: The Road Ahead", Institute of Development Studies (IDS), University of Sussex, England. Source: <http://www.ids.ac.uk/ids/particip/networks/learnfellow/hradvoc.html>

Food and Agricultural Organisation of the United Nations (FAO), June 2004, Intergovernmental Working Group For The Elaboration Of A Set Of Voluntary Guidelines To Support The Progressive Realization Of The Right To Adequate Food In The Context Of National Food Security, "Implementing the Right to Adequate Food: The Outcome of Six Case Studies", Rome. Accessed at <ftp://ftp.fao.org/docrep/fao/meeting/008/j2475e.pdf>

<http://www.indiatogether.org/2004/nov/rti-natlmeet.htm>

<http://nhrc.nic.in/impdirections.htm>

<http://www.rightofood.org> - The official website of the Right to Food Campaign in India.

Mahabal, Kamayani Bali., Comparative Case Law: Focus on India, "Enforcing the Right to Food in India - The Impact of Social Activism", Community Law Center, University of the Western Cape, Socio-Economic Rights Project, Volume 5, No. 1, March 2004. Accessed at http://www.communitylawcentre.org.za/ser/esr2004/2004march_india.php

Mehta J., and Venkataraman, July 1, 2000, "Poverty Statistics – Bemicide's Feast" Economic and Political Weekly, Volume 35, New Delhi, India.

Murulidharan, Sukumar., June 19 - July 02, 2004, "Food for all", Frontline Magazine, Volume 21 - Issue 13, Chennai, India.

Naidoo, V., et al, (Eds.) 2004, The Right to Food, Volume I, The Human Rights Law Network, New Delhi, India.

Nai-Ruenn Chen, 1966, Chinese Economic Statistics – A Handbook for Mainland China, Edinburgh University Press, Edinburgh, Scotland, UK.

Nayyar, R., 1991, Rural Poverty in India, Oxford University Press, New Delhi, India.

Parikh, Kalpana., and Yasmeen, Summiya., article entitled “Groundswell for mid-day meal scheme”. Source: <http://www.indiatogether.org/2004/jan/pov-midmeal.htm>

Patnaik, U., October 1991, “Food Availability and Famine – A longer View” Journal of Peasant Studies, Volume 19, No. 1. Reprinted in Patnaik U., 1999, The Long Transition – Essays on Political Economy, India.

Swaminathan, M., March-April 2002, “Excluding the Needy – the Public Provisioning of Food in India”, Social Scientist, Volume 30, Nos. 3-4, New Delhi, India.

United Nations Development Programme India

Strengthening Access to the Right to Information
Via Using Rights-Based Programming
Approaches Under a Demand-Supply Capacity
Development Programming Strategy in the
Access to Information Projects

6. United Nations Development Programme India: Strengthening Access to the Right to Information Via Using Rights-Based Programming Approaches Under a Demand-Supply Capacity Development Programming Strategy in the Access to Information Projects

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The views expressed in the case study do not necessarily reflect the views of UNDP India.

LIST OF ABBREVIATIONS USED:

BPL: Below the Poverty Line
CBO: Community-based Organization
CSOs: Civil Society Organizations
DGTF: Democratic Governance Thematic Trust Fund
HRBAP: Human Rights-Based Approach to Programming
HRLN: Human Rights Law Network
ICCPR: International Covenant on Civil and Political Rights
MKSS: Mazdoor Kisan Shakti Sangathan
NGOs: Non-governmental Organizations
ICT: Information and Communication Technology
INGOs: International Non-governmental Organizations
MDGs: Millennium Development Goals
OHCHR: Office of the United Nations High Commissioner for Human Rights
PDS: Public Distribution System
PILs: Public Interest Litigations
PUCL: People's Union For Civil Liberties
RTI: Right to Information
SCs: Scheduled Castes
STs: Scheduled Tribes
UDHR: Universal Declaration of Human Rights
UN: United Nations
UNDP: United Nations Development Programme

1. Background and Rationale:

Access to Information as an Internationally Recognised Human Right: ‘Freedom of information’ was recognized as a fundamental right by the United Nations (UN) way back in 1946 itself. In its very first session, the UN General Assembly adopted resolution 59(1) which stated: “*Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the UN is consecrated.*”

In 1948, when the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), the right guaranteeing freedom of opinion and expression was stated in Article 19 as follows: “*Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.*”

Following from the above, the International Covenant on Civil and Political Rights (ICCPR) - a legally binding treaty - was adopted by the UN General Assembly in 1966. The corresponding provision in this treaty - Article 19 - guarantees the right to freedom of opinion and expression in very similar terms.

In ensuing international human rights instruments, freedom of information was not set out separately but as part of the fundamental right of freedom of expression, which includes the right to seek, receive and impart information.

The specific content of that right has been since elaborated by a number of authoritative sources, including the UN Special Rapporteur on Freedom of Opinion and Expression and the Council of Europe's Group of Specialists on Access to Official Information. Of fundamental importance are areas relating to the access to information to ensure democratic participation, accountability in Government and the prevention of corruption by public officials - these standards were endorsed by the UN Special Rapporteur in his 2000 Annual Report. In this Report, the UN Special Rapporteur elaborated in detail on the specific content of the Right to Information (RTI), including the obligation of public bodies to disclose information and the corresponding right of every citizen to receive information ("information" includes all records held by a public body, regardless of the form in which it is stored). The same Report lays out a number of provisions to enable access of this right by citizens.

It is therefore apparent that individuals worldwide do have a human right to freedom of information, including access to information held by public authorities. Many countries worldwide² have also incorporated this right as one that is enshrined in their Constitutions and supported by accompanying laws.

² Over 40 countries now have laws that require the disclosure of Government records and dozens more are considering to pass and implement related Acts. Many countries that have recently created or updated their Constitutions have specific rights to freedom of information in their Constitution. In other countries, the Courts have found an implicit right to freedom of information as an element of free speech. Source: http://www.usembassy-mexico.gov/bbf/bfdossier_FOIA.htm. For more information on the list of countries, please visit the website of Privacy International at <http://www.privacyinternational.org>.

India and the Right to Information - Policy and Legal Framework: India recently passed the RTI Bill on 11th May 2005 (see Box below). However, even before the Bill was passed, the Indian Constitution, though not explicitly granting a RTI, has upheld this right in many instances. The Supreme Court of India has held in several cases³ that the right is implicit in the constitutionally enshrined rights to freedom of speech and expression (Article 19 (1)(a) and right to life and liberty (Article 21).

Box 1: The Right to Information Bill 2005: A Step in the Right Direction

The Right to Information Bill 2005 was passed on 11th May 2005. This Bill lays down the architecture for accessing information, which, as stated by the Indian Prime Minister, Dr Manmohan Singh is “simple, easy, time-bound and inexpensive”.⁴ Dr. Singh further stressed that there “will be stringent penalties for failing to provide information or affecting its flow”. “In fact, it imposes obligations on agencies to disclose information *suo motu*, thus reducing the cost of access.”

Dr. Singh emphasized that the Bill was more far-reaching and effective than the existing Freedom of Information Act and urged the State Governments to take the initiative to establish State Information Commissions. Under the provisions of the Bill, there will be no fees for people living below the poverty line (BPL).

The Bill represents a step in the right direction towards actualizing RTI for all citizens across the country and the challenge now will be to determine whether the State can perform its obligations and implement the provisions as laid down under the Bill. Active civil society involvement will thus be imperative to perform “watchdog” functions in this regard.

India is also signatory to a host of international Conventions and treaties that obligates it to fulfill its responsibilities to its citizens and these obligations complements the various freedom of expression, speech, life and liberty provisions of its Constitution. The first Supreme Court ruling on the RTI dates back to 1975. However, no attempt was made by either the Central or the State Governments to implement a simple and effective access to information regime until after the launching of campaigns for freedom of information by civil society in the early 1990s. The first and most well known RTI movement in India was spearheaded by a community-based organisation (CBO) - the Mazdoor Kisan Shakti Sangathan (MKSS) - which began its struggle to access this right in Rajasthan State. MKSS's struggle for access to village accounts

³ There are some landmark cases where the Supreme Court has intervened in favour of the citizen’s accessing information. Mention may be made of the People’s Union For Civil Liberties (PUCL) And Another, Petitioner V. Union Of India And Another, With Lok Satta And Others, V. Union Of India 2003(001) SCW 2353 SC Case; Union Of India V. Association For Democratic Reforms And Another, With PUCL And Another, V. Union Of India And Another, 2002(005) SCC 0361SC Case; and, Union Of India And Others, V. Motion Picture Association And Others, 1999(006) Case, amongst others. For a complete list of cases, please refer to

<http://www.humanrightsinitiative.org/programs/ai/rti/india/cases.pdf>

⁴ As stated by the Indian Prime Minister, Dr Manmohan Singh, in an article by K.V Prasad entitled “Right to Information Bill passed”, *The Hindu*, 12th May 2005. Source: <http://www.hindu.com/2005/05/12/stories/2005051204340100.htm>

and transparency in administration, particularly as it pertains to public-related development works - is well documented in development literature worldwide as a rights-based movement that is widely credited with having sparked off the demand for the RTI across India.

The MKSS movement gained momentum and actively lobbied and pressurized the Central Government to finally enact the Indian Freedom of Information Act in 2002. The Act, though repealed now, represents an important step towards actualizing the RTI Act, which was passed in May 2005.

It is interesting to note that while the campaign for an acceptable national legislation on the RTI was ongoing, some significant breakthroughs were already being achieved at the State levels. Tamil Nadu was the first State to enact a RTI law in 1997, followed by Goa in the same year. To date, seven other Indian States have passed RTI legislations - Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003) and Jammu and Kashmir (2003). Campaign efforts in other States have also met with some success - Uttar Pradesh framed an executive code on Access to Information in 2000 and draft bills have now been prepared by the Governments of Kerala and Orissa.⁵ With the new Bill now being passed, its provisions will apply to all the Indian States and Union Territories.

Access to Realising Human Rights under the Right to Information Framework: As noted above, it was only in the mid-1990s that the RTI movement in India was born, primarily due to the untiring and concerted efforts by Indian civil society – spearheaded by MKSS – who realized that Indians citizens practically had no access to any public information on issues like developmental projects and information on wages – information that they were entitled to access in the very first place. This was largely due to widespread illiteracy; an unresponsive media; and, constraints (coupled with lack of accountability) on the part of the duty-bearers in realizing their obligations. Lack of access to vital public information has a disempowering effect, particularly on poor, vulnerable and marginalized groups of people (like tribals, women and children) and places limitations on the realization of basic human rights entitlements like realising the right to food, the right to health or the right to education. Such a scenario also places the citizen as a passive recipient of developmental approaches (that are highly top-heavy and often un-participatory) rather than as an active partner in the developmental process. Finally, in a scenario where RTI is not realized, there are evidences which prove that corruption and unaccountability of the duty-bearer are rife and these have crippling impacts on the poor, who are often illiterate, unable to pay bribes to access services that they were entitled to or surviving the embezzlement of scarce public resources.

Thus, MKSS, with participation of civil society stakeholders lobbied for the passing of the Indian Freedom of Information Act in 2002. Operating under a very rights-based approach, MKSS initially used the RTI as a tool to draw attention to the underpayment of daily wage earners and farmers on Government projects, and more generally, to expose corruption in Government expenditure in Rajasthan State. Under

⁵ <http://www.humanrightsinitiative.org/programs/ai/rti/india/india.htm>

the slogan '*Our Money-Our Accounts*', MKSS enlisted the participation of the villagers conduct social audits that involved:

i) Lobbying, initially, the local administrators and then, the State Government, to obtain information such as muster rolls (employment and payment records) and bills and vouchers relating to purchase and transportation of materials.

ii) This information was then crosschecked at *Jan Sunwais* (public hearings) against actual testimonies of workers - the tool of using the platform of public hearings to reveal the results of social audits that were conducted by the villagers on the Government-run developmental works were incredibly successful in drawing public and media attention to corruption and exposing leakages in the system. They were particularly significant because of their use of hard documentary evidence (social audits) to support the claims of villagers. Though many villagers were illiterate, through face-to-face public hearings they could scrutinise complex and detailed accounts, question their representatives and make them answerable on the basis of hard evidence.⁶

As noted above, the general public, the media and subsequently, the State Government began paying increasing attention to the results of the hearings. Consequently, greater attention was focused on the importance of the RTI as a means for increasing transparency and accountability, as well as empowering poor people. Although MKSS was able to obtain some information on public-related works from the State Government during the early 1990s, such a process was fraught with hurdles. Such hurdles encountered by MKSS in trying to access information reinforced the importance of a comprehensive RTI law for Rajasthan (for instance, although the then Chief Minister of Rajasthan announced that his Government would be the first in the country to provide access to information to citizens on all local developmental works, no action was taken for months). This resulted in MKSS - with active participation of the villagers - embarking on a series of rights-based advocacy, campaign and lobbying strategies.⁷

The Rajasthan RTI Act 2000 was eventually passed on 11 May 2000 and came into force on 26 January 2001. MKSS was actively involved in the drafting of the draft civil society RTI Bill and continues to use the RTI and conducts public hearings to empower local people to root out corruption and hold their Government representatives to account.

With the momentum now built towards making the country moving a step closer in actualizing the provisions of the newly passed nationwide RTI Act and (via the passing of some State-level RTI Acts, the benefits of which have already being witnessed)⁸, a scenario will hopefully be facilitated wherein observance of human

⁶ <http://www.humanrightsinitiative.org/programs/ai/rti/india/states/rajasthan.htm#mkss>

⁷ Ibid. Refer to footnote above.

⁸ Please refer to the case study on “Accessing Primary Education – The Sankalp and Madhya Pradesh Educational Guarantee Scheme Models: Case Studies of Rights-Based Approaches to Designing an Educational System for Marginalized and Vulnerable Children in India” and the case study on “The Right to Food Campaign in India: A Case Study of Entitlement-Oriented Rights-Based Strategies Used to Reclaim the Right to Food for Vulnerable and Marginalized Groups” in this volume of case studies

rights and fundamental freedoms for all will be the norm than the exception. The passing of such an Act will enable a far greater degree of State accountability to its own citizens, (facilitated even further by the media - especially via the internet - and the inherent strength of the ever-expanding network of non-governmental organizations (NGOs), civil society organizations (CSOs) international non-governmental organizations (INGOs) and other interest groups who have come together to put forward various demands to enable citizens to access the RTI).

Bilateral and multilateral donors have also facilitated such a rights-based entitlement-oriented movement through support to civil society to demand for claims under the RTI via either direct funding:

- i. To civil society (for holding awareness/capacity development workshops and supporting via campaign/ lobbying/ advocacy/research efforts); or,
- ii. Of duty-bearers to respond to such claims on the RTI via developing capacities (through training, stakeholder consultations, etc).

This case documents one such effort by United Nations Development Programme (UNDP) India to support and demand capacities of two important stakeholders – the civil society and duty-bearers - using various programming approaches under a demand-supply capacity development approach to demand and fulfill obligations under the RTI. Such an approach is rooted in human rights-based approach to programming (HRBAP) principles that entails that developing capacities of both claim-holders and duty-bearers is a key component to achieve rights-based outcomes.

2. The Study of the United Nations Development Programme India’s Designing of a Rights-Based Programming Approaches to Developing Capacities to Access the Right to Information under the Access to Information Projects

Case Study/Project Context: As documented in the section above, despite RTI being a fundamental right as upheld by the Supreme Court in India (and as evidenced through the several State Acts passed on the subject), there have been severe hurdles that stand in the way of citizens accessing the right. Against such a backdrop, UNDP India realized that for citizens to adequately and knowledgeably access the RTI, a well-thought out strategy targeting the two important stakeholders is vital – one strategy relates to capacity development of important civil society partners (of the NGOs, CSOs and the media) and the other relates to developing capacities of duty-bearers to fulfill its obligations.

to get an in depth overview of how realizing the RTI is helping pave the way for the poor, vulnerable and marginalized for realizing other rights.

Box 2: Targeting Media a Key in Enabling Access to the Right to Information

Historically, the enabling role that the media can play in helping Indian citizens access the RTI has been marginal, primarily due to two reasons. *Firstly*, there has been very little reporting in media – print or electronic – about how people are using (either directly or through CSOs) this right for accessing information and for demanding greater accountability and transparency from public delivery mechanisms. There is thus the need to document people’s experiences and include such practices in the media to create awareness. *Secondly*, the Indian media has traditionally aligned with various political parties and reporting is often linked with such alignments/politics. Given the ownership pattern of newspapers and electronic media, the reports based on such information (sometimes unverified) may not be entirely of an independent or unbiased nature.

The passage of the various State-level RTI Acts have now opened opportunities for the media to access the RTI and document such people-centered experiences. However, given that many State Acts are relatively new and awareness relating to these Acts has not been widespread, the media has also not been using (or being capacitated to use) these Acts to obtain information from public authorities to report on developmental issues. There is thus need to develop the capacity of media – in partnership with CSOs - to access information by using these Acts. UNDP India has used this opportunity and entry point to build linkages with and develop capacities of the media to enable citizens access the RTI.

Thus, the various UNDP India-supported Access to Information Projects under its broader Decentralization and Participatory Planning Programme⁹ seeks to develop capacities using a demand-supply capacity development programming strategy that has various rights-based programming approaches inherent in it. Such a strategy will lead to the creation of a platform from which:

- i) Citizens can make claims under the RTI and seek redressal; and,
- ii) Duty-bearers are well capacitated to respond to such demands.

⁹ The Government of India’s Tenth Five Year Plan accordingly recognizes governance as a key factor for meeting development targets and identifies decentralization, civil service reform, civil society partnership and e-governance, among others, as priority areas of focus. UNDP’s Country Programme 2003-2007 focuses on efforts to reduce human poverty and support the Government in achieving its Tenth Plan goals and targets some of which are even more ambitious than the Millennium Development Goals (MDGs). The overall objective of UNDP’s initiatives under the present theme is to support capacity development of institutions of local governance for improved service delivery, enhance people’s participation, and ensure greater transparency and accountability. The key areas of support include capacity development of institutions of decentralized governance; capacity development of civil service at the cutting edge level; e-governance; and, participatory planning for promoting accountability and effectiveness of service delivery, enhancing transparency and participation, ensuring sustainability of development initiatives and ultimately empowering the poor and disadvantaged. UNDP also recognizes that access to information and a well-functioning justice system are prerequisites for poverty eradication. Therefore, these two areas run as crosscutting issues through all of UNDP’s projects in the area of Decentralization and Participatory Planning. Source: http://www.undp.org.in/programme/Snapshot_2003_2007.doc

Stakeholders Involved: In all the UNDP India initiated Access to Information Projects, the stakeholders include civil society partners (NGOs, CSOs and the media) and the Governments (both the Center and partner States).

Objectives of the Project/s: The various Access to Information initiatives/Projects aims at developing capacities of civil society (NGOs, CSOs and the media, especially of information and communication technology {ICT} systems). At the same time, it looks towards capacity development of public authorities for improving citizens' access to information for achieving transparency and accountability in governance at all levels.

The overall outcomes of these Projects would aim to contribute towards achieving the Goals of the UNDP India Country Programme that entail building the enhanced capacity of institutions of decentralised governance, civil service, and CSOs for planning and management of development activities including provisioning of public services.

Monitoring to Ascertain Rights-Based Outcomes: UNDP India uses a monitoring and evaluation strategy that relies on field visits by UNDP Project staff to the Project sites – such visits are used to gain first-hand information from the Project stakeholders, on for instance, how the citizens are able to access the information kiosks and the type of information provided in such kiosks; or, from those who participate in the public hearings and are able to dialogue with the duty-bearers; and, or the constraints faced while undertaking such dialogues. Such first-hand information is also used to decipher how effective the Project outcomes have been or what the constraints faced are in achieving the Project outcomes. These are also used for drawing out relevant lessons for various stakeholders, including development workers and policy makers at the Central and State levels

3. Process:

Addressing Power Equations – Rights-Based Programming Approaches to be Used: As mentioned elsewhere in this paper, UNDP India has built up a programming strategy under a demand-supply mechanism that involves developing capacities of two important stakeholders. While UNDP India did not develop this programme under a rights-focused lens, the programming approaches used has rights-based principles inherent in it. Such a strategy has been buttressed by the same democratic governance principles that UNDP worldwide actively pursues.¹⁰ Of special interest to this paper are two of the programming approaches that are rooted in rights-based principles:

- i) Facilitating the use of media, primarily of ICT as an enabling tool for efficiency and effectiveness by supporting e-Government and e-governance processes thereby improving citizen– Government interface for better governance; and,

¹⁰ Overall, UNDP supported 69 projects and initiatives related to Access to Information in various countries around the world in 2002/03. Such support reflects the importance UNDP is paying to this particular issue, especially since such access is also an indicator of the principles of promoting good governance – a sector UNDP is very intimately involved with in most of the countries that it works in.

- ii) Supporting capacity development of civil service to improve governance at the district levels through innovative, participatory training programmes; strengthening citizens' access to information; and, enhancing their legal empowerment.¹¹ These two approaches are evident in the developing of capacities via various activities that UNDP India has initiated under its Access to Information Projects.

Developing capacities of the media, is a key approach, as building of such capacities provides an enabling environment for citizens to access information at low cost and with speed and, in many cases, overcoming language and literacy barriers. In tune with the overall demand-supply capacity development programming strategy, linkages and capacity development of ICT will also use a demand-supply approach. On the supply side, such capacity development entails facilitating and strengthening ICT systems for efficient information management and dissemination. At the same time, ICT-based initiatives will be used to strengthen the demand side of information (training of citizens to access public information through use of ICT; through mass media awareness campaigns; via networking of decentralized institutions and so on) that is pertinent to a broad array of services that citizens expect of Government departments, including performance of poverty reduction programmes.

Some such Access to Information initiatives are documented below:

- i) *Improve Citizens' Access to Information:* This Project was created to promote a more open regime with freer access to information. It aims to empower citizens, make the administration more participatory, ensure greater transparency, and deter the arbitrary exercise of official power.

Programming strategies used: The above is to be achieved through sensitising, re-orientation and capacity development of public officials; increasing the awareness of citizens, and development their capacity to make reasonable demands for information; and, via re-engineering of existing systems. More importantly, six separate locations have been chosen for piloting ICT-based Access to Information initiatives, where citizens can access information about Government laws and public services. Through interactive technology, citizens can transact with the Government, for example, by filing grievances over the Internet.

- ii) *Enable Access to Information:* This Project adopts a multi-pronged strategy to ensure peoples' RTI.

Programming strategies used: The strategy is to sensitize and build the responsive capacity of civil servants; develop citizens' ability to make reasonable demands for information; and provide support to an enabling legal and institutional environment. Activities include framing of model rules under the official State Information Acts; developing capacities of public officials by means of exposure visits to grass roots initiatives on access to information; developing a module on the subject for training of civil servants; piloting to demonstrate the use of information as a tool to bring about a

¹¹ Ibid. Refer to footnote above.

qualitative improvement in the life of the urban poor; piloting to establish a budget information service on local Government; supporting a study of the impact and awareness of RTI Acts in the seven (out of the nine) Indian States where the State-level RTI Acts have been passed; and, establishment of ICT-based information kiosks to bring Government services closer to the people in “remote, difficult terrains”.

iii) Enable Media and Citizens’ Access to Information: This Project aims to develop the capacity of professionals working with print and electronic media and CSOs to promote citizens’ awareness of, and ability to make better use of the right to official information. Via this Project, UNDP is encouraging the media to report on how people are using recently recognized rights to information to demand greater accountability from Government. Specific outputs include documentation of the success (and failure) stories of how citizens are using a legislated right to official information in the States where such Acts have been passed; extensive media reports on such stories and coverage on legal and implementation related issues; media reports on the use of ICT in promoting citizens’ access to information in different parts of the country; strengthened interface (through workshops and seminars) between the media and CSOs that are working to promote RTI; and, the resultant and regular use of the RTI Acts by the media for seeking information for reporting on development matters.

Programming strategies used: UNDP India is helping to develop capacity of the media to utilize State-level RTI Acts to gain information on development matters and report these as such to the public; this also involves building capacities to report on legal and implementation aspects of the RTI Acts and to report on people’s experience with using these acts for getting information.

iv) Give Support to Rural Development Using Community Radio: Implemented at the grassroots and as part of a wider rural development programme, UNDP is supporting a community radio initiative (*‘Kunjali Panje Kutchji’*) to raise awareness and participation in rural development issues. The Project also seeks to improve the portrayal of women in the media by promoting greater involvement of women in developing the programme content.

Programming strategies used: The Project combines innovative programme content, which uses a participatory technique, combining interactive dialogue between the community and the radio characters. Various means are used to deliver this dialogue – narratives, drama, songs, news from the field and interviews with invited experts and public officials. A feedback exercise ensures that the listeners decide what issues are taken up, hence influencing the script of the dramatized serial.

Changing Power Equations – Using the Rights-Based Approach: As noted elsewhere, UNDP India has used some important rights-based programming approaches, targeting the two very important stakeholders under the demand-supply capacity development programming strategy that has been initiated. While the demand side works primarily with civil society stakeholders to augment their capacities to demand and claim rights through the use of various rights-based

approaches, the supply side targets duty-bearers and assists in building their capacities, again through a variety of rights-based approaches.

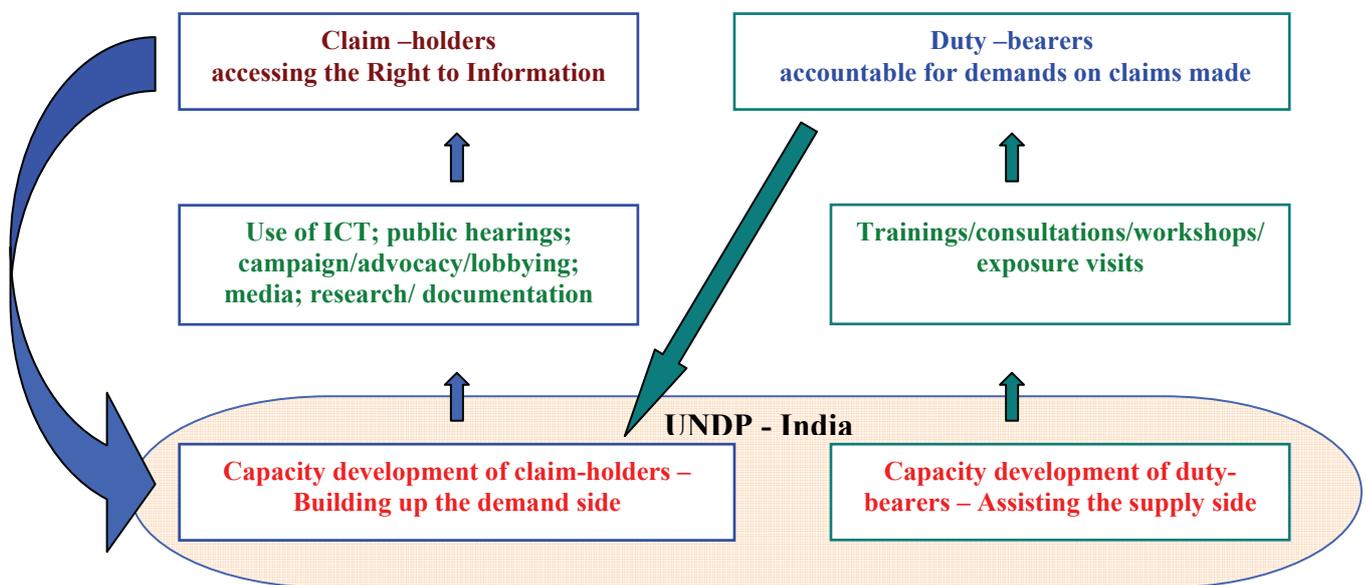


Figure: The demand-supply capacity development programming strategy using rights-based programming approaches¹²

Building up the demand side:

Developing capacities to use ICT for accessing the Right to Information: UNDP India has facilitated the setting up of IT-based information kiosks to enable access to information of poor, vulnerable and marginalized people, especially in the remote interior areas where access of such kind is virtually not available. Under some of the UNDP India Access to Information Projects (implemented in partnership with the Indian Government) that looked at building capacities as the key to enable citizens access to RTI – more importantly, access to Government information and documents – a supply-side system of information provision was initiated - creating a management information system, software, virtual spaces and access points through the setting up of IT kiosks. In partnership with the Department of Personnel and Training under the Central Government, UNDP has supported the setting up of such IT kiosks in Jhalawar (a poor rural district in Rajasthan State), Mandya (an urban district in Karnataka State), Bhopal (the capital city of Madhya Pradesh State), Jorhat (a district in the Northeastern State of Assam and home to the world’s largest riverine island, Majuli), Kalahandi and Bolangir (poor tribal districts in Orissa State), and Kutch and Panchmahal districts (in Gujarat State, the former heavily devastated during the 2001 earthquake) (Sharma, 2004).¹³

¹² By Upala Devi Banerjee

¹³ UNDP Oslo Governance Center, The Democratic Governance Fellowship Programme, paper on “Civil Society and Right to Information: a Perspective on India’s Experience”, Pradeep Sharma, 2004.

To facilitate the demand-side interventions, the IT kiosk initiative starts with the needs assessment information survey of the area where the kiosks are to be set up. Tapping into the decentralized system of Government that the Government has initiated across the country, implementation of the Project at the village or block (cluster of villages) level is generally undertaken through the locally elected *Panchayat* or village council structures.

Using a participatory approach which involves local people as partners in the developmental process, UNDP India either: i) trains volunteers from within the villages, who are then paid to run the kiosks and fulfill outreach, training and marketing roles; or, ii) gives franchises to local literate but unemployed youths to run the kiosks. These youth provide computer services to citizens (printing of Government documents etc. when asked for by the villagers); teach computer classes to enable villagers to use the kiosks (at a nominal fee); and, visit the villages to promote the services available at the kiosks. In those villages where the volunteers receive salaries to run the kiosks, revenues generated from the kiosks are passed on to the *Panchayat* and used to pay for cartridges, paper and other equipment. The *Panchayat* can also choose to increase the volunteer's salary. For the delivery of cartridges and spare parts, the kiosks depend on UNDP staff. UNDP Staff also scan new Government documents and other materials, save them on CD-ROM or floppy disks and pass them on to the volunteers at the kiosks for system updates.¹⁴

Box 3: Using IT Kiosks to Access the Right to Information

At the IT kiosks that UNDP India has helped set up in collaboration with the Department of Personnel and Training under the Central Government, users can access (these can vary from kiosk to kiosk) the following types of information:

- * Information about Government schemes and benefits that the citizens are entitled to access;
- * Application forms to apply for such benefits;
- * The list of community members receiving (or are entitled to receive) Government pensions, BPL benefits, etc; and,
- * Some information pertaining to agricultural and livestock.

¹⁴ "Case study: Visit to UNDP IT Kiosk, Orissa", by Sigrun Rottmann. Source: <http://217.206.205.24/Initiatives/ict/project/country/india/undp-case-study.htm>

While there have been shortcomings of the Project (as documented in Section 5), it is a step in the right direction in enabling villagers to be capacitated in accessing their RTI.

➤ *Developing Capacities via the tool of public hearings:* As public hearings in India have proved enormously successful in making duty-bearers fulfill their obligations and in ensuring public accountability and transparency, UNDP India utilized this tool to facilitate dialogue between duty-bearers and claim-holders. By sponsoring Government officials to participate in public hearings, UNDP India has helped built capacities of such officials (by enabling them to not only listen first-hand to testimonies of claim-holders and learning about the problems they face but also in dialoguing and solving problems in collaboration with the claim-holders). For instance, in the wake of the Delhi hearing, local public officials pledged greater transparency in construction projects. The capacities of the citizens have also been enhanced as they got the opportunity to interact and dialogue with the officials on a common platform – as a result of the Delhi hearing, a residents’ association to monitor neighbourhood construction has been formed.¹⁵ Such outcomes would not have been witnessed had officials and the citizens not had the opportunity to participate and interface in hearings of this kind.

➤ *Developing civil society capacity via advocacy/campaigns/lobbying support:* Realizing the impact Indian CSOs can have on building pressure on officials to respond to demands made, UNDP India has actively assisted such organisations in their advocacy/campaign and lobbying activities. An instance of such support is the CARE International India-supported RTI Campaign carried out in slum settlements in Delhi State, the objective being to develop capacities of such poor and vulnerable communities to seek information for improved access to civic services and Government schemes and to use such information to improve their quality of life. This was done with the help of two NGOs already working in these areas - creating a pool of trainers; identification of change agents from within the communities; linking communities to other groups similarly working in this field; and, sensitizing Government functionaries to people’s need for information and procedures under the law formed part of the activities the NGOs undertook. Two information fairs were also organized by CARE with the collaboration of Government agencies, NGOs and community members, the objective being to inform people about their entitlements, including information on departmental norms for various civic facilities, the structure and functioning of departments they have to frequently interact with, and names of concerned offices / officials they should approach for any related information or problems. Women also turned out in large numbers in these fairs.¹⁶ It has been seen that these processes of capacity development of such marginalized communities has led to their increased confidence and self-esteem

¹⁵ “Lessons Learned From Access to Information Initiatives in India: Case Study Write-Up on Access to Justice by the Poor and Disadvantaged in India”, Pradeep Sharma (UNDP, India), Peter Lee (India) (unpublished).

¹⁶Ibid. Refer to footnote No 13.

➤ *Building media capacities:* As outlined elsewhere in this paper, UNDP India has realised the potential media can have in enabling citizens to access the RTI. Thus, UNDP India has started augmenting media capacities via intensive workshops held with local language media, print and TV, the objective being to sensitize them to related development issues including decentralized governance, ICTs for development (including the role of community radio), concerns of the marginalized groups (for instance, women and HIV positive persons), and the RTI. In particular, media persons were encouraged to go on field trips to give feedback on the working of the RTI and to document people's experiences in accessing information. These workshops were instrumental in revealing critical capacity gaps in media, including the inadequacy of media's capacity to work on and access high quality technical reports. These capacity-development workshops culminated in a multi-stakeholder consultation titled "Access to Information, ICTs and Cross-media Partnerships".¹⁷

➤ *Using research and documentation:* Research and documentation plays a key role in augmenting capacities by providing resources/tools for campaign and advocacy purposes. Thus, the training modules prepared for civil servants, illustrated booklets and pamphlets in local language, user manuals for the community mobilizers and volunteers, audio-visual documentation of the capacity development workshops (of the media and of public officials), and films on the public hearings– all capacity development products that have been developed under the rights-based programming approaches used by the various Access to Information Projects have proved useful materials that can be built upon for UNDP's future work in this area. This is in addition to the survey on citizens' awareness and perception about RTI Acts across States conducted by an NGO and supported by UNDP-India; documentation on international RTI laws by the National Law School based in Bangalore, Karnataka State; and, a comprehensive paper on RTI in Rajasthan State. A CD-ROM, under preparation, is expected to be a powerful multi-media rights-based tool, which can be used for capacity development of diverse audiences.¹⁸

Capacity/Role of Duty-bearers (including the Judiciary/Related Frameworks) in Addressing Demands – Assisting the Supply Side: The strategy to develop capacities of duty-bearers as a part of the demand-supply capacity development programming strategy was first initiated as a result of the 1998 report on "Operationalization of the Right to Information" that the Department of Administrative Reforms and Public Grievances under the Government of India brought out in collaboration with UNDP India. This report examines the international experiences pertaining to access to RTI and cautions that "unless continuous vigil is exercised in its implementation, feedback of users sought, and independent assessment of the efficacy of the legislation done from reputed agencies and individuals from time to time, the proposed legislation will not serve its laudable purpose".¹⁹ Since then, UNDP has realised that enabling citizens' access to information will not be successful without correspondingly developing capacities of duty-bearers to respond to demands made.

¹⁷ Ibid. Refer to footnote above.

¹⁸ Ibid.

¹⁹ Ibid.

Moreover, workshops with local public officials revealed that less than 5 percent of them were aware of the RTI Act. Several officials had, in fact, focused their attention on the Act's secrecy exemptions as providing a potential excuse for not supplying requested information. This is not conducive to the realization of rights and reflected the need for institutional and cultural changes within Government departments in order for the legislation to operate effectively.²⁰ Thus, some of the various rights-based approaches used to build such capacities include multi-level stakeholder consultations (bringing together public officials, media, NGOs, academia, lawyers and students); workshops; working with the Department of Personnel and Training (which is responsible, among others, for the training of civil servants in the Centre and the States through Central and State training institutes and in setting up the IT kiosks in various locations); and, supporting public officials to participate in public hearings. UNDP is also supporting preparation of training materials to be used in the various Central and State training institutes - such materials can also be used for advocacy purposes.

By strengthening training of civil servants and sensitizing them about the citizens' RTI, UNDP India aims at enhancing the current knowledge-base about required concomitant changes in procedures; Government perceptions about grassroots initiatives and the pro-active information disclosure initiatives of Central and State Governments and how public officials can use these initiatives.²¹ Such capacity development will enable duty-bearers to better respond to demands made by the citizens in their interfaces with them.

4. Outcome (Results):

Changes that have occurred as the Result of Application of using the Rights-Based Approach:

The various Access to Information initiatives undertaken addresses both the demand and supply side mechanisms, and include a dual capacity development strategy – that of the claim-holders and duty-bearers - that is rights-based. Some of the outcomes include:

➤ *Empowering and capacitating poor and vulnerable people to access Right to Information:* The various initiatives that UNDP India has facilitated to build capacities of citizens -through the setting up of and training local volunteers/giving franchises to run IT kiosks; training villagers to access information in the kiosks, thereby leading to enhanced use of Government redressal systems; awareness raising through the media/campaigns, etc; and, through the platform of public hearings to access RTI have led to their empowerment in more ways than one.

Ghunsar village - one of the poorest areas in Bolangir District in the State of Orissa - has most of the population living in dire poverty circumstances; they are thus entitled to BPL-benefits (like Government food ration cards that enable them to receive food at highly subsidized rates). Of the 6000 inhabitants registered under the village

²⁰ Ibid. Refer to footnote No. 15.

²¹ <http://www.persmin.nic.in/otraining/cainfo.html>

Panchayat system, 50 per cent are registered as Scheduled Tribes (STs), and 30 per cent are Scheduled Castes (SCs) – these people are often classified as belonging to the lowest strata of society under the Indian caste system.²² Only an estimated 25 per cent know how to read and write. UNDP India set up an IT kiosk in the village, equipped with a computer and a printer, located next to the *Gram Panchayat* office. According to UNDP staff, an average of 15 to 20 users has visited the kiosk per month since it was established in December 2001. This number rises considerably on special occasions. For example, when the Government recently declared a drought emergency, 150 people came to the kiosk to apply for crop insurance. The *Panchayat* then forwarded the applications to the appropriate governing body. The volunteer who mans the kiosk estimated that 70 per cent of customers who come to collect forms and information knew how to read and write. All of the 30 to 35 young people who attend computer courses are literate.²³

Analogous is the case in the remote parts of Jhalawar, the border district of Rajasthan State. Home to a highly poor population, the setting up of 28 such kiosks²⁴ under one of the UNDP India Access to Information Projects now means that services such as certificates for land records, the availability of on-line grievance redressal systems and on-line application forms means that villagers can now not only access but also question discrepancies and avail of benefits under the numerous poverty-alleviation schemes that they earlier did not even know existed. There have been several examples from villages in this remote district where people's complaints with such Government services as power supply, pensions and land dispute resolution were attended to speedily.²⁵ Plans are now afoot to set up more kiosks in this area.

Similar IT-related initiatives that enable citizens to access information and to put pressure on duty-bearers to undertake governance in a transparent and accountable manner are ongoing in the States of Karnataka, Madhya Pradesh and Assam.

Finally, as stated elsewhere in this paper, the vehicle of public hearings have provided an opportunity to enhance citizens' empowerment and enabled them to interface with the officials on a common platform and redress their grievances under the RTI.

➤ *Enhancing livelihood security issues:* Livelihood security issues have been enhanced, to an extent, through the use of some of the rights-based initiatives. For instance, UNDP has trained local village youth - generally educated but unemployed youth with some knowledge of computers and Internet – to run the kiosks. While in some sites, these youths receive a salary to run the kiosks, there are some others that receive franchises to run the kiosks. Quite a few of these entrepreneurs conduct private business from these kiosks (such as providing photocopying facilities or

²² According to the *Sarpanch* (the elected people's representative of the village *Panchayat*). Ibid. Refer to footnote No. 14.

²³ Ibid. Refer to footnote above.

²⁴ UNDP News, January 2004, "Information Kiosks bring Government services to people's doorstep: Jan Mitra Heralds the Arrival of Knowledge Economy in Remote Regions of Rajasthan". Source: <http://www.undp.org.in/UNDPNEWS/Jan-04/j-pg03.htm>

²⁵ Ibid. Refer to footnote above.

internet surfing), thereby augmenting their income. Hence, many who have taken up the franchises recover their initial investment in a short period of time.²⁶

➤ Ensuring public transparency and accountability: The multi-pronged rights-based approaches used have facilitated public accountability and transparency to a large extent in the locations under the Access to Information Projects. In the case of Jhalawar district in Rajasthan State, the use of the IT kiosks, complemented with the Rajasthan State Government's efforts to take governance closer to the people through initiatives like sub-district development fairs and grievance redressal fora (like social audits and public hearings) for an on-the-spot amelioration of people's problems with Government-related services, has not only tapped and augmented local capacities (as highlighted in the previous paragraphs) but has also ensured public accountability and transparency. Such an outcome marks a huge leap forward in making citizens the empowered users of the RTI.²⁷

Similarly, the participation of public officials in the public hearings helped facilitate the process of public accountability on various people-oriented development schemes. These public hearing experiences, in fact, helped not just the citizens from one geographical location but also helped in addressing rights/entitlement issues in other locations. For instance, organisers of the public hearing in Rajasthan - which was centered around food security issues - invited officials from Karnataka State (and other States) to attend as observers. Karnataka officials responded to complaints of Rajasthani citizens by streamlining the public distribution system (PDS)²⁸ in their own State, including raising the margins for food traders so that inadequacy of margins could not be used as an excuse for malpractice.²⁹

5. The Value Added of Using Rights-Based Tools:

While comprehensive evaluations of the various UNDP India Access to Information Projects have not been undertaken, there are some important process lessons learnt (both positive and the challenges involved) whilst implementing the HRBAP strategies in the Projects. Quite a few of these lessons have been documented in the in-house UNDP paper that was undertaken as a part of documentation of lessons learned exercise from various Asia Pacific Rights and Justice Initiatives Programme.³⁰

Positive Lessons Learned:

➤ Tapping into the enabling policy environment: A rights-based strategy works best in a scenario where there are enabling policy frameworks in place. The passage of a national RTI (and the various related State Acts that were passed) has created a framework wherein access to information is now a justiciable right. Even before the national-level RTI Bill was passed, UNDP India tapped into the enabling legal policy

²⁶ Ibid. Refer to footnote No. 13.

²⁷ Ibid. Refer to footnote above.

²⁸ The PDS is a Government-run food distribution network that enables the poor to access limited quantities of food at subsidized prices

²⁹ Ibid. Refer to footnote No. 15.

³⁰ Ibid.

framework that existed via the passing of the 2002 Freedom of Information Act and the 9 State-level RTI Acts, and facilitated a process to define its implementing rules. Academics, policy experts and civil society representatives drafted a set of model rules, which were presented to the Government. While the extent to which these model rules informed the actual rules is uncertain, they represented a critical input at a critical time.³¹ Moreover, it was found that mobilising local communities was much easier if a State had already passed the State-level RTI Act. Without such a pre-existing legal environment, many citizens had difficulty conceptualising access to information as a right to which they were entitled.³²

Similarly, UNDP India tapped into the decentralization legislative framework - wherein power is devolved to the lowest levels of Government - to make optimal use of its rights-based strategies, especially those pertaining to the use of IT in enabling access to information. For instance, in some of the sites where the IT-kiosks have been situated, the local *Panchayat* has been used to forward downloaded and filled-in applications of the people to the local appropriate governing body. Various policy legislations on IT that were passed - more importantly, the New Telecom Policy of 1999, Information Technology Act 2000 and the State-level IT policies - also facilitated this process.

➤ *Training public sector officials a key to achieve outcomes:* One of the most important strategies used involved developing capacities of duty-bearers to help enable citizens to access the RTI and the duty-bearers to deliver on their obligations. Developing such capacities, under a demand-supply capacity development programming strategy that used a HRBAP strategy, was key and not only helped build duty-bearers' legal knowledge regarding the RTI but also assisted them in overcoming resistance to new duties/obligations they are now obliged to fulfill under the RTI provisions and in addressing resource deficiencies.³³

➤ *Enlisting participation of public officials essential:* The IT kiosk initiative was successful, in part, because it was a collaborative exercise with a related Government department - more importantly, the Department of Personnel and Training under the Central Government. Such collaboration follows a highly participatory and rights-based framework wherein multi-stakeholder collaboration - especially when it relates to setting up infra structural citizens'-centered goods (like schools, water and sanitation facilities, public toilets) - is imperative to first initiate and then help facilitate the public authorities for sustained upkeep, use and replication on scale of such goods. The responsibility of provisioning of such services is the responsibility of the State and UNDP India - helped by the enabling policy framework in relation to the State and National IT-related laws -collaborated in building these facilities and in training and developing capacities of the citizens to use such facilities, with the expectation that such initiatives will be replicated on scale and sustained by the State.

➤ *Tapping into highly sophisticated civil society capital imperative:* UNDP India was largely complemented in its efforts to take the RTI Campaign to the masses

³¹ Ibid. Refer to footnote above.

³² Ibid.

³³ Ibid.

due to the presence of a very highly sophisticated civil society capital that exists in the country (and which is an important corollary to achieve rights-based outcomes). For instance, during the UNDP-commissioned CARE International (India) RTI Campaign, disseminating information was a significant challenge, given that residents were often illiterate, poor and politically marginalized. But, the social (and at times, informal) networks and relationships that many of the CSOs have built up, led to, in the end, for instance, using such networks (like savings groups that existed in the community) to aid in educating and mobilising the community. Savings groups, in which neighbourhood residents contributed to and drew from a communal fund, represented established informal networks. The high levels of trust and familiarity associated with such groups then made an ideal entry point for larger community mobilisation. Furthermore, because women traditionally play a strong role in the groups, such a strategy ensured their active participation.³⁴

➤ *Using public hearings as a rights-based tool:* The tool of public hearings, as have been documented elsewhere in the India-focused case studies in these volume of case studies, proved once again that they are an effective rights-based tool that can be used for demanding public accountability. They also proved instrumental in empowering poor, vulnerable and marginalized citizens as these hearings enabled them to interface and dialogue with officials on a common platform. Power equations were thus challenged and addressed, to a large extent, through these hearings.

➤ *Tapping into the appropriate funding sources imperative:* A very important corollary to achieving rights-based outcomes that can prove sustainable and viable in the long run is to find appropriate funding sources/donors who are willing to invest and learn in the process of these shared initiatives. In this case, UNDP India could tap into the funds of the Democratic Governance Thematic Trust Fund (DGTTF) – for instance, in the case of public hearings, access to information was used as a tool to address issues relating to food distribution and development projects³⁵ - these funds were extremely helpful, flexible and useful for the multidimensional nature of the various Access to Information initiatives.

Challenges in Implementing the Rights-Based Strategies: Process Lessons Learned

➤ *Mobilization around community-levels far more challenging than mobilization centered on individual-levels:* In a rights framework, it is often a challenge to mobilize a rights unaware community around an issue that can then be taken up by the community at the community level. In the case of the RTI, the importance of accessing information that directly affects an individual's or a business' well being is fairly easy to communicate as there are direct benefits involved (and hence, it is not difficult to conceptualise access to that information as a right to be asserted). More challenging, but potentially more powerful, is convincing individuals of the importance of community-level information, since community members may be reluctant to assert their right to this information because communal projects “do not belong to me”.³⁶ Mobilizing on this issue at the community-level via raising

³⁴ Ibid.

³⁵ Ibid. .

³⁶ Ibid.

awareness (though a hurdle that has been progressively overcome in many locations) is an important step in building community self-awareness and in demanding accountability from the Government and a challenge that UNDP India and its partners face.

➤ *Future access to information initiatives should be more demand-driven and address obstacles facing marginalized sub-groups:* While the setting up of IT kiosks were effective in enabling citizens to access the RTI, the setting up of such kiosks was largely a supply-driven initiative - with the components of the participatory needs assessments, training of volunteers to run the kiosks, training of citizens to use the kiosks and the enhancing of livelihood security through the giving out of franchises to the locals being the capacity development empowerment-related aspects that were incorporated. And it was the developing of such capacities that led to some rights-based outcomes. It has to be acknowledged that for a project to be pro-poor, or to serve the needs of the poorest and most marginalized, careful attention needs to be paid to the complex and multi-layered power relations (relating to caste, traditions, patriarchy, etc) within a target community or group. To access that community through the most visible, the most literate or the vociferous, is often likely to result in strengthening existing power structures that underpin poverty and inequality in a community or region (in the case of the kiosks, it was found that often, even in spite of awareness conducted on the benefits of using the kiosks or training of villagers to access the kiosks, only the literate few in the villages could access the kiosks or had the technical wherewithal to do so.³⁷ There is thus a need to undertake widespread surveys to ascertain specific informational needs of citizens – such a process would shift through the layers of power structures inherent in communities (where the literate or those who are members of local Governments represent the local elite) and ensure a more demand-driven approach and greater participation of the marginalized and vulnerable groups.³⁸

➤ *Gender considerations not addressed to a large extent:* Following from the above, it was seen that the existing power structures in the rural and interior areas led to men using the kiosks to a far greater extent than women. This is totally in violation of a rights-based approach wherein the participation and empowerment of women – who are often the most vulnerable and marginalized – are key to achieve sustainable rights-based outcomes. To overcome this, certain IT kiosks could be earmarked solely for women or special timings adopted when only women could use the equipment. Furthermore, ICT initiatives could be further adapted to better accommodate individuals of limited literacy, through the use of graphic and audio interfaces. Future sites also could incorporate design elements to encourage access by people with disabilities. In addition, while ICT proved a promising intervention, an ideal strategy may include a combination of ICT and more traditional means of accessing information, such as via the medium of community radio, plays and so on.³⁹

³⁷ “From Rhetoric to Reality: Ownership and Participation”, by Hannah Beardon, REFLECT ICTs Project Coordinator. Source: <http://217.206.205.24/Initiatives/ict/resources/rhetoric.htm>

³⁸ Ibid. Refer to footnote above.

³⁹ Ibid. Refer to footnote No. 15.

➤ Use of some rights-based tools are time and resource intensive: Preparations for using rights-based tools like the vehicle of public hearings are both time and resource intensive and at times, even gave rise to conflict. This is reflected in UNDP India's experience with the public hearings that reveals that intensive preparation and pre-hearing community awareness campaigns were critical to achieve the desired outcomes. For instance, UNDP India found that the period for preparing the community and public officials for such an exercise could take upward of eight months. Furthermore, these hearings can demand a high level of technical expertise, as was demonstrated in the Delhi hearing, where engineering experts were called in to scrutinize Government contracts to determine the exact specifications for Government-constructed roads, pumps and waterworks.⁴⁰

➤ Use of some rights-based tools can be conflict-inducive: UNDP-India experienced that the use of some tools that are used to further rights that can be potentially conflict-inducive. An instance of this was the use of unruly political speech and, in some cases, small skirmishes that frequently interrupted one public hearing - these incidents could prove to be a challenge in achieving the desired outcomes. In a rights-based framework, conflict is not to be suppressed or avoided, but managed toward productive ends. Measures must be taken to ensure healthy dialogue while maintaining decorum and public safety and in defusing any antagonism that may alienate the public officials whom the community would like to be more sympathetic to local concerns.⁴¹

⁴⁰ Ibid. Refer to footnote above.

⁴¹ Ibid.

SELECT BIBLIOGRAPHY:

Beardon, Hannah., Paper on “From Rhetoric to Reality: Ownership and Participation”, Action Aid UK. Source:

<http://217.206.205.24/Initiatives/ict/resources/rhetoric.htm>

<http://www.humanrightsinitiative.org> - the official website of the Commonwealth Human Rights Initiative, New Delhi, India.

<http://www.persmin.nic.in/otraining/cainfo.html>

<http://www.privacyinternational.org>

http://www.undp.org.in/programme/Snapshot_2003_2007.doc

http://www.usembassy-mexico.gov/bbf/bfdossier_FOIA.htm

Prased., K.V, 12 May 2005, article on “Right to Information Bill passed”, The Hindu. Source: <http://www.hindu.com/2005/05/12/stories/2005051204340100.htm>

Rottmann, Sigrun., Paper on “Case study: Visit to UNDP IT Kiosk, Orissa”. Source: <http://217.206.205.24/Initiatives/ict/project/country/india/undp-case-study.htm>

Sharma, Pradeep., 2004, Paper on “Civil Society and Right to Information: a Perspective on India’s Experience”, UNDP Oslo Governance Center, The Democratic Governance Fellowship Programme.

Sharma, Pradeep., and Lee, Peter., Paper on “India Case Study Write-Up on Access to Justice by the Poor and Disadvantaged in India: Lessons Learned From Access to Information Initiatives in India”, UNDP India (unpublished).

UNDP ‘Democratic Governance Thematic Trust Fund’ (DGTTF) – 2003: India-Project Documents.

UNDP News, January 2004, Article on “Information Kiosks bring Government services to people’s doorstep: Jan Mitra Heralds the Arrival of Knowledge Economy in Remote Regions of Rajasthan”. Source: <http://www.undp.org.in/UNDPNEWS/Jan-04/j-pg03.htm>

Using Rights-Based Processes towards Building Gender- Sensitive Responses for Women Living with HIV/AIDS

The UNIFEM South Asia Partnership with the
Positive Women Network, India and Centre for
Advocacy and Research in India

7. Using Rights-Based Processes Towards Building Gender-Sensitive Responses for Women Living with HIV/AIDS: The UNIFEM South Asia Partnership with the Positive Women Network, India and Centre for Advocacy and Research in India

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LIST OF ABBREVIATIONS USED:

CBO: Community-Based Organization
CEDAW: Convention on the Elimination of All forms of Discrimination Against Women
CFAR: Center for Advocacy and Research
DOTSP: Directly Observed Treatment Support Program
DRDA: District Rural Development Agency
DWCD: Department of Women and Child Development
FGDs: Focus Group Discussions
GIPA: Greater Involvement of People Living with HIV/AIDS
IEC: Information and Education
ILO: International Labor Organization
INGOs: International Non-governmental Organizations
ISST: Institute of Social Studies Trust
LCHAU: Lawyers Collective HIV/AIDS Unit
MoE: Ministry of Education
MoH: Ministry of Health
MSJE: Ministry of Social Justice and Empowerment
NACP: National AIDS Control Programme
NACO: National AIDS Control Organization
NCW: National Commission for Women
NGOs: Non-governmental Organizations
NEN: North-East Network
NSS: National Service Scheme
OHCHR: Office of the United Nations High Commissioner for Human Rights
PLWHA: People Living With HIV/AIDS
PPTCT: Prevention of Parent To Child Transmission
SAK: Stree Aadhar Kendra
STD: Sexually Transmitted Diseases
STEP: Support to Training–cum-Employment Programs for Women
SWB: Social Welfare Board
TNWDC: Tamil Nadu Women Development Corporation
UN: United Nations
UNDP: United Nations Development Programme
UNFPA: United Nations Population Fund
UNICEF: United Nations Children’s Fund
UNGASS: United Nations General Assembly Special Session on HIV/AIDS
UNIFEM: United Nations Development Fund for Women
UNODC: United Nations Office on Drugs and Crime
UTs: Union Territories
VCTCs: Voluntary Counseling and Testing Centers
WHO: World Health Organization
WLHAs: Women Living with HIV/AIDS

1. Background and Rationale:

Country and Programme Context: “Today, AIDS has a woman’s face.” Kofi A. Annan, United Nations (UN) Secretary- General, 2003.

“It has to be recognized that women are not just infected/affected by HIV; they are agents of change. Their voices must be heard and their leadership invested in.” Kathleen Cravero, Deputy Director, UNAIDS, 2004.

Historically, the turning point in the global war against HIV/AIDS began at the UN Millennium Summit in 2000 when world leaders “committed themselves to halting and beginning to reverse the spread of HIV/AIDS by 2015”². While doing so, they also decided to convene a special session to review and address the problem. By then, the World Health Organization (WHO) had reported that, “by the end of 2000, about 36.1 million men, women and children worldwide would be living with HIV or AIDS. WHO’s forecast for the future was equally dismal - it predicted that 21.8 million would die of the virus by end of 2000 and that the spread of the virus was far more extensive with the numbers of infected people almost 50 % higher than the figure projected in 1991.”³

When the Special Session of the UN General Assembly met in 2001, it stressed: “*Gender equality and the empowerment of women are fundamental elements in the reduction of the vulnerability of women and girls to HIV/AIDS.*” It also established a number of strategies and set down a number of measurable targets seeking to mitigate the growing impact of the virus on women and girls (because the epidemic’s burden on these groups were continuing to grow).

In India, the estimated number of HIV infections for the year 2004 is 5.134 million. In comparison to 2003 estimates, it has been observed that there are 28,000 added infections in 2004. The trends across the country show that there is no galloping HIV epidemic in India as a whole, as no evidence of upsurge in HIV prevalence has been observed in the country. However, there are sub-national epidemics in various parts of the country with the evidence of high prevalence of HIV among both sexually transmitted diseases (STD) clinic attendees and antenatal clinic attendees in 16 sites and among antenatal clinic attendees in 7 sites located in the States of Andhra Pradesh, Maharashtra, Tamil Nadu, Gujarat, Pondicherry, Assam, Bihar, Chattisgarh, Delhi, Haryana, Himachal Pradesh, Kerala, Orissa, Goa, and Manipur. Thus, while overall HIV prevalence is around 0.91% - i.e. less than 1% of the population is infected - the prevalence masks various sub epidemics in various foci in the country based on high prevalence observed in the above-mentioned sentinel sites.⁴

Globally too, there is a steady increase in the overall numbers of positive women from 41% of all people living with HIV/AIDS in 1997 to almost 50% by 2002⁵.

² Special session of the General Assembly on HIV/AIDS. Report of the Secretary –General, February 2001.

³ Ibid. Refer to footnote above.

⁴ http://www.nacoonline.org/facts_hivestimates04.htm

⁵ UNAIDS Report, “*The Global AIDS Epidemic*”, 2004.

Women and young girls are disproportionately vulnerable to HIV. Their physiological susceptibility – at least 2 to 4 times greater than men’s –are compounded by social, cultural, economic and legal forms of discrimination. Dr. Noeleen Heyzer, Executive Director, UNIFEM, observed that: *“Gender Inequality is at the heart of the epidemic”, while adding “we must address power imbalances in every single policy, strategy and programme relating to prevention, treatment and care, if we seriously want to tackle this global challenge. It is not simply a matter of justice and fairness. In this case, gender inequality is fatal.”*

Infection in women and girls is fuelled by:

- Poverty, low status, and unequal economic rights and educational opportunities that can place women and girls at greater risk of sexual exploitation, trafficking and abuse;
- Gender power relations which limit women’s ability to negotiate safe sex or refuse unwanted sex;
- Gender-based violence and sexual exploitation - such as rape and abuse of young women and girls - especially in emergency and conflict situations;
- Older men who often seek younger sexual partners - even in marriage; this age discrepancy can increase a girl’s risk of infection;
- Certain gender norms such as those that encourage men and boys to engage in risky, early or aggressive sexual behavior increase the vulnerability of both men and women;
- Cultural practices that deprive women of a means of protecting themselves from HIV infection, including early and forced marriages⁶.

A study sponsored by UNIFEM in collaboration with select Indian women’s organizations in the year 2000⁷ on the gendered impact of HIV/AIDS with 116 respondents substantiates the above. Of 79 respondents living with HIV, 58 were women – majority of these women in the study sites (the cities of Chennai, Delhi, and Pune) stated that they had no knowledge on sex (or related issues) prior to their marriages. Seeking information about sex was feared, as they would be branded “loose”. Many women gained pertinent information about HIV/AIDS only after they were infected. It was also noted that young men’s knowledge of female sexuality and reproductive health was very poor. Some women respondents shared that they had experienced physical, sexual, and mental violence, including suffering abuse and neglect at the hands of their husbands and their in-laws. Female subjects from Chennai city revealed that they had suffered through beatings, marital rape, forced sex, and mental torture. Almost all the women experienced “blame”, as they were held responsible for their husbands’ infection. Furthermore, most women suggested that they could not re-claim their dowries and jewelry, and lacked knowledge on how to access the legal system. Single-partner positive

⁶ *“Women Meeting the Challenges of HIV/AIDS”*, UNIFEM, UNAIDS, UNFPA, 2004.

⁷ *“Community-based Research: Gender Dimensions of HIV/AIDS in India”*, UNIFEM in collaboration with North-East Network (NEN); Stree Aadhar Kendra (SAK); Initiatives: Women in Development; and, Institute of Social Studies Trust (ISST), 2000.

women within the household bore (and still bear) a greater burden of the epidemic and the economic costs incurred are many a time borne by the women's natal family. In some cases, especially in the cities of Delhi and Pune, the natal family provided the much needed economic support to their daughters and son-in-laws, almost validating an extension of the dowry system⁸. Ironically, it was the family of the infected person that discriminated the most compared to other sections of society.⁹

The same study also threw light on the critical vulnerabilities of positive women in respect of their access to safety and care - a man living with HIV is cared for by his wife or other female members of the family, while a positive married woman may be deserted by her marital family and denied access to inheritance and property. There was a high degree of secrecy involved and in some cases, men did not inform their wives of their sero-status even when they had informed other male members of their families. There was a desire to protect the wife on the one hand and keep the so-called "honor" of the family intact on the other. This was particularly the case where female members of the family (sisters/daughters) were yet to be married. Women who were widowed thus had to face the brunt of dual stigmatization - of widowhood and of being positive. Thus, the study reaffirmed that there is a new site of violation of women's rights and discrimination in the context of HIV/AIDS wherein women are differentially located in the process.¹⁰

Another study undertaken by UNAIDS on stigma, discrimination and denial in India and Uganda also substantiate this strong gender bias.¹¹ It showed that "being outside the structures of power and decision", women are subject to hostility and injustice by families and communities, blamed for the husband's status, rejected by both their marital and natal families, denied a place to stay and even their rightful share to property on the pretext that they will soon be dead.

Another study¹² undertaken by the International Labor Organization (ILO) in India further highlights the adverse economic impact of HIV/AIDS on the family and the trauma arising from stigma, discrimination and ostracism. The study focused on four of the Indian States - Delhi, Maharashtra, Manipur and Tamil Nadu - with high-prevalence. Interviews in the study conducted amongst 292 people - of whom 42 per cent were women - revealed that 74 per cent of the HIV positive women faced huge discrimination, hardships and responsibilities.

However, it must be noted that women living with HIV/AIDS are not just victims; they have demonstrated much resilience and taken on newer roles and duties previously undertaken by their husbands. Some positive people - with the support of voluntary agencies - were (are) gainfully employed as counselors and were (are) networking with

⁸ "Living under a Shadow: Gender and HIV/AIDS in Delhi", Institute of Social Studies Trust, New Delhi.

⁹ Swapna Mazumdar, November 2003, in an article entitled "Undone by HIV-AIDS", published by [indiatogether.org](http://www.indiatogether.org) and can be accessed at <http://www.indiatogether.org/2003/nov/hlt-hiv aids.htm>

¹⁰ Ibid. Refer to footnote No. 7.

¹¹ "HIV/AIDS -related Stigmatization, Discrimination and Denial: Forms, Context and Determinants", UNAIDS, 2000.

¹² The study focused on the socio-economic impacts of HIV/AIDS on infected people and their families, particularly on women and children.

other people living with HIV/AIDS (PLWHAs). In some cases, both women (and men) had (and still have) the courage to challenge discrimination, accept their positive status and provide support to others¹³.

Policy and Legal Framework: Against such a backdrop, India's commitment to tackling HIV/AIDS was effectively demonstrated by the setting up of a high-powered National AIDS Committee in 1986 and the launching of the National AIDS Control Programme (NACP) in 1987 under the auspices of the National AIDS Control Organization (NACO). Dr. S.Y. Quraishi, Special Secretary and NACO Director General, has also expressed concerns about the increasing feminization of the epidemic and encouraged men's roles and increased participation of non-governmental organizations (NGOs) to address it. He mentions that there is a conspiracy of silence surrounding women's health issues and gender needs to be addressed at all levels¹⁴. Thus, State AIDS Cells have been created in all the 32 States and Union Territories (UTs) of the country for the effective implementation and management of the NACP. It should be noted that India is one of the few countries that initiated HIV-prevention activities in the very early stages of the epidemic and the country has maintained its commitment to prevention efforts.

As HIV/AIDS is a multi sector issue, NACO is also facilitating the involvement of various sectors and related Ministries - such as Education, Defense, Labor, Youth Affairs, Steel, Railways, Industry and transport, Rural Development, and Social Justice and Empowerment - to optimize the country's response to AIDS. To ensure sustainability, NACO promotes HIV/AIDS prevention and care activities into the ongoing programmes of the Government.

The UN Theme Group on HIV/AIDS in India has been also very active on this front, working closely with NACO and a wide range of partners; this Group is supported by the Technical Resource Group from across UN agencies. The Theme Group currently has expanded and is co-chaired by the UN Resident Representative and the Government of India. It includes NACO, bilateral donor agencies, some international foundations and the Indian Network for People living with HIV/AIDS (INP+). It works closely with the Government, NGOs and community networks, PLWHAs, the private sector and other partners in generating a well-coordinated and enhanced response to HIV and AIDS¹⁵.

The context of Women's Human Rights: With the launch of the second phase of the NACP (NACP II), NACO noted that the epidemic was moving beyond risk groups to the general population and from urban to rural areas. And that one in every four new cases was a woman. There was also recognition of the fact that women affected and vulnerable to HIV/AIDS face barriers in accessing their legal and human rights. Experience from other parts of the world where the spread of HIV/AIDS has been slowed or halted has shown that paradoxically, protection and promotion of the rights of those infected and

¹³ Ibid. Refer to footnote No. 7.

¹⁴ Excerpted from key remarks made by Dr S.Y.Quraishi at the "Orientation Program on Gender and HIV/AIDS" jointly organized by Department of Women and Child Development (DWCD) and UNIFEM on April 19, 2005.

¹⁵ UNAIDS web site at <http://www.unaids.org>

those most vulnerable to it is the most effective public health strategy. Such a strategy, *inter alia*, calls for the *enactment of a law based on human rights, which reduces stigma and discrimination and enhances access to HIV prevention, testing and treatment services for all*. The enactment of such laws was also espoused under the UN General Assembly Special Session on HIV/AIDS – Declaration of Commitment, 2001 - to which India is a signatory¹⁶.

In India, at an International Policy Makers Conference on HIV/AIDS organized by NACO in New Delhi on 11-12 May 2002, political leadership at the highest level called for the creation of such an enabling environment for HIV prevention and control. To this end, the need for instituting an appropriate rights-based law on HIV/AIDS for the country was also articulated¹⁷.

Against this backdrop, the Lawyers Collective HIV/AIDS Unit (LCHAU) - a group of lawyers working on legal-ethical and human rights issues arising out of HIV/AIDS for several years - was approached by Kapil Sibal (a Member of Parliament) and NACO to draft a law on the subject. They have since had several consultations in 2004 around the country, including with positive networks and women's groups. The involvement of such groups in the drafting of such a law presents an opportunity for ensuring that gender concerns are reflected into the understanding of the epidemic and in the methods, priorities and focus in combating it.

2. The Study of the UNIFEM South Asia Partnership with the Positive Women Network and Centre for Advocacy and Research in Enabling the Building of a Rights-Based Gender Sensitive Response to HIV/AIDS

Case Study/Project Context: As reiterated in the Section 1, global statistics, by 2000, were indicating that women were being disproportionately impacted and this would, in turn, result in reversals in women's empowerment. HIV/AIDS was thus being seen as "*a new site for women's rights violations*"¹⁸. In such a scenario, women's right to life, to information and to development needed to be center-staged. There was need for a gender-sensitive approach to combating HIV/AIDS factoring in women's rights in the context of the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW). As Ms. Chandni Joshi, Regional Programme Director, UNIFEM South Asia Regional Office noted in 2003: "*Women need to play a central role in HIV/AIDS prevention, treatment and care*" because "*they have the experience, insights, skills and expertise and they need to be an integral part of policy and programme formulation.*"¹⁹

UNIFEM worldwide thus makes gender equality and human rights perspectives central to its work on women and HIV/AIDS. In this context, UNIFEM programmes support

¹⁶ *Report of the Consultation with Women's Groups on the Draft Legislation on HIV/AIDS*, 17th –18th April 2004, Agra, Lawyers Collective with support from UNIFEM.

¹⁷ *Ibid.*

¹⁸ Speech of Chandni Joshi, April 2000, UNIFEM.

¹⁹ In the foreword to "*Positive Speaking: Voices of Women living with HIV/AIDS*", published by UNIFEM in collaboration with PWN+ and CFAR, 2003.

women's participation in policy-making on HIV/AIDS; and, builds partnerships with national HIV/AIDS councils; women's groups; and, local, national and international organizations.

Box 1: UNIFEM, HIV/AIDS and Human Rights

UNIFEM spearheads holistic strategies on HIV/AIDS that make clear links to violence against women, feminized poverty, security and women's limited voice in the decisions affecting their lives as follows:

Supporting women's participation: With CEDAW as a reference point, UNIFEM helps develop the capacities of women to take part in policy-making on HIV/AIDS. It supports women seeking to reframe laws and programmes to promote gender equality and reduce stigma.

Building partnerships: To expand the reach of its work, UNIFEM strikes alliances with national HIV/AIDS councils, women's groups, and local, national and international Governmental bodies. It mobilizes activities on gender and HIV/AIDS with partner UN organizations, including UNAIDS and the UN Population Fund (UNFPA), and ensures that women remain high on the HIV/AIDS agenda of the UN system as a whole.

Linking HIV/AIDS and violence: Since violence against women is a major factor fueling the spread of HIV among women, UNIFEM works with women's groups and UN partners to break vicious cycles of physical harm, ill health and disempowerment.

Advocating for gender: UNIFEM regularly produces cutting-edge advocacy materials exploring the gender dimensions of HIV/AIDS, and chronicling the latest data and research²⁰

In June 2001, world leaders at the first General Assembly Special Session on HIV/AIDS had unconditionally acknowledged that: *“Gender equality and empowerment of women are fundamental elements in the reduction of vulnerability of women and girls to HIV/AIDS”. Encouraged by this perspective, “determined” not to reduce gender equality to a “lofty ideal”, and instead to work towards the realization of the practical goal of advancing the women’s human rights, UNIFEM has been facilitating a highly process-oriented intervention rooted in rights-based principles to empower its partners and women’s self-help collectives such as the Positive Women Network (PWN+) ²¹ and their partners and members in India.*

PWN+ is a community-based organization (CBO) that advocates for the rights of women living with HIV/AIDS (WLHAs) in India. It implements its programmes by mobilizing WLHAs, leading them toward self-reliance and sustainability. Their overall goal is to

²⁰ UNIFEM website at <http://www.unifem.org>

²¹ Please note that the terms “Positive Women Network” and PWN+ has been used interchangeably throughout this case study.

improve the quality of life WLHAs by preventing the stigma and isolation that HIV often causes, and by advocating for the rights of such women. With support from NACO, UNIFEM, UNAIDS and other partners, PWN underwent a rights-based journey to “move on from being ‘traumatized individuals’ to an empowered collective”²² (see Box 2 below). Going down the memory lane, Kousalya, the President of the Network recalls: *“In November 1998, when the four of us met and decided to form a self-help group, our first concern was to create much-needed space, where we could freely share experiences and discuss our concerns”*. With gender equality being recognized as a guiding principle in addressing HIV/AIDS, it was imperative that positive women themselves lead the process and become ambassadors of change.

Meanwhile, advocacy groups working from gender and human rights perspective were calling for broader partnerships and solidarity among women’s organizations with a view to addressing the crippling issues of stigma, discrimination and denial being faced by positive women.

Around the same period, NACO was also beginning to see HIV/AIDS as a strongly gendered health, development and social rights issue. Mr. Prasada Rao, former Special Secretary and Project Director of NACO, stressed that in India, no other issue of late had brought gender disparity *“into greater focus than HIV/AIDS”* and added that any attempt to *“address such an enormous problem must follow a bottom-up approach aiming for women’s empowerment.”*²³

Such a role demanded strengthening the collective dynamics of PWN+, through enhancing their legal rights, advocacy, and networking skills, as well as facilitating interactions and dialogue with multiple stakeholders at the national, regional and international levels.

With CEDAW as a reference point, UNIFEM facilitated processes to enhance capacities of women to advocate and empower them on policies and programmes on HIV/AIDS, thereby enabling them to effectively advocate for laws and programmes to promote gender equality and reduce stigma. They could thus *“make appropriate decisions about the virus; learn skills in assertiveness to negotiate safety in their relationships and access information about economic resources to face the challenges that are pushing them into poverty and deprivation.”*²⁴

The processes involved in helping develop such capacities that are rooted in rights-based principles are documented in the following Section.

²² *“Shaping a New Reality- a Vision document of the Positive Women Network”*, PWN+, India, December 2004.

²³ Sixth International Congress on HIV/AIDS in the Asia Pacific- Melbourne- October 2001.

²⁴ *“Gender and HIV/AIDS”*, UNIFEM New York, 2001.

Box 2: A Gender and Rights-Based Journey of the Positive Women Network (PWN+)

In 1998, 18 positive women came together to form the Positive Women Network (PWN+) in the southern Indian State of Tamil Nadu to fight the circumstances that had led to their status.

The impetus that led to the formation of this organization came from P. Kousalya - the present President of PWN+ - who decided to defy social disapproval and go public about the fact that her husband knew about his positive status prior to marriage. Feeling angry and cheated, she filed a case with the local police and sent a petition to the district collector's office. However, there was no support forthcoming for her cause; it was thus that she took the unprecedented step of going to the media with her story - a successful step that made her realize that there were others like her struggling to cope with their newly acquired status of a woman living with HIV/AIDS in the country and who could use the tools of advocacy, campaign and lobbying to bring their issues to public policy domain.

Other members of the network have had traumatic experiences - Rani (not her real name), a trained nurse, was demoted to a low skilled job as "punishment" for her status; Heena, a 27 -year old mother of three, was sent back to her natal home after her status became known. Sara was deprived of her property rights by her in-laws.

Today, PWN+ has over 5000 members in 15 Indian States that are part of a National Network of Women Living with HIV/AIDS that was launched in 2004. They have successfully forged several public-private partnerships, collaborated with diverse stakeholders with support from NACO, INP+, UN agencies, select Government departments and agencies at State and district levels, faith-based organizations, civil society groups and corporate bodies to bring their cause to the forefront and to launch a strong movement to influence public policies and programmes that reflect the cause of positive women in the country.

The objectives of PWN are to address ignorance and harmful attitudes as their greatest enemies and not HIV/AIDS. In this respect, they are creating an enabling environment for WLHAs by de-stigmatizing HIV/AIDS; educating such women and their families in order to increase their awareness of issues that affect them; and, establishing a system of support and referral services and overall empowerment of WLHAs.

3. Process: Various processes that catalyzed the stronger collective formation and empowerment building of positive women in various parts of the country that enabled them to impact upon pro-positive women’s polices include:

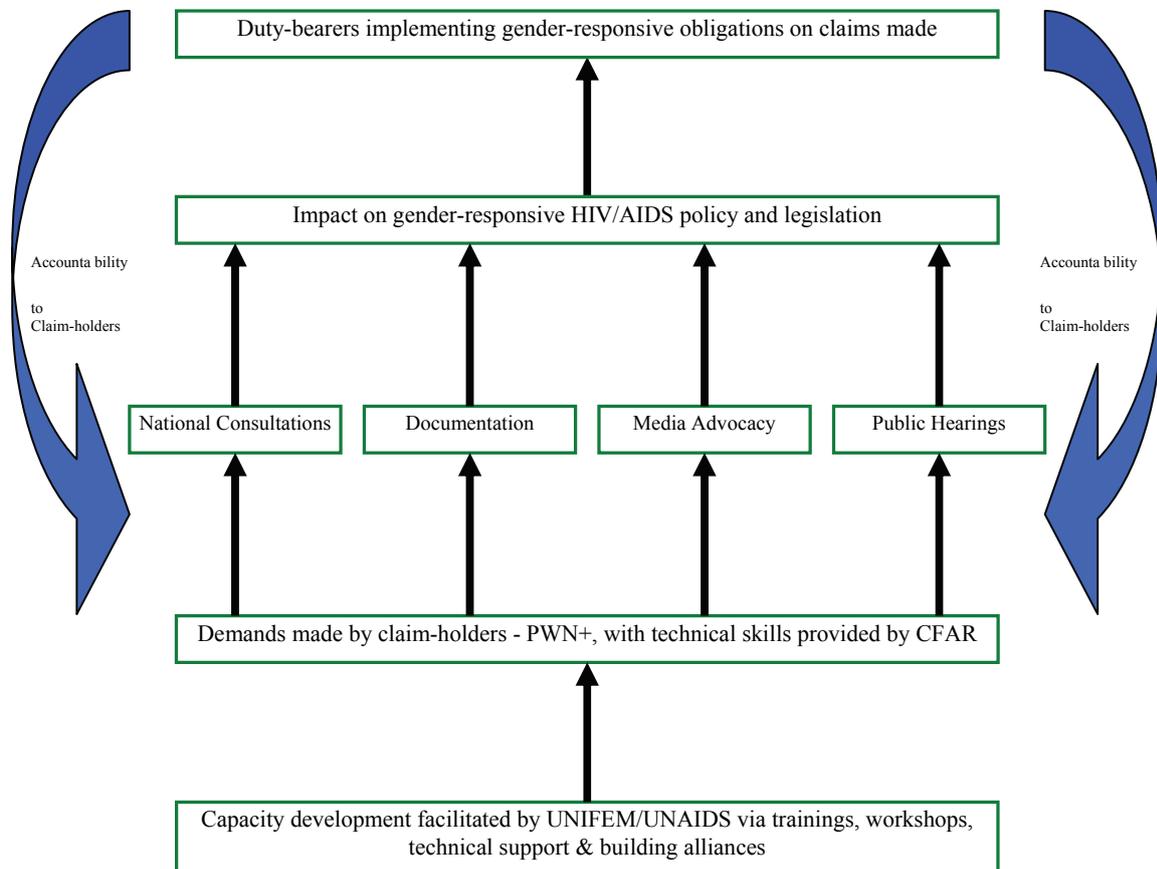


Figure: The Rights-Based Approaches Cycle used by UNIFEM South Asia in partnership with PWN+ and CFAR in eliciting responses on claims made²⁵

Holding the National Consultation to bring together positive women and other stakeholders on a common platform: In 2001, following the UN General Assembly Special Session on HIV/AIDS (UNGASS) event, leading women activists, representing PWN+ and INP+ and other NGOs working on HIV/AIDS from different States came together to plan a National Consultation in close partnership with NACO, UNIFEM and UNAIDS. A series of meaningful processes were facilitated, including broader partnerships and solidarity with women’s organizations. A Steering Committee was established to design and plan the first ever National Consultation of positive women with the objective of bringing together multiple stakeholders; identifying critical issues and actions; and, developing enabling processes and partnerships. An e-net process was

²⁵ By Upala Devi Banerjee.

set into place so that decision-making related to this event was participatory and transparent and supportive of each other.

Titled “Voices and Faces of Positive Women”, the Consultation was based on inclusive principles and sought to break down barriers across those affected by HIV and build wider solidarity. Held in March 2002, in Chennai, the event was “a turning point in integrating many positive women into the process.”²⁶ It provided, for the first time ever, a platform for a hundred or so positive women so that they could, without fear, share their experiences, dialogue as well as learn from others. For many women, this was also the first time that they learnt about International Women’s Day and celebrated it too.

During this process, key gender, legal and human rights issues were prioritized, advocacy skills learnt, and interaction with media determined. The women saw themselves as an effective constituency articulating the need for rights-based programming and skills; demanded actions from their partners; and, found new solidarity as women. This Consultation also helped bring the experiences and situations of positive women into the public arena and helped establish a consensus among the community of positive women and men; it also enabled a move towards collaborative responses, the need to create mechanisms of accountability and galvanized support from policy-making bodies.

The Consultation was significant in that it demonstrated the fact that women’s empowerment could go beyond just facilitating “women’s participation in agendas set by others” to a more rights-based approach that would enable them to recognize and realize the vital principle that to foster women’s own agency, they need to set the agenda, identify supportive processes and actions and implement them by forging strategic and substantive partnerships (see Box 3 below).

Box 3: Commitments to a Rights-Based Response to HIV/AIDS²⁷

The key outcomes of the Consultation were the setting up of several critical commitments and action points rooted in rights-based principles:

- *Right to information on the availability of treatment and affordable drugs that are easily available in urban and rural areas;*
- *Promotion of women –friendly reproductive health services in the public and private sector and building of skills among health care providers, especially among gynecologists on the prevention of Mother to Child Transmission;*
- *Counseling services that are sensitive to the needs of women;*
- *Increase awareness and skills in legal literacy;*
- *Facilitate networking and advocacy with different stakeholders such as the judiciary, law enforcement agencies, and women’s and human rights groups;*
- *Address stigma and discrimination;*
- *Increase access to micro-credit programs and welfare schemes for WLHAs;*

²⁶ Suneeta Dhar, Regional Programme Coordinator, UNIFEM South Asia Regional Office.

²⁷ “Positive Faces and Voices”, Report of the National Consultation of Positive Women, Positive Women Network and UNIFEM, Chennai, 2002.

- Document success stories and life experiences of positive women and establish role models for WLHAs; and,
- Solicit Greater Involvement of People Living with HIV/AIDS (GIPA) – including involving and seeking recommendations from WLHAs in various committees.

The National Consultation also recommended that documentation be undertaken of the rights violations of positive women within the familial and community context and how they were negotiating their strategic interests in the context of heightened vulnerability and risks.

Building partnerships with the Center for Advocacy and Research: Recognizing the need for more of these critical interventions and supportive processes, UNIFEM decided to broker cross-cutting partnerships to enable PWN+ in enhancing their perspectives and competencies. It was also logical that in order to successfully bring issues of positive women to the forefront and campaign for policy changes, PWN+ would need to partner with another women’s organization, preferably one that was well versed in areas relating to knowledge development, advocacy, media content and representation. A strategic alliance between PWN + and another UNIFEM partner - the Center for Advocacy and Research (CFAR) – was thus forged (see Box 4 below).

Box 4: The Center for Advocacy and Research – Supporting a Gendered Response to HIV/AIDS through Research, Advocacy and Lobbying

Since its inception, the CFAR has been committed to mainstreaming the voices of the less privileged through public interest research, and developing and strengthening of public and policy advocacy in areas ranging from reproductive health and women’s empowerment to human rights and preventive strategies on HIV/AIDS.

Members of CFAR have been involved in training and building the communications and advocacy skills of positive networks and organizations; in developing a media tool on gender sensitive reporting on HIV/AIDS in partnership with PWN+ and UNIFEM; and, in providing technical support to this Network in organizing public hearings in collaboration with the National Commission for Women (NCW) - a quasi-Government agency that works on women’s issues in India - in three southern States to advocate on issues of gender and HIV/AIDS and elicit concrete commitments from policy makers and implementers. From a rights-based lens, the work of CFAR and its collaboration with PWN+ through such processes has proved vital in building capacities of positive women to demand and claim rights.

Over the last three years, CFAR has been involved in the strategic documentation of various HIV/AIDS related issues, including school AIDS prevention programs for young people; harm reduction interventions in the north-eastern Indian States; and, the experiences of positive women using a life cycle and rights-based approach. One of the most important documentation, especially from a rights perspective and which has been conducted in collaboration with PWN+ and UNIFEM, has been the study – *“Positive*

*Speaking: Voices of women living with HIV/AIDS*²⁸ - that provides a whole new body of knowledge on not just the experiences, needs and perspectives of 21 positive Indian women but also the experiences, appraisals and assessments of stakeholders who have integral links with people living with HIV/AIDS and the responses to demands made by such women (like the right to live in dignity, without stigma and discrimination or the right to work and a livelihood).

Ensuring the principle of Greater Involvement of People Living with HIV/AIDS:

UNIFEM ensured that the positive women's representatives would be integral to all the work that the agency is undertaking on HIV/AIDS. To advance collective empowerment and leadership of GIPA - especially of positive women as agents of social transformation - UNIFEM also started leveraging platforms and partnerships with Government and NGOs for policy dialogue and capacity development. Thus, partnerships with a wide range of women's organizations around the country with groups such as MARG, Institute of Social Sciences (ISS), the North East Network (NEN), SAHRWARU, Lawyers Collective, women's rights advocates and CEDAW experts were established. Their issues were further resonated by the NCW and select State AIDS Organizations, particularly in the States of Tamil Nadu and Karnataka. It goes to the credit of agency of the positive women that ensured their representation at several regional and international levels where they negotiated their spaces amidst a range of competing issues. Women began to access their rights and started demanding for gender sensitive services in the community as well as sharpened their citizenship identities. They also attempted to influence policies through positive advocacy and constructive partnerships. For instance, PWN+ is a member of the Advisory Committee on HIV/AIDS at UNIFEM; such a membership has provided the space for them to provided valuable inputs into several projects, including the joint project on Gender and HIV/AIDS being undertaken by South Central Railways (Vijayawada Division) and UNIFEM in India.

Documenting the voices of Positive Women: From the onset, UNIFEM identified the documentation of positive women's lives within the women's human rights framework as a pre-requisite for the process. For PWN+, this was an opportunity to not only undertake evidence based advocacy largely based on their lives, but also to learn new skills in research methodology and analysis. The National Advisory Committee for undertaking the study mandated CFAR and PWN to nest the study in the every day realities of WLHAs; engage with different stakeholders; document both the subtle and overt forms of discrimination; and, to include testimonies of WLHAs as well as experiences from other women as well.

CFAR thus undertook an exercise that combined different pedagogic processes of learning, study and research. Workshops were held to enable the women to engage on issues like international human rights instruments (like CEDAW), the rights guaranteed by the Indian Constitution and how the various case laws interpreted these human rights. MARG, a legal advocacy organization undertook legal literacy process with them to so as

²⁸ Ibid. Refer to footnote No. 19.

to enable them to understand their rights and entitlements²⁹. Such capacity development was necessary as having experienced the incongruity between de facto and de jure rights, there was considerable diffidence amongst the women in leveraging such instruments. For instance, take the experience of Kousalya who wanted to file a complaint against her husband who was trying to get married again. “I went to the police station and filed a complaint but to no avail. Then I went to the district collector’s office and submitted a petition, but that was also of no use.”³⁰ Or that of Lakshmi who is separated from her husband but not divorced. “I have approached the courts many times seeking some kind of maintenance and divorce from my husband. The Court has granted judgments in my favor many times, but to no avail. To escape from paying maintenance, my husband wanted to get back to me.”³¹

This collective soul searching enabled the women to hone their skills in conducting self-assessments from a legal and human rights perspective and helped to deepen their convictions about the use of a rights-based framework to collate evidence on violations experienced by them. CFAR also helped them to develop the skills requisite for conducting situational and participatory assessments, which included primary testimonies as well as collective sharing. They had to deal with the issues of ethics and confidentiality and engage with the ever-growing concerns and experiences of WLHAs.

Consequently, CFAR and PWN+ members from the States of Karnataka, Kerala and Tamil Nadu had intensive interactions with positive women in both rural and urban settings, conducted focus group discussions (FGDs) with affected people and those involved with this issue as well as informant interviews with decision-makers and community leaders.

The result was “Positive Speaking: Voices of Women living with HIV/AIDS”, a seminal study that was jointly produced by CFAR, PWN+ and UNIFEM with support from the NCW. Based on their experiences, positive women identified the precise intersection in their lives where vulnerability to HIV/AIDS began and grew - such as inability to continue with schooling, forced to work to augment economic resources of the family, or into early marriages. The stakeholders recognized the complexity of these challenges given the life-cycle continuum of deprivation, discrimination and stigma experienced by the women. Consequently, the compelling learning that has emerged is that unless all stakeholders address the reality of the girls and women’s lives, they cannot reduce women’s vulnerability to HIV/AIDS.

In many ways, the documentation was a rich iterative experience in which some learning got expanded and others got consolidated with the researchers from PWN+ benefiting most from the documentation. The two important learning and insights they gained was that firstly, vulnerability began much before the onset of the virus and consequently, gender discrimination precedes and aggravates their vulnerability to HIV/AIDS. Thus, if

²⁹ For more details – refer to Reports of Legal Literacy Trainings supported by UNIFEM in 2003-04. A draft manual on “Rights of Positive Women in the context of HIV/AIDS” is under preparation.

³⁰ Ibid. Refer to footnote No. 27.

³¹ Ibid. Refer to footnote No. 19.

any rights had to be made non-negotiable, it was via addressing and preventing practices such as early or forced marriage, discontinuation of education and ensuring access to health care and life skill education. Secondly, it was clear that the battle against stigma and discrimination had to be waged at many levels ranging from the “other” to the self. Hence, the environment as a whole had to be addressed.

Engaging with the media on gender and HIV: Developing norms and perspectives: In any rights-based process, a relationship with mass media becomes inevitable. In many instances, PWN+ found the mass media overreacting and further stigmatizing the problem. They not only exposed the injustice and atrocities inflicted against people living with HIV/AIDS but in the process, were highly intrusive (at times, even melodramatic, judgmental and uninformed). Insensitive language and inability to link this concern with other circumstantial deprivations and stress made whatever little representation they got on the media highly problematic and undermined all their efforts to “normalize” the epidemic.

CFAR thus initiated a consultative, participatory process to evolve guidelines and norms to strengthen gender-sensitive reportage on the media. Representatives of PWN+ and the mass media came together to assess and analyze media content and set common standards on what constitutes a sensitive, balanced, unbiased, non-stereotypical, empowering and informed framing of the issue.

Thereafter, CFAR, PWN+ and UNIFEM jointly developed a gender sensitive media tool for print and electronic journalists. Since the objective in creating the tool was to make media practitioners conscious of the links between HIV/AIDS and human rights and gender and to alert them to some of the key sensitivities they must consider while reporting on this sensitive issue, one of the norms that the positive women emphasized on was that: “HIV/AIDS should not be projected as a terminal, incurable disease; nor should women living with HIV be portrayed as passive victims³²”.

The other norm was to caution the media not to create negative associations by constantly linking HIV with behaviors like incest and pedophilia. CFAR also identified norms on confidentiality and consent and clarified how, for instance, a story/article on WLHAs should be framed, using affirmative elements to center-stage the issue and their concerns. Such development of norms and guidelines are in line with a rights-based approach wherein the women could pro-actively engage the media as a public good and use the space to explicitly “change attitudes of discrimination and stigmatization associated with HIV/AIDS to understanding and acceptance”.³³

Creating mechanisms for accountability through policy advocacy and public hearings: Given the strong evidence presented in “Positive Speaking: Voices of Women living with HIV/AIDS”, NCW, at a meeting in August 2004 held a nationwide consultation to find ways by which such stigma and discrimination could be addressed. They also called for

³² “Media Tool for Gender-sensitive Reporting on HIV/AIDS”; CFAR, PWN, UNIFEM, June 2003.

³³ *Guideline 9, HIV/AIDS and Human Rights International Guidelines, Revised Guideline 6, Access to Prevention, Treatment, Care and Support*, OHCHR and UNAIDS, August 2002.

public hearings in order to generate concrete commitments for WLHAs. Public Hearings - attended by decision-makers, Government representatives from the Departments of Health, Education and Social Welfare; Government and private medical professionals; and, NGOs - were subsequently held in the States of Tamil Nadu, Karnataka and Kerala. It must be noted here that, for the first time ever, in the context of HIV/AIDS, public hearings were held to bring together stakeholders in a constructive manner. Under the leadership of NCW, WLHAs deposed at these hearings and spoke of the stigma and discrimination in health and educational settings, denial of property, and discrimination by various members of society.

The official stakeholders responded pro-actively; the hearings thus proved to be an opportunity to mandate decisive action, initiate innovative practices and create an expanded response from other stakeholders. These hearings also helped make a big difference to the work of PWN+ and were now recognized as one of the vital mechanisms for building a gender sensitive response. In Tamil Nadu, it was decided that positive women would be represented on all district hospital committees to ensure that discrimination in health care settings are addressed. The public hearings also discussed how women could be supported in terms of livelihood opportunities. In Namakkal District, trained animators from 288 Self Help Groups or women's collectives are now being used to spread awareness among rural women on their vulnerability to HIV/AIDS. This has encouraged positive women to speak out, deal with social ostracism and community boycott.

In Karnataka, it was decided that the PWN+ would develop the leadership and capacity of positive women in six districts to enable them act as public speakers, health educators and counselors to personalize prevention, care and support messages. This, in turn, sent a positive message to the many WLHAs. Commenting on the training, one woman observed that: "It gave us an opportunity to reflect on our lives and also learn about how others like us cope. We also got to know about Government schemes and programmes for people like us and how we can avail of them".

Strengthening policy commitments and affirmative leadership: With some of these gender-sensitive practices being developed, it became necessary to capture the process and some of the emerging outcomes. UNIFEM further supported CFAR and PWN+ in 2004 to document gender sensitive interventions on the ground for advocacy purposes so as to further consolidate inter-sectoral partnerships and the leadership of positive women at all levels. The responses from the ground showed that a three-pronged approach has been used to address gender discrimination that includes:

- Facilitating the agency of women;
- Mainstreaming and expanding upon women-centered interventions; and
- Scaling up the response by integrating prevention, care and support and provide treatment in public health settings³⁴

³⁴ Report of the *National Consultation on Scaling up Advocacy on Gender and HIV/AIDS*, organized by CFAR with support from UNIFEM, November 24-25, 2005, New Delhi.

Having collated the evidence, CFAR and PWN facilitated a consultation in November 2004 with representatives of women's organizations, the Planning Commission, Department of Women and Child Development (DCWD), Ministry of Social Justice and Empowerment (MSJE), and representatives of some international agencies. Dr Sayeeda Hameed, Member of the Planning Commission stated that such multi-sectoral dialogues were required where stakeholders could learn from each other's practices³⁵.

Scaling up: Policy dialogue to catalyze a multi-sectored response in end- 2004: Despite many breakthroughs and the emergence of a strong collective in the form of PWN+, it became clear that given the magnitude of the problem, it was essential to scale up this initiative. A need was also envisaged to go beyond just collaborating with institutions responsible for controlling and managing HIV/AIDS and to mobilize a multi-sector response, building a nation-wide presence of the Network. This would lead to infusing the positive women with a shared and enhanced vision and renew their resolve and confidence to lead the community in their battle against HIV/AIDS.

To achieve this twofold objective, PWN+, in collaboration with NACO, INP+, CFAR, UNIFEM, UNAIDS, United Nations Children's Fund (UNICEF) and support from United Nations Development Programme (UNDP) and United Nations Office on Drugs and Crime (UNODC) organized a second National Consultation in December 2004. This was an opportune moment for the Network to use the high-profile event to formalize such a Network with a leadership representing as many States as possible. To strengthen the organizational cohesion of the Network, the Consultation was preceded by a "Visioning Exercise" where 120 members representing 15 States re-visited and re-formulated their core objectives, arrived at strategic goals and agreed on practical objectives and activities for the future in partnership with UNIFEM, UNAIDS and UNICEF. The process culminated in a Vision Document - "*Shaping a New Reality*".

Box 5: "Shaping a New Reality": A Vision Document grounded in Rights-Based Principles

The 2004 December National Consultation was momentous in more ways than one. The Vision Statement was clearly articulated and grounded in rights-based principles: "*Our Vision is that women living with HIV/AIDS and their children should have the absolute right to live a life of dignity, in an environment free of stigma and discrimination and that we succeed in mainstreaming our concerns to enable women to access their fundamental constitutional rights, especially the rights to equality, health, education, livelihood, to form associations, enhance participation and to be free from violations and neglect*".

The document is a testimony of the collective struggles and determination of such women to overcome rights violations and to forge a more inclusive future for them³⁶.

³⁵ Ibid. Refer to footnote above.

³⁶ Ibid. Refer to footnote No. 22.

120 representatives of PWN+ and INP+ found themselves in empowering roles, discussing and negotiating with decision-makers and senior officials from the key social Departments/Ministries as well as with the President of the Parliamentary Forum on HIV/AIDS – a very crucial body in India cutting across all party lines. The positive women seized the opportunity to advocate with them a re-examination of their programmes and schemes targeting vulnerable sections of women, from their standpoint and need. They forwarded concrete amendments and changes in norms, criteria and scope of programmes and argued convincingly for the inclusion of positive women to address the whole issue of women’s vulnerability to HIV/AIDS.

The December 2004 Consultation was extremely significant in demonstrating the power of an intervention founded on principles of women’s empowerment, gender equality and human rights. It not only helped sensitized the official stakeholders to the concerns of positive women but also made it possible for many of them to respond decisively and supportively and also to initiate the process of mainstreaming the issues of WLHAs (see Box 6 below). Ms. Mohini Giri, former Chairperson of the NCW and Director – Guild of Service, New Delhi, urged the Government to “*take the partnership with PWN+ seriously and build a meaningful response for women living with HIV/AIDS*”. She stressed on “*the strength and confidence of the women who had successfully traversed limitations of language, hierarchy and stigma and discrimination to come and present their concerns*”. The event witnessed an unprecedented assertion of women’s agency, the emergence of a rights-based dialogue and negotiation and an equally principled response from the policy makers. The Consultation thus revealed the huge potential of a multi-sectored, development response to HIV/AIDS founded on principles such as gender and social equity.

Box 6: Using the National Consultations to Successfully Advocate for Pro-Positive Women’s Policies

A national Government-led initiative entitled “*Support to Training–cum-Employment Programs for Women*” (STEP) is, for instance, attempting to improve the lives of women and young girls by arranging marketing linkages and providing training in non-traditional sectors like computer programming and electronics. But eligibility is restricted to marginalized and asset-less rural women and the urban poor. PWN+ lobbied, at the December 2004 National Consultation, to specifically include a provision for WLHAs in the marginalized category and a modification of the norm of beneficiary selection so that such programmes can reach out to positive women. Many such small but highly significant gains were similarly made with other programs and schemes managed by a range of Ministries, targeting women in different circumstances and locations. The positive women, through these consultations, not only succeeded in center-staging their concerns but also opened up opportunities for future negotiations and collaborations.

Capacity/Role of Duty-bearers in responding to the demands from the Positive Women Network: An effective way in which duty-bearers have sensitively responded to the demands of the claim-holders has been through partnerships, consultations, field visits

and public hearings. They facilitated the participation of WLHAs, ensured their access to programmes and schemes as well as integrated gender responses within the ambit of their programmes. NACO, under the leadership of the present Director General, has also instituted a gender rights and child rights desk to address key concerns.

Monitoring to Ascertain Rights-Based Outcomes: Through the process, regular reflections among the PWN+ have been held and extensive networking and facilitating learning opportunities have been undertaken. This has led to a spiral learning process wherein decision-making is ratified by the group and the collective monitoring process strengthened. Every presentation made by the members of PWN+ enables them to go through this collective monitoring process and seek consensus amongst themselves. Further, as they attend various other events and workshops and partner with other international and national agencies, they pick up new skills and enhance their competencies, which in turn feeds into their own monitoring process.

Close collaboration of all stakeholders in the various events and processes has also enabled the monitoring of the rights-based outcomes. In a way, the learning processes have involved not only PWN+ members but also the UNIFEM team and other UN partners and agencies at various stages.

4. Outcome (Results): Changes that have occurred as the Result of Application of using the Rights-Based Approach:

➤ *The quantum leap of the Network:* One of the most important factors that helped PWN+ emerge as a cohesive force and enabled it to influence policy outcomes, were its collective strength in numbers and the strategic linkages that it forged. From a small group of 18 positive women in 1998 who formed the network, PWN+ has strengthened and grown to launch the National Network of Women Living with HIV/AIDS. This National Network consists of over 5000 members in 15 States. With such an extensive system in place with a large geographical spread, the Network has become a nationally recognized organization that is bringing the issues of positive women to the forefront in the national policy and public arenas.

➤ *Identity and politics of change - From the personal to the political:* Positive women have grown to be more visible in the public eye and their situations are also more openly discussed. Efforts to train and develop the capacities of these women to gain confidence have led them to participate in national and international workshops and meetings related to HIV/AIDS. These women are also pro-actively involved in policy development and program design. Positive women are now on the executive boards of the Maharashtra and Tamil Nadu State AIDS Control Societies, on hospital committees and information and education (IEC) forums.

And it was the PWN+ President who represented all the positive people in the country at the National Parliamentary Forum that was launched in 2003 (this event was attended by over a 1000 parliamentarians and led by the Indian Prime Minister). UNAIDS /UNIFEM also advocated and supported for the PWN+ President to be included in the Global Coalition of Women on HIV/AIDS; she is currently also a McArthur Fellow recipient

and these milestones have enabled her to carry the issues of positive women to the forefront in a more concerted manner. Such participation in public and policy spaces has also enhanced the quality of the leadership of the members of the Network and has led to an increase in their numbers and democratic spaces.

➤ *Learning and enhancing capacities:* The most important and visible factor impacting the lives of positive women is their empowerment through the development of their capacities. This has been reflected through the successes experiences by the Network in influencing gender-sensitive policy changes and laws as well as in accessing basic entitlements and services. On a national level, such outcomes have been achieved through effective collaborations with NACO, UN agencies, international and bilateral agencies and international NGOs (INGOs) and have demonstrated that gendered responses to this virus should not be limited to only health service providers but must also be extended to cover multi-sectoral stakeholders (like work places, schools, colleges etc.).

➤ *Partnerships and collaborations:* Such emerging new partnerships and collaborations that have been forged have had positive outcomes. For instance, in the State of Tamil Nadu, the Network has collaborated with the Tamil Nadu State AIDS Control Society, the National Service Scheme (NSS), the District Rural Development Agency (DRDA), the Tamil Nadu Women Development Corporation (TNWDC), the Social Welfare Board (SWB), Ministry of Education (MoE), Ministry of Health (MoH), District Collectorates, etc. This multi- organizational alliance has resulted in the Tamil Nadu State Government declaring that positive women need to be represented on all district hospital committees to ensure that discrimination in health care settings is abated (and thus eventually eliminated). Trained animators from 288 self-help groups or women's collectives were used to spread awareness among rural women on their vulnerability to HIV/AIDS. Positive women, who have been actively spearheading women-friendly services in Voluntary Counseling and Testing Centers (VCTC) and STD departments in Government hospitals, have succeeded in changing the mindsets of numerous healthcare professionals and in motivating and sensitizing counselors to adopt advisory techniques which are more customized for positive women.

In Karnataka State, Network members acted as resource people in schools, colleges and hospitals and formed partnerships with the Karnataka State AIDS Control Society, Department of Health and Family Welfare, sex workers collectives and with factories, hospitals, schools and colleges. Such partnerships allowed positive women to leverage various programmes and schemes for skill building and the establishment of accessible micro-credit programmes.

The Network, in Kerala, collaborated with VCTCs, Prevention of Parent To Child Transmission (PPTCT) counselors, the State AIDS Control Society, human rights groups, hospitals, colleges and schools and have succeeded in providing anti-retro-viral drugs free of cost to positive people in the State (through the State AIDS Control Society). This is a critical outcome as many people in the State are unable to afford these drugs on a regular basis due to their high prices.

In State of Maharashtra, the Network - through its lobbying and advocacy efforts - has succeeded in initiating several Government-NGO collaborations. The Municipal Corporation in Maharashtra has now given free space to the Network members to provide free services in 6 districts. Collaboration with the National AIDS Research Institute resulted in providing free Clonal Designation (CD4) testing for people living with the virus. Lastly, the lobbying efforts led to the Municipal Corporation's establishment of a center for the Directly Observed Treatment Support Program (DOTSP).

In the State of Gujarat, positive women have exercised some of their most important personal rights – one of which is their right to marry. This was made possible by the Network's consistent effort to create a culture in which even positive people can lead normal lives.

In the north-eastern State of Manipur, Network members have been working with the Government as well as NGOs to provide services to WLHAs. Advocacy and awareness efforts relating to HIV/AIDS have been carried forth through the use of popular media - such as songs and plays - and have received support from several stakeholders in gathering a combined response to combating the virus.

5. The Value Added of Using Rights-Based Programming Strategies:

Positive Lessons Learned:

➤ *Tapping strong civil society networks in India to provide technical skills:* Using the rights-based strategies in the process of claiming and securing rights for positive women was buttressed by the existence of a highly-developed civil society – and more importantly, a strong women's movement - in India. This enabled PWN+ to tap into the technical skills of NGOs like CFAR, Lawyers Collective, MARG, other women activists and of women associated with the rights movement in the country – the result was the emergence of a highly successful collaboration that developed multi-pronged strategies that had rights-based elements entwined in them and that saw these stakeholders working with the positive women to be enablers of change, rather than as mere recipients of service delivery efforts. The Network has also forged partnerships with the women's movement on the draft domestic violence bill, gender training, CEDAW reporting and so on.

➤ *Using the agency of the claim-holders to claim rights:* The rights-based strategies used were successful, in part, due to the efforts of the agency of the claim-holders - the positive women themselves. They demonstrated their leadership and took the initial steps to build a cohesive identity. They also realized that if, they, as the claim-holders, make their own demands (rather than depend on others), they would be in a more advantageous position to claim their rights. This strategy proved to be highly effective and is now considered a model that can be replicated on scale in other countries in the region.

➤ *Using strategic tools such as research, documentation and media advocacy:* Some of the tools used in the process – like documenting the lives of positive women and using such documentation to undertake lobby and advocacy as well as tapping the media

to take the messages of the women forward – proved to be highly effective. Though documentation and use of the media as an effective programming strategy has been often used, such tools assumed even more strategic importance in this context as it helped focus on the gender and humane aspects of the virus in the country. These tools also helped in eliciting a gendered response from the policy-makers to combating the virus, as well as in initiating policies, programmes and mechanisms that has impacted positive women in diverse ways (as has been documented in Section 4).

Challenges in Implementing Rights-Based Programming Strategies: Lessons Learned

Numerous challenges have been encountered along the journey towards empowering positive women and engendering the national response to HIV/AIDS. One of the most important challenge (which is ongoing) includes the need to ensure that HIV/AIDS responses are steeped in the context of larger developmental and women's empowerment agendas. The second important challenge was in enabling the community of positive women - who were invisible to the public eye - as agents of transformation to be able to envision a future for themselves and their sisters around the world and stimulate concrete, effective action with an ever-increasing range of partners. UNIFEM, in partnership with Government and NGO partners and with its wide range of experiences in working with groups of marginalized and vulnerable women worldwide (like survivors of violence and trafficking; home-based workers; tribal and mountain women; and, women in the informal economy) have been able to effectively guide the process and ensure that empowerment is not a meaningless tool but a powerful process of change.

Other challenges include:

➤ *The need to move into systemic gender mainstreaming processes and focus on the supportive role of men:* It is well known that tackling such gender equality issues cannot be dealt with in isolation or in a projectised manner. They have to inform policy, programmes, structures and processes in a cohesive and coordinated manner. Men need to be involved and seen as partners. Towards this end, UNIFEM has facilitated the training of positive women and men as gender advocates. Reflection sessions on how gender intersects with other issues are being undertaken and a new body of knowledge is being created in partnership with NACO and UN partners.

➤ *Institutionalizing gender and rights:* Dr Quaraishi, the present Director General of NACO, has advocated for engendering of the new NACP Phase (the entire NACP III) as well as for instituting a gender rights and child rights desk in NACO to provide ongoing technical assistance. As he has stated: *“The positive networks are integral to our work. We have been engendering GIPA as part of our every day lives”*. However, this will require multi-pronged strategies and the political will of all stakeholders. The movement requires determined implementation and greater accountability, innovative strategies and transformation of mainstream institutions to make gender concerns integral parts of their policies, programmes and practices.

SELECT BIBLIOGRAPHY:

Centre for Advocacy Research, Positive Women Network and UNIFEM, June 2003, “Media Tool for Gender-sensitive Reporting on HIV/AIDS”.

Centre for Advocacy Research and UNIFEM, 2005, Report of the *National Consultation on Scaling up Advocacy on Gender and HIV/AIDS, New Delhi, India*.

<http://www.nacoonline.org>

<http://www.womenandaids@unaids.org>

<http://www.unaids.org>

<http://www.unifem.org>

Institute of Social Studies Trust, “*Living under a Shadow: Gender and HIV/AIDS in Delhi study*”, 2000, New Delhi, India.

Lawyers Collective, *Report of the Consultation with Women’s Groups on the Draft Legislation on HIV/AIDS*, 17th–18th April 2004, Agra, New Delhi, India.

Mazumdar., Swapna, November 2003, article entitled “Undone by HIV-AIDS”, published by [indiatogether.org](http://www.indiatogether.org) and can be accessed at <http://www.indiatogether.org/2003/nov/hlt-hiv aids.htm>

OHCHR and UNAIDS, August 2002, Report on “*Guideline 9, HIV/AIDS and Human Rights International Guidelines, Revised Guideline 6, Access to Prevention, Treatment, Care and Support*”.

Positive Women Network, December 2004, “*Shaping a New Reality: A Vision Document of the Positive Women Network*”, India.

Positive Women Network, Centre for Advocacy Research and UNIFEM, 2003, “*Positive Speaking: Voices of Women living with HIV/AIDS*”.

Positive Women Network and UNIFEM, 2002, Report of the National Consultation of Positive Women, “*Positive Faces and Voices*”, Chennai, India.

Report of the Secretary –General, February 2001, Special Session of the General Assembly on HIV/AIDS.

UNAIDS, 2000, Report “*HIV/AIDS -related Stigmatization, Discrimination and Denial: Forms, Context and Determinants*”, Geneva, Switzerland.

UNAIDS, 2002 Report, “*Keeping the Promise*”, Geneva, Switzerland.

UNAIDS South Asia Inter-Country Team & UNIFEM South Asia Regional Office, August 2004, Report on “*The Gender Dimensions of HIV/AIDS Challenges for South Asia: Extracts from a Regional Scan and South Asian Regional Consultation*”, Geneva, Switzerland.

UNAIDS, 2004, Report, “*The Global AIDS Epidemic*”, Geneva, Switzerland.

UNIFEM in collaboration with North-East Network; Stree Aadhar Kendra; Initiatives: Women in Development; and, Institute of Social Studies Trust, 2000, “*Community Based studies on Gender and HIV/AIDS*”, India.

UNIFEM, 2001, “*Gender and HIV/AIDS*”, New York, United States.

UNIFEM, UNAIDS, UNFPA, 2004, “*Women Meeting the Challenges of HIV/AIDS*”,

**Ensuring Sustainable
Livelihoods - Using Rights-
Based Tools for Implementing
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8. Ensuring Sustainable Livelihoods – Using Rights-Based Tools for Implementing Pro-Small Farmers’ Oriented Policies in Klaten district, Central Java, Indonesia – An OXFAM GB-Indonesia Case Study

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LIST OF ABBREVIATIONS USED:

ASEAN: Association of South East Asian Nations
CAT: Convention Against Torture
CBOs: Community-based Organizations
CEDAW: Convention on the Elimination of Discrimination Against Women
CRC: Convention on the Rights of the Child
CRD: Convention on Racial Discrimination
CSOs: Civil Society Organizations
DfID: Department for International Development
DPRD: Dewan Perwakilan Rakyat Daerah
FKIP: Farmers Forum for Information and Communication
GB: Great Britain
HRBAP: Human Rights-Based Approach to Programming
IMF: International Monetary Fund
INGO: International Non-governmental Organization
JARNOP PP: Jaringan organisasi non per, merintah Pendamping Petani Se-Java
JSA: Jan Swasthya Abhiyan
MDGs: Millennium Development Goals
NCHR: National Commission of Human Rights
NGOs: Non-governmental Organizations
NHRC: National Human Rights Commission
NPAHR: National Plan of Action on Human Rights
OHCHR: Office of the United Nations High Commissioner for Human Rights
PRSP: Poverty Reduction Strategy Paper
ToTs: Training of Trainers
UDHR: Universal Declaration of Human Rights
UN: United Nations
UNDP: United Nations Development Programme
US: United States
VSO: Volunteer Services Overseas
WB: World Bank

Background and Rationale: The Status of Human rights in Indonesia

Country and Programme Context: Indonesia's commitment to the promotion and protection of human rights in the country is derived from *Pancasila* (Five Pillars), notably from the second pillar - "A just and civilized humanity" - as well as relevant articles in the 1945 Constitution which came into being prior to the adoption of the United Nations (UN) Universal Declaration of Human Rights (UDHR) in 1948.

Endeavours to promote and protect human rights of the 230 million strong Indonesian people are based on the principles of indivisibility, equality and recognition to the prevailing national conditions. The indivisibility principle implies that civil, political, economic, social and cultural rights as well as the Right to Development are regarded as integral parts of a whole that cannot be broken up without diminishing each one of the components. This is true whether in the implementation, monitoring or in the evaluation of their implementation. The equality principle requires that there should be balance and harmony between individual and collective rights and between the rights of the individual and his responsibility to the community and nation.

The general framework within which human rights are protected include Decree No. XVII of 1998 on Human Rights, Law No. 39 of 1999 on Human Rights, the National Commission of Human Rights (NCHR), the Government Regulation in Lieu of Law No. 1 of 1999 on Human Rights Courts, the National Plan of Action on Human Rights (NPAHR) 1998-2003, and the 2000 amendment to the 1945 Constitution, which includes a new chapter on human rights.

Policy and Legal Framework: As stated above, the commitment of the Indonesian Government to promote and protect human rights has been demonstrated by, among others, the establishment of the NCHR in 1993 and the Human Rights Courts through the human rights trial act number 26/2000 for the purpose of helping develop a national atmosphere conducive to the exercise of human rights. In line with the recommendation of the 1993 Vienna Declaration and Programme of Action and the outcome of the Second National Workshop on Human Rights held by the Government of Indonesia, the NCHR and the UN on 24-26 October 1994, Indonesia formulated the NPAHR 1998-2003, which consists of concrete steps of what will be conducted at national level in the ensuing five years. Systematic and comprehensive implementation of the Indonesian NPAHR - which is based on the provisions of the Seventh Five-Year Development Plan of the People's Consultative Assembly no.11/MPR/1998 on State General Guidelines - is expected to help promote a culture of respect for human rights.

In addition to the above, the country has acceded to the Convention on Racial Discrimination (CRD), signed and ratified the Convention on the Elimination of Discrimination Against Women (CEDAW) and the Optional Protocol, signed and ratified the Convention Against Torture (CAT) and signed and ratified the Convention on the Rights of the Child (CRC), including the Optional Protocol on the Sale of Children and Children in Armed Conflict.

Since the fall of President Suharto from power and the elimination of the “New Order” in 1998, a series of political and civil reforms have been implemented to build the framework of a liberal democracy. New rules have been instituted for political parties, the electoral system and parliamentary bodies and the Government is making progress in its transition to a more pluralistic and representative democracy. This transition includes a recent decision to reduce the formal political role of the police and military. Yet, while the framework of electoral democracy has been well established, the progress in deepening democracy has been hampered by the slow pace of judicial and military reform. For instance, though the Constitution provides for an independent judiciary; in practice, the Courts remain subject to influence, including by the Executive Branch; this can have far-reaching effects on the ability of disadvantaged/marginalized peoples to access justice.

In the area of attainment of social and economic rights too, the people are facing numerous challenges. Over 37 million people live in extreme poverty and the Government’s capacity to meet the basic rights of citizens is undermined by a crippling debt burden, poor governance, corruption, natural calamities and in fighting civil wars in various parts of the country. Some of the more entrenched political and economic interests have proven resistant to change and the disparity of wealth and opportunity within Indonesian society remains large.² The Government has taken on the Millennium Development Goals (MDGs) challenge, and formulated reasonable poverty frameworks to work toward the Goals. The National Development Program (2000-2004) lays out initiatives for poverty reduction, including provision of services to poor families, support for small and medium enterprises, and a pro-poor social security system. Reports indicate that Indonesia is making good progress toward realising the MDGs, particularly in relation to poverty reduction, education, gender equality and child mortality.³

Yet, this prognosis masks a more complex reality about the state of development in Indonesia. Nationally aggregated statistics fail to capture the degree of underdevelopment among “pockets of poor” and the unevenness of MDG attainment. Although forecasts predict that the goal to reduce poverty to 7.5% will be achieved by 2008 at a national level, this will largely be due to development gains in a few wealthier regions. Most provinces are not expected to reach MDG targets by 2015 and, based on 1993-1999 trends, it is predicted that the least-developed provinces will not have reached these targets by the end of the century. Corruption and poor governance often mean that funds secured for development objectives do little to bring about real and lasting improvements in the equity or rights of the most disadvantaged.⁴

For the large pockets of the country’s poor, many of which depend on the land for their living, social and economic rights are severely compromised and opportunities for control over key aspects of their own welfare are severely restricted. And the same is the case for other vulnerable groups like women and children and people belonging to ethnic minorities. Internal unrest is further resulting in threat to livelihoods,

² <http://www.oneworld.ca/guides/indonesia/development>

³ <http://www.undp.or.id/pubs/IMDG2004/index.asp>

⁴ Ibid. Refer to footnote No. 2.

collapse of farming and fishing markets and structures, governance and environmental destruction.

Human Rights and the Role of Civil Society: Various forms of civil society has existed in Indonesia prior to the arrival of the colonial power/s. Traditional institutions such as the *pesantrens* (the Islamic traditional educational institution), *lumbung desa* (the traditional village cooperatives in Java), *subak* (the traditional water irrigation system in Bali), and religious-based charitable institutions had existed in society and served as institutional bases for building solidarity and social empowerment among the people at the grass-roots level. However, of all forms of civil society present in Indonesia, it is reasonable to concur that non-governmental organizations (NGOs) and civil society organizations (CSOs) have been perhaps the most visible and successful in articulating demands of the people, with varying levels of success.

When the process of modernization took place during the early twentieth century, many social leaders not only adopted the western organizations as a model, but they also envisioned that those traditional institutions could be developed and adjusted to serve their goal of social and cultural transformation. Those leaders - whose social origin were from the middle class (and some of them having availed of a modern educational system) - then played an important role in transforming the society through the establishment of various organizations devoted to implanting new awareness among the subordinate people. These organizations can be seen as the first generation of NGOs in the country.

The second generation of NGOs emerged during the post independent Indonesia, and took its peak under the New Order regime of Suharto.¹³ This generation emerged in response to the accelerated economic development that took place in the late sixties and early seventies. They were mainly supported by new generation of activists (some of those from the previous generation) who adopted the idea of empowerment of the people or at least, minimum State intervention. While coordinating a number of activities ostensibly aimed at "community development" or simply "development," these groups have sought to influence Government policy at the highest levels through grassroots organizing and through limited media campaigns in both the local and international press. It is the efforts of these organizations to achieve a measure of participation in the political decision-making process that "constitute the first signs of societal pluralism in Indonesia's authoritarian political order" since Suharto's rise to power.⁵

Unlike the first generation, the new generation was quite aware that a fundamental change in the paradigm of development is necessary for their movement. It is fair to say that the idea of empowerment of civil society began to be introduced in the mid-eighties amidst the increasing degree of State intervention and control over society on the political realm. The weakness of political institutions had made NGOs an alternative arena for struggle, not only for their activists but also for the students who lost their academic freedom in their campuses under the policy of *Normalisasi Kehidupan Kampus* (the normalization of campus life or in short, NKK).¹⁵ Prohibited

⁵ <http://www.hawaii.edu/cseas/pubs/explore/v2/gordon.html>

from other forms of political involvement, many of these newer NGOs were established by intellectuals and former student activists themselves

As a consequence, efforts were made to broaden the objectives, strategies, and programs of NGOs in line with the demand for fundamental changes in the State and society relations. Many NGOs moved beyond the conventional model of community development and began to look at the redefining institutional roles, emphasizing notions of power sharing between national and local levels as well as popular participation in their action programs, very much in line with certain principles of a rights-based approach (like enlisting participation of various stakeholders in public programs, ensuring accountability of duty-bearers to implementing such programs and so on). Their subject matters for intervention encompass macro social and political issues, including human rights, labor relations, environmental protection, and gender issues in addition to poverty alleviation, health/education provision, etc.

As mentioned above, it was the reorientation of Indonesian NGOs from Government supported development agencies to civil society empowerment that actually transformed the character of State-society relations. Although the domination of the State is unchanged drastically, the room for maneuvers by civil society has gradually broadened. Efforts undertaken by advocacy-oriented NGOs have tried to ensure that people are now capable of articulating and defending their interests vis-à-vis the State with some successes.¹⁶ This is due in part to the fact that these NGOs are not only capable of using their networks to disseminate information - which otherwise remains hidden by the State apparatus - but also mobilizing both moral and political support beyond the local community or even the State boundaries. Over the years, quite a few NGOs have become "established and internationally recognized organizations with regular high level contacts with Government and multilateral development agencies"¹⁷ and have developed both national and international networks through which they could strengthen their bargaining position vis-à-vis the State and enlarge their basis of support beyond State boundaries.⁶ And more importantly, many of these NGOs and CSOs have used a human rights-based approach to programming (HRBAP) in helping poor, marginalized and vulnerable people to laying claims and demanding their rights.

This paper will study one such case wherein poor farmers in Klaten district in Central Java have used right-based approaches to claim sustainable livelihood rights gains. It also examines the role of one NGO – Jaringan organisasi non per, merintah Pendamping Petani Se-Java (JARNOP PP) and its collaboration with a CSO, FKIP (Farmers Forum for Information and Communication) – in empowering such farmers in successfully lobbying for pro-poor farmers' oriented policies that ensured that such livelihood rights were not threatened or marginalized. And it highlights the role of an international NGO (INGO) – OXFAM Great Britain (GB) Indonesia in playing a catalytic capacity development role in supporting the entire process.

⁶ <http://www.infid.be/baliconpapermuhammadhikam.html>

2. The Study of the OXFAM GB Indonesia-supported Project initiated by JARNOP PP/FKIP as a Case Study using Rights-Based Tools

The Right to an Adequate (and Sustainable) Livelihood and its Complimentarity to the Livelihoods Approach: The right to an adequate (and sustainable) livelihood is an integral aspect of any human rights framework. In a way, the rights approach is complementary to the livelihoods approach since they both seek to attain the same goal (say, attainment of capacities like sustainability and empowerment) and look at people as agents of change rather than as passive recipients. Primary focus of a rights approach is to build links between public institutions and civil society so as to increase accountability of such institutions to all citizens. The livelihoods approach, on the other hand, focuses more on the constraints that prevents realisation of people's rights, which is a prerequisite for promoting livelihoods. These rights are not specified in the livelihoods approach which is relatively more positive rather than normative in approach as compared to a rights approach. Obviously, the utility of the two approaches lies in the possibility of blending them and the complementarity that exists can be useful for this purpose. Viewed from this angle, the rights approach can be seen as promoting access to livelihoods as conceptualised by the livelihoods approach. This analysis is also applicable for sustainable livelihoods, which, generally makes explicit the sustainability of the natural resource base as a part and parcel of livelihoods of the poor.⁷

Oxfam GB and the Rights-Based Approach to Livelihoods: Worldwide, OXFAM GB takes a rights approach to addressing the root causes of poverty. OXFAM GB's definition of poverty goes beyond the purely economic to encompass capabilities, powerlessness and inequity. For instance, OXFAM GB's work under the Democracy and Human Rights Programme focuses on 'voice poverty' - the denial of poor women and men's right to influence the decisions that effect their lives. It thus focuses on the Right to be Heard⁸ as an integral aspect in any HRBAP that it undertakes. Through addressing voice poverty via the Right to be Heard, it contributes to its core aim of reducing poverty and suffering in two ways. Firstly, by ending voice poverty, OXFAM GB tackles a key element of what it is to be poor. Secondly, by enabling the voices of the poor to reach and influence policy makers (via voting or by participating in hearings and budgeting exercises), the organization can advocate for policies and practices that impact positively on all other aspects of poverty such as material deprivation. In addressing Democracy and Human Rights, OXFAM GB works with local partners worldwide to strengthen people's rights in specific areas, including rights to access to information, to expression, to association, and other ways that people meaningfully participate in determining their own future. It also works with such partners in the progressive realisation of social and economic rights, such as the Right to Education or the Right to Health. Only by realising these rights can people overcome the factors that cause and exacerbate poverty, and build the skills, resources

⁷ "Rights and Livelihoods", paper by Kazi Ali Toufique, Research Fellow, Bangladesh Institute of Development Studies, Dhaka, Bangladesh, 31 July, 2001.

⁸ Though the Right to be Heard is not a basic human right as defined under the UDHR, the realization of this right can help realize other basic human rights.

and practices that force accountability upon Governments, companies and other institutions (see Box 1).

Box 1: OXFAM Great Britain's work on Democracy and Rights: Incorporating people's Voices

OXFAM GB's work on Democracy and Rights incorporates the voices of the people from the global to the personal spheres, and forms the core of all OXFAM GB's work. In Uganda, for example, OXFAM worked with local partners to influence policy makers, leading to a tripling of Government spending on water and sanitation programmes after it was demonstrated that this area was a key priority for poor people. This was part of the Poverty Reduction Strategy Paper (PRSP) process which has also been implemented in many other poor countries and which has offered limited but increased democratic spaces for OXFAM's partners to lobby for their rights. PRSP has been a major focus of OXFAM's work in the area of Democracy and Human Rights. At the same time, it works to increase the accountability and transparency of these decision makers, in local and national Governments, donor agencies, multilateral agencies such as the World Bank (WB) and International Monetary Fund (IMF) and lastly, the private sector. In Southern Africa, for example, OXFAM GB worked with others to demonstrate how the policies of the WB and IMF in agriculture had made the food crisis far worse, leading to violation of people's rights.⁹

Based on its work on rights, OXFAM GB adopted a Sustainable Livelihoods Approach in the early 1990s as a response to a felt need for a broad framework that could accommodate issues of environmental change together with concerns about globalising markets, deteriorating economic rights, gender and wider social inequality, and the need to strengthen deprived people's participation in the development process. OXFAM GB uses the Sustainable Livelihoods Approach in planning and assessment (of projects and wider programmes) and incorporates it as part of its overall strategic aim. It takes its definition of sustainable livelihoods from Chambers and Conway (1992) that stresses that sustainability needs to be looked at from several perspectives:

- • Economic (e.g. the functioning of markets, adequate credit supply);
- • Social (e.g. building of networks, enabling gender equity);
- • Institutional (e.g. capacity development, access to services and technology, political freedom); and,
- • Ecological (e.g. quality and availability of environmental resources).¹⁰

⁹ http://www.oxfam.org.uk/what_we_do/issues/democracy_rights/introduction.htm

¹⁰ The Department for International Development (DfID) built on this work when developing its own ideas about sustainability.

Under the Sustainable Livelihoods aim, two ‘strategic change objectives’ have been formulated:

1. People living in poverty will achieve food and income security; and,
2. People living in poverty will have access to secure paid employment, labour rights, and improved working conditions.

Since 1993, OXFAM GB has employed the Sustainable Livelihoods Approach both in formulating overall aims and in improving project strategies. In the former area, the approach has helped articulate the need to help deprived people gain better access to and more control over productive resources, strengthen their position in markets, and ensure that these improvements are structural and sustainable rather than temporary. In the latter area, the approach has been used to formulate inclusive and participatory projects and to assess their impact on livelihoods, the environment and social relations¹¹.

It is the former area (and how HRBAP tools were used in this aspect) that will be studied under this case. However, before analyzing the rights-based elements involved, a brief background to the project and OXFAM GB Indonesia country office’s support to JARNOP PP and its collaborating partner, FKIP, is presented in the section below.

Case Study/Project Context: Although agriculture is one of the most important sectors in Indonesia - about 59%¹² of the Indonesian population base their livelihood on this sector – there are a lack of adequate policies and programmes that hampers placing the Indonesian farmer at the center of Indonesia’s agricultural development. Farmers are not given the opportunity to utilize natural resources in an optimal manner. Specific problems related to land include unclear ownership certification, Government-enforced cropping schedules and agricultural practices, and weakening soil fertility that is closely connected to cropping regimes and chemical fertilizer overuse. Water resources are controlled and managed by Government policies; thus, water resources and irrigation systems that were originally built ‘for the farmers’ often end up serving other interests and purposes such as those related to major industrial houses. The imposition and management of ‘water user fees’ and water allocation by sub-district level Governments further exacerbates the problem. Most of these problems are faced by farmers in areas under technical irrigation in various districts in Java, for example, the districts of Karawang and Lakbok Ciamis in West Java and Klaten, Boyolali and Grobogan in Central Java.

Furthermore, farmers themselves often do not have a voice in determining prices for their produce and hence, the purchasing power of farmers remains low. The ‘floor price’ for rice that is determined unilaterally by the Government has never been

¹¹ Background Paper for International Workshop on “Fundamental Rights in the Balance: New Ideas on the Rights to Land, Housing & Property”, Institute of Development Studies, University of Sussex, England, United Kingdom, 16-18 October 2003. Source: www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/polenvnm.doc

¹² From OXFAM GB Indonesia’s workshop presentation at the local-level stakeholder workshop in Jakarta, 14th January 2005.

implemented at the farm level, resulting in farmers receiving a price that is almost always below the so-called 'floor price'. 'Buyers' dealing with farmers are not local cooperatives, but 'appointed' buyers. In other words, cooperatives just sells (expensive) inputs to farmers, but does not buy produce, while traditional middlemen/traders do the buying. Cooperative efforts at the farmers' groups level find that they cannot sell directly to the Logistic Bureau stations due to various regulations.

The scope for farmers to form and participate in farmers' organizations on their own also remains limited; farmers are often forced to join farmer organizations created by the Government. *The result is that no true farmer forums exist to exert influence and control over Government policies affecting farmers; this is further exacerbated by the lack of 'cross-village' farmer networks.* Farmers groups often mostly exist in name only with little actual participation of so-called members. *The lack of farmers to find an adequate forum to participate and have a legitimate voice in policy-making was, in fact, one of the major reasons as to why OXFAM GB Indonesia chose to support the capacity development of JARNOP PP and FKIP to use HRBAP tools.*

Large-scale agricultural programs in Indonesia really began with the introduction of the 'Mass Guidance' (INMAS/BIMAS) programs in 1968. These 'Green Revolution' programs still exist today in one form or another. And these programs still cause the same problems in terms of disempowerment of farmers, dependency on outside/Government inputs, cropping regimes that strain soil fertility, over-application of chemical inputs, disrupted environment due to pesticides and subsequent pest and production problems because the 'old paradigm' of 'technology transfer' still reigns and has not been replaced by farmer-led science at the field level. The 'Gemapalagung' program - a commodities based intensification program- complete with input and technology 'packages' causes tremendous losses for farmers, especially the IP-300 rice-rice-rice system pushed by the Government in some areas and which is nearly always rejected by farmers since it encourages the breeding of rats while diminishing soil fertility.¹³

Finally, the increasing price of imported technology due to the decreasing value of exchange rates against the dollar, combined with subsidy elimination on agricultural inputs and market liberalisation have devastated farmers' livelihood. Poverty incidence in rural areas has increased significantly. Recent statistics shows that more than 53% (or approximately 115 million from total number of 230 million) Indonesian population live on less than \$ 2 per day.

¹³ "Farmers in Indonesia: Escaping the Trap of Injustice", Rahmat Hidayat, Indonesian IPM Farmers Association. Translated from the paper delivered at Seminar and Workshop on "Corporate Farming—Challenge to the 2nd Green Revolution", 30 October - 1 November 2000, at Hotel Yogyakarta, Yogyakarta, Indonesia. Source: http://www.thefieldalliance.org/Documents/Rahmat_farmers_rights.pdf

Stakeholders Involved - The OXFAM GB Indonesia and JARNOP PP/FKIP Partnership: Though the problems faced by poor farmers in Indonesia are immense, a road of opportunity for greater public-State participation emerged with the passing of Law No. 22/1999 on Regional Governance, and Law No. 25/1999 on Fiscal Balance between the Center and the Regions that aims to transform the concept of decentralisation and regional autonomy into reality (see Box 2 below).

Box 2: Facilitating Participation, Equity, Democracy and Justice through Enabling Laws:

The key features of Law 22/1999 are the devolution of a wide range of public service delivery functions to the regions, and the strengthening of the elected regional councils (*Dewan Perwakilan Rakyat Daerah - DPRD*) which received wide-ranging powers to supervise and control the regional administration. The law places regional autonomy on five fundamental principles: democracy; people's participation and empowerment; equity and justice; recognition of the potential and diversity of regions; and, the need to strengthen the regional legislatures. Law No. 25 (1999) on Fiscal Balance between the Center and the Regions aims at empowering and raising regional economic capabilities, generating a financing system for the regions which is "just, proportional, rational, transparent, participatory, accountable and provides certainty", and at realising a funding system that reflects the division of functions (between levels of Government) and which reduces regional funding gaps.

JARNOP PP – already a network of 30 NGOs working in Java with experience on strengthening farmers’ networks in Java and advocating policy reforms both in local and national levels – wanted to exercise this opportunity to encourage farmers’ organizational capacity to influence the policy developmental processes at the district level, especially pertaining to agriculture development and budget allocation priority. It thus facilitated the formation of a partnership with farmers through FKIP. FKIP has a network of around 25 farmers’ groups that comprises of around 300 farmers working in all the 26 sub-districts in Klaten district and was formed in 1999. On a national level, FKIP works in 28 districts in 4 provinces - Central Java, West Java, Yogyakarta and East Java. Since its inception, FKIP has been advocating for fair rice prices, cheaper prices for fertilizers and access to the Government-imposed floor price for rice. The formation of such a partnership which had a strong resource base in the form of strong networks with other stakeholders and institutions provided an ideal opportunity to OXFAM GB Indonesia to support a process for building sustainable livelihood capacities by using HRBAP tools – the organization worldwide was already working on ensuring sustainable livelihoods via using HRBAP (including using the tool of participatory budgeting) and such experiences were tapped while developing this programme. Furthermore, the advocacy successes that JARNOP PP and FKIP had already demonstrated in several sub-districts highlighted the fact that the regional autonomy era in Indonesia has made possible a lawmaking process that seriously engages and involves the public. Hence, it was foreseen that effective pressure from community groups - particularly FKIP and other farmers organizations - could result in influencing local Executive and Legislative Branches of Governments

to make laws that reflect poor farmers' wishes and needs as well as protect their interests.

Objectives of the Project: OXFAM GB Indonesia's support to JARNOP PP would enable a partnership between JARNOP PP and FKIP – to build a farmers' movement through the creation of farmers' organizations that would be capacitated to advocate to claim pro-farmers' policies. It was with the macro objective in mind that OXFAM GB Indonesia started supporting this initiative since 1999. The desired rights-based outcomes include:

- * Reform of agricultural policies and legislation to strengthen the rights of the poor farmers, the landless, women or other marginalized groups;
- * Promoting inclusive policy debates and consultation in relation to drafting of laws and policies that reflect poor farmers' demands and needs;
- * Strengthening organizations that represent the poor or advocate for land and livelihood rights on behalf the poor – community-based organizations (CBOs) and NGOs (in this case, JARNOP PP and FKIP);
- * Instituting arrangements for monitoring of Governmental policies and programmes that are accessible, accountable and transparent;
- * Representation of JARNOP PP and FKIP on various commissions;
- * Ongoing livelihood rights information and awareness campaigns; and,
- * Capacity development of JARNOP PP and FKIP to achieve the above desired outcomes.

Monitoring to Ascertain Rights-Based Outcomes: OXFAM GB has used elements of Chambers and Conway's original Sustainable Livelihoods framework as something of a checklist in project appraisal, planning and review in its Sustainable Livelihoods Programmes.¹⁴ Since 1993, OXFAM GB has trained staff and partner staff from about 12 country programmes in a mixture of what 'sustainable livelihoods' can mean (strongly based on Chambers and Conway framework), the use of checklists borrowed from environmental screening (i.e. an early stage of Environmental Impact Assessment), and participatory approaches to appraisal and project review. These workshops have demonstrated that in order to operationalise the Sustainable Livelihoods Approach, *it is necessary to combine some conceptual analysis with a range of existing project management and analytical tools, including participatory assessments*. The workshop reports were communicated and distributed widely and influenced training and learning in other countries. As a result, new initiatives have been adopted and analysis improved within projects/ programmes.¹⁵

And HRBAP tools have also been integrated in some of its sustainable livelihood programmes, especially in those wherein power equations needed to be altered and

¹⁴ For a more detailed analysis of this framework, please refer to the paper "A brief comparison of the Livelihoods Approaches of the United Kingdom for International Development (DFID), CARE, OXFAM and the United Nations Development Programme (UNDP), Diana Carney with Michael Drinkwater and Tamara Rusinow (CARE), Koos Neefjes (OXFAM) and Samir Wanmali and Naresh Singh (UNDP). Source:

http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/003/X9371e/x9371e11.htm

¹⁵

http://www.careinternational.org.uk/resource_centre/livelihoods/livelihoods_approaches_compared.pdf

policies framed to ensure that poor people could access their rights to land and to a livelihood.

At a macro level, in the OXFAM GB Indonesia-supported JARNOP PP/FKIP initiative, annual participatory reviews and workshops have been held with the stakeholders – members of JARNOP PP and FKIP, women’s groups, and Klaten district officials in charge of agriculture and district development and local planning agencies - to monitor, evaluate project implementation and to design and plan future plans of action. While normal outcomes as a result of such reviews and workshops ensured that relationships with other like-minded networks have been developed and workshops and regular meetings among the members of JARNOP PP, FKIP and other farmer organizations held to monitor the process and progress of the project implementation, there were certain other micro level processes that were incorporated to ensure that rights-based outcomes were derived from project implementation.

For instance, FKIP used Government allocated funds to monitor whether the budget that was directed for agricultural and development of farmers organizations in Klaten district has been used for those stated purposes. JARNOP PP played a catalytic role in ensuring that farmers were equipped with the necessary capacities to undertake the above.

3. Process:

Addressing Power Equations –Strategies Used: As mentioned in Section 2, OXFAM GB uses the Right to be Heard as a necessary corollary to achieve human rights-based outcomes. This is more inherent in projects that aim at changing power equations and achieving desired policy impacts favouring the poor, marginalized and the vulnerable. In the case of JARNOP PP/FKIP too, OXFAM GB Indonesia used principles under the Right to be Heard as integral in achieving the desired outcomes that influenced policy-makers to introduce measures that ensured that poor farmers had access to a framework that would enable them access to a sustainable livelihood

The table below demonstrates how OXFAM GB worldwide uses strategies under the Right to be Heard and the Right to a Sustainable Livelihood to achieve rights-based outcomes:

<i>The Right to Be Heard</i>	<i>Strategies used</i>	<i>Expected Outcomes</i>
Poor and marginalized people will have an effective voice in influencing decisions affecting their lives, will achieve their civil and political rights and will enjoy equal status with others.	Supporting poor people to have the skills, resources and access required to influence Government and institutional policies and practices affecting their lives. Influencing Governments, multilaterals and NGOs to employ practices that allow poor people to participate effectively in the design, implementation and evaluation of the programmes and policies affecting their lives.	Greater aid and budget accountability to poor people in programme areas. <ul style="list-style-type: none"> • Governments actively seek to involve poor people in the development of national poverty reduction strategies and decentralisation plans. • Poor people and civil society groups have the skills and resources to influence Government policies and practices in the interests of poor people.
<i>The Right to a Sustainable Livelihood</i>	<i>Strategies used</i>	<i>Expected Outcomes</i>
People living in poverty will achieve food and income security.	Supporting poor producers to gain access, power and fair prices in markets.	<ul style="list-style-type: none"> • Improved access to markets for selected products by producer groups in programme areas. • Greater influence by poor people on national trade policies and regional/global trade agreements affecting their livelihoods. • Growth in pro-fair trade consumer movement and increased offer of fair trade products in Britain. • Effective civil society engagement on world trade rules and accountability of institutions governing trade rules.¹⁶

To achieve rights-based outcomes (the desired project outcomes have been highlighted in Section 2), OXFAM GB Indonesia realised that developing *capacity* in using HRBAP tools was key for the poor farmers to interface knowledgeably and advocate effectively with policy makers (in this case, district officials). For, it is only when people are empowered to ask questions, seek accountability and claim their rights from duty-bearers can viable changes occur. And rather than they – as an INGO – undertaking such a process, it could be more accepted and hence, more effective if undertaken by a local NGO (as such an agency has more of a closer mass base and relationship with the people). Hence, OXFAM GB Indonesia held workshops and training of trainers (ToTs) to strengthen the capacity of JARNOP PP on various issues including policy advocacy and lobbying skills, participation in policy forums, etc.

¹⁶ <http://www.dfid.gov.uk/pubs/files/oxfam-ppa.pdf>

JARNOP PP then held such workshops and ToTs with FKIP farmers - both men and women – and included training in participatory budgeting (integrating a rights perspective with a good understanding of the mechanics and politics of public expenditure management has potential for advancing understanding of the key question of how a pro-poor focus can be encouraged and fostered in the mainstream of public policy¹⁷), to conduct policy dialogue and in campaign/advocacy skills.

Along with capacity development, other strategies for using HRBAP tools included supporting farmers through regular meetings, discussions, annual and thematic workshops (based on agricultural issues and related problems faced by farmers) as well as consolidation and reflection meetings – these forums served as valuable spaces for farmers to come together to discuss their problems in an atmosphere of trust and solidarity.

Changing Power Equations – Rights-Based Tools Used: Various HRBAP tools were used to change power equations and achieve desired outcomes with the overall macro objective of creating farmers’ organizations that would be recognized as a legitimate force having a voice in lobbying and advocating for pro-poor farmers’ policies as follows:

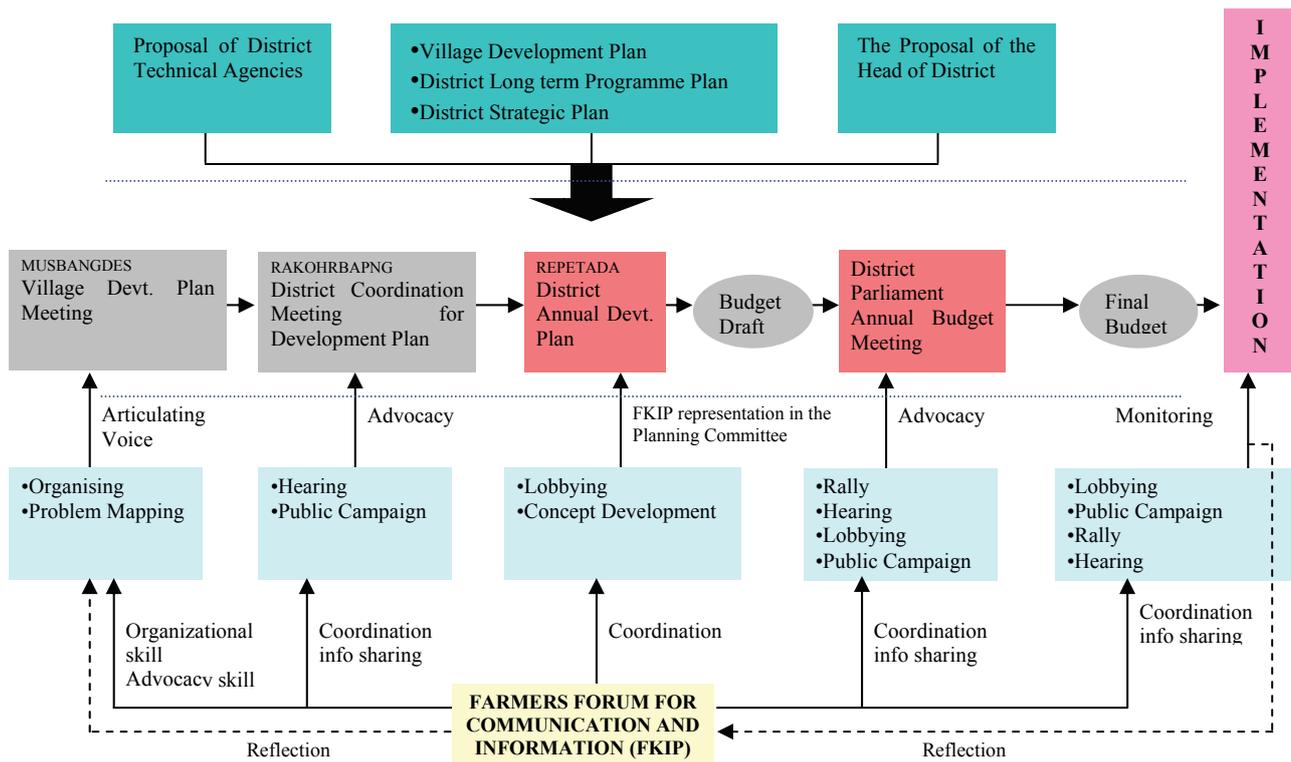
Using the tool of participatory budgeting: As allocation (or lack of) of budgetary resources to specific sectors and ensuring that spending under such sectors is undertaken in a transparent manner is one of the main indicators whereby citizens can hold duty-bearers accountable¹⁸, the poor farmers identified the need to start work on participatory budgeting in collaboration with the district officials. JARNOP PP and FKIP members participated in the process to increase allocations in the District Development Budget Plan and the 2002-2003 District Government Development Budget in Klaten district, the outcomes of which are documented in Section 4. This process of participation in the budgeting process included various strategies and these are highlighted in the figure below:¹⁹

¹⁷ “*What’s behind the Budget? Politics, Rights and Accountability in the Budget Process*”, Andy Norton, Center for Aid and Public Expenditure, Overseas Development Institute, London, and Diane Elson Department of Sociology/Human Rights Center, University of Essex, United Kingdom, June 2002.

¹⁸ There have been various initiatives worldwide on how citizens’ participation in analyzing and formulating national budgets has a strong rights-based component as it demonstrates how such partnerships increases accountability and transparency in public expenditure planning and monitoring. The South African Women’s Budget Initiative is a case in point wherein such elements were strongly visible and wherein “civil society complemented a government’s own capacities and in the process, strengthened policy formulation overall.” (Source: Pg 284, “South Africa: Women Analyse the Budget, and Parliament Heeds the Gaps”, from “*Ownership, Leadership and Transformation: Can we do Better for Capacity Development*”, by Carlos Lopes and Thomas Theisohn, UNDP, 2003.

¹⁹ Ibid. Refer to footnote No.11.

Farmers Forums' interventions in Annual Budgeting Process in Klaten District



➤ *Public hearings as a rights-based tool:* Public hearings have been used as a rights-based tool in various countries to mobilize communities around the specific issues; to create awareness amongst local communities about the various services which the Government at different levels should provide; to document and highlight specific instances of denial of such services; to present testimonies that detail the instances of denial to public officials and expert panelists, and to emphasize the structural deficiencies in facilities underlying such cases; and finally, to present the larger structural deficiencies related to the system, based on surveys and analysis of key issues.

In this case, armed with skills provided through various capacity development initiatives by JARNOP PP (as mentioned in the Section above), farmers started to participate in district parliamentary hearings and district Government hearings to interface at various levels about the problems faced by poor farmers in Central Java (these interfaces at various levels have been highlighted in the figure above). These hearings served as a vital space for policy-makers and the poor farmers to interface, discuss and dialogue and ultimately, to influence budgetary increases in allocation for poor farmers' needs. They also proved invaluable in making duty-bearers accountable to the claim-holders for the implementing of policies and programmes that impact the lives of the farmers and their rights to land and a livelihood – district officials used these forums to provide information on their plans/policies and also to invite farmers to participate in the budgetary planning process. The hearings are very much in line with OXFAM GB's belief that the Right to be Heard is inherent in achieving rights-based outcomes.

➤ *Advocacy and lobbying campaigns:* In addition, various advocacy and lobbying campaigns were conducted by the poor farmers to implement pro-poor

farmers' policies. The various entry points where advocacy and lobbying were used as an HRBAP tool can be captured from the diagram above. The results that such well-targeted campaigns achieved are highlighted in Section 4.

All the above HRBAP tools used are very much in tune with a rights approach wherein more emphasis is placed on the spaces and capacities needed for citizens – in this case, poor farmers - to ask questions of public policy and implementation systems; to participate in such policy making and monitoring of implementation systems; and, the developing of capacity of the disadvantaged to make (and sustain) claims for service outcomes.²⁰

Capacity/Role of Duty-Bearers (including the Judiciary/Related Frameworks) in Addressing Demands: The State (duty-bearer) can act as an enabler of livelihood-related rights by promoting policies, which increase access to them, and by promoting dialogue with social movements and civil society. This is very much in concurrence with the rights approach that states that the State (duty-bearer) has to be responsive to the demands/claims made by citizens and ensure that proper mechanisms be created to enable citizens to participate and put forward their claims (see box No. 3 below).

Box 3: The National Human Rights Commission in India: State Responsiveness to Rights Claims

A very good example of state responsiveness to address claims made by citizens has been the setting up of the National Human Rights Commission (NHRC) as well as the State Human Rights Commissions in India. An autonomous quasi-Government organization, the Commission was set up by the Human Rights Protection Act of 1993 to inquire into human rights violations and make petitions on the behalf of those people whose rights have been violated. In case inquiry by the Commission reveals violations of rights, the Commission can recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons; approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary; and/or, recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary.²¹

The Commission also provides spaces for collaboration with civil society in holding the state accountable in case of non-delivery of certain rights. For instance, the Commission has been holding, in collaboration with the Jan Swasthya Abhiyan (JSA) - a national coalition of health organizations who are a part of the ongoing Right to Food Campaign in India - public hearings in different parts of the country. During these public hearings, selected cases or instances, wherein individuals or groups have suffered denial of right to healthcare, and have not received mandated healthcare from a public health facility, were presented before a panel consisting of the Commission and the State level public health officials. Similarly, violations of health rights due to structural deficiencies in any other health facility were also presented. Union and State Government health officials are expected to respond to these presentations with a description of the steps taken by them to ensure healthcare rights, mechanisms for public monitoring and interaction with civil society organizations. And various steps have already been initiated by State health officials in response to addressing these demands.

The Commission is an ideal and effective vehicle to coordinate such hearings because it has been specifically created by the State to address and inquire into rights violations and to promote dialogue on rights between the State and civil society. It also organizes human rights trainings. And finally, it has been given the mandate and “legal teeth” to address and inquire into violations; failure to comply could result in the Commission taking such cases upto the Supreme Court.

²⁰ Ibid. Refer to footnote No. 14.

²¹ <http://nhrc.nic.in/>

In the case of the farmers in Central Java, the responsiveness (and ensuing solidarity) of the duty-bearers to the demands made by the farmers were enhanced through providing access to the farmers to participate in the district and parliamentary hearings – these provided the vital platforms from where the farmers could dialogue with the duty-bearers and ensure that not only were their demands articulated but also met.

Duty-bearers also invited farmers to participate in the budgeting process - through their participation in the District Development Budget Plan and the District Government Development Budget in Klaten district, the farmers could pressurize the Government to increase funding in the annual budget plan for the agricultural and irrigation sectors.

4. Outcome (Results):

Changes that have Occurred as the Result of Application of using the Rights-Based Approach: The HRBAP tools used resulted in both the members of JARNOP PP and FKIP demonstrating high levels of success in creating a process of participatory decision-making at the local levels that would positively impact the lives of the farmers. And more importantly, this was achieved with participation of all stakeholders – farmers groups, women’s groups and Government officials (both at the district and sub-district levels). Such participation ensured accountability and ownership that would affirm that the gains made would also be sustainable. Some of the successes are highlighted below:

➤ *Increasing of budgetary allocations for agriculture and irrigation sectors, including the creation of farmers’ organizations:* The most important success that has been achieved has been the allocation of resources to create farmers’ organizations that could now legitimately lobby and advocate for pro-poor farmers’ policies. As mentioned elsewhere in this paper, a series of well-targeted advocacy and lobbying campaigns forced the local officials to invite the district level-JARNOP PP and FKIP members to participate in the district and parliamentary hearing sessions and review some policy budget drafts proposed by the local Government. From 2001 to the middle of 2002, the officials invited the members seven times to review the draft budgets relating to agriculture and its related issues. Through such participation in the Klaten District Development Budget Plan and the Klaten District Government Development Budget, the farmers pressurized the Government to increase funding in the District Annual Budget Plan for the agricultural and irrigation sectors by 10% - earlier, the budgetary allocation for the agricultural sector comprised 20% of the overall budget; the process of participatory budgeting led to this allocation to now comprise 30% of the overall budget. Thus, in the case of the 2003 District Government Development Budget, the amount earmarked came to be about Indonesian Rupiahs²² 6.5 million per year. And more importantly, a major proportion of this increase in budget could be used to create farmers’ organizations that could legitimately lobby for fair prices for their produce, fair prices for buying fertilizers, etc. Farmers groups could also use funds from this budget to not only create farmers’

²² 1 US\$ is 9,200 Indonesian Rupiahs at the current exchange rate.

organizations but to also undertake training in the use of fertilizers, organic farming techniques, etc.

In the fiscal year 2005-2006, the farmers are lobbying to increase the allocation by another 4.2 billion Indonesian Rupiahs. And, they are lobbying for some funds in the budget to cover free health and primary education needs. It is also hoped that in the near future, all the 108 farmers groups in Klaten district can benefit from the increase in the budgetary allocations.

➤ Formation of water users groups: Advocacy and lobbying tools achieved other results too - members of JARNOP PP and FKIP in Klaten district lobbied to form water users groups that would monitor the management and use of water resources both at the source and catchment areas²³. A group called the Forum Koordinasi Irigasi Kapilaler Ponggorkanan – Pongok Kiri was formed in December 2004 to undertake the above and included members of FKIP, Government officials and Aqua Danone representatives. FKIP hopes to use this Forum to ensure that farmers also have equal access to water and irrigation facilities.

➤ Highlighting the problem of illegal sand mining: Another advocacy campaign conducted in September 2003 by FKIP focused the attention of local district officials to the problem of illegal sand mining on the slopes of the Merapi Mountain. The campaign was the result of a local investigation conducted by FKIP members; armed with the results of the investigation, the members demonstrated in front of the local Parliament office to pressurise the officials to pass a law that regulates such mining. Dialogue is now continuing on this issue between the officials and FKIP. A local Forum - the Black Hoe Forum - has been formed and consists of local village executives who are entrusted with monitoring the mining on the mountain slopes.

➤ Rescheduling farmers' credit payments: Farmers who had defaulted on their payment of farming credit (due to poverty and unaffordability of fees) have also succeeded in lobbying the local Government to reschedule such payments to better suit their paying capacities.

➤ Monitoring of budgetary allocations made transparent and participatory: The transparency and accountability of the system of budgetary allocation and management is critically important to ensure citizen's access to public goods and services. FKIP was given a sum of around 6.5 million Indonesian Rupiahs from the 2002-2003 District Annual Budget to strengthen institution building - FKIP used some of these funds to actually monitor the usage of allocated funds of the Governmental agricultural programme. In the next fiscal year, FKIP collected its own funds for monitoring the Governmental budgetary allocation and use for agricultural development.

²³ As a result of the government's water privatization policy, multinational firms like Aqua Danone had sole control over the use of water, including permission to bottle water at source and catchment areas. No profits were shared with the local people and the policy also meant that farmers had less water for their farming needs (as water was tapped at the source and catchment areas by Aqua Danone).

Gaining membership of the Agency for Food Security: JARNOP PP acquired a position as a member of the Agency for Food Security. This Agency is a Governmental body and the membership will enable JARNOP PP to be more involved in advocating for pro-poor farmers' livelihood and food security issues at the national policy-making level.

➤ *Developing organic farming techniques:* JARNOP PP and FKIP were successful in lobbying for the development of friendly organic farming techniques that has the backing of the local district officials and that which poor farmers could use - now, the farmers in Klaten district are preparing to launch the organic farming book, based on their experiences and successes in implementing organic farming. Such a method of farming is not only commercially viable but also poses less health hazards.

➤ *Potentiality for replication:* Finally, the success of a process can be measured by its potential for replication. In this case, the outcomes achieved have resulted in replication. Volunteer Services Overseas (VSO), an INGO, is interested in JARNOP PP and FKIP's work in participatory budgeting at the district level and will replicate it in its targeted areas. In the context of this activity, VSO will invite JARNOP PP and FKIP representatives as resource persons in the workshops/trainings in participatory budgeting of VSO partners.

Successes have been replicated elsewhere in Java. In Magelang district in Central Java, since 2002, FKIP, supported by JARNOP PP, are intensively observing the budgeting process and critically giving inputs on the process to the Parliament. Meanwhile, in Purworejo district – also in Central Java - FKIP and JARNOP PP reviewed the draft of the 2004 Development Budget Plan and lobbied the Parliament and head of regency to provide space for them to participate. They have since received 467 million Indonesian Rupiahs to manage the water user groups. In Banjarnegara district in Central Java, JARNOP PP, FKIP and the Banjarnegara Farmers' Union (*Serikat Petani Banjarnegara*) approached the local district budget officials to include them in the next year budgetary planning session. A similar process was conducted in Karang Anyar district by lobbying the Parliament to include them in the next year's budgetary planning exercise. Farmers in Ngawi District in East Java have submitted critical inputs on the Ngawi District Development Budget Plan for the year 2004. In Mojokerto district in East Java, farmers have been reviewing the draft of the Mojokerto District Development Budget Plan for the year 2004. They also advocated the Government to issue regulations on sustainable forest management. And, in Trenggalek district in East Java, JARNOP PP and FKIP submitted their critical inputs on the Trenggalek District Development Budget Plan Draft as well as advocated for the government to focus attention to the potential of natural disasters due to the mining of stony mountains in this area.

5. The Value Added of Using Rights-Based Tools:

Positive Lessons Learned

➤ Facilitating the principles of participation, accountability and sustainability: The rights- based approaches used in this project support the legitimacy of key livelihoods principles including freedom, equality, well-being, participation, accountability and sustainability (Moser, Norton, Conway, Ferguson and Vizard).²⁴ At the same time, the approaches used are also in line with the various Conventions that provide justification for the claim to secure and sustainable livelihood conditions, involving access to relevant natural, physical, human, financial, social, and political assets.²⁵

In this case, using HRBAP tools empowered the poor farmers to lay claim to their rights through dialogue that ensured and enabled their participation in policy-formulation. And such participation ensured a form of legitimacy (through the medium of creation of farmers' organizations through the budgetary increases) that enabled claim-holders to hold duty-bearers not only accountable if they reneged on their duties (via monitoring of the budgetary allocations) but also ensured transparency of the process (as farmers could use some funds to monitor whether the district officials are fulfilling their obligations, in this case, whether funds have been allocated and properly spent). Such participation also enabled the creation of a process that was sustainable (as local ownership was created through participation in hearings and in the budgeting (and the monitoring of the) process.

➤ Empowering communities through capacity development: HRBAP tools enhances capacity for making livelihoods claims that involves supporting: access to information; group solidarity; skills development; linking to allies for advocacy work; and, access to independent regulatory institutions capable of assessing competing claims.²⁶

Following from the above, building up of such capacities enlisted stakeholder participation in the form of hearings and participatory budgeting and ensured that the gains made were not only economically viable but also sustainable and justiciable (farmers can go to district Courts and file class action suits if, for instance, the funds allocated for agricultural development have not been properly used). In one instance, farmers, alongwith JARNOP PP members, have gone to the constitutional court to lobby for an individual judicial review of the Government-introduced water privatization policy. Such access to Courts also demanded and ensured accountability but also transparency of the budgetary allocation and use process.

²⁴ "To Claim our Rights: Livelihood Security, Human Rights and Sustainable Development", Caroline O.N. Moser; Andy Norton; Tim Conway; Clare Ferguson; Poly Vizard, 2001. Source: http://www.livelihoods.org/static/cmoyer_NN130.html

²⁵ Ibid. Refer to footnote No. 23 above.

²⁶ Ibid. Refer to footnote No. 23.

The rights-based approach helped OXFAM GB's ability to target truly poor and vulnerable households in its programmes, yet building on those households' existing abilities (capacities) and activities rather than on their resource needs. This ensured that the gains made in terms of policy changes would prove to be sustainable and viable to the farmers.

➤ *The value-added of having a catalyst:* The HRBAP tools used has also verified what has been often a underlying principle all along – that a strong civil society organization/ donor/ social capital is imperative to build capacities of hitherto rights unaware people to claim their rights and to achieve desired outcomes. In this case, OXFAM GB/Indonesia was the catalyst that came in with the requisite experience in developing rights-based strategies (like strategies under the Right to be Heard and the Right to Sustainable Livelihood) and using tools (like participatory hearings and budgeting). It thus helped develop the technical capacities of JARNOP PP, who in turn developed the capacities of FKIP to adopt HRBAP to achieve outcomes.

➤ *Enabling access to policies and legislative frameworks:* Also, such approaches can not only enable access to positive policies and legislative frameworks (it is however imperative that such mechanisms already are in place) but also help use such policies and frameworks to achieve positive outcomes that are rights-based. In this case, the policy of decentralization adopted by the Indonesian Government, accompanied by the passing of Law No. 22/1999 on Regional Governance, and Law No. 25/1999 on Fiscal Balance between the Center and the Regions helped transform the concept of decentralisation and regional autonomy into reality. JARNOP PP and FKIP could successfully use the enabling mechanisms under these two laws to lay claims to their demands and achieve outcomes that were rights-based.

➤ *Laying a base of mutual trust and cooperation to achieve viable and sustainable outcomes:* Rights-based approaches can achieve desired outcomes by laying a foundation of mutual trust and solidarity for the cause. In this case, district Government officials were successfully co-opted into the process through the efforts of JARNOP PP and FKIP – members employed both inward and outward lobbying tactics to build such a foundation. Inward lobbying through participation in the budgeting process and parliamentary hearings and outward lobbying through advocacy campaigns that was built on a mass support base ensured that the Government would extend all cooperation to JARNOP PP and FKIP to achieve sustainable livelihood outcomes. For instance, it was the district officials who educated the farmers on the new laws relating to district level decentralized governance. The solidarity has now extended to the Klaten District Development Office offering a room in their office premises wherein policies on participatory developmental planning are discussed and drafted in collaboration with JARNOP PP and FKIP members (as well as with some other CSO groups). And district officials are planning to start a pilot project in 10 Klaten district villages wherein the selected village members will be invited in policy planning in regard to budgetary allocations.

Challenges in Implementing the Rights-Based Approach: Lessons Learned

Though JARNOP PP and FKIP have achieved remarkable successes, it is clear that there are several internal and external constraints and challenges that hamper the full realization of their capacities in not only using HRBAP tools but by using HRBAP. These constraints and challenges are being faced by civil society in varying degrees across the country and some important lessons can be gleaned from them as follows:

Internal Constraints and Challenges:

➤ *Levels of literacy and capacity a pre-requisite for using rights-based approaches:* The most important challenge in using a HRBAP relates to a minimum level of literacy and capacities need to achieve outcomes. At a minimum level, some levels of literacy can help accelerate meaningful participation in, for instance, Government meetings (as many district Government officials in Kalten district were using slide presentations to educate the farmers about the laws and what the entry points for the farmers to engage in participation could be, etc). Moreover, the time-consuming nature of participation in such HRBAP processes (as have been used in this case) often means that poor farmers do not have the necessary time/capacity to devote to such a process (as they are more involved in meeting their daily needs in terms of securing access to food, water, land, etc). This constraint can be a major challenge while using HRBAP tools.

➤ *Lack of coherence of a rights-based ideology:* Another constraint on a macro level relates to Indonesian NGOs being still unable to establish a coherence regarding rights-based ideology, which can serve as a common platform in the empowerment of civil society. This lack of a coherent ideology has made it difficult for Indonesian NGOs to build strong networks and organizations through which a rights-based movement can be developed.

As of now, most of the rights-based work that are based on the principles of sustainability (without challenging the existing State-civil society status quo) have been undertaken by INGOs like - OXFAM GB - that have provided technical skills to using a HRBAP in local contexts and who have played the role of a catalyst. Although it may be true that there has been a common view shared by NGOs regarding the State-society relations - in which the former should not dominate the latter – the challenge of using HRBAP remains in altering the status quo by activists in such a way that it does not only become either a slogan or a rhetorical (and threatening) statement.

➤ *Lack of adequate social capital:* In addition to ideological constraints, there has been also the lack of adequate social capital development among the Indonesian NGOs. The proliferation of NGOs in Indonesia for the last fifteen years has been spectacular, particularly in big cities such as Jakarta, Surabaya, Yogyakarta, Bandung, Medan, etc. Even in smaller district towns, there are smaller NGOs who engage in community development programs and advocacy oriented work. Quantitatively, Indonesia has one of the largest presences of NGOs amongst not only the Association

of South East Asian Nations (ASEAN) but even amongst Asian countries on the whole. And yet, the capacity of those NGOs in building social capital remains low, which in turn affects their ability to significantly transform the balance of power equations between the State and society (especially when it relates to marginalized and disadvantaged people).

The poverty of social capital within the Indonesian NGOs has also negatively affected their relationship with other elements of civil society such as social and religious organizations as well as intellectuals. Suspicions from many religious leaders that NGOs are agencies of foreign forces are still rampant – and this has been highlighted very strongly in the recent relief and rehabilitation efforts in the aftermath of the December 2004 tsunami in Aceh province (wherein some religious groups viewed western aid with suspicion). The challenge lies in bringing a strong and like-minded civil society together, without which no demands or claims can be made on the State.

External Constraints and Challenges:

➤ Limitations of using a rights approach within the framework of a State bureaucracy: The State bureaucracy poses a threat to NGOs because it has been used in the past to control them in the forms of regulatory measures and limitations to NGOs operations. Even though the State power has been reduced substantially following the collapse of the New Order, it remains to be seen whether the NGOs are able to recover and expand their activities in the near future. And most of these limitations will be more difficult to surmount when a rights approach is used – as such approaches often challenge power equations and try to ensure that the most poor, marginalized and vulnerable have a voice in decisions that impact their lives.

One of the related constraints is also the fact that many regulations aimed at limiting social organizations have not been revoked. This means that NGOs are still vulnerable to the State intervention once the latter is fully consolidated. Clearly, the main challenge of NGOs in this respect is to pressure the current regime to revoke those regulations, including the ones relating to Social Organizations) No. 8/1985, PP (Government Regulation) No. 18/1986, and *Instruksi Mendagri* (Ministerial Instruction) No. 8/1990.

➤ Adequate budgetary allocations often not made available: On a macro level, other pressing “priorities” like a higher allocation towards a defense budget by the Government as well as diversion of funds in cases of emergencies like a natural disaster, etc. means that Government does not often have the necessary funds to allocate towards basic human needs like health, education and livelihood issues. The challenge lies in using rights-based strategies in the right manner to pressurize the Government by using the right pressure techniques in a non-confrontationist manner and lay claims on access to such rights. Again, this requires a high level of capacity and resources (both human and material).

➤ Limited availability of funding for rights-based work: A major external constraint relates to funding for rights-based programming. As of now, Indonesian NGOs depend largely on foreign funds to implement programs, either it be rights-

based or otherwise. Post September 11, 2001, such funding to Indonesian NGOs, especially from the United States (US), has been severely constrained. For instance, the Patriots Act in the US now requires US-based donors to divulge information on each and every project to which funding is or is planned to be given. It has become obvious that such restrictions will curtail or limit funding on any future rights-based programming in the country.

SELECT BIBLIOGRAPHY:

Background Paper for International Workshop on “Fundamental Rights in the Balance: New Ideas on the Rights to Land, Housing & Property”, Institute of Development Studies, University of Sussex, England, United Kingdom, 16-18 October 2003. Source:

www.oxfam.org.uk/what_we_do/issues/livelihoods/landrights/downloads/polenvnm.doc

Carney, Diana., with Drinkwater, Micheal., and Rusinow, Tamara., (CARE), Neefjes, Koos., (OXFAM) and Wanmali, Samir., and Singh, Naresh., (UNDP), paper on “A brief comparison of the Livelihoods Approaches of the United Kingdom for International Development (DfID), CARE, OXFAM and UNDP. Source: http://www.fao.org/documents/show_cdr.asp?url_file=/docrep/003/X9371e/x9371e11.htm

Hidayat., Rahmat, “Farmers in Indonesia: Escaping the Trap of Injustice”, Indonesian IPM Farmers Association. Translated from the paper delivered at Seminar and Workshop on “Corporate Farming—Challenge to the 2nd Green Revolution, 30 October - 1 November 2000, at Hotel Yogyakarta, Yogyakarta, Indonesia. Source: http://www.thefieldalliance.org/Documents/Rahmat_farmers_rights.pdf

http://www.careinternational.org.uk/resource_centre/livelihoods/livelihoods_approaches_compared.pdf

<http://www.dfid.gov.uk/pubs/files/oxfam-ppa.pdf>

<http://www.hawaii.edu/cseas/pubs/explore/v2/gordon.html>

<http://www.infid.be/baliconfpapermuhammadhikam.html>

<http://nhrc.nic.in/>

<http://www.oneworld.ca/guides/indonesia/development>

http://www.oxfam.org.uk/what_we_do/issues/democracy_rights/introduction.htm

<http://www.undp.or.id/pubs/IMDG2004/index.asp>

Lopes, Carlos., and Theisohn, Thomas., 2003, *Ownership, Leadership and Transformation: Can we do Better for Capacity Development*, UNDP, Earthscan Publications Ltd, London and Sterling, Virginia, USA.

Moser, ON Caroline., Norton, Andy., Conway, Tim., Ferguson, Clare., and Vizard, Poly., 2001, *To Claim our Rights: Livelihood Security, Human Rights and Sustainable Development*.

Norton, Andy., and Elson, Diane., June 2002, *What's behind the Budget? Politics, Rights and Accountability in the Budget Process*, Center for Aid and Public Expenditure, Overseas Development Institute, London, and Department of Sociology/Human Rights Center, University of Essex, England, United Kingdom.

Toufique, Ali Kazi., 31 July 2001, "Rights and Livelihoods", a paper produced as Research Fellow, Bangladesh Institute of Development Studies, Dhaka, Bangladesh.

United Nations Development Programme Indonesia

Strengthening Access to Justice and the Rule of
Law in Conflict-Affected Provinces: Process
Lessons Learned while Designing a Rights-
Based Approach to Programming

9. United Nations Development Programme Indonesia: Strengthening Access to Justice and the Rule of Law in Conflict-Affected Provinces: Process Lessons Learned while Designing a Rights-Based Approach to Programming

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LIST OF ABBREVIATIONS USED:

BAPPENAS: Indonesia's National Development Planning Agency

DGTTF: Democratic Governance Thematic Trust Fund

FGDs: Focus Group Discussions

GB: Great Britain

HRBAP: Human Rights-Based Approach to Programming

MDGs: Millennium Development Goals

NGOs: Non-governmental Organizations

OHCHR: Office of the United Nations High Commissioner for Human Rights

PCGs: Provincial Consultative Groups

PSPK: Center for Village and Regional Studies

SURF: Sub-Regional Facility

UDHR: Universal Declaration of Human Rights

UNDP: United Nations Development Programme

UNVs: United Nations Volunteers

1. Background and Rationale:

Access to Justice in Indonesia - Country and Programme Context: The Indonesian justice system is currently facing a number of challenges. While the reform era has brought new opportunities for the country to develop a more equitable and transparent justice system, many key problems persist. The formal justice system - consisting of the courts, police, Attorney General's Office, the attendant public prosecution service, the special commissions and the private sector legal professions - are each important partners to the legal reform process that require upgrading and improvement, especially if marginalized and disadvantaged groups of people are to have recourse to fair and equitable access to justice. Entrenched poverty across the archipelago further complicates this setting, leaving judges, court officials, police and other law enforcement officials open to manipulation and corruption. Furthermore, areas of ongoing social conflict serve to exacerbate deficiencies in Indonesia's judicial system, as many citizens feel that local violence destroys any opportunity for free and fair dispute resolution, while others contend that violence is their only recourse/option.

Each of these political, economic and social issues presents a major challenge to Indonesia's justice system. Thus, improving access to justice for all Indonesian citizens is an essential precondition for sustained human development and to help raise people out of poverty.

In Indonesia, justice is meted out through a range of channels. Traditional (*adat*) justice systems remain the central source of dispute resolution for many. The informal, community-based mediation, negotiation and reconciliation methods that have marked Indonesian *adat* systems have historically played a central role in meting out justice to many citizens. The *adat* mechanisms cannot, however, always provide the most balanced, rights-based approach to dispute resolution, wherein citizens can claim access to justice to reconcile disputes as a matter of their right. Indeed for many, traditional norms serve to bolster local biases and prejudices without adequate checks and balances. Women in particular, under such systems, frequently fail to secure the fair and impartial consideration required for lasting dispute resolution.

Strengthening the formal justice system is thus a critical component to Indonesia's reform process and to improving access to justice for all citizens beyond local remedies. The Government of Indonesia is taking important steps to boost national justice institutions through such processes as hosting the National Law Summit, setting up the National Action Plan on Human Rights, and via the establishment of new institutions such as the Judicial Commission and the Anti-Corruption Commission. It is hoped that through work with both the traditional *adat* mechanisms and such formal justice systems as mentioned above, Indonesian citizens would be guaranteed access to better, more equitable dispute resolution mechanisms.

Policy and Legal Framework: The policy and legal framework and the status of (and access to) rights of disadvantaged and marginalized groups of people in the country have been discussed at length in the other paper on Indonesia – “Ensuring Sustainable Livelihoods – Using Rights-Based Tools for Implementing Pro-Small Farmers' Oriented Policies in Klaten district, Central Java, Indonesia – An OXFAM Great

Britain (GB) -Indonesia Case Study” - and which is included in this volume of case studies.

Access to various Human Rights Issues under the Justice Framework: The following provides a brief overview of some of the key justice challenges in Indonesia, which are to be addressed if disadvantaged and marginalized groups are to access justice in a fair, equitable and timely manner.

- As mentioned elsewhere in the paper, the first challenge relates to the *entrenched corruption and lack of accountability and transparency of the key justice systems* in the country in delivering justice. Though the Constitution provides for an independent judiciary, the courts, in practice, remain subject to influence, including by the Executive branch - this can have far-reaching effects on the ability of disadvantaged/marginalized peoples to access justice.
- Systemic challenges from within the judicial system that hampers lack of access to justice are further exacerbated by prevailing *social and cultural norms and these have an overarching impact, especially on vulnerable groups like women and ethnic minorities*. For instance, even though women and men share the same literacy rates, go through the same mean years of schooling and comprise roughly an equal proportion of the labor force, women and men do not share equal rights in Indonesia. In general, women do not share equal access to property and land rights and are rarely seen on par with their male counterparts under the *adat* laws. In conflict situations, women are frequently the targets of violent crime and exploitation.
- Moreover, a *general lack of access to economic rights and to other entitlements* -, such as access to land, water and property rights as well as disputes arising out of environmental and natural disasters - have proven to be a catalyst for numerous disputes and conflicts across Indonesia. Lack of clear regulations and laws, complications arising from the dual use of traditional and formal justice systems, as well as frequent corruption has made access to such entitlements a central issue of concern.
- The Government of Indonesia, has, in recent years, moved towards devolving power to the provinces, under an increasingly *decentralized framework*. This shift of power downwards to the provinces, though a welcome development (especially under a rights-based framework, where leadership and governance decisions are handled locally) has led to a new set of challenges in ensuring that disputes are handled fairly. *The United Nations Development Programme (UNDP) Indonesia-initiated Access to Justice project (which is the subject of study in this paper) will thus be working in some of the areas most affected by the move towards a decentralized Government, analyzing the effects of these changes and working with local partners to ensure that key local justice issues are not neglected in this shift of power.*

Understanding the above-mentioned challenges and how they relate to each other is the first step in the process towards developing an effective programme that works to improve citizen's access to justice. Such challenges can be more effectively dealt with if citizens are well capacitated to demand and receive access to justice from both the traditional and formal justice systems as a matter of right.

UNDP Indonesia, in partnership with Indonesia's National Development Planning Agency (BAPPENAS) and the Centre for Village and Regional Studies at Gadjah Mada University (PSPK), is currently implementing a project entitled 'Strengthening Access to Justice and the Rule of Law'. This paper looks at how this project: i) works towards building a programming approach that is rights-based and that can more effectively develop such capacities of disadvantaged and marginalized communities (especially those who have been exposed to conflict situations) to confront the deficiencies in the basic law systems; ii) how institutions from the local to national levels can be better fortified to deal with demands made by the communities and; iii) what the process lessons learned are while developing such a human rights-based approach to programming (HRBAP). Many of the project activities on the ground are yet to be implemented and rights-based outcomes yet to be determined. Many of the techniques that have been developed under a rights-based programming framework and that are to be used also remain untested and this necessarily limits the extent to which meaningful lessons learned can be extracted. However, it is hoped that process lessons learned even while developing a HRBAP will be of interest to other agencies that are committed to developing such a programming approach.

2. The Study of United Nations Development Programme Indonesia's Designing of a Rights-Based Programming Approach under the Access to Justice and Rule of Law Program

Case Study/Project Context: As mentioned in the preceding sections, undertaking programming to enable access to justice for disadvantaged and marginalized groups is a priority for UNDP Indonesia's Governance Programme under the Access to Justice Project. Such a commitment is a part of the agency's broader focus on support to Indonesia's governance reform and poverty alleviation.³ UNDP defines "access to justice" as the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and which is in conformity with human rights standards. Articles 7 and 8 of the Universal Declaration of Human Rights (UDHR) enshrine access to justice as a fundamental human right by guaranteeing, respectively: i) the right to equality before the law and the equal protection of the law without any discrimination; and, ii) the right to an effective remedy by a competent national tribunal for acts violating the fundamental rights granted by the constitution or by law. Promoting greater enjoyment of these rights is the key long-term aim of UNDP Indonesia's Access to Justice Assessment, and in doing so, it is hoped that there may be a flow-on effect to other areas. Indeed, access to justice is much more than simply a right in itself – it is also a key means for realizing the enjoyment of a whole range of other rights.

Through partnerships at the most local through to the national levels, the Access to Justice Project seeks to address the main obstacles and opportunities Indonesian citizens face in their efforts towards accessing effective and more durable justice. In

³ UNDP worldwide is committed with overseeing progress towards the Millennium Development Goals (MDGs). Access to justice for poor, vulnerable and marginalized groups is a key component to this global drive, helping to ensure that the right to free and fair dispute resolution is central on the Indonesia development agenda.

cooperation with a wide range of partners - including non-governmental organizations (NGOs) and academia - the Project is providing key knowledge, recommendations and support to both Government bodies and community level actors engaged in the justice system. This Project - *'Strengthening Access to Justice and the Rule of Law'*, with networks in each of the five focus provinces - *Maluku, North Maluku, Central Sulawesi, Southeast Sulawesi and West Kalimantan* - as well as via cooperation with regional and international counterparts, is investigating current circumstances related to justice, major obstacles to access and key opportunities for improvement. With the exception of Southeast Sulawesi, all the other four focus provinces share a recent history of significant conflict, which has manifested itself along ethnic or religious lines.

The Project operates in two phases - the first phase focuses on capacity development of various stakeholders, identification of claim-holders and duty-bearers and data collection and analysis; the second phase seeks, through pilot projects, to improve civil society capacities for demanding and building better response mechanisms and towards presenting policy recommendations for Government action. Accessing and integrating the perspectives and experiences of women will be a critical component to the design and implementation of the Project. It is planned that the Project will lead to the development of a longer-term Access to Justice Programme, supported by UNDP Indonesia.

Box 1: UNDP Indonesia's Governance Programme and the Access to Justice Project –

Promoting good governance - including ensuring the rule of law and eradicating corruption - is essential to the achievement of sustainable development. UNDP's Governance Programme is committed to supporting Indonesia in improving the management of its public resources and enhancing public sector accountability. The Access to Justice Project is a key component to this process, developing greater public awareness about the needs for, and requirements of, a working legal system and of good governance more broadly.

UNDP's Access to Justice Project in Indonesia is part of a regional effort taking shape across Asia to address the chief justice issues in a developmental context. Projects in Nepal, India, Sri Lanka and Cambodia are already underway and are in tandem with UNDP Indonesia's own project design and implementation. The Indonesian Access to Justice Project is quite unique, for its depth of research and focus on the capacity development of local actors under an overarching HRBAP framework.

Stakeholders Involved: UNDP Indonesia was responsible for the initial project design of the 'Strengthening Access to Justice and the Rule of Law' Project, with inputs from the UNDP Sub-Regional Facility (SURF) and the UNDP Oslo Governance Centre, and further fine-tuning as a result of consultations with BAPPENAS and PSPK. While not initially conceived as a project that would explicitly apply a HRBAP, the language of the Access to Justice Project document and the subsequent development of the Project have attempted to incorporate this to the greatest extent possible as

programme staff have increased their understanding of the concepts and methods involved. At a more practical level, the researchers employed to conduct the assessment were given the freedom to help develop the research strategy and methodology, while working within the broader rights-based framework.

Objectives of the Project: The “Strengthening Access to Justice and the Rule of Law” Project aims to identify and assess key factors obstructing access to justice for disadvantaged groups in the five above-mentioned predominantly conflict-affected provinces of Indonesia, thereby providing a basis for developing a longer-term program on scale to improve access to justice for such poor, marginalized and conflict-affected communities. A rights-based approach is being incorporated in the project design, planning, implementation and monitoring/evaluation phases so as to seek outcomes that protect and promote the rights of the communities in the five focus provinces.

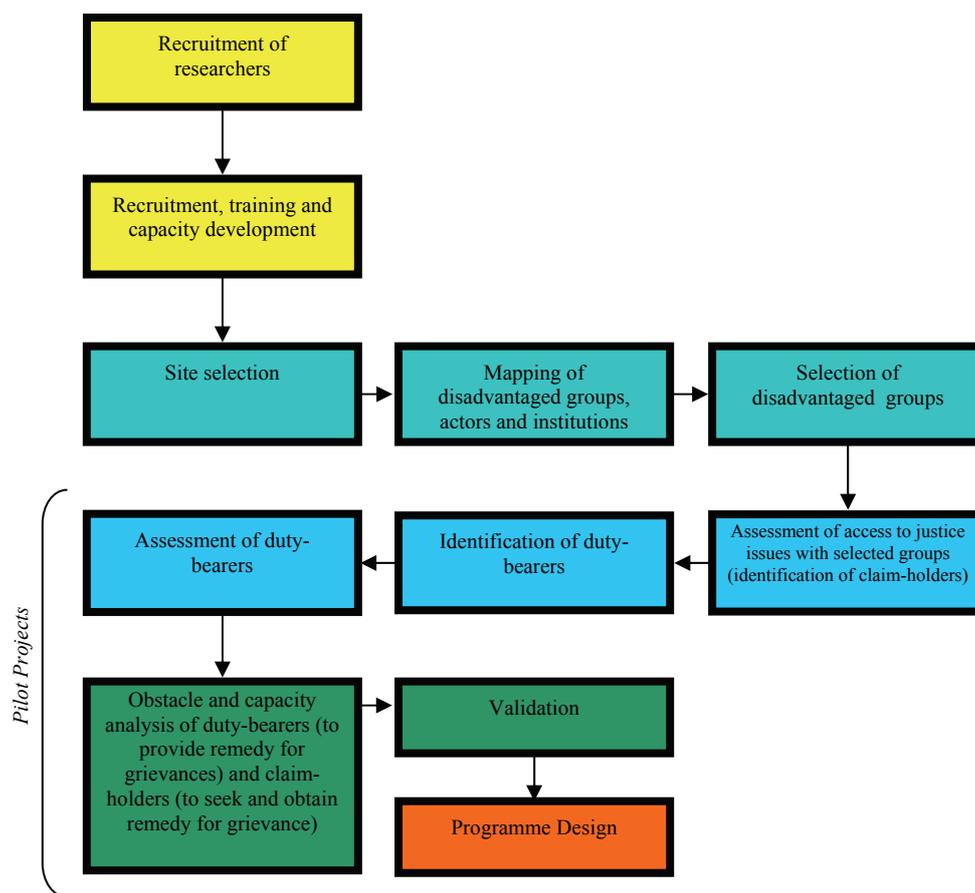
Monitoring to Ascertain Rights-Based Outcomes: This Project was initiated in early 2004. Monitoring is ongoing and two international United Nations Volunteers (UNVs) have been recruited to constantly monitor process, activities and outputs. The design of the programme envisages that communities will be capacitated (through training activities) to undertake actively periodic monitoring of the activities and in the final evaluation of outcomes.

3. Process:

Addressing Power Equations – Rights-Based Programming Strategies to be Used: In each of the five provinces, two districts, four sub-districts and two villages in each sub-district (40 villages in total) have been chosen according to a set of criteria designed to ensure the selection of research locations with varying characteristics. The Project starts with developing local capacities, identifying the claim-holders and duty-bearers, undertaking assessments to address the information gaps, identify relevant entry points and fortify response options, designing (and implementing) pilot projects and convening Provincial Consultative Groups (PCGs) – all with active participation of all stakeholders (the communities, the local partners and the Governmental national developmental planning agency).

The assessment is the first step in a longer-term Access to Justice Programme. The design and implementation of a rights-based strategy and the balance of power equations (between the duty-bearers and stake-holders) engendered through such a process, will serve as the basis for the development of the broader Access to Justice Project to be supported by UNDP Indonesia. Through its focus on capacity development of the provincial team members, the assessment aims to develop a community of practitioners to engage in access to justice activities in the future programme and beyond.

The rights-based programming strategies consists of the following steps:



The steps are elaborated in length below:

➤ Undertaking recruitment, training and capacity building of local partners and researchers: Initial training on rights-based principles and approaches were undertaken with Project partners - BAPPENAS and PSPK - so as to co-opt them as equal partners who are actively involved in designing and implementing a rights-based programming strategy. Subsequently, UNDP – together with these partners - identified the team members through local searches and field interviews. Multi-disciplinary teams of seven *local* researchers with either academic or NGO backgrounds - reflecting ethnic, religious and gender diversities - have been recruited in each province to carry out the assessments that will firstly identify claim-holders and duty-bearers, help determine key entry points and help shape the Project.

Team members are each local to the province in question, and generally come from NGO and/or academia backgrounds. Every team member brings a diverse set of skills, experience and local knowledge to the task of surveying the provincial justice conditions. Some are technical experts; others have explicit training in law. One member of each team is a gender specialist. As a whole, the teams are working to help illuminate some of the most complex justice issues facing Indonesia.

The local researchers were trained in Access to Justice concepts, assessment and research methods and the underlying principles of the HRBAP. For most, conflict is a defining characteristic of the local society that they live in and a component in dispute resolution. Securing fair, impartial rulings was, thus, a particularly important test in

settings where sectarian violence has taken root and local leaders have taken sides. Through such capacity development, many researchers are gaining the analytical skills that will further serve them in future endeavors of this kind.

➤ *Identifying the duty-bearers and the claim-holders in the five Project sites/provinces:* At the initial stage of designing the assessment, duty-bearers and claim-holders had no involvement in the process design. The primary reason for this is that at the time when the assessment was designed, the claim-holders and duty-bearers were unknown/unidentified, and the time and expense involved in locating them would have been resource extensive in relation to the overall assessment budget. Given the disadvantaged nature of the claim-holders and the overall politically sensitive scenario that this Project aims to work with and in, they are also the least likely to have identifiable representatives capable of providing inputs on their behalf. Likewise, before the main obstacles obstructing these groups from accessing justice are known, decisions as to which formal justice sector institutions to involve would be based on little more than guesswork, while attempting to involve yet-to-be-identified duty-bearers from the informal justice sector would be equally problematic.

Considering the above, it is clear that the first step of the assessment was to identify these claim-holders and duty-bearers. UNDP had/has no working definition with which to identify the targeted claim-holders – hence, ‘criteria of disadvantaged groups’ for the purposes of this Project were therefore developed by the local researchers in partnership with UNDP and PSPK. They included factors such as: i) the non-fulfilment of basic rights of claim-holders to adequate access to food, healthcare, education and other Government services; ii) discriminatory treatment by Government or other community members; and iii) individuals’ inability to participate in decision-making affecting their futures. It may be that a majority of the community in certain areas fits some or all of these criteria – in this case, only the most disadvantaged groups were selected.

Initial identification of disadvantaged groups was achieved through a combination of field observations, analysis of existing data, in-depth interviews with key informants and focus group discussions (FGDs) with participants comprising a general cross-section of the community. There was some risk that due to their very nature, members of marginalized and excluded groups may somehow ‘slip through the net’ and not be invited to participate in these initial FGDs; but it is hoped that by employing a two-pronged approach (involving a second round of FGDs to identify these groups) the chances of these groups not being included in latter stages of the assessment are minimized.

After specific disadvantaged groups were identified, a second round of FGDs, surveys and in-depth interviews were conducted with members of these groups where they were encouraged to reflect both on what obstacles currently prevent them from accessing justice, and also on what justice mechanisms, if any, currently work best for them. Additional participation and empowerment methods are being developed and tested, leading to the development of a comprehensive participation plan. Analysis of the unfulfilled rights underlying their claims will then identify the formal and informal justice institutions that bear a corresponding duty to defend and facilitate the enjoyment of those rights.

➤ Undertaking assessments in the focus areas in the five provinces: As mentioned elsewhere, local researchers were recruited and capacitated to undertake the assessments in focus sites in the five provinces. It is hoped that an assessment of the strengths and weaknesses of all the judicial institutions under Phase One will reveal the factors enabling or limiting the fulfilment of their duties. All justice mechanisms identified are also being analysed to determine the extent of their compliance with international human rights standards.

➤ Designing pilot Project activities in collaboration with the disadvantaged groups and members of the informal justice sector: Guided by the results of the assessments to date, locally engaged facilitators are bringing together targeted disadvantaged groups and justice institutions under Phase Two of the Project to design a number of small-scale pilot projects aimed at either reducing one or more obstacles that currently prevent them from accessing justice, or alternatively strengthening resolution mechanisms that already enjoy some degree of success. This activity could be termed as one of the most important activities in this Project - especially under a HRBAP framework - as it brings together duty-bearers and claim-holders on a common platform to debate and dialogue on what activities best suits the demands of the communities in accessing informal justice mechanisms. The focus will therefore be divided between strengthening the capacity of disadvantaged groups to claim and realize their rights and assisting duty-bearers to defend and facilitate the enjoyment of those rights. In the case of duty-bearers, it is anticipated that at this stage, the primary focus will be on those operating in the informal justice sector.

Aside from any immediate improvements to the local situation (in changing power equations and enabling disadvantaged groups to access the local informal justice mechanisms through activities designed in collaboration with the duty-bearers), the overall purpose of these small-scale projects is to experiment with different approaches to find those with the greatest chances of succeeding in the longer-term Access to Justice Project intended to be developed on scale on the basis of this particular Project. It is to be noted that the type of activity may vary depending on the needs of the community, the level and degree of participation of the community and the degree and willingness of collaboration/cooperation of duty-bearers in responding to the demands of the claim-holders.

➤ Convening Provincial Consultative Groups (PCGs): PCGs are also being convened (comprised of key justice sector stakeholders at the provincial level) at the mid and end-points of the assessments. These forums will be used to inform relevant parties (mainly duty-bearers) about the progress of the larger Access to Justice Project assessment, seek their inputs on its future direction, and build support from key justice sector actors for future programming in this area. In contrast to the focus on informal justice actors with the pilot projects, it is expected membership of these consultative groups will be weighted more heavily towards duty-bearers from the formal justice sector, as well as educational institutions and NGOs active in the legal arena.

Changing Power Equations – Using the Rights-Based Approach: Throughout its activities, the Project will pursue a *rights-based approach* to understanding and securing local justice. And a beginning has already been made via the design of

rights-based programming strategies that are bringing together claim-holders and duty-bearers on a common platform to discuss and design strategies that will enable claim-holders to access justice and duty-bearers to deliver their obligations. Under such an approach, understanding the roles, responsibilities, capacities and obstacles faced by both duty-bearers and claims holders helps to clarify how access to justice can be improved in even the most challenging settings. The Access to Justice Project seeks to bolster people's awareness of justice services, and to build the capacity of justice providers to improve dispute resolution. In areas where conflict has destroyed both the local resources and the social fabric, this work is proving especially critical to the community's well being.

Capacity/Role of Duty-bearers (including the Judiciary/Related Frameworks) in Addressing Demands: As can be gleaned from the preceding sections, despite not being initially conceived as a project explicitly applying a rights-approach, the normative direction of UNDP Indonesia's Access to Justice Assessment has been significantly guided by the principle characteristics of such an approach. This is most clearly demonstrated by the employment of an analytical programming approach that focuses on bringing together and developing the capacities of both claim-holders and duty-bearers to claim and deliver specific human rights.

4. Outcome (Results): Changes that have Occurred as the Result of Application of using the Rights-Based Approach: This case study focuses on lessons learned while designing programming strategies under a rights framework. Implementation of the strategies and the outcomes are not under the purview of this paper, as such outcomes will take a while to be achieved and documented.

However, an important and immediate outcome that has already emerged and which is actually an activity under the current HRBAP framework is in bringing together duty-bearers and claim-holders on a common platform to debate and dialogue on what activities best suits the demands of the communities in accessing informal justice mechanisms in the focus sites in the five provinces. Such an activity is rooted in the principles of participation (as it brings together duty-bearers and claim-holders on a common platform and thus assists in changing inequitable power equations) but also in accountability (as duty-bearers are now legally accountable to deliver equitable and timely justice and such a mechanism holds even more significance under the decentralized framework).

The second immediate outcome has been that the holding of FGDs with participants comprising a general cross-section of the community through a combination of field observations, analysis of existing data and in-depth interviews with key informants have actually led to helping build their empowerment levels. Such FGDs have enabled these marginalized groups to actually participate and dialogue with the duty-bearers on a common platform to discuss their needs and what the best methods/means are to access justice in such conflict scenarios.

5. The Value Added of Using Rights-Based Tools:

Positive Lessons Learned

- *A donor willing to invest in a relatively untested approach is key to designing (and achieving outcomes) HRBAP strategies:* Most donor initiatives focusing on the justice sector in Indonesia focus on the formal justice system and its institutions, primarily at the central level. This Project, however, is attempting to complement such initiatives by working to identify and assess key factors obstructing access to justice for disadvantaged groups at the local level in five predominantly conflict-affected provinces of Indonesia. The start up funds, which came from the UNDP Democratic Governance Thematic Trust Fund (DGTTF) were instrumental in starting the design process for the Project, and led to the design of a much broader and comprehensive process (complemented by other resources), which will provide a basis for developing a longer-term programme to improve access to justice for poor, marginalized and conflict-affected communities in Indonesia.
- *Committed programme staff willing to test HRBAP strategies:* Designing and implementing a HRBAP strategy requires a committed programme staff that is willing to invest time and energy (as rights-based strategies are very resource inducive in terms of time taken to achieve viable outcomes). In this case, there exist a committed UNDP Indonesia Access to Justice Project staff under the umbrella of the larger UNDP Indonesia Governance Programme who was willing to invest and take risks in programming to develop such a strategy that was not tried and tested before in such a programme context in the country. Management support is also key, in terms of allowing Project staff to engage in such activities.
- *Using the enabling policy framework to legally access rights:* Indonesia's move towards devolving power to the local levels (though fraught with attendant risks like no corresponding budget to support such devolution, corruption at the lower levels of the bureaucracy, and so on) has broader rights-based ramifications. The Project made use of such a decentralized policy framework to design activities wherein disadvantaged groups could legally access and use the local informal justice systems and make such systems accountable in delivering justice.

Challenges in Implementing the Rights-Based Approach: Process Lessons Learned

- *Identifying local partners who are well-capacitated to work on a rights-based approach a key:* It is a well-documented fact that working under a rights-based framework, besides being resources intensive –human, managerial, funds and time involved – also requires working with a local partner who either has the experience/capacity in undertaking HRBAP or is willing to invest in the shared objectives of how a rights approach can help achieve developmental outcomes. In this case, PSPK and the provincial university legal departments seemed to be the logical choice for this role and they were approached to gauge their interest in working under such an approach. However, while explaining the significant role that was envisioned for these local partners, there was a simultaneous realization that capacities of these

partners, through vigorous training on rights-based principles and programming approaches needed to be built (and this holds true if UNDP seeks to work with any local, indigenous organisations in the country) and was the key if any rights-based programming strategy could be developed and used. This was the initial major challenge that the Project had to face and had to immediately start work on.

➤ *Making distinctions between partnerships and mere “contractors” imperative:* The HRBAP that the Project is attempting to apply is relatively untested and required capacity building of PSPK and its local partners. A major programming process lesson learnt for UNDP is that it is not only important for the agency to develop capacities but also to be clear and open about whether an implementing partner is really a ‘partner’ (working together into the development and overall direction of the Project) or merely a ‘contractor’ (whose role is limited to the practical implementation of a project completely designed by others).

➤ *Facilitating meaningful participation of stakeholders to access justice and claim rights a challenge, especially in a conflict setting:* One of the key challenges that remain is how to facilitate the meaningful - and not merely tokenistic - participation of disadvantaged groups (especially in this current project scenario where work involves soliciting access of disadvantaged groups to justice in a conflict setting) so as to enable them to claim their rights in the remainder of the larger Access to Justice Project (apart from the planned pilot projects). At this stage, it is therefore more realistic to view this Project as the preparatory stage for a larger and longer-term Access to Justice Project, with much greater participation of claim-holders and duty-bearers in the project design and implementation made possible through the knowledge accumulated during this “Strengthening Access to Justice and the Rule of Law” Project that has designed and is now using these HRBAP strategies.

Adopting Rights-Based Programming Strategies Towards Developing Capacities for Accessing Sustainable Water and Sanitation Facilities

The NAM SAAT/Sida/UNICEF Partnership
in Luang Prabang Province in Laos:
A Case Study



10 Adopting Rights-Based Programming Strategies Towards Developing Capacities for Accessing Sustainable Water and Sanitation Facilities: The NAM SAAT/Sida/UNICEF Partnership in Luang Prabang Province in Laos – A Case Study

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LIST OF ABBREVIATIONS USED:

ADB: Asian Development Bank
CBO: Community-based organization
CCPR: Convention on Civil and Political Rights
CEDAW: Convention on Elimination of All Forms of Discrimination Against Women
CESCR: Convention on Economic, Social and Cultural Rights
CERD: Convention on the Elimination of All Forms of Racial Discrimination
CRC: Convention on the Rights of the Child
DCU: District Council Unit
DRA: Demand Responsive Approach
HRBAP: Human Rights Based Approach to Programming
IGOs: Inter-governmental organizations
INGOs: International non-governmental organizations
IMF: International Monetary Fund
LFTU: Lao Federation of Trade Unions
LPRP: Lao People's Revolutionary Party
LWU: Lao Women's Union
LYU: Lao Youth Union
MDGs: Millennium Development Goals
MoA: Memorandum of Agreement
M & E: Monitoring and evaluation
NAM SAAT: Center for Environmental Health and Water Supply
NEM: New Economic Mechanism
NGOs: Non-governmental organizations
OHCHR: Office of the United Nations High Commissioner for Human Rights
O&M: Operation & Management
PCU: Provincial Council Unit
PDR: People's Democratic Republic
RWSS: Rural water supply and sanitation
SCF UK: Save The Children United Kingdom
Sida: Swedish International Development Agency
UN: United Nations
UNDP: United Nations Development Programme
UDHR: Universal Declaration of Human Rights
UNDAF: United Nations Development Assistance Framework
UNICEF: United Nations Children's Fund
WATSAN: Water and Sanitation
WB: World Bank
WES: Water and Environmental Sanitation
WHO: World Health Organisation
WSP-EAP: World Bank Water and Sanitation Program –East Asia and the Pacific

Section 1. Background and Rationale: The Status of Human Rights in Laos

Country and Programme Context: The Lao People's Democratic Republic (Lao PDR) is a small landlocked country in South-east Asia with a population of around 5.5 million and an annual growth rate of 2.8 percent. 80 per cent of the population live in the rural areas, mostly dispersed in small villages that are often difficult to access. The country comprises of more than 49 ethnic groups from four ethno-linguistic families, with distinct cultures and attitudes as well as widely differing livelihood systems. Such differences perpetuates wide disparities across the country and has had a massive impact particularly on accentuating disparities amongst vulnerable and marginalised groups, especially people living in remote areas, ethnic minorities, women, and so on.

Following liberation in 1975, the country adopted the New Economic Mechanism (NEM) in 1986, moving economic activity away from a central command towards a market-based economy and allowing the private sector a gradual role in socio-economic development. It is also gradually strengthening its legal framework - including laws to protect property rights - but reforms to embrace such rights-focused laws have been slow.² The country however remains heavily dependent on assistance from multilateral agencies for undertaking poverty reduction programmes and in attaining the Millennium Development Goals (MDGs).³

Policy and Legal Framework: Lao PDR is a one-party state ruled by the Lao People's Revolutionary Party (LPRP). The Party continues to lead governance and the choice of leaders at all levels through its constitutionally designated "leading role." The 1991 Constitution, amended in 2003, outlines a system composed of executive, legislative, and judicial branches; however, the judiciary is subject to executive influence.

Moreover, the entire legal framework is relatively new in comparison to other countries in the region. The number of legal personnel is limited and a major challenge exists in meeting the need for trained legal personnel and for building capacities of existing legal personnel.⁴ Such low capacities place serious restrictions in Laotians seeking redress under justice mechanisms.

The Constitution provides for a representative National Assembly, elected every 5 years in open, multiple-candidate, fairly tabulated elections, with voting by secret ballot and universal adult suffrage; however, it legitimizes only a single party, the LPRP. Election committees, appointed by the National Assembly, must approve all candidates for local and national elections.⁵

² <http://www.state.gov/g/drl/rls/hrrpt/2003/27777.htm>

³ <http://www.oneworld.net/guides/laos/development>

⁴ Pg 4. *Initial, Second, Third, Fourth and Fifth Report of Lao on the implementation of CEDAW to the CEDAW Committee.*

⁵ <http://www.state.gov/g/drl/rls/hrrpt/2003/27777.htm>

In terms of its international commitments, the Lao Government⁶ has not yet ratified the two main United Nations (UN) human rights covenants – the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic, Social and Cultural Rights (ICESCR) - that it signed in December 2000. It has acceded to the Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Rights of the Child (CRC) and signed and ratified the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW).

Human Rights and the Role of Civil Society: Lao civil society is modest in size, quite constricted and limited in its activities to mass mobilization organizations which buttress the political apparatus. Local voluntary or community-based organizations are few - according to an Asian Development Bank (ADB) report, Lao currently has only a few indigenous organizations like *Champa* (that works on health issues) or *Padek Lao* (that works on community-based agricultural issues) and the emergence of such organizations may be viewed as the beginnings of a trend towards the formation of a civil society independent from the Government. International non-governmental organizations (INGOs) operate in the country under adherence to following a non-contentious, non-advocacy role.

A vast proportion of community-based work is therefore undertaken by organizations affiliated to the Party – like the Lao Women’s Union (LWU), the Lao Youth Union (LYU) or the Lao Federation of Trade Unions (LFTU). These organizations have extensive networks at the grassroots level and have started working on some key issues like the rights of textile workers or HIV/AIDS prevention as a right for all workers.⁷

In the last few years, the United Nations Development Programme (UNDP) has been able to put in place community projects designed to explore models for the formation of a national civil society, particularly focused on good governance issues.⁸ Along with UNDP, quite a few other donor agencies – both bilateral and multilateral – work in Laos and are assisting in making a transition from an aid-reliant to a more self-sufficient country. There are 33 bilateral partners and 14 multilateral UN agencies present in the country. Three international financial institutions – the World Bank (WB), ADB and the International Monetary Fund (IMF) – also operate in Laos as does six inter-governmental organizations (IGOs) and 21 INGOs.⁹ However, the national civil society is still in its nascent stages and will need time to evolve as a cohesive force that can actively engaged in the country’s development.

As mentioned above, there exist limited opportunities and capacities for a constrained civil society in a newly emerging country like Laos to work for and with communities

⁶ Please note: the term “government” and “public sector” has been used interchangeably throughout this document.

⁷ Asian Development Bank, “*Key Governance Issues in Cambodia, Lao PDR, Thailand and Vietnam*”, April 2001.

⁸ <http://www.oneworld.net/guides/laos/development#politics>

⁹ *Report on the Eighth Donor Roundtable Meeting for Lao PDR*, Vientiane, September 4-5, 2003. The number of INGOs may have gone up substantially now.

for realizing their right to development or for realising their rights. Most of the development-related work is undertaken by bilateral/multilateral agencies or INGOs that work in close cooperation with the Government. Under such a scenario, it is worthwhile to mention one case – *the United Nations Children’s Fund (UNICEF) Laos partnership with the Center for Environmental Health and Water Supply (NAM SAAT), in the Water and Environmental Sanitation Project (WES), under the Laotian Ministry of Health* and supported by the Swedish International Development Agency (Sida) - wherein both NAM SAAT and the local communities have been capacitated to work together to design, implement, access and manage community water and sanitation facilities under a framework that can be termed rights-based for its focus on participation (of all stakeholders) and accountability mechanisms and also because of the levels of empowerment and equity that were built as a result of the process. A rights-based philosophy to water use implies that the people themselves have the democratic authority to make the decisions about water. And such authority translates to ownership issues relating to water use: ownership of water resources *per se* and ownership of the decision-making processes that govern water use. Such ownership may be expressed through different democratic structures and systems – and the systems (strategies) used in this particular case are explored in-depth in the following sections.¹⁰ Though such an example coming from another country - where there exists a high level of sophistication and capacity of civil society to participate and undertake such an exercise - would not be seen as exemplary, this particular example is remarkable as it comes from a low capacity constrained country like Laos (and more so, as it involves building capacities of both duty-bearers in fulfilling obligations and claim-holders in realising their rights).

Benefits of using such strategies under a rights framework have already shown incremental gains in provinces like Luang Prabang (and these outcomes have been documented in Section 4 of this paper).

Section 2. The Study of the NAM SAAT/Sida/UNICEF Laos initiated project using Rights-Based Programming Strategies

The Right to Water is a Human Right: “Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity”: Kofi Annan, United Nations Secretary-General.¹¹

In November 2002, the UN Committee on Economic, Social and Cultural Rights (UNCESCR) declared in a General Comment (No. 15) that access to water is an independent human right, by necessary implication from Articles 11 and 12 of the IESCR. The Committee's statement elaborated: *“The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses”*. The Committee further notes that, in addition to

¹⁰ Paper on “The Human Right to Water and Sanitation”, by Jon Lane, Chair of the Building Partnerships for Development in Water and Sanitation. Source: <http://www.bpd-waterandsanitation.org/english/humanRights.asp>

¹¹ “The Right To Water”, 2003, WHO, Source: http://www.who.int/water_sanitation_health/rtw1.pdf

personal and domestic uses, “*priority should also be given to water resources required to prevent starvation and disease, as well as water required to meet the core obligations of each of the Covenant rights*”.¹² Finally, the Comment proscribes any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to water.

The concept of core obligations, as stated above, is of crucial importance in a rights framework – in an earlier General Comment No. 3 of 1990, the Committee declared that it “*is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights (as recognized in the ESCR Covenant) is incumbent upon every State Party*”.¹³ The Committee finds that in General Comment No. 15, there are “*a number of core obligations in relation to the right to water*”, and more crucially, that they “*are of immediate effect*”.¹⁴ This is despite the fact that parties to the Covenant are generally required to only “*achieve progressively the full realization of rights*” it recognizes.¹⁵ It thus means that all State Parties (including Laos) that have signed the ESCR Covenant has an obligation to realize the citizens’ right to water with immediate effect.

The World Health Organisation (WHO) also stipulates that individuals should have access to quality water corresponding to the organisation’s guidelines.

Box 1: Why does defining water as a human right make a difference?¹⁶

Ensuring that access to sufficient safe water is a human right constitutes an important step towards making it a reality for everyone. It means that:

- * fresh water is a legal entitlement, rather than a commodity or service provided on a charitable basis;
- * achieving basic and improved levels of access should be accelerated;
- * the “least served” are better targeted and therefore inequalities decreased;
- * communities and vulnerable groups will be empowered to take part in decision-making processes;
- * the means and mechanisms available in the United Nations human rights system will be used to monitor the progress of States Parties in realizing the right to water and to hold governments accountable.

¹² Human Rights Committee, General Comments adopted under Article 40, paragraph 4 of the Covenant on Political and Civil Rights, U.N. Doc., CCPR/C/21/Rev.1 (19 May 1989).

¹³ General Comment No. 15.

¹⁴ Ibid. Refer to footnote above.

¹⁵ Ibid.

¹⁶ Ibid. Refer to footnote No. 11.

Though sanitation is not specifically mentioned in the UN Committee's declaration of November 2002, the provisions and subsidiary clauses of the Universal Declaration of Human Rights (UDHR), ICESCR and the 2002 General Comment No. 15 that declared water to be considered a human right relate water principally to health and hygiene, and this naturally translates to sanitation to be accorded a status as important as water.¹⁷ It is also therefore apparent that without access to the right to water, other rights as mentioned in the various Covenants – like the right to health (Article 12 of the ESCR Covenant) and more importantly, the right to life itself (Article 6 of the ICPCR) – cannot be realized.

UNICEF and the Rights-Based Programming Approach: UNICEF has been following a human rights-based approach to programming (HRBAP) to enable the constituencies it serves – the poor, vulnerable and marginalised children and women worldwide – realising various human rights that they have valid claims to, including the very important rights – the right to water, sanitation, and health. The application of such a rights approach to programming (that focuses on building stakeholder capacities to demand and realize rights and fulfill such obligations as stated in the section above) has been very succinctly developed by the UNICEF Regional Office for Eastern and Southern Africa - this Office has undertaken pioneer work that not only calls for a number of well-known good programming practices as a starting point, but also improves on them (and thus, demonstrates the value-added of using such an approach over traditional good programming approaches).

At this juncture, it is imperative to mention that a rights-based programming is less about a fixed set of guidelines or rules and more about an evolving set of practices that not only develop with experience but also have to be modified to suit different contexts. Seasoned practitioners and commentators stress that “one size does not fit all”.¹⁸

Nevertheless, there are some generally agreed principles of how to go about rights-based programming. The UN inter-agency document, “*Towards a Common Understanding*”, that was developed in Stamford, Connecticut in 2003, provides a useful indication of the essential ingredients of undertaking rights-based programming. Apart from employing good programming practices that one might expect to find in any kind of development activity, the following are recommended as “necessary, specific, and unique to a human rights-based approach”:

- * Identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers, as well as the causes for non-realisation of rights;
- * Assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfil their obligations; develop strategies to build these capacities – *this aspect is of crucial importance from the standpoint of the focus of this paper that focuses on building capacities of both duty-bearers and claim-holders to fulfil obligations and demand and claim rights respectively;*

¹⁷ Ibid. Refer to footnote No. 10.

¹⁸ http://www.crin.org/hrbap/index.asp?action=theme_guideitem&item=4681&subtheme=2

* Monitor and evaluate both outcomes and processes guided by human rights standards and principles;

* Ensure programming is informed by the recommendations of international human rights bodies and mechanisms.¹⁹

Thus, Rights Based approaches are not just a means to an end, but the process of applying them constitutes the realisation of a person's right as well.²⁰

In a way, the table below that was developed by the UNICEF Regional Office for Eastern and Southern Africa substantiates the above Common Understanding Principles to a large extent.²¹

Under this approach (as elaborated in table below), all UNICEF Country Programmes of Cooperation are focused on facilitating the realization of the rights of children and women. Furthermore, human rights principles guide all phases of the UNICEF programme process and are applied in all programme sectors. *These include the principles of universality, indivisibility, accountability and participation as well as the four foundation principles of the CRC, i.e. non-discrimination; the child's right to life, survival and development; the best interests of the child; and respect for the views of the child.* These principles and the specific standards of the Conventions provide "value added" to how UNICEF programmes - how it assesses and analyzes the situation of children and women; how it sets objectives, designs strategies, and implements and evaluates programmes; how it builds partnerships and alliances; and how it works towards the adoption of public policies, legislation and resource allocations - help ensure the full spectrum of children's rights.

¹⁹ Ibid. Refer to footnote above.

²⁰ Ibid.

²¹ "Applying a human Rights Based approach to programming: Experiences of UNICEF", Dorothy Rozga, UNICEF, Presentation Paper prepared for the Workshop on Human Rights, Assets and Livelihood Security, and Sustainable Development, London, UK, 19th - 20th June 2001, http://www.crin.org/docs/resources/publications/hrbap/Applying_Human_Rights_Approach_to_Programming.pdf

Good Programming Approach	Human Rights Based Approach to Programming (HRBAP)
People cannot be developed; They must develop themselves. People (including people who are poor) should be recognized as key actors in their own development, rather than as passive beneficiaries or transfers of commodities and services.	In a human rights perspective, people, including people who are poor, are subjects of rights. It is therefore logical to recognize people who are poor as key actors in their development by empowering them to claim their rights.
Participation is crucial, both as an end and a means. Participation, however, should not be seen as 'they' participate in 'our' programme or project but rather 'we' behave in such a way that 'we' are allowed and invited to participate in 'their' development efforts.	Participation, including children and women's participation, is a human right enshrined in many conventions; a right often violated. In a human rights perspective, participation is both a necessary outcome and a necessary aspect of the process.
Empowerment is important, but it is not a strategy. 'Empowerment' and 'disempowerment' are aspects of any strategy, such as advocacy, capacity building or service delivery.	Human rights imply dignity and respect for the individual. This means self-esteem and equality. Circumstance and chance should not dominate one's life. A HRBAP implies a people centered approach to development, in which outside support should be catalytic and supportive to people's own efforts.
Role of stakeholder analysis is very useful for social mobilisation, programme development and evaluation because it identifies clear accountabilities in community and society.	Most stakeholders, although not all, are duty-bearers. An important step in a HRBAP is the identification of key relations between the child as a claim-holder and all duty-bearers. Such an analysis is similar to, but is more than, a stakeholder analysis.
Pure top-down approaches should be rejected because they deny the principle of 'people as actors'. Pure bottom-up approaches should be rejected because they are utopian. It is not either/or; it is both. It is the synergism between appropriate top-down and bottom-up approaches that should be promoted.	A HRBAP requires respect for knowledge and dignity of people. It implies a people-centered approach to development in which outside support is only catalytic and supportive to people's own efforts. On the other hand, in many communities, human rights values need to be promoted 'from above' because they are not yet internalized.
Programmes should be developed on the basis of a situation analysis that identifies priority problems and their immediate, underlying and basic causes. Immediate, underlying and basic causes should be addressed either simultaneously or in sequence.	A HRBAP requires an understanding of the causes at all levels - immediate, underlying and basic. The internalization of human rights values makes it inescapable that the basis or structural causes are addressed. The indivisibility of human rights also emphasizes the simultaneous attention to causes, at all levels, including the basic level.
Goal setting is important. The necessity for scaling up needs to be considered at the planning stage. Efforts should promote that positive changes are sustainable and sustained.	The realisation of the human rights requires both the achievement of desirable outcomes and a good process through which the outcome is achieved reflecting human rights values. In that sense, a HRBAP implies goals. But 'the end does not justify the means.' This is why there must be simultaneous attention to both outcome (goal) and process.
All possible partnerships should be explored with strategic allies including donors and non-governmental organizations (NGOs)/community-based organizations (CBOs). Also through the linkages to other development efforts, it is often possible to leverage additional resources.	A country's human rights realisation must come from within, and be supported from outside. UNICEF is just one partner in such an endeavour. It is, however, important to appreciate that all of the UN has an obligation to promote human rights. The UN Reform emphasizes this challenge and UN Cooperation within the United Nations Development Assistance Framework (UNDAF) is therefore of particular importance.

Table 1: Source: Urban Jonsson, 'An Approach To Human-Rights Based Programming In UNICEF (Eastern And Southern Africa)' Presented at the 'Second International Encounter on the Right to Food in Development', Geneva, 21-22 August 2000.

Case Study/Project Context: Following from the above, UNICEF could now legitimately use the UNCESCR declaration of 2002 to adopt a HRBAP strategy in its programmes related to WES. While using such a programming strategy, UNICEF is guided by the MDGs itself and by related goals for this sector that were set at the World Summit on Sustainable Development (September 2002), the UN Special Session on Children (May 2002) and the Second and Third World Water Forums (March 2000 and March 2003).²²

Over the years, UNICEF programmes that started with an emphasis on water supply ‘hardware’ like drilling rigs and hand pumps have evolved towards a greater concentration on sanitation and on the ‘software’ of supporting policy development, building the capacity of various institutions with and raising awareness about hygiene. Children's rights to an adequate standard of living and to the highest attainable standard of health (and the fulfillment of these rights) are central to UNICEF's objectives for water and sanitation programmes. UNICEF works in partnership with the public sector and the communities – especially women and children – in planning, implementing and maintaining such water and sanitation systems. Such a *modus operandi*, UNICEF believes, leads to creating conditions for change – or enabling environments – to ensure the effectiveness and sustainability of all water and sanitation programmes.

In the context of this study, the project sites (that are mostly hilly and mountainous) had few alternative technological options that guarantee provision of water supply from protected water sources. Thus, most areas would have to depend on water supply systems that are based on gravity flow – constructing such a system in the villages (that would promote access to safe drinking water and for agriculture) and linking these up with the construction of latrines (that would promote safe hygiene conditions and reduce the incidence of diseases) was the major outcome that UNICEF Laos and NAM SAAT wanted to achieve. *And they realized that these outcomes could only be sustainable and viable through a framework that is based on HRBAP strategies. Thus, UNICEF Laos decided to put forward a framework that focuses on supporting the building of capacities of the public sector (NAM SAAT) along with the communities so that the human right to water is realized. UNICEF Laos played a 2-fold capacity development role: on one hand, it worked in close collaboration with NAM SAAT in developing the rights-based strategies that were so integral in achieving the project outcomes; on the other hand, it supported the building up of the capacities of both NAM SAAT and the communities to implement these rights-based strategies so that they apply and sustain the project activities throughout the country (see figure below).*

²² These goals are to: Halve, by 2015, the proportion of people without sustainable access to safe drinking water; Halve, by the year 2015, the proportion of people who do not have access to basic sanitation; and, equip all schools with facilities for sanitation and hand washing by 2015. Source: http://www.unicef.org/wes/index_bigpicture.html

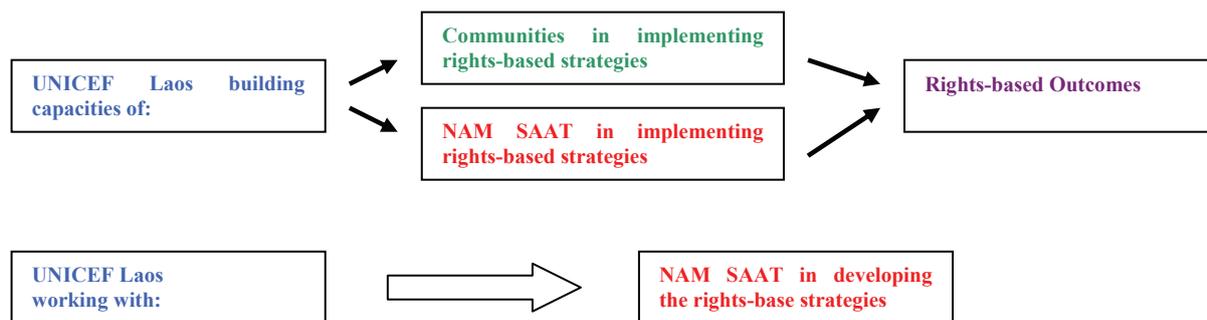


Figure: The 2-fold capacity development role of UNICEF Laos

It was further envisaged that creating conditions of change or enabling empowerment through this capacity development framework (and the rights-based strategies inherent therein) would facilitate interior, rural communities in 14 districts in 18 provinces in Laos to access and maintain sustainable water and sanitation facilities

UNICEF’s worldwide experiences of HRBAP focused on children and women were evident when the NAM SAAT/Sida/UNICEF Laos partnership was conceptualised and put into practice (for one such instance, see box 2 below).

Box 2: Rights-Based Criteria for Selection of Project Sites

- * High proportion of poor, disadvantaged ethnic minority communities located in remote, often hilly and mountainous areas;
- * Existing needs - based on a participatory assessment of quality of life indicators, health, hygiene, poverty and investment indicators - will focus on sustainability and impact rather than coverage alone;
- * History of limited support to the rural water and sanitation activities – hence, communities have to be capacitated to enjoy their right to water and sanitation;
- * All stakeholders – district and provincial officials under NAM SAAT, the communities and the mass organizations - to demonstrate willingness to actively participate in project activities, including willingness and ability to pay.

Stakeholders Involved - The NAM SAAT/Sida/UNICEF Laos Partnership: The various stakeholders involved in this project included Sida as the donor, NAM SAAT, UNICEF Laos, some other international agencies like the World Bank Water and Sanitation Program –East Asia and the Pacific (WSP-EAP at various stages) and the community. Since a vibrant civil society does not exist in Laos, UNICEF Laos and NAM SAAT worked with mass organizations like the LWU, the LYU and the LTU

(these organizations have extensive networks and reach in the project sites). Alliances with such organisations provided the necessary momentum as it ensured that the strategies developed and implemented were in tune with the rights approach (where effective ways to influence outcomes for children at the family and community level, as well as through institutional and administrative arrangements of the State, at local and national levels, requires collaboration and participation of all stakeholders).²³

Objectives of the Project: The development objective of the WES project is as follows: “Through supporting a Demand Responsive Approach (DRA) in rural areas, improve access, use and sustainability of water supplies and sanitation facilities; and, increase health and economic benefits and reduce infant mortality and morbidity rates”.

Such an approach would be facilitated by achieving the following immediate objectives, (and which would ultimately lead to the realisation of the right to health, education, livelihood, water and sanitation facilities) as follows:

- Improved public sector management and coordination (including increased efficiency at NAM SAAT to ensure programme sustainability and viability);
- Revised sector strategy which reflects the current situation;
- Gender considerations are actively promoted in all training activities and at all levels of water and sanitation provisions and management;
- Water quality is maintained at acceptable standards;
- Increased access, use and sustainability of water and sanitation facilities;
- Improved construction quality of existing water and sanitation facilities;
- Improved affordability, quality and quantity of new water and sanitation facilities;
- Improved community participation, management and maintenance of water and sanitation facilities;
- Improved environmental, health and education conditions in remote areas and rural schools; and,
- Protection of raw water resources and water shed management.

Section 3. Process

Rights-Based Programming Strategies Developed: As mentioned elsewhere in this paper, the rights approach to programming that UNICEF undertakes requires it to play a vital role in working with and capacitating various stakeholders – one main goal of such capacity development is to improve public sector policy development to realise the rights of children and women. As part of this effort, explicit attention is paid to:

- i) the links between a given policy and the realisation of rights;
- ii) the degree to which a given policy is consistent with the human rights principles, including the best interests of the child, non-discrimination, participation and survival and development;

²³ Ibid. Refer to footnote No.21.

- iii) whether the policy provides a sound basis for the "progressive realisation" of rights; and,
- iv) whether the policy making process allows for effective participation of all the holders of rights, including children and women.²⁴

In this case, though Laos has not yet ratified the ICCPR and the ICESCR, the Laotian policies related to water like the National Strategy for the Rural Water Supply and the Environmental Health Sector of 1997 (*this Strategy was revised in 2004 and was a participatory process at the central planning level as it invited participation and inputs from stakeholders like Sida, UNICEF Laos, the Laotian Government, WSP-EAP and other external support agencies and INGOs*), and the various laws related to the provision, supply and access of safe drinking water (like the Water and Water Resources Law, No 02-96/NA of 11/10/1996; Decree to Implement the Water and Water Resources Law, No 204/PM 9/10/01; PM Decree on Management and Development of Water Supply Sector, No 37/PM 30/9/99; Hygiene, Prevention and Health Promotion Law, No 04/NA 10/4/01; and Water Quality Targets, No 953 MoH/14/7/03) provided the enabling legal and policy framework to realize the rights of the communities to water and sanitation facilities.

The above was endorsed through the 1991 Constitution that guarantees equal rights for women and men to water and sanitation infrastructure provision. Like many other Constitutions worldwide,²⁵ the 1991 Constitution further provides through Article 17 that “ all organisations and citizens must protect the environment and natural resources: land, underground, forests, fauna, water sources and atmosphere”.

All the above laws would be implemented through the policy framework of decentralisation that was introduced by the Laotian Government in 2001 as a corollary to undertaking poverty alleviation, the process of which is legally mandated via the PM Decree No. 1 (2000); No. 192 (1999); Governance Policy Paper (2003); Law on Government (modified 2003); Law on Local Administration (2003); Civil Service Statute (2002); the 1993 revision of the Constitution; and, the NPEP (2003). Via this framework which focuses on integrated rural development as essential for poverty reduction, the Government is to transfer authority to perform a public service closer to the people it is meant to serve through the local and lower levels of administration. This process also allows villagers and local communities to participate in decisions that impact them. Water systems as well as clean water provision and a focus on the health sector are very succinctly stated as some of the areas where special attention is to be focused. In this case, tapping into the constitutionally mandated decentralisation process reduced public sector dependency

²⁴ Ibid. Refer to above.

²⁵ More than 100 constitutions throughout the world guarantee a right to a clean and healthy environment, impose a duty on the state to prevent environmental harm, or mention the protection of the environment or natural resources. Over half of these constitutions explicitly recognize the right to a clean and healthy environment, including nearly all constitutions adopted since 1992. Some 92 constitutions impose a duty on the government to prevent harm to the environment. Dinah Shelton, health and human rights working paper series available at http://www.who.int/hhr/information/Human_Rights_Health_and_Environment_Protection.pdf, accessed at http://www.who.int/water_sanitation_health/rtw2.pdf

and placed greater focus on partnership building with the private sector and the communities, including mass organizations like the LWU, LYU and LFTU.

In addition to the above policy and legal frameworks that the Laotian Government has put in place to access water and sanitation facilities, the Government has also positioned the MDGs (Target 10 focuses on the provision of access to safe water supply) as a central item on their national development agenda, thus recognizing that safe water and sanitation are considered to be crucial determinants to realise the right to the highest attainable standard of health and of living, the right to education, to development as well as the realization of other political and civil rights.

Closely linked to the above is the development of UNICEF’s “Hygiene Improvement Framework”²⁶ (see modified diagram below) that combines the increased and sustainable access to facilities and the promotion of behavioural change in the context of an enabling environment.

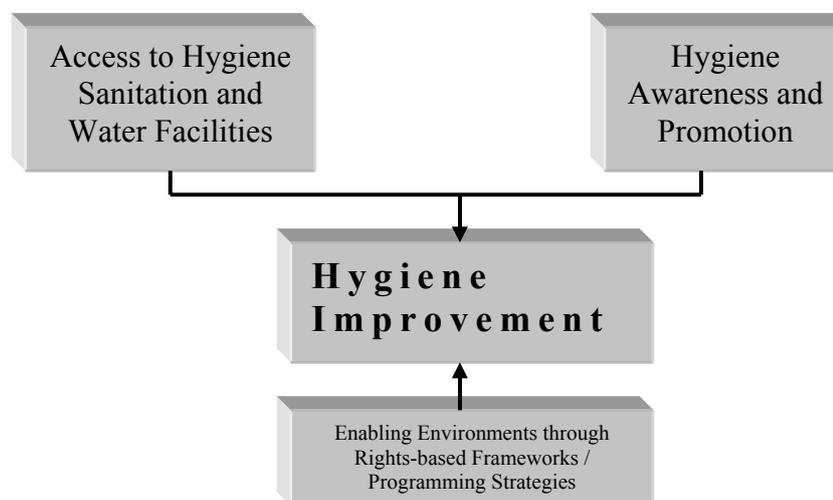


Figure 1: Hygiene Improvement Framework

It is this environment that has to be rights-based and the creation of such a rights-based enabling environment can only be facilitated through the development of a framework that consists of various HRBAP strategies that have been designed to suit *local needs and contexts* (as can be seen in this particular project) as follows:

Tapping into the decentralisation policy framework: Key to the issue of addressing power equations is the Laotian Government’s *decentralisation policy* that establishes the province as the strategic unit, the district as the planning and budgetary unit and the village as the implementing unit. In the context of water supply and sanitation provision, such a move was aimed towards focusing more on use, sustainability and impact of water and sanitation facilities rather than on numbers of installations and nominal community coverage. However, provincial and district implementation plans still needed to be developed and financial resources for large-scale investments and recurrent funding were (and still is) insufficient. Under such a scenario, UNICEF

²⁶Ibid. Refer to footnote No. 21. The diagram has been modified to build the linkages to the rights-based programming strategies that are the focus of discussion in this case study.

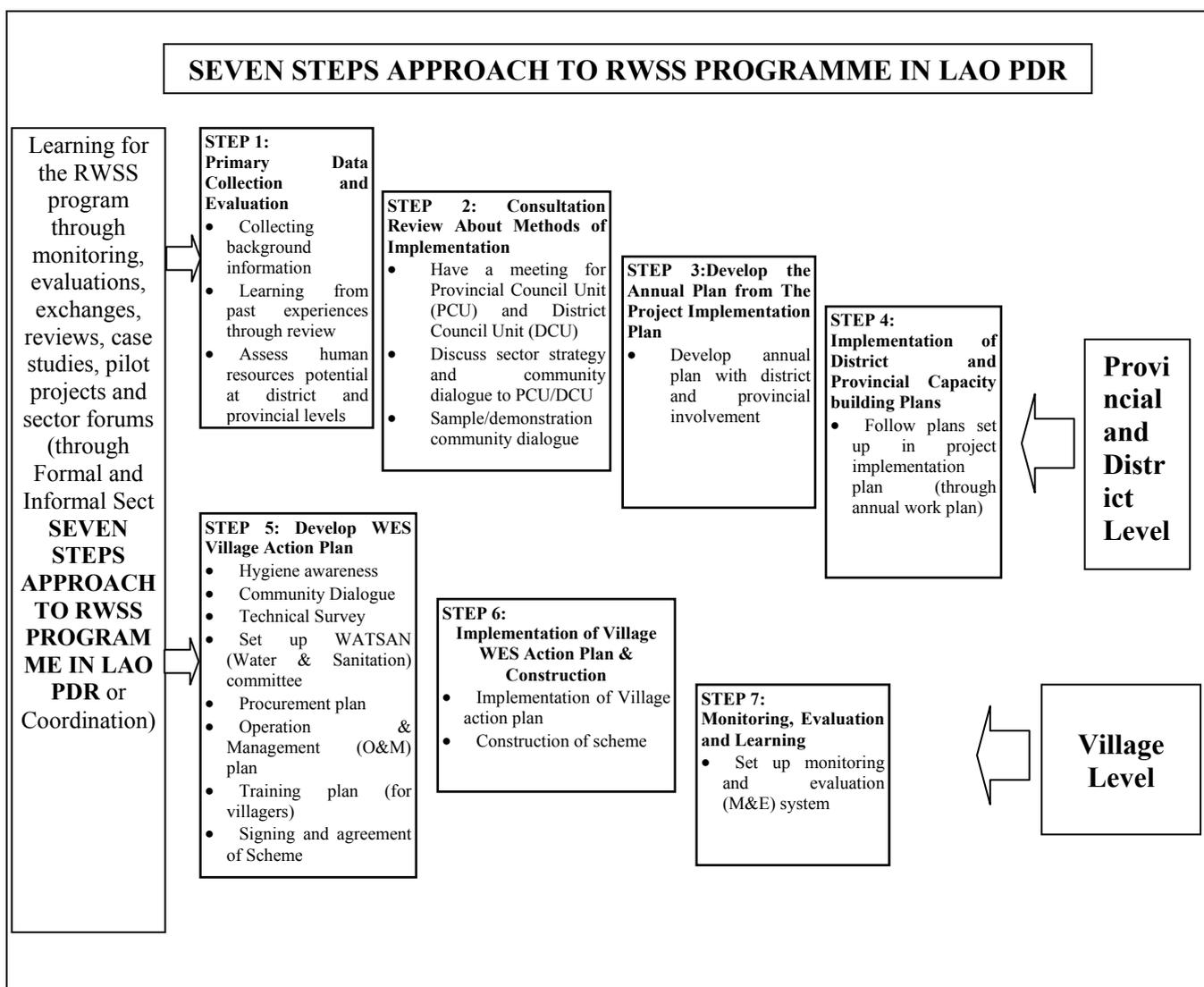
Laos and NAM SAAT realised that the programming strategies that needed to be developed for delivering water and sanitation facilities to the villages needed to be rights-based, so that such facilities could be used and monitored by the community under a decentralized democratic framework. The development of such strategies was facilitated by the political commitment of the Ministry of Health (wherein operational guidelines for strategy implementation and the approval of a new mandate for NAM SAAT were undertaken in 2004 under the Revised Sector Strategy). These also provided the legal framework (as mentioned in this section above) and necessary tools for institutional reform and sustainable sector development.²⁷ All of the above combined provided the necessary framework via which the public sector/duty-bearer moved from a manager to the facilitator role.

Division of clear and equal roles and responsibilities among all stakeholders: One of the HRBAP strategies developed included demarcating the clear lines of roles and responsibilities between the duty-bearers (NAM SAAT) and the claim-holders (the communities). Such a demarcation involved, in this case:

- i) The community owning, using, managing, operating, repairing and expanding its rural water supply and sanitation (RWSS) services;
- ii) NAM SAAT (and its partners) supporting the community's planning and implementation of its RWSS services at the district level;
- iii) NAM SAAT provincial teams (and its partners) supporting the district NAM SAAT teams (especially in planning, procurement and training); and,
- iv) The Central NAM SAAT team acting as advisor, facilitator, trainer (for the provincial NAM SAAT teams) and communicator for the external agencies (UNICEF Laos, Sida, etc) and the Central Government. The Central NAM SAAT team also facilitates the learning process at all levels and phases of the annual cycle.

Developing the Seven Steps Implementation Approach: This approach was launched in November 1997 as part of the National Strategy for the Rural Water Supply and the Environmental Health Sector and further simplified in 2001 (from 12 to the now-practised 7 steps), based on the ongoing decentralisation policy of the Government. This approach could be termed as the most important rights-based strategy developed for this programme and formed the foundation for rights-based implementation. Field surveys and site visits during the revision phase indicated that the Seven Steps should be formalized by establishing a set of operational guidelines. All implementing project sites, in order to track progress, would follow these guidelines. Wherever possible, NAM SAAT, at all administrative levels – central, provincial and district – have to ensure that all activities under this programme either followed the Seven Steps (presented in the diagram below) or support its adherence.

²⁷ Pg 10. UNICEF Final Progress Report to Sida, Water and Sanitation Programme, Vientiane, September 2004.



Developing the DRA: Along with the 7 Steps Approach, the DRA was also a part of the National Strategy for the Rural Water Supply and the Environmental Health Sector of 1997 and was developed to ensure sustainability of the nationwide rural water supply and environmental health sector. As mentioned earlier, the drafting of this National Strategy was a participatory process at the central level, with the Government inviting stakeholder participation (of various developmental agencies) to solicit their inputs to design a Strategy that is sustainable and viable. The result of this consultative process is reflected in the design of the DRA (included in the Strategy) that is rooted in rights-based principles, as it entails in depth stakeholder dialogues as well as involves communities putting forward demands and making claims and the duty-bearer responding to these claims. Demand-driven models bring issues of service provision coupled with a more participatory approach into the political discourse, something of increasing importance as Government services in Laos continue to be decentralized. Demand-driven services also boosts the accountability of the provisioning systems at various levels (from the level of public sector to that of the

contractor and the community) and shifts the ownership of services to communities in ways that foster greater interest in the access to and quality of services provided.²⁸

The DRA involved communities making informed choices for investing in water and sanitation services based on a range of technical and financial options presented to them - while NAM SAAT and UNICEF Laos became the facilitators, acting to support local decisions, communities became the decision makers. As mentioned in this paper, such an approach (see diagram below)²⁹ is mainly bottom up, involving participatory dialoguing and decision making from a common platform. It fosters accountability and transparency in decision-making, service provisioning and the monitoring of such provisioning.

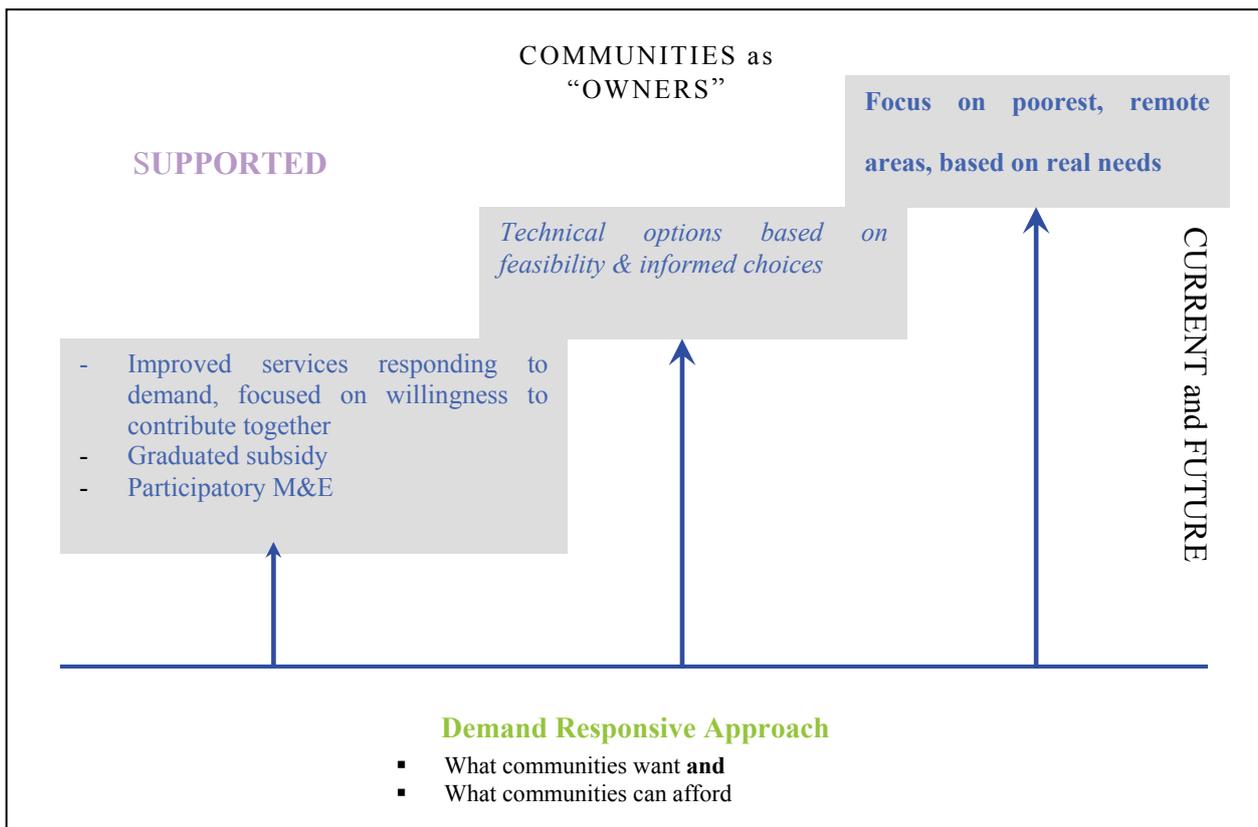


Figure 2: The Demand Responsive Approach

Implementing the Rights-Based Programming Strategies: To implement the above HRBAP strategies at the community level, various rights-centered techniques and methodologies were used as follows:

²⁸ Pg 6. Upala Devi Banerjee in “Development Done Right: Advancing Women’s Status by Operationalising Human Rights”, Manjushree M. Badlani and Richard Strickland, International Center for Research on Women, Washington D.C, 2002.

²⁹ “Building blocks used to achieve rural water supply and sanitation sector policy reform in Lao PDR”, by Dr. Nounanta Maniphousay, Dr Soutasakhone Chanthophone, Sam Godfrey, Santanu Lahiri and Thomas Meadley, NAMSAT and Water, engineering and Development Center (WEDC).

Using the Seven Steps Approach: The Seven Steps Approach used, as mentioned earlier, formed the core of HRBAP strategies used to help implement the WES programme at the grassroots. The decentralized and participatory structure of the strategies used under each of the steps are elaborated as follows³⁰:

<p><i>Step 1: Primary Data Collection and Evaluation</i></p>	<ul style="list-style-type: none"> • Data collection by the provincial NAM SAAT and local government officials from various sources of information like the Statistics Center, community, etc. • Promotion of WES programme - public mass media campaigns promoting WES programmes countrywide • Support communities to assess the human resource and their capacity in the project areas • Outset of community participation • Community approach NAM SAAT for assistance and information • NAM SAAT provide village a WATSAN³¹ Book and hold public meetings and discuss and evaluate technical options • Based on technical options, NAM SAAT present possible costs and contributions • Community decides whether they will continue
<p><i>Step 2: Consultation Review About Methods of Implementation</i></p>	<ul style="list-style-type: none"> • Organise a consultation meeting on the strategy and approaches/steps to be used with the district and provincial coordination units • Conduct the pilot or demonstration project as lessons for the focal staff in the targeted villages (incl. LWU and LYU members, NAM SAAT officials, Village Committee members, etc) • NAM SAAT undertakes initial health awareness campaign at the community level • NAM SAAT assist community to prepare an official agreement to support the project and be responsible for M&E • Community decide to go ahead with the WES application • Province gives preliminary approval for the project
<p><i>Step 3: Develop the Annual Plan from the Project Implementation Plan</i></p>	<ul style="list-style-type: none"> • Based on community's willingness to participate, NAM SAAT assists the community to prepare WES programmatic application for adoption at the district level • NAM SAAT assist in application process at the district level and if approved, the application is forwarded to the provincial level • Provincial level evaluates application and if approved, forwards it to the central level • District NAM SAAT office keeps the community informed of the progress of their application • Project appraised at central level and if approved, a budget is allocated and project added to the work plan for the following year • Based on approval, the district prepares draft plan for local projects
<p><i>Step 4: Implementation of District and Provincial Capacity building Plans</i></p>	<ul style="list-style-type: none"> • Based on community's willingness to participate and subsequent approval of the project at the central level, provincial NAM SAAT evaluates training needs required to support project in the community and decides if the province has the capacity to provide adequate training • Together with village community leaders, NAM SAAT plans detailed health awareness strategy at community level using village health volunteers³² for the purposes of community mobilization and involvement • Community then decides to go ahead with the implementation of the project
<p><i>Step 5: Develop WES Village Action Plan</i></p>	<ul style="list-style-type: none"> • With assistance from NAM SAAT, the community appoints the village WATSAN Committee – formation of this Committee is crucial as it plays an important role in maintaining the water system in the village as well as in liasoning and dialoguing with NAM SAAT officials on any issues relating to WES • NAM SAAT provides initial training for WATSAN Committee and for preparing the Village Action Plan – NAM SAAT and the village health volunteers undertakes tailored hygiene awareness strategy to ensure WES impact • NAM SAAT encourages demand and promotes community dialogue on technical options and responsibilities • Community prepares the WES Village Action Plan (what activity, where, time, who will take action,

³⁰ Pg 33. Refer to footnote No. 29. And Pgs 1-3 of Annex C1 from the report on “*The National Strategy for the Rural Water Supply and Environmental Health Sector*”, June 2004, Ministry of Health, Lao PDR.

³¹ Village community water user groups consisting of various village community members.

³² The community identifies village health volunteers and they are trained by the public health department and NAM SAAT. These volunteers ensure the cleanliness standards of the WES provisions, and are the first level of response mechanism should a health problem occur in the community

	<ul style="list-style-type: none"> support/contribution/share, etc.) The community signs a Memorandum of Agreement (MoA) and NAM SAAT undertakes technical survey, cost estimates and procurement – only then does UNICEF Laos release funds for construction
<i>Step 6: Implementation of Village WES Action Plan & Construction</i>	<ul style="list-style-type: none"> NAM SAAT assists community to organize and arrange its contribution to the project NAM SAAT assists the community to procure services (through tenders) NAM SAAT assists in community mobilization NAM SAAT provides the community with technical assistance for supervision and resource protection The contractor - who is always a private sector stakeholder wins the tender through a transparent bidding process - starts construction of the water and sanitation system together with the community NAM SAAT and the contractor provide technical training for maintenance of water and sanitation facilities (if required) NAM SAAT assists the community with quality control and taking over the facilities Community approve project and contractor bills after expressing satisfaction of the quality of services provided Community trained by NAM SAAT to finance and manage project operation and maintenance
<i>STEP 7: Monitoring, Evaluation and Learning</i>	<ul style="list-style-type: none"> District NAM SAAT, together with the community assesses the impact of the success of the WES provisions NAM SAAT monitoring systems at the provincial level work with the community and district to evaluate implementation and sustainability and report to the central level NAM SAAT central makes spot checks to determine the accuracy of local reporting If community requests for assistance, NAM SAAT provides assistance NAM SAAT collects data for provincial and central planning NAM SAAT adapts and adjusts provisions and approaches to suit local needs

Using the DRA: The DRA focuses on community participation, using dialogue as the key entry point wherein communities could put forward their demand for supply, use, own and maintenance of services. Community dialogue is central to all phases of the Seven Step Approach and focuses on *12 participatory learning activities* as follows:

- Village history profiling (to include all village data related to, for instance, religious profiles, ethnic minority composition profiles, history of migratory patterns of the villagers, and so on).
- Village mapping;
- Gender analysis of tasks and roles;
- Control of resources in the household;
- Decision-making in the community;
- Hygiene awareness assessment;
- Identification of community's perception on the routes of faecal-oral contamination routes;
- Local blocking methods of faecal-oral contamination routes;
- Analysis of the community's health status;
- Prioritising the community's problems;
- Informed choice on sanitation issues; and,
- Informed choice on water issues.



Figure 4: A NAM SAAT official explaining the 12 participatory learning activities to the villagers with the help of village facilitators (LWU and LYU members)

(Photo courtesy: Bandith Leuanvilay)

Central to the DRA process is the exercise of listening to what people would want – in this case, listening to the types of water supply and sanitation services people want, are willing and able to pay for and can sustain. Thus, for the community to make informed choices - the NAM SAAT team actually presents different types of water supply or latrine systems to the communities and explains to the villagers how much each of these WES types cost and what type of contributions in the form of cash and/or kind are solicited from the community - the above last two activities are presented to the communities and based on these and resultant discussions, communities come to decisions on what kind of services they would like to avail of.

The DRA process also helped establish *community user groups* – called the WATSAN Groups - which are gender balanced and have specific roles, such as reaching village consensus on community contribution during construction; in maintenance of the water systems (by hiring paid volunteers to maintain the systems); in promotion of hygiene messages; and, in liasoning and dialoguing with NAM SAAT officials and representing the community in these dialogues.³³ For more information on the composition, roles and responsibilities of the WATSAN Groups, please see the section on “*Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Programming Strategy*”.

³³ Ibid. Refer to footnote No 18.

Capacity of Duty-Bearers (including the Private Sector/Related Frameworks) in Addressing Demands: Capacity development of the duty-bearer being a vital component to ensure programme viability and sustainability, appropriate public sector human resource development – through the establishment of a Human Resource Development unit by NAM SAAT at the central level and in collaboration with UNICEF Laos - in techniques such as participatory rural appraisal, participatory situational analysis, participatory M&E with the villagers and interpersonal communication and facilitation of NAM SAAT officials at the district and provincial levels were (and is still being) undertaken to implement strategies such as the DRA, community dialogue and hygiene promotion.

Involvement of the private sector in operating and managing water delivery systems has accelerated in the last decade and NAM SAAT has also pursued this trend of building its own capacities to promote private sector participation in the building of the gravity fed water systems and the sanitation facilities. Lessons of how private sector can participate (including incentives) were learnt (and are being still learnt) from neighbouring Vietnam.³⁴ To ensure that such involvement is transparent, a nationwide private sector mapping exercise was undertaken and the bidding processes to select the contractor/s were quite transparent (with the names of those who put in a tender up on a website and the short-listed candidates vetted with the WATSAN Committee for final selection). Other key activities that are being undertaken to ensure that the community has a stake in monitoring private sector participation in the project included approval of business licenses by the provincial authorities; surveying and data collection to assess demand; agreement with the village authorities to provide the piped water supply service; tariff set by the water provider; and, signing of contracts by each household requiring the service and cost of connection paid for in advance.³⁵

Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Programming Strategy - The Role of the WATSAN Committee and of NAM SAAT: Monitoring to ascertain rights-based outcomes is a crucial part of any project that uses HRBAP strategies and such monitoring, in collaboration with both duty-holders (NAM SAAT) and the claim-holders assumes immense importance in this project. Such rights-based M&E that enlists participation of the claim-holders (in this case, poor and vulnerable villagers) and the sharing of lessons learnt in the process has also been institutionalised – thus giving it a formal mandate, as can be observed from the various strategies included in the Seven Steps Approach designed for this project.

In Houay Hid village in Nambak District in Luang Prabang Province, for instance, the WATSAN Committee has been formed comprised of 5 committee members, often consisting of the village head, a village committee member, an LWU member, an LYU member and a village volunteer. Gender balance is represented via the representation of two women members who usually come from the LWU. This Committee exists in all the villages where the project has been implemented and plays an important role in monitoring the activities pertaining to the construction, supply and maintenance of water and sanitation facilities. In this way, the WATSAN

³⁴ Ibid. Refer to footnote above.

³⁵ Ibid.

Committee reflects the voices of the people and represents community interests. For instance, the village chief maintains the village profile record book and a system for sending the information monthly to the province has been established. The village chief uses this book to log in entries of when repairs are taking place, of monies collected for the village fund, the quality of materials used for construction, etc. Reports are then sent through to the Central NAM SAAT office via the NAM SAAT district and provincial officials.

After the gravity-fed water system was constructed in Houay Hid village, post-construction village action plans are being developed to implement and monitor the progress of operation and maintenance of water supply systems (the village community chooses two people from within the village who are paid from the contributory village fund to maintain and repair the system), construction and maintenance of latrines and the promotion of hygiene activities. Though such a system of undertaking M&E and evaluation is quite informal as it relies on the participation of the community, it is highly participatory and the NAM SAAT official's states that the system works till date.

Programme monitoring by the duty-bearer, NAM SAAT Central – at the macro level – is undertaken systematically via liasoning horizontally with planning units within the Ministry of Health, the Committee for Planning and Cooperation, the Ministry of Foreign Affairs and other ministries and vertically with its local offices and UNICEF Laos. A central electronic database called the “Progress Monitoring Database” is being developed with support from UNICEF Laos to track progress in achieving the objectives of the programme. Section 4. Outcome (Results)

Changes that have Occurred as the Result of Application of using the Rights-Based Programming Strategies- The case of Houay Hid village in Luang Prabang Province: As a result of using the HRBAP strategies jointly developed by UNICEF Laos and NAM SAAT and supported by Sida, many communities are now being enabled to realise their rights and this is evident in the case of Houay Hid village, an interior rural agricultural, weaving and animal rearing community of around 500 people in Nambak District in Luang Prabang Province.

➤ ***Realising the right to safe, affordable drinking water:*** The construction of the gravity-fed water system in Houay Hid village in 2002 – a feeder tank on the mountain was connected by pipes to a cistern in the village – enabled taps to bring water to the doorsteps of every family. Earlier, people would have to walk for more than 10 minutes (one way) to the water source and carry back 40 litres of water (the entire process took more than 20 minutes). People would follow this routine at least four times a day – this meant that between two-three hours a day were spent in collecting water. In the rainy season, this process would entail even more time since the route to the stream would become treacherous and in the dry season, the stream would dry and people would take more than 30 minutes to find some clean drinking water.



Figure 4: Villagers accessing safe water (Photo courtesy: Bandith Leuanvilay)

The building of such a system, with local community knowledge and resources (both in terms of money and labour) and maintained by the community fostered a sense of community ownership and participation. UNICEF Laos and NAM SAAT officials also trained targeted villagers in testing the water quality. It thus enabled the community to realize their right to safe, affordable and available drinking water –*even those who cannot afford to pay were ensured access to water and were given the option to pay whenever they could afford to do so (often, at time intervals that they themselves decided upon)*. The realization of this human right by each and every member of the community accrued benefits in terms of realization of other rights as well as can be seen from the subsequent outcomes.

➤ *Realising the right to sanitation:* UNICEF Laos and NAM SAAT helped build latrines in each house in the village. These were constructed with contributions from the villagers (again, both in terms of monetary and labour contributions). UNICEF realized from the start that a demand-driven participatory approach (the DRA) to provisioning for needs (in this case, water and sanitation facilities) ensures that the needs met are more sustainable and viable in the long run. Villagers now had access to sanitation facilities in their own yards and also had access to water to use such facilities.

➤ *Realising the right to health and nutrition:* Following from the above, health and nutrition levels of the villagers improved as can be seen from the immediate

visible gains - cases of diarrhea, water-borne diseases and malnourishment in the village has gone down remarkably and, villagers now state that they need to spend much less on medical needs. They could also work more (as they fell ill less often). In a way, the right to life, health and work as enshrined in the 2 main Covenants has been realized to a large extent through these outcomes.

➤ *Realising the right to education:* The realization of the right to water also led to the realization of the right to education – children now need not help their parents fetch water. It thus left them with ample time to pursue their right to an education. Such benefits accrued even more for girls. Traditionally, women and girls in Laos spend as much as two hours per day in fetching water, resulting in energy expenditure greater than one-third of their daily food intake. Even in schools, the burden often falls on the girls to fetch water when needed, taking additional time away from their studies and play time.³⁶ Taking cognizance of the benefits that safe water and sanitation can bring, other organizations also started contributing to this process of development. Thus, Save The Children United Kingdom (SCF UK) constructed a kindergarten school and latrines in the school – giving the Houay Hid’s villagers a chance to further capitalize on their gains of accessing safe water, sanitation and health facilities.

➤ *Realising the right to a sustainable livelihood:* Houay Hid villagers could now also reap the economic benefits of realizing their rights to water and sanitation facilities, thus enabling the realization of the right to access a sustainable livelihood (and thereby, to work and to food security). This links directly to the General Comment on the right to water that states that: “*attention should be given to ensuring that disadvantaged and marginalised farmers, including women farmers, have equitable access to water and water management systems, including sustainable rain harvesting and irrigation technology.*”³⁷

Villagers now had ample water that could be used to tend to rice production and fruit and vegetable cultivation all through the year. Animals and chickens could be reared and the consumption of meat and eggs increased. Not only did nutrition levels improve (which is a direct correlation to enjoying the right to health and life) but the women in the village also formed a group to sell their fruit and vegetable produce in the market. And since water was now available in their own houses, the women also had the time to weave and sell such products in the markets.

➤ *NAM SAAT capacitated to take the process forward:* A major outcome of the capacity development process of NAM SAAT through the conception and implementation of the Seven Steps Approach was the development of capacities of NAM SAAT officials at various levels to take the WES programme forward. UNICEF Laos worked with NAM SAAT in not only developing HRBAP strategies but also trained relevant officials at the district and provincial levels to implement such strategies in collaboration with the local communities. NAM SAAT staff nationwide is now learning to plan and implement infrastructure improvements through community participation, so that people can help construct and maintain the water and

³⁶ Pg 25. Refer to footnote 29.

³⁷ Ibid. Refer to footnote No. 13.

sanitation systems they need. Such capacity development of relevant public officials ensured that the gains made from the implementation of project activities could be sustainable, viable and replicable across the country in the long run.

➤ Promoting Gender equity and empowerment: The HRBAP strategies used also helped promote gender equity and empowerment to an extent – through women’s participation in the community user groups, women’s roles in various communities became more clearly defined. For instance, in ethnic groups such as the Lao Ikho, LWU women volunteers who went in to train and work with minority women succeeded in overcoming stereotypical and traditional barriers - women could now not only talk to male outsiders but also participated on an equal footing with men - for instance, in the decision-making processes - in the WATSAN Committees and the hygiene promotion groups.³⁸ On an average, such groups that consist of around 5-7 community members now have around 2-3 women as active members. Moreover, with the availability of water (and the resultant impact on growing fruits and vegetables and undertaking weaving for commercial purposes), economic empowerment was also gradually fostered.

Positive Lessons Learned

Box 3: A Checklist: Some of the rights-based principles realized through the NAM SAAT/Sida/UNICEF Laos partnership

- i) *Focusing on the most Poor, Marginalised and Vulnerable Groups* - As in evident in the communities targeted through this programme – the interior, rural, mountainous and ethnic communities were the main focus communities;
- ii) *Fostering Participation* - Through communities planning, designing, building, maintaining and monitoring both public sector and private sector delivery – very succinctly elaborated in practice through the Seven Step Approach;
- iii) *Enabling Empowerment* - Of the stakeholder communities as a result of such participation;
- iv) *Promoting Equity and Non-discrimination* - More importantly, of the women in the communities (by ensuring their representation in the WATSAN Committees, for instance); and by ensuring that that even those who cannot afford to pay can have access to water;
- v) *Facilitating Transparency* - Via communities, for instance, by having a role in the contractor bidding process; in communities signing agreements before the release of construction funds from UNICEF Laos; overseeing quality of construction; or, in having a voice in stating their agreement that contractor is to be paid after expressing satisfaction at the construction works undertaken;
- vi) *Ensuring Accountability*: Through community monitoring the entire construction process, accountability from both the public and private sector is demanded to an extent. vii) *Developing Capacity*: Of both the duty-bearer (to fulfill obligations) and the claim-holder (to realise the right to water and sanitation) through the strategies used.

³⁸ Ibid. Refer to footnote No. 29.

➤ Fostering rights-based principles in practice – Ensuring sustainability and viability via building community capacities: The WES programme focuses on building community capacities to participate (via designing, building, monitoring and maintaining their own resources), undertaken in collaboration with the duty-bearer. This process fosters a sense of community ownership and makes the system more sustainable and viable in the long run. *Experiences from Laos demonstrates that communities are willing to pay up to 100% of operation and maintenance costs for both water supply and sanitation facilities if a framework is used wherein community choices are honored and acted upon. In Houay Hid village, the community contributed towards construction costs in terms of local materials, labour and cash for both the water supply system and the construction of household latrines.*

This experience resonates with the findings in a UNICEF paper “*Financing of Fresh Water for All: A Rights Based Approach*”, by Ashok Nigam and Sadig Rasheed, wherein the authors note: “one of the important lessons in the water and sanitation sector in the 1980s and 1990s is the fundamental role that communities play in any sustainable financing strategy. Many of the communities are not ripe for private sector initiatives. Placing undue reliance on private capital to finance public infrastructure runs the danger of marginalizing many poor people unless this investment is also socially responsible. But, community initiatives have in many instances shown potential for sustainability and replication”.

The paper further mentions: “The motivation for community initiatives arises from the shared nature of the resource base, whether ground or surface water and the implications of unhygienic conditions as a result of improper sanitary practices. Even for the protection of the fresh water environment, success can be achieved only when the community participates in decision-making and sees a stake for itself in the protection of the environment. The latter goes beyond the rhetoric of stakeholder participation. The greater the control that the community has in the management of the fresh water environment and benefits from it, the higher the probability of success. For this purpose, the community must be aware and appreciate the consequences of action that impact its environment”.³⁹

³⁹ “Financing of Fresh Water for All: A Rights Based Approach”, paper by Ashok Nigam and Sadig Rasheed, UNICEF Staff Working Papers, Evaluation, Policy and Planning Series Number EPP-EVL-98-003, UNICEF, New York, N.Y., USA, 1998.



Figure 5: Villagers participating in and overseeing construction of a public water collection point – there are now 23 such water collection points in Houay Hid village (Photo courtesy: Bandith Leuanvilay)

In the case of the NAM SAAT/Sida/ UNICEF Laos partnership, even in conditions that are not traditionally civil society friendly or where civil society have not attained higher levels of sophistication, HRBAP strategies used in practice helped find ways of undertaking sustainable development activities. For instance, activities like the members of the LWU organizing teams to clean village yards, thus raising environmental and health awareness; or, the signing of village agreements before the release of any construction funds from UNICEF Laos to the provinces contributed to an increased number of facilities built on the basis of people’s preferences rather than driven by personal interests and profit motives on the part of project designers and local authorities⁴⁰.

Such a process of support to building of capacities that enabled communities to participate and take ownership of the process, also helped in ensuring accountability of the duty-bearer to an extent.

➤ *Bringing in positive catalysts to build capacities is a key:* In the case of the WES programme, the role of Sida and UNICEF Laos as positive catalysts cannot be undermined. Sida’s assistance, both bilateral and through UNICEF Laos, was an

⁴⁰ Pg 17. Refer to footnote 29.

essential contribution in assisting the Laotian Government in its efforts to build an effective WES programme, grounded in HRBAP strategies, and that was used to develop, deliver and sustain water and sanitation facilities in the most poor, vulnerable and marginalised sections of the population throughout the country. UNICEF role was key, being one of the multilateral agencies that have been a forerunner worldwide in developing and using HRBAP strategies and tools. The agency brought in this very experience and skills in capacitating NAM SAAT and played a very catalytic value-added role in the entire programmatic process by playing a two-fold function (as highlighted in page 11). Building of capacities – as has been elaborated throughout this paper - was crucial as it ensures that outcomes and gains made as a result of implementing the project activities are both sustainable and viable in the long run.

➤ Stakeholder participation in building a team approach: HRBAP strategies used helped build a team approach that was suited to the local contexts and needs. In this case, project activities were designed under a team framework and left room for adjusting the pace of implementation based on local capacities (depending on the communities willingness to collaborate). Such an approach helped UNICEF Laos to be an inside member of the team (rather than just being a donor or a member from the donor's side).⁴¹

Duty-bearers capacitated in fulfilling their obligations: Following from the above, the team approach used to develop HRBAP strategies created an atmosphere of mutual trust and solidarity that enabled duty-bearers to carry out their obligations to *respect, protect and fulfill* the right to water – in the process, they were also capacitated to take the process of development forward.

The duty to *respect* requires a Government to ensure the activities of its institutions, agencies and representatives do not interfere with a person's access to water.⁴² In this case, the enabling laws and policies in place mandated the various provisions to realize the right to water and NAM SAAT (assisted by UNICEF Laos) used these provisions to put forward a framework that ensured that the right to water is met. A related responsibility - the duty of *non-retrogression* – is also followed since NAM SAAT has directly established the means to obtain drinking-water, by putting in place a model of water system delivery that is highly participatory and sustainable.

The duty to *protect* requires that Governments should diligently take all the necessary feasible steps to prevent others from interfering with the right to water. This will usually require a strong regulatory regime that is consistent with other human rights. The UNCESCR has stated that this should include independent monitoring, genuine

⁴¹ This approach was also used in the UNDP initiated Governance and Public Administration Reform Programme in Laos (wherein local styles of building consensus and making and participating in decisions fostered an environment where honest dialogue can flourish, based on the principle of mutual learning and respect. It also allows all parties involved to strike an appropriate balance between short-term success (imposed by donors or by the political agenda of a country) and long, term, sustainable and viable results). Pg 248. "Laos: A Team Approach Aligned to the Local Decision-Making Style", from "*Ownership, Leadership and Transformation: Can we do Better for Capacity Development*", by Carlos Lopes and Thomas Theisohn, UNDP, 2003

⁴² http://www.who.int/water_sanitation_health/rtw4.pdf

public participation and imposition of penalties for non-compliance with standards. Comprehensive regulatory measures will be needed with respect to pollution, disconnection of water supplies, land use and access to water supplies.⁴³ Again, all these principles were followed in practice in this project. – the Houay Hid community was actively involved not only in designing, constructing and maintaining the water supply system but also was given the space in ensuring that their right to water was protected by participating in the approval of business licenses by the provincial authorities and in survey and data collection to assess demand; signing agreements with NAM SAAT to provide the piped water supply service and so on.

Such outcomes assumes even more significance in a traditionally aid receiving and dependent country like Laos, where the duty-bearers are more reliant on service delivery via provisioning for needs with the aid of donor funds.

The duty to *fulfill* requires that Governments take active steps to ensure that everyone can enjoy the right to water as soon as possible. This encompasses the obligations to *facilitate*, *promote* and *provide*. The obligation to *facilitate* requires the State to take positive measures to assist individuals and communities to enjoy the right. The obligation to *promote* obliges the State Party to take steps to ensure that there is appropriate education concerning the hygienic use of water, protection of water sources and methods to minimize water wastage. States Parties are also obliged to *fulfill (provide)* the right when an individual or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal. In practice, this means taking steps that accord sufficient recognition of this right within the national political and legal systems, preferably by way of:

- * legislative implementation;
- * adopting a national water strategy and plan of action to realize this right;
- * ensuring that water is affordable for everyone;
- * facilitating improved and sustainable access to water, particularly in rural and deprived urban areas.⁴⁴

All of the above was followed in practice in the NAM SAAT/Sida/UNICEF Laos partnership.

Finally, the UNCESCR has stated that countries have a duty to progressively increase the level of water access until it reaches an adequate standard for safety and quantity. One of the most practical ways of ensuring such a quantity is to ensure access to households or “on-plot”.⁴⁵ Again, NAM SAAT has achieved such progressive realization by ensuring that all households in Houay Hid village have access to clean and safe water to meet their needs and *by ensuring that even those who cannot afford to pay can have access to water.*

⁴³ Ibid. Refer to footnote above.

⁴⁴ Ibid.

⁴⁵ Ibid.

➤ Enabling other agencies to participate in realizing the right to development: As a result of the enabling environment that was created and which helped the community realise their right to water, sanitation and a livelihood, other agencies like SCF UK came in and helped played its value-added role by building a nursery in Houay Hid village. Such a step enabled children to access and thereby helping realise the right to an education. In a way, such HRBAP strategies used and the resultant positive outcomes created a ripple effect that enabled other agencies to come in and help people realise other rights in the process. Elsewhere across the country – in Khammuane Province, for instance – SCF UK is collaborating with UNICEF Laos and NAM SAAT and complementing the WES activities by opening and running primary schools with community participation. And in Vientiane Province, primary schools are being operated in the WES sites by a Japan-based Foundation.

Opening the doors for scaling up: It has been observed that HRBAP strategies - especially when it involves communities in planning, implementing and monitoring of public sector services, in collaboration with the public sector - can be replicated on scale. In this case, the success highlighted by using such strategies in Houay Hid village and other villages in the same district is now going through the same process of replication (and resultant outcomes) in villages (though, with its accompanying challenges) in other districts across Luang Prabang Province (Phonh Saat village in Sieng Neune District is a case in point) and in Houaphan Province (in the north-eastern part of the country).

Challenges in Implementing Rights-Based Programming Strategies: Lessons Learned

➤ Unclear public sector roles and responsibilities under the decentralisation process: Following from the above, a major feature that can stand in the way of seeking legal redressal to claims is NAM SAAT's absence of a legal mandate that would give it the authority (and necessary power) to carry out its assigned tasks. Coupled with this constraint is the challenge in terms of assigning a clear division of roles and responsibilities under the decentralisation process and the resultant lack of coordination – from the central-level NAM SAAT to the district-level NAM SAAT offices with the provincial NAM SAAT offices in between - to carry out some of the specific and assigned tasks as conceptualized under the HRBAP-based framework strategies that were developed for this project. Some of the other constraints in making the decentralized framework work has been the limited funding resources available; the low efficiency of investment; corruption-related issues (specifically as they related to the public sector); weak capacities of public sector officials at various levels to carry out their functions, including undertaking M&E; and so on.

Box 4: Enabling Access to Justice and Rule of Law - A very imperative rights-based principle not realized

A rights approach posits that individuals and communities can take recourse to legal mechanisms in case their rights are not met. Such mechanisms can take several forms - like filing cases in designated courts or making complaints to a tribunal or court. Even local justice redressal mechanisms are and can be used to address claims. However, Laos, as a country, still does not have a legal system that promotes judicial activism; nor is the newly set-up judicial system well capacitated to do so. Moreover, absence of civil society capital and lack of awareness of how the justice system works means that civil society activism to legally demand and claim rights is almost nil. Local dispute resolution mechanisms – where they exist – are also not capacitated to address any claims issues. Finally, NAM SAAT - at the programme level – also has not set up a legal mechanism by which individuals or groups can make claims if their right to water is not met. Such absence of a legal provision and lack of legal awareness on the part of the claim-holders to claim rights places individuals and groups at a severe disadvantage in so far as to make the duty-bearer accountable in cases of not fulfilling their obligations and poses one of the most serious challenges that this programme has to address on an urgent basis.

Note to UNICEF Laos: Some recommendations to this effect are - (i) Building relationships with “those in power” (like the judges and magistrates) and help build their capacities so that they not only aware of the legal obligations that mandate them to pass positive judgments in favour of the claim-holders in delivering on the right to water or in putting pressure on the State to fulfill their obligations relating to the human right to water; and (ii) Making the claim-holders aware that they have a human right to water and can hold the State accountable if it does not fulfill its obligations to this effect – legal awareness on the right to water can be included in the public awareness campaigns on safe water and sanitation that are being conducted by NAM SAAT officials and the LWU and the LYU volunteers at the grassroots as a part of the Seven Steps Implementation Approach.

➤ *Low capacity and limited civil society capital:* As mentioned elsewhere in this paper, Laos does not yet have the level of civil society capital required (or the enabling conditions for such capital to flourish) to adopt and implement rights-based approaches. More importantly, the country is still going through a period of transition where communities are not capacitated to make informed choices about their own developmental processes – thus, development led-processes are still not people-owned, people-led or people-centered. In the case of Houay Hid and the neighbouring villages in Nambak District, a cohesive social capital was built and capacitated to take the process of development forward through the use of HRBAP strategies (like the DRA or the Seven Steps Framework). *Even then, some drawbacks have been encountered – for instance, even with the community overseeing construction activities, there are no mechanisms in the agreements signed between NAM SAAT and the communities that makes the contractor liable if he has provided low quality construction materials and if the water systems break down over a period of time due*

to the quality of construction. In other districts across the country too, such work is proving to be a challenge as no cohesive social capital exists or is willing to be capacitated to undertake people-led, people-owned and people-centered development. Coupled with this are the very limited administrative, managerial and technical capacities of the public sector to manage and implement development programmes in collaboration with civil society. In such a scenario, development outcomes to flourish and grow via the use of rights-based approaches will take a while to be achieved.

➤ *Few donors investing in rights-based approaches:* Laos is at present, an aid recipient country and the aid delivery mechanism is very much service delivery oriented. Under this scenario, those donors that are willing to invest in developing and implementing HRBAP-based strategies to achieve developmental outcomes are finding it a challenge to do so and encounter all the challenges that are documented in this section. In this case, Sida was a pro-active partner that was willing to invest its resources to develop and use HRBAP strategies. However, such a process can often be very time and resource intensive - especially in a country like Laos - and acts as a deterrent for donors to invest in rights-based approaches to achieve developmental outcomes.

➤ *Limited sector partnerships:* Adopting HRBAP strategies not only requires a highly capacitated civil society and a responsive duty-bearer – it also requires partnerships between these sectors and others (like the private sector). In Laos, though partnership with the private sector has been undertaken and solicited for working in partnerships with both NAM SAAT and the community, such sectoral partnerships have still not evolved to a level that can enable them coming together on a common platform to undertake common developmental goals, using rights-based approaches.

SELECT BIBLIOGRAPHY:

Asian Development Bank, April 2001, Report on “*Key Governance Issues in Cambodia, Lao PDR, Thailand and Vietnam*”.

Devi Banerjee, Upala., 2002, in “Development Done Right: Advancing Women’s Status by Operationalising Human Rights”, paper by Manjushree M. Badlani and Richard Strickland, International Center for Research on Women, Washington D.C, USA.

Dr Maniphousay, Nounanta., Dr Chanthophone, Soutasakhone., Godfrey, Sam., Lahiri, Santanu., and Meadley, Thomas., September 2004, “*Building blocks used to achieve rural water supply and sanitation sector policy reform in Lao PDR*”, UNICEF Final Progress Report to Sida, NAM SAAT and Water, Engineering and Development Center (WEDC), Water and Sanitation Programme, Vientiane, Laos.

<http://www.bpd-waterandsanitation.org/english/humanRights.asp>

http://www.crin.org/docs/resources/publications/hrbap/Applying_Human_Rights_Approach_to_Programming.pdf

<http://www.crin.org/hrbap/index.asp?action=theme.guideitem&item=4681&subtheme=2>

<http://www.oneworld.net/guides/laos/development>

<http://www.oneworld.net/guides/laos/development#politics>

<http://www.state.gov/g/drl/rls/hrrpt/2003/27777.htm>

http://www.unicef.org/wes/index_action.html

http://www.unicef.org/wes/index_bigpicture.html

Human Rights Committee, General Comments adopted under Article 40, paragraph 4 of the Covenant on Political and Civil Rights, U.N. Doc., CCPR/C/21/Rev.1 (19 May 1989).

Jonsson, Urban., 21-22 August 2000, “An Approach To Human-Rights Based Programming In UNICEF (Eastern And Southern Africa)”, paper presented at the 'Second International Encounter on the Right to Food in Development', Geneva, Switzerland.

Lane, Jon., paper on “The Human Right to Water. ...and Sanitation”, Chair of the Building Partnerships for Development in Water and Sanitation. The paper can be accessed at Source: <http://www.bpd-waterandsanitation.org/english/humanRights.asp>

Lopes, Carlos., and Theisohn, Thomas., 2003, *Ownership, Leadership and Transformation: Can we do Better for Capacity Development*, UNDP, Earthscan Publications Ltd, London and Sterling, Virginia, USA.

Nigam, Ashok., and Rasheed, Sadig., 1998, *Financing of Fresh Water for All: A Rights Based Approach*”, UNICEF Staff Working Papers, Evaluation, Policy and Planning Series, Number EPP-EVL-98-003, UNICEF, New York, USA.

Report of the *Initial, Second, Third, Fourth and Fifth Report of Lao on the implementation of CEDAW to the CEDAW Committee.*

Report on the *Eighth Donor Roundtable Meeting for Lao PDR*, Vientiane, Laos, September 4-5, 2003.

Report on “*The National Strategy for the Rural Water Supply and Environmental Health Sector*”, June 2004, Ministry of Health, Laos.

Rozga, Dorothy., 19th - 20th June 2001, “Applying a human Rights Based approach to programming: Experiences of UNICEF”, UNICEF, presentation paper prepared for the Workshop on Human Rights, Assets and Livelihood Security, and Sustainable Development, London, United Kingdom. The paper can be accessed at http://www.crin.org/docs/resources/publications/hrbap/Applying_Human_Rights_Approach_to_Programming.pdf

World Health Organisation, Geneva, 2003, “The Right To Water”, Source: http://www.who.int/water_sanitation_health

Using Rights-Based Approaches to Mobilize for Social Justice

The Action Aid Nepal RELECT Process



11. Using Rights-Based Approaches to Mobilize for Social Justice: The Action Aid Nepal RELECT Process

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LIST OF ABBREVIATIONS USED:

AA: Action Aid
AAN: Action Aid Nepal
CBOs: Community-based organizations
CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women
CIRAC: International REFLECT Circle
CRC: Convention on the Rights of the Child
CSOs: Civil society organizations
DDCs: District Development Committees
DJKYC: Dalit Jana Kalyan Yuba Club
DSSS: Dalit Samaj Sewa Sangh
HRBAP: Human Rights-Based Approach to Programming
ICERD: International Convention on the Elimination of all Forms of Racial Discrimination
IEU: Information and Education Unit
INGOs: International non-governmental organizations
MDGs: Millennium Development Goals
NDC: National Dalits Commission
NFE: Non-formal education
NGOs: Non-governmental organizations
NHRC: National Human Rights Commission
NPC: National Planning Commission
OHCHR: Office of the United Nations High Commissioner for Human Rights
REFLECT: Regenerated Frerian Literacy through Empowerment Community Technique
SCDF: Saraswati Community Development Forum
SKVDA: Shiva Kedar Village Development Association
ToFs: Training of local facilitators
ToTs: Training of trainers
UNDP: United Nations Development Programme
VDCs: Village Development Committees
VPGs: Village People's Government

1. Background and Rationale: The Status of Human Rights in Nepal

Country and Programme Context: The land-locked Kingdom of Nepal was one of the first countries to produce a Millennium Development Goals (MDG) country report in 2002. In the field of health and education, Nepal had made significant progress during the 1990's with primary school enrolment rates rising from 64% to 80% and infant mortality rates declining from 165 to 64 per 1000 births.² However, a recent study by the National Planning Commission (NPC) and the United Nations Development Programme (UNDP) concluded that unless the country receives additional foreign assistance, the MDGs will be hard to achieve by 2015. At present, the country receives half of its development budget from donor funds³. As well as targeting foreign direct investment more towards the attainment of the Goals, there is also a need to consider the possibility of debt relief to release funds for development.⁴

Policy and Legal Framework: The reason for this declining rate of progress can be attributed to the political turmoil that the country has witnessed in the last one and a half decades. Following the restoration of democracy in 1990, power became centralized in the Kathmandu Valley with governance responsibility jointly shared between the Monarchy and the Parliament. This gave rise to a liberal middle class, which benefited from globalization. Often hailing from the upper castes, this middle class was the segment most represented in both the political and economic structures of the country. However, rural communities and people belonging to the lower castes continued to suffer a mixture of injustices, of which overriding poverty has been the one consistent factor.⁵

With a succession of democratically elected Governments dismissed through the 1990's, a heavy toll continued to be borne by the country – politically, economically and socially - and these have been reflected in its very low development indicators and progress towards such.⁶

The political instability has been further compounded from the mid-1990s with the growth of the movement called the People's War of the Maoists – this movement was growing in strength largely due to the political insecurity and the growing inequities amongst the people. Originating in the villages and rural, remote areas of the country, the movement has grown in strength mainly due to the large support base it enjoys amongst the working “blue-collar” class of people and particularly amongst the often educated but unemployed youth and Dalits (a group belonging to the lowest strata of the Hindu caste system).

² “The Nepal Guide in Summary”, Source: <http://southasia.oneworld.net/article/view/94071>

³ “Nepal: Development and Human Rights are Intertwined”, HRW Letter to Donors to Nepal, by Brad Adams, Executive Director, Asia Division, Human Rights Watch, May 4, 2004. Source: <http://southasia.oneworld.net/external/?url=http%3A%2F%2Fhrw.org%2Fenglish%2Fdocs%2F2004%2F05%2F04%2Fnepal8532.htm>

⁴ Ibid. Refer to footnote No. 3.

⁵ <http://southasia.oneworld.net/guides/nepal/conflict>

⁶ The country is currently ranked at a very low UN Human Development Indicator Index of 140 out of 177 countries. Source: http://hdr.undp.org/statistics/data/cty/cty_f_NPL.html

At present, the growing strength of the movement - the Maoists have currently taken over authority of the Government-constituted Village Development Committees (VDCs) and the District Development Committees (DDCs) in large pockets of the country and have substituted this set-up with their own local governance structures called the 'Village People's Government' (VPGs); these VPGs are today the dominant structures of local power that exist in Nepalese villages and rural interior areas - and the resultant backlash by the security forces to curb their activities has intensified the conflict situation in the country to such an extent that the Monarchy dissolved the Parliament in February 2005 and has since taken over control of the Government.

Amidst this political turmoil, human rights violations have become rampant during police operations (named Kilo Sera II) launched in May 1998 in the western and central regions of the country and abuses have been perpetrated by both sides - the Maoists and the Army (that owes its allegiance to the Monarchy) since that time.⁷

Against this backdrop, while Nepal has 'acceded' to several international human rights instruments, its ratification and/or implementation in this regard has been weak. Those few treaties and conventions that have been ratified include the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The country has however only signed but not ratified the CEDAW Optional Protocol or the two Optional Protocols on Children.

Human Rights and the Role of Civil Society: In the current backdrop of a "three-pronged" power struggle between the Monarchy, the Maoists and the Parliament, the socio-economic struggles that the poor, excluded and marginalized sections of the populace faces have further intensified. As in all conflict situations, it has been the women and children belonging to the "lowest" strata of the Hindu caste system - the Dalits, the *Kamaiyas*, the *Chamars*, the *Mohis* or the *Haliyas* (all groups belonging to this "lowest" strata) - that have often suffered the most due to such inequities in the system. This situation has been further exacerbated by the State mechanism that has become unable to deliver socially inclusive policies and programs in the desired manner. Though the Nepal Constitution, through various articles - (Article 14(4)) prohibits caste-based discrimination and Article 20 prohibits serfdom - and the legal system, through various laws - like the Civil Liberties Act of 1954, the Civil Code (Section 10A that prohibits some forms of discrimination against the Dalits, but excludes places of religious practice from the scope of the Act) and the *Kamaiya* Bill (passed by the House of Representatives) - have tried to tackle caste-based discrimination, such prejudices persists. To raise awareness against racial discrimination, the National Human Rights Commission (NHRC), established in 2000, undertakes a project entitled "An Integration of Dalit Rights Promotion Project"; currently, the Commission is however preoccupied with tackling complaints of violations brought to its notice due to the prevailing conflict situation. A related Commission that is supposed to work dedicatedly on Dalit issues - the National Dalits Commission (NDC) - has not yet been given a legal mandate that can empower it to

⁷ Ibid. Refer to footnote No 3.

work on behalf of this particular section of the population. Other bills like the “Bill to Uplift and Protect Dalits” that was introduced in 2001 are yet to come into force⁸.

Thus, poverty, illiteracy, the hierarchical caste system, ongoing political turmoil and lack of implementation of the existing legislations and lack of adherence for the constitutional provisions have also led to a situation where such groups have faced immense discrimination in all spheres – from social exclusion to being denied entry to high-caste Hindu temples to being ostracized for marrying above their castes.⁹ People belonging to these groups are often found living in isolated neighborhoods and forced to perform menial tasks (such as removing dead animals or cleaning human excreta) and are often chastised if they refuse to do so.¹⁰ All such acts of discrimination and exclusion are in direct contravention to internationally agreed upon human rights principles and the provisions of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD).

Against this setting, the Maoists have cajoled some of these groups, like the Dalits, into joining their militia and mobilized them effectively to generate violent conflicts.¹¹ This has perpetrated further violence against the Dalits by the Government armed forces.

While policy and legal frameworks, as highlighted above, have not been able to protect Dalits from discrimination, it has been observed that civil society in Nepal is quite active in helping such marginalized groups realize various rights. Nepal’s civil society - reflected in the large number of non-governmental organizations (NGOs) and international non-governmental organizations (INGOs) that exist in the country – have been performing an array of services in this regard, ranging from traditional service delivery roles to building capacities for social activism to claim social justice.¹² At present, however, the role of Nepali civil society has become marginalized due to the political situation – on one hand, civil society functions are hampered due to many parts of the country becoming inaccessible as a result of the Maoist conflict; on the other hand, the current assumption of all power by the Monarchy has led to a situation where civil society group activities are being seriously curtailed. For instance, despite a plethora of vibrant electronic, print, and broadcast media, journalists trying to report human right abuses have been victims of both Government as well as Maoist sides. Such denial of democratic rights and frequent bans on political assembly further exclude the civil society in particular and the Nepali people in general from participating in governance processes.

⁸ “Discrimination against Dalits in Nepal”, Human Rights Watch. Source: <http://hrw.org/english/docs/2004/02/09/nepal7322.htm>

⁹ US Department of State, Bureau of Democracy, “Human Rights and Labor”, Human Rights Report: Country Report on Nepal, 2002.

¹⁰ Jana Utthan Pratishthan, “Dalit in Nepal”, April 2001, p. 25.

¹¹ “Birth Place of Lord Buddha”, Pradipna Raj Panta, 11 June 2004, “An Introduction to Nepal”, Source: <http://southasia.oneworld.net/article/view/87950>

¹² There are 94 international non-governmental organizations and 10,745 non-governmental organizations in Nepal registered with the Social Welfare Council as of 26th March 2000. “Civil Society in Nepal: Opening the Ground for Questions”, Dev Raj Dahal, Center for Development and Governance, Kathmandu. Source: http://www.nepaldemocracy.org/civic_education/civil_society_in_nepal.PDF

Against such challenges that have particularly intensified in the last one decade, a process of empowerment initiated by an INGO from 1996 onwards - Action Aid Nepal (AAN) - via a model called REFLECT (Regenerated Frerian Literacy through Empowerment Community Technique) stands out as a rights-based model due to its focus on building capacities of one vulnerable and marginalized group – the Dalits - across parts of the country to mobilize to access social justice and to lead a life free from discrimination, which is a basic human right. This approach is carried out in partnership with AAN local partners and has been used, with modifications, by other NGOs and social movements countrywide. The following sections will document this process and the outcomes and lessons learned in some details.

2. The Study of the Action Aid Nepal REFLECT Experience: Empowering Disadvantaged Groups to Mobilize for Social Justice

Case Study/Project Context - The REFLECT Process Worldwide: Over the past decade, in collaboration with hundreds of organizations around the world, Action Aid (AA) has developed an innovative approach to learning, communication, empowerment and social change called REFLECT. This process, very much in line with a rights-based approach to development, aims to build capacities to improve the meaningful participation of people in decisions that affect their lives, by strengthening their ability to communicate. The approach has shown large impacts and has even been used, with modifications, in northern countries. It encourages the active involvement of learners, built on their existing knowledge and respected oral traditions and other types of ‘literacy.’ REFLECT focuses on knowledge building rather than attaining literacy; (active) writing rather than (passive) reading; uses learner-generated materials (derived from the communities themselves) rather than prepackaged texts; mainstreams acknowledged gender concerns; and, aims to be responsive and relevant to the local contexts and needs.¹³

Working with partner organizations in El Salvador, Uganda and Bangladesh, AA developed REFLECT between 1993 and 1995 through a process of action research in 100 villages in these three countries. Nearly 2,000 people participated in literacy circles, each composed of between 10 and 30 learners. The most innovative aspects of these circles are that they did not use textbooks and primers. Instead, with support from trained local facilitators, participants produced their own learning materials by analyzing their communities and circumstances. Using locally available materials such as sticks, stones, seeds or beans, participants constructed maps and calendars of their villages, including maps of households, land use or land tenancy, calendars of agricultural work, gender workloads and income; matrices to analyze health practices, credit sources or household decisions; and diagrams of the relationships between groups in the community. As these graphics were developed, the participants used simple pictures to label them and transfer them from the ground to a large piece of paper – a first step towards literacy. The facilitators then assisted them to introduce words in places where their spatial location helped to reinforce recognition. Over

¹³ “REFLECT: The Power of Communication”, “Community Stories”, The Caledon Institute of Social Policy, January 2004. Source: www.caledoninst.org/Publications/PDF/Reflect_Layout_final.pdf - 18 Jun 2005

time, a wider range of literacy and innumeracy activities were built on the basis of the graphics. The development of the graphics led to intense group dialogues about the issues they raised, and gradually to deeper analysis of individual and community problems and possible solutions.¹⁴

The approach proved very powerful, not only as a means of building literacy skills, but as a way to encourage local analysis of problems and local ownership of solutions. Currently, the REFLECT process is being used by more than 350 organizations in 60 countries, including by local, national and international NGOs, social movements, peoples' organizations, and district and regional Governments. In 2000, with support from AA, RELECT practitioners established the International REFLECT Circle (CIRAC) to communicate, exchange, learn and build a wider movement¹⁵

Though initially conceived as an adult literacy and empowerment model, the movement has grown and expanded to respond to varying contexts.¹⁶ Thus, the REFLECT process that has been used by AA in other countries like India, Pakistan, Uganda, Nigeria and South Africa have demonstrated varying goals and outcomes based on the ground realities the project operates in – for instance, the political system in a country, the nature and level of involvement of local agencies/NGOs in the process and the end goals that the process wants to achieve (see Box below).

Box 1: REFLECT in Operation –Diverse Ground Realities leads to Different Outcomes

It is not only the country context but also the implementing organisation which impacts on the possibilities for a REFLECT process. This is both due to the aims and objectives of the organisation, its size and profile, and the type of organisation it is. For instance, Idasa in South Africa is a national NGO that has established good links with the Government. They have carried out research and have run trainings for elected members and Government officials, and thus have a high profile, and influence and access to key players in Government at all levels. This means that they can draw on a certain amount of support for their work with REFLECT - taking advantage of prior contacts, and linking the REFLECT work into their wider initiatives supporting strong and accountable Government. One key example of this is the work they undertake on budget analysis, which can be used to inform REFLECT circles.

In Nigeria, AA coordinates the REFLECT programme and works with a mixture of Government partners and locally based civil society organizations (CSOs). This impacts on both the framing of the REFLECT work (and is linked to the AA strategy of 'Fighting Poverty Together' using a rights-based framework) and the target of the work, focusing on the most poor and marginalized communities. AA has some links with the Nigerian Government at the national level, but the implementing organizations have differing connections at local and State level and this leads to different amounts/levels of support that REFLECT participants can expect. As part of

¹⁴ Ibid. Refer to footnote above.

¹⁵ Ibid.

¹⁶ Ibid.

an international organization, AA Nigeria (as is the case with AAN) have to question whether they can be considered part of civil society in Nigeria, or if they are external actors. This again impacts on the types of relationships they can expect with the Government.

In Nepal, REFLECT is used by a wide variety of people's and social movements. The social or people's movements have differing aims and objectives, and use the process to differing extents and therefore faces differing issues and challenges (these are highlighted in Section 5). However, in all cases, REFLECT is part of a larger process in which different groups of people unite with a common specific aim (for instance, to achieve land reforms, to realize rights for groups like the Dalits and so on). Many of these movements link local level work with national level movements for change. There is thus less of a project focus and a much more explicit overall goal that focuses on social empowerment and change in the Nepal REFLECT process than in many other REFLECT projects/processes.

Source: Education Action 18, Governance and Reflect, by Kate Newman, Information and Education Unit (IEU), Action Aid UK¹⁷

REFLECT as initiated in the Saptari District in Nepal: As highlighted in Section 1, the inequitable social processes and corresponding weak policy and legal implementation have led to some sections of the Nepali populace – including the Dalits - becoming the most marginalized and disempowered. For instance, the Dalit community, though comprising nearly ¼ of the total population of the country, is and always has been marginalized by the status of ‘untouchability’ practiced against them. Though ‘untouchability’ attacks the very roots of realization of human rights and has been declared a crime under the 1990 Constitution, the practice continues unabated, especially in the rural and interior parts of the country; the situation is further compounded by the very low rates of literacy and by their resultant lack of awareness of related Governmental policies and programmes.

AAN, through the REFLECT process and in collaboration with local partners (including both development-oriented NGOs and Dalits rights-focused NGOs like the Shiva Kedar Village Development Association (SKVDA), the Dalit Samaj Sewa Sangh (DSSS), the Dalit Jana Kalyan Yuba Club (DJKYC), and some others) have however been able to mobilize and help develop capacities of these groups and transform them from passive beneficiaries to active claim-holders and in the process, is enabling them to access and realize social justice. In the Saptari district in the eastern Terai region, for instance, the REFLECT process has been instrumental in capacitating the Dalits to enable them to confront the huge social, economical and political discrimination they face in everyday life. Such developing of capacities has led to a process of empowerment that has enabled this group to realize basic human rights - more importantly, the right to be free from discrimination in many spheres, the right to equal wages and the right to an education.

¹⁷ Source: <http://217.206.205.24/resources/publications/ea18/governance.htm>

Stakeholders Involved: The REFLECT process has been initiated by AAN in collaboration with its local partners (local NGOs) and involves the local communities as claim-holders at every stage. This in keeping in tune with the overall AA mode of programming that does not directly implement sector-specific and separate projects any more but which now supports local people and partners to take responsibility for implementing their own developmental programmes and initiatives.¹⁸

Objectives: The process seeks to empower excluded, vulnerable and marginalized groups to organize and claim rights-based outcomes through the realization of various rights.

3. Process: This section documents the rights-based processes used under REFLECT in one district - the Saptari district – where the vast majority of Dalits work as landless agricultural workers, dependent on the high caste landlords for their survival. The higher castes also wield undue influence over every institution of power in society – including the police and local Government - leaving Dalits vulnerable to harassment and intimidation. As a result of such vulnerabilities, challenges to the caste system in Nepal – either individual or organized – have been rare and practically unheard of before.

Box 2: Action Aid and the Rights-Based Approach

AA believes that lasting solutions to poverty and injustice are rooted in helping people who are poor and marginalized to discover and secure their rights themselves. These include realization of the vital social, economic and cultural rights - such as to education, shelter, food, water, livelihoods, participation and health - as well as the fundamental civil and political rights. The realization of such rights can however occur by not only the efforts of the supporters of such marginalized and poor people to influence public policy in ways that they think will benefit the poor but also by helping develop the capacities of such people to participate in decision making - effective participation requires creating opportunities and capabilities for people who are poor, vulnerable and marginalized to analyze their own situations and find possible solutions, take decisions in their own ways, and build trusting relationships with those who support them.

AA's human rights-based approach to programming (HRBAP) is therefore based on the following set of elements¹⁹:

- * People are the center of a rights-based discourse. People are the ones who need to benefit from this approach;
- *The State and civil society need to protect and promote the rights of people and in doing so, Governments must be totally accountable;
- * This approach focuses on vulnerable groups. But, on the whole, the structure needs to be democratic without any room for discrimination against people by the State; and,

¹⁸ “Rights-based approach to development transforms a major international NGO”, by Charles Owusu, id21 Research Highlight: 26 April 2005. Source: <http://www.id21.org/society/s9aco1g1.html>

¹⁹ <http://www.actionaid.org/asia/1160.html>

* People, empowered and conscious of their rights, need to demand and assert their rights.

AA thus supports and enables people to better negotiate on their own behalf for their basic needs and basic rights by challenging the very notion that poor people cannot formulate or understand the causes of poverty and what needs to happen to bring about change in their lives. It believes that poor people need to be able to negotiate their own position and be given space and opportunity to do so at local and international levels. The REFLECT process that it introduces in countries worldwide is such a process – this process harnesses people’s own capabilities to produce outcomes that help them realize their own rights.²⁰

Dalit movement in Nepal 2000-2005

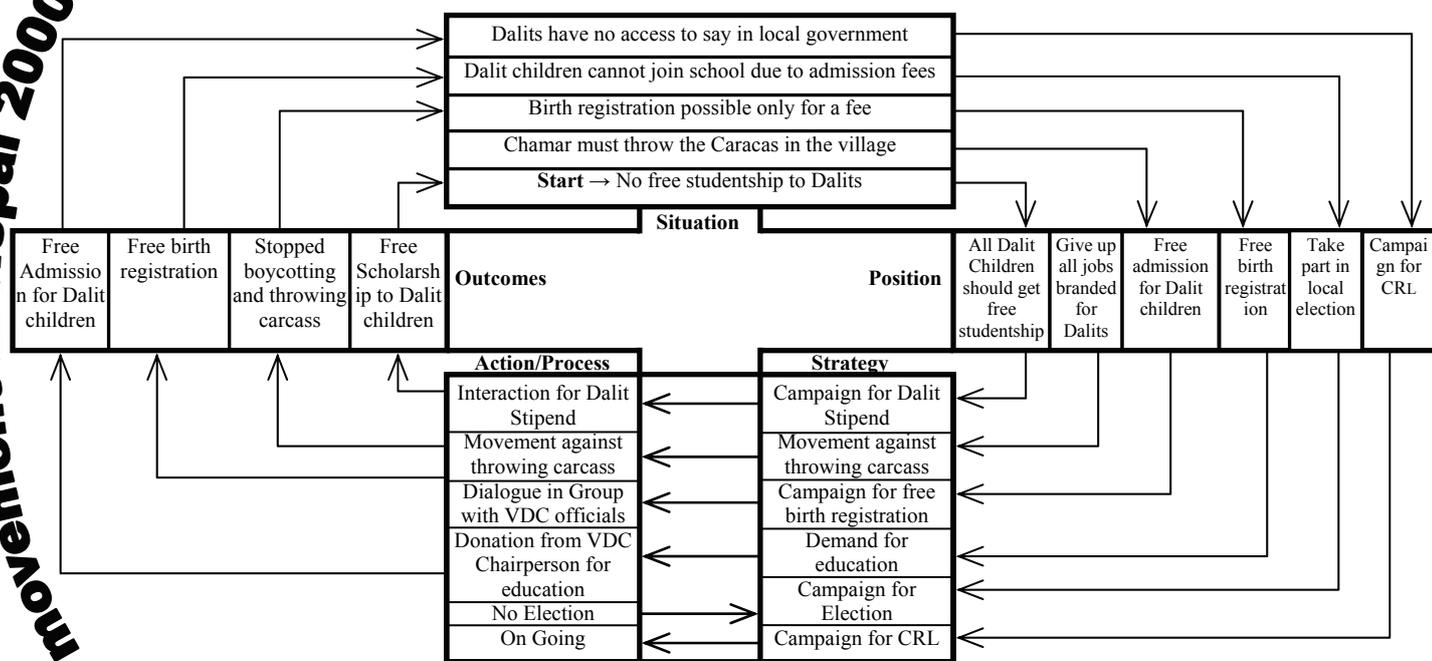


Figure 1: The REFLECT cycle approach and outcomes visualized between 2000-2005 in Nepal²¹

Challenging these well-entrenched power relationships had hitherto thus seemed unthinkable. Though the basic groundwork for an emerging movement of the Dalits was in place – an awareness of the systematic discrimination and the beginnings of a leadership core developed through political and development activities was gradually

²⁰ http://www.actionaid.org.uk/517/the_rightsbased_approach.html

²¹ REFLECT in Nepal; PowerPoint presentation by Khemraj Upadhyaya at the joint UNDP Nepal/OHCHR workshop held in Kathmandu in March 2005.

on the rise - the community, as a whole, lacked the forum to harness this collective power and develop an alternative vision for their future. Thus, AAN, in collaboration with a local partner – the Saraswati Community Development Forum (SCDF) - provided the critical capacity development support that helped the movement to emerge, grow, organize and finally, demand and claim rights.

The REFLECT process in Nepal, as highlighted in Box 1, was therefore conceived as a way of systematically and collectively mobilizing the Dalits for building a social movement. Thus, the REFLECT process became part of a sustained effort around an issue – in this case, linking local level action to national mobilization and raising the profile of the most marginalized groups in society so that the Government takes their situation and condition into account. *As detailed in the article “Reflect – A forum for Dalits to organize for their rights in Nepal”, by Manvi Shrivastav and Keshav Gautam,²² the REFLECT process as initiated in the Saptari district consists of:*

➤ Identification of the problem through a situational analysis – Focus on political literacy and social stratification: As a first step in the strategy of addressing the inequitable power relations, REFLECT promotes ‘political literacy’- a critical understanding of how power relations work - through a critical analysis of power structures in society. REFLECT empowers individuals by helping them develop a politically literate attitude and behavior that can be then used to impact upon wider institutional and societal changes from the local to the national level.²³ Since power relationships are overlapping and has macro-level impacts (for example, without raising awareness and addressing societal discrimination related to HIV/AIDS, overall country health indicators will not record any improvement), analysis of social stratification is a primary step towards critical and in-depth social analysis and forms the initial part of the REFLECT process - whether in training of trainers (ToTs), training of local facilitators (ToFs) or community- level REFLECT circles. The process of situational analysis helps to understand how a given reality is constructed, its institutional mechanism, its history and current dynamism.

While the common participatory tools like social and resource maps and preference ranking have been used in the political literacy process, the REFLECT process in Nepal, while promoting political literacy and developing a situational analysis, has gone a step further and have used seasonal calendars, song writing, myth and story telling to enlist community participation. The use of such locally appropriate participatory tools helps to structure the analysis in a systematic way. Each participant in the REFLECT trainings has the opportunity to contribute his/her perspective and experience. In REFLECT, this analysis develops from an individual to a collective experience, from household to community level, from local to global and also from simple to complex issues.

In the Saptari district, through such situational analysis conducted by AAN/SCDF, Dalit discrimination was identified as the primary area of concern during the initial

²² Education Action 14 on “Reflect – A forum for Dalits to organize for their rights in Nepal”, AAN. Source: <http://217.206.205.24/resources/publications/EA14Eng/dalit.htm>

²³ “The organic process of participation and empowerment in REFLECT”, Bimal Phnuyal, AA *PLA Notes CD-ROM 1988–2001*.

work that was undertaken in four VDCs in early 1998. Specifically, the local Dalits raised the issues of education, landlessness, local governance, and citizenship (lack of documentation of citizenship places obstacles in these people accessing the policy and legal systems) as areas of concern. The process and outcome of the situational analysis strongly supported the formation of a social movement/organization to represent the Dalits²⁴.

➤ *Community organizing activities:* After the situational analysis was undertaken in these areas, SCDF staff realized that they had to rethink their service delivery functions and began to modify their roles to start taking on capacity development functions; thus, they began serving as community organizers/facilitators. As facilitators and organizers, they began visiting villages and communities throughout the working area to discuss the problems facing Dalits and to educate and make them aware about their entitlements/ rights. As part of a strategy to focus on (much needed) women's issues, female trainers and activists are being used – these trainers and activists live among the people, learning from them, building upon their strengths, analyzing their weaknesses and mobilizing them. Their presence have put into operation, for instance, gender-sensitive land tenure context mapping. Outcomes and impact of such mapping on empowerment levels of women have already been visualized – it has led to planning the development of joint land occupancy rights, including gaining independent rights for women (for instance, for divorced women and widowers).

With the help of these facilitators, the Dalits began to understand the importance of coming together to counter social injustice. The main community organizing activities consisted of:

i) Creation of REFLECT circles: The early stages of organizing the Dalits was greatly facilitated by the structure of REFLECT circles created by AAN/SCDF. 15 such circles were launched in 1998 in the Saptari district.

After introducing these circles and determining their effectiveness over a period of time, AAN now has ceased undertaking any other forms of non-formal education (NFE) activities in Nepal. More than 100 REFLECT circles are functioning each year and are being used as a platform by AAN's partner organisations to organise the poor and excluded people in more than 30 districts of Nepal. In 2005, AAN has facilitated the development of 100 local trainers (the composition being 50% female, 50% male, 50% from AAN partner organisations and 50% from outside of AAN) throughout the country to produce circle facilitators as a *modus operandi* to build connections between the people, provide an opportunity for them to identify and discuss issues, as well as build their basic literacy skills, confidence and leadership.²⁵

ii) Formation of women's Sanghams: In their meetings at the circles, the women began conducting an analysis of the caste system and the situation of women therein. Groups discussed the importance of creating an action plan to counter discrimination and identified the need to develop an organization to create and sustain

²⁴ Ibid. Refer to footnote No. 22.

²⁵ Ibid. Refer to footnote above.

group strength to undertake cohesive action on issues. In response, eight women's *Sanghams* (community-level organizations) were formed among the circle members in the Saptari district.²⁶ Several similar community-level organisations have been formed in different districts across the country.

The *Sanghams* themselves served to break down caste barriers, raising the participants' self-confidence and dignity. The rigid caste separation (between Dalit and non-Dalit women) evident in the circles in the beginning began to break down. For instance, when the adult literacy classes were initially started by AAN/SCDF, Dalits had to sit outside the class and were not allowed to use the same water tap or share food with the non-Dalit class members. These rigid caste divisions were analyzed and discussed in depth in the *Sanghams*. Barriers were gradually broken down and conscious changes were made to rectify the unjust treatment meted to the Dalits. After a period of time, non-Dalit and Dalit women started mingling, sharing food together and sat together in the class. This, in itself, was a major achievement, given the stringent cultural taboos surrounding 'appropriate' caste behaviour.²⁷

Traditional	Naïve	Critical
<i>"We are Kamaiya by age old tradition"</i>	<i>"We can't repay the Sauki (the debt), how could we be liberated"</i>	<i>"We can survive freely; we do not want to be bonded like bulls"</i>
<i>"We are Kamaiya by birth and it is our Karma (belief in fatalism)"</i>	<i>"We are exploited and sold by landlords time and again, what is our option for liberation?"</i>	<i>"Slavery is illegal, it must be punish by law in practice"</i>
<i>"We will not die of hunger in landlords house being Kamaiya "</i>	<i>"How to secure to our daily wages?"</i>	<i>"Our labour must be valued and be calculated""</i>
<i>"Without having a piece of land how will we survive?"</i>	<i>"We do not wish to be bonded, but we are landless"</i>	<i>"Government should provide security in food and shelter"</i>

Figure 2: An example of critical situational analysis conducted by bonded laborers during the REFLECT process in a Nepali village²⁸

iii) *Creation of Dalit Sanghams*: The circles and women's *Sanghams*, coupled with direct organizing by the facilitators in the villages, created an enormous momentum for forming *Dalit Sanghams* in these communities. Once a core group of support was

²⁶ Ibid. While these community-level organizations are called "*Sanghams*" in the Saptari district, they are variously named by the local people based on the local contexts and the area of the country they are residing in.

²⁷ Ibid.

²⁸ Ibid. Refer to footnote No. 16.

solicited in each VDC, SCDF sought to widen involvement and support by organizing mass meetings of all Dalits in the area. Each *Dalit Sangham* is a federation of children, women's and men's organizations. In each *Sangham*, a Working Committee of 9 to 15 members was democratically elected at the end of each organizing meeting. Although there was no official reservation system for women, SCDF staff encouraged the group to ensure significant women's representation and each of the Working Committees included women.²⁹

SCDF used the REFLECT circles and women's *Sanghams* as platforms to launch the community's discussions and stand on Dalit rights and to provide the initial structure for the *Sanghams*. Historically, a lack of unity had kept the Dalit community from regaining its guaranteed rights. These organizations – the *Dalit Sanghams* – became the force that began connecting them and building their power. The structure of the *Sangham* creates a long-standing forum for debate and discussion, identifying issues and leading campaigns. Establishing such an organization also provides a means for the community to pursue change beyond a single campaign or effort.³⁰

While organized separately across the VDCs, the *Dalit Sanghams* have, from the beginning, worked closely together and began initiating activities by the end of 1998. Working in coordination, the *Dalit Sanghams* are beginning to tackle caste-based discrimination in education, land reforms, and citizenship rights issues. Perhaps, more importantly from a rights perspective, the Dalits, as claim-holders, are also reclaiming their dignity by refusing to perform traditional caste-based jobs, such as removing dead animals and eating left-over food from high caste households.³¹

vi) Using the tools of campaign, advocacy and lobbying: The creation of the homogenous networks and alliances through the various REFLECT circles and *Sanghams* (both the women's *Sanghams* and the *Dalit Sanghams*) enabled them to mobilize around issues of concern. Though even amongst the Dalits there exists various groups, the coming together and bonding via these alliances made them a cohesive force that enabled them to conduct campaigns, advocacy and lobbying around many vital issues that impact their rights. The outcomes of the use of such tools are documented in Section 4.³²

v) Tapping into coalitions and networks: One of the strategies used is the building up on linkages and coalitions with other NGOs and community-based organizations (CBOs) in the country who are working on education or land rights-related issues. As mentioned elsewhere in this paper, the REFLECT process is used by other NGOs and CBOs in Nepal in varying contexts – for instance, for campaigning on land rights issues or for accessing and realizing the right to primary education - and with various communities. Such linkages and coalitions enable tapping into the relative strengths, capacities and skills that each of these agencies possesses on using REFLECT and other related strategies and can be stated as a vital strategy that AAN uses.

²⁹ Ibid. Refer to footnote No. 22.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

vi) *Using the participatory review reflection process and social audits:* Realizing the value-added of having inbuilt monitoring mechanisms that document outputs, outcomes and impacts of the processes used and which would involve the collaboration of all stakeholders (the communities, related Government officials, AAN and SCDF), AAN uses the tools of both the Participatory Review Reflection process and Social Audits (more information on how these two tools have been used for monitoring are outlined in the following sections). The most important objectives of using these participatory tools from a rights-based perspective is that it enables maintaining of transparency at all levels; solicits accountability; evaluates the institutional performance (and resultant learnings from such); pressurizes duty-bearers to work with the poor, marginalized and vulnerable groups; helps develop community capacity and sense of ownership and confidence; and, assists in promotion of overall good governance.

Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Programming Strategy: Two forms of monitoring are used by AAN to ascertain outcomes from the REFLECT process as follows³³:

Participatory Review Reflection Process: This process is an ongoing one and is used by the claim-holders throughout their involvement in the REFLECT process. This process develops community capacity to view changes and outcomes analytically and to internalize the impact of such outcomes. The “real” qualitative change perceived by the poor and excluded claim-holders is the main objective of this process. In a way, many of the process activities that the REFLECT communities undertake as a part of the REFLECT strategies have this ongoing monitoring process inbuilt. The following activities/tools (or a mix of these) were adopted in the Nepal REFLECT Participatory Review Reflection process:

- (a) Social mapping by the community members;
- (b) Mapping of resources, programme benefits, etc;
- (c) Community meetings – of both male and female claim-holders;
- (d) Learners’ achievement test in non-formal education/alternate schools;
- (e) Visit to sites of physical assets created by the project;
- (f) Visit to sites of physical assets/programmes undertaken by the Government;
- (g) Discussions with community members who have been imparted training in REFLECT methodologies;
- (h) Discussions with the community members who have been left out by the project;
- (i) Discussions with the Government teacher/any employee that could be easily contacted in the village during the exercise.

Social Audits: Social Audits have been gradually used by AAN to review and evaluate programmes and results jointly by all stakeholders on a regular basis - justifying accountability and maintaining transparency at the larger level is the central theme of such audits. AAN also uses these audits to review its own accountability systems. In a way, social audits differs from the above Participatory Review Reflection Assessments – while the Assessments are inbuilt and an ongoing part of the activities

³³ Email discussions with Khemraj Upadhyaya of AAN with the author.

that the communities undertake and often involves the judging of performance of such activities by understanding changes (intended or otherwise) experienced by primary stakeholders over a period of time, the social audits emphasize the *periodic review of result* against plans, their consequences and assesses degrees of accountability and transparency. It also helps ensure that all communities have the right to be informed about policies and programmes that impact them. Such a process not only makes stakeholders transparent, accountable and helps solicit instant opinion and feed back for immediate action but also attracts communities' ownership over any initiatives undertaken, which eventually leads towards demonstrating effectiveness, efficiency, relevance, impact and ultimately, sustainability of outcomes.

AAN would like to promote such audits as a core practice, which, it hopes, will ultimately take a form of permanence in the community over a period of time.

Capacity of Duty-Bearers (including the Private Sector/Related Frameworks) in Addressing Demands: In both the processes mentioned above, active participation of all concerned stakeholders, including the relevant duty-bearers, are being sought as a requisite. The public officials have started using these platforms of social audits to keep communities informed about any new public policies and programmes that are relevant to these communities. These forums also serve to educate the officials about the issues/problems facing the communities and how best to handle them in a manner that ensures that the needs and interests of the communities are reflected. Equipped with knowledge of communities needs and demands, local public officials assist in the process of carrying these messages to the higher policy levels for appropriate action.

4. Outcome (Results) of the REFLECT Process as visible in the Saptari District

➤ *Tackling caste-based discrimination at the workplace:* The most visible rights-based outcome that also targets exploitation of human beings on the basis of caste or class and in realizing social justice is in the *Sangham's* decision to abandon or boycott their traditional jobs as dictated by the caste system. Carcass throwing³⁴ was a job relegated only to the *Chamar* (or shoemaker) caste and although the *Chamars* in this community had not protested against this caste-based profession before, they were distinctly aware of the systemic oppression and exploitation it represented. The *Sangham* was able to unite all the Dalit castes in supporting the ban because this job was a perfect example of the caste-based exploitation and discrimination suffered by all so-called "untouchables". The Dalit community's solidarity – reinforced by their coming together through the *Sanghams* - and ultimate victory in sustaining the boycotts, confirmed their faith and commitment to the movement, helping to attract new members and in spreading the Dalit movement throughout the region.³⁵

Ironically, it was their other traditional caste-based duty – the role of *Chamar* women as midwives – that made such discrimination clearer. *Chamar* women are renowned

³⁴ For the considerable labour of disposing of the upper castes' dead animals, the Chamars receive nothing from the landlord except the right to 'beg' from the landlord's house during religious festivals. The whole system degrades the Chamars, making them totally dependent on the high caste.

³⁵ Ibid. Refer to footnote No.22.

for their role as midwives and are called upon by high caste women for most deliveries. The midwife is required to stay with the family for seven days following the birth of the child for which she is paid only one-half kilo of rice per day. While in this role, the midwife is allowed to tend to the newborn baby but she becomes an “untouchable” again once her services are terminated. The *Chamar* midwives also face a second level of discrimination as none of the Government appointed health workers are from the low castes despite the *Chamars’* long experience in this field. In both these situations, the *Chamars* clearly saw that they were conveniently ‘touchable’ and worthy of interaction with the high castes when their services were needed. Although they took pride in their skills in these two professions, it was for this very same work that the high castes deemed them untouchable.³⁶

➤ Reinforcing the right to education: The *Dalit Sanghams* had identified, through the process of political literacy and the situational analysis exercises, that along with the exploitation they face in their work, the issue of lack of access to education was a major barrier to their accessing other rights. For many Dalits, access to an education was not possible due to an interplay of factors: the inability to pay the school fees charged; the poor quality of education and the low rate of attendance by the teachers; and, more importantly, the discrimination that the Dalit children would face in the classroom. Even those who could pay received education of appalling quality, as research by SCDF revealed. The result was startlingly high rates of illiteracy and a large dropout rate in the area. Through analysis in the REFLECT circles, Dalits began to mobilize around education issues. Field visits from SCDF and AAN advocacy staff helped support the education campaign by providing inputs on the strategies and activities. They started holding in depth discussions with the *Sangham* activists and mobilized them to claim their right to education through collective action. During such visits, the staff joined women from the *Dalit Sanghams* as the women met with teachers to demand their consistent attendance in schools. In mid 1999, 1,000 Dalit women and children protested at a rally in front of the District Education Office, demanding free education. The group’s actions led to visible policy changes at the local school level – as a result of the protest, two schools began to waive school fees for Dalit children.

In January 2000, SCDF released a study measuring the effectiveness of primary education in 4 VDCs. The report’s release was coordinated with outreach efforts by the *Sangham* to help support the improvements needed as identified in the study.

➤ Demonstrated high levels of women’s empowerment: As in other countries like Uganda³⁷ where the REFLECT process has been able to demonstrate high levels

³⁶ Ibid. Refer to footnote above.

³⁷ In the REFLECT process initiated by AA Uganda, there was a focus on empowering women on micro-credit issues. The value-added that REFLECT brings into the process can be gauged from the fact that the process:

* Ensures easy mobilization of communities, especially women. The processes also ensure group cohesion. This means that women are not only brought together for credit, but generate other development ideas.

* Micro- credit is not an end in itself. REFLECT provides an opportunity for further discussion and generation of ideas around utilization, investment opportunities available and marketing options.

of women's empowerment, the same has witnessed in Nepal. The rights-based aspects of this process - especially the focus on poor, vulnerable and marginalized groups and the processes of empowerment inherent therein- cannot be ignored. The other interesting observation is the types of social action and resultant changes that have been noted, again occurring in a relatively short period of time. In Saptari district, it has been reported that women who previously used to sit separately and eat separately due to the social customs associated with caste hierarchy and "untouchability" have begun sitting together after discussing and analyzing in the REFLECT circles the reasons behind such norms/prejudices and how best to overcome them (this was undertaken systematically via the formation of the *Sanghams*).³⁸ In addition to this, the "lower" caste women within the wider community were now able to gather water from the local well, rather than having to walk long distances to fetch water from a different source. A major outcome of the movement was when - going back against the social backlash that they knew they would encounter - they took the decision to abandon their traditional jobs as dictated by the caste system. Although this resulted in a backlash at the local level, the Dalit movement has gone from strength to strength and is spreading throughout Nepal, as all these outcomes reveal.³⁹

5. The Value Added of Using Rights-Based Programming Strategies:

Positive Lessons Learned:

➤ *Focus on real participation of the poor, marginalized and vulnerable groups:* The strategies that REFLECT uses go farther than just enlisting "token" participation of the poor, marginalized and vulnerable groups. REFLECT enlists the participation of these groups in the entire process – from planning, designing to implementation - with AAN and SCDF, in this case, helping develop the capacities and acting as the

* REFLECT equips women with reading, writing and numerical skills, hence enabling those involved to follow up easily on their records.

* The discussion process enables women to begin making their own decisions on issues affecting them.

* REFLECT provides a channel for information dissemination and sharing;

* It generates a critical mass that can lobby and advocate for their rights; and,

* It helps build a resource base - facilitators who could be used in other development interventions.

Source: Education Action 16, "Reflect Methodology: Facilitating women's empowerment through micro-finance in Uganda", by Maria Nandago, AA Uganda,

<http://217.206.205.24/resources/publications/EA16Eng/maria.htm>

³⁸ Ibid. Refer to footnote No. 22.

³⁹ Through analyzing gender differences in workloads, participants in REFLECT learning circles in another district - Taplejung district of Nepal - became aware of discriminatory wage rates between women and men. It had been a longstanding practice that, whether they are paid in cash or grain, women receive only half the pay of men for completing the same number of hours of work. This issue was first discussed in the learning circle but was eventually taken beyond it. Discrimination in wage rates soon became a community issue and various conflicting views started to be expressed. REFLECT circle participants and many others in the village - both women and men - felt that the discriminatory wage-rate practice was an injustice that needed to be reformed. They managed to change the beliefs of some community members who had initially supported discriminatory wages. Despite resistance and pressure, circle participants and other community members, have succeeded in putting equal wages into practice. And the benefits have accrued manifold for women in the communities. "Literacy & REFLECT in Nepal: An Overview", by Sara Parker, 2003. Source: www.staff.livjm.ac.uk/socspark/-research_page

catalysts in the process of accessing and realizing social justice. In the REFLECT process, participants are involved in a thorough analysis of their reality, including an analysis of power relations, and planning their action for change. They can re-discover their reality, identify their respective positions in it, and also explore the potential for a positive change in the status quo. Everyone has the potential to thus grow and empower himself or herself. The strategies used thus focuses on the process (of building capacities) and the outcomes (that help groups realize their rights). The results of such an empowering process have been evident and have been amply highlighted in the case of women in the communities. Such a process also helps ascertain that the outcomes gained in terms of social change and empowerment are sustainable.

Box 3: A Checklist ---- Rights-based principles realized through the REFLECT process

- Focuses on the most poor, excluded, marginalized and vulnerable groups -- including women -- and helps capacitates them to mobilize and access social justice through the use of various rights-based strategies;
- Uses processes that are local context specific and which are locally designed and locally owned;
- Focuses on participation of all stakeholders;
- Strategies used focuses on both processes and outcomes;
- Uses processes that helps promotes transparency and accountability at all levels.

➤ Using participatory techniques instead of a mother manual: In Nepal, rather than develop a pre-formatted manual for training, participatory techniques were utilized throughout training events to impart the skills needed in order to establish and run a REFLECT circle. It was felt that the use of a manual produced by other people in the training event would be an “imposition from the top”, while a participatory bottom-up approach that focuses not only on common participatory tools such as social and resource maps, preference ranking and seasonal calendars but also alternative and more indigenous forms of participation (like song writing, drama and story telling and reinforced through the formation of the circles and *Sanghams*) would entail a more sustainable and community “owned” approach.

➤ Based on the ground realities instead of relaying on a pre-formatted blueprint: Following from the above, the REFLECT process is thus well grounded in those right-based principles that suggests that strategies used are adaptable to local contexts and needs. In Nepal, the entire process starts with an identification and critical situational analysis of the root causes of discrimination and non-equity by the communities themselves. Thus, the solutions/processes to combat such discrimination are also “locally-owned”, with the communities (through the REFLECT strategies used) participating and building in their stake in the entire process of social change.

- Focus on political literacy instead of traditional adult literacy: The REFLECT process emphasizes the use of political literacy for empowering poor, marginalized and vulnerable people to be able to “read the world”, rather than reading the word. Political literacy enables one not only to read the world from one’s position and perspective but also to identify vulnerabilities (and find local solutions) that hamper such groups from realizing their rights. A thorough analysis of given stratifications and power relations helps to promote an understanding of social dynamism, as well as determine possibilities of change. It also contributes to a positive transformation in power relations. Outcomes of the use of this process has already been documented in the Section above and could be termed as the most important rights-based strategy used to access (and realize) social justice and rights.

 - Using partnerships for social action: AA worldwide has been able to demonstrate results from the use of its rights-based strategies under the REFLECT process due to its partnerships. AAN, under the REFLECT process, uses local partnerships – the partnership with SCDF is a case in point - to mobilize for social justice and work with the grassroots communities to realize rights-based outcomes. AAN is also a member of several significant education and land rights-related networks in Nepal, members of who are involved and well experienced in rights-focused work. Through such memberships, AAN has been able to undertake cross learning and cross-sharing of experiences and skills as well as undertake collaborative advocacy and lobbying to move forward and make visible the agendas of poor, vulnerable and marginalized peoples at the public policy level.

 - The process facilitates a two-way learning curve: In the REFLECT learning process, both participants and facilitators contribute as well as learn. Whether drawing a village resource map in a community or conducting a national level social stratification exercise or facilitating the organizing of women and analyzing their roles therein, the role of a facilitator is to initiate the process of analysis, not to dictate its content. Participants decide the content. This should not mean that a facilitator cannot share his or her views, since s/he is also a participant in the overall process. Rather, the facilitator avoids imposing “answers”. Thus, the REFLECT process facilitates a two way learning process with the facilitators sharing their skills and new learnings with the group.
- Challenges in Implementing Rights-Based Programming Strategies: Lessons Learned
- Current political imbroglio will hamper rights-based work: The current political situation in Nepal, as outlined in Section 1 of this paper, has clear implications for the on-going programmes and activities of civil society activities in general, and for the AAN “type” of rights-focused work in particular. The Government’s complete suspension of political activity in Nepal has excluded virtually the entire population from participation in the political process, in direct contravention of the “good governance” principles that the donor community aims to promote as a strategic priority to achieving developmental goals in Nepal.⁴⁰ Of utmost necessity for a full and proper functioning of HRBAP strategies and resultant outcomes is a stable system of governance and this does not exist at present in the country. With civil liberties being curtailed to a large extent in the country at present,

⁴⁰ Ibid. Refer to footnote No. 4.

there is fear that many of the gains accrued through the REFLECT process in the communities that AAN and its partners (as well as other organizations that has used the REFLECT approach) has worked in may be lost.

➤ *Challenging social status quo poses a deterrent:* A rights approach often entails challenging the current status quo. This has particularly larger implications in a caste-based society like Nepal where political, social and economic power traditionally has rested in the hands of the elite few who belong to the upper rungs of the hierarchical caste system. Accessing, co-opting and then working in collaboration with such “elite” power structures and then trying to transform the socio-economic and political status quo is a major challenge in the Nepal context and has currently assumed even more proportions due to the prevailing political situation.

SELECT BIBLIOGRAPHY:

Adams, Brad, May 4, 2004, "Nepal: Development and Human Rights are Intertwined", HRW Letter to Donors to Nepal, Human Rights Watch, New York, USA. Source:

<http://southasia.oneworld.net/external/?url=http%3A%2F%2Fhrw.org%2Fenglish%2Fdocs%2F2004%2F05%2F04%2Fnepal8532.htm>

Dahal., Dev Raj, 2001, article on "Civil Society in Nepal: Opening the Ground for Questions". Source:

http://www.nepaldemocracy.org/civic_education/civil_society_in_nepal.PDF, Center for Development and Governance, Katmandu, Nepal.

<http://www.actionaid.org/asia/1160.html>

http://www.actionaid.org.uk/517/the_rightsbased_approach.html

<http://southasia.oneworld.net/article/view/94071>

<http://southasia.oneworld.net/guides/nepal/conflict>

http://hdr.undp.org/statistics/data/cty/cty_f_NPL.html

Human Rights Watch, "Discrimination against Dalits in Nepal". Source:

<http://hrw.org/english/docs/2004/02/09/nepal7322.htm>

Jana Utthan Pratisthan, April 2001, "Dalit in Nepal", p. 25.

Nandago., Maria, article in Education Action 16 on "Reflect Methodology: Facilitating women's empowerment through micro-finance in Uganda", Action Aid Uganda. Source: <http://217.206.205.24/resources/publications/EA16Eng/maria.htm>

Newman., Kate, article in Education Action 18 on "Governance and Reflect", Action Aid UK Information and Education Unit, Source:

<http://217.206.205.24/resources/publications/ea18/governance.htm>

Owusu., Charles, article on "Rights-based approach to development transforms a major international NGO", in "Inclusive aid: Changing power and relationships in international development", edited by Groves., Leslie, and Hinton., Rachel, Institute of Development Studies, University of Sussex, England. Accessed from: id21 Research Highlight: 26 April 2005. Source:

<http://www.id21.org/society/s9aco1g1.html>

Panta., Raj Pradipna, article on "Birth Place of Lord Buddha" in "An Introduction to Nepal". Source: <http://southasia.oneworld.net/article/view/87950>

Parker., Sara, 2003, article on "Literacy & REFLECT in Nepal: An Overview". Source: www.staff.livjm.ac.uk/socspark/ - research pa

Phnuyal., Bimal, article on “The organic process of participation and empowerment in REFLECT”, Action Aid, PLA Notes CD-ROM 1988–2001.

Shrivastav., Manvi and Gautam., Keshav, article in Education Action 14 on “Reflect – A forum for Dalits to organise for their rights in Nepal”, Action Aid Nepal. Source: <http://217.206.205.24/resources/publications/EA14Eng/dalit.htm>

Simpson., Ann, January 2004, “REFLECT: The Power of Communication”, “Community Stories”, The Caledon Institute of Social Policy. Source: www.caledoninst.org/Publications/PDF/Reflect_Layout_final.pdf - 18 Jun 2005

US Department of State, Bureau of Democracy, 2002, Human Rights Report, Country Report on Nepal, “Human Rights and Labor”.

Promoting Media-Community Action for Shaping Rights- Based Outcomes

The UNDP Philippines and Center for
Community Journalism and Development
Partnership in the Western Visayas Region



12. Promoting Media-Community Action for Shaping Rights-Based Outcomes: The UNDP Philippines and Center for Community Journalism and Development Partnership in the Western Visayas Region

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LIST OF ABBREVIATIONS USED:

AIJC: Asian Institute of Journalism and Communication
ALPOG: Alliance Against Pollution and Hunger
CAT: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBOs: Community-based Organizations
CCJD: Center for Community Journalism
CCAGG: Concerned Citizens of Abra for Good Governance
CEDAW: Convention on the Elimination of all Forms of Discrimination Against Women
CERD: International Convention on the Elimination of all Forms of Racial Discrimination
CESCR: International Covenant on Civil and Political Rights
CHR: Commission on Human Rights
CMFR: Center for Media Freedom and Responsibility
CODE-NGO: Caucus of Development NGO Networks
CPR: Center for Public Resource
CRC: Convention on the Rights of the Child
CSOs: Civil Society Organizations
DENR-EMB: Department of Environment and Natural Resources – Environmental Management Bureau
FGDs: Focus-group Discussions
FMA: Foundation for Media Alternatives
FREE: Forum of Reporters for Equality and Empowerment
HRACs: Human Rights Action Centers
HRBAP: Human Rights-based Approach to Programming
ICPRMW: International Convention on the Protection of the Rights of All Migrant Workers and their Families
ICCPR: International Covenant on Civil and Political Rights
IPC: Indigenous People’s Commission
IPRA: Indigenous People’s Rights Act
LGC: Local Government Code
LGUs: Local Government Units
MDGs: Millennium Development Goals
MIJ: Mindanao Institute of Journalism
MNICC: Mindanao News and Information Cooperative Center
NAMFREL: National Movement for Free Elections
NGOs: Non-governmental Organizations
NUJP: National Union of Journalists of the Philippines
OHCHR: Office of the United Nations High Commissioner for Human Rights
PBN-DZGB Network: Radyo Veritas Legazpi Program
PCMC: Palawan Community Media Council
PDAF: Priority Development Assistance Fund
PESC-KSP: Philippine-European Solidarity Center
PIA: Philippines Information Agency
POs: People’s Organizations
PPI: Philippine Press Institute
SACDL: Social Action Center Diocese of Legazpi

SIPJC: Samar Island Public Journalists Group
ToTs: Training of Trainers
TVE: The Visayas Examiner
UN: United Nations
UNDP: United Nations Development Programme

1. Background and Rationale:

Country and Programme Context: With over 7,000 islands and a population that currently stands at a little around 80 million, the Philippines has many geographic and infrastructural obstacles to creating uniform improvements in people's lives. The disparities between the rural and urban areas are pronounced, with rural poverty greatly exceeding that of urban communities. Though the Government is aiming to improve the infrastructure and communications on and between the islands in order to improve access to essential services for those people in more remote areas², progress has been slow and even lacking in some areas or for some groups that are highly vulnerable. For instance, indigenous peoples (IPs) living in remote areas often face obstacles while accessing land rights. Over 40 percent of the population live on less than US\$2 per day and over 17 million people are malnourished.³ It has been predicted that the country will face immense challenges in achieving all the Millennium Development Goals (MDGs) by 2015. Such constraints and hurdles in achieving internationally agreed-upon development indicators also have serious consequences on accessing rights.

Policy and Legal Framework: The Constitution of Philippines, promulgated in 1987, provides for the rights of its citizens, specifically via Article III (the Bill of Rights) and Article XIII (the provisions relating to Social justice and Rights). The Supreme Court is the highest court of the land and has a mandate to protect the rights of its citizens. Furthermore, to protect and facilitate the rights of citizens, the country has established the national Philippines Commission on Human Rights (CHR). A constitutionally mandated body, the CHR, whose primary mission is to investigate complaints of human rights violations, also provides human rights training to the police, the military, other Government officials, and the general public. Approximately one-third of the country's 42,000 *barangays* (municipalities) have Human Rights Action Centers (HRACs), which coordinate with the CHR Regional Offices. However, staffing and funding of these bodies remain inadequate, and monitoring and investigation of human rights complaints remain ineffective.⁴

At the international level, Philippines has signed and ratified a number of international treaties and conventions, including the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and the related Optional Protocol; the International Convention on the Elimination of all Forms of Racial Discrimination (CERD); the International Covenant on Civil and Political Rights (CESCR); the International Convention on the Protection of the Rights of All Migrant Workers and their Families (ICPRMW); and, the Convention on the Rights of the Child (CRC). The country has also acceded to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR) but has not taken any action on both the Optional Protocols on either of these two Conventions.

² <http://www.oneworld.net/guides/philippines/development>

³ Ibid. Refer to footnote above.

⁴ US Department of State, *Country Reports on Human Rights Practices - 2001: Philippines*. Source: <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8371.htm>

Also, inspite of such enabling frameworks and provisions, consistent political turmoil has had serious impacts on the socio-economic and political structures of the country. Thus, the legal framework faces many challenges in retaining the democratic fabric of the nation and in upholding and honouring citizens' rights.

The Role of Civil Society in Securing Rights: As mentioned in the preceding section, the country faces challenges on many fronts - logistical constraints of the geographical spread of the country (the archipelagic topography), the persistent political corruption (the corruption perception index is currently ranked at a very high 102), internal and violent conflicts, a rapidly growing population and high out-migration – amongst others. Against such challenges, it has been seen that the progress that country has witnessed on the social (and even the political) front has often been due to the presence of a highly developed civil society and like-minded social capital. For, it is the Filipino civil society organizations (CSOs) – the non-governmental organizations (NGOs), people's organizations (POs) and community-based organizations (CBOs) - that have often shown the lead in demonstrating that developmental outcomes are possible if they have a role in shaping the policies in the country.

Even when working on service-delivery initiatives, many such CSOs are veering towards a more empowerment and entitled-oriented in its work with community stakeholders that are rooted in the principles of participation, accountability, transparency, equity and non-discrimination. This has been further buttressed by increasing collaboration between these diverse stakeholders that has initiated various rights-based initiatives. For instance, The Caucus of Development NGO Networks (CODE-NGO) is a civil society network consisting of more than 2,500 NGOs, cooperatives and other CSOs from across the country. It has recently started implementing the project entitled “Pork Barrel Watch: A Civil Society Monitoring System”. Formed as a response to the growing concern of corruption and in-efficiency in public service delivery, the project will monitor the “Pork Barrel” allocations of the Senate and House of Representatives.⁵ Other such instances abound – the Philippines Report Card on Pro-Poor Services assesses the performance of selected Government services (basic health, elementary education, housing, potable water, and food distribution) based on client experience. The Report Card results throw light on the constraints Filipinos face in accessing public services, their views about the quality and adequacy of services, and the responsiveness of Government officials. They provide valuable insights on the priorities and problems faced by the clients and how the various services may be better tailored to the needs of Filipinos in general, and the poor in particular. It is expected that the service providers (the Government) would take the Report Card findings into consideration in adjusting their programs to improve service delivery.⁶

This case study will document one such rights-based initiative that looks into how civil society – in this case, media in partnership with NGOs, CBOs, CSOs, POs and

⁵ Now labeled as the “Priority Development Assistance Fund” (PDAF), the pork barrel has become the national symbol for corruption in the country. Source: <http://www.codengo.org/>

⁶ “*Filipino Report Card on Pro-Poor Services*”, Chapter VIII: Institutionalization of the Report Card. Source: <http://www.worldbank.org/participation/web/webfiles/philipreport.htm>

the communities – and complemented via support from United Nations Development Programme (UNDP) Philippines, have played a capacity development role to develop and use rights-based processes in collaboration with various stakeholders to demand and claim rights.

2. The Study of the UNDP Philippines and Center for Community Journalism and Development Partnership in Securing Rights for Poor and Vulnerable Groups

Case Study/Project Context – The UNDP Philippines and Center for Community Journalism and Development Partnership: In 2002, the Government of the Philippines, in collaboration with UNDP Philippines established a Governance Portfolio to address issues of widespread poverty in the country. This Portfolio aimed at creating a conducive atmosphere - mainly through promoting an enabling environment and via capacity development initiatives - for good governance. These initiatives cut across all sectors of Government and CSOs, including the media.

UNDP Philippines thus embarked on a partnership with the Center for Community Journalism (CCJD) – a countrywide-focused NGO based in Manila and that works via local media partners- under the project title “*Media-Community Action on Mainstreaming Rights-based Approaches at the Local Level*” under the Right to Development Programme of the Governance Portfolio. Under this project, CCJD would work with CSOs - primarily media groups - as well as with relevant Government agencies, to mainstream good governance, gender and human rights in various initiatives through the use of rights-based processes to secure rights-based outcomes. Realising the vital role that the media can play in enabling good governance, the project, at the macro level, aims at developing a framework for media engagement in governance reforms, evoke a deeper understanding of the state of governance and the state of media at the local level and through such understanding, redefine the participative media-multi-sector roles to enable good governance.⁷

Stakeholders Involved: The project is a multi-stakeholder collaboration that involves CCJD (and its partners at the various regional levels)⁸, the related Government agencies (the CHR and the Indigenous People’s Commission (IPC), amongst others), CSOs at the local and regional levels and UNDP Philippines (as the donor). The communities are at the core of this collaboration – that is, whatever collaborative activities are undertaken by the stakeholders always have the people at the center of

⁷ Government of Philippines in collaboration with UNDP Philippines Report, “*Engaging People and Communities: Advancing Governance Reforms through the Realisation of the Millennium Development Goals, Highlight of Major Outputs, 10 October to 10 December 2004, Philippines*”.

⁸ Ibid. Refer to footnote above. CCJD partners at the local (based in the provinces) level include: the Philippines Information Agency (PIA), Asian Institute of Journalism and Communication (AIJC), Foundation for Media Alternatives (FMA), Center for Media Freedom and Responsibility (CMFR), Kapisanan ng mga Broadcaster ng Pilipinas, Philippine Press Institute (PPI), Mindanao News and Information Cooperative Center (MNICC), Ateneo de Davao, National Union of Journalists of the Philippines (NUJP), Mindanao Institute of Journalism (MIJ), Forum of Reporters for Empowerment and Equality (FREE), TVE, University of San Agustin, Bandillo ng Palawan, Palawan Community Media Council (PCMC), PBN Broadcasting Network, Social Action Center Diocese of Legazpi (SACDL), OFW Journalism Consortium, Samar Island Public Journalists Group (SIPJC) and the Partners in IEC and Advocacy Development, Inc., among others.

the process (whether be it via enlisting people’s participation in developmental activities at all stages or whether the activities undertaken have the people as the end “beneficiaries” of the process) (see figure below).

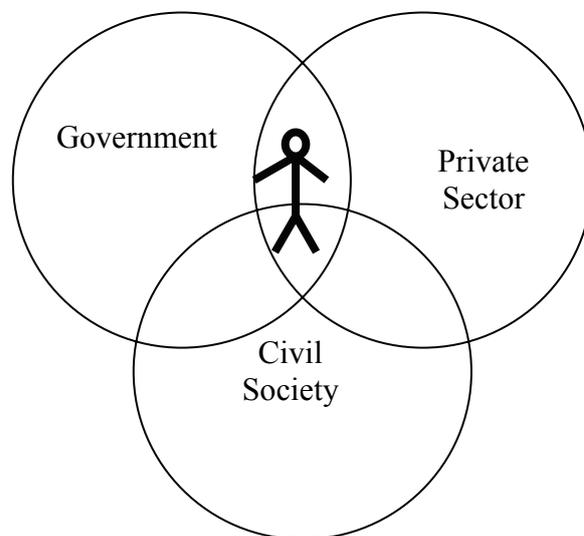


Figure: Capacitating governance stakeholders to be people-centered for achieving developmental outcomes⁹

Objectives: The project aims to develop strategies and mechanisms for the active and effective participation of the media in governance reforms towards building a more transparent, accountable and participatory governance system in the country and implementation of measures for sustaining a media participation network and developing mechanisms at the national and local levels to include citizen engagement in governance.¹⁰

Primarily a *capacity development initiative* (awareness-raising, constituency-building and consensus-building), the project activities consists of undertaking various capacity development activities (rights-based forums and public journalism training activities) at the regional and local levels for the media and other stakeholders and through these forums, identify (and undertake work on) areas of action/ formulate human rights-based approach to programming (HRBAP) strategies and then mainstream these strategies down to the local community levels (via the local governance processes) to produce outcomes that focus on realization of rights by poor, vulnerable and marginalized sections.

This project contributes to UNDP Philippines Governance Portfolios outcomes as follows:¹¹

Outcome 1: Strengthened capacity of Government that are transparent, accountable, ethical, human rights and gender-responsive; effective and efficient in policy

⁹ GOP-UNDP Program Portfolio, “Enabling Environment: Poverty Reduction through Good Governance”, Vol. I-1, Series of 2003.

¹⁰ Ibid. Refer to footnote No. 5.

¹¹ Ibid. Refer to footnote above.

formulation, enforcement and adjudication, and in economic and fiscal management; service delivery; and, in civil service administration;

Outcome 2: Strengthened capacity of organized, responsible, accountable and transparent CSOs, media and private sector groups so that they can effectively engage with Government and actively exercise their rights and citizenship role to promote good governance;

Outcome 3: Strengthened capacity of institutions to promote and protect the Right to Development, especially of the poor, marginalized and vulnerable groups; and,

Outcome 4: Strengthened national and local capacities, including civil society organizations, media and the private sector to manage globalisation consistent with the national anti-poverty strategies and poverty reduction.

3. Process:

A) Capacity Development Initiatives: As mentioned in the section above, the UNDP-supported project is primarily a capacity development initiative that aims at building capacities at various levels to develop and use HRBAP strategies to produce rights-based outcomes. Empowerment is generated through such building of capacities – CCJD builds capacities of the media groups/partners who then work in collaboration with local-level CSO and communities on various issues that affect the lives of poor, marginalized and vulnerable groups of people.

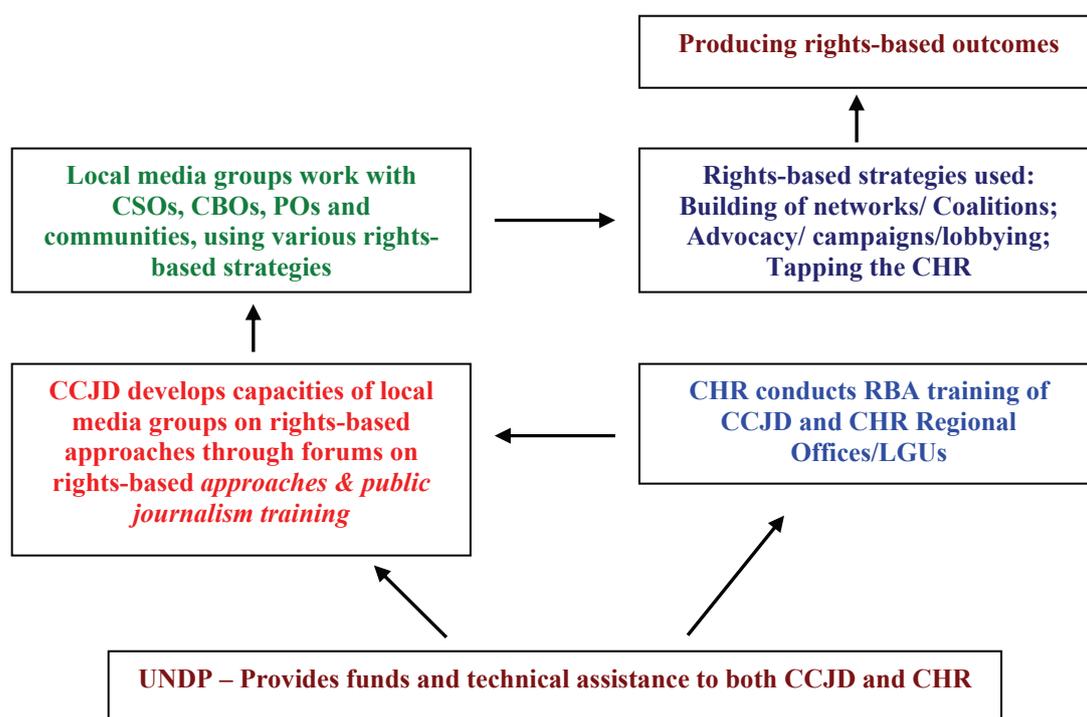


Figure: Building stakeholder capacities to develop right-based strategies to produce rights-based outcomes¹²

¹² By Upala Devi Banerjee.

➤ Capacity development by UNDP of the Philippines Commission of Human Rights (CHR): The capacity development process is initiated via the series of trainings on rights-based approaches that the CHR conducts, both of select officers based at its Regional Offices and of CCJD. A training manual has been developed for this purpose, the design of which is based on the framework developed by the CHR (as the executing agency of the Right to Development Program under the Country Cooperation Agreement of the Government of Philippines and UNDP Philippines). UNDP Philippines has played the role of a catalyst in building CHR capacities by providing necessary funding support and technical assistance towards the development of this manual and in facilitating the CHR training forums that it conducts on rights-based approaches based on this manual.¹³

➤ Capacity development by CHR of CCJD and other concerned agencies: The training that the CHR officers receive is then tapped by CCJD; it has been witnessed that such training has proved useful in building skills of CCJD on the techniques of developing and using rights-based approaches at the grassroots (see Section 4 for a documentation of such outcomes).

Along with CCJD, CHR has also initiated rights-based training for select officers based at its offices at the regional levels (CHR has offices at the regional levels in all the 12 Regions of the country). The use of CHR as the central agency by UNDP Philippines in undertaking such training has proved to be an effective and sustainable strategy, mainly because CHR is the main Government agency that is mandated to work on human rights issues nationally and hence, also has garnered community and civil society recognition and acceptance. Moreover, since CHR has offices at the regional levels, there is the added advantage of its trained officers carrying out such trainings at the local (regional) levels for the officials of the Local Government Units (LGUs)¹⁴ and which CCJD (and its local partners) can also tap into (both to gain

¹³ The manual entitled “*CHR Reengineering Project: Rights-Based Approach Design Report*” was prepared in October 2003 to:

- Suggest an action framework of rights-based approaches from the view point of a national human rights institution on the progressive convergence of development and human rights through the various critical governance functions and areas of activity in the management of development using human rights criteria and standards;

- Define the role of the CHR in catalyzing the use of rights-based approaches in development and governance based on the organizational principles and tasks of a national human rights institution as prescribed under the Philippines Constitution and the United Nations (UN) system;

- Provide significantly an identification of all possible entry points of rights-based approaches and its wider application in both the work of CHR and other institutions of government and civil society; and,

- Propose a rights-based approach system design framework, objectives, policy considerations, design of rights-based tools for specific applications and processes flow charts for each of the selected strategic development and governance areas of work and activity. (Source: CHR Reengineering Project: Rights-Based Approach Design Report, October 2003, UNDP Philippines and Government of Philippines, by Center for Public Resource (CPR) and CPRM Consultants Inc.).

- A new manual has lately been developed on rights-based approaches for training for training of trainers (ToTs), with funding support of UNDP Philippines.

¹⁴ Local Government Units (LGUs) have been set up by the Local Government Code (LGC) to provide for a more responsive and accountable local government structure instituted through a process of decentralization. LGUs, as the front-line units of the government are thus authorized to exercise more governance powers, authority and discharge responsibilities at the local level. CHR sees the LGUs as their natural partners in discharging good governance and one of the most effective ways of

knowledge on use of rights-based approaches and also to then play a monitoring role on whether the LGUs are actually using such training whilst discharging their obligations).

➤ Using Forums on rights-based approaches as a capacity development tool:

The training that CCJD receives from CHR is used to capacitate local media organizations on the *modus operandi* of rights-approaches in the regions (at the grassroots levels) that CCJD works with. This is undertaken through forums - which are basically training and capacity development platforms focused on how various tools (mostly media tools) can be used in a rights-based manner - that has, as its objective, the development of a core group of trained media practitioners that will work in collaboration with local CSO partners to achieve rights-based outcomes. These forums, supported by UNDP Philippines, also often use the expertise of the CHR trainers (trained regional officers) to deliver training. Though primarily targeted at media practitioners, these forums (held in Palawan, Bicol, Albay and Iloilo Provinces till date) have not only trained LGU members and other concerned civil society groups on using media tools effectively (for instance, on how reporters can use public journalism techniques in a rights-based manner in a public hearing) but have also used them as platforms to conduct advocacy and lobbying on various rights-based issues (see Box below).

➤ Public Journalism as a capacity development tool: CCJD has used the principles of public journalism to develop capacities of its media partners (and the larger civil society at large in the Regions it works in) to develop and use rights-based strategies. The principles of public journalism are, in themselves, rights-based, as they involve, engage and ensure that citizens' voices are heard in issues that affect their lives (see Box 2 below). CCJD began on a small scale to take the concept of public journalism to the local communities to help citizens understand the impact of the news on their lives; how journalism can provide opportunities for community debates to take place; and, how they can likewise actively participate in building the news agenda – an agenda which was previously always set by journalists in the newsroom. Gradually, this concept took root and CCJD started building capacities of their local media partners as well as of the communities at large through training on how to use public journalism techniques to more effectively develop and use rights-based strategies. The UNDP-supported forums (mentioned in the Section above) were also used to train participants on public journalism techniques. Basically, *six techniques* were used that allowed for better engagement between reporters and the communities as follows:¹⁵

undertaking such a role is via initially training LGUs in rights-based approaches. This is in recognition that the first step towards implementation of human rights standards and policies involves local measures such as alterations in the local priorities and practices regarding the provisioning of services and modifications in fiscal and resource allocations so that it adequately reflects the needs and priorities of the local communities. Through such rights-based training, CHR will encourage LGUs to undertake rights-based local budgetary planning.

¹⁵ Red Batario, “*Breaking the Norms*”, Center for Community Journalism and Development, 2004.

Box 1: Using the Forums on Rights-Based Approaches in Promoting Better Governance through a Rights-Based Development Agenda – The Case of Bandilo ng Palawan in Palawan Province

The UNDP-supported CCJD-conducted rights-based approaches training forums have been able to not only train media and civil society partners on the effective use of such approaches but have also served as forums on which to conduct advocacy and lobbying. As a prelude to the planned *Ulat ng bayan/Ulat sa Bayan* forum (a citizen feedback and monitoring mechanism) in October 2004, Bandilo ng Palawan (a CCJD partner and a media network) organized such a forum on “*Back to the Basics: The Role of Community Media in Palawan in Promoting Better Governance through a Rights-Based Development Agenda*” for LGUs, Palawan media and CSOs to not only provide orientation on the effective use of rights-based approaches but also on how best such approaches can be used to encourage and pressure local officials to adopt such an approach in crafting their political agenda.

To provide a solid basis and practical starting point for this forum, research was undertaken on relevant data that would indicate how LGUs would measure up in terms of discharging their obligations on education, health and food security (these three sectors were chosen on the basis of a consensus arrived upon by various CSO stakeholders like Bandilo ng Palawan, the Palawan Community Media Council and Palawan NGO Network Inc. as those wherein citizens were not able to access their rights). Forum participants validated the results of the research and crafted plans on how to monitor Government responses to unmet needs of their constituents using rights-based approaches (like joint participatory monitoring techniques, public audits, etc). Letters were sent to LGU officials to solicit their responses to the issues raised and suggested the possibility of incorporating the *Ulat ng Bayan/Ulat sa Bayan* activity in their report of their first 100 days in October 2004. Bandilo ng Palwan has since started publishing the results of the research in a series of reports in the public journalism page of its weekly newspaper. Sections of inaugural speeches of LGU elected officials are also being published (so that they can be held accountable during their tenure for promises made during their elections).

Community Immersion: This involves spending time in the community to understand its dynamics – their needs, interests, geography, demography, etc. For instance, members of the Forum of Reporters for Equality and Empowerment (FREE) stayed with a local community in Maguindanao Province for a week to more clearly understand the community’s perceptions of the ongoing peace efforts at the height of fighting between the Government soldiers and the Moro Islamic Liberation Front in 2000. As a result, a series of stories on citizens’ voices about their perceptions on the peace process were included in the media.

Community Conversations: Community conversations allows journalists to mix with people living in communities and carry out conversations with them, without being too probing and intrusive. In Kidapawan City, North Cotabato, radio reporters started engaging local citizens in conversations on issues that they really care about and

began developing a daily program called *Pulso Ng Bayan* (Pulse of the Town) based on these insights.

Focus Group Discussions: Such discussions - also called FGDs in developmental parlance - allows for more targeted discussions on issues with various stakeholders in the communities; The Visayas Examiner (TVE) in Iloilo City used FGDs to a large extent to develop stories that eventually led to advocacy and campaigning on targeted issues (a more detailed discussion of how TVE was a key CCGD partner in helping develop and bring about rights-based outcomes in the Western Visayas Region is highlighted in Section 4).

Citizen Polls: Surveys and opinions highlighting citizens' concerns can help in mapping out such concerns in a story form. A CCGD partner – the PBN Broadcasting Network in Bicol Province – polled citizens in one *barangay* that expressed concerns about a cement plant which was to be set up in that area. Such polls led to a series of discussions that ultimately led to the citizens (in participation with the local Government officials) developing a series of guidelines under which the plant could operate in that municipality (see Box 3).

Community Interaction: Network building and establishing contacts with CSOs often result in stories that examine problems and identify solutions. It also opens up avenues for news agencies to play a more catalytic role in the community by providing avenues for dialogue through their media outlets. Through community interaction, the Bandilo ng Palawan gradually encouraged different stakeholders to discuss the creation of the Palwan Heritage Center to arrest the slow deterioration and loss of cultural and loss of environmental artifacts.

Alliances with Competitive Peers: Alliance building with peers in the same field allows for more efficient and effective use of resources. This also ensures broader reach and a larger impact when undertaking work on issues that requires large groups to converge together to build alliances on any issue. Four radio stations in Kalibo, Aklan Province, worked together to undertake a simultaneous broadcast on a program that tackles children's rights issues. The program was soon able to attract listeners to participate and report cases of child abuse – an issue that was hitherto a taboo topic in this town.

Box 2: Principles of Public Journalism – Operationalizing Rights-Based Approaches

The principles of public journalism are rooted in approaches and would aim at achieving outcomes that are rights-based as follows:

- * Careful, timely and sensitive listening to community needs;
- * Systematic consultation of the community by means of polls and FGDs;
- * Listening more closely to their audience and facilitating dialogue or “conversation” so that everyone talks – participatory conversation cuts across differences, particularly in a multi-cultural society, to create “reciprocity”;

- * Dialogue with panels of resource specialists chosen for their differing expertise and perspectives;
- * Media-sponsored public forum that deliberate on key issues;
- * Continuity of in-depth reporting on issues chosen independently by journalists for their immediate relevance to citizen's concerns; and,
- * The journalists must be "fair-minded participants in a community that works".

Source: "Old wine in new bottles", paper by Shelton Gunaratne, 1996, published by the Urban Governance Initiative in the "Cities, Chaos & Creativity: A Sourcebook for Communicators" written by Kalinga Senviratne and Sivananthi Thanenthiran.¹⁶

B) Rights-Based Strategies Used in Securing Rights: Developing of capacities through the above is then used by CCJD and its media partners in collaboration with CSOs at the local levels to develop rights-based strategies that target and focus on specific issues affecting poor, marginalized and vulnerable groups. Such strategies also bring in relevant Government agencies to partner in the process to achieve rights-based outcome as highlighted below:

➤ Building networks and coalitions: Reaching out and building networks and coalitions have been one of the most important strategies used – whether it be building alliances with like-minded peers in the media sector or with other stakeholders, such networks and coalition-building have ensured that the tools (like campaigns) used have a larger membership base, are resource conducive and have more impact at undertaking advocacy and lobbying at the policy level. It is the forging of extensive alliances through such coalitions and networks that have been quite effective in not only undertaking campaign advocacy and lobbying activities but in also performing a "watchdog" role, monitoring that duty-bearers discharge their obligations and are accountable for such.

➤ Undertaking advocacy/campaigns/lobbying: Advocacy, campaigns and lobbying have been used as effective rights-based tools under the public journalism strategy – such tools have worked successfully due to the forging of effective community/civil society/media partnerships that are a result of the networks and coalitions that have been built. The media, community and civil society have used such tools in different ways, targeting various issues to produce various outcomes. For instance, while public radio (the Radyo Veritas Legazpi Program or the PBN-DZGB Network in Legazpi City) has been used as an effective communication and advocacy tool in Legazpi, newspapers have proved to be highly effective in undertaking campaign, advocacy and lobbying in the Western Visayas Region or in Palawan Province.

➤ Tapping the Commission on Human Rights at all stages: CCJD and its partners have recognised the value-added of tapping into relevant Governmental agencies to produce viable and sustainable outcomes. Under this project, CCJD has built alliances with the CHR – the only constitutionally mandated human rights-

¹⁶ Ibid. Refer to footnote above.

focused Government agency in the country. Whether it be activities that entail training of CCJD and its partners by CHR on rights-based approaches or by inviting CHR officials to be a part of meetings, dialogues, debates and discussions on issues at the local level that affect the lives of citizens, CCJD has tapped into CHR and built up a partnership with the Commission that will ensure that the gains made through the project will be sustainable and viable.

Box 3: Radio Advocacy as a Public Journalism Tool in Legazpi City in Enabling Effective Community/Civil Society/Media Partnerships

In Legazpi City, the PBN-DZGB Network – a radio network in Legazpi City and a CCJD partner - has been used very effectively in enabling the community, CSOs and media to work together in bringing about rights-based outcomes. When a Taiwanese company wanted to set up a cement plant in *Bangaray* Palong in Legazpi City, concerned residents joined hands with PBN-DZGB reporters (who not only conducted interviews with the residents but also conducted a survey/poll through dialogue with the residents and *bangaray* officials to decipher what the ramifications of having a cement plant in the area would entail). This dialogue was aired over the radio network.

This dialogue was followed by another community dialogue amongst the community, concerned CSOs and environmental experts as well as concerned *bangaray* and Government officials to discuss whether the economic benefits of the plant would outweigh the possible health hazards. Around the same time, citizens opposed to the plant organized themselves into a group, later evolving into what is now known as the “*Alyansa Laban sa Polusdyon at Gutom*” (Alliance Against Pollution and Hunger or ALPOG). Again, this dialogue was aired live on PBN-DZGB.

A third forum was organized by the Department of Environment and Natural Resources – Environmental Management Bureau (DENR-EMB) in Legazpi City. PBN-DZGB covered the entire process and enabled a forum wherein a dialogue could take place between the citizens and the Taiwanese investors, CSOs and concerned Government officials. Though the Taiwanese company stated that it has applied for an Environment Compliance Certificate and would help generate employment in the area while assuring cheap supply of cement, an agreement was arrived at by which a monitoring group will work with the EMB to ensure that the company complies with the above.

Again, PBN-DZGB devoted airtime to community discussions on the issue as monitoring by ALPOG and concerned citizens revealed that despite earlier promises, the company operations did not meet environmental standards (residents also started complaining of increasing respiratory problems). Residents thus started communicating these grievances to the local officials through the radio station as they stated that they were assured of faster official action through this channel. A PBN-DZGB staff then refers these cases to the Department of Health and the Provincial Health Office.¹⁷

¹⁷ “Radio as Community Member: PBN-DZGB Legaspi City”, by Bonifacio Serrano in “*Breaking the Norms*”, by Red Batario, Center for Community Journalism and Development, 2004.

In such ways, PBN-DZGB has forged effective and crucial partnerships with the community. Not only have such methods of undertaking advocacy through public journalism means via the radio acted as a catalyst in pressuring the duty-bearers to take action on issues that impact the lives of the citizens but have also proved very effective in forming a monitoring process that ensures that the Taiwanese company (and the duty-bearers) are accountable for the promises made.

Capacity/Role of Duty-Bearers (including the Private Sector/Related Frameworks) in Addressing Demands:

As has been elaborated throughout this paper, duty-bearers - notably the CHR - have been very actively involved in collaborating with the claim-holders (CCJD and its partners) in addressing demands made and in training the claim-holders on how to operationalize rights-based approaches at the local levels. Such an approach has also been very effective in building capacities and developing collaborative relationships with the claim-holders to achieve rights-based outcomes. Developing such collaborative relationships have further helped CHR to work with CCJD and its partners to address demands on claims made in an atmosphere of mutual trust and cooperation. For instance, as co-chair of the Regional Sub-Committee for the Welfare of Children, the CHR Regional Office pushed for the enactment of rights-based local codes for children in all cities and provinces of the Western Visayas Region.¹⁸ In another instance, at the conclusion of the UNDP Philippines-supported forum on training on rights-based approaches in Iloilo City, covenants were signed between media and multi-sectoral groups (including LGU officials from Albay and Iloilo Provinces) to undertake activities to promote the use of rights-based approaches (like soliciting people's participation) while undertaking developmental activities.

Along with CHR, another Government agency – the IPC – has been active in working with CCJD in addressing demands, especially as they pertain to working with IPs in addressing their claims in relation to their right to their ancestral domains.

Monitoring to Ascertain Rights-Based Outcomes from the Rights-Based Strategies:

Monitoring by CCJD and its partners on the use of the rights-based strategies are undertaken in a variety of ways:

- The media, through the use of public journalism techniques, have been quite effective as a monitoring tool. Through such coverage and broadcasts, not only are the communities kept abreast of whether the duty-bearers are discharging their obligations, but via enabling participatory dialogues and debates (which are duly covered by the media), due emphasis is placed on enlisting duty-bearers' accountability and transparency.
- One of the most effective ways of undertaking monitoring that has been used by CCGD and its media partners is via the practice of partnering with civil society led “watchdog” groups - such “watchdog groups” perform ongoing monitoring and public audits on public works/projects that are being undertaken by both the public sector and the private sector to ensure that the works/projects are undertaken in a transparent and accountable manner and

¹⁸ Ibid. Refer to footnote No. 5.

that these undertakings are not detrimental to citizens' interests in any way. Such monitoring and audit activities forged through media-civil society partnerships have proved highly successful in ensuring ongoing accountability and transparency (see Box below).

- E-groups have been set up by CCJD to enable its partners to dialogue on issues of concern. These groups have been tapped to build strategic networks and coalitions on issues of concern - networks and coalition members regularly interact and use the e-groups to highlight issues. The use of the Internet has proved highly effective in exchanging views and news; soliciting ideas; keeping network members abreast on activities undertaken and monitoring progress achieved and hurdles encountered in the process.
- Monitoring is also done via field visits, undertaken by the media partners in collaboration with the local partners (the CSOs and the communities). Though a traditional form of monitoring, these visits are very helpful in the partners getting an "on the ground" view of whether the activities undertaken have produced desired outcomes.
- Finally, CCJD brings its media partners together twice a year; these bi-yearly forums - primarily held to dialogue on issues of concern and to exchange ideas and keep each other abreast of developments in their respective constituencies - also act as a platform for CCJD and its partners to undertake macro-level monitoring and evaluations of their programs.

Box 4: Media-Community Monitoring in Ensuring Accountability - The Case of the Concerned Citizens of Abra for Good Governance

A civil society group, the Concerned Citizens of Abra for Good Governance (CCAGG), currently partners with UNDP Philippines under the Participatory Project Monitoring Activity, the objective being to conduct the first-ever participatory audit of a local Government unit in the Philippines. Based in the Abra Province in the Cordillera Region in the northern Philippines, members of this organization came together from the ranks of students, professionals, housewives, priests, church workers and Government employees in 1987 when an article appeared in a local newspaper boasting of 20 successful Government infrastructure projects in the region. The organization's first investigation in 1987 of these projects exposed the "uncompleted" nature of the projects of the Department of Public Works and Highways, which resulted in the suspension of 11 Government engineers who were found guilty of dishonesty and misconduct.

CCAGG was founded in 1986 as an offshoot of the provincial chapter of the National Movement for Free Elections (NAMFREL), which monitored the 1986 presidential elections. Instead of disbanding, the members of NAMFREL decided to use their experience gleaned during the election monitoring process for further action. Since then, this non-profit non-partisan civic organization of more than 1,000 members have been monitoring public spending in Abra - despite considerable funds being channeled into the poor province, very few concrete results can be seen.

Today, the group's assessment reports have become vital in the release of Government funding for public projects. The pioneering efforts of this organization in fighting corruption at the local level have found allies in the media – CCAGG partners with a Catholic media network and the “Abra Today Newspaper” (both local CCJD partners) to monitor and spread awareness on good governance issues. Every Sunday, from 7.30 p.m to 8.30 p.m, this radio network is being used to discuss issues on good governance, work on ongoing public-related works, and so on. In a remote and often inhospitable travel terrain, such a partnership have been very effective in building awareness and in enlisting their participation on issues that affect their lives. Such efforts also demonstrate clearly the capacity of partnerships that can act collectively to be a powerful force in making both the public and the private sector accountable.¹⁹ CCAGG has also won the 2000 Transparency International Integrity Award.

4. Outcome (Results): The Case of the Western Visayas Region

While the outcomes of using the rights-based strategies developed has produced visible outcomes in many regions where CCGD has worked in under this project (and such instances abound throughout this paper), this particular section highlights outcomes from one region – the Western Visayas Region in southern Philippines – where CCGD has worked in partnership with its local media partner, TVE, to produce outcomes that have culminated in the realization of various rights by disadvantaged sections, are sustainable and that have had far-reaching impacts. TVE is a community newspaper established in 1999 by journalists in Iloilo City in Iloilo Province, Western Visayas Region. The newspaper started working through public journalism techniques in 2001 for covering issues of concern to the citizens. Activities ranged from holding community meetings, helping other media groups organize, to the printing of a public journalism page entitled “Examined”. TVE’s public journalism initiatives received added fillip via the training on rights-based approaches and resulted in greater public impact of the news covered, development of a more critical and concerned core of readers and enhanced skills of journalists to cover news and the building of partnerships with other CSOs and the communities at large. Such partnerships have resulted in the development of the HRBAP strategies (documented in Section 3, B) and led to producing rights-based outcomes as follows:

➤ *Joining cudgels in the fight against the setting up of a hospital incinerator:* In 2001, following complaints by local residents in Iloilo City about noxious fumes coming into their homes from a nearby hospital incinerator, TVE came up with a series of reports on this issue. The TVE staff forged alliances with Greenpeace Philippines to spread awareness about the related hazards at a TVE-organized forum in Iloilo City. Attended by multi-stakeholders including Government and hospital officials, community members, health workers, priests, journalists and NGO groups, the forum was successful in helping make the participants not only understand the environmental hazards posed by the incinerator but also in organizing them around this issue. Furthermore, various other groups like the Physician’s Association, the representatives of the Catholic Church and professional organizations like the Iloilo

¹⁹ Website of Transparency International at http://www.transparency.org/pressreleases_archive/2000/2000.09.28.i_award_portraits.html

Chamber of Commerce and the Iloilo Medical Society picked up the issue and launched an information drive on solid waste management. Concerted advocacy and lobbying efforts by forging alliances of these various stakeholders (including the Iloilo CODE NGO – a coalition of around 50 NGOs in the city), coupled with reporting on the issue and related events by TVE, finally resulted in the hospital incinerator shutting down. Although there has been efforts to re-operate it, intense lobbying efforts and the dangers of pressures of adverse publicity that would occur as a result of the campaigns that the citizens are ready to again undertake have resulted in the incinerator remaining closed till date.

➤ *Campaigning Against the coal-fired plant in Bangaray San Salvador:* A Korean Electric Power Plant had plans to set up a 100-megawatt plant in *Bangaray San Salvador*, a coastal town north of Iloilo City. Citizens' groups joined hands to protest against this plant since the continuous burning of coal particles emit harmful toxic chemicals that can seep into the ground water and contaminate drinking water. Pregnant women and infants are often the most vulnerable. Doctors have also thus joined in the fray because of the perceived serious health effects on the residents in the area. TVE covered the issue as a long-running series that allowed citizens' voices to be heard, especially in relation to their stand on the proposal. Readers were provided citizens' guides that showed schedules and venues of public forums, and how they can actively participate in the debate. Such media-community engagement - that drew in the readers with the liberal use of statistics, graphs and maps as well as reader suggestions, citizens' guides and explanatory sidebars - has led to sustained awareness and campaigning on the issue that put pressure on the local officials and the Plant and finally led to the *Bangaray* head sponsoring a resolution, calling for the scrapping of the project.

➤ *Signing of Covenants on good governance:* During the training forum on rights-based approaches held in Iloilo City in August 2004, covenants were signed between concerned civil society stakeholders, the media (including TVE) and LGU officials (six LGU officials from Puerto Princesa; ten LGU officials from Iloilo Province; and, six LGU officials from Albay). By signing these covenants on good governance, the officials reiterated their commitments to undertake activities at the local level that would ensure that rights-based approaches are incorporated while undertaking developmental planning and programming (for instance, participatory budgeting, election monitoring, and so on). LGU officials can be further held accountable for not meeting obligations under such commitments and they agreed to withstand monitoring and scrutiny on these commitments by the concerned civil society stakeholders.

➤ *Targetting corruption via public audits:* Citizens' have started monitoring activities after getting organized via efforts of local CSOs and media groups, primarily led by members of Iloilo CODE NGO – all local TVE/CCJD partners. Batad town in Iloilo Province was the first area where a public audit, called "*Pamangkot Sang Banwa*", was piloted. The success of bringing LGU officials face-to-face with citizens to ensure accountable governance led to its replication elsewhere. The mountain town of Bingawan in Iloilo Province has actually passed a resolution mandating that such public hearings be institutionalized; thus, such a hearing is held

every second Monday of February and July each year. In the hearing held on 4th February 2005, there was a dialogue on transparency between the local community and elected LGU officials in which the local Mayor also attended. 50 community members demanded responses from the officials on commitments made (like budget for repair of school buildings and damaged street lights, conversion of farm roads to market roads, honorarium of day-care workers and so on).

This particular “*Pamangkot Sang Banwa*” was an offshoot of the voters’ education drive conducted in the town during the May 2004 elections. NGOs sponsoring it took down the promises of the officials who signed a covenant agreeing to join the hearing once they are elected to office. During the “*Pamangkot Sang Banwa*”, the promises of the elected officials were listed down and their attendances to the regular legislative sessions were posted as well as their performances in passing and sponsoring ordinances. Even the LGU officials felt that an initiative of this kind is imperative in making governance transparent in Bingawan. TVE actively covered the news leading upto this “*Pamangkot Sang Banwa*”, published views of the citizens relating to the performances of the LGU officials, attended the hearing and subsequently gave it front-page coverage following the hearing.²⁰

Currently, TVE is collaborating with Iloilo CODE NGO to help popularize such audits through publications and media releases. Such collaborations have proved central in promoting participatory, transparent and accountable governance at the local levels in quite a few provinces in the Western Visayas Region.

➤ *Enabling indigenous peoples to advocate to claim their rights to ancestral domains:* TVE worked in collaboration with local CSO groups (in the form of undertaking fact-finding missions; holding FGDs; publicizing the findings of such missions and FGDs in the media; and, making the general public aware of the plight of IPs) in the provinces of Tapaz, Capiz and Garangan in Iloilo. In these provinces, communities that consider themselves indigenous have started organising themselves with support from the local CSOs against the construction of dam that is being planned by Aegis France, a multinational corporation. The dam, if constructed, will displace these people from their lands because the areas upriver would then be used as watershed areas. Thus, none of these communities signed the affidavit that would actually give them land in other areas if they move away from the land that they are currently occupying. The collaborations and advocacy has gained further momentum due to the involvement of the IPC that has started working with these groups to address their claims, including listening to their demands that the mining operations would threaten their right to their ancestral domains.

5. The Value Added of Using Rights-Based Strategies:

Positive Lessons Learned: The partnerships of media with the communities in the Western Visayas Region has produced various rights-based outcomes and have enabled communities to lobby and demand their entitlements. Several enabling conditions that are listed as positive lessons in the Section below have made such outcomes possible:

²⁰ The Visayas Examiner, 19 March – 25 March 2005, Vol.5, No. 8, Iloilo City, Philippines.

➤ Strong civil society acting as capacity development “enablers”: Philippines, like India and Bangladesh, has a documented strong history of civil society movements, buttressed by a strong social capital. Popular action has played a major role in shaping the country’s politics and society. It is this social capital that has joined forces to become the “enablers” to build capacities of communities to organize themselves and claim their rights. This role of civil society has been further enhanced and legitimized by the Local Government Code (LGC) of 1991 that has enumerated three key areas wherein NGOs can participate: i) Strengthening the Local Bureaucracy; ii) De-bureaucratizing Local Governance; and iii) Institutionalising People’s Governance. In this case, whether it be training and building capacities of communities and like-minded CSOs on rights-based approaches; in conducting advocacy, campaigning and lobbying; building coalitions and networks; organising communities; or, tapping into and building alliances with the duty-bearers, it has been this strong social capital that has taken the lead role in leading the way and empowering and organizing communities to claim rights-based outcomes.

➤ A strong and independent media crucial in achieving outcomes: The extensive Filipino press, free from state controls, is known for its free comment and speculation in many areas. However, investigative reporting into major crime and corruption is often criticised.²¹ This is reflected in the periodic harassment and even killings of journalists who have reported cases of graft and corruption of public officials or in public works. Against such challenges, it is the strong media alliances - in this instance, CCJD and its local partners – that has forged partnerships with the local civil society to use public journalism techniques that actively engages communities and helped build their capacities so that they can play (and has since played) a major role in good governance issues at the local levels in the Western Visayas Region (and in many other regions across the country). As an editor in TVE remarked: “Public journalism works well in local communities because members of the media are also looked up to as citizen leaders and are seen as stakeholders in community life”.²²

➤ Legitimacy optimized via partnerships with quasi-Governmental agencies: The strategy of collaborating with the quasi-Government agencies like the CHR and the IPC (that has been formed as an outcome of the Indigenous People’s Rights Act (IPRA) of 1997) has proved effective for CCJD and its partners in achieving outcomes. This is mainly due to the institutional legitimacy that these Commissions possess as well as the mandate of CHR to promote good governance through training and capacity development in rights-based approaches, the strategy of which has been endorsed by UNDP Philippines and tapped by CCJD to its fullest potential. CHR’s strategy of training its officials across its offices throughout the country is a practice that can be replicated by other national human rights commissions in countries like India.

➤ Tapping into enabling policy frameworks: Civil society in the Philippines - as in other countries like India - has been successful in using the decentralization process in producing rights-based outcomes. Through the LGC of 1991, the country has

²¹ Ibid. Refer to footnote No. 2.

²² Ibid. Refer to footnote No. 14.

transferred local governance issues (as well as accompanying powers and responsibilities) from the central to the local Government levels. Such autonomy of the local Governments furthered the space for the local people to participate in governance. For people to participate effectively in governance, their capacities needed to be built up and herein came in organizations like CCJD and their local partners (like TVE, Ilioilo CODE NGOs or CCAGG) – these organizations started equipping communities with skills that would aid their participatory processes in governance. And these organizations had the legitimacy to undertake such an exercise due to the enabling policy framework – the LGC of 1991 – that highlighted the three areas wherein civil society could participate in good governance issues to gain positive and desired outcomes.

Alongwith the LGC, there have been other enabling legislations like the IPRA of 1997 that spells out the right of IPs to their ancestral domains, their right to self-governance and empowerment, their social and human rights, and their right to cultural integrity. IPRA also allocates for the administrative bodies (the IPC), mechanisms and funds to implement its provisions. And CCJD and its partners have tapped into the provisions of this Act to advocate for the rights of these peoples.

➤ *Donor assistance imperative:* Donor assistance, in the form of development aid, is imperative to achieve project goals and objectives. However, the risks associated with supporting in projects that have rights-based elements interwoven in them are higher due to the often uncertain nature of the outcomes. For instance, supporting a good governance initiative that looks into developing community capacities for advocacy and lobbying to produce rights-based outcomes can be categorized as a “high-risk” project due to the uncertainty of the outcomes – there is a high possibility that the community may not use such capacity development for advocacy and lobbying due to their own inadequacies or due to macro-level operating constraints. UNDP Philippines however invested in such “high-risk” initiatives to develop capacities of its partners to effectively participate in various governance processes. And such investment did pay dividends in terms of the partners using such capacity development to, in turn, empower communities.

Challenges:

➤ *Challenges in combating the “culture of silence”:* The foremost challenge in operationalising the rights-based approach – wherein citizens organize to take up cudgels and challenge the status quo – have been in breaking the “culture of silence”. In some of the remote and inaccessible project areas which are inhabited by IPs, winning the confidence of the people and helping them break the “culture of silence” is an enormous challenge; these communities are often cut off from mainstream civilizations, are illiterate; and, have no knowledge of the related Government policies and programmes. Working with such people, winning their confidence and then empowering and mobilizing them have been (and still is) a challenge that CCJD and its partners face (though some gains as stated in Section 4 have gradually been witnessed).

Following from the above, the practice and use of rights-based approaches – like the use of advocacy and lobbying, campaigns and protests – often faces resistance from communities as it means challenging the status quo. Many communities thus resist such strategies as these involve face-to-face interactions with LGU officials, challenging existing power equations and demanding their accountability on public-related works. For poor, vulnerable and marginalized communities, their struggle for basic survival often precedes their engagement in civic action (that can be very time intensive); resistance has thus been encountered by CCJD and its partners while building capacities of groups on the use of such approaches.

➤ *Disempowering laws acting against citizens' interests:* A rights-based approach works best in an environment where there are enabling laws and policies in place. However, enabling policy frameworks like the LGC and IPRA have been negated to a large extent by disempowering laws like the Mining Act of 1995 - wherein all public and private lands can be thrown open for mining operations to foreign companies and give them total control over such operations – that has endangered the land rights of communities, including indigenous communities. Section 56 of the Mining Act states that states that “property rights within the ancestral domains already existing and/or vested upon affectivity of this Act, shall be recognized and respected,” excludes lands that are privately owned, from the scope of ancestral domains. This has the effect of practically negating the progressive definition of ancestral domains contained in Section 3 of the Act.²³ Mining companies have taken this provision to further their interests, interpreting "vested rights" as including mining concessions. Thus, under such interpretation, mining concessions already existing prior to the affectivity of IPRA are excluded from the scope of ancestral domains. NGOs and indigenous communities have taken a strong stand against such interpretation. To include mining concessions within the purview of vested rights could open the floodgates to exclusion from the scope of ancestral domains sizable lands that are now under timber concessions and permits to operate commercial tree farms. Also included are the mineral lands of large mining companies in the Cordillera and the fertile lands owned by agri-business companies in Mindanao.²⁴

Though there was major judicial activism against this Act, the Supreme Court also acted against community interests by ordering only a temporary deferment of the implementation of the law.

➤ *Commissions addressing human rights concerns facing budgetary constraints:* As mentioned elsewhere in this paper, the role of the CHR in capacitating and developing skills of diverse stakeholders on rights-based approaches has been exemplary. But, the Commission faces severe budget constraints – with an annual budget of only around 200 million pesos, there are limitations on the level of resources that CHR can devote to training and capacity development. As budgetary

²³ Section 3(a) provides an expanded definition of the concept of ancestral domains, which goes beyond those set forth in earlier laws on indigenous peoples rights.

²⁴ “The Regulatory Climate for Mining in the Philippines”, *The Philippines International Review*, Vol.2, No.1, Autumn 1999, Philippine-European Solidarity Centre (PESC-KSP), The Netherlands. Source: <http://www.philsol.nl/pir/v2/RegClimate-99b.htm#note>

allocations (or the lack of such allocations) to a sector signals the Government's commitment to that particular sector, such resource constraints plaguing the CHR actually poses questions on whether the Government, at the macro-level, is serious about addressing human rights issues.

Similar is the case of the IPC – though set up to address and protect the rights of such groups, the Commission has been plagued with severe financial crisis that hampers its effective operations and reach.

SELECT BIBLIOGRAPHY:

Batario, Red., 2004, *“Breaking the Norms”*, Center for Community Journalism and Development, Quezon City, Philippines.

Government of Philippines in collaboration with UNDP Philippines Report, *“Engaging People and Communities: Advancing Governance Reforms through the Realisation of the Millennium Development Goals, Highlight of Major Outputs, 10 October to 10 December 2004, Philippines”*.

GOP-UNDP Program Portfolio, *“Enabling Environment: Poverty Reduction through Good Governance”*, Vol. I-1, Series of 2003.

Center for Public Resource Management, Inc. and CPRM Consultants, Inc., October 2003, *“CHR Reengineering Project: Rights-Based Approach Design Report”*, Philippines.

Serrano, Bonifacio., 2004, *“Radio as Community Member: PBN-DZGB Legaspi City”* in *“Breaking the Norms”*, by Red Batario, Center for Community Journalism and Development, Quezon City, Philippines.

The Philippines International Review, *“The Regulatory Climate for Mining in the Philippines”*, Vol.2, No.1, Autumn 1999, Philippine-European Solidarity Centre (PESC-KSP), The Netherlands. Source: <http://www.philsol.nl/pir/v2/RegClimate-99b.htm#note>

The Visayas Examiner, 19 March – 25 March 2005, Vol.5, No. 8, Iloilo City, Philippines.

The Visayas Examiner, 21-27 November 2003, Vol.4, No. 47, Iloilo City, Philippines.

The Visayas Examiner, 31 October – 6 November 2003, Vol.4, No. 47, Iloilo City, Philippines.

US Department of State, *“Country Reports on Human Rights Practices - 2001: Philippines”*. Source: <http://www.state.gov/g/drl/rls/hrrpt/2001/eap/8371.htm>
<http://www.codengo.org/>

Website of Transparency International, accessed at
http://www.transparency.org/pressreleases_archive/2000/2000.09.28.i_award_portraits.html

Website of Oneworld.net, accessed at
<http://www.oneworld.net/guides/philippines/development>

World Bank, *“Filipino Report Card on Pro-Poor Services”*, Chapter VIII: Institutionalization of the Report Card. Source:
<http://www.worldbank.org/participation/web/webfiles/philipreport.htm>

The Application of the Human Rights-Based Approach to Programming into the Common Country Assessment of the United Nations in Viet Nam

A Case Study

13. The Application of the Human Rights-Based Approach to Programming into the Common Country Assessment of the United Nations in Viet Nam: A Case Study

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LIST OF ABBREVIATIONS USED:

CAT: Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment
CCA: Common Country Assessment
CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women
CG: Consultative Group
CPRGS: Comprehensive Poverty Reduction and Growth Strategy
CRC: Convention on the Rights of the Child
ECOSOC: Economic and Social Council
HoAs: Head of Agencies
HRBAP: Human Rights-Based Approach to Programming
HRWG: Human Rights Working Group
ICJ: International Criminal Court
MDGs: Millennium Development Goals
MFA: Ministry of Foreign Affairs
MPI: Ministry of Planning and Investment
NGOs: Non-governmental Organizations
ODA: Overseas development assistance
OHCHR: Office of the United Nations High Commissioner for Human Rights
PRSP: Poverty Reduction Strategy Paper
Sida: Swedish International Development Agency
SWOT: Strengths, weaknesses, opportunities and threats
TA: Technical Assistance
UN: United Nations
UNCTs: United Nations Country Teams
UNDAF: United Nations Development Assistance Framework
UNDP: United Nations Development Programme
UN-DG: United Nations Development Group
UNFPA: United Nations Population Fund
UNICEF: United Nations Children's Fund
U5MR: Under Five Mortality Rates

1. Background and Rationale: This case study examines how the human rights-based approach to programming (HRBAP) has been integrated into the Common Country Assessment (CCA) in Viet Nam. The CCA is a joint assessment of a country's situation by the United Nations (UN). It aims to identify key development challenges through a collective process of discussions and analysis between UN agencies, in collaboration with Government agencies, the wider overseas development assistance (ODA) community as well as with civil society. The CCA builds the basis for the programmes and projects supported by UN agencies under the United Nations Development Assistance Framework (UNDAF) in a country. The CCA is thus a high profile document, which is closely linked to the reputation and value-added of the UN in that particular country.

A HRBAP adds a new dimension to the CCA. It merges perspectives and experiences on poverty reduction, human development and human rights into a new approach to developmental programming. It is therefore important for the purpose of this study to clarify that the CCA is a critical document within the cycle of joint programming of the UN and development agencies but that it is not intended to be a human rights report about a country.² Nevertheless, the inclusion of human rights as an important dimension of developmental programming raises the bar in the policy-dialogue between the UN and the Government of a country.

It is to be noted at the outset that the political, technical and institutional complexity of a collective rights-based analysis by UN agencies is high while available space, time, human resources and funding are limited. Therefore, expectations regarding rights-based CCAs will have to be rather modest. In addition, the typical 30-page limit for the CCA does only allow a very broad and strategic analysis of problems and challenges in development and human rights. In the case of Viet Nam, the CCA was agreed upon by 12 UN agencies, 17 Government agencies under the leadership of the Ministry of Planning and Investment (MPI) as well as nine ODA partners.³ The process was coordinated by a small team of two staff at the Office of the Resident Coordinator with access to a budget of US\$ 50,000. The team employed a consultant and liaised with an editing team of staff from United Nations Development Programme (UNDP) and United Nations Children's Fund (UNICEF) with support from United Nations Population Fund (UNFPA).

Despite many challenges (that are highlighted in Section 4), one also has to recognize that the institutional and political environment for a HRBAP has improved significantly in recent years. The UN Secretary-General has instructed that human rights be included into the work of all UN agencies as a cornerstone of the UN reform. The United Nations Development Group (UN-DG) has also reached an agreement on the principles related to such programming (the "Stamford Agreement") and provided technical guidelines for the CCA/UNDAF with particular emphasis on rights-based

² Human rights and related topics are sensitive issues for many Governments worldwide and UN agencies may face difficulties in raising such issues with these Governments. Managing such sensitivities requires diplomatic skills and a close dialogue among all parties involved in the CCA process.

³ UNDAF Prioritization Workshop: List of Participants. Hanoi, 8-10 September 2004.

analysis and rights-based programming. In Viet Nam, these developments have found a supportive environment. The Resident Coordinator has strongly supported the human rights dialogue with the Government as well as towards a rights-based approach to programming. Another set of enabling factors were the increasing confidence and willingness of the Government to discuss developmental challenges from a human rights perspective and their acceptance of such programming in the CCA and the UNDAF.

This study briefly explains the country background, describes process and methodologies for the incorporation of the HRBAP into the CCA, presents the outcomes, compares the CCA with previous CCAs and the World Bank's Poverty Reduction Strategy Paper (PRSP) and finally proposes some lessons learned, challenges and recommendations.

Country and Programme Context: Viet Nam is going through an extremely fast and complex process of social and economic change called "Doi Moi". This process presents a dominant social and political background for a diverse picture of the situation of human rights in the country.⁴ The process of change started in 1986, when the 6th Congress of the Communist Party of Viet Nam decided to substantially reform the Vietnamese State and society.⁵ "Doi Moi" is based on three key processes: a) transition from a centrally planned economy to a market oriented economy with State management; b) strengthening of the rule of law and citizen's participation in decision-making processes; and, c) an open-door policy towards all countries of the world. These processes have ever since marked the development of the Vietnamese society and have also opened the door for an increasingly open environment for dialogue and programming on human rights, child rights and women's rights.

The success of economic reforms apparently led the Party leadership at the 8th Party Congress in 1996 to reconfirm and expand the direction taken in the past years and to

⁴ The following text is largely an excerpt from Christian Salazar Volkmann's book, *"A Human Rights-Based Approach to Programming for Children and Women in Viet Nam: Key Entry Points and Challenges"*, UNICEF New York and Vietnam, 2004.

⁵ One party - the Communist Party of Viet Nam - is the only political power in the State and Government of Viet Nam. The Party has around two million members, out of a total population of 80 million citizens. Every five years, around 1000 party delegates meet at a National Congress to decide on basic guidelines relating to laws and policies in Viet Nam, including those for children and adolescents. Article 4 of the Constitution of the Socialist Republic of Viet Nam stipulates the role of the Communist Party of Viet Nam as follows: "The Communist Party of Viet Nam, the vanguard of the Vietnamese working class, the faithful representative of the rights and interests of the working class, the toiling people and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thoughts, is the force which leads the State and the society. All organizations of the Party operate within the framework of the Constitution and law". The Party is governed by the principle of democratic centralism. The National Congress elects the 150 members of the Central Committee. The Central Committee elects the Politburo. The Politburo appoints the General Secretary. The highest position in the Party is the Party Chairman (which was held by Ho Chi Minh, but is now left vacant). The post of General Secretary or First Secretary follows that of the Party Chairman. Every Vietnamese citizen, if voluntarily joins the Party and has all qualities that the Party requires, will be admitted. However, the new Party member has to experience a time of probation, lasting for at least one year, before having the right to vote, elect and stand for election in the Party.

Guillermo Monroy, "Institutional Environment for a Human Rights-based Approach to Programming in Viet Nam", first draft, Hanoi/London, 2003.

add an ambitious time frame: “From now to the year 2020, we will strive strenuously to turn our country basically into an industrialized country.” This decision was supported by a detailed agenda of economic modernization, including the attraction of foreign investment and guarantees for private property in order “to encourage private capitalists to invest in and operate long-term businesses.” At the same time, Viet Nam also started to play a prominent international role within the UN. The country was elected Vice Chair of the Executive Board of UNICEF from 1996-1998, to the UN Economic and Social Council (ECOSOC) in 1998-2000 as well as to the Executive Board of UNDP/UNFPA from 2000-2002.

The 9th Party Congress followed the line of previous Congresses in detailing and specifying the goals, plans and strategies for the reform process to an even more larger extent – this is witnessed by the Party endorsing a 10-year socio-economic strategy (2001-2010) towards achieving the goal of industrialization by 2020; a five-year socio-economic plan; as well as several broad-based programmes targeting poor people and ethnic minorities.

“Doi Moi” has witnessed economic growth rates between eight and 12 per cent per year over the past 10 to 15 years. The impressive economic and social development of Viet Nam has also changed the environment for foreign assistance dramatically. Today, the Government of Viet Nam finances its budget largely through national taxes; other national sources of State revenue and official development aid to Viet Nam has increased to US\$ three-four billion per year (by 2005). About 400 international organizations are contributing to the developmental process. This is in contrast to the situation 10 years ago, when only a handful of international organizations were present in Viet Nam, and UN agencies like UNDP and UNICEF were among the main ODA actors. To this has been added the remarkable commitment of the Government to improving the situation of children and women. This has led to a halving of poverty and significant reductions in Under Five Mortality Rates (U5MR) and malnutrition, inter alia. Viet Nam has also achieved many of the Millennium Development Goals (MDGs). The country has reached high levels of primary education enrolment and is aiming towards achieving universal lower secondary education.

Given this new enabling environment, the CCA and UNDAF processes in 2004 provided a strategic opportunity for the UN agencies and the Government to seriously re-think the added value and re-position the development cooperation mechanism of the UN-system in order to make the most effective use of UN support. Given the limited financial volume of the cooperation of the UN with Viet Nam, technical assistance and policy dialogue on newly emerging problems within the process of transition towards a market-based economy as well as on matters related to international integration such as human rights and the Millennium Declaration/MDGs have assumed more importance than ever before.

The following section delves into the processes involved while incorporating a HRBAP into the Viet Nam CCA.

2. Process:

Integrating Human Rights into Development Programming in Viet Nam: The full integration of a HRBAP into the CCA is closely linked to the overall process of strategic repositioning of the UN in Viet Nam within the wider ODA-context as well as by the strong emphasis of the UN Secretary-General for a UN-system wide approach to human rights.

As a first step in this process, the Resident Coordinator in Viet Nam organized a retreat for all Heads of UN agencies (HoAs) in 2002. At this retreat, senior UN staff undertook an analysis of strengths, weaknesses, opportunities and threats (SWOT) of the UN system in Viet Nam.⁶ HoAs also brainstormed on development challenges of Viet Nam. While the “human rights approach” was not on top of the short list of issues to be addressed, the HoAs identified a number of priorities with high human rights relevance such as governance, democracy, participation, civil society, youth, HIV/AIDS and inequalities amongst groups.⁷

The UNCT also endorsed a joint training on human rights for UN staff. This was conducted at a later date by facilitators from the regional offices of the UN Office of the High Commissioner for Human Rights (OHCHR) and UNICEF (more information on this training is elaborated in a latter section in this paper). Shortly after this training, a CCA/UNDAF-mission of the Government visited the headquarters of UNICEF, UNFPA and UNDP in New York and came back with the clear message from the UN Executive Committee agencies about the importance and need of the HRBAP for a CCA/UNDAF that reflects the needs and priorities of the Vietnamese people.

⁶ “In sum, UN **strengths** were identified as: neutrality; universality; strong UN Conventions/declarations; good history/credibility in Viet Nam; close trusted relations with the Government; strong collective technical knowledge/skills base which can contribute towards a multi-sectoral approach to development; availability of international/regional technical resources; and, a strong and well-capacitated national staff. UN **weaknesses** included meager resources for which agencies must compete; lack of institutional continuity; bureaucratic and slow to respond on many fronts; little negotiating space with Government; lack of common systems and coherence in policy; overlapping agency agendas; poor UN coordination /communication; and, weak partnerships with NGOs. The overall **opportunities** identified for Viet Nam’s development were: the country being stable and peaceful with a positive development environment (e.g., strong Government ownership, reform process, drive for development); opportunities from globalization; demographic shift to youth; grassroots democracy decree; private sector interest in development; some actors looking to UN for leadership; and UN agencies (at UN Headquarters) having agreed to harmonize some procedures. The **threats** in the Vietnamese context were outlined as: rapid change and widening social inequalities; economic development emphasis may overwhelm need to mitigate widening social disparities; marginalization of the UN with decreasing ODA; technical assistance (TA) mobilizing other large donors; questioning of UN’s effectiveness/efficiency and ability to hire best staff; Government gatekeepers acting as a barrier to accessing civil society; contradictory/incoherent Government social policies; Government cuts to social sector budgets; vertical Government structures, duplicating aid requests and inter-ministerial competition; decentralization without capacity strengthening; and growing HIV/AIDS threat”, UNCT Summary Minutes. UNCT, 13-14 June 2002.

⁷ Ibid. Refer to footnote No.4.

The Resident Coordinator highlighted the importance of the human rights training as well as the findings of the Government mission during the HoA Retreat in New York in 2003. The HoAs in 2004 subsequently discussed the importance of the Millennium Declaration as an important worldwide framework for further dialogue among agencies and between the UN and the host Governments on human rights as follows: “It was agreed to expand the focus to make the Millennium Declaration the collective framework for the UN work. This would more effectively allow the UNCTs to better address the agenda on human rights, equity, governance and harm reduction among other issues.”⁸

These developments predated the UNCT CCA workshop in March 2004.⁹ At that workshop, the UNCT re-emphasized the Millennium Declaration and the six core values of freedom, equality, solidarity, tolerance, respect for nature and shared responsibility as a key framework for the UN system in Viet Nam (see box below).

Building Diplomacy around Human Rights: The sensitivity of the Government around human rights and a human rights-based approach to development required a careful process of dialogue and consensus building. In a letter to the OHCHR in Geneva, the Resident Coordinator explained the need for well-thought through diplomacy around the programming process and elaborated on the rationale for the structure, process and methodological approaches for a rights-based CCA: “*Among the issues discussed (at the CCA workshop) was also how to best integrate and mainstream human rights. We are considering several alternative approaches (or a combination of approaches) but feel comfortable about developing an overview and analysis of Viet Nam’s human rights commitments in a separate chapter of the CCA with three-four priority issues being addressed in more depth in relevant chapters. We also need to discuss further the consideration of developing a full rights-based CCA document involving a comprehensive causality as well as pattern analysis. As you may know, the subject of human rights remains a sensitive issue in Viet Nam and we have already been given the first signal from the Government that our focus should be strictly on “development rights”. While the UNCT recognizes the added value of the rights framework, we are also conscious of the potential tension with Government if we move ahead too boldly in this matter.*”¹⁰

In fact, the Government did pay special attention to the fact that the UNCT applied a human rights perspective to the CCA and indicated to the Resident Coordinator informally, that “*at least initially, that they are not looking for any separate chapter*

⁸ UN Country Team Retreat, Hanoi, 12 June 2003; UN Country Team Heads of Agency Retreat, Hue, 5-6 June 2004.

⁹ UN CCA workshop, Summary Report, Hanoi, 3 March 2004.

¹⁰ Letter from Jordan Ryan, UN Resident Coordinator, Viet Nam to Maria Luisa Silva, Team Leader, Human Rights and Development Unit, OHCHR, Geneva, 4 March 2004. It is important to mention in this context that overall, the Government did not place a very high priority on the CCA - Government involvement in the process was rather sporadic and at a relatively low hierarchical level. This may be due to the fact that the CCA is not a joint document between Government and the UN. Another factor may be that the CCA does not include budget negotiations for development programmes that are to be implemented in collaboration with the Government.

on human rights (but would positively consider a more “human rights-based” approach to development).”¹¹

Box 1: The UNCT CCA March 2004 Workshop - A Step in Integrating Human Rights into Development Planning and Programming in Viet Nam by Identifying Development Priorities

During the UNCT CCA workshop, two key documents for the CCA were presented: the UN-Report on the implementation of the MDGs - a report that had been elaborated with the participation of all UN agencies in Viet Nam – and, a UNICEF-assessment on key entry points and challenges for adopting a HRBAP in Viet Nam. Both documents presented an agenda of important challenges for Viet Nam’s future agenda, based on solid research and documentation.¹² Both agendas were merged and built the basis for a CCA with five priority development challenges and a rights-based analysis. The key developmental challenges identified include:

- * Decreasing quality of growth;
- * Widening social disparities;
- * The growing threat of HIV/AIDS;
- * Youth; and,
- * Governance.

It was also agreed that human rights and gender should be mainstreamed into the text.¹³ Hence, the CCA process Viet Nam mirrored the international trends in this area - a merger between the concept of human development and the human rights paradigm.

¹¹ Message from UN Viet Nam Resident Coordinator to the UN Preparation Team for the training on human rights-based approach to programming.

¹² The key points for the CCA to address resulting from the MDG Report were:

Decreasing quality of investment and growth;
Growing corruption;
Potential for destabilizing financial imbalances;
Widening social disparities;
Rapid urbanization and growing migration;
Growing threat of HIV/AIDS;
Environmental treasure chest being depleted;
Rapidly growing young labor force with rising expectations;
Poverty remains significant and many near poor, highly vulnerable living just above poverty line; and,
Challenge of reaching remaining poor and the most needy in isolated remote areas.
Key conclusions for implementing rights-based developmental programmes according to the case study on “Human Rights-based Approach to Programming in Viet Nam” are:
Continued and deeper recognition of the rule of law, especially within the context of a one-Party State;
Improvements on human rights since 1992 mainly focused on economic rights although advances in terms of some political rights (e.g. presumption of innocence and no arrest without a court decision) are to be noted;
Viet Nam’s commitment to the ideals of non-discrimination and equity is very high and thus there is great public concern for vulnerable groups (marginalized groups, disparities between different ethnic groups, etc);
Interdependence and indivisibility of rights need to be well analyzed – there is a risk in Viet Nam that human rights of certain groups are suspended in the interest of the majority or in the interest of the State;
Participation and empowerment, monitoring and accountability are big challenges in a one-Party State. Civil society also plays a limited role in Viet Nam. Important entry points for people’s participation is to support the National Assembly at all levels as well as to enable grassroots participation in planning, monitoring and evaluation.

¹³ Ibid. Refer to footnote above.

Based on the discussions and agreement among HoAs as well as on the solid technical documentation for the CCA (like the MDG Report and the UNICEF assessment), the Resident Coordinator informed the Government at the preliminary stages itself that the upcoming CCA should be rights-based. In his letter to the Minister in the MPI, Mr. Vo Hong Phuc, dated 13th February 2004, he stressed: *“Furthermore, the new (CCA/UNDAF) guidelines emphasize mainstreaming of a rights-based approach to development and of national ownership and engagement in this process. The UN-Secretary-General continues to emphasize the importance of the rights-based approach and we hope to move this forward in the new CCA.”* Shortly thereafter, at the CCA workshop held in March 2004, he informed the International Relations Department of the MPI again about the rights-focus and methodology for the CCA. This was followed by another letter to the MPI dated 5th March 2004 wherein he stated: *“The new CCA/UNDAF guidelines, which are global instructions to all UNCTs, are explicitly requesting the UN to address a range of issues. This include human rights and the adoption of a rights-based approach to development, which will help to focus our analysis on some of the fundamental issues related to development.”* This intention was further explained in several face-to-face meetings with related Government officials and the fact that the Viet Nam Government finally signaled its agreement with the CCA indicates that the policy of early information and transparency with the Government officials related to UN intentions successfully created the necessary space for a rights-based country assessment by the UN agencies in the country.

After endorsement by the UNCT and subsequent acknowledgement by the Government, 1,000 Vietnamese and 500 English copies of the CCA were printed and distributed to Government agencies, the National Assembly, Embassies and various international agencies. As expected, the CCA built the substantial foundation for the elaboration of the UNDAF 2006-2010. However, at this stage, there has been no presentation to the press and only limited use of the document for advocacy purposes, such as at the annual Consultative Group Meeting (CG) between the international donor community and the Government of Viet Nam.

Methodology and Working Mechanisms: The UN-DG guidelines suggest a set of tools and methodologies for the elaboration of the country assessment: problem tree analysis (causal trees), pattern analysis (duty-bearer/rights-holder analysis), capacity gap analysis (authority, responsibility, motivation, resources) as well as disaggregated data analysis i.e. by age, gender and ethnicity. These instruments were presented and explained at the CCA workshop of the UNCT held in March 2004.

Five CCA Inter-agency working groups prepared initial causal trees for the five CCA priorities during the CCA retreat (see Box 1). These groups were composed by a number of management and technical staff from different agencies, coming from very diverse professional backgrounds. The groups built up the initial causal trees during a two-hour brainstorming session and HoAs asked the groups to finalize these causal trees in follow-up meetings.

Shortly afterwards, the Resident Coordinator’s Office, the regional Office of the UNOHCHR and UNICEF Viet Nam organized a HRBAP training for the members of

the human rights working group and the CCA focal points of the UNCT in Viet Nam in order to strengthen the rights-approach to the CCA from the very beginning.¹⁴ This training had several expected outcomes, primarily related to: a) a common understanding about the HRBAP among the UNCT in Viet Nam along the lines of the new CCA/UNDAF guidelines and the Stamford Agreement of UN-DG on HRBAP; b) a review of HRBAP work undertaken in Viet Nam; c) a review of CCA causal trees from a HRBAP-perspective; and, d) elaboration of inputs for a rights-holder/duty-bearer analysis in the CCA.

Despite the inputs given at the CCA workshop and the HRBAP-training, the working groups on the five CCA-themes encountered numerous difficulties in applying tools and methodologies for the analysis. The five priority themes are very different in nature: the “youth” issue relates to problems of a specific group of beneficiaries; “quality of growth”, “access to social services” and “governance” are broad areas of institutional and structural concern of both State and society, while “HIV/AIDS” is a particular social and public health problem. It is almost impossible to analyze themes that are so different in nature with the same tools without entering into problems of coherence and consistency. For example, the underlying and structural causes of fundamental problems such as economic growth and governance are very different from the factors underlying youth-related issues. Weak governance is a crosscutting, structural issue directly related to many problems encountered by youth or insufficient quality of growth. The causal tree for a very specific issue like HIV looks very different from a causal tree analyzing the problems of one particular target group like youth. So the integration of the causal analysis of each theme into one coherent framework for analysis created inconsistencies and contradictions.

The analytical task was further complicated by the attempt to develop a pattern analysis based on the causal trees. At each causality level (immediate, underlying, structural causes) there are factors that enable or disable duty-bearers from fulfilling their obligations and of rights-holders to claim or not be able to claim their rights - so the attempt was made to identify these factors for all relevant rights-holders and duty-bearers. This attempt resulted in a very complicated and in the end, an impractical analytical framework.

In diplomatic language, the Resident Coordinator’s Office highlighted such methodological difficulties in a paper about lessons learned from the CCA process: *“The UNCT in Viet Nam benefited from the Programming Tools for analyzing and planning the CCA and UNDAF developed by UN-DG. While the documentation is “heavy” and not written in a way that can be translated into Vietnamese so it can be easily understood, it did at least provide material to prepare the UNCT for the lengthy and extensive CCA and UNDAF preparatory processes. It can never be viewed as a “light” exercise.”*¹⁵

Apart from the intrinsic challenges of conducting such causal analysis and pattern analysis and linking them together into one coherent framework of analysis, one has

¹⁴ UN Human Rights Training Workshop, Hanoi 6-7 April 2004.

¹⁵ Paper on “United Nations in Viet Nam: CCA/UNDAF Process in Viet Nam. From Planning through Finalization - A Long Journey”, UN Vietnam Resident Coordinator’s Office, Hanoi, 2004.

to also recognize that few of the members of the working groups had the necessary substantive knowledge on the five development challenges or the planning skills to develop appropriate causal trees or pattern analysis. Furthermore, UN staff had very little time to dedicate to further the analysis of priority themes, causal trees or duty-bearer/rights-holder analysis for the CCA once the CCA retreat was over.¹⁶ It seemed that UN managers expected that staff would carry out joint work on CCA on top of their regular key assignments in individual agencies. This created overload and serious capacity constraints resulting in high staff fluctuation in the working groups.

As a result of this process, the application of tools and methodologies for the CCA analysis was very uneven. Four groups developed causal trees but the causality levels of each problem tree were not coherent. The Governance group undertook a duty-bearer/rights-holder analysis but no causal analysis. The Youth and HIV/AIDS groups tried to combine a causal tree analysis with a capacity gap analysis but concentrated the latter only on Government capacities, leaving out the capacity gaps that enable citizens to claim their rights. The “Regional Readers Group” - a group of regional UN staff that provided feed-back and quality control for the CCA - noted such methodological shortcomings as such: *“While the introductory chapter mentions, for example, an explicit methodology for incorporating the human rights-based approach into an overall analysis (causality analysis, role-pattern analysis and capacity gap analysis) the subsequent chapters adopt a more implicit approach. In some cases, we have assessment followed by prescription with only limited analysis.”*¹⁷

The methodological problems were compounded by the need to contract an external consultant to produce the first draft of the CCA. Faced with five separate and divergent processes on the main themes of the document, the consultant presented his own personal framework for analysis in an attempt to shape the inputs of the UN agencies into a coherent framework for the CCA. However, as the consultant’s framework did not take sufficient account of the methodological approach and analytical content of the working groups, the first draft did not meet the expectations of the UNCT. Therefore, the Resident Coordinator appointed a small editing team of senior technical staff from UNDP and UNICEF to rewrite the text. This editing team restructured the text and re-analyzed the existing information. The methodology adopted combined an assessment of the situation found in each area with an analysis of key challenges and brief conclusions. The assessment sections put particular emphasis on difficulties encountered in each area and on the situation of poor and marginalized groups. The analytical part mostly focuses on capacity gaps of duty-bearers, i.e. the Government, with the exception of the chapter on Governance. This latter assessment puts greater emphasis on the barriers and capacity gaps of citizens to claim their rights.

¹⁶ The Office of the Resident Coordinator of Vietnam noted: “...CCA/UNDAF working group meetings were at times attended by low level staff who displayed little technical expertise on the subject discussed and reviewed. As a consequence, these people could neither provide the inputs nor have the authority to decide on substance. This greatly affected the quality of the initial draft of the CCA. At least, in the case of some chapters, there was good group Inter-agency discussion and inputs around the draft prepared by the consultant but then very poor, and in some cases, non-existent follow-up by designated responsible focal points to improve the draft.” Ibid. Refer to footnote above.

¹⁷ Regional Reader Group Comment on the Viet Nam CCA, Bangkok 2004.

In sum, the process leading to the production of the CCA was less systematic than initially envisioned largely because of staff shortages in the UNCT and the limited amount of resources available to complete the task. The application of rights-based methodologies such as pattern analysis or capacity gap analysis was rather scattered and sporadic. Although it finally generated important substantive elements including strong rights-based information elements for the CCA, it could have been more efficient. Drafting documents by working groups or committees is difficult under the best of circumstances. Given that working group members were already overburdened by their agency responsibilities, it was unlikely that they were in a position to develop technically sound, high quality analysis. Agencies were formally present in the groups to make sure that the issues related to the mandate of each agency are covered by the CCA. But they were not in a position to contribute sufficient time and effort to ensure that each of the working groups achieved a rights-based country assessment of high methodological and substantive quality. The task of ensuring the quality and consistency of the CCA therefore ultimately fell to a smaller group of senior professional staff.

3. Rights-Based Outcomes of the Viet Nam CCA: The CCA in Viet Nam emphasizes a strong explicit commitment of the UN in Viet Nam to the realization of human rights. The “Message from the UNCT”, accompanied by the signatures of all HoAs, states that: *“This assessment marks an important step in the process of promoting a rights-based approach to development”*. The same emphasis can be found throughout the main text as the executive summary highlights: *“The unique contribution of the CCA is to analyze the current development situation in Viet Nam from the perspective of the rights-based approach of the UN. Rights-based approaches view of development as part of a larger process of promoting and protecting human rights”*.¹⁸

The unequivocal commitment of the UN in Viet Nam to human rights and a rights-approach to development thus should not be underestimated. The explicit use of human rights terminology in itself an important part of creating a culture of respect for human rights in the country. It also influences the substance and arguments within the CCA. Finally, it opens the door for the design of rights-based development programmes within the UNDAF process and provides valuable lessons learnt that could be taken into consideration while developing such rights-based CCAs in other countries. Such application of rights-based language that would guide UN development programming in Viet Nam and as stated under the CCA are highlighted below:

➤ *Stressing on the universality of human rights as a non-negotiable:* The CCA dedicates substantial attention to the establishment of the rule of law in Viet Nam, most explicitly in the chapter on Governance. Improvements in the legal system are acknowledged and shortcomings such as insufficient precision of legal provisions, inconsistent application of laws, limited capacities of judges and low public confidence in the justice system are reviewed. For example, the document states: *“In the area of juvenile justice, there remains a need to adopt international practices and to keep children and adolescents away from the criminal justice system.”* (34) The

¹⁸ Ibid. Refer to footnote No. 15.

CCA also contains references to the need to create a culture of rights and to increase the awareness about human rights in the population: “*New legislation and institutional development also will not remove all barriers to participation. Promoting people’s participation over the longer term will require a frank public discourse touching on all aspects of the relationship between citizens and authority and the social values and perspectives underlying this relationship.*”(35) In this context, the CCA touches upon the right to information and the role of the mass media: “*Restriction on the print and electronic media impede the development of a culture of accountability and transparency. More freedom to report corruption cases would discourage corrupt practices and increase public awareness of rights and laws.*”(36)

➤ *Highlighting the principles of Non discrimination:* The CCA presents important information about emerging structural social disparities in Viet Nam which highlights the human rights principle of non-discrimination: “*...the benefits of the reform process have not been distributed evenly across all strata and segments of society. Indeed, evidence has begun to emerge of widening economic and social disparities in recent years...evidence of emerging systematic disparities in living standards...*”(7) Many different aspects of social disparities are analyzed in all chapters of the CCA and supported by disaggregated data whenever available. The CCA highlights particularly the situation of ethnic minorities, of women, migrants and people infected and affected by HIV/AIDS.¹⁹

The CCA for example states: “Poverty is particularly high among the ethnic minority groups concentrated in these regions... Moreover, the rate of poverty reduction among ethnic minority groups is slower, which suggests that in the absence of concerted action to reverse these trends, ethnic minorities will account for most of the country’ s poor by the year 2015.”(7f.) However, the CCA describes problems of marginalization of indigenous populations only in a broad manner and hardly analyzes shortcomings in the fulfillment of rights (such as insufficient birth registration, bilingual education, lack of culturally sensitive health services for women and children, issues related to culture and religion as well as the protection of children from traditionally harmful practices, violence and abuse).²⁰

➤ *Looking into the principles of indivisibility:* Indivisibility means that one right should not be achieved by suspending another one. Although the indivisibility of rights is not emphasized in the CCA, the document does give concrete examples on the violation of this principle in Viet Nam: “*Some aspects of the initial response to HIV/AIDS raised serious human rights issues. These included the isolation of injecting drug users and female sex workers in State institutions...*”(29) Other examples of partial suspension of human rights of a specific group of people or even violation of human rights of certain citizens like the use of force by State authorities

¹⁹ Problems of discrimination of people infected by HIV-AIDS are strongly highlighted in the chapter on HIV/AIDS: “There is growing evidence that discrimination against people living with HIV/AIDS is common in Viet Nam, especially in employment and health services.” (28); several sub-sections deal with gender issues and women’s rights, for example: “Gender equality has progressed further in Viet Nam than in other countries at a similar level of per capita income...However important gaps remain. Women are still paid less for equal work, and are often denied equal rights to household property...”(5)

²⁰ Emilio Garcia-Mendez, “The Rights of Indigenous Children”, UNICEF Internal Document, New York, 2002.

to control uprisings of ethnic minorities in the central highlands are not mentioned in the CCA. Similarly, international criticism of Viet Nam for repression of religious freedoms or the death penalty is not addressed. However, one has to bear in mind what was mentioned at the beginning of the present study: the classical system of reporting and recommendations from the international human rights system are a more suitable mechanism to capture serious violations of human rights that occur in a country and the CCA is not a report on human rights but a situational analysis of development challenges and thus, has technical and political limitations in addressing human rights violations.

➤ Emphasizing the principles of participation: Participation and access to information are fundamental requirements for citizens to be able to claim their rights. The CCA analyses progress in participation of citizens - particularly Government attempts to stimulate grassroots participation in local development planning (“Grassroots Democracy Decree”) but also refers to the lack of concrete mechanisms to promote public participation in provinces and districts and other shortcomings. The analysis of barriers to participation and access to information is particularly sharp and a good example of a rights-perspective on challenges for development and governance: *“Information is often shared through one-way communication channels, effectively restricting the ability of people to express their views and of local officials to benefit from useful information relevant to decision-making. However, in recent years, the mass media have played an increasingly important role in disclosing incidences of corruption and abuse of power.”* (34)²¹

➤ Accentuating the principles of accountability: Accountability is a key concept of a HRBAP. One key element of accountability is the existence of systems to monitor compliance and of mechanisms that enable rights- holders and their advocates to hold states accountable for the fulfillment of rights. Another key element is the possibility of the population to complain about human rights violations and to enforce the laws through legal action. A third important element is related to budget – for instance, does the State provide sufficient funding for a progressive realization of rights and non-retrogression? The issue of accountability is raised in the CCA, although perhaps not as prominent as, for example, the deliberations on participation.²² The CCA sub-chapter on International Human Rights Obligations, for instance, mentions the recommendation of various human rights bodies to establish independent monitoring mechanisms for human rights. Moreover, the Governance chapter mentions problems of accountability and transparency in the Vietnamese State: *“Some Government agencies operate on the assumption that the public neither has the right to access information relating to the business of Government, nor the capacity to use this information in socially constructive ways.”*(36) There is, however, limited analysis of mechanisms of accountability within the chapter on Access to Social and Protection Services which merits higher attention as privatization and

²¹ See the detailed analysis of the regional readers group, especially the feedback from OHCHR: “There is no analysis of freedom of association” and “an examination of the most basic accountability tool, namely, the mechanisms by which remedies are provided to victims of violations, is absent.” Ibid. Refer to footnote No. 17.

²² William G O’Neill, “Human Rights Approaches in CCAs/UNDAFs”: “In general, country teams seem to have difficulties to capture mechanisms of accountability well in CCAs as the review of over a dozen CCAs/UNDAFs prepared for OHCHR has indicated”, Geneva, 2004.

increasing user fees for social services raises the question on who is accountable for the provision of social services to all social strata of the population. Furthermore, there is limited analysis in the CCA of the role of civil society and local non-governmental organizations (NGOs) in holding Government accountable - with the exception of a brief mention of “ *NGOs will provide an important additional avenue of public participation.*” (35)

➤ *Incorporating recommendations of human rights bodies:* One fundamental aspect of a rights-based CCA is to incorporate the conclusions and recommendations of the human rights treaty bodies to a given State. Towards this end, the OHCHR prepared an excellent Human Rights Country Profile on Viet Nam. This Profile was shared with all UN agencies and the CCA drafting committee. In addition, the report was shared and discussed with Vietnamese Government officials and a brief extract of this paper describing the status of ratification and reporting on major human rights treaties was provided to Ministry of Foreign Affairs (MFA).²³

Based on the Human Rights Country Profile, a special sub-chapter on human rights treaties was included in the CCA. It lists the ratification of major human rights treaties, mentions important international treaties such as Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) or the Rome Statute of the International Criminal Court (ICJ). The sub-chapter also refers to delays in international reporting obligations of the Vietnamese State. However neither the sub-chapter nor the other chapters of the CCA explicitly refer to specific recommendations of the human rights treaty bodies. In other words, although the CCA does reflect a number of important findings and recommendations from the international human rights system, it does not explicitly refer to them. OHCHR has observed that the country profile may not have sufficiently been taken into account during the CCA process: “*OHCHR provided a Human Rights Country Profile to the UNCT, which seems not to have been used in the preparation of the draft. It recommended that the country profile be reviewed, as it could contain valuable support for the analysis that the CCA should present.*”²⁴

This shortcoming could have probably been avoided, had the Country Profile paper of the OHCHR been broadly discussed among the HoAs and CCA focal points. However, the Country Profile paper was simply delivered to the UNCT as background material. Senior management of UN agencies did not review this paper systematically during the process and hence, it had less impact on the CCA than it might have had. Another and potentially more important factor was that it seems that there was limited, if any, possibility for the country team to give inputs before finalization of the country profile. Initial feedback from the Chair of the Human Rights Working Group (HRWG) failed to have any impact on the contents of the paper. Without any consultation with HoAs on its preparation in early draft stages or an in depth presentation to the CCA working groups, the OHCHR country profile failed to gain traction within the process.

²³ Letter from the UN Viet Nam Resident Coordinator to Ministry of Foreign Affairs, 5 April 2005.

²⁴ Ibid. Refer to footnote No.17.

It is worth to note that the prospects for integrating human rights do not necessarily rest on the existence of a Country Profile document alone. Nevertheless, it would require staff in UN agencies with specific skills and technical know-how on human rights and human rights treaties to provide the UNCT with similar information and analysis.

4. Comparison with the Previous Common Country Assessment and the Poverty Reduction Strategy Paper:

An appropriate assessment of the 2004 CCA regarding a HRBAP needs to put the document into a country-specific historical perspective. The comparison with the previous CCA from 1999 and the PRSP of the World Bank from 2003 shows the significant advancement that the CCA presents in terms of rights-based analysis and use of rights-language.

The first CCA in 1999 largely avoided the use of words such as “human rights”, “child rights” or “women’s rights”. It also struggled with an adequate assessment of the situation of the rule of law in Viet Nam, as sentences such as “*to put in place a transparent rule-based guide to social, economic and political interaction that will promote accountability*” reveal.²⁵ There are only very few examples for the use of the term “rights” in form of “citizen’s rights”, such as the following: “*The issues of corruption, abuse of power and respect for citizen’s rights have been recognized by the Party and the Government...*” The latter is also one of the few phrases with critique in the CCA and even this modest critique had to be formulated in form of a national self-critique rather than a critical remark by the UN on Viet Nam.²⁶

Despite obvious political limitations in the use of rights-language, the first CCA does refer to dimensions of human rights. For example, there are recommendations in the first CCA towards “*increasingly effective governance*”, “*greater participation of the non-State sector*”, “*wider involvement of all sectors of society in decision-making processes*” and “*greater accountability as a basis for building upon past achievements*”²⁷. Inequalities were addressed in the CCA, as was the problem of child labor. The situation of ethnic minorities is briefly described and some attention is given to insufficient access of ethnic minority children to bilingual education.²⁸ But again, direct references to human rights, to child rights or to accountabilities under international human rights law are lacking. The first CCA refers only briefly to the Convention on the Rights of the Child (CRC) or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and focuses more on Viet Nam’s commitments at international conferences. Population policies such as forced resettlements or family planning, which can be problematic from a human rights perspective, are mentioned but not discussed in any way.²⁹

²⁵ “United Nations in Viet Nam: Looking Ahead- A Common Country Assessment”, UN Viet Nam Resident Coordinator’s Office, Hanoi, December 1999.

²⁶ Ibid. Refer to footnote above.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

It is also interesting to note the little progress in addressing human rights or assessing development from a rights perspective between the first CCA and the Comprehensive Poverty Reduction and Growth Strategy (CPRGS) or the Viet Nam PRSP, which was written four years later. The CPRGS concentrates on economic growth, large-scale infrastructure and social sectors such as health and education. It generally does not use the term “rights” with three exceptions. “Child rights” are mentioned in a sub-chapter on Gender Equality and Children’s Rights,³⁰ and reference is made to “equal rights in the area of labor and work” of women.³¹ The third exception constitutes the use of the highly problematic concept of “legitimate rights”³², which suggests that there are illegitimate rights without further specification. While rights-language is largely absent from the document, pejorative terms are widespread. There is relatively frequent use of terms such as “social ills”, “social diseases” or the even more problematic “social evils”³³ in order to characterize phenomena such as HIV/AIDS, drug abuse and alcoholism.

The CPRGS does address important issues related to the fulfillment of human rights such as growing inequalities, difficulties that urban migrants face, the problematic social situation of ethnic minorities, gender equality and the need for greater participation of the poor. However, the overall assessment of the development situation of Viet Nam has little “rights base”, as a study conducted by the Swedish International Development Agency (Sida) concluded: “*The overall impression from a rights-based perspective is that the Strategy indirectly covers many areas of human rights, but that there still are important gaps..... Human Rights are not mentioned in the Strategy. The focus is on needs, not rights, of the poor, and there is nothing in the document to imply that the Government of Viet Nam sees itself to be under any obligation under human rights law to carry out the measures described in the Strategy. Consequently, there are few references to follow-up measures and how the Government and its staff are to be held accountable if obligations are not respected.*”³⁴

5. Some Lessons Learned and Recommendations:

➤ ***Positive Lessons Learned:***

➤ *Incorporating a human rights-based approach to developmental programming:* The CCA in Viet Nam largely succeeded incorporating a human rights-based approach to the assessment and analysis of key developmental challenges of Viet Nam. While this reflects a general trend in CCAs/UNDAFs in many countries of the world, it is a special achievement in a country like Viet Nam where despite significant progress “human rights” continue to be a considered a sensitive area.³⁵ Consequently the CCA and the rights-based UNDAF is currently the main inter-

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ “The Socialist Republic of Viet Nam: The Comprehensive Poverty Reduction and Growth Strategy (CPRGS)”, Government of the Socialist Republic of Vietnam, Hanoi, November 2003.

³⁴ Kristina Hedlund Thulin, “A Human Rights Analysis of the Viet Nam Comprehensive Poverty Reduction and Growth Strategy (CPRGS)”, draft two, May 2003, Swedish Embassy, Bangkok.

³⁵ Ibid. Refer to footnote No. 22.

institutional development framework in Viet Nam that offers a human rights perspective to development and as such, goes significantly beyond the strategic perspectives offered by the previous CCA and by the PRSP.

➤ *Ensuring a transparent engagement on human rights issues between the UN and the Government:* Following from the above, the importance of widespread use of rights-language in the CCA in Viet Nam should not be underestimated. It is one of the major successes for the CCA to establish rights-based language without rejection from the host Government. This will allow a transparent engagement with the Government on human rights and the HRBAP and has the potential to facilitate a stronger programmatic commitment of UN agencies and their counterparts to the HRBAP in the years to come. This is a considerable achievement given the persistent sensitivities on issues relating to “human rights” countries like Viet Nam and the fact that neither the PRSP nor the earlier CCA would mention human rights. This CCA has demonstrated that non-fulfillment of human rights can and frequently does underlie key developmental challenges of a country and that they can be addressed in the CCA but have to be framed and formulated in a non-confrontational way. However, in order to further develop rights-based analysis and rights-based programming, systematic capacity development for Government on the HRBAP will be necessary.

➤ *Buying-in of senior UN management essential:* The experience of Viet Nam shows that it is necessary to have a clear understanding and good management of the political and institutional limitations for a human rights discourse in a given country in order to maximize the human rights elements within the CCA. The political complexities around a human rights-based approach means that the extent to which a HRBAP can be built into the structure, language, substance and process of the CCA depends on the ability of the Resident Coordinator to organize the dialogue on such an approach within the UNCT as well as with the Government. In the case of Viet Nam, the Resident Coordinator has given full support to the inclusion of a HRBAP to the CCA. As a result, the CCA has explicitly adopted such an approach, analyzed a number of important developmental issues from a human rights perspective and thus constitutes an important inroad in the human rights dialogue between the UN and the Government.

➤ *Existing and strong documentation imperative to build a rights-based CCA:* The experience in Viet Nam also shows that the quality of the CCA from a rights perspective depends on the degree of already existing strategic analysis and rights-based situation analysis that UN agencies had done before the elaboration of the CCA. In the case of Viet Nam, documents like the MDG Reports with good data and analysis of social and regional disparities and the case study on a human rights-based approach to programming by UNICEF built the technical backbone for streamlining such an approach into the CCA. Hence, UNCTs should be encouraged to undertake joint rights-based assessments of different topics as regular part of their joint collaborations or individual endeavors.

Challenges:

- *Placing more emphasis on economic and social rights:* The CCA process has probably “pushed the envelope” for rights-based development discussions as far as possible under the given social, cultural and political conditions in Viet Nam. However, while the CCA in Viet Nam managed to address a wide range of developmental challenges from a human rights perspective, including non-fulfillment of rights in a number of areas, the fact that the document is meant to be a basis for joint development programming between the UN agencies and the Government, poses limitations to the extent that human rights violations or non-fulfillment of rights can be openly addressed. Given the nature of the CCA as a consensus-oriented development document, there is a tendency to emphasize social and economic rights as opposed to the more controversial civil, political and cultural rights.

- *Producing Country Profiles Imperative:* As mentioned elsewhere, the Country Profile of the OHCHR could have been a third key reference document and as such would have further strengthened the rights-focus of the CCA. However, it did not have as much impact on the text as it could have had, mainly because the document was delivered to the UNCT without a formal mechanism to discuss the Profile before its finalization. As a result, the recommendations from human rights treaty bodies have not been incorporated as fully as possible into the CCA.

- *Understanding of UN agencies on a coherent approach to framing of the CCA process essential:* Finally, the CCA process requires further consideration. The double essence of a CCA as a document of strategic analysis of data and knowledge about a country as well as a result of a negotiation process amongst institutions and individuals on topics and approaches means that a CCA can be read twofold: as a technical document for UN programming, as well as an expression of an Inter-agency policy dialogue. The experience in Viet Nam indicates that the need for Inter-agency negotiation and consensus building tends to dominate over the technical exercise for joint strategic analysis of certain developmental challenges. In addition, the tools that are being put forward -- such as causal analysis and pattern analysis -- seem to be too complicated to be applied within a process that is mostly oriented towards formal participation and consensus-building among agencies. Teams composed of staff with uneven capacity and experience cannot be expected to be able to apply sophisticated planning and analysis tools in an appropriate way. At the same time, it has not been possible to overcome the difficulties of the Inter-agency process by simply hiring a consultant. The process in Viet Nam shows that a coherent rights basis of the CCA text was only ensured by an editing team of senior technical staff from UNICEF and UNDP rather than an outcome of a systematic application of programming tools and methodologies by the country team.

Following from the above, several recommendations for UNCTs and the UN-DG can be formulated as a result of the experience in Viet Nam:

For UNCTs:

1. UN agencies should expand rights-based research and analysis on specific topics related to their mandates and practices which create the basis for a rights-based CCA and UNDAF;
2. It is highly recommendable that UNCT staff receives training on a HRBAP before engaging into the CCA/UNDAF process;
3. UN agencies need to identify technical teams of their own staff according to the technical capacity and planning skills required for the analysis and assessment of CCA priorities in order to ensure a smooth process and a high quality product. If a consultant is brought in, he or she can play a role as facilitator of the process but cannot substitute the technical and editorial responsibilities of UN staff;
4. A formal mechanism for consultation between OHCHR and UNCTs on human rights Country Profiles should be established as part of the CCA Process;
5. From a rights-based perspective, an active national dissemination and popularization of the CCA/UNDAF is desirable. Therefore, it is recommended to design and implement a strategy for advocacy and communication of the CCA/UNDAF towards the general population as a contribution to national awareness on human rights and Rights Based development; and,
6. UNCTs needs to build develop capacity of the Government on the HRBAP for UNDAF in order to further practical impact of such an approach in developmental programmes.

For the UN-DG:

1. The leadership and commitment of the Resident Coordinator towards human rights (and on the HRBAP) is essential for rights-based CCAs/UNDAFs. Hence, special trainings for Resident Coordinators on rights-based situational assessments and such an approach to programming are recommendable in order to improve the rights-basis of CCA's (and UNDAF's);
2. UN-DG should further discuss and develop alternative methodological tools for rights-based analysis. A full-blown rights-analysis on top of a causal analysis seems to be too heavy a methodological requirement for the CCA process. Perhaps, a better way to ensure a rights-based assessment could be to focus on pattern analysis (duty-bearer/rights-holder) instead of the causal analysis and to link it more directly to international human rights standards;
3. The methodological tools suggested by the UN-DG guidelines are designed for a technical process of strategic analysis and strategic planning. They are not sufficient to guide the inter-institutional policy dialogue regarding CCA. It is recommended to develop tools and methodologies for organizing Inter-agency policy dialogue and consensus building, for example, through brainstorming, open debate and systematic use of participatory techniques.

SELECT BIBLIOGRAPHY:

Garcia-Mendez, Emilio., 2002, “The Rights of Indigenous Children”, UNICEF Internal Document, New York, USA.

Government of the Socialist Republic of Viet Nam, 2003 Paper on “The Socialist Republic of Viet Nam: The Comprehensive Poverty Reduction and Growth Strategy (CPRGS)”, Hanoi, Viet Nam.

Monroy, Guillermo., 2003, paper on “Institutional Environment for a Human Rights-Based Approach to Programming in Viet Nam”, first draft, Hanoi, Viet Nam /London, United Kingdom.

O’Neill, William G., 2004, paper on “Human Rights Approaches in CCAs\UNDAFs”, Geneva, Switzerland.

Regional Reader Group Comment on the Viet Nam CCA, Bangkok, 2004.

Thulin, Kristina Hedlund., May 2003, paper on “A Human Rights Analysis of the Viet Nam Comprehensive Poverty Reduction and Growth Strategy (CPRGS)”, draft two, Swedish Embassy. Bangkok, Thailand.

United Nations Viet Nam Resident Coordinator’s Office, 1999, First CCA paper on “United Nations in Viet Nam: Looking Ahead- A Common Country Assessment”, Hanoi, Viet Nam.

United Nations Viet Nam Resident Coordinator’s Office, 2004, CCA paper on “United Nations in Viet Nam: CCA/UNDAF Process in Viet Nam. From Planning through Finalization - A Long Journey”, Hanoi, Viet Nam.

United Nation Country Team Summary Minutes. United Nations Country Team, 13-14 June, 2002.

Volkman, Christian Salazar., 2004, *A Human Rights-Based Approach to Programming for Children and Women in Viet Nam: Key Entry Points and Challenges*, UNICEF New York, USA and UNICEF Hanoi, Viet Nam.

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