

Universal Declaration of Human Rights Whereas recognition of the inherent dignity and of the inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy the rights of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, and have decided to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the universal and effective recognition and observance of human rights and fundamental freedoms, Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, Therefore The General Assembly proclaims This Universal Declaration as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. Article 1. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2. Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3. Everyone has the right to life, liberty and security of person. Article 4. No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6. Everyone has the right to recognition everywhere as a person before the law. Article 7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. No one shall be subjected to arbitrary arrest, detention or exile. Article 9. No one shall be subjected to arbitrary arrest, detention or exile. Article 10. Everyone has the right to a fair and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11. (1) Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had full opportunity to defend himself. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one which was applicable at the time the offence was committed. Article 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks. Article 13. (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country. Article 14. (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations. Article 15. (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. Article 16. (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending spouses. (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. Article 17. (1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property. Article 18. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Article 19. 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. Article 20. (1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association. Article 21. (1) Everyone has the right to take part in the government of his country, directly or through chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed through periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures. Article 22. Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality. Article 23. (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. (2) Everyone, without any discrimination, has the right to equal pay for equal work. (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. (4) Everyone has the right to form and to join trade unions for the protection of his interests. Article 24. Everyone has the

THEMATIC Nº 2

Special Edition

The Human Rights-Based Approach: A Field of action for Human Rights Education

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coordination

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This publication may be cited as:
Cifedhop (2012),
The Human Rights-Based Approach:
A Field of Action for Human Rights Education
(Coord. José Parra). Geneva.

Avec le soutien financier:



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Département fédéral des affaires étrangères DFAE

ISBN: 978-2-8399-1128-3

The Human Rights-Based Approach:
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for Human Rights Education



Présentation

The CIFEDHOP, a private Swiss foundation governed by articles 80 et seq. of the Swiss Civil Code, was founded in 1983 at the initiative of Mr. Jacques Mühlethaler. With its headquarters in Geneva, the CIFEDHOP operates under the supervision of the Swiss Confederation. The goal of the CIFEDHOP is to train teachers from all over the world in the teaching of human rights and peace. Since it was founded, the CIFEDHOP has had the same president and the same director, Mr. Guy-Olivier Segond and Ms. Monique Prindeviz, respectively.

Every year, the CIFEDHOP organizes training sessions for human rights education in two or three languages. The CIFEDHOP teaching staff is composed of professors, researchers, employees of international organizations, and NGO leaders. The participants are primary and secondary school teachers, educators, and youth movement leaders. In collaboration with universities in Europe and North and South America, the CIFEDHOP has developed methods and instruments effective for teaching law to non-experts. To date, more than 4,200 teachers from Europe, Africa, the Americas, Asia, Oceania, and the Arab world have received training in human rights education from the CIFEDHOP.

At the same time, the CIFEDHOP – which has acquired recognized expertise in making human rights accessible to all – publishes works (in three languages) that are recognized and appreciated by international organizations (UNESCO, UNICEF, the Office of the High Commissioner for Human Rights, the Council of Europe) and by non-governmental organizations. They are widely distributed by these organizations and through their regional offices.

Furthermore, the CIFEDHOP has digitized and made available online the ensemble of its publications, and has created a discussion forum and an online follow-up platform to help training session participants continue their exchanges.

Since the Human Rights Council – which has as part of its remit human rights education – was created in 2006, the CIFEDHOP has worked with it in close collaboration on all questions relative to human rights education and training. Training session participants who come to Geneva become, when they return to their home countries, major multipliers on the national level, and develop follow-up activities in the field.

Finally, with its 28 years of recognized expertise, the CIFEDHOP played an important role within the Advisory Committee that developed the United Nations Declaration on Human Rights Education and Training, which was introduced by Switzerland and adopted by the United Nations General Assembly in December 2011.

Awards

In 1989, French Prime Minister Michel Rocard presented the CIFEDHOP with the Human Rights Award of the French Republic on the occasion of the French Bicentennial.

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The Human Rights-Based Approach: A Field of Action for Human Rights Education

Preface

Thématique, a series of publications by the CIFEDHOP, discusses current issues relevant to human rights education. In the past, the collection has addressed the relationship between human rights and development. With this special edition, the CIFEDHOP will explore more specifically the field of human rights and education in development cooperation.

Since it was created in 1983, the CIFEDHOP has regularly organized training sessions on human rights education. Principally targeted to teachers, and offered in three languages (English, Spanish, and French), these sessions have provided training to more than 4,000 teachers over the last 30 years. This work is based on the premise that access to education and to human rights education is essential not only for the promotion and protection of human rights but also for development.

Indeed, the human rights-based approach to development insists that development policies and programs must contribute explicitly to human rights. And that development programmes must be organized in a way that will strengthen the capacities of individuals (rights holders) to exercise and demand respect for their rights, and of states (duty bearers) to fulfil their human rights obligations.

From this perspective, shouldn't human rights education and training be considered essential components of capacity building and, consequently, of the integration of human rights into development cooperation?

To answer that question, the present edition proposes to reaffirm the relevance of human rights to development cooperation (Part 1), and to discuss how the capacity building of rights holders and duty bearers can be implemented in practice (Part 2). In this

context, it is urgent to specify the role which we believe to be essential of human rights training and education, and to guarantee their integration into development programmes and policies.

Since the replacement of the Human Rights Commission by the Human Rights Council in 2006, the CIFEDHOP has organised specialised sessions for civil society on the Universal Periodic Review (UPR). In doing so, the CIFEDHOP is contributing to building the capacity of civil society to demand the respect and promotion of human rights by using international human rights protection mechanisms. This is our contribution to a vast and diverse field of action, encouraging the full integration of human rights education and training in development cooperation programmes and policies.

The CIFEDHOP would like to thank the human rights and development experts and specialists who have agreed to share their experiences and points of view about human rights education and training in international cooperation. The ensemble of their contributions presented in this volume, will contribute, we hope, to exploring as well as defining the field of action of human rights education and training for international development cooperation.

Finally, the CIFEDHOP hopes that this publication will be useful for all professionals and trainers in the development and human rights fields. And more generally, we hope it will arouse interest and be a source of inspiration for a broader audience interested in human rights-based development and human rights education.

MONIQUE PRINDEZIS
Director of the CIFEDHOP

Part 1
Human Rights: A Relevant Framework
for Development Cooperation

The Human Rights-Based Approach: the Challenge of Developing Human Rights Capacities

BY JOSÉ PARRA

Introduction

The human rights-based approach to development is promoted as a relevant paradigm for development. A growing discussion involving both development and human rights practitioners is addressing questions such as what defines a human rights-based approach, what is the added value of human rights for development, and how such an approach should and can be implemented in practice.

A human rights-based approach is underpinned by international human rights law and recognizes the full spectrum of human rights: civil, cultural, economic, political and social rights. The promotion of human rights has been fostered by many types of activities, among which human rights education and training has played a key role in developing capacities for the effective realization of human rights.

Indeed, capacity development appears to be of central significance as a means to promote human rights in development processes. As defined by the United Nations, the human rights-based approach to development entails strengthening capacities of both rights-holders, to claim their rights, and of duty-bearers, to meet their human rights obligations according to international human rights law. In this context, human rights education and training is to be understood as a fundamental component of all endeavours to develop human rights capacities in development processes.

Human Rights Education and the Human Rights-Based Approach: Towards an Integrated Framework

International human rights law has been evolving since the adoption of the Universal Declaration of Human Rights in 1948 and the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. Additional human rights instruments related to specific groups and to specific human rights violations have subsequently been adopted and entered into force.

From a development perspective, while all human rights are relevant—recalling the principles of interdependence and indivisibility—economic, social and cultural rights are regarded as specifically and directly relevant for development and poverty alleviation. Among the relevant features of economic, social and cultural rights, it is only since the end of the 1980s that a specific framework to respect, to protect, and to fulfil human rights obligations has been adopted, along with important work clarifying the content and scope of these rights, by the United Nations Committee on Economic, Social and Cultural Rights (CESCR).¹ Related to development cooperation, article 2(1) of the ICESCR refers specifically to international cooperation as a means of complying with human rights obligations:

“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”²

¹ For more information on the CESCR, see <http://www2.ohchr.org/english/bodies/cescr/index.htm>.

² See also the CESCR General Comment No.3 “The nature of States Parties’ obligations [art.2 (1)]”.

In 2008, the United Nations adopted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights that will, once it enters into force, set up an international complaint mechanism on economic, social and cultural rights.

Furthermore, academics and civil society are today proposing to recognize both extraterritorial human rights obligations,³ to hold states accountable for their extraterritorial actions, and the international human rights obligations of international organizations or institutions, including the accountability of states for their actions as members of an international organization governing body.

Along with the development of international human rights law, a universal system of human rights protections has been built, with the intergovernmental Human Rights Council (replacing in 2006 the Human Rights Commission established in 1946) and its mechanisms, in particular the Special Procedures and the Universal Periodic Review, as well as the treaty bodies, which are committees of experts responsible for supervising the implementation of the main human rights treaties. All of these mechanisms formulate recommendations to states on how to meet their human rights obligations and improve the human rights situations in their countries.

In addition to the human rights obligations framework, the process of clarifying the content and scope of economic, social and cultural rights plays an important role in framing development and poverty issues in human rights terms. Indeed, the Committee on Economic, Social and Cultural Rights has adopted a significant number of General Comments, explaining the significance of the principle of non-discrimination in economic, social and cultural rights as well as the content of the rights protected by the International Covenant on Economic, Social and Cultural

³ For more information, see Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, adopted in September 2008, and related Commentary by Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman. See also, Mark Gibney, Sigrun Skogly (2011), *Universal Human Rights and Extraterritorial Obligations*, University of Pennsylvania Press.

Rights, such as the right to food, the right to health, the right to education, or the right to water and sanitation.⁴

The development of international human rights law and mechanisms is a process taking place within the United Nations (UN). In parallel, the international agenda of development cooperation has evolved with its own norms and paradigms, mechanisms and institutions, within and outside the UN. While the paradigm of economic development is still central to many development agencies, the concept of human development,⁵ placing people at the core of development, has largely been adopted by development actors. In this context, the human rights-based approach to development has emerged over the last twenty years, reflecting a growing convergence of human rights and development in theory and in practice.

The United Nations has played a leading role in this process. In 1997, the UN General-Secretary launched a programme of reform requiring the integration of human rights into development and humanitarian actions.⁶ This reform included the strengthening of the UN human rights programme to better coordinate the work of the different organizations, in particular programmes and funds operating at national levels. The UN system at the national level, the UN Country Team, was targeted to become, through a programme called "Action 2", the main vehicle to promote and integrate human rights into UN development and humanitarian programmes.

In the context of the UN reform and the development of human rights law and related mechanisms, UN agencies have taken action toward the integration of human rights into their policies and programmatic approaches. While each agency has followed its own process, they all adopted a common understanding of

⁴ The full list and texts of the CESCR's General Comments can be found at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

⁵ The United Nations Development Programme (UNDP) is promoting human development. For further information, see <http://hdr.undp.org/en/>.

⁶ United Nations General Assembly (1997), *Renewing the United Nations: A programme for Reform*. Report of the Secretary General. A/51/950.

what a human rights-based approach means: the United Nations Statement of Common Understanding on Human Rights-Based Approaches adopted in 2003.⁷

The Common Understanding is now a recognized authoritative reference reflecting an evolution among development institutions to integrate human rights into their work. However, there are differences when it comes to institutional commitments, policies, and modalities of implementation. In 2005, the Overseas Development Institute (ODI) provided a useful typology of institutional policies reflecting different degrees of integration of human rights into development.⁸

For some institutions, human rights are constitutive to development goals and imply a new approach to aid that requires institutional changes and that can be labelled as a human rights-based approach, while in others cases, there is implicit human rights work, where agencies do not explicitly work on human rights issues and prefer to use other descriptors, like “empowerment” or “responsive democratic institutions”. Between these two opposing approaches, others are identified as human rights mainstreaming, integrating human rights in all sectors and aid interventions (like water, climate change, education, etc.), human rights dialogue, part of aid dialogues and conditionality, and human rights projects, a thematic sector specifically supporting human rights activities and institutions. We can consider that the UN Common Understanding falls into the human rights-based approach and human rights mainstreaming categories.

Despite differences in institutional policies regarding integrating human rights in development, many governmental and inter-governmental development agencies have adopted, under the

⁷ The document is available at: http://www.undg.org/archive_docs/6959-The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf.

⁸ Overseas Development Institute (2005), *Integrating Human Rights into Development*. A synthesis of donor approaches and experiences. Prepared for the OECD DAC Network on Governance (GOVNET).

auspices of the OECD-DAC,⁹ an action-oriented policy paper on human rights in relation to aid effectiveness.¹⁰ Aid effectiveness is concerned with the effective use of aid in achieving development results. The action paper recognizes the UN Common Understanding as a fundamental guideline for integrating human rights into development, thereby further consolidating the relevance of the UN document as an overarching framework for a human rights-based approach to development. It is also relevant to mention the existence of the Open Forum for Civil Society Organizations (CSO) Development Effectiveness, an international civil society network that is strongly advocating for the integration of a rights-based approach in aid effectiveness norms, policies and instruments.¹¹

There are, however, others key players in the development agenda that engage little – or not at all – in this process: the International Financial Institutions (IFIs), mainly the World Bank Group, the International Monetary Fund, the Regional Development Banks, and the International Fund for Agricultural Development. These institutions have not adopted a human rights-based approach in an explicit way, based on the typology proposed by the ODI. They are criticized by human rights NGOs and mechanisms not only for not adopting a human rights-based approach but for the negative impact on human rights of some of their supported projects and activities.¹²

To take the example of the World Bank (WB), the institution has clearly taken the position that it does not bear human rights obligations and does not have a human rights mandate.¹³ Nonetheless,

9 The Development Assistance Committee (DAC) is an international forum of many of the largest funders of aid created to discuss common policies on international development cooperation. The DAC is part of the Organization for Economic Co-operation and Development (OECD).

10 The document is available at: <http://www.oecd.org/development/governance-anddevelopment/39350774.pdf>. For more information on OCDE policies related to the human rights-based approach to development, see <http://www.oecd.org/dac/governanceanddevelopment/humanrightsanddevelopment.htm>.

11 <http://www.cso-effectiveness.org>.

12 See <http://www.brettonwoodsproject.org/topic/humanrights/index.shtml>.

the institution argues that its work is actually contributing to the realization of human rights via its development programmes. And despite its official position, the WB has some mechanisms that might serve as entry points for a human rights-based approach. First of all, the WB, like other IFIs, has adopted safeguard policies (i.e. on indigenous peoples or core labour standards) to avoid negative social or environmental impacts from its funded projects. More recently, the Nordic countries moved to proactively promote a human rights-based approach within the WB by supporting a Knowledge and Learning Program on how human rights relate to the Bank's core mission of promoting economic growth and poverty reduction. The conceptual framework of this programme includes international human rights law, the core principles of the UN Common Understanding, and international practice in the field of integrating human rights into development programmes.¹⁴

Civil society organizations are also playing a key role in promoting a human rights-based approach to development. In recent years, many have progressively adopted a rights-based approach to their policies, programmes, and projects. By producing valuable conceptual and guiding documents as well as case-studies and learning projects, these organizations are contributing to the understanding of how a human rights-based approach can bring added value and how it can be implemented in practice. Moreover, international human rights non-governmental organizations (NGOs) in the field of economic, social, and cultural rights have been advocating for a human rights-based approach to development issues for many years.

We could also highlight the role of community-based organizations and social movements that are framing their claims in terms of rights and, by doing so, are influencing the evolution of

¹³ Further information on the World Bank position on human rights is available at: <http://web.worldbank.org/WBSITE/EXTERNAL/EXTSITETOOLS/0,,contentMDK:20749693~pagePK:98400~piPK:98424~theSitePK:95474,00.html>.

¹⁴ Further information on the World Bank Nordic Trust Fund on Human Rights is available at: <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:22312165~pagePK:41367~piPK:51533~theSitePK:40941,00.html>.

international human rights standards as well as the institutional policies of development agencies. From this perspective, the human rights-based approach appears to be driven by a conviction that global poverty is an affront to human freedom and dignity, as well as by a concern for justice.

Today, the human rights-based approach is well established as a relevant paradigm for development as a large number of human rights and development organizations have adopted related policies while integrating human rights in different ways or to different degrees. This paradigm, the human rights-based approach, has generated a significant body of work that clarifies the conceptual relevance of linking human rights to development, in particular in relation to specific sectors of intervention and specific groups, as well as provides guidance on how the approach can be implemented, in particular taking into account the special focus of the UN Common Understanding on building capacities of duty-bearers and rights-holders.

The Human Rights-Based Approach: Added Value

In human rights-based approach literature, policies, and tools, there are a number of different definitions and concepts of how to integrate human rights into development. For instance, the distinction between a “human rights-based” approach and a “right-based” approach clarifies different, but not contradictory, meanings. While the former emphasizes the legal framework, the latter encompasses broad concepts such as equity and justice, including values that might be considered as rights even though they not yet legally recognized as such.

Among the various contributions to defining a human rights-based approach to development, common and fundamental elements can be identified. They compose a general framework of linkages between human rights and development and include both intrinsic and instrumental rationales. Intrinsically, development and human rights have the same objectives of dignity and well-being. In addition, the intrinsic rationale recalls that human

rights are the legal expression of a set of values subject to an international consensus.

The instrumental rationale posits that human rights positively contribute to development processes and outcomes. The notion of “added value” entails a series of elements, such as:

- a shift from a needs-based approach to a rights-based approach, placing the person living in poverty at the centre of development processes and outcomes
- stronger focus on processes leading to positive development results and ensuring no negative effects
- focus on the structural causes of poverty, in particular on power balances and discriminatory patterns
- normative framework for defining development objectives and processes in accordance with human rights standards
- stronger rationale for participatory processes based on the human rights principle of participation and related rights, in particular political rights
- focus on obligations, accountability, and transparency based on the relationship between the state and individuals.¹⁵

The overarching objective of the development agenda is poverty reduction. In the context of the human rights-based approach, the links between human rights and poverty have also been addressed. A conceptual framework on human rights and poverty reduction has been developed by United Nations human rights experts on the basis of Amartya Sen’s theories.¹⁶

According to this framework, different categories of human rights would have different degrees of relevance in addressing poverty reduction. Some human rights are seen as having a constitutive or intrinsic value to poverty while others are instrumental

¹⁵ For an overview of the added value of a human rights-based approach, see OHCHR (2006), *Frequently asked questions on a human rights-based approach to development cooperation*. Geneva and New York. Ref. HR/PUB/06/8.

¹⁶ OHCHR (2004), *Human Rights and Poverty Reduction: A Conceptual Framework*. Geneva and New York. Ref. HR/PUB/04/1.

as they may play a preventive role or may strengthen participatory processes. Then, there is the category of restrictive rights which offers guidance on what can and cannot be done in the context of poverty reduction strategies and policies. Constitutive human rights include the right to work, the right to adequate food, the right to adequate housing, the right to health, the right to education, personal freedoms and security, the right to private life, the right to due process, as well as political rights and freedoms.

According to the guidance given by the conceptual framework, there are various “added values” in integrating human rights into poverty reduction strategies:

- Integrating human rights strengthens the claim for an immediate adoption of poverty reduction strategies
- Integrating human rights extends the scope of poverty reduction by addressing structural causes of poverty such as power distribution and discriminatory patterns
- Integrating human rights calls for a strengthened civil society and the exercise of political rights as essential components of meaningful poverty reduction strategies
- Integrating human rights confirms that economic, social and cultural rights are legally binding and enforceable like any other rights, and are not merely programmatic rights
- Integrating human rights warns against any regression or breach of human rights obligations to ensure a fundamental minimum realization of human rights standards
- Integrating human rights strengthens the legitimacy of claims to participate in the decision-making processes leading to the adoption of poverty reduction strategies
- Integrating human rights calls for the creation or strengthening of accountability mechanisms and institutions.
- Integrating human rights introduces the notion of human rights obligations of states, strengthening a shift from direct implementation of projects to a more facilitative approach to development.

In the context of striving for poverty alleviation, the international community has adopted the Millennium Declaration with specific Millennium Development Goals (MDGs) to be achieved by 2015. These issue-based and time-bound objectives are guiding the work of the development community towards precise targets. Here, the links between human rights and MDGs are to be found in the Millennium Declaration adopted by the United Nations in 2000. The Declaration lists the commitments of the international community for the new century and calls for the promotion and respect of human rights along with poverty eradication. The discussion of the practical linkages between human rights and MDGs has built on the “added value” arguments based on common and mutually beneficial features as well as on differences and criticisms.¹⁷ And the discussion will continue as the international community is already engaged in the process of defining a new agenda for the Millennium Declaration post-2015.¹⁸

The development agenda addresses many issues and is organized by sectors or areas of intervention. While the MDGs set specific development goals, development cooperation is usually organized around broader areas of intervention. As an example, the United Nations Development Program is organized around the following areas: Democratic Governance, Poverty Reduction, Environment and Energy, as well as Conflict Prevention and Recovery. Moreover,

¹⁷ For further information and references on this discussion, see OHCHR (2010), *Human Rights and the Millennium Development Goals in Practice: A review of country strategies and reporting*. Geneva and New York. Ref. HR/PUB/10/1; Amnesty International (2010), *Combating Exclusion: Why Human Rights are Essential for the MDGs*, in the international Journal on Human Rights SUR, Vol. 12; OHCHR (2008), *Claiming the Development Millennium Development Goals: A human rights approach*, Geneva and New York. Ref. HR/PUB/08/3, and UNDP (2007), *Human Rights and the Millennium Goals – Making the Link*. Oslo Governance Centre.

¹⁸ On the post-2015 discussion, see Sakiko Fukuda Parr (2012), *Should global goal setting continue, and how, in the post-2015 era?* DESA Working Paper No 117. Ref. ST/ESA/2012/DWP/117 and Mac Darrow (2012), *The Millennium Development Goals: Milestones or Millstones? Human Rights Priorities for the Post-2015 Development Agenda*, Yale Human Rights and Development Law Journal, Vol. XV, March 2012.

the vulnerability of certain groups of people among those living in poverty, such as children and women, indigenous peoples or minorities, has been taken into account by specific development agencies through targeted programmes or mainstreamed into other sectors of intervention.

The relevance and implications of integrating human rights in sector development programmes have been addressed in various conceptual documents. For instance, there are several documents on human rights and health, human rights and water, as well as human rights in environment and energy or human rights in decentralization or anti-corruption programmes. All of these documents contribute to specifying what the conceptual linkages and practical implications are when applying a human rights-based approach to specific sectors or issues.

The Human Rights-Based Approach in Practice

The international agenda of integrating human rights into development is well established. A consensus on a general definition has been agreed upon while the relevance and conceptual linkages have been further elaborated in a large number of publications. The most common reference for all development actors is the UN Common Understanding, a synthetic and program-oriented definition of the human rights-based approach. First, the Common Understanding recognizes the core human rights principles: universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law. Second, it affirms that:

- All development programmes should further the realization of human rights,
- Human rights standards should guide all development programming in all sectors and in all phases of the programming process,
- Development cooperation should contribute to strengthening the capacities of duty-bearers to meet their obligations and of rights-holders to claim their rights.

The crucial question then is how the human rights-based approach works in practice, in particular how it can strengthen the capacities of duty-bearers and rights-holders. The first challenge faced by development agencies for integrating human rights in their policies and programmes is the lack of internal capacities, in terms of human rights knowledge, but also the absence of policy and operational frameworks in their own institutions. Consequently, development agencies have undertaken a process of building internal capacities as a first step towards integrating the approach in their programmes, which, in turn, aim at developing external capacities. For their part, UN and other development agencies have put in place different learning mechanisms and programmes on the human rights-based approach, leading to a significant production of conceptual and practical documents. A second challenge for development organizations is to integrate human rights into their programmatic and project cycle methodology and tools, including a clear focus on how such programmes would build or strengthen the human rights capacities of duty-bearers and rights-holders.

With regard to the external capacities of duty-bearers and rights-holders, it is worth highlighting that development agencies place capacity development at the core of their programmes, as the engine of human development, as defined by the United Nations Development Programme (UNDP). The UN Common Understanding is therefore in line with this approach. According to the United Nations, capacity means the ability of people, organizations, and society as a whole to manage their affairs successfully. A common definition given to capacity development is that it is a process whereby people, organizations, and society as a whole unleash, strengthen, create, adapt and maintain capacity over time.¹⁹ For the UNDP, capacity development is the process through which individuals, organizations, and societies obtain, strengthen, and maintain the

¹⁹ OCDE/DAC (2006), *The Challenge of Capacity Development. Working Towards Good Practice. DAC Guidelines and Reference Series*, A DAC Reference Document, Paris.

capabilities to set and achieve their own development objectives over time.²⁰

Capacity development is a rather broad concept. As such, it invites inclusion of individual capacity building and training as a central element of capacity development, but also encourages longer-range thinking. For instance, the scope of capacity development should go beyond individuals and address organizational development and creating an enabling environment. More focused on a rights-based definition, capacity is the key factor determining how well rights are claimed and duties are fulfilled. This then leads to the question of what the elements of this key factor are and how they can be strengthened.

In fact, the UN Common Understanding does not propose a specific definition of capacities; rather, it qualifies them and proposes to understand capacity development from a human rights perspective. That is to say that capacities, in this context, have to be defined from the perspective of duty bearers and rights holders, meaning they are the elements needed by duty-bearers and rights-holders to fulfil their human rights obligations or to exercise their rights, respectively.

As mentioned above, human rights integration in development is intended to be implemented through programmes. As a consequence, a series of tools to integrate human rights into project and programme cycle management instruments and to specific sectors of intervention have been developed. These tools take human rights into account in all phases of programming, from analysis, design, and implementation to monitoring and evaluation.

One approach to human rights-based programming is to take into account the framework of the national system of human rights protection as well as the recommendations of the international system of human rights protection. The national system first identifies the main national institutions and organizations

²⁰ UNDP (2008), Capacity Development Practice Note. New York.

that should play a key role in national human rights protection and assesses their capacities in fulfilling their role. This can help in undertaking a human rights-based context analysis and identifying key institutions for ensuring protection of human rights. Taking into account that a positive human rights situation is an essential condition for sustainable development results, the analysis and support for national human rights protection systems could be part of the programming process.²¹ Furthermore, international human rights recommendations targeted to countries are useful in effectively guiding all development programming in all sectors and in all phases of the programming process.²²

Another important area for programming is the elaboration of human rights indicators. On the one hand, such indicators facilitate monitoring and accountability from a rights-holders perspective and, on the other hand, offer the possibility of guiding the actions of duty-bearers and the programmes of development agencies. Indicators are also useful for measuring development results, as recommended by the aid effectiveness agenda and results-based management.²³

In the context of a human rights-based approach to education, UNICEF and UNESCO provide some insight about what capacities actually mean.²⁴ They underscore the need for assessing capacities of both rights-holders and duty-bearers, to identify

²¹ This concept is elaborated by the United Nations (2005), National Systems of Human Rights Protection. A Concept Paper. Action 2.

²² This idea has been elaborated and included in various document on the human rights-based approach. In particular, see United Nations (2005), Guidance note for UN country teams in establishing theme groups or other appropriate mechanisms on human rights. Action 2 and UNDP (2004), Human Rights: A Practice Note. New York.

²³ Significant work has been undertaken to build human rights indicators: OHCHR [see <http://www.ohchr.org/EN/Issues/Indicators/Pages/HRIndicatorsIndex.aspx>]; UNDP (2006) Indicators for Human Rights-Based Approaches to Development in UNDP Programming: A Users' Guide. New York; The World Bank (2010) Human Rights Indicators in Development. An Introduction. By Siobhán McInerney-Lankford and Hans-Otto Sano. Washington; The Right to Education Project (<http://www.right-to-education.org>).

the capacity gap. On the rights-holders side, the key capacities include the need to know about human rights, opportunities to access policy makers and the media, as well as the existence of mechanisms for redress and the capacity to analyze how rights are being denied. The UN agencies' perspective is that "empowering rights holders to claim their rights requires a range of strategies, including information, advocacy, capacity-building, parent networking, peer support and technical assistance."²⁵ Concerning the duty-bearers, the assessment should focus on identifying and addressing obstacles to compliance with human rights obligations. Such obstacles or capacity gaps include lack of resources, authority, responsibility, coordination within the public sectors, and lack of knowledge. Furthermore, developing capacities for claiming rights can be understood as including civil society human rights work such as advocacy, awareness-raising, and legal action as well as training and educational activities.

Assessments and measures for addressing lack of knowledge, for both duty-bearers and rights-holders, constitute a key factor for ensuring the integration of human rights into programming. UNDP, for instance, points out the central role of education for human rights in a human rights-based approach:

"Every programme and project should have a component of human rights education directed at personal, national counterparts – government and non-governmental organizations – and to all stakeholders whether they are holders of rights or obligations."²⁶

²⁴ UNICEF and UNESCO (2007), *A Human Rights-Based Approach to Education for All. A framework for the realization of children's right to education and rights within education*. New York and Paris.

²⁵ Ibid. Page 17.

²⁶ UNDP (2006), *Applying a Human Rights-Based Approach to Development Cooperation and Programming*, a UNDP Capacity Development Resource. Page 58.

The Human Rights-Based Approach: A Field of Action for Human Rights Education

Human rights education and training are essential for promoting human rights. They cover human rights education in formal and informal education; this is to say in schools as well as other educational-type institutions. Human rights education and training also include experience with a broad range of groups, such as civil servants, the police and military forces, parliaments and public authorities, or specific groups such as rural communities, indigenous peoples, minorities and women, among others. As a result, human rights education and training activities require expertise in teaching human rights to different audiences, and in how to translate such knowledge into concrete actions. When it comes to a human rights-based approach to development, there are several areas in which human rights education and training centres can share their expertise and contribute to effectively integrating human rights into development.

A first step, and a task for human rights education and training, is to ensure a basic understanding of international human rights law. One approach is to use the proposed framework on human rights and poverty that establishes degrees of relevance among rights between constitutive, instrumental, and restrictive rights. An area of discussion could be the applicability of this framework for specific development sectors of intervention. The reference to rights and duties in promoting citizenship could be clarified, as different meanings are provided in human rights-based approach literature and tools. Another area of attention relates to non-discrimination and how to address such an issue in a development program. Another issue is how to transmit human rights knowledge in view of its application by certain groups of people: communities, professionals, or civil servants. What are the strategies for ensuring that the human rights dimension of a project or programme is well understood, accepted, and taken into account by involved national duty-bearers and rights-holders?

For these questions and others, human rights education can play a constructive role in effectively conveying the notions and concepts of human rights in view of their effective integration in development cooperation. In other words, human rights education and training can expand their action by providing guidance and tools as well as training on how to apply this conceptual framework to development cooperation and programmes. Indeed, expert institutions in the field of human rights education and training can contribute to defining the content, strategies and methodologies for developing the capacities of duty-bearers and rights-holders.

Human rights education and training institutions can bring essential expertise and know-how to a human rights-based approach to development; they can also develop new techniques and types of support to effectively integrate human rights in all sectors and phases of development programming.

Conclusion

The human rights-based approach to development is well established both conceptually and institutionally. For the UN Common Understanding, the concept of capacity development is central and oriented towards the strengthening of rights-holder and duty-bearers capacities to claim their rights and fulfil their human rights obligations respectively. Several studies and tools have been produced since this approach emerged in the field of development cooperation in the 1990s. The conceptual framework, including justifying arguments and programmatic tools, has been elaborated by human rights experts as well as by development practitioners. To make the human rights-based approach effective in practice, human rights education and training activities are essential for bringing concepts and standards to concrete actions and social change.

Wateraid: Right to Water and Sanitation

BY GIRISH MENON AND TOM PALAKUDIYIL

1. Context

WaterAid's work is driven by a firm belief that access to safe water and sanitation are vital for health, education and livelihoods, and form the first essential step in overcoming poverty. Access to these essential services is a basic human right. Through the programmes it supports, WaterAid strives to transform lives by improving access to safe water, hygiene and sanitation in the world's poorest communities, working with partners and influencing decision makers to maximize our impact.¹

The context in which we work is challenging. Globally, 884 million people do not have access to safe drinking water and 2.6 billion people do not have adequate sanitation.² This has a deep impact on people's health, education, livelihoods and dignity. While a vast majority of those without access to water and sanitation live in sub-Saharan Africa and South Asia, there are pockets of deprivation in other parts of the world. And within sub-Saharan Africa and South Asia, there are severe inequalities based on gender, disability, chronic illness, occupation, language, religion and geography.

The impact of lack of access to clean water and sanitation is immensely adverse. Every day, 4,000 children die needlessly from diarrhoea, millions of children miss school, and millions of hours are wasted by women and children who walk long hours to collect water. Lack of privacy and the indignity of having to defecate in the open severely affects women and girl children. Schools without access to safe water and sanitation, and without separate facilities for girl children, fail to attract and retain students and teachers, especially girls and women. Some estimates from the Water

¹ WaterAid: Global Strategy 2009-2015.

² WHO/Unicef Progress on Sanitation and Drinking Water (2010).

and Sanitation Programme of the World Bank suggest that 2-7% of the Gross Domestic Product of affected countries is lost due to poor access to water and sanitation.³

With the Millennium Development Goal milestone of 2015 approaching fast, it is clear that most countries in sub-Saharan Africa and South Asia will be way off the target of halving the number of people without access to water and sanitation, the situation being much more critical in case of the latter. And even if the number of people without access is halved, there will remain the other half. The pace at which progress is being made is highly inadequate. Climate change, rapid urbanization, armed conflict, and the global economic situation are factors that can further aggravate this crisis.

Though governments continue with their traditional approaches, it is vital to address why progress towards the above targets has been so slow and to understand the structural causes of why people lack access to water and sanitation in such large numbers. It is in this context that rights-based approaches (RBAs) to water and sanitation assume great significance.

2. Human Rights and Rights to Water and Sanitation

2.1 EVOLUTION OF THE RIGHTS-BASED DISCOURSE

International human rights treaties, negotiated by representatives of governments around the world, provide the current internationally accepted framework of human rights, and are a commonly accepted standard to gauge their degree of recognition.

While there have been various efforts at articulating human rights in different forms in past centuries, the current human rights environment is considered to have been initiated in 1948, in the aftermath of World War II, when the international community adopted the Universal Declaration of Human Rights. Two additional

³ World Health Organisation and UN Water: GLASS 2010 UN-Water Global Annual Assessment of Sanitation and Drinking Water.

treaties were adopted in 1966 – the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).

In the intervening years, there have been many references to rights to water and sanitation. The Committee appointed by the ICESCR recognized that water is a human right in its General Comment No. 6 (1995). The Committee had also pointed out that the right to water is inextricably related to the right to the highest attainable standard of health and the rights to adequate housing and adequate food. The right to water should also be understood in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.

In addition to the ICESCR, the rights to water and sanitation (linked, though separate rights) are recognized by a number of international instruments and political declarations in the fields of human rights, environmental law and humanitarian law. One can find an articulation of these rights to water and/or sanitation in the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the United Nations (UN) General Assembly Resolution on “The Right to Development” in 1999 (A/Res/54/175), the General Comment on the right to Water in 2002, the Convention on the Rights of Persons with Disabilities in 2006, and the Report of the UN High Commissioner for Human Rights on the scope and content of the relevant human rights obligations related to equitable access to safe drinking water and sanitation under international human rights instruments in 2007 (A/HRC/6/3). In addition, numerous other international conferences organised by the UN and other multilateral agencies have explored these two rights.

Finally, on July 28, 2010, the General Assembly of the United Nations formally recognised water and sanitation as basic human rights and thus fully endorsed the General Comment No. 15 that had earlier been issued in 2002. In September of the same year, the UN Human Rights Council, which has the mandate to

monitor the respect of all human rights, also passed a resolution to the same effect and further called upon states to develop appropriate tools and mechanisms to progressively achieve the full realisation of human rights obligations related to access to safe drinking water and sanitation, including in currently un-served and underserved areas.

As the UN Special Rapporteur on Human Rights Obligations Related to Access to Safe Drinking Water and Sanitation, Catarina de Albuquerque, subsequently observed: "This means that for the UN, the right to water and sanitation is contained in existing human rights treaties and is therefore legally binding... The right to water and sanitation is a human right, equal to all other human rights, which implies that it is justiciable and enforceable."⁴

The **implications** of such treaties are significant. States are obliged by the international legal instruments they have adopted and ratified to respect, protect and fulfil their commitments to the human rights enshrined in these covenants and conventions. These three obligations are elucidated below as they apply to the right to water and sanitation.

The **obligation to respect** requires states to refrain from interfering directly or indirectly with the enjoyment of the rights to water and sanitation. For example, states should refrain from: polluting water resources; arbitrarily and illegally disconnecting water and sanitation services; reducing the provision of safe drinking water to slums in order to meet the demand of wealthier areas; destroying water services and infrastructure as a punitive measure during armed conflict; or depleting water resources that indigenous peoples rely upon for drinking.

The **obligation to protect** requires states to prevent third parties from interfering with the rights to water and sanitation. This would mean that states should adopt legislation or other

⁴ See the United Nations Press Release "Right to water and sanitation is legally binding, affirms key UN body". Available at: <http://www.un.org/apps/news/story.asp?NewsID=36308>.

measures to ensure that private actors – e.g., industry, water providers or individuals – comply with human rights standards related to the rights to water and sanitation. States should, for instance, adopt the necessary measures, legislative and otherwise, to ensure that third parties do not arbitrarily and illegally disconnect water and sanitation services; that communities are protected against third parties' unsustainable extraction of the water resources they rely upon for drinking; that the physical security of women and children is not at risk when they go to collect water or use sanitation facilities outside the home; that land ownership laws and practices do not prevent individuals and communities from accessing safe drinking water; that the third parties controlling or operating water services do not compromise the equal, affordable and physical access to sufficient safe drinking water.

The **obligation to fulfil** requires states to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realize the rights to water and sanitation. States must, among other things, adopt a national policy on water that gives priority in water management to essential personal and domestic uses; identifies the resources available to meet these goals; specifies the most cost-effective way of using these resources; outlines the responsibilities and timeframe for implementing the necessary measures; and monitors results and outcomes, including ensuring adequate remedies for violations. Under this same obligation to fulfil, states must also, progressively and to the extent allowed by their available resources, extend water and sanitation services to vulnerable and marginalized groups; make water and sanitation services more affordable; ensure that there is appropriate education about the proper use of water and sanitation; and encourage methods to minimize waste.

In advocating for the rights to water and sanitation, it has already been noted that the ultimate responsibility lies with the state. However, it is also important to be clear that according to international human rights law, although governments are responsible for ensuring that such a provision is in place they are not necessarily responsible for directly providing access to

water and sanitation. Instead, they are responsible for ensuring that the policies, systems, processes, mechanisms, standards and procedures for providing access are in place. Therefore, the obligation on states to protect human rights includes ensuring that non-state actors do not infringe upon the rights to water and sanitation. In addition, there is increasing debate about the extent to which other actors in society—individuals, intergovernmental and non-governmental organizations (NGOs), and businesses—have responsibilities with regard to the promotion and protection of human rights.

International human rights law does not prescribe whether water services should be delivered by public or private providers or by a combination of the two. Nevertheless, the human rights framework requires states to ensure that if water services are operated or controlled by third parties (i.e. non-state actors), states must put in place an effective regulatory framework that includes independent monitoring, genuine public participation, and penalties for non-compliance. It is implicit in this duty to regulate that the state should put this framework in place before delegating the provision of safe drinking water and sanitation to non-state actors.

In order to ensure a holistic approach to poverty reduction and human development, the rights to water and sanitation must be translated into a clear strategic and operational framework, protected by national legislation and empowered by a set of binding guidelines with sufficient substance to ensure that national governments, local authorities, and private operators are accountable to the communities they serve.

2.2 PROGRESSIVE REALISATION OF RIGHTS

One of the approaches used by many states to postpone (and even avoid) taking responsibility to fulfil the obligations they have agreed to by signing and ratifying the international human rights framework with regard to water and sanitation, is to hide behind the fact that this framework acknowledges that such rights can only be progressively realised.

Article 2[1] of the ICESCR indicates that signatories are under the obligation to progressively realise the rights to water and sanitation to the maximum of their available resources. It requires states to set national targets with reference to an objective assessment of the national priorities and resource constraints of each country. States must have a vision of how to fully realise the rights to water and sanitation for all, and elaborate national strategies and action plans to implement that vision. These should be endorsed at the highest political level and integrated within national poverty reduction strategies and expenditure frameworks to ensure their operational viability, sustainability and comprehensiveness. States are required to move towards the goal of full realisation as expeditiously and effectively as possible, based on available resources and within the framework of international cooperation and assistance, where needed. This implementation calls for the translation of the internationally recognised rights to water and sanitation into locally determined benchmarks for measuring progress, thereby enhancing accountability.

This progressive framework for implementation provides an advocacy dimension to rights-based approaches as governments have voluntarily agreed to the obligation to fulfil. This provides a firm foundation for advocacy that attempts to influence policy formulation in favour of the excluded.

2.3. CONTENT OF THE RIGHTS TO WATER AND SANITATION

While the rights to water and sanitation are clearly established, there still remains the thorny issue of what exactly those rights mean. What would constitute the fulfilment of a state's responsibility with regard to those rights vis-à-vis people living within its borders?

General Comment No. 15 [2002] offers clarity when it states: "The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses." While there are a number of other important uses for water such as for the production of food and use

within cultural and religious practices, the human right to water prioritises the allocation of water for personal and domestic uses.

General Comment No. 15 also states in Article 10: “The right to water contains both freedoms and entitlements. The freedoms include the right to maintain access to existing water supplies necessary for the right to water, and the right to be free from interference, such as the right to be free from arbitrary disconnections or contamination of water supplies. By contrast, the entitlements include the right to a system of water supply and management that provides equality of opportunity for people to enjoy the right to water.”

As far as sanitation is concerned, a WaterAid document notes: “Access to sanitation was not adequately covered in General Comment No. 15, other than clarifying the need for safe sanitation to ensure water quality. This omission has been addressed in other human rights instruments since General Comment No. 15 was adopted, but certain aspects of sanitation as a human right, such as definitions of standards, do still need to be clarified.”⁵

3. Relevance of Rights-Based Approaches (RBA) for WaterAid

A large proportion of the 783 million people without safe drinking water and the 2.5 billion with no adequate sanitation consists of the poor and the marginalised - be it on the basis of caste, ethnicity, gender, age, or ability; those excluded because they live in remote (hilly) regions or disadvantaged locations (urban slums); and those excluded because they are landless or migrants. The people who are most deprived of their basic needs are also those who have the least voice on account of exclusion and discrimination.

Since the water, sanitation and hygiene (WASH) needs of these groups are glaring, and seemingly demand an immediate supply-driven approach, many local and international NGOs, and

⁵ <http://www.righttowater.info/progress-so-far/general-comments-2>.

even private commercial bodies, have adopted a service-delivery approach with significant funding and resources being channelled towards building and maintaining water and sanitation infrastructure.

With time, however, the limitations of an exclusively hardware-based service delivery approach – which involves NGOs and private commercial bodies supplementing and often substituting for the state as a service provider – have become increasingly evident. This is graphically reflected in the WHO/UNICEF Joint Monitoring Programme (JMP) findings which show that despite human rights proclamations at the international level and the signing and ratifying of treaties, the improvement of access to safe drinking water for the poorest 20 percent has not been significant.⁶

Therefore, a number of recent civil society interventions have introduced a software element that includes rights-based approaches to water and sanitation services. Importantly, civil society initiatives have also begun to recognise and reflect on the interconnectedness of water and other basic needs of the poor. Consequently, there has been an attempt by many civil society groups to integrate water and sanitation interventions with other livelihood and development interventions identified by local communities. RBAs help in such integration, especially where the focus is on identifying those who are marginalised, vulnerable and excluded, and empowering them by amplifying their voices to demand their rights while also supporting them to discharge their responsibilities.

The above change in strategy can be traced to the growing recognition of two socio-political realities found in many developing countries. Firstly, states function through large bureaucracies that are normally neither responsive nor sensitive to the needs of the poor and whose track record of policy implementation on poverty eradication is often weak. In the WASH sector this is exacerbated

⁶ Unicef and WHO: Drinking Water Equity, Safety and Sustainability (2011).

by institutional fragmentation, limited sector coordination, weak accountability mechanisms, inadequate attention to water resource management and low priority to sanitation. Secondly, corruption is a major problem in much of our world, and has become intrinsic to the processes of government in many countries.⁷ This has severely impaired the effectiveness of governments in implementing poverty reduction programmes.

Against this background there is the growing realisation that, in a world where economically and socially marginalised peoples' human rights to water and sanitation are ignored, empowering excluded communities to claim these rights in a legally enforceable manner must become a defining feature of any serious attempt to change the situation.

Rights-based approaches are aimed at facilitating a process whereby citizens are empowered to hold the state accountable to honour their human rights and legal entitlements. This is possible only when there is a change in the power equations between disempowered individuals/communities and the state. Therefore one of the crucial elements in rights-based approaches is the effort to increase the power of citizens vis-à-vis the state. As a result, RBAs place much importance on the internal attitude with which citizens approach the state/other duty bearers regarding their responsibility to ensure human rights – i.e. as claimants of their rights, rather than as supplicants. Adopting rights-based approaches involves not only focussing on the content, but also on the process through which respect for these rights is achieved.

Another implication is that such approaches must also focus on bringing about systemic change. This is crucial because even though a people-centric approach may make a governmental institution more accountable, this may be only temporary. For example, a good government officer may work towards ensuring that all departments under his/her control become

⁷ Transparency International: Global Corruption Report 2008 – Corruption in the Water Sector.

accountable to the marginalised and excluded. However, s/he cannot go beyond his/her own jurisdiction, and if this particular officer is transferred out to another post, it could happen that the situation reverts back to that of non-accountability. RBAs therefore try to work towards a change in the 'system' so that accountability mechanisms are institutionalized and are enforced, irrespective of the officer in charge. It may not always be possible, but a rights-based effort necessarily attempts to move in that direction.

RBAs thus work towards ensuring that the most vulnerable and marginalised people are taken into account, and empower excluded individuals and communities to participate in the development process as rights holders, rather than as recipients of the goodwill of others.

Such rights-based approaches are relevant at each stage of the development process: from situation analysis and needs assessment through policy and programme implementation to monitoring and evaluation. They seek to analyse the inequalities that lie at the heart of development problems and to redress discriminatory practices and unjust distributions of power that impede development progress. They seek, in effect, to create a renegotiated power equation between the previously unempowered and the state. They also allow for a better understanding of how laws, social practices, policies and institutions positively or negatively affect development issues. They change the relationship between development actors and poor/vulnerable people from one of charity and powerlessness to one of obligation and rights. They ensure that people living in poverty are fully recognised as being part of the solution. As a result, approaching development from a rights perspective informs people of their legal rights and entitlements, and empowers them to claim those rights/entitlements.

4. WaterAid's experience in Applying Rights-Based Approaches for WASH

WaterAid has gradually come to realise that rights-based approaches are essential if people, particularly the poorer sections of society, are to have access to equitable and sustainable WASH services. We see it as a necessary approach that will help to create an enabling environment that recognises the dignity of every individual, especially among the poor; respects their right to be drivers of change; and stresses the responsibility of governments to make this change happen.

WaterAid's experience of promoting rights to water and sanitation in a systematic manner goes back to 2005 when a project called 'Citizen's Action'⁸ was initiated to empower people to demand their rights to WASH services.⁹ In 2009, WaterAid initiated a Governance and Transparency programme¹⁰ which was aimed at strengthening southern civil society advocacy in water and sanitation, while also improving accountability and responsiveness of duty bearers to ensure equitable and sustainable WASH services. In 2010, WaterAid finalised its Equity and Inclusion framework,¹¹ based on the principles of fairness and non-discrimination. This framework provides guidance for understanding the underlying causes of why people lack access to water and sanitation, for working with duty bearers to strengthen their capacity to fulfil their obligations, and for empowering those without access. Finalizing the framework triggered organization-wide discussions on the rationale for, and the practical implications of, promoting rights to water and sanitation. It has been an evolutionary process. WaterAid is currently, at the time of writing, in the process of finalizing its position paper on rights to water and

⁸ WaterAid: Bridging the Gap: Citizen's Action for accountability in water and sanitation (2006).

⁹ WaterAid: Stepping into action: The second report on citizen's action for accountability in water and sanitation (2008).

¹⁰ WaterAid: Governance and Transparency Fund Annual Reports (2008-09, 2009-10, 2010-11).

¹¹ WaterAid: Equity and inclusion – A rights based approach (2010).

sanitation. These processes have involved building capacity and educating stakeholders – both rights holders and duty bearers – about human rights.

The goal of presenting the evolving global understanding of the rights to water and sanitation, as well as the development of various frameworks and instruments, was to elaborate on the conceptual issues and complexities involved in promoting these rights. As in all areas of human rights promotion, we need to work at two levels – with communities, who are the rights holders, and with policymakers and service providers, who are the duty bearers – while also recognizing that in many cases the distinction may not be clear-cut.

In the following section we provide an overview of the different ways in which rights-based approaches are applied on the ground by WaterAid and our partners.

4.1 CITIZENS' ACTION

Citizens' Action (CA) is an advocacy initiative that aims to transform present levels of state accountability by building an empowered citizenry capable of engaging constructively with governments and other service providers and holding these entities accountable for the provision of quality, accessible and sustainable services. It is founded on the belief that an informed and empowered community – one that has been educated and trained about its rights and is confident to engage with the government and other service providers to demand that they deliver on their commitments and obligations – is an essential precondition for ensuring accountable governance in a given community. It is important to compliment CA work with development of local government skills and resources, for example through educating about human rights and increasing resources, including those that improve government ability to respond to the demands of rights holders. As a methodology, CA is designed to facilitate the process of knowledge generation, empowerment, and constructive engagement by rights-holders.

As a first step, local people, with assistance from a facilitating agency like a local NGO, develop a fuller understanding of: a) their entitlements to water and sanitation (for example, rights to water and sanitation, details of district or local plans); b) their current water and sanitation service situation (service levels); c) who is responsible for implementation of laws/policies and service delivery; and d) responsibilities of the community and of government for maintaining services.

In order to carry out the above, citizens' groups will decide upon suitable data collection methods (from the following, non-exhaustive list) and use the different types of information they have generated and verified in dialogue platforms with service providers and the government in the pursuit of action-oriented results:

- Community scorecards where people rank or score the range of service/s.
- Slum enumeration and censuses which entail mapping amenities.
- Mapping access to water and sanitation amenities to show their distribution – equity mapping can be done not only at the local level but also at district and national levels.
- Report cards, which are essentially a market research exercise to assess public satisfaction with services.
- Public juries, accountability days, and other stakeholder dialogue platforms to bring those responsible for ensuring service provision together with citizens.
- Planning and budgeting for interventions – through dialogue, participating in planning and budgeting processes, budget literacy.
- Monitoring progress and implementation – participatory monitoring of budgets, services and outcomes.

The “Roving Camera” project in Madagascar is an interesting example of how filming as a tool was used to ensure that communities had the opportunity to freely express their thoughts, needs and concerns, and enter into a constructive dialogue with duty bearers on improving the state of water and sanitation in their communities.

In the Kuwempe division of Kampala, Uganda, a detailed community mapping exercise and consultation was initiated by a local organisation, Community Integrated Development Initiatives (CIDI), with WaterAid's support. This exercise revealed the extent of dissatisfaction with the reliability and quality of service. This led to bringing together service providers and competent NGOs to address these issues, creating a clear development plan, and having this implemented. [http://www.wateraid.org/documents/plugin_documents/stepping_into_action.pdf]

Also in Uganda, radio programmes, for example by CIDI with support from the Governance and Transparency Fund (GTF), have been used to educate communities on human rights and promote dialogues with rights holders and duty bearers to improve accountability, transparency and responsiveness in WASH service provision.

Training about the Right to Information Act (RTI) in India and advocacy processes supported by our partners has encouraged communities to submit a number of applications seeking information on government delivery programmes. In the state of Jharkhand, for instance, as a result of intensive campaigning, the high court has issued notices to two district magistrates to address drinking water problems.¹²

4.2 BUDGET ADVOCACY

Budget advocacy is founded on three principles: transparency, accountability and participation (TAP). Budget advocacy works towards trying to ensure more equitable budget allocations. The poor and marginalised in most countries have little influence on budgetary decisions made by the government, even though implications for their lives and livelihoods are huge. Budget advocacy seeks to alter this situation by enabling citizens to have a voice in budgetary decisions and make the state accountable to its citizens in the utilisation of the budget.

¹² WaterAid: Governance and Transparency Fund Annual report 2010/11.

An essential aspect of this tool is to help poor communities become aware of the four stages to the annual budget cycle – formulation, enactment, execution and audit – and to explore and decide on the most effective way to engage at each of these four stages. It is only by taking the different processes and actors in this cycle into consideration that suitable and strategic advocacy plans can be created.

As the budget cycle is an on-going process, advocates need to be strategic about the types of advocacy they undertake, at different phases in the national and local decision-making processes, with regard to where government resources are being allocated.

While it is essential that civil society organisations (CSOs) help citizens to articulate their concerns directly, budgets are complex and highly politicised, and CSOs can also perform an important role in representation, as well as directly critiquing and assisting the budget process. Furthermore, while acting as a conduit from the people to the government, CSOs can also help with dissemination in the other direction, clarifying and transmitting information about government spending and systems to the people. Ultimately, this can help build genuine accountability, whereby citizens, especially the poor and marginalised, are aware of their rights, and government is aware of its responsibilities (and vice-versa).

A detailed community-based assessment of the utilisation of subsidies in the Thakurgaon district of Bangladesh was undertaken with support from WaterAid and partners. This revealed the extent to which subsidies were captured by the non-poor (35% and 54% respectively in the two areas studied). Using simple participatory techniques, community-based organisations, facilitated by local organisations, collected, analysed and presented information in a manner that empowered them to engage with local government and to improve the targeting of subsidies to the 'hard core' poor, as the government policy demanded.

→ http://www.wateraid.org/documents/plugin_documents/stepping_into_action.pdf

4.3 ENGAGING IN URBAN REFORM PROCESSES

In the developing world, urban environments pose a huge and growing challenge for the rights to water and sanitation, a situation aggravated by the rapid pace of urbanisation in many developing countries. Characteristically, urban areas are unplanned and very densely populated, and the poorer parts are often unserved by even the most basic water and sanitation infrastructure. A key factor is that most of the inhabitants, often considered to be illegal occupants, are invisible and unorganised. Not having legal tenure for their homes puts them at an additional disadvantage and in a weak bargaining position when it comes to formal service provision. Where there is no safe water supply, people either collect from polluted sources or rely on vendors, who are invariably unregulated, selling expensive water of dubious and untested origin. A lack of sanitation facilities means that streets are turned into sites of open defecation, and drainage channels become full of untreated sewage.

WaterAid supports local urban partner networks to take part in processes that attempt to re-direct resources towards meeting these challenges. These partner networks advocate to ensure that the voices of those without services, as well as the experience of local NGOs that service urban WASH needs, are considered in urban development decision making.

WaterAid supported Dushtha Shasthya Kendra (DSK), a local NGO in Bangladesh in its decade-long campaign to get the Dhaka Water Supply Agency to provide formal water connections to people living in informal settlements. Residents had previously been considered to be living there illegally since they did not have legal tenure. This provision of water has now set a precedent for lobbying with the public sector water and sanitation agencies in other cities like Chittagong and Khulna for formal connections to those living in informal settlements.

Urban water utilities are in urgent need of reform. Across all of WaterAid's country programmes, WaterAid advocates for the financial and operational autonomy of water utilities, free from

political interference and with a clear performance contract (that includes the rights of the excluded) between the utility and government. Our experience has shown us the importance of CSO networks that champion the voices and issues of the poorest within urban reform developments, and supporting such CSOs is an integral component of WaterAid's efforts in advancing the WASH rights of the urban poor.

Supporting civil society networks as they engage in urban reform processes involves developing a knowledge base that includes the complex options available to government as well as the skills necessary to influence decision makers to consider the experience and needs of people who lack WASH access. Bringing these excluded voices, issues and solutions to the decision-making table is essential to success.

Engaging in urban reform processes requires practical knowledge of the issues – which may be very complex – and support for partner representatives as they pursue meaningful opportunities to represent the voices and issues of the poor.

In Lilongwe, Malawi, WaterAid and its partner Centre for Community Organisation and Development (CCODE) worked with the Lilongwe Water Board to bridge the gap between poor consumers and the Board that had resulted in the poor being cut off from formal water supplies. In the process, a better understanding based on mutual trust has been engendered, with the Board being more committed to delivering services to the poor.

→ http://www.wateraid.org/international/what_we_do/where_we_work/malawi/2584.asp

4.4 WORKING WITH PARLIAMENT/ELECTED REPRESENTATIVES

Parliaments are recognised as a key element of domestic accountability for WASH and more widely for development work. Previous work on accountability in water and sanitation, such as WaterAid's Citizens' Action project, has focused on accountability at local levels between service providers and users. However, broader domestic accountability between the national govern-

ment and citizens is required for WASH, and this is where parliaments play a crucial role.

When it comes to working with parliaments, our experience is that each country's governance system calls for different strategies. In some cases outreach to local members of parliament can be very effective, and representatives of WASH network members at the local level are often best placed to do this. In other countries, lobbying at the central political party level may be more effective, and in such cases engaging with heads of political parties or their most influential members may be more helpful than lobbying the local MP. In such cases, if local network members are linked up with national advocacy CSO networks, they can more easily be supported to understand and address core issues in the sector and make their voices heard.

Lobbying members of parliament at both the local level (in their own constituencies) and at the national level (when they sit in the national parliament) brings the chronic difficulties faced by people with very limited access to WASH into a forum. Again, different systems of parliamentary democracy work differently. In some cases the central parliament is the seat of all decision making, but in other cases this responsibility may be relegated to lower levels, and an understanding of this in one's own country guides the advocacy strategy. In addition to individual lobbying, there are a number of ways to engage with parliamentarians. Understanding the way parliament functions provide many insights and opportunities to influence the legislature. The "naming and shaming" technique, the use of the opposition, pressure from a carefully orchestrated media campaign, the use of Gandhi-like protests and pressure tactics, and the clever use of parliamentary devices (like the "question hour" that is available in some parliaments) have often pushed governments to take action in the areas of policymaking, planning, legislation, budgeting, implementation, monitoring, oversight, and sanctioning/penalising.

In Burkina Faso, WaterAid and its partners have initiated an innovative approach called 'Leader-led Total Sanitation', which aims to engage local communities in preparing a profile of the sanitation situation of villages, with community, business and political leaders. With the information collected and with short video clips on the real state of sanitation in their respective villages, the communities aim to highlight the sanitation crisis and encourage leaders to champion the cause of sanitation. To ensure that this is firmly on the political agenda, community leaders, in discussion with key members of parliament, set up a network of parliamentarians to raise awareness on the sanitation crisis in parliamentary debates.

In India, WaterAid and its partners engaged the elected members of the Bihar state assembly by organising state-wide walks and assembly-level discussions to raise awareness on the sanitation crisis in the state.

In Bangladesh, we are currently working with an all-party parliamentary group focussing on WASH to raise the profile of the water and sanitation situation within parliament.

4.5 WORKING WITH THE MEDIA

The media are a powerful ally and engaging with the media is another way to enable community-level voices to be heard by a wider audience and to influence key decision makers. To achieve these aims, CSOs must work to forge close connections among those affected by a lack of safe water and sanitation, community-level organisations, and the media. This means nurturing relationships with media personnel at different levels (from stringers at the local level to key decision makers/editors at the central level). With such a network in place, it becomes much easier to gather, share and publish information on WASH-related issues, and to carry out successful campaigns to bring about positive change.

Our experience has also shown that a distinction needs to be made between publicity and media advocacy. A lot of CSOs get their programs and efforts highlighted in the media and claim that

they are doing media advocacy. This claim may not necessarily be true, despite an impressive number of press clippings. Media advocacy is the strategic use of the media to create a public discourse so that this public discourse then influences policymakers and other arms of the government or other influential players/stakeholders. 'Publicity' work may or may not lead to this. The fact is that many things are published in the media as the media are hungry for news, but that does not necessarily mean that media have been effectively utilised from an advocacy perspective.

The media are also used more generally to help the public and politicians appreciate the importance of water, sanitation and hygiene in education, health and economic development. This provides a strong foundation to demand sustained, equitable and efficient expenditure for the sector.

Building and maintaining relationships with the media at both the country and regional levels is critical for carrying out impactful policy work. The momentum generated by such relationships not only brings issues affecting poor people to public attention but also puts pressure on governments and decision makers to deliver on their WASH responsibilities.

The Information and Communication Network on Water, Hygiene and Sanitation (RICHE), a network of journalists in Burkina Faso, has played a key role in raising awareness about the right to water and sanitation and how the poor have been affected, thus challenging the government and service providers to take action.

In South Asia, the power of the media has been used to create mass awareness and shape public opinion about the importance of safe water and sanitation, and to impress upon policymakers and governments the measures to be taken to ensure that these basic needs are met. The South Asia Regional Media Forum on WASH was established in 2011 to write and broadcast extensively on the important but ignored issues of water, sanitation and hygiene; to bring to light the human tragedies, mainly of women and children, hidden behind crude statistics; and to jointly target important political meetings, regional and international events.

During the South Asia Conference on Sanitation (SACOSAN) in April 2011 and the South Asian Association for Regional Co-operation (SAARC) summit in November 2011, the Forum journalists actively highlighted the pathetic situation of sanitation in the region through news and feature articles. In its first year, the Forum was able to publish more than 200 stories on issues such as access to water and sanitation for marginalised communities; disasters and access to water and sanitation; urban water and sanitation problems; children and WASH requirements; and the link between health and WASH.

4.6 ENGAGING IN POVERTY REDUCTION AND SECTOR DEVELOPMENT PROCESSES

In international development debates, the challenge of building responsive and accountable states which in turn will work to alleviate poverty, protect rights and tackle social inequalities has been a focus in recent years. Much of the debate centres on improving the institutions of government. Yet states are not built through formal institutions alone. Organised citizens also play a critical role, by articulating their concerns, mobilising pressure for change, and monitoring government performance.

The United Nations World Public Sector Report 2008, entitled “People Matter: Civic Engagement in Public Governance”, argues that engagement is important in policy development as well as in budget, service delivery, and accountability processes, and produces outcomes that favour the poor and the disadvantaged.

Government actors must be prodded to recognise and support the critical role of citizen action and engagement in poverty reduction and sector development processes if change is to be sustainable. Trying to build responsive and accountable states without recognising and supporting the contributions of organised citizens to the process will do little to bring about sustainable change.

In Mali, as part of our work on governance and transparency, local organisations have been able to build relationships with various government departments, and because of this, they have

been engaged with processes related to poverty reduction strategies and joint sector reviews. Advocacy by the National Steering Committee for the International Campaign for Water, Sanitation and Hygiene (CN-CIEPA) within the water and sanitation sector has led to revitalisation of the steering committee of the Water and Sanitation Sector Programme (PROSEA), the national co-ordination mechanism. A civil society platform has also been created to contribute to the steering committee discussions.¹³

Conclusion

WaterAid's experience in applying rights-based approaches has made us realise that irrespective of the specific tool utilised, there are a few underlying guiding principles that apply to all of our efforts at championing the WASH rights of the poor. These principles are also highlighted in a recent publication of the Institute for Development Studies.¹⁴

Building and protecting democratic space is critical. Creating and maintaining democratic space for citizens to organise and articulate their voices is a pre-requisite for effective policy change.

Civil society organisations rarely change policy by themselves. Broad coalition building that includes other stakeholders, including government actors, is critical for achieving pro-poor change. Achieving the broader goals of civil society campaigns requires the capacity to operate at multiple levels; sometimes at different stages in a campaign, and sometimes simultaneously. Because many types of alliances are important, civil society actors must ally with others in diverse coalitions – including with progressive figures within government, with legal scholars, academics, and technocrats of professional associations who bring specialist knowledge to bear on policy debates, and of course with grass-roots organisations and social movements.

¹³ WaterAid: Governance and Transparency Fund Annual Report 2010/11.

¹⁴ Institute for Development Studies: Focus Policy Briefing Issue 05 (2008) Building Responsive States: Citizen Action and National Policy Change.

Strategic framing of issues and messages is important, paying special attention to international norms as well as the national context. 'Universal' framing helps coalitions claim the moral high ground, and can also play an important role in alliance building. However, in some cases activists prefer to downplay international norms and stress national and local values.

Contentious issues may require contentious politics. Such campaigns require a greater focus on collective action and popular mobilisation, as well as skilful use of high-profile media. Campaigns that involve conflict and antagonism, rather than more comfortable 'partnerships' with government, require a strong and relatively independent civil society that can challenge and hold its own against powerful interests

Sustaining success and robust change requires robust campaigns. Building cultures and constituencies for change can be as important in the long term as changes in government policies. To be sustainable, campaigns should effect change at every level – from local to national, tangible to intangible levels. The better the implementation of national policy reforms, the more likely they are to translate into material improvements in people's lives and to gain popular support. And the more campaigns create the 'intangible' changes in decision-making patterns, accountability, and rights-claiming capabilities, the more policies themselves will be 'owned' and remain in place.

The other important conclusion that our experience thus far has brought us is that people-centred, rights-based approaches can deliver more sustainable solutions, because if they are successful, decisions are more likely to be focused on what marginalised communities and individuals require, understand and can manage, rather than what external agencies deem is needed. Even when it is not fully able to influence decision making at the legislative level, the change in self-perception of the people, from seeing themselves as passive recipients to seeing themselves as rights claimants, gradually works towards changing the power equations at different levels. This eventually leads to more people-centric decision making.

A Human Rights-Based Approach to Climate Change¹

BY MARCOS A. ORELLANA

Introduction

This paper explores human rights standards and mechanisms relevant to addressing climate change, with a focus on human rights training and education. It also discusses how climate change policies and measures can affect a wide range of human rights recognized by international human rights law. Additionally, this paper analyzes how a human rights-based approach can help to integrate human rights standards into climate change policy and development cooperation to achieve effective and equitable implementation of human rights. Finally, it concludes that human rights training and education effectively contribute to the development of capacities, for both rights-holders and duty-bearers; ensure a basic understanding of human rights law; and, integrate human rights standards into climate change policy.

This paper first discusses the human rights-based approach to development and climate change respectively. Next, it analyzes how a wide range of human rights are affected by the physical impacts of climate change as well as by adaptation and mitigation measures. Then it will discuss the importance of the linkages between human rights and climate change for the purposes of addressing human rights violations caused by climate change; protecting the human rights of vulnerable groups; and, facilitating international cooperation in protecting human rights from climate change. Finally, the paper concludes that human rights training and education can contribute to achieving the effective and equitable realization of human rights in the face of climatic uncertainties. .

¹ This document has been prepared by CIEL fellows Misako Goto and Chris Kyle under the supervision of Dr. Marcos A. Orellana, Director of CIEL's Human Rights and Environment Program.

A Human Rights-Based Approach to Development and Climate Change

A human rights-based approach brings human rights standards into development activities and programs to fully realize all human rights recognized by international human rights law. The United Nations (UN) development agencies and human rights bodies have integrated human rights into their policies and explicitly worked to promote respect for human rights issues in their development programs (e.g., poverty reduction). Also, many international human rights non-governmental organizations (NGOs) have advocated for the recognition and protection of economic, social and cultural rights in relation to development issues. Furthermore, a rights-based approach to development encompasses basic human rights principles, such as transparency, participation, non-discrimination and accountability, human dignity, empowerment, and the rule of law. For example, some development decision-makers are required to engage in a consultation with affected communities in order to minimize disproportionate impacts on vulnerable groups under the human rights-based approach to development.

In addition, a rights-based approach is central to effective and equitable implementation of climate change policy. It can address the unequal level of economic, social, environmental and human development created by the many, different challenges posed by adaptation to climate change. At the national level, a rights-based approach requires decision-makers to incorporate human rights compliance mechanisms and procedures in all new climate change policies after identifying climate impacts on the most disadvantaged. This is accomplished using disaggregated data according to the prohibited grounds of discrimination (e.g., race, colour, sex or national origin). At the international level, a rights-based approach requires decision-makers to integrate human rights standards into their climate change policies to ensure that international cooperation does not infringe on human rights in developing countries when providing development cooperation overseas.

Importantly, the human rights principles relevant to national development policies and measures are equally applicable when states assist developing countries for climate change policy and measures overseas. For example, Principle 2 of the Rio Declaration on Environment and Development provides that “States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.” This formulation implies that the international community may not address climate change or any other global or transboundary harm in a manner that allow its effects to violate basic human rights standards.

Human Rights Implications of Climate Change

The Intergovernmental Panel on Climate Change concluded that climate change is occurring and attributable to increasing green house gas (GHG) emissions resulting from human activity. In many parts of the world, climate change has led to increased environmental degradation and has affected increasingly larger numbers of people and their basic human rights. For example, the Office of the UN High Commissioner for Human Rights (OHCHR) concluded in a 2009 report on the relationship between climate change and human rights (A/HRC/10/61) that climate change can interfere with human rights, posing immediate and far-reaching threats to people and having direct and indirect implications for their enjoyment of human rights. It is beyond dispute that climate change will have an increasing impact on the environment and human rights in the future. Generally speaking, human rights are impacted by climate change in two ways: (i) physical impacts of climate change and (ii) the impacts of climate change policies (e.g., adaptation and mitigation measures).

Physical Impacts of Climate Change

Physical impacts of climate change result from extreme weather conditions, rising sea levels, rapid increases in Earth's temperature and unexpected changes in precipitation patterns. These physical impacts have led to various kinds of human impacts, such as loss of land, damage to coastal property, depletion of agricultural soils, contamination of water supplies, spread of disease, dislocation of populations, and disruption of educational services. In short, physical impacts of climate change pose a threat to livelihoods and deprive people of their basic means of subsistence.

Also, human rights are implicated by climate change policies including adaptation and mitigation measures. Since the entry into force of the UN Framework Convention on Climate Change (UNFCCC) in 1992, many states have taken adaptation measures to address the impacts of climate change and mitigation measures to stabilize and reduce GHG emissions, for example by implementing technology transfer and Clean Development Mechanism (CDM) projects. Although adaptation and mitigation measures intend to prevent dangerous interferences of climate change with human rights, they potentially infringe on human rights including the rights to self-determination, life, health, food, water, property, culture and education.

Policy Impacts of Climate Change: Adaptation Measures

Adaptation measures enhance the capacity of societies and the environment to effectively respond to the increased threats of climate change. Adaptation measures can address vulnerability to climate change and respond to risks to water resources, biodiversity, low-lying coastal regions, agriculture, fisheries, and forestry, to name a few issues. To reduce the vulnerability to climate impacts, decision-makers can ensure access to additional water resources and increase the resilience of farming systems and regions to the risks of climate change. One example of the adaptation measures can be found where

decision-makers have changed a wide range of development activities (e.g., design of hydropower facilities and resettlement policies) to accommodate the projected risks of climate change (i.e., increasing temperatures leading to glacial retreat, glacial lake flooding, and decreased downstream flow in the Himalayas region).

Despite good intentions, adaptation measures can infringe on various human rights. Adaptation measures may exacerbate already existing social inequity by failing to consider climate impacts on the socially disadvantaged groups. Often, these groups will not only be adversely affected by the impacts of climate change, but also may be disproportionately affected by the adaptation measures pursued for the purposes of minimizing climate change risks. For example, the shift to low-carbon energy alternatives is likely to impose minimum energy performance standards and have the potential to increase costs for users, some of whom cannot afford the increase. Therefore, adaptation policy may have adverse impacts on human rights, such as the rights to equality and non-discrimination, self-determination, property, housing, and culture.

Policy Impacts of Climate Change: Mitigation Measures

Mitigation measures to reduce GHG emissions and to help states meet their international obligations to combat climate change are often achieved through the use of the market-based mechanisms established under the Kyoto Protocol (e.g., the CDM and Joint Implementation). Under carbon emission trading schemes, mitigation measures allow developed countries to meet their treaty obligations by investing in reductions in GHG emissions in developing countries, thereby generating carbon credits that industrialized countries can use to offset their own GHG obligations. Under REDD+ (reducing emission from deforestation and forest degradation) initiatives, developed countries provide funds to developing countries in support of forest management governance and activities that prevent deforestation or degradation that otherwise would have taken place.

However, mitigation measures can infringe on various human rights if they do not respect human rights standards. For example, a large-scale hydroelectric project in a developing country under the CDM could force local communities to relocate from their traditional lands and livelihoods resulting in infringement of their rights to self-determination, property and life. Although current CDM procedures contain tools to help promote a rights-based approach, including disclosure of environmental assessments and channeling for public participation, the CDM has yet to fully adopt a rights-based approach to ensure that its operations respect human rights. Also, in the case of REDD+, national governments establishing protected areas over forests occupied or used by indigenous peoples and other forest dependent communities could potentially violate various human rights by displacing and relocating traditional occupants and infringing on their traditional resource use rights.

Therefore, it is critically important to integrate a human rights-based approach into adaptation and mitigation measures to ensure that people and communities are protected. This approach can address human rights and inequality by focusing on individuals as rights-holders and allow for participation of affected members of society in the development and implementation of climate change policies. Particularly in the case of adaptation, climate policies should be tailored to local conditions because local, community-based initiatives allow the multiple stakeholders to engage in, design, and implement climate risk reduction measures that are more effectively tailored to local concerns related to adaptation. In short, local climate change initiatives have positive influences on reducing GHG emissions and a human-right based approach will contribute to achieving an effective and equitable realization of climate change policy.

Linkage between Human Rights and Climate Change

Given the impacts of climate change on a wide range of human rights, it is essential to strengthen the linkage between human rights and climate change to achieve effective and

equitable realization of those rights. The linkage between human rights and climate change is relevant for three reasons.

First, the linkage between human rights and climate change allows states to use existing international human rights standards and mechanisms to address human rights violations caused by climate change. Under the Universal Periodic Review process, the OHCHR can request states to include statements explaining how climate change affects the state's ability to comply with its human rights obligations under international law. Also, special procedures of the UN Human Rights Council (HRC) can address climate impacts on the implementation of basic human rights. For example, in an annual report submitted to the HRC, the Special Rapporteur on the Right to Food has addressed the negative climate impacts on the right to food, referring to environmental degradation, desertification and global climate change as contributing factors to poverty and noted the concomitant challenges for development programs. The linkage between human rights and climate change helps duty-bearers to use existing human rights instruments and mechanisms to effectively address climate impacts on human rights.

The linkage between human rights and climate change plays an important role in addressing climate change impacts at the regional level. For example, the Inuit people of Canada and the United States submitted a petition to the Inter-American Commission on Human Rights (IACHR), Petition No. P-1413-05, concerning the impacts of climate change on their human rights as enumerated in the American Declaration on Human Rights. The petition argued that climate change has had a devastating impact on the rights of the indigenous peoples of the Arctic. While the IACHR decided not to proceed with the petition, in 2006, it held a thematic hearing to begin investigating the connection between human rights and climate change from a general perspective. The efforts by the Inuit before the IACHR illuminated the linkage between human rights and climate change, and helped broaden and re-focus the terms of the climate change debate. At a second hearing held by the IACHR on climate change and its impacts on freshwater resources in the Andes, the Commission provided its

first official acknowledgement of the human rights implications of climate change. Though this acknowledgement was contained in the press release number 28/11, not a report, it is a significant development in the recognition of the human rights implications of climate change in the Americas.

Second, the linkage between human rights and climate change contributes to international cooperation for assisting states in need of development in addressing the impact of climate change on basic human rights. Often, many forms of environmental degradation are transnational in character. Effective international cooperation to address such damage is important in order to support severely affected countries in the realization and protection of full human rights. Further, climate change poses disproportionately large threats to states lacking resources to protect basic human rights and to invest in adaptation; resulting in transnational inequity. For example, many coastal and low-lying islands states lack the economic resources to adapt to severe climate change and the people living in those countries will face rising sea level and natural disasters associated with changes in temperature and rainfall patterns.

A linkage between human rights and climate change can help states address their international obligations under the UNFCCC, as well as under the UN Charter, to assist low-income countries in adaptation and mitigation strategies necessary to reduce GHG emissions and protect the basic human rights of vulnerable populations. In the context of climate change, it is even more important to facilitate international cooperation because low-income countries, acting alone, cannot fully protect their populations from climate impacts. The linkage between human rights and climate change can therefore help states to fulfill their international obligations to assist states in need of development cooperation and achieve the effective and equitable realization of human rights in the face of climate uncertainties.

Third and finally, the linkage between human rights and climate change enables states to identify particular climate threats

to vulnerable groups, such as indigenous and tribal peoples. Often, such groups are particularly at risk for climate impacts because their livelihoods are inextricably tied to nature and the environment. Climate changes will certainly impact their ability to access water, food and shelter as well as their culture, lands, and means of subsistence. The analytical report produced by the OHCHR on climate change and human rights recognizes that indigenous and tribal peoples have been disproportionately affected by climate change due to a) they are generally less informed about their human rights and b) they lack resources to adapt to climate impacts.

Although they are particularly vulnerable to climate change, indigenous and tribal peoples play a key role in achieving sustainable development. For example, Principle 22 of the Rio Declaration recognizes the special role played by indigenous peoples and their communities in environmental management and development owing to their knowledge and traditional practices. To achieve the effective and equitable realization of the human rights of vulnerable groups, duty-bearers should collect detailed information about local impacts on livelihoods and vulnerabilities to the risks and impacts of climate change and disclose all relevant information to those affected. This disclosure is necessary to enhance their participations in preventing and managing climate change effects. Thus, the linkage between human rights and climate change can identify particular threats to vulnerable groups and help duty-bearers to achieve effective and equitable realization of human rights.

Human Rights Training and Education

The aim of human rights training and education is to broadly promote human rights by raising awareness of human rights among different constituencies; ensuring a basic understanding of international human rights law; integrating human rights into development cooperation; and, developing the capacities of stakeholders to protect those rights. Human rights training and education is important for three reasons: (i) it promotes human rights through ensuring a basic understanding of human rights law, (ii) it develops capacities of rights-holders and duty-bearers

in development cooperation and climate change; and, (iii) it integrates a human-rights based approach into climate change policy and response measures. First, promoting human rights by ensuring a basic understanding of human rights law and standards is particularly important for those who implement development programs because so much of what they do will have human rights implications. In practice, advocacy, awareness-raising, legal action and training and education activities can all contribute to ensuring a basic understanding of human rights law.

Second, human rights training and education play an important role in increasing the capacities of rights-holders and duty-bearers in development cooperation in the climate change context. When stakeholders collaborate and share responsibility for capacity development initiatives, they increase the effectiveness of development programs and ensure country-driven, locally-defined development implementation. When stakeholders engage in awareness-raising to inform and educate about environmental sustainability, they increase ownership of the adaptation and mitigation process at the local level. In particular, developing capacities of stakeholders through proper human rights training and education is important because adaptation measures can be hindered by a lack of awareness and understanding of climate variability and the threats posed by climate change.

Finally, human rights training and education can contribute to a human rights-based approach to climate change. Because adaptation and mitigation measures often implicate human rights issues and equality, a rights-based approach should be incorporated into development cooperation to reduce poverty, strengthen community, build local strategies to live with climate change and empower local communities to participate in the development of climate change policies and measures. Under a rights-based approach, states are required to increase accountability to achieve more equity in the use of natural resources, common property, and the distribution of the environmental impacts, costs, and benefits. The capacity development of duty-bearers (e.g., states) can facilitate increased private sector accountability as well,

which is important given the private sectors' role in natural resource extraction and processing, pollution control, energy and climate change issues, and, in the delivery of environmental goods and services. A human rights-based approach contributes to equitable and effective implementation of human rights standards in climate change policy.

Conclusion

Human beings depend on a healthy environment to enjoy their entitlements to a wide range of human rights. However, environmental degradation due to climate change threatens many human rights, decades of progress towards poverty reduction, and poses grave risks to the attainment of the Millennium Development Goals (MDGs). To effectively adapt to and mitigate the impacts of climate change, countries must follow a human rights-based approach and integrate climate policy into their development programs. The implementation of development cooperation and climate change policy in accordance with a human-rights based approach can protect human rights from climate change; promote respect for human rights recognized by international human rights law as well as by the MDGs; and, promote environmental sustainability.

Human rights training and education can play an important role in efforts towards the realization of human rights because it can help to successfully integrate human rights standards into climate change policy as well as development cooperation. This can be accomplished through ensuring a basic understanding of human rights law; transferring relevant knowledge of human rights law in an appropriate manner; developing capacities of duty-holders and rights-holders; addressing disproportionate impacts of climate impacts on vulnerable groups; and, facilitating international cooperation to protect human rights from climate change. Human rights training and education must play an increasing role in addressing the climate-related impacts on human rights issues as well as climate change policy, including adaptation and mitigation.

Indigenous Peoples and an HRBA for Development Cooperation

BY JANNIE LASIMBANG

Introduction

Since the Social Summit in Copenhagen in 1993 put human rights at the centre of the development agenda,¹ much effort has been made to establish the rule of law and access to justice as the necessary conditions for human development. This has spurred interest in social, economic and cultural rights by human rights non-governmental organizations (NGOs) on the one hand, and an interest in the protection of civil and political rights by development NGOs on the other. Cooperation between NGOs, indigenous movements, and the United Nations has launched a process of operationalising a human rights-based approach to development and a human development-based approach to human rights.²

Aid agencies and states have pledged to end poverty by 2015 through the United Nations (UN) Declaration on Millennium Development Goals (MDGs). Ensuring that indigenous peoples - who are among the poorest, most marginalized and disadvantaged sectors of society - are included in these goals will require that their needs be taken into account at all levels, including nationally, in designing overall plans and strategies, and locally, in the implementation of action plans and strategies. Indigenous peoples' right to self-determination, their right to decide their own future, must be the basis for all development policies in indigenous areas.

The human rights-based approach (HRBA) to development serves as a good basis upon which effective development policies and measures can be built to adapt development programs

¹ United Nations, "World Summit for Social Development: The Copenhagen Declaration and Programme of Action," New York. 1993.

² A Human Rights-Based Approach to Programming (HRBAP), Source: http://www.fao.org/righttofood/kc/downloads/vl/docs/Jonsson_HRBAP.doc.

to serve the interests of indigenous peoples. Prerequisites for the HRBA include real knowledge of indigenous peoples, the development of expertise and capacity, and effective empowerment through human rights education. The HRBA is also premised on the need to adopt human rights standards, and it is essential to recognise the UN Declaration on the Rights of Indigenous Peoples as one of the key international human rights instruments relative to indigenous rights.

Ideally, development cooperation should guarantee indigenous peoples' access to resources so that they can develop their own territories and ensure that international laws safeguard their interests. This would imply new relationship models in which indigenous peoples play important roles in development cooperation. However, indigenous peoples are often unable to influence development cooperation policies. They lack access to information and understanding of structural development programs. Empowering communities and peoples to gain greater control over their lives and futures requires a holistic and multi-faceted approach. Networking and cooperation among indigenous organisations globally could help organisations support each other and gain perspective on the need to balance bilateral aid.

International Development Cooperation and Indigenous Peoples

International development cooperation aimed at reducing poverty for indigenous peoples is either targeted to them specifically or comes in the form of economic development aid within their traditional territories. To be successful, this development cooperation must be based on three principles examined in this paper: it must reflect indigenous peoples' own concept of development; it should follow a human rights-based approach to development; and it must reflect a respect for shared responsibilities.

Victoria Tauli-Corpuz emphasizes that international development cooperation should support development that reflects indigenous peoples' own vision, perspectives, and strategies for self-determined development within the framework of respect for their

basic human rights and fundamental freedoms.³ The concept of indigenous development will be elaborated in section 3 of this paper.

The paper will then look in section 4 at how an HRBA to development can be applied to indigenous peoples' issues. Governments and international development agencies have the responsibility to include indigenous peoples in development processes. Policies have been adopted over the years by international financial institutions, UN specialised agencies and funds, and some bilateral donors to include the rights and interests of indigenous peoples in the international development agenda. At a minimum, states are expected to take special or positive measures in order to provide equal opportunities for indigenous peoples with respect to attaining decent living standards.⁴

On shared responsibility, it is important that indigenous peoples' right to development be guaranteed and supported not only by the governments of countries where these communities reside but also by developed countries.

These countries should not only provide financial and technical assistance but also engage in activities aimed at ending poverty and achieving respect for human rights. Indigenous peoples' and other organisations must support indigenous communities through networking and cooperation.

Indigenous Peoples' Rights in the Aid Effectiveness Framework

Ensuring respect for the above principles becomes more challenging in the face of an increasingly centralized aid effectiveness agenda. Research by the International Labour Organisation (ILO) indicates that the approach adopted under the 2005 Paris

³ Victoria Tauli-Corpuz, "A Framework for Advocacy in Support of Indigenous Peoples' Visions, Perspectives and Strategies for Self-Determining Development," in UNDP, *Indigenous Peoples and the Human Rights-Based Approach to Development: Engaging in Dialogue*, 2007, p. 96.

⁴ UNDP-Regional Indigenous Peoples' Rights and Development (RIPP), *Indigenous Peoples and Millennium Development Goals*, p. 41.

Declaration on Aid Effectiveness carries inherent risks for further exclusion of indigenous peoples if safeguards are not developed. The table in Annex 1, which reproduces the results from the ILO research, details some of the specific risks posed by each of the five principles of the Paris Declaration.

The question of aligning development aid with partners' national policies and other principles contained in the Paris Declaration on Aid Effectiveness was also raised by the UN Expert Mechanism on the Rights of Indigenous Peoples. In its first study on the Right to Education, the Expert Mechanism noted:

"Support for indigenous peoples can even be omitted if participation in government structures or in decision-making is weak, or if indigenous peoples have little political leverage or are absent in the Government's over-all strategy. Measures must be taken to address such deficiencies using a rights-based approach and to include requirements such as governance, inclusiveness, transparency and quality with respect to education."⁵

Aid agencies using the Paris Declaration have accepted offers by indigenous peoples and organisations to provide better understanding of their own structure and situations. Evaluations of the Declaration show that earlier methods used in development assistance continue to be applied, without taking local structures into account, and therefore this type of assistance does not always reach the people it targets.⁶

Other challenges for implementing development cooperation strategies include the lack of mechanisms for securing participation of indigenous peoples; scarcity of statistics or data on the situation of indigenous peoples; and the lack of knowledge of in-

⁵ A/HRC/12/33.

⁶ Korkeakivi, Antti, "Advancing the Declaration on the Rights of Indigenous Peoples through true partnership: New UN initiatives on the Rights of Indigenous Peoples in University of Tromsø," in *Stakes Replacing Rights – New Pathways for Indigenous Peoples in Development Cooperation?* 2011, p. 16.

indigenous issues among staff of development institutions and governments. However, indigenous peoples have demonstrated their ability to participate in resource utilization, and given the opportunity, they are best able to improve their own living conditions, providing health and education services for their own people.

It is necessary that appropriate tools be developed to gather information, that reporting and analysis related to indigenous people be required, and that the reports be made widely available. More importantly, a review of the 2005 Paris Declaration that takes into account to the 2007 UN Declaration on the Rights of Indigenous Peoples must be undertaken.

The CSO Open Forum for Development Effectiveness, a worldwide civil society network, made a series of proposals to the 4th High Level Forum on Aid Effectiveness, which took place in Busan, Korea, in November 2011.⁷ These proposals insist that development cooperation be conducted in accordance with the international human rights framework, recalling that donors and partner governments have the same international human rights obligations, including towards indigenous peoples' rights. Unfortunately, in the final Declaration of the Busan meeting, entitled "Busan Partnership for Effective Development Cooperation", there is no reference to indigenous peoples as legitimate partners, entitled to the right – as established in ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and the UN Declaration on the Rights of Indigenous Peoples – to decide on their own development. Indeed, the aid effectiveness agenda fails take into account indigenous peoples' conception of their own development.

Indigenous Peoples Concept of Development

Indigenous peoples have, through historical processes, been denied the right to control their own development. It is therefore urgent that they be able to define their own concept of development

⁷ Better Aid and CSO Open Forum for Development Effectiveness. CSOs on the Road to Busan: Key Messages and Proposals, April 2011.

based on their own diverse values, visions, needs and priorities. For example, the indigenous peoples of Asia define indigenous development as “the growth or progress of an indigenous community in its originality or within the context of its ethnic identity i.e. the growth and expansion of indigenous systems in a holistic way.”⁸

Important aspects of indigenous peoples’ concept of development coincide with indigenous systems, those that govern the way of life of indigenous societies, at both the individual and collective levels. They include social, cultural, belief, health, political and institutional, judicial, education, economic, resource management and technological systems. Indigenous peoples’ concept of development is holistic and these systems are closely interconnected. Indigenous lands, territories and resources are central to the systems, and indigenous life is threaded through with all of them. Any development that occurs in indigenous lands and territories will affect most, if not all, of these systems.

The progress of the community is based on these systems that have been handed down through generations and are regulated by customary laws. They are consistent with indigenous peoples’ simple lifestyles and symbiotic relationship with the natural environment and other communities they come in contact with. The indigenous concept of development, like the concepts, principles and practices of indigenous systems, is dynamic. Communities aspire to maintain their systems, and parameters to measure interface with states and other entities may be established as prescribed by the Asia Indigenous Peoples Pact in Annex 2.

Why do difficulties related to indigenous peoples and development persist? Indigenous peoples face tremendous challenges as development initiatives and interventions often overlook or marginalize them or do not recognize their specific needs and priorities. The UNDP Human Development Report in 2004 concluded that public spending on basic social services in many countries “systematically discriminates against minorities and indigenous

⁸ Asia Indigenous Peoples Pact, First Indigenous Development Conference, 2006.

peoples.” The way development is pursued disserves indigenous peoples in two ways. First, while they have the same rights to development, resources and services that all people have, they are not given equal treatment. Second, they may have specific rights and entitlements as an indigenous group but these may be in conflict with the interests of the majority population.

Furthermore, the participation and consent of people affected by development and their full control of the process are very difficult to achieve. Challenges facing an indigenous concept of development include the absence or lack of recognition for pluralism; insufficient interface of legal and policy frameworks, including the recognition of customary laws; the need for innovative programmes by indigenous peoples based on the Declaration on the Rights of Indigenous Peoples; and the need for continued efforts to strengthen the capacities and institutions of indigenous peoples. The harshest reality today is that, in the name of green economic development, indigenous territories are becoming a primary focus for development without indigenous peoples’ free, prior, informed consent.

Development in Indigenous Territories

Development occurring in indigenous territories needs to be informed by an understanding of the relationship of indigenous peoples with the land and the territories where they live. Special Rapporteur Erica Irene A. Daes summarized, in her 2001 report, four elements that are unique to indigenous peoples:

- A profound relationship exists between indigenous peoples and their lands, territories and resources;
- This relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities;
- The collective dimension of this relationship is significant; and
- The intergenerational aspect of such a relationship is also crucial to indigenous peoples’ identity, survival and cultural viability.⁹

⁹ E/CN.4/Sub.2/2001/21.

In addition to these four elements, the ILO has provided a relevant and complementary analysis of the right to development of indigenous peoples:

“...While the construction of infrastructure, oil exploitation, logging and mining has contributed to economic growth for certain sectors of society, the consequences for indigenous peoples have often been devastating. Their land has been taken away, their forests have disappeared and their rivers are left contaminated. They have thus been deprived of their means of livelihood, often with no compensation or access to alternative livelihoods. Indigenous peoples’ poverty is a reflection of their generally marginal position within national societies. This implies that indigenous peoples are also marginalized with regards to participation in the shaping of the development strategies and with regards to access to resources aimed at alleviating poverty.

The fundamental starting point is the understanding that indigenous peoples are distinct peoples who have their own histories, territories, livelihood strategies, values and beliefs and thus hold distinct notions of poverty and well-being. The preamble of the UN Declaration on the Rights of Indigenous Peoples recognizes that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising their right to development in accordance with their own needs and interests. If indigenous peoples’ own perceptions and aspirations are not addressed in development strategies and programmes, there is a risk that these will either fail or even aggravate the situation by for example depriving indigenous peoples of access to crucial resources, undermining traditional governance structures or contributing to the loss of indigenous languages.”¹⁰

¹⁰ ILO, *Indigenous and Tribal Peoples’ Rights in Practice*, 2009, p. 118.

What distinguishes indigenous peoples' relationship to land from that of many other peoples is its close and multi-dimensional character, such that the impact of land loss can be devastating and can lead to total social breakdown. Claim by the state to indigenous peoples' lands, territories and resources, including the right to impose development or alienate the land for development, ignores not only the fact that indigenous peoples have historically occupied the land and used the resources, but also the fact that they have their own customary laws recognizing and regulating ownership and access.

Despite impositions by the state, many indigenous societies still have their own customary systems regulating access to, and use and management of, land and resources. Most of these systems are community-based: the rights to use and manage land and resources are regulated within a community and by its own institutions. The customary laws regulating such community-based land and resource use systems are usually very complex. Use or ownership rights of a particular resource or stretch of land depend on the nature of the land or resource and the relationship that has evolved between this particular resource or track of land and the community members.¹¹

The HRBA and Indigenous Peoples¹²

Development strategies thus must be designed to overcome marginalisation and dispossession of land and at the same time respect the rights of indigenous peoples. This can only be achieved with the participation of the peoples concerned and with their full consent to the process. Article 23 of the UN Declaration on the Rights of Indigenous Peoples states:

“Indigenous peoples have the right to determine and develop priorities and strategies for exercising their

¹¹ Erni, Christian and Lasimbang, Jannie. Indigenous Peoples and Communal Land, paper presented at Regional Conference on Indigenous Peoples and Communal Land in South and Southeast Asia, 2007, Cambodia.

¹² HRBA Training Manual of the UNDP-RIPP (unpublished).

right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.”

HRBA principles set a basic standard for all development interventions where the process of ‘how’ development occur is as important as the outcomes. They promote a people-centred form of development that seeks to ensure that the people who are affected by development interventions have a say about how and whether these interventions take place in their communities. The HRBA to development is premised on five core principles: universality, inalienability, indivisibility, inter-dependence and inter-relatedness. It also integrates five operational principles participation, accountability, non-discrimination, empowerment, and linkages to human rights standards developed below.

PARTICIPATION

The principle of participation includes granting full attention to indigenous peoples and assuring that they have a decision-making role in the process. Participation needs to be free, active and meaningful which requires access to information, organizational capacities, capacity to articulate claims, etc., and involvement at all levels of the decision-making process. Participation can empower indigenous peoples to shape the development process affecting them, and to become not just be subjects of but partners in development.

ACCOUNTABILITY AND TRANSPARENCY

Assuming duties demands accountability, and duty-bearers have a responsibility to fulfil their obligations. This not only includes accountability upwards to supervisors, donors, etc., but also downwards towards communities and claim-holders. In all development programmes and at all stages (design, implementation, monitoring and evaluation), accountability and transparency

must be promoted, for example, by providing relevant, timely and accurate information, strengthening the rule of law, and ensuring internal as well as external accountability.

HRBA Operational Principles
Participation – Free, active and meaningful participation.
Accountability and transparency - Towards donors as well as to communities.
Non-discrimination and attention to vulnerable groups.
Empowerment – Building capacities to participate, know and claim rights.
Linkages to human rights standards, progressive realization and non-retrogression.

NON-DISCRIMINATION AND ATTENTION TO DISADVANTAGED GROUPS

The principle of non-discrimination is at the core of all human rights treaties: no one can be discriminated against on the grounds of sex, age, national or social origin, political or other opinion, disability, etc. But non-discrimination entails going beyond treating everyone equally to recognizing that there are certain groups that are consistently in a disadvantaged position and that particular attention must be paid to these groups to make sure that disparities are not exacerbated. Non-discrimination means ensuring that the rights of indigenous peoples, as marginalized and disadvantaged groups, are not overlooked. Their rights have to be safeguarded, and they must be encouraged and assisted to participate meaningfully in the development/recovery process. Before programmes can be targeted appropriately, it is necessary to collect disaggregated data on indigenous peoples.

EMPOWERMENT

Empowerment is both the goal of using an HRBA in development programming and part of the process itself. Empowering indigenous peoples includes a focus on building capacity i.e. increasing knowledge and skills to claim and exercise rights effectively. Examples include promoting access to information; increasing awareness of human rights and entitlements; setting up means for seeking redress for grievances; facilitating access to credit; enabling indigenous communities to organize themselves, analyze and seek solutions, and demand redress for grievances.

LINKAGES TO HUMAN RIGHTS STANDARDS

Human rights standards serve as a guide to identifying where and how to intervene on various issues. They provide a 'roadmap' that helps in identifying where problems exist and the capacities/functions needed to address them.

Numerous standards elaborated in international human rights instruments clearly establish guidelines for development interventions. Key among these is the UN Declaration on the Rights of Indigenous Peoples adopted in September 2007, after 20 years of negotiations. Others include the ILO Convention 169, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and instruments such as the Declaration on the Right to Development, Agenda 21, the Vienna Declaration, as well as relevant Declarations and Statements by indigenous peoples themselves. Development interventions need to refer and adhere to these standards when working with indigenous peoples and within their territories.

Applying HRBA principles to indigenous peoples' issues

The HRBA recognizes a progressive realization of human rights, which means that respect for rights should be pursued by all necessary means and to the maximum of available resources. Some rights, such as those that protect indigenous peoples

from discrimination, however, need to be championed immediately (immediate realization) and states are not to wait for resources to be available. Additionally, once respect for rights has been achieved, the principle of non-retrogression means that states must continue to invest resources to at least maintain the existing level of respect for those rights.

Non-discrimination means that all peoples have equal claim to the respect of their human rights, so indigenous peoples are entitled to all rights enjoyed by all human beings. Marginalization and the denial of equal rights (education and health rights as well as political and security rights) of indigenous peoples cannot be justified under any circumstances. But the HRBA principle of non-discrimination goes further, stating that development interventions must particularly focus on vulnerable and disadvantaged groups. Recognizing that there are power imbalances and hierarchies in societies and that different forms of discrimination may exist in any community based on caste, class, ethnicity, sex, race, etc. the HRBA proposes that development interventions address these inequalities.

Development interventions that work with indigenous groups or within indigenous territories must be sensitive to the priorities and specific concerns of indigenous peoples. This includes being aware of the historical context in which indigenous peoples may have faced systematic discrimination in the hands of majority groups and the state, in which their culture and traditions may have been devastated due to policies of assimilation or oppression, in which they may face disproportionate levels of poverty and unequal access to services such as health and education facilities provided by the state, and in which they may have been denied their rights to land and resources.

The discourse around indigenous peoples' rights draws on HRBA principles, even if this is not always explicitly stated. The principle of free, prior and informed consent (FPIC), for example, is very much grounded in the HRBA principles of participation, accountability and transparency. Free, active and meaningful participation is necessary for all development interventions so that

communities can take a lead in defining their own priorities. This not only enhances the process of development interventions by empowering communities and strengthening ownership of projects, but it also has a major impact on outcomes. Community participation can make a significant difference in terms of the success and sustainability of development interventions. In accordance with the HRBA principles of participation and accountability, as well as the principle of FPIC, development programmes taking place within indigenous territories must fully inform communities about the possible positive and negative impacts of the interventions so that indigenous communities can make informed decisions about whether to consent to the projects or not.

A Human Rights-Based Approach to Programming¹³

An HRBA to Programming (HRBAP) is an additional tool to ensure HRBA principles are achieved. HRBAP now makes most 'good programming practices' obligatory, and not just optional. Good programming practices important for indigenous peoples include:

- People are recognised as key actors in their own development, rather than as passive recipients of commodities and services.
- Participation is both a means and a goal.
- Strategies are empowering, not disempowering.
- The development process is locally owned.
- Top-down and bottom-up approaches are used in synergy.
- Situation analysis is used to identify immediate, underlying, and basic causes of development problems.
- Strategic partnerships are developed and sustained.

Indigenous Women and Development Cooperation

Indigenous women are and will continue to be affected by socio-economic globalization, including insensitive international

¹³ Adapted from Jonsson, Urban. A Human Rights Based Approach to Programming. 2004. Source: http://www.fao.org/righttofood/kc/downloads/vl/docs/Jonsson_HRBAP.doc.

development cooperation. Their rights are violated within their own communities and by entities such as corporations and the state. While women in most societies often suffer low status, indigenous women given their triple burden of being indigenous, women, and poor are particularly in need of empowerment measures to help them to be better informed about their rights. Such measures would strengthen their capacity to demand and enjoy the same rights as others. It is vital that in the struggle of indigenous societies for the recognition of their rights, women's rights take equal importance.

International instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), that advocate for the recognition, protection and promotion of women's rights, can be tools for indigenous women. Recognition and respect for indigenous women's rights must go hand in hand with increased participation in decision-making processes so that women can play effective roles in their communities. It is important to recognise indigenous women's equal right to occupy decision-making positions and to empower them to take informed and sound decisions. Such recognition will help address the changing relations within indigenous communities and in society as a whole. It is thus critical for development cooperation that adopts an HRBA to be sensitive to the special needs of indigenous women.

Conclusion

Development cooperation should take into account the normative human rights framework applying to indigenous peoples, in particular the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. This is of crucial importance to how partnerships should be conceived between development institutions and indigenous peoples. Fundamentally, all partnerships with indigenous peoples should reflect their recognition as peoples, entitled to the right to self-determination (art. 3 of the Declaration). According to the Expert Mechanism Advice No. 2 (2011), "Indigenous peoples have the right to determine their own

economic, social and cultural development and to manage, for their own benefit, their own natural resources.”¹⁴

Development cooperation would gain in coherence by following a human rights-based approach informed by the international human rights framework, including the Declaration on the Rights of Indigenous Peoples. Such an approach should be operative in aid architecture and agenda-setting as well as in development programs with a specific focus on indigenous women and children. Indeed, a human rights-based approach to development cooperation, when affecting or involving indigenous peoples, should be based on self-determination and indigenous peoples’ development conception and priorities.

Finally, human rights education and training are a fundamental tool for ensuring that development institutions and actors understand indigenous peoples’ rights. In many countries, indigenous peoples’ issues are a subject of conflict or, at the very least, sensitive for the government and the non-indigenous population. This is why a deep understanding by human rights and development practitioners is of paramount importance in making indigenous peoples’ rights a reality through the day to day work of development cooperation.

¹⁴ See A/HRC/18/42, Annex Expert Mechanism advice No.2 (2011): Indigenous peoples and the right to participate in decision-making, para. 18.

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Annex 1.

The Paris Declaration and risks for Indigenous Peoples

Particular risks faced by indigenous peoples in relation to the principles of the Paris Declaration:

Principles Some general implications

Specific risks related to indigenous peoples

Ownership: Developing countries exercise strong and effective leadership over their development policies and plans.

Development becomes more state-centred, although civil society should also play a role. The quality of policies and plans will depend on the governance (including corruption) and capacity situation in the given country.

The use of donor conditionalities as an instrument for reform is challenged. Instead, donors can focus on policy dialogue in support of changes in the partner countries.

In line with the country-driven approach, donors should delegate authority to staff at the country-level.

Many indigenous peoples, particularly in Africa and Asia, have only weak participation in government structures and national decision-making process and therefore risk not being taken into account in policies and plans.

Donors may hesitate to engage in policy dialogue on indigenous peoples' issues.

Most development agencies face difficulties in ensuring the capacity to address indigenous peoples' issues in their decentralised structures.

Alignment: Donors base their support on developing countries' own policies, strategies and systems.

Donors will no longer define individual country strategies but use the countries' own planning, budget and monitoring frameworks, including arrangements and procedures for public financial management.

Donors should help address capacity weaknesses of partner countries' institutions.

Lack of participation by indigenous peoples in decision-making often implies that their needs and priorities are not reflected in national policies, strategies and programmes and they do not benefit from poverty reduction efforts.

If the partner country is reluctant, donors may not find ways to comply with their own institutional policies on supporting indigenous peoples.

Harmonisation: Donors coordinate their activities and minimise the cost of delivering aid. Donors will establish common arrangements at the country-level for planning, funding, disbursement, monitoring, evaluating and reporting, and sharing of information.

Instead of individual interventions, donors will aim at providing budget support or support to Sector-Wide Approaches (SWAps).

The lack of an overall strategy on support to indigenous peoples (in the context of

the commitments stipulated by the Rome and Paris Declarations) may eventually undermine the value of individual donor policies on support to indigenous peoples.

Managing for results: Developing countries and donors orient their activities to achieve the desired results, using information to improve decision-making. National policies should be translated into prioritised results-oriented operational programmes, reflected in Medium-Term Expenditure Frameworks (MTEF) and annual budgets. This requires strengthening the linkages between planning and budgeting.

Donors should rely on partner countries' statistical, monitoring and evaluation systems. Most indigenous peoples do not have the institutional capacity or political leverage to ensure that their needs and priorities are reflected in MTEFs or budgets.

In most countries, adequate data on indigenous peoples are not available and national statistical bureaux do not have the capacity to provide disaggregated data.

Mutual Accountability: Donors and developing countries are accountable to each other for progress in managing aid better and in achieving development results. It is acknowledged that the successful implementation of the Paris Declaration requires continued high-level political support, peer awareness, and coordinated action at global, regional and country levels.

Compliance in meeting the commitments will be publicly monitored against 12 indicators of aid effectiveness that were developed to track and encourage progress against the broader set of partnership commitments.

Both donors and developing countries should increase their accountability towards citizens and parliament.

The agenda set by the Rome and Paris Declarations focuses on the effectiveness rather than the quality and relevance of aid. Consequently, none of the 12 monitoring indicators is related to governance, human rights, participation, quality or inclusiveness of development.

In other words, the reformed aid architecture in itself provides no safeguards to ensure that "effectiveness" does not jeopardise the rights-based approach.

In many countries, marginalisation with regards to access to education and information excludes indigenous peoples from participating in monitoring and holding governments accountable.

Source: ILO, Indigenous and Tribal Peoples' Rights in Practice, 2009, p. 119

Annex 2.

Indicators of Indigenous Development

Source: Lasimbang, Jannie et al. (2010). Asia Indigenous Peoples' Perspectives on Development. Asia Indigenous Peoples Pact. Chiang Mai, Thailand. p.46

The Asia Indigenous Peoples Indigenous Development Conferences elaborated on the 10 elements of indigenous systems and also developed a set of indicators of the goals and aspirations of indigenous peoples related to **Cultural Integrity and Empowerment** (social, cultural, spiritual and education development), **Technical Integrity and Environmental Sustainability** (technology, natural resource management development), **Wellbeing** (economic, health development) and **Governance** (political and judicial development)

- Collective values and identity are maintained
- Indigenous perspectives and values are actively promoted
- Traditional land use and ownership systems are alive
- Traditional social and political institutions exist and customary laws are enforced to regulate indigenous way of life
- Indigenous skills and knowledge systems on social, cultural, spiritual practices and education are intact and actively promoted
- Indigenous languages are widely used in the community and taught in schools
- Transparent and good systems of resource distribution
- Traditional belief system (e.g. rituals, ceremonies) are freely practiced
- Venues for community gatherings exist
- Indigenous knowledge systems on natural resources management and technology are intact
- Modern technology does not take over indigenous technology
- Promotion and development of indigenous skills and knowledge of natural resources management and indigenous technology
- Environmental integrity of indigenous peoples' territory
- Traditional institutions actively enforce sustainable use of natural resources
- Customary laws are in place to regulate technology and resource use
- Indigenous peoples own and control their lands and natural resources, and collective rights over lands and resources are recognized by government and non-indigenous people
- Active lobbying against globalization that negatively impacts the lives of indigenous peoples
- Transparent and good systems of resource distribution
- Indigenous production systems are encouraged, practiced and maintained
- Subsistence economy is recognized and thriving
- Indigenous knowledge of economic and health systems is intact and actively promoted

- Indigenous healing is recognized, and healers, shamans, ritualists are free to practice rituals and ceremonies and to promote their knowledge
Protection of traditional medicines both resources and knowledge by creating laws, community protocols
- Participation in development processes and in decision-making
- Active lobbying to change laws and policies negatively affecting indigenous peoples
- Traditional defence and security systems exist, including the freedom to develop own defence and protection mechanism
- Indigenous systems on governance and legal knowledge are intact and practiced
- Community organizations exist to ensure that community issues are addressed
- Human rights and fundamental rights of indigenous peoples are recognized and guaranteed by governments
- Traditional institutions are gender sensitive
- Full and effective participation of women and youth
- Indigenous peoples are guaranteed citizenship
- Genuine autonomy is achieved or being advocated
- Strong foundation of traditional leadership e.g. based on responsibility and accountability

Parameters

Parameters to measure the extent to which the indigenous perspective on development should interface or relate with external or non-indigenous development models and the extent to which indigenous development can be promoted independently.

Enactment of laws that ensure protection of indigenous peoples in defending their lands;

Full-implementation of free, prior, and informed consent as a basis for interfacing with outside interventions and all development programmes of the government;

National governments ratify/implement international instruments/standards that protect indigenous peoples rights such as the UN Declaration on the Rights of Indigenous Peoples, ILO Convention 169, CBD Akwé: Kon Voluntary Guidelines, etc.;

National governments legitimize and provide legal and political recognition to customary governance;

Aspirations for genuine autonomy are seriously considered by national governments;

Multilingual education is approved as a government policy and implemented nationwide;

Establishment of indigenous peoples defence systems to secure peace and security over traditional territory;

Use of cultural impact assessment (cultural accounting and inventory) to evaluate outside development intervention over traditional territory; and

Establishment of legal support groups to advocate for the protection of indigenous rights in government policies and laws.

Human Rights Education through Development Cooperation: the Case of Afro-Descendants in Latin America and the Caribbean

BY LEONARDO REALES¹

Introduction

In the 1810s the situation of most Spanish colonies in what we today call Latin America changed. Creole elites wanted to take power from Europeans and control economic resources. The Spanish Crown refused to make substantial changes in its colonial system, which had been used to rule the region for more than three hundred years. So elites decided to declare independence from Spain and fight for freedom. However, their actions neither included the abolition of slavery nor promoted equality to benefit former slaves and their descendants. In fact, once independence was obtained, most Afro-descendants continued to suffer the negative consequences of the denigrating discourses and socio-racial divisions created by the Spaniards and Portuguese and supported by the Creole elites themselves. This situation affected not only all Latin American countries but also the Caribbean ones. Racist practices have persisted all over the region from the first stages of the Republican era through to our time, despite the passage of laws establishing equality and the states' ratification of human rights treaties.

The poverty, exclusion and socio-racial discrimination that Afro-descendants in the region have historically faced are structural

¹ This article is based on my previous work, "The Human Rights Protection Regime for Afro-Descendants: The Case of Latin America and the Caribbean", a research paper published in the academic journal 'Revista de Relaciones Internacionales, Estrategia y Seguridad', Vol. 3, No.1, Universidad Militar Nueva Granada, Bogota, 2008. I want to thank Ronald Michael, Professor Emeritus, California University, for his valuable insights on this text.

problems that should be of concern not only to researchers, advocates and non-governmental organizations interested in development cooperation and human rights education, but also to governments, philanthropists and international financial institutions. There is no doubt that numerous economic, cultural, and socio-political benefits would accrue to the region from the implementation of strategies to eliminate such problems. International interest in this situation has grown over the last twelve years, as is evident in the proliferation of reports and texts demonstrating the urgent need for reducing such marginalization and promoting human rights education and laws in order to achieve equitable development.

In Latin America and the Caribbean, no effective human rights protection regime exists to defend Afro-descendants. While some nations have been proactive in ratifying human rights laws that protect indigenous peoples, most people of African ancestry have been historically excluded from benefiting from these laws. At the same time, self-identification as an “ethnic minority” has been problematic in various ways. Through advocacy opportunities and learning from indigenous groups’ struggles in the region, some Afro-descendant advocates are successfully pushing nations to establish new protection mechanisms for their communities as an ethnic group.

The purpose of this text is two-fold: (1) to explain the complex human rights situation of Afro-descendants in Latin America and the Caribbean, and (2) to enhance human rights education and development cooperation as the keystones of their empowerment and progress.

Previous Research and Analytical Framework

Reports from non-governmental organizations and international institutions like the Inter-American Development Bank, the Economic Commission on Latin America and the Caribbean, and the United Nations Office of the High Commissioner for Human Rights have given accurate portrayals of the Afro-descendants’ human rights situation, but the authors have not analyzed

in depth the historical causes of their systematic marginalization. Researchers have also failed by ignoring the relevance of well-documented studies that would help elaborate a protection regime that Afro-descendants could use as a strategy to help overcome their socio-economic problems as an ethnic group. All the same, Ariel Dulitzky (2001), Felipe González and Jorge Contesse (2004), Corinne Lennox (2006), Leonardo Reales (2005) and Jonas Zoninsein (2001) have produced interesting works on the contemporary history and human rights struggles of Afro-descendants.

Other documents describe human rights treaties that states have ratified to protect Afro-descendants. Martín Hopenhayn and Alvaro Bello (2001), Peter Oakley (2001), and Carlos Sojo and Estanislao Gacitúa (2001) have presented balanced discussions of these treaties and other human rights laws, even though they do not study in detail their effectiveness in practice.

For information demonstrating differences between Afro-descendants and the rest of the population in Latin America and the Caribbean, the author takes into account documents such as the human rights report produced by Maurice Bryan and Margarita Sánchez (2003), who demonstrated that racial exclusion exists in the region, based on statistical comparisons between Afro-descendants and most “Whites” and “Mestizos” (light-skinned mixed-race people).

A few texts have acknowledged that Afro-descendants have made a significant contribution to Latin America and the Caribbean. These works are cited in the text to explain the educational, cultural, economic and political context that has historically characterized the region. There are authors who explore racist practices, exclusion and marginalization in Latin America and the Caribbean, focussing on how Afro-descendants have been systematically excluded from the political and higher education systems. Their works serve as a basis for explaining how non-officially recognized racist practices have, for decades, dramatically affected not only most Afro-descendants but also Latin American and Caribbean societies as a whole.

Regarding the analytical framework of this text, it is important to mention that the success in promoting a normative interpretation of the right to self-determination demonstrates the potency of the agency of minorities, particularly of indigenous peoples. Their political influence and actions are reshaping interpretations of the concepts of minority and indigenous peoples and are changing the landscape of regional human rights protection regimes (Lennox 2006). They have been aided by human rights mechanisms that have opened spaces many times in the face of state opposition for a discourse to emerge around ethnic identities and rights.

It is important to underline that in most Latin American countries, the term 'minority' has been deemed inappropriate or negative. For instance, the use of the concept to denote numerical smallness may seem "illogical" given that Afro-descendants constitute such a large population in Latin America and the Caribbean, totalling 150 million people (Zoninsein 2001). The notion of being a minority is certainly debatable when describing such a quantity of people (Lennox 2006).

Some Afro-descendants in the region feel a negative connotation to the term 'minority' since it is seen as less empowering, implying some weaknesses. In Spanish-speaking nations, the word 'minorías' (minorities) is often perceived as a term that tends to minimize some problems. Hearing comments like "Afro-descendants may have many problems, but they are just a minority, and what we need is to solve the problems of most people" is a common occurrence in the region.

While most of the political efforts of indigenous peoples have been resisted by states, the constant struggle to obtain respect for human rights has influenced the normative understanding of the right to self-determination. Afro-descendants have learned lessons from the indigenous movement. This helps explain why they are focused on taking advantage of the international human rights regime to reflect their interests as a group (Lennox 2006). They continue to strive to shape the discourse about their rights

while using their identity as a political tool. Nevertheless, Afro-descendant leaders in the region recognize that there is much work to be done with regard to self-identification, since the pull factor for many Afro-descendants to self-identify as “White” or “Mestizo” remains.

The aforementioned factor comes from the racist elites’ idea of promoting the “whitening” of the population as the best strategy to “improve the race” and is the main reason why enhancing human rights education and development cooperation to benefit Afro-descendants continues to be one of the toughest challenges for leaders and advocates.

Who are the Afro-Descendants?

The experiences of people of African descent across Latin America and the Caribbean are diverse, though most have nonetheless historically been uniformly ignored by the states. Afro-descendants range from a large demographic majority in several Caribbean states to a relatively-small numerical minority in Latin America (Lennox 2006), except for Colombia and Brazil. They have distinct experiences of exclusion that influence their position in society. Some communities are urban and others are rural. Many Afro-descendants live in coastal zones or places where they have settled since slavery times. There are variations in traditions, and they descend from different tribal groups across Africa (Minority Rights Group International 1995). Afro-descendant leaders believe, nonetheless, that they have been, and are being, successful in forging an identity under the rubric of all being people of African origin who bear the legacy of slavery, marginalization and racism that their ancestors began fighting centuries ago.

Afro-descendants still occupy the lowest social stratum and have limited access to human rights education and development cooperation. They do not even have access to good education facilities, and it has been hard for most of them to implement ethnic rights education programs or education projects in their mother tongue (Cristina Torres 2002 and Clare Ribando 2004), which is

not only a fundamental (ethnic) right but also a pre-condition for empowerment and progress.

Arguably, the self-determination of the vast majority of Afro-descendants has also been denied by colonialism. People of African descent were brought to the territory by colonizers and slave-traders involuntarily, and many still retain distinct socio-cultural identities, as expressed through music, land use, livelihoods, etc. Those who have been “integrated” into mainstream society have done so only at the lowest levels of the social hierarchy (Dulitzky 2001).

Some Afro-descendant advocates from communities like the Raizales and the Palenqueros in Colombia are currently seeking legal recognition not only as Afro-descendant ethnic minorities but as indigenous peoples at both regional and international levels. As the Colombian Ministry of the Interior (1998) underscored, the Afro-Colombian Raizales on San Andrés Island are a “unique” ethnic community. The Raizales speak both “bandé” a language of African origin and English, and have religious traditions that are not practiced anywhere else in the country.

Despite the state recognition of the Raizales, they are historical and ongoing victims of racist practices that have produced internalized racism among them. Some Raizales do not even speak Spanish, but they still hear from intellectuals and read in educational texts that their nation’s only motherland is Spain, which tends to negatively affect their cultural heritage (Dulph Mitchell and Leonida Bush 2002) and represents a grave human rights abuse.

The heritage and history of the Palenqueros has also been ignored, even when the United Nations Educational, Scientific and Cultural Organization (UNESCO) declared this community Intangible Cultural Heritage for Humanity. The Palenqueros live in San Basilio de Palenque, a small town that was founded by escaped slaves centuries ago, well-known for being the first free town in the Americas. Central to this community is the Palenquero language, the only Spanish-Bantu Creole spoken in the Americas

(Nina De Friedemann 1993). The Palenquero language constitutes a vital factor reinforcing socio-political cohesion among community members and all local-level human rights education activities.

The Palenqueros are not only severely threatened by the market-economy transformation, which menaces local production modes, but also because issues related to the Colombian armed conflict are affecting their surroundings. Outside their town, the Palenqueros have been subjected to racism, socio-racial discrimination and ethnic stereotyping leading to a denial of their (ancestral) values. As UNESCO (2005) underlines, the increasing influence of commercial media and unsuitable high school curricula is eroding the community's heritage, leading to cultural homogenization.

There is only one Afro-descendant group in the region that has been widely and officially accepted to be an "indigenous people": the so-called Garífunas. The Garífuna people are descendants of escaped slaves and indigenous persons who still practice traditional livelihoods that are closely linked to their environment, often living in coastal regions (Francesca Gargallo 2002). Although the Garífunas cannot be considered original inhabitants of the region, they have retained evidence of their African heritage, leading the Guatemalan state to recognize them as indigenous peoples.

An Overview of the Afro-Descendant History

In the 1810s, when the wars for independence in the region began, society was divided by statute into the so-called socio-racial castes, which comprised, broadly speaking, Euro-Mestizos, free people of African origin (Afro-Mestizos and Afro-Indigenous persons), indigenous persons, and slaves. The castes were ruled by (white) Europeans and Creoles. Free Afro-descendants were not permitted to be professionals or to enter the various civil or military bureaucracies. When the military was created, they were permitted to serve, but in segregated units (Jay Kinsbruner 1994).

The term *caste* was a pejorative reference to those of mixed blood, before and during the independence process. Rolando Mellafe (1984) notes that the preference was to be considered Euro-Mestizo, so as to be, socio-racially speaking, “close to the rulers.” Some free Afro-Mestizos and Afro-Indigenous purchased a pure-blood certificate from authorities. This operation was used not only to gain respect but also to have access to state benefits (Reales 2005). Afro-Mestizos and Afro-Indigenous then perceived this so-called *blanqueamiento* (whitening) as the best strategy to ascend in the socio-racial pyramid inherited from colonial times.

The situation of slaves was obviously the worst. Although sometimes slave masters were “respectful” of their slaves and manumitted them after years or decades of hard work, most slaves were treated as wild beasts. This is the main reason why, from the earliest days of Spanish-American slave society, running away, or “*el cimarronaje*,” was a common occurrence.

Once slavery was abolished in Latin America and the Caribbean in the 1850s and 1860s, Afro-descendants found themselves in a largely unchanged cultural, socio-economic and political situation, suffering the consequences of the denigrating discourses created within the framework of slavery. Historical texts indicate the reproduction of the so-called socio-racial structure, in spite of laws promoting the existence of a society formed by free men and women living under the same judicial and human rights conditions. Socio-racial discrimination practices, in fact, grew stronger throughout the region, affecting both Afro-descendant and indigenous communities.

These practices spread in the region, as they were imposed by national political elites who controlled the states (Dulitzky 2001). Researchers list two phenomena among the consequences of such practices: internalized racism and invisibility in social terms. Internalized racism causes many people of African origin not only to deny their ethnic origin but also to discriminate against their own families. It is a complex psychological problem which is not easy to overcome since the mass media and the education system

continually reproduce negative images of those who have African background and hide their major contributions to the region. Once again, human rights education at all levels is the best tool for facing and solving this problem.

Despite their undeniable historical contributions, which include thousands of soldiers who died seeking both independence from colonial powers and the legal abolition of slavery, most Afro-descendants have neither been effectively included in Latin American and Caribbean societies as equal citizens, nor have they been given real opportunities to enjoy their human and ethnic rights. As William Sharp (1968) would say, Afro-descendants may have become free before the law, but their “race” continued to be the sign of their inferior socio-economic, cultural and political status.

Most Afro-descendants continued to be dehumanized despite the advent of the so-called “Republican” world. Those who survived the wars for independence did not substantially improve their political situation or living conditions, not even when freedom and civil and political rights were granted. Two centuries later, Afro-descendants, who are still marginalized in Latin America and the Caribbean, have found in the reconstruction of their history a valuable tool to feed their identity discourse and human rights education in the context of development cooperation.

The Current Human Rights Situation of Afro-Descendants

Racism has produced serious self-esteem problems in Afro-descendant populations. It is urgent that Latin American and Caribbean states implement international human rights treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the American Convention on Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of All Forms of Racial Discrimination and the Covenant 169 of the International Labour Organization, which were ratified throughout the region with a clear view to improving the situation of ethnic groups.

The Millennium Development Goals complement these treaties insofar as they seek the elimination of poverty and the promotion of development in a non-discriminatory framework. It is important to note that while the main objective is strengthening economic growth and equitable development, all countries must guarantee the elimination of institutional racism.

Although Afro-descendants in general live in the poorest regions in Latin America and the Caribbean, and have the lowest level of income, the situation is even worse when we analyze the gender component. Afro-descendant women (and girls) are not only the most excluded persons in the region, but they suffer the consequences of domestic and sexual violence, as other women do. This problem can be solved through human rights education as well, thus helping recognize the role of women as promoters of culture and values. It should be underlined that in all development cooperation activities for Afro-descendants, the gender issue needs to receive special attention.

Afro-descendants have limited access to the education systems in all countries. Moreover, socio-racial prejudices and offenses that come from slavery times are still present throughout the region, and the (Eurocentric) education system still promotes racist and discriminatory ideas. The education system does not encourage human rights education and has undoubtedly ignored how crucial Afro-descendants were during the wars for independence and their role in the construction of the region's wealth. What is worse, the education system itself still uses racist stereotypes that obviously produce self-esteem problems among Afro-descendant children. This situation becomes another obstacle for Afro-descendants when it comes to having access to labor markets at both public and private levels.

Afro-descendants' access to labor markets and loans is precisely influenced by the strong lack of equity they permanently suffer in educational terms (Reales 2008). That is why states and development agencies have to implement human

rights education programs and development cooperation activities towards the effective elimination of all forms of labor discrimination that affect the vast majority of Afro-descendants in Latin America and the Caribbean.

To sum up, there is a need to transform the public perception of Afro-descendants through effective changes in formal education curricula, to incorporate an accurate history of Afro-descendants and their evident contribution to Latin American and Caribbean countries. Yet, apart from developing bilingual education curricula in some places, no known efforts are being made at any level in the region to change attitudes about socio-racial exclusion and institutional racism.

Relevance of a Human Rights Protection Regime for Development Cooperation and Afro-Descendants

As has been evidenced throughout the text, Afro-descendants need to unite their efforts in order to put pressure on states and to create a regional protection regime. The response from some Afro-descendant leaders over the last ten years or so has been to establish a more coherent social movement with articulated, shared goals (Lennox 2006). Six of these goals remain as priorities: 1) the elimination of racist practices in the region, including through affirmative-action laws and institutional change; 2) ethnic-oriented development programs; 3) recognition of land rights; 4) improved access to education; 5) curriculum reform to reflect Afro-descendant history; and 6) census reform and improved collection of disaggregated data.

It is important to point out that in individual countries there has been some progress. For instance, Inter-American Dialogue (2004) indicates that five countries in Latin America and the Caribbean (Brazil, Colombia, Ecuador, Honduras and Nicaragua) have formally recognized land entitlements for people of African descent.

In Colombia, however, many Afro-descendants in the Pacific region have not had the chance to make effective the above entitlements as their lands are affected by internal armed conflict and drug-trafficking activities.

While some of these concessions were made in the 1990s (for example, Colombia passed legislation on Afro-descendants through Law 70 of 1993), much of the progress has come since the World Conference against Racism (WCAR), held in Durban, South Africa, in 2001. There, states embraced the so-called Durban Declaration and Programme of Action (2001). The success of Durban was the elevation of Afro-descendants to a 'named group' with specific rights and targets, thus incorporating the term 'Afro-descendants' into the international law lexicon.

It should be noted that much of the Durban text on Afro-descendants comes directly from the Regional Conference of the Americas, held in Santiago, Chile, in 2000. Civil society actors feeding into this process utilized the term 'Afro-descendant peoples,' which was not initially adopted by Latin American and Caribbean states or at Durban. Some Afro-descendant human rights activists have continued to push for recognition of their rights not as indigenous peoples or as minorities but as peoples of African descent. Other activists strongly defend the term ethnic minority as appropriate to advocate for the Afro-descendant communities in the region.

This controversial debate has been characterized by the fact that the rights that most Afro-descendants have claimed are a kind of "hybrid" of existing international standards on minority rights and indigenous peoples' rights. Many Afro-descendants include, for instance, land rights in their discourse (which do not appear in the so-called minority rights discourse) but have not, to date, asserted the 'right to self-determination,' which is so prevalent in the indigenous peoples' rights discourse, particularly in Latin America. Yet some Afro-descendant advocates persist with the language of 'peoples' instead of ethnic minorities.

According to Lennox (2006) there could be many reasons for choosing not to self-identify as an ethnic minority. It does not appear that the actual rights recognized in the minority rights regime are inappropriate; indeed, Afro-descendants would claim that the various rights contained, for example in the United Nations Declaration on Minorities, are relevant to them. The reason is most likely either that the set of rights recognized for minorities is too limited in scope or the identity of 'minority' is ill-fitted to their own interests. This is what has motivated indigenous peoples to establish a separate rights regime and what appears to be motivating some Afro-descendant leaders in Latin America and the Caribbean to follow a similar path.

What is interesting, however, is that most Afro-descendants (those who support the use of the term ethnic minority and those who do not) are now focused on enhancing an effective regional human rights regime to reflect their interests. The success of indigenous peoples in this regard is clearly evidenced by the Organization of American States (OAS) Draft American Declaration on the Rights of Indigenous Peoples. The path laid by indigenous peoples has led to tremendous attention to laid issues by states and international actors alike, and it should not be surprising if some Afro-descendants use this as a model for achieving their own, often similar, social goals.

It should be underlined that the relationship between the two movements indigenous and Afro-descendants has sometimes been cooperative and sometimes strained (Lennox 2006). The strength of the indigenous claims arguably has come in large part from their 'otherness,' which entitles their communities to particular rights. If Afro-descendants have the same rights, this may challenge the still unsecured space that many indigenous peoples have long been struggling to create within states. There is a genuine tension in many states between indigenous and Afro-descendant actors, where Afro-descendants are unwilling to accept that indigenous peoples have gained several substantive concessions from governments while most Afro-descendant communities still remain overlooked (Bryan and Sánchez 2003).

Many Afro-descendant leaders clearly see much to be gained from carving out a 'distinct' ethnic identity for their communities in Latin America and the Caribbean. There is no doubt that 'people of African descent' exist. The international community has started to respond to this fact, creating new institutions to address this particular constituency, much as was previously done for indigenous peoples. The recently created UN Working Group of Experts on People of African Descent, established in 2002, is one of the clear products of the UN World Conference against Racism. The UN Office of the High Commissioner on Human Rights continues to hold regional seminars for Afro-descendants, such as the one held in Chíncha, Peru in early November 2005 to focus on poverty reduction and the achievement of the UN Millennium Development Goals.

The author participated in this seminar, where attendees underscored that although many countries have passed statutes to recognize Afro-descendants as an ethnic minority, and to punish racist practices, few of these laws are being enforced. Also, attendees confirmed that, in the region, freedom of movement and advancement in the socio-economic arena are blocked by these practices and by the fact that most workers lack knowledge about minority rights.

This complex situation forces a large mass of workers to be constantly available to function only as cheap labor in sectors where "Whites" and "Mestizos" do not wish to work. This not only stifles the self-development of the vast majority of Afro-descendants but also perpetuates the extremely unequal distribution of income that has historically characterized Latin America and the Caribbean.

Despite racist practices and other grave human rights violations, Afro-descendants have mobilized their communities to put pressure on regional institutions regarding the empowerment of "their" protection regime. The most important regional Afro-descendant outcome to date was the establishment of a 'Special Rapporteur on the Rights of People of African Descent

and Racial Discrimination’ at the Inter-American Commission on Human Rights of the Organization of American States. Pressure from Afro-descendant leaders resulted in the OAS approving urgent exploratory discussions on the creation of an Inter-American Convention against Racism and Racial Discrimination.

The OAS has approached the issue of the rights of people of African descent by focusing on non-discrimination; indeed neither the above Special Rapporteur nor the proposed Convention exclusively target Afro-descendants. The scope of claims made by most Afro-descendant leaders, nevertheless, is not limited to “non-discrimination rights,” even though such rights are paramount for them. Protection of cultural heritage, education reform, and land rights also feature strongly in their ethnic discourse. Most Afro-descendants expect these claims to be included in the proposed Inter-American Convention against Racism and Racial Discrimination.

As the International Human Rights Law Group (2003) has strongly suggested, instituting a regional convention against racial discrimination and racism would enhance the Inter-American System for the Protection of Human Rights. A regional convention would be in keeping with the OAS’s practice of reiterating international human rights instruments and expanding upon them where necessary to address dynamics particular to Latin American and Caribbean states. Indeed, the Inter-American System has developed as a combination of reiterations of and expansions on national and international efforts, as well as uniquely regional efforts.

The OAS has promulgated several regional instruments that borrow heavily from existing international instruments, including the American Convention on Human Rights (ACHR), which draws from the International Covenant on Civil and Political Rights (ICCPR), the Protocol of San Salvador, which excerpts many of the provisions in the ICESCR word-for-word, and the so-called Convention of Belém do Pará, which touches upon many of the themes articulated in the CEDAW. As succinctly stated in an intro-

ductory clause to the Protocol of San Salvador, the reiteration of laws allows rights to be “reaffirmed, developed, perfected, and protected” in the regional context (International Human Rights Law Group 2003).

The World Conference on Human Rights recognized in the 1993 Vienna Declaration that regional arrangements play a fundamental role in promoting and protecting human rights. These arrangements serve to reinforce universal human rights standards, as contained in international human rights instruments (Reales 2005), and evidence has proven these statements true.

Regional articulations of international laws not only strengthen protection regimes, but they also promote greater accountability and more effective enforcement mechanisms, which, in turn, protect against further human rights violations. A regional convention against racism and racial discrimination would also advance the OAS’s long-standing endeavors, as it would constitute a means of translating those endeavors into concrete institutions and minority-rights statutes, giving them heightened impact (International Human Rights Law Group 2003). As Afro-descendant activists point out, a regional convention of this kind would be the “natural” next step in the process initiated by the efforts surrounding the UN World Conference against Racism. A regional convention against racism and racial discrimination would surely strengthen the overall framework of the Inter-American System for the Protection of Human Rights.

A regional convention against racial discrimination would also make a serious statement about the region’s rejection of its long history of slavery and exclusion and would complement existing domestic laws and human rights institutions. It would send a message not only to Afro-descendants but also to indigenous peoples, migrants, and refugees that their rights are worthy of protection and that any violation of their rights is actionable before various regional human rights institutions.

To sum up, a regional convention against racism and racial discrimination would fill in the gaps left by existing regional and

international human rights instruments. It is undoubtedly the “logical” next step toward a more effective protection regime for Afro-descendants and other historically-marginalized groups in Latin America and the Caribbean.

It should be emphasized that Afro-descendant human rights advocates are confident about the prompt approval of the proposed convention. This is why they continue to strive to shape the discourse on their ethnic identity and special rights. Even though there has been some relevant support from international non-governmental organizations, such as The Inter-American Dialogue and Global Rights, to bring Afro-descendant leaders together, the bulk of the advocacy has been undertaken by local, national, regional, and international non-governmental organizations of Afro-descendants who work in development cooperation at all levels.

There is no doubt these organizations have been somewhat successful in their struggle to enhance the aforementioned human rights discourse. Implementing an effective protection regime for Afro-descendants, however, will continue to be a hard task for them given the lack of political will to follow this human rights path in most Latin American and Caribbean nations.

Human Rights Education through Development Cooperation for Afro-Descendants

The still highly Eurocentric and male-oriented education systems in Latin America and the Caribbean produce contexts that facilitate human rights abuses, a process that begins at the family level. For instance, sending only the men in the family to college, when college education is accessible at all, is still a common cultural practice. People in the region need to eradicate such behaviors. Afro-descendant boys and girls, men and women, must have the same rights, opportunities and access to education without any obstacles. Moreover, as some academic studies have emphasized, Afro-Latino and Afro-Caribbean women play an important role in strengthening their children’s education process (Reales

2011). As suggested throughout the text, this disadvantageous environment has to be faced through human rights education programs that should be enhanced by development cooperation initiatives.

Most Afro-descendant students are largely excluded from loans and scholarships to pursue advanced studies. In Latin America and the Caribbean, some private universities have sufficient resources to create sustainable affirmative-action programs for people belonging to ethnic groups, but most of these academic institutions are not interested in doing so, as they see racism neither as a structural problem nor as a grave human rights violation.

Despite multiple national, regional and international human rights instruments that defend Afro-descendants — particularly women of African origin — as a vulnerable group, new generations are not benefiting from human rights education initiatives and, in fact, continue on a daily basis to be educated under the influence of systems that reproduce all manner of stereotypes and abuses against persons of African ancestry. For example, there have been cases of Afro-Latino girls who have been victims of racial and gender discrimination practices in their primary and high schools. Their own classmates and teachers sometimes insult them by using racist expressions. This racist ideology affecting the region is also fostered by families. What makes the case of Afro-descendant girls and women more complex is precisely the fact that most people in the region do not consider those abuses as human rights issues. Stereotypes against Afro-Latino and Afro-Caribbean people have been perpetuated, reinforcing their exclusion and lack of empowerment and progress.

It should be underlined that mass media companies have been among the main vehicles for racism in the region. This has happened since the nineteenth century, when the press wrote racist articles on Afro-descendants. Today, most newspapers and national television channels still utilize offensive words to describe Afro-descendants. Many people repeat racist expres-

sions used in commercials and soap-operas, without considering them, at all, deplorable. In short, the mass media have promoted the use of a discriminatory lexicon against Afro-descendants, and there is no evidence indicating that such use will be eliminated soon, thus representing a violation of most nations' human rights laws. Human rights education initiatives cannot ignore the need to educate journalists and decision-makers from the mass media as well as Ministries of Communication.

Based on relevant recommendations from ethnic rights forums and good practice plans at both national and regional levels, the author supports the following five strategies promoting human rights education initiatives through development cooperation. These strategies would surely benefit not only Afro-descendants but Latin American and Caribbean societies as a whole, while promoting strong development cooperation as a decisive tool for ethnic empowerment and progress.

First, government institutions have to find effective ways to educate Afro-descendant men and women in the creation, management, implementation, evaluation and follow-up processes of human rights education programs focusing on ethnic groups, helping thereby to include community ancestral knowledge at all stages. Second, it is important to strengthen Afro-descendant academic and advocacy networks that produce and maintain socio-racial inclusion projects that could rely on development cooperation. Third, all governments, Afro-descendant civil society organizations, international financial institutions and cooperation agencies have to establish priorities in the face of grave structural problems such as extreme poverty, social exclusion, gender discrimination and institutional racism that disproportionately affect people of African ancestry in the region. Fourth, it is urgent that effective laws regarding Afro-descendant women's issues be enacted. And finally, Afro-descendant organizations, advocates and leaders need to create awareness and partnerships with public and private institutions, including the mass media and universities, in order to secure a big labor force of Afro-descendants with a high education level.

The aforementioned strategies suggest the following development cooperation initiatives, not only to eliminate the poverty that most Afro-descendants face, but to achieve empowerment, progress and respect for ethnic and women's rights throughout the region.

First, all governments and Afro-descendant NGOs must promote initiatives to lobby at both national and international levels for the implementation of sustainable programs that focus on human rights education and Afro-descendant entrepreneurship. Second, it is important to have initiatives that create specific working groups on political and economic empowerment for Afro-descendant communities, taking into account the gender component at all times. Third, it is necessary to create a regional initiative of frequent events, workshops and seminars where Afro-descendants gain a clear comprehension of human rights education techniques and development cooperation projects for them as an ethnic group. Fourth, Afro-descendant leaders need to create a political culture that allows them to defend programs that directly benefit Afro-descendant women and girls. And finally, Afro-descendant organizations and networks need to work with international development agencies to find support for affirmative-action policies that facilitate Afro-descendant access to higher education and well-paid jobs throughout the region and beyond.

Conclusion

Educating the Afro-descendant population on human rights instruments and development cooperation is important, but it is not enough. Government officials, journalists, Afro-descendant organizations, international development agencies and Latin American and Caribbean families as a whole should work together not only to create a respectful human rights environment for all, but also to promote equitable development and socio-political inclusion. To do so, human rights education needs to reach all citizens without discrimination of any kind, which in the end will make it easier for development cooperation institutions to sup-

port the empowerment process and progress of Afro-descendants and the entire region.

Furthermore, human rights education that promotes human rights principles and mechanisms applying to Afro-descendants should be a transversal component and tool to develop capacities of both rights-holders and duty-bearers in any development cooperation framework or program. In fact, this is the way states could ensure that development cooperation programs in all sectors (such as education, health, climate change, rural development or governance, among others) target Afro-descendent communities, while promoting their human rights and avoiding any negative impact on their enjoyment.

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The Rights of Persons with Disabilities in Humanitarian Emergency Situations

BY GHULAM NABI NIZAMANI

Introduction

More than one billion people, or about 15% of the world's population, have some type of disability. Around 80% of persons with disabilities live in developing countries, where they experience material deprivation and social exclusion. For example, only 1% of children with disabilities in developing countries receive any schooling. Exclusion from mainstream reforms and systems has marginalized people with disabilities for generations, and it is vital that measures aiming to improve well-being and standards of living include persons with disabilities at every stage of the mainstreaming process. Programs and projects centred on disability issues, such as inclusive education at mainstream schools, inclusive disaster management, or inclusive development, tend to be based on human rights principles.

It is critical to note that people with disabilities need and have the right to access all mechanisms and infrastructure such as food, water supply, sanitation, transportation and other basic necessities, on the same basis as the rest of the population. Due to the need to consider and include persons with disabilities in general development projects, inclusive development is increasingly recognized as a key component of successful and sustainable development. The social and environmental obstacles that marginalize and impoverish people with disabilities cannot be overcome by any one entity or organization, but only through the collaborative efforts of diverse stakeholders, including developing countries, bilateral and multilateral donors, United Nations (UN) agencies, humanitarian relief agencies, national and international non-governmental organizations (NGOs), foundations, and others. Yet the idea of mainstreaming disability into the humanitarian relief agenda is a novel concept to many humanitarian organizations,

developing country governments, and even NGOs. There is often a disconnection between the people who are knowledgeable about international relief work and humanitarian assistance on the one hand and disability on the other. Education and training about the human rights of people with disabilities is crucial.

Natural and human-made disasters are triggered by natural or human-created hazards that overwhelm local response capacity and seriously affect the social and economic infrastructure and development of a region. Traditionally, natural disasters have been seen as situations that create challenges and problems mainly of a humanitarian nature. However, it is increasingly recognized that human rights protections also need to be provided in these contexts. The tsunamis, hurricanes and earthquakes which have recently hit parts of Asia and the Americas including the 2004 Indian Ocean tsunami, Hurricane Katrina, earthquakes in Pakistan and Haiti, floods in Pakistan and Thailand, and the Tsunami in Japan compounded by a nuclear event — highlight the need to be attentive to the multiple human-rights challenges that people with disabilities may face due to the clear effects of climate change in the 21st century. All too often, the human rights of disaster-affected people with disabilities are not sufficiently considered. Unequal access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, loss of documentation, unsafe or involuntary return or inaccessible resettlement, and issues of property restitution are just some of the problems that are often encountered by those with disabilities affected by the consequences of natural and human-made disasters. These issues are not unique to persons with disabilities, but persons with disabilities are generally affected by those issues to a more significant extent than the general population.

In addition, a high number of persons with disabilities (survivors or new persons with disabilities secondary to the disaster impact) also become internally displaced when volcanic eruptions, tsunamis, floods, drought, landslides, earthquakes, wars or conflicts destroy houses and shelter, forcing affected populations to leave their homes or places of residence. Experience has shown

that the longer the displacement lasts, the greater the risk of human rights violations. That is even more the case for the rights of people with disabilities, due to greater discrimination and vulnerability. In particular, discrimination and violations of economic, social and cultural rights tend to become more systemic over time due to barriers and inaccessibility. Often violations of the human rights of people with disabilities are not intended or planned, but are the result of the lack of human rights education, knowledge and information. This results in the insufficient mobilization of resources and capacities to prepare for and respond to the consequences of a disaster. The lack of knowledge and education also leads to inappropriate policies, neglect, or oversight of the human rights of people with disabilities. These violations could be avoided if human rights education and training were instituted from the beginning. Missions and evaluations by the Special Representative of the United Nations Secretary General on the human rights of internally displaced persons show that national authorities are often unaware of the relevance of the human rights of people with disabilities in the context of natural and human-made disasters.

International humanitarian and relief agencies and NGOs are also often at a loss as to how to incorporate a human rights-based approach into emergency relief and response for people with disabilities, even though many of the laws and codes of conduct applicable in situations of natural disaster include such guarantees. Human rights education has to be the legal underpinning of all humanitarian work pertaining to natural disasters. There are limited legal frameworks to guide such activities, especially in areas where there is no armed conflict. When this is the case, the principal framework used is the United Nations Convention on the Rights of Persons with disabilities (CRPD). If humanitarian assistance is not based on a human rights framework, there is a risk that the focus will be too narrow, and the basic needs of the affected people with disabilities will not be integrated into a holistic planning process.

The risk also exists that factors important for recovery and reconstruction will be overlooked.

Furthermore, neglecting the rights of people with disabilities that are affected by natural disasters means overlooking the fact that such people do not live in a legal vacuum. Human rights education can guide disaster risk management — including pre-disaster mitigation and preparedness measures, emergency relief and rehabilitation, and reconstruction efforts — in the perspective of a human rights-based approach. Those at risk need to be protected against violence and abuse. Those displaced need to be provided with protection and assistance, and need to be able to return in safety and in dignity to their original lands and property. When this is impossible, they need assistance in the process of local inclusion in the area to which they have fled, or to settle elsewhere in the country or in a third receiving country. Adherence to the CRPD will help to ensure that the basic needs of affected people with disabilities are met under the human rights-based approach.

Convention on the Rights of Persons with Disabilities (CRPD)

HISTORY

The negotiations on a Comprehensive and Integral International Convention on the Rights and Dignity of Persons with disabilities were based on a number of initiatives. The determining one was instigated by Mexico. In the course of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban in 2001, the Mexican delegation proposed developing a Convention protecting the rights of persons with disabilities. The president of Mexico, Vicente Fox, reiterated this proposal during the opening session of the 56th General Assembly. In response, the Assembly adopted Resolution 56/162, which established the Ad Hoc Committee on a Comprehensive and Integral International Convention Protecting the Rights and Dignity of Persons with disabilities, to:

“consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social

development, human rights and non-discrimination and taking into account recommendations of the Commission on Human Rights and the Commission for Social Development”.

The Ad Hoc Committee’s task was to develop a text that would ensure the full and effective enjoyment of all existing human rights for persons with disabilities. It did not establish new rights, but reaffirmed the applicability of existing human rights to persons with disabilities. The text was therefore to be based on the United Nations Bill of Rights and its specialized treaties:

- the International Convention on the Elimination of All Forms of Racism (ICERD);
- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- the United Nations Convention on the Rights of the Child (CRC), and;
- the International Convention on Protection of Rights of Migrant Workers and their Families (CRMW).

The Convention on the Protection of All Persons from Enforced Disappearances had not yet been concluded at the time of the negotiations, and therefore was not considered within the realm of the CRPD.

The first two meetings of the Ad Hoc Committee produced such a vast amount of material that a Working Group of 27 governments and 12 NGOs met in January 2004 to prepare a draft of the convention, on the basis of which Member States negotiated further. Thereafter, a meeting was held in spring 2004, followed immediately by a session in summer 2004. After two further meetings, the Chair, H.E. Ambassador Don MacKay of New Zealand, produced an amended “Working Text” or “Chair’s Text” on which negotiations were based. Shortly after its publication, the General Assembly, in its Resolution 60/232, called on Member States to “participate actively and constructively in the work of the Ad Hoc

Committee with the aim of concluding a draft text of a convention and submitting it to the General Assembly, as a matter of priority, for its adoption, preferably at the sixty-first session.” The Ad Hoc Committee reconvened for a three-week session in January 2006 and for its final session in August 2006, at the end of which the draft of the convention was adopted by referendum. In the course of this session an optional protocol allowing for individual complaints to the Committee was drafted and adopted by referendum. A drafting committee was subsequently set up to ensure compliance with UN human rights treaty language.

Throughout the negotiation process, civil society, particularly Disabled People’s Organizations (DPOs), was very actively involved in the drafting. The participation of DPOs was also reflected in the 800 or so persons who registered for the Ad Hoc Committee’s final session, as well as in disabled persons’ involvement in subsequent events, such as the signing ceremony on March 30, 2007. A broad coalition of DPOs and allied NGOs from international, regional and national levels formed the International Disability Caucus (IDC), which developed into the negotiation’s strongest civil society voice. In the course of the negotiations, Kofi Annan, then Secretary General of the United Nations, stressed the need for heightened visibility also by way of a special international treaty declaring: “Persons with disabilities make up the world’s largest minority group. They are disproportionately poor, are more likely to be unemployed, and have higher rates of mortality than the general population. All too often, they do not enjoy the full spectrum of civil, political, social, cultural and economic rights. For many years, the rights of persons with disabilities were overlooked.” The Optional Protocol (OP) allows for individual complaints to the expert bodies under the core human rights conventions. It is worthwhile to note that not all core human rights treaties have that possibility, and that most OPs were negotiated well after the conclusion of the original Convention. The OP of the CRPD was adopted in December 2006 when the CRPD came into force.

ARTICLE 1: PURPOSE

The purpose of the present convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments, which in interaction with various barriers from society may hinder their full and effective participation in society on an equal basis with others.

The CRPD is the only human rights convention that directly addresses natural disasters and secures specifically the rights of people with disabilities in such situations. In line with that purpose, the CRPD focuses on all human rights of people with disabilities, with a particular mention of women and children with disabilities, groups that can be in a situation of greater vulnerability in the context of humanitarian emergencies.

ARTICLE 2: DEFINITIONS

Definitions within the Convention are discussed with regard to two essential risks: creating so-called “shopping-lists” that could leave someone or something out; or not having a definition and being so open that the target is unclear and the aims of the Convention are in danger of remaining unfulfilled because a lack of applicability is construed.

“Communication” includes language, display of text, Braille, tactile communication, large print, accessible multimedia as well as written, audio, plain-language, human reader, captioning, augmentative and alternative modes, means and formats of communication, including accessible information and communication technology;

“Language” includes spoken and signed languages and other forms of non-spoken languages;

“Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition,

enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

“Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms;

“Universal design” means the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. ‘Universal design’ shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

These definitions interpreted in disaster management or humanitarian responses:

- Communication gaps enhance the risks, including that of discrimination, for people with disabilities in disasters situations. People with hearing and visual disabilities become vulnerable due to lack of accessible signs, Braille formats, captioning and other accessible formats.
- Sign language is recognized as a language. Unavailability of sign language can create many obstacles.
- In humanitarian responses, lack of knowledge about the rights of people with disabilities can lead to discrimination against these people. To avoid such situations, the importance of human rights education and training cannot be sufficiently emphasized.
- Understanding of reasonable accommodation is important during relief work with regard to both temporary shelters and infrastructure rehabilitation.
- Adoption of universal design will support all phases of disaster management. Understanding of the universal design approach can play a vital role in evacuation, relief and rehabilitation.

ARTICLE 3: GENERAL PRINCIPLES

The principles of the present Convention shall be:

- a) Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- b) Non-discrimination;
- c) Full and effective participation and inclusion in society;
- d) Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- e) Equality of opportunity;
- f) Accessibility;
- g) Equality between men and women;
- h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

General Principles are new to a core human rights treaty. They are the roots that spread through all of the Convention's provisions and connect the various branches. The General Principles are a legal treasure trove, if utilized fully; they form the basis from which to infer changes in legislation, policy and practice, without necessarily referring directly to the Convention. Each one forms a cornerstone of the mosaic that ensures that persons with disabilities are equal and meaningful participants in mainstream society. The General Principles are closely connected or inter-linked to each other and, overall, to every provision in the Convention. Their impact is evident, overtly and covertly, in every Article.

General principles can be integrated into all disaster response, recovery and reconstruction efforts from the earliest possible stage, for instance:

- Identify relevant measures to ensure that affected people with disabilities are fully consulted and can actively participate in all stages of the disaster response, in accordance with their human right of participation and inclusion;
- Provide benchmarks for monitoring and assessing the needs of persons with disabilities affected by the consequences of natural disasters, to ensure they can access services and assistance like people without disabilities;
- Provide a basis for humanitarian actors, when entering into dialogue with governments and civil society, to understand their obligations to people with disabilities affected by natural disasters under human rights law as harmonized with CRPD.
- At all stages of disaster management, diversity and gender perspectives should be included for fostering the equalization of rights without discrimination.

ARTICLE 4: GENERAL OBLIGATIONS

1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

- (a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
- (b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- (c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programs;

- (d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;
- (e) To take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise;
- (f) To undertake or promote research and development of universally designed goods, services, equipment and facilities, as defined in article 2 of the present Convention, which should require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use, and to promote universal design in the development of standards and guidelines;
- (g) To undertake or promote research and development of, and to availability and use of new technologies, including information and communications technologies, mobility aids, devices and assistive technologies, suitable for persons with disabilities, giving priority to technologies at an affordable cost;
- (h) To provide accessible information to persons with disabilities about mobility aids, devices and assistive technologies, including new technologies, as well as other forms of assistance, support services and facilities;
- (i) To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.

2. With regard to economic, social and cultural rights, each State Party undertakes to take measures to the maximum of its available resources and, where needed, within the framework of international cooperation, with a view to achieving progressively the full realization of these rights, without prejudice to those obligations contained in the present Convention that are immediately applicable according to international law.

3. In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.

4. Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of persons with disabilities and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.

5. The provisions of the present Convention shall extend to all parts of federal states without any limitations or exceptions.

When the CRPD is to be implemented at state level, the national legislation for people with disabilities has to be harmonized with the CRPD. At that stage, legislative, administrative and other measures for the implementation of the rights of people with disabilities will become law. The state will be obliged to guarantee the respect of rights of people with disabilities in humanitarian responses. Its obligations will include prohibiting discrimination against or violation of rights of persons with disabilities by all stakeholders, be they individuals, non-governmental organizations, civil society organizations, humanitarian agencies or private enterprises or businesses. In this way, all non-state actors will be bound to protect the rights of persons with disabilities in humanitarian situations.

These obligations are pushing governments to conduct research, provide assistive devices and promote education and training on the rights of people with disabilities. These obligations also emphasize the education and training of professionals

and staff working with persons with disabilities about the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights. This is also the case, perhaps even more importantly, in humanitarian response to disasters, when there is a potential for even more human rights violations to take place, resulting from disruptions in the systems of affected communities.

The general obligations clearly indicate that allocation of resources should be inclusive of people with disabilities. Persons with disabilities should also be an integral part of decision making. Through a rights-based approach, all humanitarian agencies are bound to respect those obligations, and adequate measures should be ensured from the initial stage of disaster management. Education and training becomes mandatory not only for humanitarian and non-governmental organizations, but for governmental agencies as well.

ARTICLE 9: ACCESSIBILITY

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- (a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- (b) Information, communications and other services, including electronic services and emergency services.

2. States Parties shall also take appropriate measures to:

- (a) Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- (b) Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- (c) Provide training for stakeholders on accessibility issues facing persons with disabilities;
- (d) Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- (e) Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- (f) Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- (g) Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- (h) Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

Barriers are the main cause of discrimination against people with impairments. These barriers from society turn people with impairments into people with disabilities. They make services and enjoyment of equal rights inaccessible for people with disabilities. Major barriers can be identified as physical, environmental, transport, information, communication, policy, institutional, legal and attitudinal barriers. Removal of these barriers will bring accessibility for people with disabilities. There is a clear need for education and training on understanding and removal of these barriers, especially in humanitarian responses.

ARTICLE 10: RIGHT TO LIFE

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

The right to life may be interpreted broadly. The main reason for this formulation is the fact that the lives of persons with disabilities are regularly under threat because others think their lives are not “worth living” or because of their lack of knowledge about disability and human rights. The right to life of people with disabilities can also be considered from the perspective of hazards. It is not hazards in and of themselves that are the main reason for disasters. They need to be considered in light of human vulnerability, where hazards are multiplied by human vulnerabilities, resulting in increased risks. So when human vulnerabilities are not addressed, for example in planning for the inclusion of persons with disabilities in disaster preparedness and mitigation, those hazards will be increased for the most vulnerable groups during major disasters. When right to life is understood properly, measures will be taken to avoid life threats to people with disabilities in all types of disaster situations, and humanitarian response will automatically become more oriented under a right-based approach. Studies show that people with disabilities are most vulnerable to disaster and rates of death for people with disabilities are two to ten times higher than for the general population. Again, survivors with disabilities face life threats during humanitarian response due to the lack of access to food, water, sanitation and other basic necessities.

ARTICLE 11: SITUATIONS OF RISK AND HUMANITARIAN EMERGENCIES

States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

As mentioned, the CRPD is the first and only human rights convention to address natural disasters. If article 11 of CRPD is used as a cross-cutting article for humanitarian response, the whole of the CRPD can be utilized as a basic tool for implementing a human rights-based approach in humanitarian response to protect the rights of people with disabilities in situations of risk and hazard. It is recommended that curricula should be developed in human rights education and training to develop human resources for the protection of the rights of people with disabilities in such situations.

ARTICLE 14: LIBERTY AND SECURITY OF THE PERSON:

1. States Parties shall ensure that persons with disabilities, on an equal basis with others:

- (a) Enjoy the right to liberty and security of person;
- (b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.

2. States Parties shall ensure that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.

It has been observed in the disasters of Haiti and the human conflicts in Africa and Bosnia that internally displaced people were insecure, especially women and children. Children are regularly forced to fight as child soldiers, and girls and women are sexually abused and trafficked. Boys, girls and women with disabilities become more vulnerable and insecure compared to those without disabilities. For humanitarian agencies and workers such knowledge is important and they need to take special measures to ensure the security of internally displaced persons with disabilities.

ARTICLE 15: FREEDOM FROM TORTURE OR CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.

2. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

Once again, torture can have harsh psychological and physical consequences, leading to the creation of further impairments and disabilities. There is also often the additional challenge of ensuring access to treatment in cases where the authorities are complicit in or directly responsible for these human rights violations.

ARTICLE 16: FREEDOM FROM EXPLOITATION, VIOLENCE AND ABUSE

1. States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse by ensuring, inter alia, appropriate forms of gender and age-sensitive assistance and support for persons with disabilities and their families and caregivers, including through the provision of information and education on how to avoid, recognize and report instances of exploitation, violence and abuse. States Parties shall ensure that protection services are age-, gender- and disability-sensitive.

3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programs designed to serve persons with disabilities are effectively monitored by independent authorities.

4. States Parties shall take all appropriate measures to promote the physical, cognitive and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse, including through the provision of protection services. Such recovery and reintegration shall take place in an environment that fosters the health, welfare, self-respect, dignity and autonomy of the person and takes into account gender- and age-specific needs.

5. States Parties shall put in place effective legislation and policies, including women and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.

Article 15 and 16: These articles have direct implications in human created disasters like wars and conflicts and indirectly after natural disasters, when internally displaced people are in shelters or situations of vulnerability. To this purpose, after disasters, special attention must be devoted to the protection requirements of vulnerable groups such as women, children, older people and persons with disabilities. Protection clusters can be established with such a purpose.

ARTICLE 21: FREEDOM OF EXPRESSION AND OPINION, AND ACCESS TO INFORMATION

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

- (a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

- (b) Accepting and facilitating the use of sign language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- (c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- (d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- (e) Recognizing and promoting the use of sign languages.

Article 21 promotes the right to information and knowledge. At the same time, it promotes inclusion of people with disabilities in the decision-making process. This article becomes more important in situations of risk, where proper and accessible information could enhance the protection of people with disabilities in such situations. At the same time, inclusion of people with disabilities at a decision-making level will facilitate the work of humanitarian agencies and actors. This is a twin-track approach to providing and sharing information. Such a twin-track approach can be also used in human rights education and training.

ARTICLE 22: RESPECT FOR PRIVACY

1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.

2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

It has been observed through experience that the privacy of people with disabilities is mostly ignored in crisis or emergency situations because of the lack of education and information on human rights in disasters and relief work. In shelters, the right to privacy is often abused, especially that of people with visual, physical and intellectual disabilities. The right to privacy is co-related with accessibility and with understanding the right.

ARTICLE 24: EDUCATION

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:

- (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
- (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
- (c) Enabling persons with disabilities to participate effectively in a free society.

2. In realizing this right, States Parties shall ensure that:

- (a) Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
- (b) Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
- (c) Reasonable accommodation of the individual's requirements is provided;
- (d) Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;

- (e) Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.

3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:

- (a) Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
- (b) Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
- (c) Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.

4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

Education is sadly too often low in the priorities of humanitarian agencies, possibly because of operational constraints or

because they themselves lack the knowledge of how important it is for affected populations to improve their condition in the long run. Recent situations have demonstrated that Internally Displaced Persons are remaining in shelters for longer periods and the education of children is affected. By utilizing the CRPD, we can assure the right to education for children with disabilities in humanitarian situations.

ARTICLE 25: HEALTH

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive, including health-related rehabilitation. In particular, States Parties shall:

- (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programs as provided to other persons, including in the area of sexual and reproductive health and population-based public health programs;
- (b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;
- (c) Provide these health services as close as possible to people's own communities, including in rural areas;
- (d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;

- (e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;
- (f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.

In humanitarian crises, agencies and workers are challenged to provide rapid and efficient support. This involves ensuring access to all basic life necessities, such as food, water, healthcare. Humanitarian relief providers also have to cope with newly injured and affected people, and experience the daily struggle of making life-saving care and medicines available. In this context, the specific need to maintain the health conditions of affected people with disabilities is too often overlooked. At the same time, making information on infectious diseases accessible is a challenge in relief or refugees camps, leading to de facto exclusion of many persons with disabilities. In this way, the right to health is violated in disaster situations because of lack of knowledge about disability and inclusive planning.

ARTICLE 27: WORK AND EMPLOYMENT

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

- (a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;
- (b) Protect the rights of persons with disabilities, on an

- equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
- (c) Ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
 - (d) Enable persons with disabilities to have effective access to general technical and vocational guidance programs, placement services and vocational and continuing training;
 - (e) Promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
 - (f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
 - (g) Employ persons with disabilities in the public sector;
 - (h) Promote the employment of persons with disabilities in the private sector through appropriate policies and measures, which may include affirmative action programs, incentives and other measures;
 - (i) Ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
 - (j) Promote the acquisition by persons with disabilities of work experience in the open labour market;
 - (k) Promote vocational and professional rehabilitation, job retention and return-to-work programs for persons with disabilities.

2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

ARTICLE 28: ADEQUATE STANDARD OF LIVING AND SOCIAL PROTECTION

1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

- (a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;
- (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programs and poverty reduction programs;
- (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;
- (d) To ensure access by persons with disabilities to public housing programs;
- (e) To ensure equal access by persons with disabilities to retirement benefits and programs.

Article 27 and 28 relate to the rehabilitation process of affected people with disabilities. In the rehabilitation process, people with disabilities are often not actively involved in decision-making and the management of services. They also often do not know that they could and should be more active in this process. This is

in large part a result of the lack of education and training on the rights of people with disabilities. There are claims that “Disasters bring opportunities,” meaning that through the disruption of the normal functioning of affected societies, disasters can create a space to change the way things happened before, and hopefully improve the situation of the most vulnerable. Such opportunities can be created as well in access to rehabilitation services, or in creating opportunities for persons with disabilities so that they can access a decent standard of living. It should be noted, however, that this is dependent upon their involvement into the recovery process, something that is not always achieved.

ARTICLE 31: STATISTICS AND DATA COLLECTION

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:

- (a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
- (b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.

2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties’ obligations under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others.

In all disaster-response situations, analysis and data play a vital role. Most relief and humanitarian agencies start with some data collection. During the data collection process, people with disabilities are often ignored. Data must be available in order to

ensure the respect of the rights of people with disabilities in crisis situations. Data collection does not mean counting people with disabilities, but data should be collected in accordance with this article and shall be disaggregated, as appropriate, and used to help assess the meeting of obligations during disaster situations.

ARTICLE 32: INTERNATIONAL COOPERATION

1. States Parties recognize the importance of international cooperation and its promotion in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society, in particular organizations of persons with disabilities. Such measures could include, inter alia:

- (a) Ensuring that international cooperation, including international development programs, is inclusive of and accessible to persons with disabilities;
- (b) Facilitating and supporting capacity-building, including through the exchange and sharing of information, experiences, training programs and best practices;
- (c) Facilitating cooperation in research and access to scientific and technical knowledge;
- (d) Providing, as appropriate, technical and economic assistance, including by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies.

2. The provisions of this article are without prejudice to the obligations of each State Party to fulfil its obligations under the present Convention.

International cooperation is the wheel that mobilizes different stakeholders, including governmental and non-governmental actors. International cooperation in disasters is increasing steadily, and the need to develop international cooperation in a manner that protects the rights of people with disabilities in humanitarian crisis has never been so acute. Such cooperation will be de-

veloped only if all stakeholders are knowledgeable about the human rights of persons with disabilities, and the use of the CRPD in education about and enforcement of rights is a powerful tool.

Conclusion

People with disabilities are often unable to flee for safety in the event of a disaster because of barriers. These barriers can be of various natures, including attitudinal barriers preventing the inclusion of persons with disabilities into mitigation and preparedness strategies. Persons with disabilities are therefore likely to be disproportionately represented among the casualties resulting from disasters. Since disasters can result in numerous physical threats to the health of people living in a region when they occur, the number of people living with disabilities may rise as a result of the disaster itself. The World Health Organization (WHO) estimates that following disasters, five to seven per cent of people in camps or temporary shelters have a disability. After the recent disasters mentioned in the introduction, for example, the World Bank estimated at 20 per cent the increase in the number of people with disabilities in affected populations. To give one example, one third to one half of all people affected by disasters suffer from disaster-related trauma, and some will have enduring psychosocial disabilities. Evidence from various emergency situations shows that people with disabilities are affected by markedly higher rates of mortality compared to the general population. Some subgroups of persons with disabilities most affected include children, women, and internally displaced people with disabilities. In order to ensure that the concerns of persons with disabilities are fully included in disaster response, it is important to educate, train and raise awareness among local governments and law enforcement officials as well as humanitarian workers regarding the rights of people with disabilities.

When the capacity, the level of knowledge, or the willingness of authorities to meet their responsibilities is insufficient, the international community needs to support and supplement the efforts of local authorities and civil society. The scope and

complexity of many natural and manmade disasters call for the active involvement of organizations, both within and outside the UN system. These organizations have access to special expertise and resources. It is now up to them to become more knowledgeable about the subject of disability, and systematically adopt a human rights-based approach in disasters. As affirmed in the introduction, every stakeholder should use a human rights-based approach to disaster relief. Their activities should cover all the guarantees contained in the Convention on the Rights of People with Disabilities and other international treaties. Importantly, stakeholders must ensure that their activities do not constitute or perpetuate violations of human rights. This will become possible through a broad promotion of human rights education, along with training and capacity development at different levels involving all stakeholders.

Part 2
Human Rights-Based Approach in Practice:
the Role of Human Rights Education
and Training

The Human Rights-Based Approach in the Context of Disability

BY MARIA KETT AND MATHIEU SIMARD

Introduction: striving for equity

Throughout history, everywhere in the world, human beings have striven to improve their living conditions. At the same time, as long as history has been recorded, inequalities have existed within populations. It follows that those who suffer inequalities, using various methods, have striven and always will strive to challenge those inequalities in an attempt to achieve the same quality of life as others.

In order to achieve equity, modern societies are arming themselves with the necessary tools. It can be argued that human rights instruments – legislations, conventions etc - are amongst the most useful of these, providing a framework to support this work. This is why so many groups use these instruments to claim and argue their right to fair and equal treatment by states and other actors.

The more a group is discriminated against, the more important it becomes for that group to use human rights instruments to protect itself from exclusion and discrimination. One such group that has been largely discriminated against throughout history is persons with disabilities (PWD) (Kett and Twigg 2007).

However, like every other social movement, persons with disabilities often do not speak consistently with one united voice. While most advocate for the equalization of opportunities using a rights-based approach, others – for a number of reasons, including a lack of opportunities and understanding about rights – continue to advocate for a charity-based approach – or rather to entitlements, rather than rights. That is why there are examples of some Disabled People's Organizations (DPOs) demanding to be provided with exemptions that would lead them to be treated

differently from the rest of the population, rather than a fully inclusive society.

In Tajikistan, for example, a Knowledge, Attitude and Practice survey conducted in 2010-2011 demonstrated that of all the persons with disabilities interviewed and asked about their needs, 30% were still arguing for specific entitlements, resulting in the government adopting a charity-based approach toward them rather than rights-based (HI, 2010). For example, many were not advocating for their rights to have decent and equal opportunities for income, but rather were requesting discounts on public transport and the direct provision of goods like food and clothes. While this may highlight the difficulties persons with disabilities encounter in satisfying basic needs, it does not address the underlying inequalities rendering the obtaining of goods and services more difficult. The government then responds to these demands by inviting persons with disabilities to be represented on specific days, such as the UN International Day of Persons with Disabilities, and distributing goods at that time. But this does not actually change the day to day challenges faced by persons with disabilities in Tajikistan, such as high unemployment, lack of access to services such as healthcare, and the near systemic exclusion from education? The answer is 'Not much'.

This illustrates the conflict between equality and equity. Until all are on the same level playing field, interventions such as food donations will perpetuate pre-existing inequalities. To attain equality of rights in practice, persons with disabilities should not obtain limited goods at specific points in time. They need to be able to reach the same potentialities as the rest of the population, obtaining a true "equalization of opportunities" (United Nations, 1993). This approach at times may require targeted interventions to enable access to the same opportunities; for example, ensuring accessibility in schools so that a child with a disability can access education at the same level as his or her peers. This is what leads to equity and not just equality (UNESCO, 2000).

The challenges that lead some persons with disabilities to ask for entitlements and to shy away from reclaiming their rights illustrate the importance of human rights education at all levels, and the importance of using a human rights-based approach in the domain of disability in order to guarantee the advancement of rights. Everybody would benefit from such awareness-raising and education - from persons with disabilities themselves as they become advocates for their own rights, through to the duty-bearers such as states and public institutions as they learn to create and become receptive to mechanisms for claiming rights.

Section one: the evolution of disability models, from a charity to a human rights-based approach

An evolution in human rights education and advocacy is reflected in the evolution of disability models (Tumusani et al., 2002). Initially, persons with disabilities were considered objects of pity, dependent on the goodwill of those in positions of power to provide them with basic goods and services. This was and is a position of dependence.

Then came the biomedical approach: though advances in medical treatment assisted some persons with disabilities to increasing their functional independence, the underlying reasoning behind this approach remains suboptimal. The biomedical approach effectively considers persons with disabilities to be an “abnormality” that should be studied and cured whenever possible. When cure is not possible, persons with disabilities may be excluded from mainstream society and, for example, placed in “asylums” so they will not interfere with the general public. This approach identifies the individual experiencing a situation of disability as the problem.

Following this reductionist vision, the social construct model of disability developed. This challenged the previous biomedical approach in proposing that the problem is not within the individual with a disability, but is a reflection of a society and an environment at large that excluded their participation. For

example, the problem of limited access to education is not caused by the person using a wheelchair, but is rather located within the school that does not ensure physical accessibility. This approach shifts the burden of disability from the individual to the society.

This vision, advocated by disability activists, has prompted many improvements in the inclusion and participation of persons with disabilities, while also providing the drive to push for changes in the environment. However, while identifying society as the main cause of exclusion of persons with disabilities, it does not clearly identify who has the responsibility to ensure necessary changes are made or how to advocate for these changes when problems are identified. The social model approach which considers disability as a social construct neglected the role that impairments can play and the role that healthcare professionals and other actors should play in supporting the claims of persons with disabilities and the right to access services when they request them (Shakespeare 2006). However, this approach has positively influenced the conception of disability, for example by fostering changes in traditional medical-based approaches, which have started to consider the importance of environmental limitations to functioning and participation in the causation of handicaps (WHO 2001).

Finally, there has been the emergence of the human-rights model of disability. Although not everybody in the disability world agrees (as with most new theories), we believe that it is fair to argue that this model has the potential to achieve more than previous disability models (Rioux and Carbert, 2003).

The human rights-based approach (HRBA) is a logical and practical tool for this model, and brings us back to the notion of equality and equity and the need for differential – and targeted – treatment in order to achieve equity. However, in order to use these instruments efficiently, it is vital that there is widespread human rights education on the subject. In order for people to be able to use the appropriate mechanisms to claim their rights, they need to be aware of what these rights are and knowledgeable of human

rights mechanisms. While the human rights model of disability and the HRBA have great potential, they will be worthless if there is not human rights education at all levels, from deciders to providers, and including, of course, disability advocates. Moreover, systems must be put in place – or used more effectively when they already exist – for rights claimants to monitor and positively influence the implementation of disability policies.

Section two: Evolution of international cooperation approaches

As disability models have progressed from a charity-based approach to a human rights-based approach, so too have development cooperation and humanitarian emergency assistance followed similar pathways. Most NGOs, and the humanitarian world in general, have evolved from good intentions, often based on a charity approach (OHCHR, n.d.) to approaches based on rights. While this has definitely led to improvements in assistance to many populations living in difficult situations, it has also led to some populations not receiving much assistance due to political reasons while others have been favoured. For example, in the last decade, despite experiencing a similar extent of crisis (level “3B as per ECHO’s 2009-10 Global Needs Assessment), the funds received by Congolese people have been less than one tenth of those received by Iraqis (Oxfam, 2011). The political influence on foreign assistance will always be to the detriment of those not considered to hold a strategic position so it would be worth to “win their hearts and minds”.

This has been influenced by the fact that international organizations and NGOs are often accountable to donors from their home countries, and may therefore not take into consideration many of the needs expressed by the populations they are working with (Oxfam, 2011). However, this approach, has begun to be questioned (OECD, 2005) Even international agencies now insist in their guidelines that accountability to the beneficiaries is an essential component to do in order to apply a rights-based approach to development cooperation and programming (UNDP 2006).

For projects to be sustainable and for states, agencies and NGOs to reach maximum efficiency, mechanisms need to exist by which they will be held accountable to the populations they actually serve. It can take example of other projects that aimed to increase accountability of the humanitarian agencies, such as the Sphere Project (2011) or the Good Humanitarian Donorship Initiative (GHD, 2010).

A human rights-based approach can help establish such mechanisms, in monitoring not only the end-results of organizational work but equally the processes through which interventions are implemented (United Nations, 2003). By re-establishing the primacy of rights, duty-bearers, including recipient country governments, are made aware of their responsibilities.

It is therefore logical to use HRBA in both disability and international cooperation, and perhaps even more so at the intersection of these domains (Albert and Hurst, n.d). However, the main challenges are in implementing this approach in practice: how to empower rights-bearers and ensure that duty-bearers will be responsive to such an approach?

Hence the importance both of human rights education and the establishment of human rights monitoring mechanisms at all levels - national, regional, international (DRPI 2007, UNDP 2006). This mechanism once again underlines the importance of human rights education – to both educate and empower actors – in implementing an HRBA approach. It also demonstrates a particular challenge to using human rights education in this context: educating only one side of the inclusive development triangle (HI, 2009) will not be sufficient alone in achieving development and ensuring that there is realization of rights in practice on the ground.



It is important that all parties be included in human rights education. For example, if members of DPOs are trained, but there are no mechanisms established by authorities by which their claims might be addressed, human rights education can only have a limited effect. Similarly, if governments are not convinced of the importance of a human rights-based approach, they may well provide social services but not build in mechanisms that can be used by civil society members and organizations to monitor the implementation of such services and to process complaints to service providers where human rights are violated. Other civil society actors, such as service providers, other organizations and individuals, as well as police, judiciary, etc also need to receive human rights education. They will then be able to adapt their approach to better meet the human rights requirements of persons with disabilities - and in so doing, make it more accessible to the rest of the population as well.

Section three: Advantages and challenges related to the use of an HRBA in the context of disability

A number of elements support the use of an HRBA in the context of disability. As previously outlined, it is in harmony with the evolution of disability models. It is also important to note that it follows on the advancement of other categories of rights, such as the rights of ethnic minorities, indigenous peoples, women, and children. In that regard, the entry into force of the Convention on the Rights of People with Disabilities (CRPD) is a major step in the advancement of the rights of persons with disabilities at the international level (UN 2006-2011). It provides a strong moral stance towards the equalization of rights, along with providing additional mechanisms for enforcement of disability rights in ratifying countries.

The intrinsic human rights principles advocated in the Statement of Common Understanding on the HRBA (UN 2003) also pertain to disability issues, particularly when addressing some of the main challenges brought up by rights activists (Albert and Hurst, n.d.). These principles are: “universality and inalienability; indivisibility; interdependence and interrelatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.” None of these principles are new, having been drawn from previous conventions and texts, including the Vienna Declaration (UN 1993). Since the challenges faced by PWD are also often faced by other groups in vulnerable or precarious situations, this is an approach that is also appropriate in the context of development cooperation. These principles call implicitly for the interrelation of all citizens, civil society and non-governmental organizations, UN agencies and governments. This in turn can reasonably constitute a base from which to draw collaborative strategies.

However, there are challenges related to using such an approach: accountability and the rule of law are important principles. But in practice, these often depend on certain prerequisites, including national governments’ willingness to be monitored and to act on human rights violations. In specific

cases, rigidly following a human rights approach may deny populations access to aid, as happened in Darfur in 2009, when many aid agencies were expelled from Sudan after denouncing human rights violations (The Darfur Consortium, 2009). In most cases however, governments have at least basic human rights monitoring mechanisms that can and should be used in promoting and defending the rights of PWD (DRPI, 2007).

A parallel challenge arises in terms of accountability. Ultimately, the state is the body responsible for achieving respect for human rights within its borders. However, many of the rights advocated for by the disability community and in the CRPD are programmatic rights, i.e. with progressive responsibility regarding their implementation by a state. Countries often argue that they do not have the necessary resources for implementing such rights, and give this as a reason for not addressing disability issues. In such cases, it is very difficult to prove the extent of non-compliance of the state in a judicial process. Even if the CRPD explicitly states that non-discrimination is for immediate application, it can prove tricky to put this into action. For example, all workplaces should be accessible so as to facilitate the employment of persons with disabilities, so they are not discriminated against. However, many low-income countries are confronted with extremely limited resources, and it can be assumed that this right will not be immediately realized, especially when we see that even in better-off countries much work is left to be done around this issue. What is not negotiable, though, is that countries demonstrate a constant commitment to improving the rights situation according to their maximal capacity.

It should moreover be clear that “the obligation to guarantee that each right is enjoyed by everyone is of immediate effect” (OHCHR, n.d.). If implementation can be somewhat challenging, the underlying principle is very clear and states have a duty to do everything in their power to put it in practice.

An advantage related to the use of the HRBA is that all actors agree on a common framework, which can allow for discussion to

occur on the same level with the same language – providing that all the stakeholders are receptive to this framework and have had the opportunity to access the same level of information. This is a potential benefit related to the human rights model as compared to previous disability models, which saw disability activists often discussing very different elements from service providers, who were working from the medical model, or NGOs and authorities who were working from a charity model. The challenges in bringing everyone to agree on a similar vision should, however, not be underestimated. If basic human rights education can provide knowledge of the subject, there is arguably a need for further study and analysis of how to promote changes in attitudes and areas of competence.

Another advantage of using the HRBA is that human rights education empowers traditionally excluded groups, such as PWD. It also renders easier the identification of duty-bearers and, if needed, the legal resolution of conflict, in comparison with previous disability and development models and approaches. But we also need to be aware that the logic of confrontation can sometimes exacerbate tensions between civil society and government actors. Sometimes awareness-raising and the education of all stakeholders can go a long way to prevent such conflicts from escalating. Even when it is impossible to avoid divergence of opinions, mediation can at times allow for such divergences to be levelled before moving to a legal approach. Unfortunately, this is not always possible, and rights-holders may rapidly realize that claiming rights through the judicial system is often a very long and difficult process. Persons with disabilities actually seem to shy away from the judicial process in general for that reason, such as women with disabilities victims of sexual assault resorting to the compensation board rather than using the litigation system (Disability Council of NSW, nd). Experience also shows first hand the frequent power imbalances in the use of court systems, particularly in the context of disability. There are examples of people unable to access documents properly because of their visual impairments and the unavailability of Braille translation in the courts, posing a challenge to the access

to justice (Disability Council of NSW, nd). Too often, physical, social and attitudinal barriers are present limiting access to justice. The challenges in accessing court systems should not however discourage their use in view of the impact that strategic disability rights litigation can have in advancing rights for large groups of PWD and other stakeholders (DRPI, 2007).

Concretely, even with the empowerment of rights-holders, inequalities too often exist within human rights education itself. Not everyone has access to the same level of education, formal or informal, and better-off groups have the best access to education resources. PWD, being on average poorer than the rest of the population (Barron and Ncube, 2011), and often facing exclusion from regular school systems, they are less likely to receive formal human rights education. They may therefore find themselves excluded from the human rights knowledge they need to claim their rights. This is further compounded by physical disabilities and structures themselves, therefore limiting access also to informal human rights education. It is harder to attend training sessions or courses when your mobility is limited, or if you have a sensorial impairment such as auditory or visual difficulties and adaptations or accommodations are not made. All of this can affect not only knowledge of the enforcement mechanisms, but also the ability to access judicial systems (Sobsey, 1994). Moreover, due to financial constraints, persons with disabilities may not be able to access legal assistance.

Conclusion: The HRBA is a powerful instrument in the hands of disability activists, and human rights education is a mean to sharpen this tool.

Overall, the HRBA approach in the context of disability can only be beneficial. The same can be said in relation to development cooperation, and even more so at the intersection of these two domains.

The HRBA is a common framework that can be used by all actors to solve potentially contentious issues, while also being

a natural evolution of the models of disability. Moreover, an HRBA can address the root causes of discrimination. Since PWD have been, as a group, particularly subjected to discrimination, a human rights-based approach can assist in gaining back the negotiating power too often denied to them by authorities and the society at large. Recognizing the rights of PWD and using these rights as the framework for all discussions and interventions can allow for more progress than previous approaches.

The HRBA also allows for synergies between PWD and other groups who face discrimination, such as women, children and minorities. It also empowers rights-holders (i.e. PWD) over duty-bearers (ultimately, but not exclusively, the state as it can include other people or organizations in position of power), thereby helping to address power imbalances between groups which have fostered discrimination in the first place. Human rights education is a powerful tool to facilitate the use of a human rights-based framework. The HRBA and human rights education provide practical mechanisms to address and resolve conflicts when they occur, with a potential to improve the situation for PWD in the long term.

We should, however, remain aware of the possible limitations of this approach. For example, using legal systems will expose power imbalances. Like other systems, enforcement mechanisms need to be carefully studied and improved to really allow for the achievement of equity in rights for PWD. This can affect the dialogue among stakeholders, but it may also promote dialogue, as it creates an incentive for states to negotiate with PWD rather than risking their reputation and being coerced by the judicial system to take action. The HRBA has the potential to become a monitoring and enforcement instrument in the hands of disability activists. The challenge will then be the same as for other human rights treaties; getting the state parties to comply with recommendations expressed by the different monitoring bodies of the U.N.

Human rights education is a strong tool to achieve a human rights-based approach, but it needs to be done at all levels and

for a variety of actors (including the authorities, PWD/DPOs and other civil society stakeholders, as well as service providers). However, the challenges should not be underestimated. Human rights education needs to be made accessible, in every way, as much for people living with various impairments as for those with educational and financial difficulties. Particular attention should be devoted to ensuring no one is excluded from human rights education. It may be necessary for human rights educators to provide more – and when necessary adapted – education for PWD. It is also important that PWD themselves train human rights educators on how to be more inclusive. A final challenge is to ensure changes are made not only in knowledge, but also in attitudes, areas of competence, and practices.

Challenges are made to be addressed and the disability community has proven itself time and again to be extremely active in meeting challenges – the CRPD was the fastest ever convention to enter into force at the UN, and the first one of the 21st century. We see and hope for a bright future for the rights of PWD.

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National Human Rights Institutions, a Catalyst to Promote the Respect of Human Rights

BY MONA M'BIKAY BOIN

Introduction

The primary responsibility to protect, promote and respect human rights lies with national governments. While most countries have ratified the core international human rights conventions, gaps in the implementation of the provisions contained in those instruments can be observed.

Recognising this challenge, the United Nations encouraged governments to establish national institutions that would collaborate with them for the promotion and protection of human rights.¹

In his second report on the United Nations reform in 2002, in "Action 2," the Secretary-General invited the United Nations agencies to enhance their collaboration in order to support Member States in establishing and strengthening national human rights promotion and protection systems that adhere to international human rights standards in order to ensure that the rights of individuals are respected and protected. Setting up such national protection systems includes the establishment of independent human rights institutions or ombudsmen.

National Human Rights Institutions (NHRIs) are independent state bodies established by law, a decree or the Constitution, and devoted to promoting and protecting human rights. Their functions

¹ In 1946, the United Nations Economic and Social Council asked Member States to consider, "The desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights." In 1960 the Economic and Social Council reiterated this call to the international community to establish such bodies, recognising the unique role national institutions could play in the promotion and protection of human rights.

and the traditions of the region where they have been created determine the name these institutions operate under – such as Civil Rights Protector, Human Rights Commission, Human Rights Institute, Ombudsman, Public Defender, or Parliamentary Advocate – as well as their structure.

The Paris Principles² identify several areas in which NHRIs exercise their functions:

- Commenting on existing and draft law;
- Monitoring domestic human rights situations;
- Monitoring and advising on compliance with international standards and co-operating with regional and international bodies;
- Educating and informing in the field of human rights;
- Receiving complaints or petitions from individuals or groups;
- Monitoring government compliance with their advice and recommendations.

This paper will focus on the role played by NHRIs in public education with regard to human rights, as well as on the role of development agencies in strengthening NHRI capacities.

The normative framework related to human rights education will be discussed first, followed by the role NHRIs play in promoting respect for human rights and fundamental freedoms. The paper will also suggest actions and methods that can be employed by NHRIs to educate about human rights. To illustrate the importance of human rights education the paper will present in detail the major role played by the National Human Rights Commission of Bangladesh (NHRC) in raising awareness about human rights in that country.

In Bangladesh, the NHRC benefits from the support the United Nations Development Programme (UNDP). UNDP technical

² Adopted in Paris in 1991, the Principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles") are the main source of normative standards and provide guidelines for a standard functioning of national human rights institutions.

assistance to the country focuses on areas where the agency has expertise (governance, poverty reduction, disaster risk reduction and climate change). Its intervention is aligned with the United Nations Development Assistance Framework (UNDAF) and aims to support the country in achieving the targets set by the Millennium Development Goals.

Democratic governance and human rights is one of the key areas of collaboration defined with the Government of Bangladesh. UNDP support is framed around two outcomes: (a) enhanced capacity and accountability of democratic institutions, civil services and local government, and (b) improved human rights and access to justice. Within this framework, UNDP supports the strengthening of the capacity of independent institutions such as the new NHRC.³

The normative framework

The draft plan of action for the second phase (2010-2014)⁴ of the World Programme for Human Rights Education⁵ defines human rights education as “any learning, education, training and information efforts aimed at building a universal culture of human rights, including:

- The strengthening of respect for human rights and fundamental freedoms;
- The full development of the human personality and the sense of its dignity;
- The promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and minorities;

³ UNDP Country Programme for Bangladesh (2012-2016)

⁴ The World Programme's second phase focuses on human rights education for higher education and on human rights training programmes for teachers and educators, civil servants, law enforcement officials and military personnel. The first phase focused on human rights education in the primary and secondary school systems.

⁵ A/HRC/15/28.

- The enabling of all persons to participate effectively in free and democratic society governed by the rule of law;
- The building and maintenance of peace;
- The promotion of people-centred sustainable development and social justice.”

The plan specifies that human rights education encompasses:

- (a) Knowledge and skills – learning about human rights and mechanisms, as well as acquiring skills to apply them in a practical way in daily life;
- (b) Values, attitudes and behaviour – developing values and reinforcing attitudes and behaviour which uphold human rights;
- (c) Action – taking action to defend and promote human rights.

In December 2011, the United Nations General Assembly adopted the “United Declaration on Human Rights Education and Training,” acknowledging the fundamental importance of human rights education and training in contributing to the promotion, protection and effective realisation of all human rights.⁶ The Declaration specifies what people should learn about human rights, but also how and why.

Article 2 of the Declaration defines human rights education and training as “all educational, training, information, awareness-raising and learning activities aimed at promoting universal respect for and observance of all human rights and fundamental freedoms and thus contributing, inter alia, to the prevention of human rights violations and abuses by providing persons with knowledge, skills and understanding and developing their attitudes and behaviours, to empower them to contribute to the building and promotion of a universal culture of human rights.” Article 9 recognises the important role that NHRIs can play in promoting human rights education and training by raising awareness and mobilising relevant public and private actors.

⁶ A/C.3/66/L.65.

UNESCO stresses that human rights education should encompass values such as peace, non-discrimination, equality, justice, non-violence, tolerance and respect for human dignity. Quality education based on a human rights approach means that rights are implemented throughout the whole education system and in all learning environments.⁷

The role of National Human Rights Institutions in Human Rights Education⁸

On 28 March 2011, the United Nations General Assembly adopted a resolution related to “The role of the Ombudsman, mediator and other NHRIs in the promotion and protection of human rights,”⁹ encouraging Member States to consider the creation or the strengthening of independent and autonomous NHRIs “to develop and conduct, as appropriate, outreach activities at the national level, in collaboration with all relevant stakeholders, in order to raise awareness of the important role of the Ombudsman, mediator and other national human rights institutions.” The resolution also encourages NHRIs to operate in accordance with the Paris Principles and other relevant international instruments in order to strengthen their independence and autonomy and to enhance their capacity to assist Member States in the promotion and protection of human rights.

In the following section, this paper will examine human rights education activities that could be supported by NHRIs to promote human rights. By offering such support, NHRIs would interact with several stakeholders: government officials, non-governmental organisations (NGOs), community-based organisations, the private

⁷ <http://www.unesco.org/new/en/education/themes/leading-the-international-agenda/human-rights-education>.

⁸ The term “human rights education” used in this article can be understood as defined in the Draft plan of action for the second phase (2010-2014) of the World Programme for Human Rights Education.

⁹ A/ RES/65/207.

sector and the general public, stressing the obligations and duties of the state to respect, protect and fulfil human rights,¹⁰ and of individuals to claim rights as rights-holders, as well as to respect the human rights of others.

The rationale behind conducting human rights education activities is that if people know their rights they will claim them, and they will also be aware of the institutions where they can seek redress. The rationale can be also extended to the state and other duty-bearers, as human rights education and training is necessary to inform and train representatives of the state about their obligations to respect and promote human rights.

A variety of stakeholders can be targeted and various methods can be used by NHRIs to educate and raise awareness about human rights.¹¹

The situation in Southern Africa where a large section of the population is affected by HIV/AIDS illustrates this. NHRIs, in delivering a message to ensure the respect of the rights of people living with AIDS (access to healthcare, no stigmatisation, non-discrimination), can use various communication tools to achieve this goal. They can advocate with legislators and key ministry officials on legal reform; develop advocacy materials with input from key stakeholders; and create briefing sheets on non-discrimination in non-technical language. They can also create a platform of dialogue with community-based organisations, local authorities, health care providers, school management – for the enrolment of children irrespective of their parents' HIV status – and relevant religious, social and community groups to promote understanding of people living with HIV/AIDS. Finally, they

¹⁰ Human rights violations include the non-respect of rights guaranteed by national, regional and international human rights law, and acts and omissions attributable to the state involving the failure to implement legal obligations derived from human rights standards.

¹¹ National Human Rights Institutions in the EU Member States, Strengthening the fundamental rights architecture in the EU, European Agency for Fundamental Rights, 2010.

can work with journalists to prompt them to deliver accurate, evidence-based and balanced reporting on people living with HIV/AIDS.¹²

Actions and methods for Human Rights Education

One of the key responsibilities of NHRIs is to provide training, workshops and seminars on human rights where those attending are informed about what “human rights” means, about the legislation that protects human rights and provides remedies in the event of rights violations, and about how concrete provisions contained in human rights treaties translate to the daily work of the targeted groups (students of primary, secondary or tertiary institutions, groups of trained professionals). The training, workshops or seminars NHRIs facilitate will also have an awareness-raising component, seeking to prompt a debate about the way attitudes and behaviours of the professionals being trained can change so that human rights violations do not occur.¹³

Below are some activities NHRIs can realise – apart from training, workshops and seminars – in the area of human rights education.

HUMAN RIGHTS EDUCATION FOR PRIMARY AND SECONDARY SCHOOLS

NHRIs could support the review of school curricula and textbooks, and advocate to the relevant ministry for the incorporation of human rights education in national legislation regulating education in schools. Messages promoting human rights can also be given at schools through the organisation of art or writing competitions (for instance writing essays, developing slogans) aimed at improving understanding of what constitutes human

¹² Writing a communication strategy for development programmes, A guideline for Programme Managers and Communication officers, UNICEF, 2008.

¹³ National Human Rights Institutions, History, Principles, Roles and Responsibilities, United Nations, New York and Geneva, 2010.

rights (life, justice, freedom, equality, redress for victims of an abuse), developing a sense of responsibility for human rights, and changing behaviour.¹⁴

LAW ENFORCEMENT OFFICIALS

NHRIs could consider conducting training for trainers with law enforcement agencies about the rights of detainees (the right not to be arbitrarily arrested, the right to be free of torture and inhuman or degrading treatment, the right to a fair trial).

When conducting human rights education NHRIs should not only deliver a message, but also create a dialogue and connections with government officials to induce systemic change.

Access to justice is also at the heart of human rights protection. Without it, people's rights cannot be enforced. Democratic governance is undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent.¹⁵ The main barriers identified with regard to access to justice are often long delays, the costs involved in the system, and the complexity of legal proceedings. Therefore, the formal and informal justice systems could also benefit from human rights education provided by NHRIs or from partnering with human rights NGOs to address those issues. To tackle the issue of corruption often related to access to justice, the National Human Rights Commission of Nepal has, for example, painted the amounts to be paid for all court-related services on the walls of the courthouses so that everyone knows exactly how much they are legally required to pay. Such transparency would also help people feel more assured that they are not being unfairly charged.

¹⁴ Teaching Human Rights, Practical activities for primary and secondary schools, OHCHR, United Nations Publication, New York/Geneva, 2004.

¹⁵ Access to justice, UNDP, Practice note, 2004, http://www.undp.org/governance/docs/Justice_PN_English.pdf.

THE MEDIA

Mass media (newspapers, radio, television) play an important role as vehicles for information and can be a key factor for social accountability.¹⁶ They can reach a wide audience, convey messages to all classes of society, and serve as a watchdog to check abuses of power and thus hold government officials accountable for their actions.

NHRIs could collaborate with the media to raise awareness about human rights through various communication channels: the publication of articles in daily newspapers and the broadcast of documentaries on the subject, as well as television spots on human rights issues, for example. In this regard, it is also possible for NHRIs to advocate for the nomination of human rights focal points in the main newspapers to increase media coverage of human rights and inform the public about current human rights issues.

Community radio stations present the advantage of giving a voice to marginalised groups through their capacity to reach local audiences in their native tongue and to communicate about issues of local interest (article 19 of the Universal Declaration of Human Rights).

Through social media, NHRIs can encourage public participation in debates on contemporary human rights issues (blogs, Facebook, Twitter).

Finally, NHRIs can support training in investigative journalism and human rights reporting for journalists to ensure factual reporting.

¹⁶ Social accountability is a mechanism whereby civil society interacts with power-holders to encourage them to account for and take responsibility for their actions. "Media - a key player for realizing social accountability," Orientation guide, Swiss Agency for Development and Cooperation.

HUMAN RIGHTS DEFENDERS

“Human rights defenders” is a term used to describe people who individually or collectively act to promote or protect human rights.¹⁷ They may address any human rights concerns, such as, arbitrary arrest and detention, access to health care, access to education, discrimination, women’s and children’s rights, etc.

NHRIs can initiate trainings for human rights defenders on human rights monitoring and reporting, as well as investigative techniques. These activities can contribute to enhancing defenders’ capacity to perform their work.

PUBLIC EDUCATION

State actors, the private sector, or citizens can perpetrate violations of human rights. The last are typically involved in cases of domestic violence against women and violations of the rights of the child (underage marriage, violence against children, sexual exploitation, trafficking, and child labour).

In this context, messages about human rights and the prevention of discrimination should include the fact that human rights come with the obligation to respect the law and the rights of others, and that they apply equally to everyone. Education and awareness campaigns need to focus on the legal and criminal consequences of rights violations and should target the perpetrators (to dissuade them), the victims (to empower them to report and claim and enforce their rights), and the community (to avoid stigmatisation of victims).

Campaigns on, for instance, violence against children or women should target the general public, employers, and children and parents. They should focus on the consequences for the victim of the human rights violation, as well as the consequences for the perpetrators, their family, the community and

¹⁷ Human rights defenders: protecting the Rights to defend Human Rights, Factsheet no29, United Nations, Geneva/New York.

the country.¹⁸ Increased awareness and understanding can help to reduce the stigmatisation of victims of human rights violations (e.g. rape of young girls).

In rural communities where there is no electricity, in sparsely populated areas, or where the national language is not well understood, awareness-raising activities about human rights should be conducted through interactive popular theatre or songs. These activities should also highlight the importance of social inclusion (notably for minorities and people living with a disability).

PUBLICATIONS

NHRIs can produce or contribute to a broad range of publications to raise awareness about human rights. They can, for instance, send articles addressing the most pressing thematic issues in the country to newspapers for publication, publish booklets and leaflets informing the public in non-technical language about human rights (what does the right mean and how is it protected in the country) and the national legislation that protects those rights, disseminate posters with slogans as a part of a campaign, and produce comics for young people on specific themes affecting them.

Others publications of NHRIs such as research on the compliance of national laws with the provisions of core human rights instruments, policy briefs and others studies, are useful tools in creating dialogue with parliaments and key ministries to advocate

¹⁸ Care-Bangladesh conducted a study on the “Costs of domestic violence: How much it costs to the Bangladeshi society.” In Bangladesh, many women are victim of domestic violence (physical violence, deprivation of food, deprivation of maintenance, insults, threats, dowry). The main cost resulting from these acts of violence are the expenditures related to medical care and the costs of accessing justice. The total cost believed to be borne by the perpetrator’s family relates to fines to be paid to the victim and the direct cost of relocation or hiding. The study estimated that 7.25 million of the 29 million families in Bangladesh have experienced at least one incident of domestic violence. The total cost of violence against women would correspond to 2.05% of the GDP, which almost equals the total government expenditure for the health and nutrition sector.

for the revision, enactment, or effective implementation of national legislation to ensure the realization of citizens' rights.

Capacity Development and Human Rights Education in practice – Why and How

This section will illustrate why NHRIs should engage in human rights education and how they can accomplish it, as well as how development agencies can contribute, in practice, to developing and strengthening NHRI capacities. It will do so by presenting activities conducted by the National Human Rights Commission of Bangladesh (NHRC), with a special focus on those related to awareness raising and human rights education.

On 1 December 2008, the NHRC was formally established with the appointment of three commissioners. Subsequent to the promulgation of the National Human Rights Commission Act in July 2009, and upon retirement of the then-Chairman, the Commission was reconstituted on 23 June 2010. In addition to the new Chairman, the newly-constituted Commission comprised one full-time member and five honorary members.

In accordance with its official mandate, the NHRC serves as the major national human rights watchdog for Bangladesh. It monitors the implementation of the state's obligations to respect and protect the rights of all members of society. The institution is charged with addressing specific human rights violation complaints through investigation, mediation and conciliation, and, where necessary, through constitutional litigation. It is also responsible, more broadly, with raising public awareness and educating about human rights. It is expected to play a strong role in ensuring the consistency of laws and policies with international standards.

The NHRC is supported by a consortium of donors¹⁹ coordinated through UNDP in the form of a Capacity Development Project,

¹⁹ The Danish International Development Agency, the Swedish International Development Cooperation Agency and the Swiss Agency for Development and Cooperation.

which was established in 2010. The project's overall goal is to improve the promotion and protection of human rights for all, particularly disadvantaged and vulnerable groups such as women, the disabled, ethnic minorities, and children, through the institutional capacity development of the NHRC.

The project focuses on building NHRC capacity in four key areas: institutional development, human rights monitoring and investigation, human rights awareness raising, and human rights research, reporting and policy development.

The primary goal in supporting the institutional development of the NHRC is to build the capacity of the Commission's operations – administration, finance and management – to enable it to become an effective institution. The focus is on supporting the Commission to develop its organisational vision, strategic plans, budgeting process, and policies, as well as on building its human resources policies and procedures.

The technical assistance provided in the field of monitoring and investigation aims at strengthening the case management system – receiving and processing complaints – and at enhancing the NHRC techniques for monitoring and investigating human rights violations.

By reinforcing NHRC competence in research and policy development, the project supports legislative review, policy dialogue, and human rights research.

To achieve the outcome of raising human rights awareness, a nationwide baseline survey²⁰ was conducted in 2011 to determine the level of understanding about human rights among citizens of Bangladesh, and to assist the NHRC in targeting the most important human rights issues and developing appropriate messages and methods to raise awareness and improve public education on human rights.

²⁰ Source: Perceptions, Attitudes and Understanding, A baseline survey on human rights in Bangladesh. Baseline study by: Data Management Aid & Bangladesh Legal Aid and Services trust. Summary report written by Elizabeth Wood. 2011.

The findings of the survey revealed that half of the population of Bangladesh had never heard the term 'human rights'. This low level of human rights awareness amongst the population is a major concern with regard to accessing justice, as people cannot claim their rights, or even identify when a right has been violated, if they are not first aware of the rights to which they are entitled.

Of further concern, over half the people surveyed were either not aware or did not believe that human rights are legally protected and enforceable. Of those who believed rights are protected, only 6.1% knew they are protected by the Constitution.

Clearly, a key step towards realizing the NHRC's long-term goal of a countrywide human rights culture is improved awareness of legal means to claim rights and access justice. If one cannot seek redress for rights violations, then the protection of these rights is not real, and if there are no consequences, there is no discouragement against committing rights violations.

When asked what they would do if the Government violated their rights, over 80% of respondents said they would take some form of individual or collective action, such as protesting. However only 1.1% said they would report the incident to the police, and even fewer said they would report it to a lawyer or to the NHRC. These responses indicate a lack of awareness that human rights are legally enforceable and of the institutions that are able to deal with violations, as well as, possibly, a lack of trust or confidence in existing institutions.

Bangladesh has two systems of justice, one formal and one informal. People, especially in rural areas, are far more likely to use the informal system. However, the great value – and a key objective – of the survey is that it illuminates where people go, and why, to seek justice for human rights violations, and their opinions of the services available. The majority of respondents could not provide an opinion about the High Court or the Government legal aid scheme, and over 40% could not answer about the subordinate courts, indicating that most have very little direct experience with these services. In fact, 10.9% had not heard about the provision of legal aid through the

National Legal Aid and Services Organization, reinforcing a greater reliance upon informal justice, and revealing a lack of awareness of how to access the formal justice to which they are entitled.

When asked why people do not use the formal justice system, the most common reason by far, given by 73.8% of respondents, was the cost involved. Other reasons given for not accessing the formal justice system were perceived corruption, harassment by lawyers, complicated processes, and the fact that the formal court system can be intimidating.

Vulnerable groups, such as women and *Adibashis*,²¹ were least likely to be able to provide an opinion on formal justice services. Many women who participated in the survey reported difficulty in having their cases accepted by police, as well as harassment by the police. Respondents identified problems for women who pursue formal justice, including a lack of support from family and others, and an environment that is not gender-sensitive.

A low conviction rate in the criminal justice system leads to a denial of justice for many victims of crime, especially women and other marginalised groups, as evidenced by the answers given by the persons interviewed during the survey.

Further recommendations from the survey and report include:

- Human rights should be incorporated into the school curriculum to raise general awareness and effect generational change.
- More information about the institutions that exist to deal with human rights violations must be provided to encourage people to use them.
- Education on human rights in general, and women's rights and the rights of other vulnerable groups in particular, should be provided for officials in both the formal and informal justice systems so as to ensure greater sensitivity and awareness within the justice systems.

²¹ Adibashis are indigenous people who live in the region of Chittagong in Bangladesh.

- Public education about and awareness of child rights should also include a definition of the word “child” so that people understand whom these rights relate to and whom they protect.²²

The survey also included questions intended to determine people's understanding of the link between human rights and the responsibility to respect the law and the rights of others. The responses²³ indicate a need for public awareness campaigns to include the message that human rights create obligations as well.

Following the survey about the human rights situation in Bangladesh, the NHRC will, in the field of human rights education, expand communication initiatives to raise awareness of human rights among the general public, particularly among marginalised and vulnerable groups (including women), and to increase demand-side pressures for improvements in the human rights situation in Bangladesh. To achieve this, the NHRC

²² A significant obstacle in discussing child rights is a lack of understanding about who is a child. In this regard, the survey on human rights in Bangladesh revealed that less than 1% of survey respondents believed people are children until age 18. This is in contradiction with the UN Convention on the Rights of the Child, which asserts that anyone under 18 is a child. Approximately half the respondents believed both boys and girls stop being children between the ages of 6 and 10, while 16-17% considered them no longer children by age five.

²³ When asked “If you have the right to life, what duties or obligations do you have regarding other people?”, the top five response were:

- Abide by the law (40%)
- Make yourself and others aware (22.5%)
- Protest injustice (21.4%)
- Protect other people (14.8%)
- Be aware of specific rights (10.9%)

Similar responses were received from respondents asked to consider what obligations arise if you want to claim protection of the law:

- Not break the law (43.1%)
- Be aware of the law (20.3%)
- Respect the rule of law (15.1%)
- Cooperate with the Government (10.3%)
- Protest when someone breaks the law (4.1%) and cooperate with law enforcement agencies (4.2%).

will use education campaigns to positively impact public knowledge and understanding about specific human rights issues and about the role of the NHRC in securing those rights. Activities will include the street law programme (human rights educators will be deployed in the public sphere and inform the public on human rights issues), the broadcasting of videos on human rights issues, the dissemination of awareness messages through various communication tools (print and electronic media, mobile phones, billboards, human rights promotional materials), and targeted initiatives at the grassroots level (songs, theatre pieces) to influence behavioural change. The NHRC will also develop a campaign on violence against women and gender-based discrimination, highlighting the terrible impact they have on all of society, not just women.

The NHRC is also planning to conduct training sessions tailored to key stakeholders such as human rights defenders, journalists, and law enforcement officials.

Furthermore, the NHRC Commissioners will also lead countrywide awareness workshops on child rights, inviting members of the judiciary, law enforcement officials, and journalists to discussions about their roles as professionals and the duties of their institutions in ensuring respect for human/child rights in Bangladesh.

The above activities will be realized in parallel with advocacy work with the Government and the Parliament to improve the protection of people's human rights. In this regard, the NHRC will offer a platform for dialogue to review the progress made in the implementation of the recommendations made to Bangladesh during the 2009 Universal Periodic Review. In addition, the NHRC will lobby for the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

Conclusion

One of the core functions of NHRIs is to promote awareness and understanding of human rights through human rights education²⁴. NHRIs play an important role in promoting the respect of human rights, monitoring human rights violations, and holding governments accountable. In conducting human rights education activities with various groups, NHRIs foster awareness of human rights as well as a sense of the possibility to effect change.²⁵ Training, advocacy, social mobilisation and behaviour-change communications develop global citizenship and accountability.

As mentioned in the core of this paper, knowledge of rights and freedoms is fundamental to guaranteeing respect for the rights of all. Discrimination and abuse of state power are recognised as structural causes of poverty. Investors are more prone to invest in countries where human rights are protected and where they do not risk losing their investments. A vibrant economy accompanied by a redistribution of wealth to all groups in the society contributes to poverty reduction. While growth alone is not enough, and while not all rights are resource-dependent, a good growth performance increases the resources needed for the progressive realisation of social and economic rights.²⁶ Sustainable development cannot be achieved without respect for human rights.

The United Nations engagement (mainly UNDP and OHCHR) with NHRIs – from pre-establishment to the consolidation phase – to assist them in carrying out their mandate, contributes to the acceleration of overall progress on human development. The

²⁴ Survey on National Human Rights Institutions, Report on the findings and recommendations of a questionnaire addressed to NHRIs worldwide, OHCHR, Geneva, 2009.

²⁵ Equitas, "Human Rights Education and Promotion, Training of Trainers II", Workshop Manual, Building the capacity of the National Human Rights Commission, Nepal, Kathmandu, Nepal, 17-21 May 2006.

²⁶ OECD, DAC Action – Oriented Policy paper on Human Rights and development, 2007.

technical assistance provided to those institutions helps to ensure that national development, poverty reduction, and MDG policies and strategies are grounded within and implemented according to human rights standards and principles. NHRIs indeed have the potential to support development processes by mainstreaming human rights, including economic, cultural and social rights, into democratic governance.²⁷ Support provided by the UN follows a capacity assessment, as each institution will face unique challenges depending of the context it evolves in. A multilevel approach is usually adopted, addressing organisational development, financial support, human rights capacity, and functional areas capacity, in order to ensure that the NHRI can effectively deliver results.

With their unique position as independent state bodies, NHRIs contribute – by interacting with stakeholders at the local and national level – to the creation of a human rights culture, to pursuing effective social change, to an enabling environment for sustainable development, and to the enhancement of people's participation in decision-making processes within the democratic system. By supporting a human rights culture, NHRIs underpin the relationship between citizens and the state and create the foundations for building a democratic nation based on respect for the rule of law, human dignity, and human rights.

To be effective in designing and conducting human rights education activities, NHRI educators should be guided by a human rights-based approach that will:

- Identify the factors impeding the realisation of human rights;
- Identify the claim-holders (beneficiaries) among the most vulnerable and marginalised (e.g. women, children and minorities) and empower them to claim their rights;
- Identify the duty-bearers accountable for addressing human rights issues and develop their capacity to meet their obligations;

²⁷ UNDP-OHCHR Toolkit for collaboration with National Human Rights Institutions, December 2010.

- Assess and analyse the capacity gap of claim-holders to be able to claim their rights and of duty-bearers to be able to meet their obligations;
- Take into account the socio-political context of the country and its impact on the institution's work.

Teaching human rights and promoting dignity should be conducted with participatory approaches that spark reflection, recognising that human rights are part of everyone's life and experience. It should invite people to be agents for change at the individual, organisational and societal levels.

Developing Capacities in Promoting the Right to Education in Emergency Contexts: the case of the occupied Palestinian territory

BY JO KELCEY¹

Introduction

The right to education, like other human rights, is inalienable and universal. As such it applies even in times of emergencies. Indeed, the provision of education in emergencies (quality learning opportunities for all ages in situations of crisis) is recognised as life saving and life sustaining given the contributions it makes to the physical, psychosocial and cognitive protection of at-risk populations.² Yet in emergencies characterised by armed conflict and seen through the prism of international humanitarian law, human rights approaches are sometimes sidelined in programming and advocacy. Moreover, capacity development and training activities to establish an understanding and application of human rights-based approaches are often seen as longer-term 'developmental responses' that are not always implemented during immediate response phases.

This paper discusses the value of conducting human rights programming and capacity development when working on education in humanitarian response. It will begin by asserting the applicability of human rights approaches to education in emergencies. It will then discuss the applicability of the Inter-agency Network for Education in Emergencies (INEE) Minimum Standards for Education in Emergencies to contexts of humanitarian concern, as a key tool to promote rights-based approaches in the education sector. The concomitant need for capacity development and training to

¹ Significant contributions to this paper were made by the dedicated INEE members in Gaza, and in particular by Bilal Al Hamaydah whose insights provided an invaluable contribution. Thanks are also due to Tzvetomira Laub and Dean Brooks for their guidance on this topic.

² See for example (Nicolai and Triplehorn; 2003).

support the application of these standards will also be presented. The case will be made using illustrative examples of recent experiences from the occupied Palestinian territory (OPT) - where several capacity development activities on the use of the INEE MS standards, as well as other human rights tools, have taken place in recent years.

The human right to education and the INEE MS

Education is referenced in international humanitarian law (IHL) as well as international human rights law (IHRL). While this paper focuses on the relevance of IHRL, it is nevertheless important to note those education-related provisions contained in IHL, and to understand the relationship between the two bodies of international law in emergency contexts.

IHL applies to both internal and international armed conflicts, and provisions for education can be found in the Fourth Geneva Convention and Additional Protocol and the Rome Statute of the International Criminal Court. Thus, in cases of armed conflict, legal mechanisms to protect the right of affected populations to education are available. In such cases, humanitarian law is highly relevant and its related mechanisms should be used in the pursuit of accountability. However, many emergencies are not limited to situations of armed conflict. Rather, they include a wide range of man-made or natural phenomena that provoke crisis, including conflict, social unrest and pervasive violence and natural disasters. They may also be quick or slow in their onset and protracted or short-lived in duration. The commonality that they share is disruption to a community which has yet to return to stability. Therefore in many cases of emergency and overwhelming adversities, the limitations of IHL as a *lex specialis* are quickly reached. Moreover, as the OPT case aptly demonstrates, the applicability of humanitarian law does not preclude the application and relevance of the human right to education, which provides complementary and more comprehensive protections for affected populations. The human right to education – as with other human rights – is universal and often applies during emergencies.

Its application is defined through a number of different treaties and conventions which include, but are not limited to, The Universal Declaration of Human Rights, The Convention relating to the Status of Refugees, The International Covenant on Civil and Political Rights, The International Covenant on Economic, Social and Cultural Rights, The Convention on the Elimination of All Forms of Discrimination against Women, The Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

Recognizing this dual legal framework provides practitioners with a wider range of programming and advocacy options, and importantly increases the relevance of human rights-based approaches. For educationalists this is neatly captured by the INEE Minimum Standards for Education (INEE MS) which, it will now be argued, are an important tool to use in supporting adherence to the right to education.

The INEE Minimum Standards are educational standards designed for use across a range of different situations. Originally developed to support responses to the impact of crisis on the education sector, they are increasingly used and applied to support responses across differing contexts of adversity. This includes during developmental and preparedness planning in less than stable contexts and during acute and protracted crisis. This reflects the versatility of the standards and their broadly applicable *raison d'être*: to promote educational quality, and a coordinated response that meets the educational rights and needs of affected populations.

The standards themselves were first developed in 2003-2004 and subsequently revised in 2009-2010. They are modelled both in terms of process and output objectives on the Sphere Project's Humanitarian Charter and Minimum Standards for Humanitarian Response, which are based on the principles and provisions of international humanitarian law, international human rights law, refugee law, and the Code of Conduct for the International Red Cross and Red Crescent Movement and Non Governmental

Organisations (NGOs in Disaster Relief). The INEE MS are also derived from education's international legal underpinnings and thus reflect the normative principles that guide education planning, provision and content.

In terms of process, highly participatory consultations were used at the local, national and regional level, through the organization of consultations and debates among educationalists and concerned populations. IHRL then provided a normative structure against which to align the findings of these consultations at the broader global level. In other words, the final iteration of the INEE MS involved aligning local and national lessons and good practices with each other as well as with legal commitments and specifically those espoused by human rights law. In this way, as Andina (2005) notes, human rights have provided the INEE MS with their 'standardised' and global nature and are present throughout the standards through explicit references to international agreements and covenants, the adoption of key words that refer to the right to education and the process through which the standards were developed and reviewed. This is also reflected in the title of the standards and in particular the word 'minimum', which serves to capture the linkage to human rights in particular by highlighting that these standards relate to immediate and progressive obligations as opposed to aspirations. Just as in human rights law, the standards are not quantitative but qualitative in nature, allowing for their application across a range of contexts.

References and relevance to IHRL were further strengthened during the 2009-2010 update of the INEE MS handbook when human rights were identified as a one of the key thematic issues to be mainstreamed throughout the handbook (a task that was conducted by a task team of human rights experts). Finally, the INEE MS recognize the interaction of different rights within a human rights framework: i.e. that the right to education is also an enabling right in that it facilitates rights holders to claim other rights. Thus the update of the INEE MS not only sought to strengthen references to human rights, but also to identify cross-cutting themes and areas where education interacts with other

sectors of humanitarian intervention. As noted in the INEE MS handbook, *'The INEE Minimum Standards take the language and spirit of human rights law as the basis of educational planning. They help to achieve quality education by bringing to life the principles of participation, accountability, non-discrimination and legal protection'* (INEE; p.7, 2010).

In this way, educationalists may use the INEE MS to align their programming and advocacy with legal duties towards ensuring the right to education. This is particularly conducive to conducting training and capacity development, one of the initial goals of the INEE MS. Moreover, while inspired by, and in accordance with international law, the standards remain a tool designed for educationalists. Their presentation as a technical education tool – as opposed to a legal one – tool facilitates their uptake by non legally literate education practitioners. In other words, the education sector can look to the INEE MS as providing a comprehensive view of what education should look like from a legal normative standpoint (IHRL), packaged for practitioners.

Following the development of the INEE MS, INEE prioritized training and capacity development as a way to increase understanding of the standards and support their application. The primary model used was a cascade model of training of trainers held in different locations across the globe. More recently however, there have been an increasing number of workshops that provide more tailored application support to a particular country and/or context. In addition, while the relationship between the INEE MS and the Right to Education is highlighted during the trainings, and serves to support their application with rights-based organizations, there are equally times when it is more appropriate to present the INEE MS from a technical education perspective (specifically in situations where it is highly sensitive to discuss human rights and where the INEE MS are a more palatable way of supporting the application of human rights in line with the principle of 'do no harm'). While there currently isn't any available disaggregated data to deduce the value added of different training models, the recent INEE MS assessment does point to the utility

of training and capacity development to support the application of the standards. Notably, people who report having participated in an INEE MS training tend to use the INEE MS more often.³ INEE also supports local initiatives to undertake capacity development through the provision of training tools. Of note, a module on human rights and the INEE MS was recently added to the freely available tools it offers practitioners.⁴

Case Study: the occupied Palestinian territory

Recent work conducted in Gaza around training and capacity development on the INEE MS helps to highlight the potential utility of capacity development to use IHRL to support education programming. While not yet long enough in duration to assess impact or value added, the structure of the activities conducted, and ad hoc information regarding their utility may provide inspiration for further such applications in other emergency contexts.

The particular emergency situation in the OPT is one of protracted crisis (military occupation and settlement) with periodic peaks in intensity. Although historically much of the legal analysis and commentary has focused on the nature and applicability of international humanitarian law to the OPT, as previously noted, this does not preclude the applicability and relevance of human rights law.⁵ Here it is useful to draw upon a 2007 policy brief developed by the Program on Humanitarian Policy and Conflict Research of Harvard University, which discussed how IHL and IHRL theoretically interact to provide a comprehensive dual legal framework for the protection of Palestinian civilians. In brief, for the particular case of the OPT, the law of occupation is augmented

³ See 2012 INEE Minimum Standards assessment report. Available at: http://www.ineesite.org/post/blog_announcing-2012-inee-minimum-standards-assessment-report.

⁴ See Education in Emergencies Training Package, developed jointly by INEE and the Education Cluster. Available at: http://www.ineesite.org/index.php/post/training_and_capacity_building.

⁵ For an informed presentation of this see Harvard; 2007.

by the extraterritorial application of IHRL, which articulates additional obligations and responsibilities related to the welfare and dignity of Palestinian civilians.⁶ The work of education actors in Gaza who have conducted widespread activities around training and capacity development on the INEE MS and more explicit human rights mechanisms is therefore highly relevant for programming and advocacy within the emergency/humanitarian context.

In March 2009, in the aftermath of Operation Cast Lead, which resulted in substantial damage and loss to the education sector, a week long INEE Training of Trainers on Education in Emergencies and the INEE Minimum Standards for Education was held in Gaza City. This training, which was supported by UNESCO, trained 25 educationalists working for UN agencies, international and local NGOs, the Ministry of Education and Higher Education and academic institutions.

Many of the ‘master trainers’ then sought to cascade the trainings down within their organizations or horizontally to partners and beneficiaries. These activities received a further boost in late 2009, through UNESCO’s Emergency Education programme in Gaza.⁷ During this second stage, UNESCO contracted the original master trainers to roll out trainings across Gaza. Of the original 25 master trainers, 19 remained actively engaged through this roll-out. The provision of this support and

⁶ Israel is a state party to numerous human rights treaties and conventions and two of these treaties (the International Covenant on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT)) include specific references to respecting and ensuring the rights of all individuals within its territory and subject to its jurisdiction (Harvard: p.3). While Israel contends that none of its international human rights obligations apply to the OPT, this has been systematically refuted by UN treaty-monitoring bodies in their Concluding Observations. For a comprehensive summary of the applicable human rights treaties and mechanisms that defines Israel’s obligations to protect, respect and fulfill the right to education of Palestinians in the OPT see Qaraman, H.; 2010.

⁷ This programme was funded by the office of Her Highness Sheikha Mozah Bint Nasser of Qatar which was also highly active in supporting the passing of the GA Resolution for education in emergencies A/64/L.58.8 The University College of Applied Sciences, Gaza, occupied Palestinian territory.

the dedication of the master trainers resulted in a large scale follow-up. Those trained during this portion of the work include Ministry officials, NGO workers (in education, protection, and human rights), UN agency staff, and teachers. Thus a common understanding of education in emergencies – as well as human rights-friendly language around it – has been imparted across a wide spectrum of the education sector, creating significant momentum for action. Having trained hundreds more education actors, this group then sought to organize and galvanise support for the institutionalization of the INEE MS within their agencies and at the national level through self-organising into a local Gaza INEE Advisory Group. This group, comprised of 17 of the original Master Trainers, serves as a technical hub for education in emergencies work, ensuring coordination between the various INEE-related trainings and quality assurance in their implementation. In addition to trainings and workshops, this group has also supported other technical functions related to education in emergencies work in Gaza. Key capacity development activities undertaken by the group have included: the development of an Arabic language contingency planning model based on the INEE MS; reviewing the Arabic version of the INEE MS revised handbook; ongoing monitoring of INEE trainings; successful fund-raising and implementation for follow-up activities by a Gaza University;⁸ development of training tools adapted to the Gaza context; and preparation of school-based emergency plans for at-risk schools. Members of this group are also now actively engaged in training other education staff across the Arab region (as will be touched upon later). Given the previously established ways in which the standards reflect and promote the human right to education, much of the capacity development and application work being conducted by the INEE MS advisory group is therefore also implicitly promoting human rights.

The main output of the work conducted by Gaza's master trainers has been the sheer number of education actors trained on the INEE MS. Over two thousand staff from UN agencies, government, and other education providing institutions have received training on the INEE MS. This not only serves to in-

form quality of response and more informed advocacy, but given the state-building efforts present in the OPT may also serve to support bottom-up policy development and planning. Indeed, in October 2011 the Ministry of Education and Higher Education in Gaza announced its endorsement of the INEE MS as the framework for their education in emergencies work. This is being operationalised at a practical level by the nomination of two INEE master trainers to serve as focal points within the Ministry: an important and tangible output of capacity building as it relates to duty-bearers. Looking ahead, the participation and ownership of the Minimum Standards that this will hopefully promote will be crucial to mainstreaming the standards – and thus the main foundational concepts that define the right to education – in planning and policy in the years to come (thereby hopefully better reflecting international human rights obligations at the national level).

Using their practical and theoretical knowledge, and with the support of INEE and other UN stakeholders, capacity development activities supporting the right to education are now being led by those who undertook the initial training. In September 2011, the United Nations Relief Works Agency for the Near East (UNRWA) asked INEE to conduct a capacity development workshop on the standards for its staff education staff in Syria. The workshop held in Amman, Jordan, drew heavily on the practical experiences of INEE application in Gaza and included a session where the participants connected with Gaza colleagues over Skype to discuss lessons learned. Further to this, in May 2012 a training took place in the West Bank city of Ramallah. Among the facilitators were two INEE master trainers from Gaza who were able to infuse the sessions with practical experience and knowledge relevant to the local context. More recently, master trainers from Gaza have been to Egypt to train Ministry officials there on using the INEE MS to promote good practice in managing the new emerging adversities in that country. A similar training is also planned for Jordan to support educationalists seeking to better meet the education rights of Syrian refugees in that country. Finally, it is worth noting that the INEE capacity development

has also supported broader efforts in the domain of child protection with regards to the UN Monitoring and Reporting Mechanism for Children Affected by Armed Conflict (MRM-CAAC). This child protection mechanism, which is coordinated by UNICEF and has also received strong support from Save the Children UK, requires countries of concern to report on a range of violations against children's rights. Since the creation of the group in 2007, it has collected information on both denials of access to education and attacks on education. The more recent establishment of UNSC resolution 1998 has increased the prominence of the latter as it is now considered a 'trigger violation' (namely one that can lead to the imposition of sanctions in case of violation). The occurrence of attacks against education in the OPT (see UNOCHA and EAPPI resources listed at the end of this document) presents an opportunity for the pursuit of greater accountability for some of the violations that occur with regards to the Right to Education. This has been seized upon in the first instance through a comprehensive mapping of obligations and commitments to the right to education that exist at both the national and international level (Qaraman, H, 2010). This was a necessary first step upon which to build capacities for reporting and response and has provided improved direction and contextual application for capacity development. In April 2010 this was followed up by two UNESCO-supported training workshops, in Gaza and Ramallah, on the Right to Education. The trainings provided crucial content for a subsequent mapping of the relevant right to education mechanisms that exist for the OPT.

The resultant combined knowledge and application of human rights principles and tools by local actors can better ensure the quality of such reporting and programming. One example has been the trainings conducted in highly vulnerable schools in Gaza on the INEE MS and the Right to Education. Reports generated by the schools then directly feed into the MRM-CAAC. Such case management approaches are less common in emergency education programming, yet are entirely appropriate when thinking through the prism of human rights (which stress the importance of every individual as a rights holder). Conducting capacity de-

velopment on the Right to Education at this local level represents one way in which programming and broader advocacy goals can be linked and, it is hoped, strengthened providing for greater responsiveness.

Lessons learned

While the experiences highlighted represent ad hoc and programmatic responses (as opposed to a systematic approach to human rights capacity development for education in emergencies), several useful lessons in terms of the approaches employed can nevertheless be drawn.

The Gaza experience of INEE training highlights the importance of how human rights are presented to technical practitioners who may not be familiar with rights-based approaches and who may therefore have otherwise been too intimidated to use human rights language and approaches to support their work. In this case, by using the INEE MS, a wide range of local stakeholders – including duty bearers, intermediaries and rights holders – were engaged through training. In this way, a capacity development approach has helped ensure a more meaningful participation in response.

It also points to the need to understand capacity development as a process as opposed to a one-off training. Gaza INEE members, have consistently sought to adapt and develop tools for follow-up and to better assure quality over the roll-out of the cascade model of training. Follow-up support by a variety of Agencies has kept the skills and knowledge gained fresh and relevant, such that they can continue to be applied not only in Gaza but also in the wider region. This type of organizational commitment (and the concomitant dedication of adequate resources to support implementation) is key to the success of any capacity development initiative (be it focused on human rights or not). With reference to human rights, however, it has allowed for a better contextualization of the Right to Education in the particular situation that Gaza and the wider region finds itself in.

In addition, the Gaza experience points to the usefulness of training and capacity development as an operational modality that is suited to certain emergencies. In Gaza, emergency response has been hampered and limited by severe movement and access restrictions that affect the way in which programming can be conducted. Attempting to bring in goods and services can monopolise many months of costly bureaucracy. Moreover, there has been no smooth transition into recovery and development. Rather, as is often unfortunately the case in emergencies – especially those defined by protracted and complex crises – the response to the emergency has also needed to build in components of preparedness to better manage and mitigate the impacts of the situation and any future increases in intensity. By conducting capacity-development activities, actors in Gaza are however attempting to address both of these issues. Notably, the sharing and dissemination of knowledge was more easily able to transcend the blockade imposed in 2007 to support good practice in programming. It also builds capacities and empowers people to better manage future response. Thus while there is often a reticence to see training and capacity development activities as appropriate emergency responses, the Gaza example highlights the appropriateness and usefulness of this in certain situations. In addition, the fact that initial inflows of funds often diminish over time and are much less readily available once the acute stage of an emergency is over – even if there is an ongoing protracted crisis – suggests a practical utility of using funding to support the transmission of knowledge regarding good practices as quickly as possible. The initial creation of a technical knowledge hub around human rights which will cut across acute and protracted and recovery contexts represents an important and sustainable output that may be mobilised over the longer term when funding is less readily available.

Finally, the Gaza experience suggests that by conducting capacity-development activities at the beginning of a response, or as a preparedness measure, we not only enhance the quality of emergency response but permit for smoother transitions to be made into longer-term recovery and planning. This is essential

if early gains are to be consolidated to improve the overall health of the education system. By engaging a wide range of stakeholders during the initial stages, we may enhance the likelihood for positive reforms and alignment with human rights over the longer term.

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Using Right to Education Indicators to Build Capacities in Development¹

BY BAILEY GREY

The Right to Education Project (RTE) promotes social mobilisation and legal accountability on the right to education. RTE was initiated by the first UN Special Rapporteur on the Right to Education, Katarina Tomaševski, in 2000 and was re-launched in 2008 as a collaborative initiative between ActionAid International, Amnesty International and the Global Campaign for Education, who form RTE's Steering Committee. RTE benefits from an Advisory Panel, which is comprised of experts in human rights, development and education. RTE seeks to build bridges between the disciplines of human rights law, development and education, bringing legal tools to development and education practitioners as well as civil society actors advocating for improved education provision.

RTE conducts research, develops advocacy and monitoring tools, builds capacity, and collaborates with a wide network of education, development and human rights practitioners, promoting a human rights-based approach to the process and the outcomes of education interventions. Through a human rights-based approach, RTE emphasises the participation of rights-holders and communities in decisions that affect their lives; the accountability of duty-bearers to fulfil their legal obligations; non-discrimination and the prioritisation of marginalised groups; empowerment of rights-holders to know and claim their rights; and explicit recognition and application of international human rights standards.

Since 2008, a key element of RTE's work has focused on developing and testing a set of human rights-based education

¹ This article is based on two Right to Education Project publications, *Right to Education Indicators Based on the 4A Framework: Concept Paper* drafted for RTE by Gauthier de Beco (2009) and the forthcoming *Right to Education Project Indicators Stocktaking Report* drafted for RTE by Mervat Rishmawi and Cathy Keable-Elliott (2012).

indicators aimed at bridging the three disciplines of education, development and human rights. RTE initiated work on developing human rights-based education indicators because traditional development indicators on education have focused more on human needs than on human rights standards, and they have been limited to quantitative statistics concerning enrolment numbers, literacy rates, pupil to teacher ratios, etc. Furthermore, human rights-based education indicators, which link directly to human rights standards, have been largely limited to addressing access to education. Through RTE's unique position of working across disciplines, RTE sought to develop a more comprehensive set of right-to-education indicators that were based on the international human rights legal framework, embracing a more holistic view of education. With this comprehensive set of indicators, RTE has sought to increase the capacity of education and development practitioners to better understand how the right to education may be implemented and monitored. In addition, RTE hoped to raise greater awareness amongst human rights practitioners on global education and development concerns.

Rationale for RTE Indicators

Human rights indicators are tools that use quantitative and qualitative data to measure the extent to which human rights have been fulfilled and to highlight discrimination through disaggregated data. They provide information for states to assess their own progress in implementing human rights in order to inform policy-making. In addition, human rights indicators enable civil society to draw upon existing data or to collect data to develop an evidence base that demonstrates gaps in the fulfilment of human rights obligations. Human rights indicators empower rights-holders and communities to hold duty-bearers accountable for their obligations, identify violations, and provide a means for evaluating progress and engaging in dialogue with duty-bearers. Indicators have the potential to provide a starting point and a platform for advocacy and mobilisation. Human rights indicators are especially useful for monitoring economic, social and cultural rights, such

as the rights to education, housing, health, etc., as they provide a framework for analysis of these large and complex issues.

RTE drew inspiration for developing indicators from the work of Katarina Tomaševski, as she proposed that indicators should be developed based on the normative framework of the right to education.² More commonly known as the 4 As – availability, accessibility, acceptability and adaptability – these essential elements of the right to education have been successful in bridging the disciplines of education, development and human rights, as the 4 As provide a comprehensive definition of the right to education as well as guidance on state obligations.

When RTE was re-launched in 2008, the modes of globally promoting progress on the implementation of education were grounded in UNESCO's Education for All (EFA) framework, which is based on six broad development goals. Similar and parallel to the Millennium Development Goals (MDGs), these EFA political commitments are not based on international human rights legal standards and lack strong accountability mechanisms; yet the EFA framework has served as the primary monitoring and advocacy framework amongst education and development practitioners. RTE responded to these gaps by developing comprehensive human rights-based indicators aimed at education and development practitioners. Additionally, since education has been largely viewed as a development goal, a comprehensive set of rights-based education indicators could stimulate discourse amongst human rights practitioners and raise awareness about rights issues concerning education.

Process for Developing the Indicators

RTE's work on indicators can be broken down into three phases. The first phase included background research, the development of a conceptual framework, and a series of consultations with

2 Tomaševski, Katarina. Annual report of the Special Rapporteur on the right to education, E/CN.4/2002/60, 7 January 2002.

stakeholders, including RTE's Steering Committee and Advisory Panel. The second phase focused on developing the indicator matrices, methodologies for applying the indicators, an international consultative workshop, and testing of the indicators in the field. In 2012 RTE has entered into the third and final phase, which will include a stocktaking exercise on achievements and lessons learned throughout the process of RTE's work on indicators, development of a user-friendly tool for practitioners in the field, and wider dissemination of the tool.

CONCEPTUAL FRAMEWORK

Through a process of reviewing existing development and human rights indicator frameworks regarding education, RTE began to develop a conceptual framework³ with three key themes. First, RTE's indicators must be grounded in international human rights law. Second, the 4A framework provides a comprehensive frame of analysis for developing the indicators. Third, the indicators can be used to track progressive realisation of the right to education through multiple applications.

The 4A framework was central to the development of RTE's indicators, as it was closely linked with international human rights legal standards and a means for classifying state obligations. It furthermore allowed for a comprehensive and more accurate set of indicators, whilst helping to bridge the disciplinary gaps. The 4A framework has made it possible to integrate development concerns into the rights-based indicators. This has included the use of both quantitative and qualitative aspects of the right to education by not only measuring the right to education (e.g., access to education provision) but also the rights in education (e.g., education content and quality, participatory and child-centric approaches, etc.) and the rights through education (e.g., learning outcomes, life skills, etc.).

³ For more details regarding RTE's conceptual framework, please see the Concept Paper on the RTE website, Right to Education Indicators Based on the 4A Framework: Concept Paper, prepared by Gauthier de Beco, May 2009, <http://www.right-to-education.org/sites/r2e.gn.apc.org/files/Concept%20Paper.pdf>.

The Office of the High Commissioner for Human Rights (OHCHR) has adopted a structural-process-outcome indicator model in an effort to standardise monitoring frameworks. RTE considered this model but ultimately determined that the OHCHR model may not appeal to education advocates and development practitioners, as it did not provide for a comprehensive and accurate set of indicators. Although a uniform model has advantages, RTE felt that the need to embrace a more holistic view of education and the need to build bridges across disciplines outweighed the benefits of using the standardised model. However, RTE has included structural indicators in its indicator matrix by developing a set of 'governance' indicators.

The right to education includes immediate or minimum core obligations (e.g., free and compulsory primary education for all) and progressive obligations (e.g., free secondary education over time) for states. RTE consciously elected to ensure that both core and progressive obligations were reflected in the indicator framework, as a focus on core obligations could result in progressive obligations being perceived as ancillary. Additionally, the inclusion of progressive obligations in the RTE indicator framework would enable civil society to track retrogressive or backwards steps taken by states in implementing their legal obligations regarding the right to education, and it would also encourage the development of benchmarks. Benchmarks are goals that are applied to the national context of each state which can be used to measure a state's progress. Unlike the general, one-size-fits-all goals of the EFA framework, benchmarks based on human rights standards are tailor-made to each state's particular set of circumstances, providing opportunities for continuous improvement.

RTE's indicators have also incorporated three transversal issues throughout the indicator framework to address non-discrimination, participation and accountability. The principle of non-discrimination is central to human rights and is a minimum core obligation. In order to ensure that states are upholding the right to non-discrimination in education, the indicators must show disaggregation of data. This does not preclude prac-

titioners from focusing the indicators on a specific marginalised group. Identifying marginalised groups and collecting disaggregated data helps to demonstrate the effects of laws, policies and programmes on marginalised groups and the resulting discrimination and unequal distribution of education resources. Another dimension to disaggregation revolves around intersectional or multiple forms of discrimination through multiple disaggregation, which is likely to reveal increased marginalisation for individuals who belong simultaneously to different categories. Finally, practitioners should distinguish among the various levels of education – primary, secondary, tertiary, and fundamental education. Because the right to education encompasses education at all levels, distinctions should be made regarding the prioritisation of education level.

Participation is a cross-cutting procedural right that ensures that rights-holders are able to meaningfully participate in decisions that affect them and is a central principle in the exercise of children's rights. Participation in education includes a variety of actors, including children, parents, teachers, and communities more generally, as education plays a key role in community development. Participation is integrated throughout RTE's indicator framework, focusing primarily on five issues: 1) curriculum development, 2) disciplinary sanctions and administrative proceedings, 3) adaptable approaches to strategies affecting school attendance and drop-out rates, 4) inclusion of minorities, and 5) the development of national plans of action for implementing education policies and programmes. The indicators can help to identify if procedures have been created and implemented to allow children, parents, teachers and communities to participate. They can also evaluate the extent to which school or educational personnel have been adequately trained in promoting and facilitating participatory approaches.

RTE's indicators aim to hold states accountable for their human rights obligations. This includes whether or not states have devised and implemented appropriate accountability mechanisms, such as the incorporation of domestic legislation, legal pro-

tections, plans of action, monitoring mechanisms and budgetary measures to ensure the full realisation of the right to education. These specific mechanisms are examined in RTE's governance matrix within the indicator framework. Furthermore, indicators on legal protections, complaints mechanisms and monitoring mechanisms are incorporated alongside other indicators to ensure accountability on specific issues, where applicable.

METHODOLOGY

The overall development of the indicators was established in three steps. First, standards drawn from international human rights law were identified and classified based on a general structure using the five headings of Availability, Accessibility, Acceptability, Adaptability and Governance – the 4A framework plus governance. These standards were translated into measurable units, which are expressed as indicators. The second step involved transforming the general structure into a chart with each of the five headings being further elaborated into sub-headings. The indicators have been categorised under these sub-headings. The third step included the incorporation of footnotes to link each indicator to the legal reference in international human rights law as well as references to closely related indicators elsewhere in the matrix.

TABLE 1.
RTE'S OVERALL INDICATOR MATRIX, DEMONSTRATING THE 5 HEADINGS
AND THE SUB-HEADINGS

GOVERNANCE	AVAILABILITY	ACCESSIBILITY	ACCEPTABILITY	ADAPTABILITY
Normative framework	Early childhood care & education	Physical obstacles	Skills	Child labour
Educational policy	Primary education	Economic obstacles	Tolerance	Child soldiers
Plan of action	Secondary education + TVE (technical /vocational education)	Administrative obstacles	Qualification of teachers	Minorities
Monitoring		Gender obstacles	Gender	Disability
Recourses			Discipline	Prisoners
Budget	Tertiary education + TVE	Socio-cultural obstacles	Religion	Armed conflict
International assistance & cooperation	Fundamental education	Out-of-school children	Language	
	Adult basic & literacy education			
	Educational & vocational information			
	Private schools			
	Closing schools			
	School infrastructure			
	Working conditions of teachers			

TABLE 2.

EXAMPLE OF AN INDICATOR UNDER THE ACCESSIBILITY HEADING AND ECONOMIC OBSTACLES SUB-HEADING ON TUITION FEES FOR PRIMARY EDUCATION, DEMONSTRATING THE TRANSVERSAL ISSUES (NON-DISCRIMINATION, PARTICIPATION AND ACCOUNTABILITY) AND LEGAL SOURCES AND RELATED INDICATOR REFERENCES.

ACCESSIBILITY		
Indicator A2.2 Economic obstacles A2.2.3. Tuition fees for primary education		
NON-DISCRIMINATION	PARTICIPATION	ACCOUNTABILITY
By minority, disability, origin (national, ethnic, social), region, rural / urban, public / private	Can parents, children and community leaders contribute to the formulation of strategies to identify out-of-school children, to encourage school attendance and to reduce the drop-out rates for children in low-income groups?	Is there a monitoring body evaluating the direct, indirect and opportunity costs of primary education? Is there a complaints mechanism for such costs?
Sources: Article 13 (2) (a) ICESCR; Article 28 (1) (a) CRC; Article 17 (2), (Revised) European Social Charter; Article 13(3) (a), Protocol of San Salvador; Article 11 (3) (a), African Charter on the Rights and Welfare of the Child Associated indicators: Primary education and Private schools (Availability)		

APPLICATION

There are over 200 indicators in RTE's comprehensive indicator framework.⁴ This is largely due to the fact that education is a large and complex human rights issue. The full matrix is not generally intended to be used as a whole since the exercise of collecting data for over 200 indicators would be a long and costly exercise. The framework is therefore intended to serve as a tool-box from which RTE and others may extract relevant indicators

⁴ For the full indicator framework, visit RTE's website: <http://www.right-to-education.org/node/860>.

to be used in specific national or local contexts and / or thematic contexts. It is crucially important that non-legal practitioners be able to understand and use the indicators. Therefore, the extraction process may include translation of the indicators into plain, understandable language and terminology and further adaptation to the local context (and local language to ensure that the local community can use the indicators).

In some cases, practitioners may be able to use existing data from a variety of sources, including inter-governmental organisations (such as UN bodies, the World Bank, etc.), governments, academics, research institutes, development agencies and international or national / local non-governmental organisations. However, RTE's indicators are also intended to encourage practitioners to collect data in addition to relying on existing data, especially since disaggregation is often not practiced by institutions that collect data. Practitioner resources and strategic priorities will largely influence the indicator extraction criteria.

Testing and Applying Indicators

Early in the process of developing the conceptual framework, RTE identified that the indicators would need to be tested to avoid creating indicators that are purely theoretical. Practical application has always been a primary goal, and given the complexity of working with comprehensive indicator frameworks, RTE's framework was conceived to be a 'learning-by-doing' instrument. In this way, the indicators would need to be adapted continuously, applying the lessons from each field test. The testing would also provide greater insight on how to develop a user-friendly indicator tool as well as the additional supports needed for wider dissemination and usage.

RTE considered testing the indicators on a variety of thematic contexts in different geographical regions. However, due to limited resources, RTE has relied on a less formal or scientific method for testing. RTE has worked with a variety of part-

ners who have applied the indicators with help from RTE on extracting and adapting the indicators to their specific contexts. The partners have applied the indicators, and RTE has drawn lessons through a stocktaking exercise and informal discussions with partners.

SOUTH AFRICA

RTE partnered with the Education Rights Project (ERP) in South Africa to apply the indicators to a research project aimed at examining the barriers to and violations of the right to education experienced by migrants, asylum-seekers and refugees in three provinces – Gauteng, Limpopo, and Western Cape. The project examined government policies and practices as well as the role of school governing bodies, school management teams, trade unions, and local municipalities.

RTE worked with ERP to extract and adapt the indicators and to provide general technical support. ERP conducted a literature review, policy and legislation review, review of existing national and local data, interviews, and field visits. ERP also conducted workshops with local communities, partners and key stakeholders on the right to education for the affected groups. ERP will deliver a national workshop in 2012, and their final report examining the findings from the research project is forthcoming.

INDIA

RTE partnered with ActionAid India to develop a project to examine the education rights of girls with disabilities in Delhi. In preparation for this project, RTE extracted relevant indicators from the matrix of 200 and worked with ActionAid India to adapt them to the specific context of the project. RTE also developed guidance notes, providing further direction on contextualisation, suggestions for developing benchmarks, and methodologies for collecting data. The project was unfortunately cancelled due to funding restrictions.

PROMOTING RIGHTS IN SCHOOLS

RTE and ActionAid International's Education Team jointly developed the *Promoting Rights in Schools* (PRS) framework.⁵ The PRS is aimed at practically applying RTE's indicators at the primary school level and is intended to serve as a means for mobilising local communities. The PRS seeks to engage parents, children, teachers, trade unions, local communities and civil society organisations in collectively monitoring and improving the right to education at the school level. The framework expresses ten key aspects of the right to education as a charter of education rights, citing the legal references. This charter is aimed at popularising education rights in local communities. For each of the key aspects of the right to education, there are corresponding indicators organised into a survey format that measure the degree to which the education rights are realised. The PRS also contains advice on using participatory methodologies for collecting, analysing and using the data, and there is further guidance on compiling reports as well as general advocacy guidance.

The PRS was initially tested by ActionAid Nepal in 35 schools and working with 20 local civil society organisations. The indicators from the PRS were adapted to the local context by teachers, students, parents and teachers' associations, who were all involved in collecting the data. Thirty-five school level reports and nine district level reports were produced, as well as a national report, which was shared widely with the ministries of education, finance and local development and other local stakeholders.

ActionAid Gambia also tested the PRS, working closely with parliamentary members of the Select Committee on Education and Training and the General Secretariat for Islamic and Arabic Education in Gambia. Data was collected across 44 madrassas (Islamic schools).

Following these two pilots, ActionAid has rolled out the PRS

⁵ For a full version of the Promoting Rights in Schools framework, visit <http://www.right-to-education.org/node/1374>.

to all of ActionAid's country-based education programmes, providing a series of workshops, networks for sharing learning, and additional guidance and technical support. The PRS has become part of ActionAid's core work on education with most of its national education programmes using the PRS. Each of the country programmes from over a dozen countries across Asia and Africa is expected to produce a national report later in 2012, which will be linked to a nationally-focused advocacy strategy.

Next Steps for Building Capacity on Indicators

Throughout the testing phase, RTE has learned many lessons that will inform the next phase of developing a user-friendly tool for practitioners for wider dissemination. First, the introduction of indicators requires good training on human rights standards, data collection, participatory methods for working with local communities, human rights analyses of laws and policies, and strategies for report writing and advocacy. In other words, a user-friendly tool coupled with human rights training is insufficient for meaningful engagement on using a human rights-based approach, and a more holistic approach to the wider process of using indicators needs to be considered. This means that the user-friendly indicator tool may need additional support tools and technical support, particularly around methods for identifying and collecting data. Most practitioners and communities that are likely to use RTE's indicators may not have experience in collecting data, so it is important to ensure that the process and the legal terminology are both accessible and empowering.

Second, a human rights-based approach to monitoring rights must not be overcomplicated, technocratic or externally thrust upon local communities. Human rights law can be highly technical, often relying on legal experts in specific thematic areas. Local communities must however play a lead role in using the indicators, determining priorities, and ensuring community engagement. Therefore, a balance must be found between applying a rigorous method and adapting to the local community's needs and capacities. A participatory approach will help to encourage

community involvement and identify the community's capacity needs and priority areas. Local communities should be encouraged to partner with technical experts who are able to provide appropriate levels of technical support without undermining local ownership of working with indicators.

Third, comprehensive indicator frameworks should be configured into more digestible, user-friendly formats, as RTE's full 200 indicators can be overwhelming. One possibility is to develop separate indicator frameworks for primary, secondary and tertiary school levels and to further organise the indicators under headings that are more recognisable to education and development practitioners. Whilst the 4A framework has been very useful for identifying indicators, the 4A framework is less helpful when applying the indicators. Such headings could include issues that are easily recognisable to practitioners, such as 'free and compulsory education', 'adequate school infrastructure', and 'quality trained teachers'. This undertaking would require appropriate guidance on how to select indicators to ensure that selection is based on strategic priorities rather than differing perspectives of the right to education.

Finally, it is important for local communities, practitioners and donors to experience a degree of success with indicator frameworks. This is most likely to occur at the local or school level. Therefore, clear guidance on advocacy strategies should address the school, district, provincial, national, and international levels, and wherever possible, solutions applied at the local level should be encouraged.

Conclusions

The indicators have provided an in-road to general capacity building on the right to education, which has been largely led by local development and education practitioners. Rather than approaching communities with general knowledge on rights, the indicators have provided a framework for learning, monitoring and advocacy. In other words, RTE's indicators have provided a

successful means of channelling the discourse from what the right to education is to why the right to education is not being realised and what can be done to remedy this.

Developing, testing, refining, and adapting indicators requires substantial time and resources (e.g., adequate staff resources). RTE has invested considerably in this process over the last several years and will continue to prepare and adapt indicators to specific contexts and develop guidance tools and supports. However, the leading role in applying indicators should be at the national and local level to ensure local ownership. This means that local development and education practitioners must take the lead. International institutions, such as RTE, can play a key role in developing the frameworks and supporting organisations to apply the indicators through an intermediary, reflective and capacity-building process focused on empowering local civil society. A collaborative process of working across disciplines will ultimately ensure that RTE's indicators are utilised to hold governments to account and impact the rights of local communities.

Promoting Gender Equality for Social Change in Bulgaria

BY TANIA TISHEVA

The present article provides an overview of women's rights in Bulgaria in the period of transition to democracy as well as of the challenges in the field after Bulgaria's accession to the European Union (EU) in 2007, taking into account that after accession to the European Union, Bulgaria assumed new duties in development cooperation. The article focuses on strategies that have been implemented by non-governmental organizations (NGOs) to promote gender equality and measures taken by state institutions. More specifically, it draws on the experience of the Bulgarian Gender Research Foundation (BGRF) to discuss the role of human rights education in promoting women's rights in Bulgaria, and provides conclusions about the most effective strategies for women's organizations as agents for social change promoting gender equality.

Introduction

The Bulgarian government recognizes that "the implementation of international standards in the field of human rights is a precondition both for national security and sustained development of the state and for international peace and security."¹ Bulgaria has ratified the main international instruments on human rights and women's rights, including the International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1982.

Prior to 1989, gender equality was perceived as achieved and even surpassed in Bulgaria. In the years 1962–1990, women's representation in Parliament tended to increase (though with a relatively stable share of women in Parliament of 19%, due to a party quota system), but immediately after the democratic changes in

¹ <http://www.mfa.bg/en/pages/menu/30>.

1989 there was an abrupt drop. Prior to the EU accession, Bulgaria underwent a democratic transition which was both a challenge and an opportunity for enhancing the rights of women.

The transition to democracy and a market economy was a difficult process and affected all social spheres and groups. All public sectors – health, education, welfare, governance and public administration – were targeted by reforms. The process took many years and there is still debate as to whether the transition has completely ended. In mid-1990s during the difficult transition period the will for economic reforms prevailed upon the realization of socio-economic rights. Lack of continuity was observed between the different governments in solving problems related to structural reforms and privatisation, as well as those of poverty and unemployment.

After the end of the socialist era, the democratic changes of the mid-1990s brought a new stage in the development of the women's movement in Bulgaria. The women's movement in this period was influenced by international conferences, women's platforms, and international and European institutions. Women's organisations were established and this, together with the influence of European and global feminist movements in the early 1990s, put issues related to women's rights onto the Bulgarian political agenda. The international obligations assumed at the Beijing Conference (1995) and at the World Summit for Social Development in Copenhagen (1995) also contributed to greater public awareness. The participation of several Bulgarian women at the Beijing Conference led to the establishment of new women's rights groups in Bulgaria, such as the Gender Project Foundation, the Women's Alliance for Development, and the Bulgarian Gender Research Foundation. With the support of international donors, these NGOs initiated projects in the fields of women's social and economic rights, women's human rights and, specifically, violence against women.

For example, since its founding in 1998, the BGRF has been supported by influential NGOs like The Advocates for Human

Rights from Minnesota. Aware that national networks of women's organizations are essential for the implementation of the Beijing Platform for Action, the BGRF extended its scope by attracting many women genuinely interested in working for the cause. New feminist groups formed in the country, and many trainings and seminars have been organised. Pilot multidisciplinary teams (consisting of a lawyer, a social worker and a psychologist) started working in several cities to provide support to victims of domestic violence (at that time the Law for Protection against Domestic Violence had not yet been adopted).

The BGRF also dedicated itself to challenging the government to implement the Beijing Platform for Action, and presented an alternative report to the CEDAW Committee and an alternative report to the UN Committee on Economic, Social and Cultural Rights, in November 1999. The growth and increased awareness of the women's movement in Bulgaria is one of the main results of the Beijing process. Through in-depth research, advocacy and campaigning for legislative changes, and also through bringing cases to court, the BGRF has contributed to the Beijing follow-up process.

Main victories for women's organisations after 2000 include the drafting and passing of several important laws: Law on Combating Trafficking in Human Beings (2004), Law for Protection against Domestic Violence (since 2005), and Law on Protection against Discrimination (2005). The BGRF and other partner organisations participated in consultations and the drafting of the laws. Concretely, the adoption of the Law for Protection against Domestic Violence required seven years of lobbying and campaigning, as well as key support from foreign donors. The example of foreign countries, and specifically the U.S. experience with domestic violence legislation, was a very important element. The support of The Advocates for Human Rights from Minnesota was crucial. In 2005, the infrastructure and service model established by the BGRF and its partners - support for the victims of domestic violence by multidisciplinary teams of lawyers, social workers, and psychologists - was inaugurated: the first consul-

tation premises for victims of domestic violence were opened in Sofia, Haskovo and Bourgas. In Sofia the municipality provided premises to the BGRF free of charge. Since 2000, the BGRF and other NGOs have developed and provided pilot models for non-formal education in schools on the prevention of violence and gender-based discrimination.

1. Women's rights in Bulgaria after accession to the European Union

At the European and global levels, gender equality remains an explicit priority and was developed as such in the European Strategy for equality between women and men for the period 2010–2015.

More than 85 million citizens in the European Union live in poverty and the majority of them are women.² Economic recession has a negative impact on the socio-economic rights of women: loss of jobs, low wages, pensions below the minimum subsistence level, and a gender pay gap of more than 17% are among the difficulties faced by women. As a result, indirect forms of discrimination affect a large proportion of women and girls, and combined with the low female representation in politics and economic decision-making, we may conclude that Europe, and our societies individually, are losing valuable human potential. However, the EU and its Member States are committed to promoting gender equality beyond the EU through development and external trade policies.

After Bulgaria's accession to the EU, gender equality continued to be perceived as already achieved in Bulgaria, as it was in the pre-transition times. However, according to data presented by the Global Gender Gap report 2011, Bulgaria is ranked 51st in the overall index for gender equality, while in 2010 it occupied 50th

² European Parliament resolution of 17 June 2010 on the assessment of the results of the 2006–2010 Roadmap for Equality between women and men, and forward-looking recommendations (2009/2242(INI)).

place, in 2009 it was 38th, and in 2007 it was 25th (nearly 200 countries were considered for inclusion in 2011 and 135 were ultimately covered).³ Moreover, there is still no legislation on equal opportunities between women and men as the government perceives no need for it.

The Global Gender Gap report also shows several other negative trends. There has been a slowing of progress in economic participation and opportunities for women, for even if the 2011 ranking of 48th place out of 135 was an improvement compared to the previous year (50th place in 2010), overall, as a result of the economic crisis, this indicator is decreasing – for 2007, 2008 and 2009 Bulgaria occupied the 30th, 35th and 40th places respectively. Concerning the indicator of political empowerment, the country was ranked 67th in 2011, which is also a decline: in 2007, 2008 and 2009 Bulgaria was ranked 32nd, 43rd and 42nd. For 2011, with regard to women's participation in the labour force, Bulgaria ranked 62nd; for wage equality 102nd; for the percentage of women in Parliament 51st; and for women in ministerial positions, 58th.

Data from the Social Watch report⁴ reveal that Bulgaria ranks above the European average and above all of its neighbours in terms of gender equity. With 76 points, Bulgaria ranks among those countries with a low gender equity index. While three points ahead of the European average of 73, and well above its neighbours Turkey (45), Greece, Romania (both at 72) and Serbia (75), it should be noted that Bulgaria is far behind the leading European countries with scores above 80 points (Norway, Finland, Iceland, Sweden, Denmark, and Spain).

Existing legislation provides a good basis for ensuring wider involvement of women in the process of governance, but laws and regulations need to be improved and developed. And regardless

³ http://www3.weforum.org/docs/WEF_GenderGap_Report_2011.pdf The Global Gender Gap Report, 2011.

⁴ A publication of the Gender Equity Index (GEI) 2012, published by Social Watch on the eve of Women's International Day, March 8, www.socialwatch.org.

of the formal guarantees for equal rights enshrined in the Constitution of Bulgaria, practice has shown that women do not enjoy equal opportunities in exercising their rights, especially in terms of professional careers or political participation. Women are normally found on the bottom rungs of the public ladder and practice professions that do not appeal to men. Bulgarian legislation still does not have special anti-discrimination instruments, such as an Act on Equal Opportunities. Also, there is no legal definition of gender-based discrimination.

The latest data on women in governance show that in the 27 largest Bulgarian cities, only 6.7% of mayors are women, and only 22% of representatives in the National Assembly are women (53 women and 187 men).⁵ These statistics are clear indicators that a glass-ceiling and barriers for political representation exist. The participation of women in decision making is a fundamental political right, and fair representation of women in parliament is essential to the development of civil society, and to enabling women to contribute their intellectual potential, sensitivity, and experience to solving society's most important problems.

A recent study, "Gender stereotyping in media and public life in Bulgaria: attitudes about and possibility of introducing gender equity legislation,"⁶ reveals the prevalence of the attitude that women are not competent to occupy managerial positions, the stated reason often being that "women cannot behave in a man's way." Women in high-level positions are often seen as simply covering for their husbands' unsavoury deals and tax evasion. The media often portray women as "militant" candidates and claim that men are "attacked" by them and are their "victims". This attitude towards Bulgarian women politicians is ironic, given the largely positive opinion of foreign women politicians such as Hillary Clinton or Brazilian president Dilma Rousseff.

⁵ Iliana Stoicheva, "Attitudes towards women in Bulgaria are like racism". Interview available at: <http://www.cross.bg/1242388>

⁶ Undertaken by BGRF in 2011 (to be published in 2012).

2. Bulgarian civil society: challenges and strategies

The difficulties Bulgarian women encounter in politics should be understood in light of problems they encounter in many other areas, e.g. health, domestic violence, enhanced protection of social and economic rights. Bulgarian women's NGOs approach these issues as an ensemble, lobbying and working to improve women's rights in all spheres of public life. NGOs faced many problems during the transition period, particularly underfunding and a lack of state support. As a result, and given the lack of opportunities for sustainable and autonomous fundraising, the civil society sector became dependent on donor organisations and focused on projects that were likely to receive funding.⁷ With accession to the EU in 2007, traditional foreign donors left the country due to the influx of the European funding. NGOs found themselves in an entirely new context, and faced the challenge of complying with the financial and administrative rules of the Structural Funds of the EU, which turned out to be a challenging effort. Despite the economic crisis that immediately followed accession, and the resulting budget restrictions on Bulgarian public institutions, women's NGOs were able to achieve several victories.

NETWORKING AND CAMPAIGNING

In 2009, the Alliance for Protection Against Domestic Violence was established, the first effort of its kind. Eleven NGOs from nine Bulgarian cities, the main service providers for victims of domestic violence, decided to work together. The goals of the Alliance are: to develop and affirm the values of non-violent behaviour; to promote the protection of human rights in compliance with Bulgarian and international legal standards; to raise the awareness of national and local institutions about the problems

⁷ "Creating an enabling environment for women's participation in development through legal and regulatory frameworks that provide women's equal access to rights and opportunities in the field of education, work and health – Challenges and recommendations, and the role of women's NGOs." United Nations, Division for the Advancement of Women (DAW), Expert Group Meeting, Thailand, 8-11 November 2005

of violence and to cooperate with them in developing a system to care for victims; and to build mechanisms for the sustainable development of structures to care for the victims of violence. In the three years since its formation, the Alliance has implemented several projects and campaigns at the national level. Thanks to collective advocacy and lobbying initiatives, the Alliance gained visibility and is recognized as a national organisation and service provider. With the support of foreign donors and with real support from the state, the NGOs of the Alliance provided support for more than 14,204 women and children, victims of domestic violence, from its establishment in 2009 to September 2011.⁸ Some organisations also provide crisis accommodation for victims (shelters for short-term stay). Unfortunately, in 2012, the sustainability of services is under question due to a lack of public funding.

ADVOCATING LEGISLATIVE CHANGE

In 2009, the BGRF and the Alliance proposed and lobbied for amendments to the Law for Protection against Domestic Violence, as well as changes in the Law on the Permission for Acquisition and/or Storage of Explosives, Ammunition and Pyrotechnic Articles to ensure that perpetrators of domestic violence cannot receive permission to buy firearms. Both organizations will continue to propose legislative changes for effective protection from violence, and intend to introduce comprehensive measures for combating gender-based violence.

The challenges to effective implementation of women's rights in the context of economic and political transition are:

- Adopting legal safeguards against the negative impact of macroeconomic policies
- Motivating political will to improve legislation and implement gender equality policies

⁸ Data from monitoring by the BGRF. This figure includes only victims who sought help. 70% are women and 30% children. There are many victims who do not seek support yet. In Bulgaria one woman in four is a victim of domestic violence; in the EU, it is one woman in 5.

- Mobilizing financial resources to implement gender equality and women's rights
- Promoting gender equality as integral to human rights and social rights
- Fighting gender stereotypes and investing in human rights education
- Creating incentives to increase women's representation in decision-making instances and effective participation in the labour market
- Enabling civic participation and financial support for NGOs.

In the case of Bulgaria, benefitting from EU Structural Funds is critical in meeting these challenges.

It is worth mentioning that UNIFEM has underlined the importance of capacity development for implementing gender equality legislation and policies. Indeed it recommended that Central and Eastern European states: *"Encourage the enactment of new laws and regulations for the advancement of women where appropriate and ensure that new legislation contains clear enforcement mechanisms and is tailored to the national context. Following adoption of laws and policy frameworks to protect women's rights, national governments must ensure their effective enforcement through intensive capacity building at all levels targeting all bodies responsible for implementation, drawing on the expertise of women's organizations. Awareness-raising about the law and women's rights is necessary for parties responsible for implementation, as well as for society at large, and particularly for women as rights holders."*⁹

As this recommendation underlines, full enjoyment of women's rights also requires raising the awareness of rights holders. Education for gender equality should start at a very early age. Education and awareness raising will contribute to broader understanding of the social roles of both sexes, to promoting

⁹ "Gender equality in the EU—two years after accession of new member states." UNIFEM Consultation, April 2006. http://www.unifem.org/attachments/stories/currents_200606_EUBratislavaMeeting_ConcludingStatement.pdf

tolerance of differences, and to fostering respect for women's rights and human dignity.

REGIONAL TRAINING PROGRAMMES ON INTERNATIONAL STANDARDS FOR LAWYERS

A unique initiative by the BGRF and partners in the Balkans, the Commonwealth of Independent States, and Eastern Europe is the Women's Human Rights Training Institute (WHRTI). A two-year training programme of which three rounds have now been completed (2004-2006, 2007-2009 and 2009-2011), it is a joint initiative of the BGRF, the Network of East-West Women, and the Center for Reproductive Rights. It provides training for young lawyers from Eastern Europe on key women's rights issues such as violence against women, employment discrimination, and reproductive rights. The universal and regional mechanisms for their protection are also studied: the CEDAW Committee, the European Court of Human Rights, and the European Court of Justice. The BGRF organises four training sessions for each round, produces educational materials and has developed a web site for e-learning by participants. Over 60 young lawyers have participated in the Institute from Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Georgia, Hungary, Ireland (observer), Latvia, Macedonia, Moldova, Poland, Romania, Russia, Slovakia, Turkey, Ukraine, Tajikistan, and Kyrgyzstan. The BGRF is currently running Round IV of the WHRTI in Bulgaria, with twenty-four lawyers from eighteen countries learning in English how to litigate to protect women's rights. The WHRTI has trained a pool of young experts in the region, and after the completion of the course many of them pursue cases and make advocacy changes in their respective countries for more effective implementation of women's rights.

NATIONAL AND INTERNATIONAL IMPACT LITIGATION

Another strategy for promoting women's rights is to pursue impact litigation before national courts and international fora. BGRF lawyers and legal experts have brought cases relative to violence against women before the European Court of Human

Rights in Strasbourg (Bevacqua and S. v. Bulgaria) and before the United Nations (UN) CEDAW Committee (V.K. v. Bulgaria). They have also submitted major cases in the field of employment discrimination and discrimination in social security which are still pending before the national courts. In addition, the BGRF had filed a complaint about gender stereotyping in a sexist advertisement campaign to the Bulgarian Commission for Protection against Discrimination on behalf of 13 women.

INTERNATIONAL ADVOCACY

Advocacy at the national level is often combined with international advocacy through alternative NGO reports to UN mechanisms such as the CEDAW Committee, the Human Rights Council Universal Periodic Review (UPR), and various UN committees. During the first UPR cycle, in November 2010, Bulgaria received considerable praise for a number of policy developments, including an attempt to address gender inequality through the creation of an independent national body for women's rights.¹⁰ Recommendations from 15 UN member states addressed human trafficking, gender stereotypes, domestic violence, child protection, socio-economic rights, health issues, minorities, and the rights of people with disabilities. Bulgaria accepted all of the recommendations, which indicates government-level commitment and, hopefully, efforts in the near future for to address those issues.

SPECIFIC ATTENTION TO MULTIPLE DISCRIMINATION(S)?

Bulgarian women's NGOs have also identified and started tackling important issues affecting marginalised groups of women, such as Roma women, or violations caused by multiple discrimination. These issues are not yet the focus of national policies and there are no services or education for the affected groups. In the near future, women's NGOs intend to tackle violence against elderly women and address young women's empowerment.

¹⁰ http://www.ishr.ch/upr/950-despite-improvements-problems-persist-in-the-areas-of-minority-rights-and-health-institutions#_ftn1#_ftn1

3. Promoting Gender Equality in Development Cooperation

Bulgarian women's NGOs consider promoting gender equality in development cooperation, in the framework of the EU or Bulgarian Official Development Assistance policies, to be an essential element of their activities.

EU DEVELOPMENT COOPERATION AND GENDER EQUALITY

The European Union recognises gender equality and women's rights as a key and cross-cutting factor for sustainable development, especially in areas where inequality is more pronounced in developing countries, such as employment and economic activities, governance, access to education and health, and gender-based violence. This is an underlying principle of the EU Commission communication of 8 March 2007, "Gender Equality and Women's Empowerment in Development Cooperation"¹¹ and in the related Commission working document of 8 March 2010, "EU Plan of Action on Gender Equality and Women's Empowerment in Development."¹² Both documents affirm an ambitious goal: developing the EU's capacity for action and its leading role in defending gender equality at the global level.

Promoting respect for human rights as part of Europe's democratic values is a fundamental principle in EU development objectives and strategies as the protection of human rights is essential for poverty reduction and sustainable development.¹³ EU development co-operation policies, programmes and technical assistance must further the respect of human rights as established in international human rights instruments to ensure that subsidiary development policies and instruments are in turn human rights based. The European Instrument for Democracy and Human Rights response strategy for 2011-2013, among pertinent

¹¹ COM(2007) 100 final.

¹² SEC(2010) 265 final.

¹³ 2006/C 46/01.

EU policies and human rights guidelines, has specifically laid out the EU's main human rights objectives.

However, gender equality and women's empowerment receive little attention in the strategic frameworks for development cooperation for the new member states of the European Union. Where they are mentioned, they are generally treated as a separate policy area rather than being truly mainstreamed throughout development policy, programming and implementation.¹⁵

GENDER EQUALITY IN BULGARIAN OFFICIAL DEVELOPMENT ASSISTANCE

Bulgaria, having signed the United Nations Millennium Declaration of September 2000, has undertaken substantial commitments to reduce poverty by 2015. Moreover, as an EU Member State, the country contributes to poverty reduction in other countries. Though Bulgaria has not yet settled its domestic problems, it faces a new challenge: moving from being a beneficiary country to a donor country.

Bulgaria underwent a difficult process of political, economic and social transition and then a period of accession to the European Union, prior to its full adherence in 2007. Less than two years after full accession to the EU, the country was affected by the global financial and economic crisis. Bulgarian citizens, whose standard of living was, on average, far below that of other Europeans, had to face the challenge of austerity measures imposed by the EU. Today, these measures continue to hamper democracy and social development and the country cannot contribute effectively to development cooperation due to ongoing domestic concerns.

¹⁴ Action Brief: Development cooperation and gender equality in the New Member States of the European Union. <http://www.gadnetwork.org.uk/storage/14.%20Development%20Co-operation%20and%20Gender%20Equality.pdf>.

In this context, Bulgarian spending on official development assistance (ODA) is the lowest in the EU,¹⁵ and the year 2009 marked a 13% decrease,¹⁶ a fact that creates difficulties for policy implementation. The planned budget for official development assistance (all forms, including contributions to international organisations, EU ODA policies, bilateral aid and regional cooperation) for the period 2010-2012 is 325 million Bulgarian Leva (BGN) (87 million for 2010, 108 million for 2011, and 130 million for 2012).

The main challenges in the forthcoming years will be building the legal framework, administrative capacity and relevant structures for ODA policies and fulfilling MDG commitments. Raising public awareness about the country's new donor role and involving civil society organizations are also of crucial importance. The gender approach is still missing from Bulgarian development cooperation policies.

The inclusion of gender priorities in ODA, however, will depend on the evolution of national commitments concerning gender. Indeed, strengthening Bulgarian gender equality machinery and adopting new legislation in this field will be of decisive importance for improving the situation of women. Gender-disaggregated statistics, gender budgeting, new laws and regulations, and new gender equality bodies will help, and combined efforts by many actors at the national level – such as sharing experience and knowledge in developing capacities and promoting rights-based and gender-sensitive legal framework and policies – will be required for any real improvement of ODA policies.

¹⁵ Bulgaria's ODA as a share of GDP in 2005 amounted to 0.008% of GDP, or (3,317,889 Bulgarian Leva (BGN)). In 2006, the figure increased to 0.06% of GDP, or BGN 28.6m (€14.6m), of which BGN 1.05m (€0.54m) was committed to multilateral development co-operation and BGN 27.5m (€14.1m) to bilateral co-operation. In 2007 Bulgaria set aside just 0.08 per cent of its GDP for ODA.

¹⁶ <http://news.expert.bg/n301993>.

4. Capacity Building: the Bulgarian Gender Research Foundation experience

Human rights education is part of official school curricula in many countries. It can be broadly defined as “learning that promotes the knowledge, skills, behaviours and attitudes needed to promote human rights and social justice.” Two of the central concerns of human rights education are political and economic emancipation – to encourage and enable people to participate in the decisions that affect their lives. It “can empower women and other target groups outside the classroom and lead to their political, economic and professional emancipation in the society at large”.¹⁷

The civil society sector in Bulgaria is concerned about the lack of human rights education in the education system. Comprehensive education on gender equality and for the elimination of gender stereotypes in schools is also lacking, despite the clear provisions of international instruments and of the Law on Protection against Discrimination.

Though NGOs provide human rights education via non-formal methods in schools on a project basis, this is not currently sustainable. The experience of the BGRF with non-formal education in several schools reveals that young people need to know more about mechanisms for human rights protection. Issues such as domestic violence, aggression in schools, discrimination, trafficking, health issues, etc., are of utmost importance for young people, and this need should be addressed through a complex approach including all effective methods of education – formal, non-formal, media, role-plays, discussions and lectures from professionals (representatives of the police, NGOs, etc.). Even when young people are informed about their basic human rights, instruction often does not extend to social and economic rights. Teachers also require special training from human rights organizations.

¹⁷ Human Rights Education in Communities Recovering from Major Social Crisis: Lessons from Haiti, http://www.surjournal.org/eng/conteudos/getArtigo14.php?artigo=14,artigo_03.htm.

The absence of any comprehensive strategy or government policy document is glaring in this important human rights sphere. The delay in the adoption of a special law on equal opportunities of women and men and in the establishment of an institutional mechanism for gender equality in Bulgaria is the main reason for this absence. In 2010, during the first Universal Periodic Review at the UN Human Rights Council, Bulgaria received recommendations to introduce human rights education in official school curricula. That recommendation was accepted, and the civil society sector hopes that real efforts will be implemented towards this goal soon. In 2011, the UN Declaration on Human Rights Education was adopted and this process will affect Bulgaria as well.

The lack of tools for human rights education is also problematic. Those that exist are provided by NGOs or short-term educational programs on a project basis. The role of NGOs in human rights education is crucial, as they are advocates with expertise from the field and experience with the most current human rights and gender issues. And the learning process is very effective when young human rights defenders work in classes with their peers.

Human rights education should be officially introduced and financially supported by the government. Education must be a national priority, especially in times of crisis, which nowadays is not only economic, but spiritual and moral. Investment in the sector should be promoted as investment in human capital with added value for the future.

THE BGRF EXPERIENCE IN HUMAN RIGHTS EDUCATION IN SCHOOLS

In the course of its work since 1998, the BGRF has continuously used education and training to raise awareness and achieve a higher level of gender equality and human rights protection. It has been trying to compensate for the education and training that should be provided by the government. In fact, the BGRF activities have been implemented under a variety of projects, with very little state funding.

Gender equality education in secondary schools was implemented in the 2000–2006 period as part of awareness-raising and prevention of violence against women projects. As a general rule, it is very difficult to secure funding for education programmes in schools, as sponsors demand evidence of immediate results as soon as the project is complete, whereas results from educational programs often become apparent only several years after completion.

The BGRF received funding from foreign donors to develop materials and tools for education programs on gender equality and against gender-based violence in four schools in Sofia. The initiatives included training for teachers selected by the BGRF – based on their commitment – and at the end of the project they clearly wanted to continue to work with the students and spread the human rights message. The content was interactive and based on non-formal education methods. Students, both boys and girls, learned about serious human rights issues through interactive exercises, games, role playing, and discussions, and each level included an evaluation phase. The BGRF courses also included drawings, collages, essays and entertaining events.

These early BGRF initiatives have demonstrated the great need for continuing education on these issues, using innovative tools and offered by committed teachers. By using competitions and entertaining events, the programmes gained more visibility. Unfortunately, it has been impossible to continue this program with state funding, despite the fact that the programmes, tools, and manuals were officially approved by the Ministry of Education and were recommended for introduction into the secondary school curriculum.

In the 2008–2010 period, the BGRF renewed its efforts to introduce human rights education in schools, using awareness-raising projects on antidiscrimination and gender equality among young people. Several young people from the staff of the Youth program of the BGRF prepared special tools and a programme

with the support of the Council of Europe. The team decided to implement them in secondary schools in the Dimitrovgrad region (where the BGRF has a branch), where young people from disadvantaged groups and regions need more awareness of their rights, of gender equality, and of intolerance towards violence. The BGRF was not surprised to discover that, in the country, these programmes are both more keenly needed and better accepted, and that young people there are very open to the issues proposed for training. The evaluation by school authorities was very positive and there are requests for more training sessions in the current year.

These experiences in schools demonstrate that target groups are open to and in need of human rights education. Efforts by NGOs are recognized by educational authorities, but there is no support for continuity or ongoing financial support.

Education programs in schools for students and young people from disadvantaged groups have also been developed and implemented by the member organizations of the Alliance for Protection Against Domestic Violence in ten towns in Bulgaria.

HUMAN RIGHTS TRAINING FOR PROFESSIONALS

With the goal of identifying the need for special legislation against domestic violence, the BGRF began organizing training for police, judges, attorneys, and prosecutors in 1999. This activity was very intensive prior to the adoption of the Law for Protection against Domestic Violence in 2005, preparing professionals for their roles in the protection of domestic violence victims. Aware of the experience of foreign NGOs in the field, the BGRF has continuously had recourse to the support and cooperation of well known organizations like The Advocates for Human Rights from Minnesota. The Advocates have been working with the BGRF in interdisciplinary seminars in different cities in Bulgaria as well as in specialised sessions for police and judges. In the field of professional education, it was essential to include training by foreign professionals like police and judges from the USA in order to demonstrate to Bulgarian professionals that they are

not alone in fighting domestic violence and protecting victims, and that their American colleagues face similar challenges and problems. For training of this kind, it is important to make the audience aware of existing universal and regional standards. In parallel with the international training sessions, the BGRF conducted a series of training programs and discussions only with Bulgarian trainers and participants. These led to the drafting of the Law for Protection against Domestic Violence. Since the law was adopted, the BGRF training sessions with professionals have focused on the successes and gaps in the implementation of the law, and are dedicated to improving the law and practice under the law.

In its efforts to provide relevant training for professionals working in the field, the BGRF has encountered the same obstacles, specifically the impossibility of ensuring ongoing support for the training sessions. Sustainability and continuity are crucial for the well-being and security of the victims of violence.

REGIONAL TRAINING OF LAWYERS

The WHRTI, discussed above, should be seen as a specialised BGRF training programme for professionals. Its major advantages are: the international exposure and networking of young Bulgarian lawyers with colleagues and participants from New Member States of the EU and from transition countries; the introduction of many of the lawyers to NGO work; the pool of international lecturers and trainers (representatives of United Nations system, the Council of Europe, the European Court of Human Rights etc.); the interactive methods and tools; and the two moot court sessions.

The WHRTI is aimed at developing human rights and women's rights legal practice. For Bulgaria it has additional value, attracting foreign postgraduate students for this specialised human rights training programme. Although the Institute is appreciated by Bulgarian institutions, which are aware of its achievements, the WHRTI is not yet accredited as a postgraduate programme.

BUILDING CAPACITIES OF DUTY BEARERS

As for the training of other representatives of state institutions (representatives of Ministries, the Commission for Protection against Discrimination, Members of Parliament) the BGRF has implemented shorter training sessions for them, including numerous thematic seminars and conferences on issues such as violence against women, trafficking in women, legislation on gender equality, and antidiscrimination. These events can be seen as educational sessions for duty bearers due to the extensive materials and documentation provided to the participants, as well as to the very informative nature of the sessions. Almost all training with the above target groups is related to concrete subjects open to legislative changes, and events include specific recommendations to Bulgarian institutions by the BGRF and partner NGOs, as well as follow-up activities like campaigning and lobbying for implementation of those recommendations.

The role of NGOs in the education of duty bearers is to identify and transfer to their agenda the issues affecting rights holders. The training process contributes to maintaining relations with state institutions for the implementation and effective protection of the rights of citizens.

Conclusion

Social inequalities are intensified during transition periods, and societies and states are challenged by such historical moments to respect and strengthen women's rights as inalienable human rights.

The Bulgarian experience in promoting women's rights during democratic transition can be assessed as promising. In the last twenty years, non-governmental organizations have met the challenge of being the main promoters of gender equality and greater public awareness. Successful work with policy-makers for social change has consisted of positive interaction

and dialogue, proposing concrete models for the protection of women's rights and new legislation.

In the Bulgarian experience, the most effective strategies for women's organizations as agents for social change are networking, coalition-building, advocacy, training, impact litigation at the international level, research, drafting proposed legislation, and monitoring the implementation of legislation. All of those efforts are interdependent and influence each other.

In addition to the work of NGOs, key factors for achieving full women's rights are state policies and gender equality machinery, education, and empowerment. It requires effective gender mainstreaming policies; gathering disaggregated data on gender for national statistics and applying a gender analysis to all policies; openness and transparency in the political process; developing and building the capacity of institutional mechanisms; and high representation of women in decision-making positions. Last but not least, education for human rights is a principle element in the fight against gender stereotypes.

In conclusion, the role played by civil society for gender equality in Bulgaria, in particular through developing capacities on the issue, has been crucial in the context of international human rights obligations and European integration.

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Strategies for Interacting with the State to Enact Systematic Change with Regard to Child Rights: Our Strategy, Changes and Developments

BY OLGA KORZHOVA AND NATALIA UTESHEVA

The Youth Human Rights Group (YHRG) has been working to protect and enforce child rights in the Kyrgyz Republic since 1995. In doing so, YHRG has continued to amend its approach to interacting with the state with regard to its advocacy activities. As YHRG's sixteen-year tenure in the field of child rights protection has shown, human rights monitoring is not only an effective tool for obtaining documented information about human rights violations, it is also essential to the development of controversial proposals to radically change the roles and responsibilities of the state in this and other spheres.

Systematic monitoring allows civil society organizations to track human rights situations, to monitor the practical implementation of international standards for human rights protection, and, in some instances, to take appropriate steps to protect public interests.

2000

In 2000, YHRG adopted the methodology of the Helsinki Foundation for Human Rights (Warsaw, Poland) for monitoring closed institutions. This methodology includes both quantitative and qualitative approaches to data collection, as well as methods for documenting evidence of human rights violations and presenting that evidence to the proper authorities.

Initially, YHRG's monitoring activities were focused on the wide spectrum of child rights abuses perpetrated in orphanages and boarding schools. In 2000, YHRG published a report based on the results of its monitoring. The main goal of that report was to alert

authorities to the rampant problems associated with orphanages and other youth-oriented residential facilities, while also offering constructive recommendations as to how these problems might be addressed. YHRG sent this report both to state agencies and to international organizations, and its findings were included in the Kyrgyz Republic's initial report to the UN Committee on Child Rights.

As a result of YHRG's monitoring initiatives and its subsequent publication of the 2000 report, orphanages and boarding facilities were allotted increased funding for nutrition and the general improvement of living conditions. Despite of these changes, however, many of the other violations revealed in the 2000 report were left unaddressed.

2006-2010

In 2006-2007, YHRG continued to monitor children's institutions. In order to increase monitoring effectiveness, gather more detailed information, and produce a more comprehensive analysis of the scope of institutional child rights violations, YHRG invited the participation of qualified specialists, including a paediatrician, a psychiatrist, a speech pathologist, and several psychologists. This phase of the monitoring project revealed that a number of institutions engaged in cruel treatment or torture of their young wards. Information about the most brutal violations encountered by the monitoring team was sent to state agencies and also published in the mass media. In response, state agencies launched several investigations related to child rights, and for the first time, the Interdepartmental Commission investigated twenty-eight children's institutions. Although these investigations confirmed YHRG's findings, and in spite of mounting evidence of continued violations, state agencies have not taken effective measures to combat these problems, and no systematic changes have been made. A sobering example: when YHRG revealed that children were being tortured in one psychiatric hospital, producing evidence to show that children had been placed there solely as a means of punishment with no medical grounds, state agencies responded by merely dismissing the director. This measure was

patently insufficient: while continued monitoring in 2009 showed that the institution in question no longer practiced “torture” per se, it has continued to groundlessly institutionalize children.

In 2009-2010, YHRG, continuing to improve its approach to monitoring, added to its toolkit, developing a system to store and aggregate information in order to facilitate accessibility and analysis. YHRG now develops an individual toolkit for each information source, thereby simplifying the processes of data collection, collation, processing, and analysis. For instance, a semi-structured questionnaire that includes questions about the various rights of children was developed for the residents and personnel at children’s institutions. A chart to help assess children’s living conditions has also been developed.

When visiting residential care institutions, YHRG examines the following sources of information:

- 1) Written sources, including the personal files of employees and residents; registration journals; visitation records; medical charts; records of checkups and mortalities; medical charts; and internal institutional reports. Because this information is intended for internal use only, it is often more candid and credible than information derived from materials designed for release outside the institution. YHRG also examines the internal charters, regulations, instructions, informational requests from state agencies, and National Statistics Committee data that regulate each institution’s internal organization and activities.
- 2) Personal sources, including interviews (with administrators, personnel, residents, and graduates of institutions) and psychological examinations (of child residents).
- 3) Direct observation through medical examinations, photographic documentation, and video recordings. In order to provide more comprehensive evidence of violations and win the confidence and support of state agencies, YHRG has developed a rigorous system for comparing differently-sourced information. When using information gathered through monitoring, YHRG adheres strictly to the

principles of confidentiality and non-disclosure of personal data. Visits to institutions are scheduled according to annual agreements with the Office of the Ombudsman; the agreements foresee not only the monitoring itself, but also cooperation in promoting essential changes in law and practice by filing claims with judicial bodies.

Despite these improvements in monitoring practice and procedure, however, interaction with state agencies remained unchanged, and actual interventions on the part of the state were insufficient and ineffective.

2011

In 2010, after reviewing its contributions to the field of child rights protection, YHRG concluded that state agencies remain unmotivated to seriously address the chronic problem of child rights violations in institutional settings, even after having been presented with copious evidence of the scope and severity of infractions. Upon reviewing the effectiveness of its past monitoring efforts, YHRG elected to alter its approach to using information gathered through professional monitoring in order to achieve shorter turnaround times and more effectively advocate for child rights protections.

The new approach requires that each institution undergo two stages of monitoring:

- The goal of the first stage is, as before, to provide information on child rights violations to the institution's administrators and to competent state agencies.
- The goals of the second stage are 1) to evaluate the effectiveness of the responsive measures undertaken by the administrators of state agencies to eliminate existing violations; and 2) to gather additional information for purposes of preparing strategic litigation aimed at enforcing child rights protections in court, should state agencies' responsive measures fall short.

Using the information gathered as evidence, YHRG is presently pursuing several approaches to improving the protection and enforcement of child rights:

- Communicating with institutions of care and providing recommendations for change;
- Communicating with the state agencies charged with correcting revealed violations and overseeing the work of institutions of care;
- Using the final report on monitoring to support political action, such as: including the information in a shadow report to the UN Committee on Child Rights; contributing information for the Universal Periodic Review of the UN Human Rights Council; distributing the report to Parliament and other state agencies;
- Using evidence of child rights violations to initiate strategic litigation aimed at protecting child rights, which may lead to submission of communications to the UN Human Rights Council.

YHRG's first efforts to use strategic litigation for changing situations in the field of child rights protection gave significant results. State agencies' legal obligation to implement court decisions allowed YHRG to achieve changes in a short period, a previously impossible feat.

This article outlines two different approaches that YHRG has used in its interactions with state agencies and assesses the effectiveness of each in the contemporary Kyrgyz context.

Approach 1: Leading Conversations with Institutional Administrations and Competent State Agencies

Chaldovar

On October 17, 2011, YHRG and the Office of the Ombudsman conducted joint monitoring of child rights at the Chaldovar Boarding School (hereafter "the School").

During the monitoring, it was revealed that the School owns subsidiary agricultural interests, consisting of cattle (approximately 50 head) and a 22-hectare plot of farmland. According to the institution's director, the institution has handled the exploitation of the agricultural lands internally since 1995. Because the School does not employ a sufficient number of laborers, most of this work is done by unpaid residents. On October 17, 2011, for instance, students in grades seven, eight, and nine were conscripted to sort beans rather than attend lessons. This requirement not only infringed on the targeted students' rights to education, but also violated basic legal provisions concerning child labor and labor safety conditions (see attached photos). Boys carried sacks of beans whose weight significantly exceeded the limits set for minors by the Ministry of Labor and Employment. Sacks of beans were lifted from the floor and carried away one at a time by four boys. On average, each boy lifted two or three sacks, each of which weighed between forty and fifty kilos. Outside the building, boys sifted the beans from each sack. During what was supposed to be a sports class, children were made to package beans into sacks and then haul these sacks outside. The air in the room where this "sports class" was being held was so thick with dust that monitors found it difficult to remain inside for more than short periods. Monitors also observed that the children worked from 9:00 until 14:30 with a one-hour break for lunch and a 45-minute break for a snack; they also carried on working after the monitoring team departed the institution.

During this monitoring, the paediatrician, a qualified forensic medical expert, examined ten residents involved in the work of sorting beans. The expert determined that all ten residents examined had sustained corns of varying severity; three had increased blood pressure; three others had sustained broadening of venous cells on the suprascapular area of their backs. Two of the children examined had deformities of the collarbones and chest; the medical chart of one of these two children contained a formal exemption from load-bearing physical activity. All of these health problems are known to be linked to child agricultural labor in general, and to the work of processing beans in particular.

STRATEGIES FOR INTERACTING WITH THE STATE
TO ENACT SYSTEMATIC CHANGE WITH REGARD TO CHILD RIGHTS:
OUR STRATEGY, CHANGES AND DEVELOPMENTS

According to financial documents submitted to the Office of the Ombudsman and the YHRG monitoring group, the agricultural labor of boarding school children generates a profit of not less than \$25,000 for the school (this sum is given for 2010). In spite of this, the children themselves are provided with meals, accommodations, and living conditions comparable to those provided to residents at state-funded boarding schools.

As the monitoring data clearly shows, the Chaldovar boarding school administration unabashedly exploits child labor, maximally disrupts the educational process, substantially damages the health of child residents, misappropriates the economic fruits of child labor (e.g. the labor is unpaid), and violates both general and minor-specific labor laws (e.g. the laborers have no employment contract). This and other distressing information gathered during the monitoring was sent urgently to the responsible state bodies: the General Prosecutor's Office, the Ministry of Labor and Employment, the Ministry of Social Protection, the Ministry of Health, and the Ministry of Education.

The Ministry of Labor and Employment reported that the Interdistrict Inspectorate of Labor for the Talas Region (the state inspectors) had conducted a site inspection on October 16-17, 2011. The inspectors confirmed that illegal child labor was taking place at Chaldovar Boarding School. The school's director was ordered to prevent future instances of child labor and to remit back payment to students consistent with the region's average hourly labor wage. Teachers and administrators were given an explanation of provisions and conditions of the law, under which children may be involved in work: according to Article 18 of the Labor Code, children 14 or older, with a parent's consent, may contract to carry out light work, as long as 1) it is not harmful to their health; 2) it does not disrupt the learning process; and 3) it is carried out during free time (i.e. not during school hours).

The Ministry of Education and the General Prosecutor's Office reported that Chaldovar Boarding School had been inspected, the fact of child labor use confirmed, and the school's director reprimanded.

manded. However, internal documents (the boarding school's financial statements and documents relating to its business) revealed that the exploitation of child labor at this boarding school had a long history. YHRG employees were able to confirm that this school had used child labor since 2010, and repeatedly communicated this information to the relevant government agencies.

Such measures will likely not suffice to prevent the further exploitation of child labor by this institution. YHRG is planning further monitoring to ensure the institution's total compliance with child rights legislation.

If that institution continues exploiting child labor and YHRG exhausts all internal means of legal protection with no success, it will initiate legal proceedings against the institution while bringing the case to the UN Committee on Child Rights.

Approach 2: monitoring and strategic litigation

The Center for Rehabilitation of Minors under the Ministry of Internal Affairs of the Kyrgyz Republic

This children's institution was brought to the attention of YHRG's monitoring program in 2006. The main purpose of the Center for the Rehabilitation of Minors (hereafter "CRM") is to identify unaccompanied children detained during routine raids of streets and bazaars, and to hold vagrant children in custody until they are transferred back to their families or to boarding schools. To this end, detained children may be held at the CRM facility for up to 30 days without a court order. While in custody at CRM, inmates are strictly prohibited from leaving the facility's grounds and remain under constant police supervision. This means that CRM meets the criteria for characterization as a closed institution, and that the children's deprivation of liberty qualifies as detention. A UNICEF report compiling current research on child rights issues in Kyrgyzstan characterized CRM as a "short-term closed residential institution [whose] function rather resembles detention or a 'safe' institution."¹

The Constitution of the Kyrgyz Republic sets forth strict rules regarding detention, requiring that each detainee be brought to court for a decision on the legality of his or her detention within 48 hours of arrest or intake.

It is puzzling that this constitutional provision is respected only where adults are concerned. Adults, detained by the same internal affairs bodies and delivered to the placement center of the same system for identification, are without fail delivered to the court within 24 hours. The court decides whether there are grounds for further detention in the placement center. If, after hearing explanations and examining the validity of the arrest papers, the court does not find such grounds, the detainee is immediately released.

The question of CRM's legality under the Ministry of Internal Affairs has been raised repeatedly since 2008. In practice, however, CRM was not brought into compliance with national and international child rights and human rights legislation until 2012.

The CRM monitoring was conducted cooperatively by YHRG and the Office of the Ombudsman. The results of the monitoring revealed high rates of physical violence against children within the institution. In addition, detainees' movements are so highly regulated that children may not even walk without staff supervision. At the time of the monitoring, seven children were being held in the institution, none of whom had broken the law. Several of the inmates had escaped from orphanages or run away from home. Holding these children in the environment of a closed institution was not a rational necessity, especially since other options do exist in Kyrgyzstan. These include Institutions of Social Protection and open Centers for the Rehabilitation of Juveniles under the Ministry of Education, in which the conditions of stay for children differ significantly from those of the institutions administered by the Ministry of Internal Affairs.

¹ The issues of security of childhood and care of children in Kyrgyzstan. Survey of UNICEF. – 2002, p.11.

In autumn 2011, YHRG submitted a request for information about the Regulations pertaining to the organization of work of the Center for the Adaptation and Rehabilitation of Minors of Bishkek under the Ministry of Internal Affairs in accordance with the Law of the Kyrgyz Republic “on access to information held by public bodies and local government agencies.” The Ministry of Internal Affairs refused to provide the information requested, justifying this refusal by claiming that the Regulations are for official police use only.²

YHRG has filed a complaint with the Bishkek branch of the Inter-District Court for Economic Affairs to challenge the Ministry of Internal Affairs’s refusal to provide information, arguing that, in accordance with the Constitution, access to information which is a) not a state secret and b) related to human rights and freedoms may not be restricted.

On October 26, 2011, the Inter-District Court ruled that YHRG’s arguments were valid and that the refusal by the Ministry of Internal Affairs to provide information was illegal, ordering the Ministry to provide the text of the Regulations of the CRM. Analysis of the Regulations showed them to be in abject violation of the laws of the Kyrgyz Republic.

In November 2011, YHRG appealed to the Inter-District Court for Economic Affairs in Bishkek, stating that the Regulations of the CRM under the Ministry of Internal Affairs are invalid, as they violate the Constitution of the Kyrgyz Republic. As a result of this process, YHRG concluded amicable relations with the Ministry of Internal Affairs.

The court appeal forced the Ministry of Internal Affairs to commit to addressing these legal violations within ten months of the decision. During the trial, the head of CRM admitted that the Regulations must be changed, and offered to develop new Regulations in cooperation with YHRG and other civil organizations working to protect child rights.

² Letter of the Ministry of Internal Affairs from July 14, 2011 Ё 11/877.

This kind of administrative agreement between the government and an NGO is the first of its kind, and should be seen as a symbol that effective communication and cooperation between state and civil society is possible.

Conclusion

These examples show how using different strategies may enable human rights organizations to levy different levels of accountability for human rights abuses from government agencies.

Measures taken by the government agencies responsible for these violations in institutions of care may vary depending on the actions of non-governmental organizations.

YHRG practices have shown that with regard to child rights protections in Kyrgyzstan, the use of strategic litigation is the fastest way to force government bodies to take effective measures to address the massive violations within a reasonable timeframe.

Qualitative information, which is impossible to obtain through professional monitoring, can provide a broad spectrum of opportunities for building further litigation strategies aimed at protecting child rights, and may be used in the future as a basis for changing legal norms that flout international standards.

Unfortunately, the practice of using strategic litigation to promote and protect child rights and general human rights has not historically been well-utilized by civil society organizations in Kyrgyzstan. YHRG plans to change this, and hopes that the results achieved in the case over the Regulations of the CRM under the Ministry of Internal Affairs will encourage the further development and use of similar strategies to ensure that other closed institutions for children operate in compliance with the law.

The Human Rights-Based Approach: A Field of Action for Human Rights Education

The authors

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This book has been printed in December 2012
by Alpha-Offset SÀRL
Rue du Simplon 5 - 1207 Geneva

Printed in Switzerland

CHF 15 / D 10 / US \$ 15

The Thematic collection was launched with the goal of contributing to the global discussion about including the teaching of human rights and peace in both formal and informal education. The articles attempt to make connections between educational initiatives and a larger framework of legal, sociological, and educational analysis.