**Documenting Lessons Learned
for the Human Rights-Based Approach to Programming:
An Asia-Pacific Perspective**

Implications for Policy, Planning and Programming

Undertaking a Human Rights-Based Approach: Lessons for Policy, Planning and Programming

Based on the UN Inter-Agency Lessons Learned Project
on the Human Rights-Based Approach to Development Cooperation

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Acknowledgements

List of Abbreviations

AHRO	Afghanistan Human Rights Organization
AJDL	Access to Justice at District Level (Afghanistan)
CCA	Common Country Assessment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CHA	Coordination of Humanitarian Assistance (Afghanistan)
CFC	Child Friendly School
CLC	Community Learning Centre
EU	European Union
FGD	Focus Group Discussions
FWRM	Fijian Women's Rights Movement
HRBA	Human Right-Based Approach
INGOs	International Non Governmental Organizations
ISISC/IHRLI	International Institute of Higher Studies in Criminal Sciences/ International Human Rights Law Institute
LLP	Asia-Pacific UN Inter-Agency Lessons Learned Project on the Human Rights-Based Approach to Development
NAAM SAT	Centre for Environmental Health and Water Supply, Ministry of Health, Lao PDR
NHRC	National Human Rights Commission
NZAID	New Zealand International Aid and Development Agency
OHCHR	United Nations Office of the High Commissioner for Human Rights
PIL	Public Interest Litigations
RRRT	Pacific Regional Rights Resource Team/UNDP
SMO	SABA Media Organization
SIDA	Swedish International Development Cooperation Agency
ToT	Training of Trainers
UNESCO	United Nations, Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNDAF	United Nations Development Assistance Framework
UNDP	United Nations Development Programme
UNPAF	United Nations Partnership Framework
VIHR	Vietnam Institute for Human Rights
VCP	Vietnamese Communist Party
WES	Water and Environmental Sector (Lao PDR)

Table of Contents

The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies (Stamford Common Understanding)

All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

Development cooperation contributes to the development of the capacities of "duty-bearers" to meet their obligations and/or of "rights-holders" to claim their rights.

…Since [1997] a number of UN agencies have adopted a human rights-based approach to their development cooperation and have gained experiences in its operationalization. But each agency has tended to have its own interpretation of approach and how it should be operationalized. However, UN interagency collaboration at global and regional levels, and especially at the country level in relation to the CCA and UNDAF processes, requires a common understanding of this approach and its implications for development programming.

See Attachment A for a full description of the Stamford Common Understanding and criteria

I ▶ **Background**

This report is based on lessons learned from documenting experiences and programmes that incorporated elements of the human right-based approach (HRBA)[1] in several Asia-Pacific countries from 2004 to the present time. The initial observations of such experiences and programmes resulted in the documentation and publication of fourteen case studies in countries as diverse as Bangladesh, Cambodia, Fiji, India, Indonesia, Lao PDR, Nepal, the Philippines, and Viet Nam under the aegis of the Asia-Pacific UN Inter-Agency Lessons Learned Project (LLP) on the HRBA to Development[2].

After completion of documentation of the case studies, there was a need to decipher what lessons could be learned for future development programming. Thus, in early 2006, the LLP sent out a call for applications to UN agencies and civil society groups in the region to support innovative ideas on how the HRBA could be used under existing projects to realize human rights, and what lessons could be learned from the process. More than 80 applications were received from across the Asia-Pacific region. After an intensive screening process, the LLP, in mid-2006, partnered with civil society groups, UN country teams, National Human Rights Institutions (NHRIs) and various line ministries to undertake the exercise. The six pilot projects chosen were located across the Asia-Pacific region in Afghanistan, Fiji, Lao PDR, Mongolia, Thailand and Viet Nam. The projects focused on various sectors including the media, mining, the informal justice sector, non-formal education and housing and land.

At various stages of piloting this process, the LLP provided technical assistance as required and also developed capacities of implementing partners to utilize the HRBA by holding capacity development workshops which included training on international human rights. Most of these workshops were held at the inception of pilot project activities and provided an opportunity for different stakeholders to develop relationships and discuss programmatic interventions that could be implemented.

Activities under these pilots have now been completed, and lessons have been gleaned, with additional insights resulting from a final workshop/consultation with pilot projects' partners. Such reflection and documentation has provided a further appreciation of the challenges and opportunities presented by the practical application of HRBA. For the communities involved, such documentation provides a form of knowledge exchange and some evidenced based advocacy that can feed into programming practice. For development agencies, and particularly UN agencies, this documentation feeds into a process of sustainable change and capacity development on the human rights-based approach to programming. Finally and critically, this exercise has provided further information about the implementation of the UN guidelines set out in the 2003 The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies (Stamford Common Understanding) in the Asia-Pacific providing lessons and insights on the implications for policy, planning and programming.

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1   As defined in the 2003 document *The Human Rights-Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies* (Stamford Common Understanding).

2   Devi Banerjee, U., (Ed) (2005) Lessons Learned from Rights-Based Approaches in the Asia Pacific Region, 2005 *Asia Pacific Regional Consultation of the Lessons Learned Project,* UNDP/OHCHR, Bangkok. September.

II ▶ Introduction

This report is one of two publications resulting from the Lessons Learned Project. Each publication focuses on a distinct audience, a reflection that the UN operates at both policy and programme level and that the Human Rights-Based Approach requires that both of these areas need to continue to be engaged in exploring its practical application. This first report is largely targeted at policy makers and strategic planning personnel in the various UN agencies. It reflects not only the implications of the pilot projects on the implementation of the guidelines set out in the Stamford Common Understanding in the region. It will hopefully also shed light on the LLP process itself, particularly the implications of the UN Inter-Agency efforts in this small project that spanned over four years.

The audience for the second publication is the project based practitioners responsible for embedding the HRBA into programming. The end-of-the project report aims to present lessons learned with respect to the approaches used in claiming rights, the various tools used within the programme process, and how human rights can be realized in practice. It is hoped that both publications will contribute towards the further practical implementation of HRBA, and provide the lay HRBA practitioner with some insights into the issues that need to be considered in the planning and implementation of projects that want to be framed as HRBA projects.

This paper would like to serve as a further contribution to the exploration of the practical implementation of the HRBA. It is however, distinguished by its focus on understanding, implementing and moving forward the Stamford Common Understanding on the Human Rights-Based Approach to Development Cooperation to ensure that human rights continue to be central to the work that is undertaken by UN agencies, and that the means to do so are appropriately explored and, most importantly, are shared.

A number of caveats must, however, be noted. Firstly, the sample size of the projects is small and therefore it is not possible to generalize the findings and identify specific replicable "best practice" programmes. Secondly, and reinforcing this point, these projects highlight and attempt to further various human rights with varying degrees of sensitivity in their local contexts. Some of these projects originated at the policy level, some at the community level, and hence they are, in effect, largely non-comparable beyond a common purpose to notionally adopt a Human Rights-Based Approach to programming. What should be obvious from the case studies is that the implementation of the HRBA into practice differs across organizations and contexts.

Though a small sample, it should be clear that there is no one-size-fits-all approach, and much about the nature and form of programming and the short term outcomes is ultimately contingent on context, on the constraints and realities on the ground, and, unsurprisingly, on the mandates of the UN agencies involved. This is not to say that variability renders constructive analysis impossible. Rather, it is to say that the HRBA principles can and often are adapted to the different country contexts. There is value in reflecting on the specifics of the geographic contexts, and particularly the social, political and cultural context in understanding the methodological approaches adopted in these HRBA projects and their outcomes and impacts on human rights in the short and longer term. Indeed, the issue of implementation of human rights, local politics and the relation with traditional cultures needs to be explored if HRBA implementation across UN agencies is to be made more transparent.

There are a number of issues that are explored in this Lessons Learned Project. The limitations of the pilot projects and indeed the limitations of the LLP itself provide valuable lessons in and of themselves. However, the lessons learned are not just about limitations and challenges. There are projects that, in the implementation phases, in one form or another reflected on the existing international human rights framework. Some have evidenced significant results in the realization of human rights, while there have been components of a number of the projects that have significantly contributed to building capacity to allow for the realization of these rights. While these may not always be strictly transferable, the tools and approaches adopted, and the considerations involved in designing these programmes provide valuable information for the application of HRBA at both the programme and policy level. The following section (Section III) will briefly outline the projects involved before proceeding to explore the implications for both strategic policy and programming.

III ▸ Brief Profiles of the Projects Supported

1. AFGHANISTAN

Name of Project: Access to Justice at the District Level (AJDL)

Lead LLP Partner: UNDP Afghanistan

Partner/s: International Institute of Higher Studies in Criminal Sciences/ International Human Rights Law Institute (ISISC/IHRLI); Afghanistan Human Rights Organization (AHRO); Coordination of Humanitarian Assistance (CHA); SABA Media Organization (SMO); Ministry of Justice of Afghanistan; Attorney-General Office; Supreme Court; Ministry of Education; European Union (EU).

Location: Total – 60 districts in nine provinces of Afghanistan
Pilot Provinces – Balkh and Herat
Current Provinces – Baghlan, Jawzjan, Kunduz and Samangan
Expansion – planned two provinces (Badakhshan and Takhar) plus one pilot in a less secure province (Nangahar)

Human Rights-based Techniques Used: Intensive training for judges, prosecutors, judicial police, defence counsellors on rights granted to the citizens of Afghanistan and the attendant legal processes to secure these political and civil rights; rights-based workshops for religious leaders; interactive games and role plays for elementary and secondary school teachers and pupils, theatre plays and community posters and radio programmes (dramas, messages, discussions, songs) as part of a broad community campaign.

It should be noted that all the activities for religious leaders, pupils and community members were conducted at the district and village level.

Project Specific Innovations:

- ▪ Addressing the traditional and formal justice system at the provincial level;

- ▪ Trainings and relevant information materials were not solely based on the international and statutory human rights notions, but were quite extensively "blended" with the corresponding Sharia principles. This facilitated their acceptance by the beneficiaries.

Project Background and Outline: Systematic issues in both formal and traditional justice mechanisms have affected the access to and delivery of justice in most provinces in Afghanistan. In some provinces and districts, a lack of staff and infrastructure meant that courts simply failed to function. Judges, prosecutors, and defence counsel were assigned to these positions but did not come to the office because of fear. Poor compensation impeded professionalism, motivation and integrity for justice officials. At the district level, salaries of judges, prosecutors, defenders, and prison officials were often set at USD$ 35 per month; in reality actual payment was months in arrears. Most justice facilities were destroyed by war or were not in adequate working order from the onset. Local justice in Afghanistan has been in short supply and the project was aimed at increasing that supply. It was also designed to complement other efforts undertaken through UNDP and other projects for reform and strengthening of capacity building of national justice institutions, in particular the National Justice for All Strategy and the Strengthening the Justice System of Afghanistan Project, but with the key difference of being focused on the district level and on vulnerable groups.

The traditional justice system in Afghanistan, which in the provinces is a significantly larger justice supply mechanism, is mostly given marginal acknowledgement if any, which contributes to the dichotomy between formal and traditional justice, rather than enabling them to work in synergy. The AJDL recognized the importance and relationship between both justice systems. AJDL activities for traditional and religious

leaders aimed to raise their awareness about the rights granted to the citizens of Afghanistan, as well as to build human rights-based delivery capacities within the traditional justice supply side and work to eliminate harmful customs which are a clear violation of international human rights standards or Sharia. AJDL focuses on awareness raising and capacity building within the community at the district level, and is a shift from the notion of the justice service as a centralized resource to the notion of justice as the communal "goods", which is accessible and available. The HRBA framework was adopted to help the rights holders and duty bearers to engage in an active dialogue, encouraging the duty bearers to meet their responsibilities and the rights holders to hold the justice delivery mechanisms and state institutions accountable. It aims to strengthen the social cohesion through seeking consensus and applying participatory processes, and focusing assistance on the most vulnerable strata of the society, namely women, children, the elderly, the displaced, the disabled and other minorities.

Rights Advanced: AJDL combines awareness raising activities among both duty bearers and right holders, with the improvement of formal justice infrastructure at the district level to facilitate more responsive justice delivery and make it more accessible at the local level. In awareness raising, AJDL focuses on: (1) protection of women and children in criminal law; (2) the constitutional right to defence counsel during criminal proceedings and referral of cases; (3) family and personals status law, and; (4) land law.

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2. FIJI

Name of Project: Developing Capacities of Women of Fiji to Access Adequate Housing and Land.

Lead LLP Partner: Fiji Women's Rights Movement

Partner/s: Pacific Regional Rights Resource Team (RRRT) / UNDP Pacific Centre

Location: Suva Fiji

Human Rights-based Techniques Used: regional and national consultations with key stakeholders in state departments, women's organizations as well as organizations involved in housing provision. Purpose written action guide to rights, (case studies, rights/issues explained) and gender analysis.

Project Specific Innovations:

■ Hosting a National Consultation to follow up on a Regional Consultation on Women's Right to Adequate Housing and Land (WRAHL) to tie in with the visit of the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non discrimination in this context.

■ Documentation of women's stories and case studies with respect to the WRAHL as an integral component of a toolkit for training.

Project Background and Outline: One of the most significant forms of systemic human rights and gender discrimination in the Pacific is that of women's right to adequate housing and land. Addressing both gender discrimination as well as access to livelihoods for Pacific Island women, this pilot project sought to;

a) Increase awareness of the systemic, political (racial) and cultural discrimination that Pacific Island women face in accessing housing and land through a pilot national consultation that took place in September 2006 and;

b) Equip Fiji stakeholders with a toolkit that utilizes a human rights-based approach to analyzing and mobilizing against systemic, political and cultural discrimination towards women's right to adequate housing and land.

c) Utilize this pilot project to train UN staff to implement successive pilot projects in other Pacific Island countries.

This pilot activity was a follow-up to the UN Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non discrimination in this context, Mr. Miloon Kothari's visit to the Pacific in which a regional consultation on the Women's Right to Adequate Housing and Land was held in October 2004. During this regional consultation, women's stories and case studies were developed and a framework for the HRBA analysis of women's right to housing and land was adapted and utilized. RRRT/UNDP subsequently utilized and adapted a tool kit developed by the Housing and Land Right Coalition (HLRC) for the analysis of WRAHL that could be used on a regional basis. RRRT's national partner in Fiji, FWRM has identified that WRAHL is a key issue amongst Fiji women and has joined partnership with RRRT/UNDP in both further developing this tool kit as well as piloting a training and advocacy workshop on WRAHL in Fiji.

Rights Advanced: The right to non-discrimination and the right to adequate housing.

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3. LAO PDR

Name of Project: Application of Human Rights-Based Approach to Programming in the Water and Environmental Sector (WES) in Lao PDR.

Lead LLP Partner: UNICEF Lao PDR

Partner/s: Central, provincial and district government partners from the Centre for Environmental Health and water Supply (commonly referred to as NAM SAAT), Ministry of Health, Central, provincial and district government partners from the Ministry of Education, World Bank Water and Sanitation Programme, Australian Aid for International Development (AusAID), Oxfam, ADRA

Location: Northern and Southern Lao PDR

Human Rights-based Techniques Used: participatory rural appraisal, participatory situational assessment, participatory monitoring and evaluation, community dialogues between provincial and district officials and villages, private sector mapping, transparent bidding processes for water supply (include names of those tendering being listed on the website), seven steps Implementation process[3] (this focuses on community participation and dialogue, enabling communities to put forward their demands for supply, use, ownership and maintenance of services), community user groups (which build village consensus on contribution rates, maintenance of water systems, promotion of hygiene and responsibility for liaising with officials).

Project Specific Innovations:

- National consultation on implementing a human rights-based approach in the water and environmental sanitation programme were organized during which HRBA principles were introduced and discussed with 70 central, provincial and district level government representatives from the Water and Environmental Sector (WES) across the country. The case study in Luang Prabang was used to sensitize and educate government representatives on HRBA, their responsibilities as duty bearers and the roles of rights holders in working towards effective programme responses. Village chiefs and representatives from International Non-Governmental Organizations (INGOs), the World Bank and AusAID also attended.

- Supporting provincial and district governments to develop hygiene promotion strategies

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3   Outlined in Part 2: Undertaking a Human Rights-Based Approach: A Guide for Basic Programming.

Project Background and Outline: UNICEF, in partnership with the Lao PDR Ministry of Health's Centre for Environmental Health and Water Supply (NAM SAAT), has been working with local communities in Lao PDR to design, implement and manage water and environmental sanitation (WES) facilities under a human rights-based framework.

The UNICEF Lao PDR WES Programme cannot claim to strictly utilize the human rights-based approach (HRBA) to programming in all phases of the cycle. Yet, it has been possible to incorporate many of the guiding principles into programme components. This achievement, in line with UNICEF's policy of continuously advocating and promoting the principles of HRBA within the United Nations Country Team (UNCT) and with government and NGO counterparts, is especially noteworthy given the rather challenging and often sensitive context of human rights in the Lao PDR.

A major initiative in taking the HRBA principles forward and in enhancing partner awareness of the approach was a case study in rural water supplies and sanitation services in early 2005. This case study involved a documentation of the UNICEF supported rural water supply and sanitation project in Luang Prabang province as part of a regional LLP documentation effort.

Human rights principles guide all phases of UNICEF process and are applied in all programme sectors. WES programmes now concentrate on sanitation, on building institutional capacity, and on raising hygiene awareness. This means working in partnership with the public sector and communities – especially women and children – in planning, implementing and maintaining WES systems. UNICEF has worked in close collaboration with NAM SAAT to develop the rights-based strategies integral to achieving project outcomes, and has also supported capacity- building within NAM SAAT and rural communities to implement these strategies. The aim has been to create conditions that would enable rural communities in 14 districts to access and maintain sustainable WES facilities. The development objective has been to supporting a Demand Responsive Approach in rural areas to improve access, use and sustainability of water supplies and sanitation facilities; and, to increase health and economic benefits and reduce infant mortality and morbidity rates.

In 2006, the LLP was scaled up in other villages in Luang Prabang province and expanded to Savannakhet province. UNICEF Lao PDR is now in the final stages of undertaking joint programming in three districts in Savannakhet province. The 2006 LLP took into consideration all the recommendations in the 2005 case study and the comments provided by peer review in January 2006. Most importantly, was the recommendation to raise the awareness of rights holders on their right to water.

As indicated, there are still a lot of sensitivities regarding human rights-related issues in Lao PDR. Yet, the valuable "learning by doing" approach through actual implementation of human rights-based approach to programming in the WES sector, and subsequent incorporation of the Lao PDR experience into this regional initiative, have contributed to an increased openness and awareness amongst partners regarding building processes and establishing foundations for sustainable and long-term provision of services and mechanisms in order to respond to the rights of children and women throughout the country.

Rights Advanced: The right to sanitation, the right to health, education, sustainable livelihoods, food security and women's rights to participate in the economic and social life of the villages.

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4. MONGOLIA

Name of Project: HRBA in empowering herder communities.

Lead LLP Partners: UNDP Mongolia, Ev Aran (NGO)

Partner/s: Herder communities, civil society organizations, media, public advocates, national human rights institution, local government, the judiciary, law enforcement agencies.

Location: Mongolia, Ulaanbaatar and five Aimags (provinces).

Human Rights-based Techniques Used: Stakeholder consultations (strategic mapping), field missions, community dialogues, non-formal legal education, media campaign, evidence based advocacy, public interest litigation, judiciary workshops and a handbook on environmental law.

Project Specific Innovations:

- Engaging the national human rights institution for evidence based advocacy;

- Implementing non-formal legal education for right holders to improve negotiation skills;

- Inviting journalists to join field missions as part of the media campaign;

- Production of a handbook on environmental law for the judiciary to promote Public Interest Litigations (PIL);

- Supporting access to information by communities with limited electricity and broadcasting infrastructure;

- Enabling right holders to participate in public discussions on human rights and the environment.

Project Background and Outline: Under Mongolia's law on Minerals, exploitation licenses have been issued in many critical areas including significant watershed lands, habitat lands of rare and endangered species of flora and fauna, and areas of outstanding natural beauty, resulting in irreparable harm to Mongolia's natural environment and to future generations of Mongolia's people.

As a result of the large number of licenses, the use of outmoded and environmentally destructive gold mining technology, inadequate environmental impact assessments, failure to rehabilitate mining sites and inadequate monitoring and enforcement of environmental regulations, environmental and associated human rights issues have become one of Mongolia's most pressing national concerns.

The most significant human rights issues in Mongolia's mining sector are a direct outgrowth of the adverse impacts of mining on Mongolia's natural environment. Mining activities in Mongolia have created serious problems of water pollution, diminished surface waters, and caused the destruction of pasture land. At large, the root causes for lack of access to rights could be summarized by the shortcomings in mining legislation that does not take into account the rights of residents in the mining exploitation zones. Also, limited access to justice became evident during public interest litigations at the courts.

The herder communities suffer the most and they lack the resources and power for participation and inclusion in the decision-making process that affects their preferred livelihoods.

The main objective of this pilot is to reinforce the HRBA concepts while targeting extractive mining practices in rural areas of Mongolia. The pilot aims to achieve a demonstrated level of empowerment of herder communities that are affected by environmentally destructive mining practices. The project sought to educate the judiciary on environmental law, run public litigation programmes and social campaigns to highlight the issue and provide advocacy for change in partnership with the National Human Rights Commission.

Rights Advanced: The right to live in a safe and healthy environment, the right to participate in the development process, the right to freedom of movement, right to freedom of expression and information, and access to justice.

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5. THAILAND

Name of Project: Building Capacities of Duty Bearers and Claim Holders in Select Community Learning Centres in Northern Thailand via UNESCO/UNICEF Interventions

Lead LLP Partners: Buphai CLC, UNESCO Bangkok

Partner/s: Buphai Community School, Buphai Sub-District Administration Organization

Location: Ban Buphai, Ubon Ratchathani province, Thailand.

Human Rights-based Techniques Used: human rights training, focus group discussions, community dialogue, community based participatory budgeting, social mapping, community surveying.

Project Specific innovations:

- ■ Implementation of initial project site in local community with a history of successful community development work, such as the use of a model community to advocate for HRBA in surrounding communities;

- ■ The creation of a community social welfare fund;

- ■ The utilization of public land to provide a private resource for poorer families;

- ■ The establishment of regular community meetings to discuss project outcomes.

Project Background and Outline: In Thailand, since the late 1990's, UNESCO Bangkok has been supporting non-formal education through local educational institutions referred to as Community Learning Centres (CLC). The centres are set up and managed by locals, and intended to produce social transformation by enhancing development through education. Based on the principle of inclusion, CLCs are designed to reach out to those outside the formal school system including pre-school children, out-of-school children, the disabled, the elderly etc. There are now 8,691 CLCs in Thailand.

Concurrently, the UNICEF Office for Thailand has collaborated with the Ministry of Education in piloting the Child Friendly Schools (CFS) Project. The CFS project is based on the concepts and principles of the Convention on the Rights of the Child. It attempts to create and demonstrate a new type of school that delivers quality education that is accessible to all and that focuses on and supports the health and wellbeing of its students. There are currently more than 600 CFS in Thailand.

The purpose of the pilot project in north eastern Thailand was to promote a human rights based approach to non formal education through the CLCs in close collaboration with the UNICEF's Child Friendly Schools project. Involving both students and community members, the project was designed to facilitate and initiate activities based on a HRBA at the local level. The project sought to explore how a HRBA could be practically implemented in provincial Thailand.

Rights Advanced: Buphai CLC members framed their work in accordance with "Child Rights" principles including the idea that children must be safeguarded from harm, must be appropriately cared for, must live in safe conditions without any health hazards, while also being able to enjoy their right to an education that enhances their development to the fullest. These ideas underpinned the "Community Love Cleanliness Project", Early Childhood Care and Development Project and the Prevention of School Drop-out Project. Rights with respect to non-discrimination, access to appropriate economic resources and empowerment underpinned the "One Rai Self-Sufficiency Project" and Vocational skills training for physically disadvantaged persons projects.

For further information contact:

Asia Pacific Education for All (APPEAL) Unit
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6. VIET NAM

Name of Project: Human Rights Training for Journalists in Viet Nam

Lead LLP Partner/s: The Viet Nam Institute for Human Rights

Partners: UNESCO Bangkok, UNESCO Hanoi

Location: Ho Chi Minh City and Hanoi, Viet Nam

Human Rights-based Techniques Used: consultative workshops, individual interviews and focus group discussions with journalists, academics and state servants as part of situational assessment, focus group discussions held with media organizations and other media trainers to examine means to sustain initiative.

Project Specific Innovations:

- Sector wide exploration of country specific approaches to increasing journalist's awareness of human rights and human rights issues.

Project Background and Outline: Viet Nam's popular press remains very state-centric, with limited reporting on human rights violations. Several newspapers in Ho Chi Minh City have however, recently called for greater journalistic integrity, notably the Saigon Group, *Thanh Nien, Lao Dong and Tuoi Tre*. The publications of these outlets are now free of all state-issued publishing subsidies. To some extent there has been an effort to re-locate the Vietnamese media in the context of international standards and indeed to embrace new initiatives of training. This is a gradual process, and progress must be measured in the context of other changes in Vietnamese society, but there is a perceptible and professionally discernable process of evaluation of the role of the journalist in Viet Nam, and this is gradually having an impact on media out-put. There is also evidence, though limited, that the Vietnamese Communist Party (VCP) is encouraging a more independent approach to the press, alongside the increasing emphasis on business enterprise and commercial development in other sectors. It is commonly accepted that these processes will have an influence on journalism.

The primary goals for the project were as follows:

- To influence the basic and in-service or continuing life-long education of journalists in Viet Nam by appropriately introducing human rights concepts as part of the issues in media training;

- To work with the professional journalistic community in the development of methodologies and approaches to handling human rights issues in Viet Nam, and to human rights reporting;

- To develop a system of "training of trainers"(ToT) which would have a wider impact on the training for, and discussion of human rights in the Vietnamese media;

- To inform a wide section of the Vietnamese media about human rights issues and their influence on the substantive subject content and activity of their work;

- To contribute to the increased treatment of human rights issues in the Vietnamese media;

- Providing training in human rights issues at the level of (1) basic media training and (2) "in-service" or life-long and specialist training which will equip Vietnamese journalists in the handling of human rights issues;

- Contribute to increased awareness of human rights issues and respect for human rights in Vietnamese civil society.

Rights Advanced: Uncertain

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IV ▶ Undertaking a Human Rights-Based Approach: Lessons for Policy and Planning

Since the 2003 Stamford Common Understanding, the UN has attempted to move forward on an agenda for implementing HRBA more consistently and coherently within the programming and strategic planning of its various agencies. Five years later, the LLP with its analysis of HRBA in six UN and bilateral funded projects adds another contribution to the exploration of the implications of the Stamford Common Understanding and its impact on human rights-based programming. While the sample is small, the issues, challenges and successes arising from these projects are important. Their significance is firmly rooted in the necessity for a reinvigoration of discussions on HRBA and its application in the UN. While individual case studies on HRBA in the UN system have become more common, the implications for regional, local and country collaboration and a common understanding of development programming approaches still requires significant work.

The findings from these projects have raised as many questions as they have answered. There remain a number of issues that require further clarification and discussion; issues that have existed since the Stamford Common Understanding was reached. These questions include the relationship between human rights and programming and issues that have become more pertinent today such as HRBA and the Millennium Development Goals. The focus of this part of the report is therefore primarily on the UN and how five years down the track policy and strategic planning is, or isn't, fully realizing the Stamford Common Understanding guidelines and, more particularly, meeting the requirement to clearly link and use human rights instruments as guidelines for programming and programming strategies.

Defining a Human Rights-Based Approach

The guiding principle and differentiating factor of the HRBA as defined in the Common Understanding that distinguishes it from other forms of programming and basic good governance guidelines is the requirement that;

> *"All programmes of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments",* and,

> *"Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process."*

It can be argued that it is this principle that makes a project distinctively human rights-based. While the other essential components can be seen as critical to good programming and governance[4], a human rights-based approach must not only further development and good governance aims but must also explicitly be guided by international human rights instruments.

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4   "Good governance has 8 major characteristics. It is *participatory*, consensus oriented, *accountable*, transparent, responsive, effective and efficient, equitable and *inclusive* and *follows the rule of law*. It assures that corruption is minimized, the views of minorities are taken into account and *that the voices of the most vulnerable in society are heard in decision-making*." (OECD 2001)

Embedding Human Rights

The requirement that standards, processes and principles contained in international human rights instruments guide development cooperation and programming, was, in most of the cases the point of reference for the projects at the outset of programming. However, the way these standards subsequently informed the development of the programmes through implementation was inconsistent across the six projects reviewed by the LLP. This can be largely attributable to the selection criteria for the projects which did not demand that projects be chosen conditional on direct and explicit reference and engagement with these mechanisms throughout programming. Consequently, for most of the six projects the primary linkage to human rights instruments was a programmatic focus on a specific right identified within the various conventions, declarations and treaties.

The six projects were chosen in part on the basis of the particular mandates of the UN agencies involved and, in part on the successes of previous and pilot projects undertaken. The consequent diversity of the programmes provides an interesting reflection on some post hoc impositions of the human rights-based approach lens. The following sections examine how human rights and human rights mechanisms were embedded in the various components of HRBA programming and the approaches and degrees to which the projects reviewed by the LLP met the principles and requirements articulated in the Stamford Common Understanding.

Situational Assessment

For a number of the projects reviewed by the LLP the situational assessment had been undertaken prior to the LLP funding and prior to the introduction of a specific HRBA lens. The consequent result is that the situational assessments reflected varying degrees of relationship to human rights instruments. Fiji and Mongolia both adopted HRBA prior to their situational analysis, ensuring an open discussion on human rights and international human rights instruments with rights holders. Notably, Fiji held national consultations in conjunction with the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non discrimination in this context, with a strong and clearly articulated focus on issues highlighted under the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). This was not, however, true for Lao PDR. The Lao PDR WES project did undertake a rigorous situational assessment, however, the reference to human rights and human rights instruments, was less obvious. In this instance a specific human right was chosen and the situational assessment of both micro and/or macro issues/needs was undertaken with limited reference to human rights beyond clear identification of the right involved. This, in part can be explained by the latter imposition of a HRBA lens for this project, but, it also may be argued, particularly in the instance of Lao PDR that the narrowly defined human rights issue was a product of the expediency of working with government and the political context in Lao PDR for exploring human rights issues.

The situational assessment in Viet Nam was also significantly influenced by its political context. The "situational assessment" undertaken by the consultant for the project was largely based on discussions and interviews regarding the understandings and attitudes towards reporting of human rights in Viet Nam. There was little if no, critical analysis of human rights issues in Viet Nam nor any rigorous critical analyses of the role of the State in limiting reporting in this area. This was taken as an unspoken given. Again, the political context limited the capacity for an in depth human rights based approach to the situational assessment.

It should be clear from the above examples, that it was not only the timing of the introduction of the HRBA into programming but also the local context which played a deciding role in the degree to which programming was linked to human rights mechanisms in these projects. For each of the programmes the rights language used and indeed the capacity to fully explore human rights issues within the situational analysis was contingent on the programme partners, the political environment with respect to the human rights discourse and the stakeholders engaged in the situational assessment stage of programme implementation (ie., government, communities, NGO's etc.). The critical importance of the context for human rights and their appropriate reflection in programming was emphasized by all of the pilot projects. Yet, concurrently, it was argued that though context was critical, international human rights instruments should ultimately provide the conceptual basis and framework for the realization of human rights through programming.

In reference to the principles of good programming that are essential to the HRBA, that is, firstly and importantly, that analysis includes all stakeholders and secondly, that situation analysis is used to identify immediate, underlying, and basic causes of development problems, the above mentioned absence of interrogation of rights-based issues at the macro level (Viet Nam, Thailand) and at the micro level (Lao PDR – while water issues

were interrogated, these weren't framed in a broader human rights context at the community level) appears inconsistent with the principles of the HRBA under the Stamford Common Understanding.

However, in the instance of Thailand the issues at the macro level and particularly the policy environment were explored and engaged with at a later date. This was, however, a reflection of the participation of a single government representative who later became a strong advocate of the project at the policy level. While Thailand is a notable exception, the engagement of all stakeholders in the initial situational assessment, where possible should be advocated. This can be argued not only on the grounds that this is requisite to truly understanding the underlying causes and distribution of the non-realization of human rights but also on the grounds that it can encourage the active engagement of government stakeholders further in the programme process. Viet Nam is a clear example of how the dislocation of government from the situational analysis and the process more generally, can ultimately result in a lack of long term viability of a project. In this case, once the consultations with journalists and media representatives had been completed, the project ended with the manual being written to become a component of ongoing training in the course of business as usual for the Vietnamese Institute of Human Rights. Fiji also noted that the limited participation of government in the national workshop presented a missed opportunity for greater advocacy and critically, normalizing and facilitating further dialogue between community and government to support the future realization of a number of women's rights. A rigorous situational analysis provides a unique opportunity to actively engage multiple stakeholders in the rights issue at hand. The LLP clearly highlighted the value of utilizing both top-down and bottom-up approaches that can support current and future dialogue between stakeholders, empower rights holders to articulate rights and duty bearers to explore impediments or capacity deficits contributing to the non realization of rights.

Capacity Building

While the choice of programming did not necessarily always reflect an initial focus on HR Instruments, the one consistent thread through all the programmes was the introduction of HR and HRBA education/training. Each and every project had an element of human rights education and/or training on the principles of a HRBA as a key component of capacity building. This is the singular and distinctive commonality across all projects. While the training for some projects was primarily targeted at rights holders (e.g. Thailand), in others it was largely focused on duty bearers (e.g., Viet Nam, Lao PDR). In Afghanistan, Fiji and Mongolia both rights holders and duty bearers were involved, however, in the instance of Fiji, the representation of government as duty bearers was limited due to political and timing factors.

This is significant because it gets to the heart of what the various UN agencies believe to be their role in undertaking the human rights-based approach. In the instance where the focus was largely on the rights holders/communities involved, the strategic intent is focused on empowerment and advocacy (e.g. Thailand). In the instance where the focus is greater on capacity development of government, the intent is primarily on duty bearers taking responsibility for the realization of human rights. Ultimately the Stamford Common Understanding rightly advocates for both top-down and bottom-up approaches to be used in synergy, which for various pragmatic considerations was not always possible or not even attempted.

The ultimate determination of bottom-up versus top-down approaches to capacity building with respect to human rights education was ultimately influenced by context, by the nature of the human rights issue involved and the initial focus on community/government or both. The issue that is raised is whether the projects that focused only on capacity building with respect to human rights at one end of the government/community spectrum can be considered human rights-based programming. If capacity development on human rights and the HRBA is the sole common consistency across all the programmes that were chosen by the UN and bilateral agencies involved in the LLP to implement the HRBA, after their initial programming parameters were in some part set, then at this critical juncture is HR training/education necessary at both ends of the spectrum? In light of the essential criteria for good programming under the Common Understanding, the simple answer is yes, both top-down and bottom-up approaches need to be used in synergy.

The case of Lao PDR is instructive. This highly successful project has realized the right to water and sanitation among other attendant rights that have resulted from the freeing of time that occurred as local access to water improved. Furthermore, the government has been actively engaged in the process and has been trained on the human rights-based approach, on utilizing a participatory approach for monitoring and evaluation and local situational assessment. Furthermore, consultations between government representatives and communities have been established. Communities have also been trained in monitoring and evaluation and are personally responsible for choices regarding the supplier, funding the water supply and monitoring the quality of the

service delivered. By traditional standards this is a successful development programme. However, little if no capacity has been built within communities to advocate for other human rights. This was in fact, a top-down process where human rights awareness of the community was limited to the right to water. This is despite the incidental realization of other human rights (education, livelihood etc). This is not to dismiss the potential long term value of introducing rights into the government lexicon, however, as acknowledged by the project team involved, as a stand alone project this could not claim to be fully implemented from a HRBA. However, as part of a broader, ongoing strategy that includes the gradual introduction of human rights training for rights holders, this programme could potentially meet HRBA criteria.

A final point that was raised by these pilot projects is the critical importance of capacity building activities in complement to human rights training activities to support rights holders to not only be able to identify rights issues but also to be able to seek the fulfilment of rights from duty bearers. Being cognizant of the need for top-down and bottom-up approaches includes ensuring that communities are able to appropriately articulate their rights and have the resources and understanding to navigate formal institutional settings while concurrently ensuring that formal institutions are capacitated to mediate or address these issues.

In Thailand, after the initial human rights training had been undertaken and the concept of rights embraced, the community remained uncertain as to how to go about looking for redress for a number of these rights through local administrative channels. They also noted the need for a simplified guide to the national legislation pertaining to various human rights, clearly highlighting an identified capacity gap between understanding and appropriately framing human rights issues through the relevant channels. In Mongolia, herder communities and local administration were taught about the requirement for participatory agreements under the 2006 mining legislation and how to negotiate and prepare these agreements with mining companies. The project undertook non-formal legal education activities during field missions and provided local communities with practical skills to support them to discuss, draft and negotiate such agreements, while concurrently raising the awareness of mining companies and local administration on the provisions in the new law. Furthermore, an information booklet was produced on human rights, legislation and the environment with case studies that could be used by NGOs to ensure that mining companies and the administration were aware of their responsibilities and that communities were aware of their rights under the law. In Afghanistan, while the public was educated on human rights issues, local courts were rehabilitated and duty bearers from both formal and informal justice systems were trained on human rights and legal obligations.

The projects reviewed by the LLP emphasized the need to not only raise awareness of human rights in capacity building activities but also to complement this training with capacity building of all stakeholders to raise and address these issues within relevant local and national, formal and informal institutions. It is for this reason that in a number of the projects after initial training sessions, human rights were almost exclusively articulated in reference to national and local legislation and customary practice rather than to international human rights instruments. While potentially contradicting the idea of programming being explicitly linked to these instruments, the pilot projects have argued that the critical reference to international human rights instruments should be in the initial training and that recognition is required that constitutions are often the translation of international law and human rights within the national context.

Programme Planning and Development

There were limited if no obvious linkages to international human rights instruments and mechanisms within the programme planning and development phases of the projects reviewed by the LLP, with Fiji being the notable exception. The others projects, however, did, to varying degrees, reflect the necessary components of the HRBA to programming including participation, empowerment, accountability, non-discrimination, a focus on the most disadvantaged and strategic partnerships. However, the application varied.

While Lao PDR focused on communities' access to water resulting in the incidental realization of other human rights (such as the right to education), other forms of potential disadvantage and discrimination were not directly addressed. Planning and implementation involved creating and embedding formalized, regular consultations between government and village water user groups to ensure the accountability of government to communities and to empower villages to monitor the access to, and the quality of water provision.

The local communities were not, however, empowered to articulate other human rights. In Thailand, the site of the project and the initial community were selected because they had undertaken successful community development projects in the past. However, the projects undertaken by the Ban Buphai community and the other communities that subsequently adopted the human rights-based approach were all initially focused on

the most marginalized. In Mongolia, while a proportion of the herder communities involved in the project were empowered to address and raise issues of the environmental impacts of mining, the livelihood needs of other members of the community that had adopted artisanal practices dependent on these mining practices were not addressed. Hence while obvious linkages to human rights were not present in all the projects, other necessary, specific, and unique elements of the human rights-based approach were to varying degrees applied.

Though there was little uniformity in the programmatic response to ensure that the necessary components of human rights programming such as participation, empowerment, accountability, non-discrimination and strategic partnerships were realized, discussions held at the workshop highlighted that projects believed that each and every one of these issues was critical to the appropriate and successful implementation of HRBA to programming. The extent and implementation of these principles, however, is project specific and hence while recognizing that these principles are necessary, the nature and extent to which they are embedded is, relatively flexibly applied. The importance however, of their application is evidenced when examining the role of strategic relationships and more particularly the engagement of government and other key stakeholders in strategic planning.

The degree of government involvement and the establishment of strategic partnerships with relevant government agencies during the planning and development phases was, to some extent, determined by the nature of the human rights involved and largely contingent on the initial engagement of government with the issue at the outset of the project (though not in the case of Thailand where the government became involved at a later stage). Despite the differences across projects, it can be said that those projects that had active government involvement (largely because they were less contentious) were more successful at realizing human rights on a larger scale – at least in the short term.

Advocacy based projects, such as those in Fiji and Mongolia, were viewed as part of ongoing advocacy based strategies requiring longer time frames and incorporation in broader UN agencies, NGO and National Human Rights Commissions strategic plans. In the case of Fiji, strategic planning requires a longer term advocacy agenda as it involves not only addressing adequate housing and land rights for women, but other women's rights as well. In Mongolia, long term strategic investment, planning and programming including the pursuit of public interest litigations as well as ongoing media campaigns has been identified as a prerequisite to secure the realization of human rights in the longer term. Critical to both will be the availability of adequate resources to continue to advocate for these issues in circumstances where government funding and resources may, at least in the short term, be less likely.

In these instances strategic planning requires clear identification and/or commitment of funding and resources in the longer term, necessitating strategic alliances with NGOs, other UN agencies and where possible with national human rights mechanisms. Further, while government engagement in the initial planning process may not be viable, long term strategies to establish these relationships and to engage government in the planning process in the longer term are likely to be required.

In the case of Thailand, short term realization of human rights, such as the right to education, health and a livelihood, have occurred largely due to community will and resources. However, the success of the community in its future efforts to address more contentious issues such as claims on disputed land and demands for increases in the number of pensions for the elderly and disabled is still unknown. Again, it is likely that advocating and engaging government on more sensitive human rights issues will require longer time frames and greater strategic planning. To this end, to create a critical mass for this advocacy and to share the economic costs, strategic partnerships between communities to jointly address this issue are being established. In this way creating strategic partnerships and engaging them in the planning cycle can and is often critical to ensuring the long term success and viability of human rights advocacy programmes.

Finally, as initially noted, during the planning phase of the project cycle, ensuring that human rights principles such as participation, accountability, non-discrimination and empowerment are addressed is mostly straight forward and more likely to be considered and embedded in the process (though differentially applied). It is the linkages to human rights instruments that, as highlighted in the projects reviewed by the LLP, may be less likely to be prioritized. As the example of Fiji shows, however, embedding human rights mechanisms into the planning process can in fact strengthen future advocacy through the linkage to formal, internationally recognized processes. This has the potential to support the legitimacy of the programme internationally or at minimum provide a wider audience to advocate for recognition and realization of the particular human rights issues.

Monitoring and Evaluation

The monitoring and evaluation component, particularly as pertains to human rights, is probably one of the most discernible challenges for HRBA projects. Most processes can be, and in the instances of the projects reviewed by the LLP were, relatively well monitored. For example, the community in Ban Buphai would regularly report on the project process in monthly community meetings, while the Lao PDR project regularly monitored and reported on the quality of the water provision for the village. In Fiji, the value of the workshop was ascertained through daily surveys of participants. Process and short term outcome evaluations, though not always straight-forward, are a relatively well developed field, as is monitoring and evaluation of service delivery. Project partners at the LLP workshop unequivocally advocated for regular monitoring and evaluation of both outcomes and processes to ensure project learning and consequent project adjustment.

In contrast to monitoring and evaluating processes and service delivery, monitoring and evaluating the realization of human rights during the advocacy process is difficult. While Fiji was able to utilize feedback from national consultations on the value of the consultations, changes to human rights as a direct function of these consultations are difficult to determine in the short term. The requirement that programmes monitor and evaluate outcomes guided by human rights standards and principles can be incredibly difficult in the short term when changes are required to legal, policy and planning processes or to behaviour and cultural mores. Observing the number of individuals trained, the number of villages with piped water systems, or attendance at a workshop is relatively straight-forward. Similarly for community based projects, collecting data on the number of truant children or the families that don't have farming land is again relatively straight-forward. Monitoring advocacy based projects and their impact on human rights is not.

What is clear from the advocacy based projects on human rights that were politically sensitive (notable in the instances of Fiji, Mongolia and Viet Nam) is that there are limited methods for evaluating the change in the human rights landscape and the realization of human rights as a result of short term programming. This is not to say that attendance at a workshop is not a justifiable short term outcome, however, it is difficult to argue for the Human Rights-Based Approach if we cannot monitor the impacts on human rights at minimum in the longer term in this area.

This is the very argument for a coherent long term strategy to address the human rights issue in the country and for aligning strategies and programming with issues raised in recommendations from the international HR mechanisms. Without this cycle of recommendations from the international HR mechanisms, UN country planning and programme design, there is no logical link that can be made to the realization of human rights and programme and project implementation. While the work in Fiji was clearly tied in to a broader strategy for change in women's rights, particularly around housing, the Viet Nam project was not explicitly tied to a broader agenda for advocacy. The absence of connection to broader UN strategic planning in the area of human rights ultimately left this programme adrift, with no opening for government dialogue on human rights and the media, no strategy to create a movement for greater advocacy in this area and no mechanisms tied in with the VIHR to monitor the changes in human rights reporting in the media. The need to establish long term monitoring mechanisms particularly for advocacy based programmes is critical during the programme planning stage. Whether tied in with UN CCA's or as part of ongoing activities for the key partner organizations, it is difficult to argue that HRBA to programming has been undertaken in the absence of long term planning for the realization and monitoring of human rights.

Reinforcing this argument is the case of Mongolia. Pilot partners have noted that the herder communities are, in fact divided. There are those groups who are attempting to claim back their pasturelands from mining companies and to restore water resources, and as noted above, there are those groups who are inadvertently causing environmental degradation as a result of artisanal practices based on resources obtained from the mining process. It is noted by project partners that the projects reviewed by the LLP, and the UNDP Access to Justice programme are ill equipped to address those adjacent issues, e.g., introducing safe and cost-effective technologies for those dependent on income from artisanal work. It was noted that this scenario provides a strong justification for human rights mainstreaming in country programming to ensure greater coherence in addressing the needs of different vulnerable groups. In this context long term country strategies would better ensure that programming reflects the indivisibility of rights, and that the impact of programming on the rights landscape is equitable beyond the scope and the focus of the project itself.

A final caveat, however, should be noted, as was evidenced again in the case of Mongolia. The project tied its legislative analysis, fact finding missions and other evidence based initiatives with the timing of the annual human rights report of the National Human Rights Commission. By law the NHRC reports annually to the

parliament within the first quarter of the year. Findings and recommendations from these annual reports are reviewed at the human rights sub-committee of the parliament. The 2008 annual report contained a section on the findings and recommendations of the pilot project, and the legislator issued a decree for further actions by the executive. What is highlighted in this instance is that monitoring and evaluation, as a critical component of strategic planning can and should where possible be tied in with national human rights mechanisms and reporting feeding into national planning processes and not just UN planning processes. It can be argued that long term strategic planning for the realization of human rights may be better placed in national institutional practice or in mutually reinforcing UN and national human rights institutional strategies to enhance the probability of long term sustainability and monitoring.

Understanding Human Rights

Another issue that was consistently raised by project teams was the difficulty in translating and explaining international human rights instruments in ways that were both meaningful and acceptable to the government and communities involved.

Unsurprisingly, the result was that in each project the notion of human rights was conveyed in a different way and the ways in which rights issues were explored and discussed varied significantly. In Lao PDR, they were discussed purely in relation to the right to water and sanitation, while in the case of Viet Nam, human rights discussions were limited to issues such as the rights of children and women and those with HIV/AIDS - issues that are less politically sensitive. The focus on particular human rights issues was in most of the projects determined by the degree of sensitivity to human rights issues in the country. However, as much as pragmatic considerations of national contexts and project viability provide valid justifications for the approaches adopted, this does raise the critical issue of human rights, power relations and the role of the UN, which will be explored further in the following section.

The projects reviewed by the LLP did, however, provide examples of managing for the translation of human rights issues to the relevant country contexts. In Afghanistan, rights were explored in direct relation to bridging Islamic and human rights laws. In regards to the acceptance of the notions of the rights by the beneficiaries, both among the rights holders and duty bearers, it was reported by the implementing partners that they were mostly well accepted. However, it should be noted that the trainings and the materials were not solely based on the international and statutory human rights notions, but were quite extensively "blended" with the corresponding Sharia principles which significantly facilitated their acceptance by the beneficiaries.

While this "blending" appeared to result in a relatively positive response by the moderate communities of Balkh and Herat, it was noted that NGOs were largely focusing on Sharia law rather than on bringing the two notions of human rights together and that it was necessary to reiterate the AJDL approach (ie the importance of human rights as articulated in international law) in sessions with NGOs.

In Thailand, though international human rights laws were discussed, they held little currency and generated genuine fear of conflict until the Thailand Constitution was discussed. It was at this point that the community began viewing rights as legitimate entitlements.

The notions of human rights as a fundamentally western concept remains in many countries. It was observed in the Fiji project that human rights were often viewed as being incompatible with customary law. In certain instances, this is the case (the section below will explore this issue in relationship to the role of the UN in greater detail), in others, there are points of commonality that need to be explored and highlighted. Views of rights as highlighted in the Thailand project can be potentially confronting and abstracted from the lives of local communities. References to national constitutions and law may be one way in which to show the direct connection between international human rights instruments and legislation that has direct reference to these communities' lives.

The degree to which human rights training is couched in international "rights" language however, raises notions of the importance of human rights principles versus the importance of clear identification and articulation of international human rights linkages. This is yet another area where short term political pragmatism versus longer term human rights agendas can conflict with the determination of programme priorities. While Afghanistan walked a very tight line with respect to this issue, it provides a good example of ways and means to straddle both issues, though responses to the training in less moderate communities will test this further.

In the end though, the ultimate goal of the programme and the significance of human rights instruments need to be explicitly identified. If the sole purpose of training is to encourage recognition of one specific rights issue, then a pragmatic approach may be valid. However, the larger agenda for human rights, articulated in the Stamford Common Understanding, effectively makes this a moot point. In the UN there is a larger agenda to encourage a broader dialogue on human rights, and, where conflict does arise with customary law that the international human rights instruments are the primary point of reference. This fact, however, should not necessarily prevent programming and training from reflecting both customary as well as international law and where possible and useful, the marriage of the two should be adopted.

Similarly, national laws can be used to contextualize human rights education. As was the case in Thailand, it was only when trainers discussed human rights within the framework of the national constitution that the community felt comfortable engaging and embracing the concept of human rights. From this position forward, human rights were solely viewed and discussed with reference to the constitution and local law. This may appear at first glance to distance the project from international human rights instruments, however, as noted by a number of the pilot project partners, the national constitution and relevant laws are often the operational expression of the country's international human rights commitment.

Without any references to international human rights laws and mechanisms it would be difficult to argue that HRBA has been adopted in programming. This however becomes more contentious where the programming and training manuals are designed specifically to address human rights as articulated in international human rights instruments but are simply not conveyed in this manner to primary rights holders and duty bearers. The projects reviewed by the LLP largely focused on training that reflected on both international human rights instruments as well as local customary or formal law. The degree to which the international human rights law and mechanisms explicitly permeated programming varied reflecting context and political and cultural sensitivities. The projects, however, were clear that the HRBA required sufficient flexibility to allow context including political and cultural sensitivities to be reflected, and that this demanded that human rights be couched in terms that were relevant and acceptable to stakeholders involved. What the LLP highlighted was that the efficacy of training required explicit recognition of local context and that training could include reference to both international human rights as well as the local expressions of these rights.

A final caveat must be added that there are some instances where human rights couched in international human rights language could alienate stakeholders from engagement with the project. At this point, the agency involved needs to make a decision as to the prioritization of the human rights agenda versus a purely development agenda. Where the two diverge the implementing agency needs to reconcile its mandate with the requirement to meet the Stamford Common Understanding and to establish clear guidelines on its preparedness to challenge national power structures and the existing status of various human rights. This is a recurring theme emerging from pilot studies that will be explored in the next section.

One of the most consistent themes that emerges from the study of the six pilot projects is the ambiguity around the role of the UN system and UN agencies in promoting the further realization of human rights. What becomes clear is that pragmatic approaches versus long term rights advocacy is a project by project consideration and determined in part by both the UN agency and the country context. The result is that the human rights agenda and its premise for challenging power dynamics is inconsistent and at times, pushed to the back of the agenda. The notions of empowerment of rights holders, and free and active participation, particularly of the most marginalized groups in society, may not necessarily be foremost in the mind of programme designers, particularly in large scale programming. What was absent in a number of the projects was active vigilance against reinforcement of traditional power relations and dynamics throughout various stages of the programming process. There is no doubt that these projects resulted in securing or furthering the realization of human rights. There is, however, significant concern that the intention to alter inequitable power relations through the human rights-based approach can be marginalized or merely forgotten in various stages of the programme in attempts to implement project work.

Hence, two key questions regarding power relations were highlighted through the case studies. Firstly, what role does the UN play in advocating for addressing sensitive issue that impact on the realization of human rights? Second, to what degree are the power inequities found in a number of cultures in the Asia-Pacific addressed and recognized throughout the programming process?

The latter question is perhaps slightly more straight-forward, when it doesn't converge with the first question of addressing sensitive human rights. The implications of local empowerment is that the structures that exist at the local level within communities may be reinforced or unquestioned through the programme design. That is to say that unless there is a degree of vigilance from project partners, local power structures and their attendant hierarchies can be reinforced with consequences for the marginalized groups within the community or indeed for marginalized communities themselves. The Thailand pilot study presents an interesting example. In this instance, representatives of the community personally interviewed "poor" members of the community and asked them personal details including their annual income. Whether they were reluctant or otherwise, these families were effectively asked to provide personal information to members of their own community, in a situation where power relations would have been unlikely to have been equal. The ability of these families to actually deny this information would have been quite limited. While the intentions of the community representatives were undeniably positive, and the survey findings led to programmes that clearly supported these families, the basic right to privacy was violated.

In the case of Lao PDR, the question that is raised is whether a programme that does not train or empower rights holders to claim and challenge duty bearers to protect and fulfil rights outside a pre-specified human right can be considered to be adopting the HRBA? The programme was certainly characterized by significant participation, accountability, non-discrimination and a focus on the most marginalized. It had limited links to international human rights instruments and mechanisms, and as noted above, did not in the first instance claim to be fully HRBA compliant. It did, however, embed the elements of good programming that are essential to the HRBA, which the project noted as having a significant positive impact on the development outcomes of the programme. There is no doubt that the project benefitted from most of the essential components of the HRBA lens as defined under the Stamford Common Understanding, however, in the absence of appropriate training and broader human rights education it is easier to argue that this project was a very successful development project focused on service delivery rather than the HRBA. The only caveat to this is that without the explicit adoption of HRBA (no matter how it is applied) human rights would not have been placed on the WES government agenda and the terminology itself would not have entered into governmental organizations' discourse. At both the UN country and agency level the trade off between introducing and acclimatizing governments to human rights language and the long term integrity of the language of rights needs to be considered.

This leads directly to the issue of the role of UN agencies in challenging power relations and advocating for sensitive rights. It raises questions such as whether to raise human rights violations in a training session on human rights for journalists in Viet Nam, or whether to insist that human rights education be introduced for communities in Lao PDR, or whether to tackle strategic policy and planning frameworks and broader legal reform at the national level to address environmental issues and herder rights in Mongolia. There is no consistency across agencies as to whether or not to undertake sensitive human rights issues, as this is often

determined by the UN country team. The reality is that UN agencies have different mandates, and projects occur within strategic country plans such as the UNDAF (United Nations Development Assistance Framework) / UNPAF (United Nations Partnership Framework). The degree to which programmes do or do not address sensitive human rights issues needs to be viewed within the strategic planning of the UN agency and the broader strategic planning of the UN country team. At these levels the linkages to human rights need to be established with clear strategies for the realization of human rights progressively over time and ongoing recognition and reflection on recommendations coming from international HR mechanisms. The pragmatic approach to programming is just that, it is informed by the understandings of UN experts in the field of the political sensitivities and the space for negotiation. The reality is that the capacity to undertake development programming can be compromised by advocacy based programming in sensitive areas. Further, particularly in HRBA, great sensitivity needs to be given to issues regarding the need to empower local communities and the need to ensure that programming and change at the policy level are able to keep apace of the expectations resulting from human rights training.

The conclusion that can be drawn is that a single and clear mandate for UN agencies on the responsibility for undertaking highly sensitive issues related to human rights in projects based on the human rights-based approach is not likely to be forthcoming. However, the basic elements of the human rights-based approach must be considered and, where possible, captured and reflected in various stages of the programme process with international HR mechanisms clearly linked to UNDAF and Common Country Assessments thereby reflecting an ongoing commitment to the progressive realization of human rights. Furthermore, with the introduction of the Human Rights Advisors to the UNCTs, this engagement becomes more viable if there is sufficient capacity within their roles to provide a supportive role in the delivery of HRBA projects and in the strategic planning of the country.

It should be noted however, that what is considered consistent with the HRBA requires appropriate reflection. These case studies were ultimately problematic because they were not all originally designed as HRBA processes. While some were broadly consistent with the HRBA principles, the question remains as to whether a number of them could legitimately say they had adopted the HRBA in the absence of certain essential programming components including, the training of rights holders on human rights, appropriate monitoring and evaluation, and active engagement of duty bearers.

What should be clear is that the LLP, with its particular focus on post-hoc implementation of the Human Rights-Based Approach, in effect reinforces the need for projects to be conceived from the outset within a HRBA framework. The importance of such an approach is that it will allow for consideration of issues such as; appropriate capacity development of both duty bearers and rights holders, planning and monitoring for addressing potential power inequalities and the housing of programmes within broader strategic frameworks. Adopting such an approach can facilitate the incremental realization of human rights regardless of the political sensitivities of the country involved and ensure that these programmes are linked to international human rights norms and standards.

In reflecting on the LLP, the HRBA and the UN, a critical issue that needs to be raised is the degree to which rights based approaches and projects are in keeping with the MDGs and, indeed, whether the MDGs are reflecting the rights issues that are challenging the Asia-Pacific Region. It should be stated at the outset that the sample of HRBA projects reflected during the project life of the UN Interagency Lessons Learned Project on the Human Rights-Based Approach to Development Cooperation is small and consists of only 18 (4 LLP 2007[5], 14 LLP 2005) projects out of a significant pool of possible HRBA projects that have been implemented in the region. As such, this sample simply could not be taken to be representative of the HRBA projects undertaken in the region.

To try to further broaden the sample, 81 project applications for the 2007 LLP were considered. However, again a number of caveats exist and are identified and noted below. Even by widening the sample, it cannot be directly generalized to the population of rights-based programmes in the region as the self selection process in applying would have likely introduced bias to the sample, particularly given the relatively small amounts of funding available. However, the sample does cover a range of potential and existing HRBA projects conceived over the past three years and while broad generalizations can't be made, this sample can provide some insight into the human rights being explored in the region and their relationship to the MDGs. Attachment B provides a mapping of these rights against the various Millennium Development Goals.

What should be clear from the mapping of human rights against the various Millennium Development Goals is the absence of programmes for MDGs three and four on maternal and child health. For MDG five there are no non-HIV/AIDS based programmes. Recognizing the qualifications identified above, the questions that this raises are who initiates these projects and is it simply a factor of non inclusion in this sample or do the agencies and institutions that undertake this type of project simply not view them from a HRBA perspective?

Similarly for MDG eight that directly addresses the special needs of the least developed countries with particular reference to issues of debt, tariff and trade quotas, the needs of landlocked and small island developing states and providing access to affordable essential drugs in developing countries, there are no related projects in the pool of LLP applications and projects. It should be recognized that these goals are aimed at the least developed countries and hence this MDG has a strong emphasis on African nations. Furthermore, these goals are fundamentally macro goals and largely based on bilateral and multilateral agreements between governments and the private sector. However, issues of debt burden, trade and affordable drugs can all be translated into national and local programming, yet for some reason in this sample of projects these issues were not directly addressed. This again, may merely be a function of this particular sample of projects. However, it does raise a number of questions including; whether previous innovations like community based loan facilities are being framed in rights based terms, whether human rights issues are permeating multilateral agreements and policies, and whether a number of UN agencies are actually embedding the Stamford Common Understanding in their programming.

Further questions are raised with respect to the absence of specific reference to social justice in the Millennium Development Goals. When not explicitly applied to women, social justice can only be tentatively applied to MDG eight with respect to good governance and the indicators simply do not attempt to measure or quantify access to justice, a critical rights issue that significantly impacts on a number of the MDG goals.

There is no doubt that while the sample is relatively small, the rights issues that were considered in the LLP do in some part reflect the critical rights based issues that are and have emerged in the region. While it is not possible to fully explore this issue in this paper, it is worth highlighting the relationship between MDGs, human rights and the role of UN Agencies.

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5   Two projects from the 2005 case studies were monitored or extended in the 2007 round of the LLP.

What emerges are further key questions that need to be resolved as the UN moves forward on both the MDGs and the human rights agenda.

- Are the mandates of a number of UN and multilateral agencies that have direct correspondence to the MDGs not viewed in rights-based terms? Do organizations with more macro based mandates have a greater political sensitivity to rights-based language?

- Is social justice too politically difficult to universally apply within the Millennium Development Goals? Or is it simply that the MDGs need to be achievable within relatively short time frames and that reformation of justice systems is simply too politically difficult and a far longer term goal?

- Should there be a formal mechanism to embed emerging rights based issues within the Millennium Development Goals, or more realistically, in the introduction of further indicators that cover these issues?

- To what degree are locally based MDG programmes reflecting a human rights-based approach. It was clear from the applications for the LLP in the Philippines that this is certainly occurring, however, whether this is commonly occurring across the region is uncertain. These localized programmes provide a unique opportunity to embed HRBA in the MDG agenda, and should be rigorously pursued.

The relationship between human rights and the MDGs should and is currently being explored by UN agencies. What needs to be noted is that while linkages between HRBA programmes and human rights instruments and mechanisms remain less than perfect, the programming itself needs to be explored as a potential source of information regarding critical human rights issues on the ground. Further, HRBA projects can be instructive in terms of reflecting on the human rights agenda of agencies responsible for the various MDGs, and whether they view their programming as part of the Stamford Common Understanding. While recognizing the political sensitivity of these human rights issues, there may still be opportunities for supporting HRBA in the field for these agencies. These options need to be explored.

Finally, what this mapping shows is that it is possible to embed a HRBA in localized MDG projects as was the case for four LLP applications from the Philippines. These applications were to implement HRBA in localized MDG projects. Adopting a HRBA to localized MDG projects is one important measure that can be taken to better align the MDGs with HRBA and human rights and should be further explored, advocated for and developed in the region.

A number of issues have been raised with respect to the implementation and strategic planning of HRBA projects, with a particular emphasis on the linkages to the international human rights framework. It is however critical that evidence of the sustainability of programme outcomes leading to both long and short term realization of human rights be highlighted and recognition of the value of the Human Rights-Based Approach be explicitly identified.

Evidence of Sustainability and Incremental Realization of Human Rights

Sustainability

The LLP documented a number of projects that have evidenced ongoing sustainability of programming leading to the long term realization of human rights. The Thailand project is one of the best examples of the creation of a sustainable process for the realization of human rights in the region through:

Policy

- Agreement has been secured for human rights and HRBA to be considered and embedded in non-formal education policies and in the work of the National Human Rights Commission.

Establishment of Training Networks

- Ban Buphai has agreed to provide ongoing training for CLCs on HRBA.

Support for the uptake of HRBA in other CLCs

- Ban Buphai has continued to host dialogues between villages on rights based projects discussing these projects and ways to work together to secure more contentious rights.

- Ban Buphai has also continued to advocate for other CLC members to undertake a HRBA by visiting communities and discussing the success of their projects.

Funding

- A community fund has been established to continue to undertake HRBA projects.

- Funding has been secured from a number of sources for their rights based projects.

Like Thailand, a number of the other projects have evidenced sustainability of programming, despite being at various stages in the realization of rights. In Fiji, the handbook created will inform not only future workshops on HRBA for women's rights to adequate housing and land in the region but also provide a resource for NGO planning in this area. Initial work has commenced in engaging policy makers, and there are clear strategic plans in place for furthering and monitoring women's rights in the region that will be informed by, and will inform, the projects undertaken in the area.

The Lao PDR project, being rolled out across the country, has shown that these projects can be locally funded and monitored over time with the support of government agencies.

In Afghanistan, the project will continue to be rolled out in other provinces, with learning reflected in ongoing planning for the project. Furthermore, it is part of a broader programme undertaken in conjunction with government to support the justice system. Between the district level programme that was supported by the LLP, AJDL, and the national programme to strengthen national institutions and policies, there is significant promise and commitment to ensuring justiciable rights for the people of Afghanistan in the longer term.

Incremental Realization of Human Rights

In addition to evidence of sustainability, a number of projects reviewed by the LLP highlighted that incremental realization of human rights can be achieved through HRBA programming. Lao PDR and Thailand stand out as clear examples of the inter-relatedness of rights and the potential for multiple rights to be realized through the human rights-based approach. In the instance of Lao PDR, the creation of community based water and sanitation systems has resulted in better environmental health conditions for the communities involved. Furthermore, this project has freed up time, particularly for women and girls. As a direct result the project has now become involved in supporting women to undertake income generating activities and encouraging girls to attend school. In Thailand, the success of the initial projects across a broad range of issues has encouraged the community to continue to explore human rights issues and to plan projects that will see other human rights realized for both marginalized groups and the broader community. Finally, the Fiji project on housing and land is, in and of itself, providing a vehicle for advocating for women's rights more broadly.

Factors Impacting on Sustainability and Successful Realization of Human Rights

What should be evident from the above sections is that sustainability and realization of human rights are achievable though they can be impacted both positively and negatively by a number of both programming and non programming based issues. From the pilot projects the following were the factors impacting on the long term sustainability and realization of human rights within these projects.

Programming Factors:

- Timeframe for implementation;

- The adequacy and/or flexibility of funding sources over time particularly in light of the often long term nature of structural and behavioural change;

- Government involvement and support of programme;

- Contractual arrangements, sufficiency of funding and time frames and the need for ongoing engagement with the programme over time;

- Community engagement and empowerment;

- A recognition of local context in framing rights language for training purposes and in delivering programmes;

- Degree of expectation of stakeholders and the capacity of programmes to deliver these expectations in the shorter and longer term.

Non Programming Factors:

- Community cohesion, tolerance and innovation;

- Government position with respect to human rights articulated;

- Security issues;

- Stability of the political environment.

Addressing Issues of Sustainability and Realization of Human Rights: Lessons Learned from the LLP

While the projects reviewed by the LLP have clearly highlighted that programming and strategic planning can lead to both long term and short term realization of rights, a number of clear lessons on policy, planning and programming have been identified.

The necessity to ensure the link with international human rights norms, standards and principles

- An essential component of HRBA, reaffirmed by the Stanford Common Understanding, is that programming is guided by international human rights norms, standards and principles and is informed by the recommendations of international human rights mechanisms.

- It should be acknowledged that in the actual implementation of the projects examined by the LLP this requirement has not been consistently respected. This is probably due to the criteria for the selection of the projects, which did not explicitly demand it.

- Firmly linking programming to the international human rights instruments provides a legally binding framework for states that serves as an entry point for dialogue with duty bearers at all levels. Additionally, human rights standards help focusing development objectives by providing the criteria to define the minimum content of the entitlements and obligations against which duty bearers

can be held accountable. Finally, recommendations of international human rights mechanisms, by highlighting the main concerns of the international community on the human rights situation in a specific country, allow prioritisation of actions and can be a powerful tool for advocacy (as evidenced by the Fiji project).

The necessity of both bottom-up and top-down approaches

- The engagement of all stakeholders in the initial situational assessment is valuable not only for understanding the underlying basic causes of the rights issue but can also help enlist the active engagement of government stakeholders. Furthermore, a rigorous situational assessment that takes into account social, economic and cultural factors at the macro, micro and meso level can ensure a more holistic approach to programming at the outset.

- Ongoing engagement and consultation with stakeholders and more particularly creating opportunities and channels for dialogue between duty bearers and rights holders can significantly increase the probability of realizing sustainable outcomes.

- The essential criteria for good programming under the Stamford Common Understanding require that both top-down and bottom-up approaches are used in synergy, particularly with respect to capacity development around human rights. In the instance where human rights issues are contentious, serious capacity building strategies need to be in place to ensure that, though not necessarily required initially, a programme for capacity development of all parties is planned in one form or another.

- Certain human rights can be easily secured where community will and resources exist and this in itself can provide sufficient evidence to advocate for later government involvement.

- Despite the differences across projects, it can be said that those that had active government involvement (partly because they were less contentious) were more successful at realizing human rights on a larger scale at least in the short term.

- The implication of local empowerment without appropriate monitoring is that the structures that exist at the local level within communities may be reinforced or unquestioned through the programme design.

The necessity of addressing context:
local customary law and negative local perceptions of rights

- Where human rights may be perceived as contrary to customary law there may be opportunities to "blend" the informational and training materials based on the international and statutory human rights notions with the corresponding customs and principles of the relevant faiths and traditions. Finding commonalities in principles and ideas may greatly facilitate the engagement of beneficiaries with human rights without dismissing their local relevance.

- When international human rights norms can be potentially confronting and abstracted from the lives of local communities, reference to the national constitutions and laws (where available) may be one way in which to show the direct connection between international human rights instruments and legislation that has direct reference to these communities' lives.

- Understanding relevant legislation can be incredibly challenging for the communities. Simplified summaries of all the relevant legislation and case studies distributed to communities during the human rights training may support understanding in this area and provide a valuable resource tool for future use.

- Where the marriage of customary law and international human rights law is not possible, the UN agency needs to be clear on its position with respect to the human rights agenda, with a clear strategy for addressing this issue as part of a longer term strategy for the gradual realization of this right.

- Creating formal institutions that are also blended/directly engaged with or that explicitly recognize customary practices and/or administered by traditional justice providers may actually reinforce the integrity and allow change in traditional customary law, while also introducing potential flexibility and capacity into the legal system.

The necessity for UN HRBA projects to be embedded in long term strategic planning, particularly when addressing sensitive human rights issues

- A Human Rights-Based Approach often requires long term planning that in turn implies that projects need to be conceived from the outset within the HRBA framework so that consideration of issues such as appropriate roll out of capacity development of both duty bearers and rights holders is planned in accordance with a broader strategic framework for the realization of human rights within that country, directly linked to international rights instruments and their reports.

- In the absence of processes to ensure that recommendations from international HR mechanisms inform UN country planning and subsequent programme design, there may be no logical link that can be made to the realization of human rights and programme implementation, particularly for long term, advocacy based HRBA programming in sensitive areas.

- Mainstreaming of human rights into country strategies would better ensure that programming reflects the indivisibility of rights, and that the impact of programming on the rights landscape is equitable beyond the scope and the focus of the project itself.

- The need to establish long term monitoring mechanisms particularly for advocacy based programmes is critical during the programme planning stage. Whether tied in with UN CCA's or as part of ongoing activities for the key partner organizations, it is difficult to argue that HRBA programming has been undertaken in the absence of long term planning for the realization and monitoring of human rights.

- It can be argued that long term strategic planning for the realization of human rights may be better placed in national institutional practice or in mutually reinforcing UN and national human rights institutional strategies to enhance the probability of long term sustainability and monitoring.

- The integration of Human Rights Advisors in UN country teams may encourage a greater alignment between programming and human rights instruments, if there is sufficient capacity within their roles to provide support in the delivery of HRBA projects and to actively engage in the strategic planning for the country.

- The relationship between human rights and MDGs should and is currently being explored by UN agencies. What needs to be noted is that while linkages between HRBA programmes and international human rights instruments and mechanisms remain less than perfect, the programming itself needs to be explored as a potential source of information regarding critical human rights issues on the ground.

- HRBA projects can be instructive in terms of reflecting on the human rights agenda of agencies responsible for the various MDGs, and whether they recognize and address the Stamford Common Understanding in their programming. While recognizing the political sensitivity of human rights, there may be opportunities for supporting the realization of human rights in the field and these options need to be explored.

- Finally, the mapping of the projects reviewed by the LLP and the applications received has shown that it is possible to embed a HRBA in localized MDG projects and that this should be a critical starting point in aligning the MDGs with HRBA and human rights.

The need for monitoring, evaluation and evidence

- The sustainability of the programme and programme outcomes are dependent on appropriate, continuous monitoring, evaluation and feedback at all levels of programming. This reflects the critical importance of accounting for contextual factors that need to be monitored over time as well as the need to adjust programme implementation strategies to reflect relevant lessons learned over the previous period or in alternate locations. In order to do this good indicators and baseline data should to be identified from the outset of programming.

- The creation and provision of appropriate materials capturing the best practices in the implementation of projects can help support the replication of the projects in other locations as well as provide valuable tools for evidence based advocacy. This would include simplified explanations of relevant legislation and international law, case studies, action guides to HRBA etc.

Questions to be Addressed to move forward a HRBA Agenda in the UN: Lessons Learned from the LLP

Five years after the adoption of the Stamford Common Understanding, the diversity in adoption by the projects reviewed by the LLP of the HRBA principles and programming components indicates that the requisite processes and outcomes that define the Human Rights-Based Approach are still uncertain and questions remain. Both directly and indirectly, the LLP has also highlighted that issues regarding more contentious rights and the policy and planning environment in UN agencies also need to be explored and addressed if the HRBA is to be effectively and systematically implemented across the UN system in Asia Pacific region. In order to encourage greater and more effective buy in of UN agencies a recognition of obstacles and greater clarity of meaning is required. Pertinent questions identified by the LLP that need to be resolved are:

Defining HRBA: A number of the pilot projects clearly did not comply with the necessary and essential elements of a HRBA defined under the Stamford Common Understanding. The imposition of a HRBA post commencement of programming undoubtedly contributed to this.

However, irrespective, the value of the programmes, and the value of the HRBA lens undoubtedly added to the projects, a post hoc imposition is arguably to be preferred over none at all. This issue goes to the heart of the HRBA debate within the UN regarding the expectations of the Stamford Common Understanding, and how it can be reconciled with the practical realities on the ground that may or may not allow for all the necessary and essential elements to be embedded within programming. Questions therefore arise as to;

- What are the absolute minimum criteria for a programme to be considered to be consistent with the HRBA , and are these criteria essential from the outset of programme planning?

- Can these minimum criteria be applied across the breadth of UN agencies or will these differ according to the mandate of the agencies involved? Should they differ across agencies?

HRBA and the Environment: While no specific environmental projects were selected by the LLP, there were proposals that specifically focused on human development, bio-dioversity and environmental sustainability (see Table 1, MDG Goal 7). These raised critical questions regarding the link between human rights, development and the environment, namely:

- Are "soft" international instruments that enumerate so called "third generation rights" contained in non-binding agreements such as the 1972 Stockholm Declaration of the UN conference on the Human Environment and the 1992 Rio Declaration on the Environment and Development to be considered within HRBA projects?

- Does and should the HRBA take into account the environment?

UN Policy and Planning and HRBA: Finally, it should be clear from the projects reviewed by the LLP that the connection between strategic planning, policy, programming and international human rights instruments and mechanisms differs across agencies and programmes. For any UN wide HRBA agenda to move forward further questions and research is required. This needs to be the initial starting point. In order to fully understand the position of UN agencies and to appropriately design any UN wide strategy or approach and, if necessary refine and further develop the Stamford Common Understanding for the region the following questions need to be asked;

- What are the current positions of UN agencies with respect to the HRBA approach in the Asia-Pacific Region? To what extent are the mandates of the various agencies viewed as being compatible or incompatible with a human-rights based approach?

- In the various UN agencies, to what extent is the Stamford Common Understanding viewed as a priority for programming and planning? If not, why not? Are there competing generic UN requirements/priorities or regional issues that are prioritized or compete with a HRBA?

- To what extent do linkages between international human rights instruments and mechanisms and strategic policy and planning exist or are being established in the various UN agencies and in country offices?

In answering and addressing these issues the UN may be able to more effectively move forward towards a greater "common understanding" of a human rights-based approach and, importantly, towards greater support and consensus amongst agencies in creating an environment conducive to the realization of human rights in the region.

Recommendations for Policy, Planning and Programming

Many useful insights and lessons have been derived from the LLP and a number of further questions have been raised. From these findings a few key recommendations can be drawn that have strong consensus amongst stakeholders and particularly pilot project partners despite the variation in the human rights they have pursued and the level of programme implementation. The following are therefore recommendations for both policy and programming at the regional, country and programme level. These recommendations reflect the need for coherence in the UN at each of these levels in both policies and programmes to ensure that human rights remain central to its work and that the practical application of HRBA continues to be explored, developed, understood and integrated in the work of UN agencies.

Regional Level

Recommendation 1: That a mechanism be created to support greater coherance for the HRBA at both the strategic planning and programming level in the Asia-Pacific Region and/or to provide better communication, dissemination and analysis of HRBA practice by UN agencies.

Country Level

Recommendation 2: That mainstreaming of the HRBA into all phases of UN country programming and implementation be strengthened. to ensure and support the consideration of human rights issues at all stages.

Programme Level

Recommendation 3: That situational analysis that reflects the economic, social and cultural context at both the macro and micro level be undertaken to ensure that the contributing factors to the realization of human rights be sufficiently defined to ensure appropriate and rigorous programme design.

Recommendation 4: That key stakeholders be identified, consulted, engaged and empowered throughout the programme cycle and that mechanisms for dialogue between duty bearers and rights holders be fostered and developed.

Recommendation 5: That in all phases of the programme cycle, and particularly in the design of human rights training, the context be appropriately considered, reflected and utililized to support the realization of human rights as defined in international human rights instruments.

Recommendation 6: That appropriate and continuous monitoring, evaluation and feedback occurs at all levels of programming. This reflects the critical importance of accounting for contextual factors that need to be monitored over time as well as the need to adjust programme implementation strategies to reflect relevant lessons learned over the previous period or in alternate locations. In order to do this good indicators and baseline data should to be identified from the outset of programming

Attachment A ▶ The Human Rights-Based Approach to Development Cooperation

Towards a Common Understanding among UN Agencies

Introduction

The United Nations is founded on the principles of peace, justice, freedom and human rights. The Universal Declaration of Human Rights recognizes human rights as the foundation of freedom, justice and peace. The unanimously adopted Vienna Declaration and Programme of Action states that democracy, development, and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing.

In the UN Programme for Reform that was launched in 1997, the Secretary-General called on all entities of the UN system to mainstream human rights into their various activities and programmes within the framework of their respective mandates. Since then a number of UN agencies have adopted a human rights-based approach to their development cooperation and have gained experiences in its operationalization. But each agency has tended to have its own interpretation of approach and how it should be operationalized. However, UN interagency collaboration at global and regional levels, and especially at the country level in relation to the CCA and UNDAF processes, requires a common understanding of this approach and its implications for development programming. What follows is an attempt to arrive at such an understanding on the basis of those aspects of the human rights-based approach that are common to the policy and practice of the UN bodies that participated in the Interagency Workshop on a Human Rights-based Approach in the context of UN reform 3-5 May, 2003. This Statement of Common Understanding specifically refers to a human rights based approach to the development cooperation and development programming by UN agencies.

Common Understanding

1. All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

2. Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

3. Development cooperation contributes to the development of the capacities of duty-bearers" to meet their obligations and/or of "non binding agreements rights-holders" to claim their rights.

1. **All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.**

   A set of programme activities that only incidentally contributes to the realization of human rights does not necessarily constitute a human rights-based approach to programming. In a human rights-based approach to programming and development cooperation, the aim of all activities is to contribute directly to the realization of one or several human rights.

2. **Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.**

   Human Rights principles guide programming in all sectors, such as: health, education, governance, nutrition, water and sanitation, HIV/AIDS, employment and labour relations and social and economic security. This includes all development cooperation directed towards the achievement of the Millennium Development Goals and the Millennium Declaration. Consequently, human rights standards and principles guide both the Common Country Assessment and the UN Development Assistance Framework.

   Human rights principles guide all programming in all phases of the programming process, including assessment and analysis, programme planning and design (including setting of goals, objectives and strategies); implementation, monitoring and evaluation. Among these human rights principles are: universality and inalienability; indivisibility; interdependence and inter relatedness; non-discrimination and equality; participation and inclusion; accountability and the rule of law.

   These principles are explained below.

   - **Universality and inalienability:** Human rights are universal and inalienable. All people everywhere in the world are entitled to them. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away from him or her. As stated in Article 1 of the UDHR, "All human beings are born free and equal in dignity and rights".

   - **Indivisibility:** Human rights are indivisible. Whether of a civil, cultural, economic, political or social nature, they are all inherent to the dignity of every human person. Consequently, they all have equal status as rights, and cannot be ranked, a priori, in a hierarchical order.

   - **Inter-dependence and Inter-relatedness:** The realization of one right often depends, wholly or in part, upon the realization of others. For instance, realization of the right to health may depend, in certain circumstances, on realization of the right to education or of the right to information.

   - **Equality and Non-discrimination:** All individuals are equal as human beings and by virtue of the inherent dignity of each human person. All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.

   - **Participation and Inclusion:** Every person and all peoples are entitled to active, free and meaningful participation in, contribution to, and enjoyment of civil, economic, social, cultural and political development in which human rights and fundamental freedoms can be realized.

   - **Accountability and Rule of Law:** States and other duty-bearers are answerable for the observance of human rights. In this regard, they have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights-holders are entitled to institute proceedings for appropriate redress before a competent court or other adjudicator in accordance with the rules and procedures provided by law.

3. Programmes of development cooperation contribute to the development of the capacities of duty-bearers to meet their obligations and of "rights-holders" to claim their rights.

In a HRBA human rights determine the relationship between individuals and groups with valid claims (rights-holders) and State and non-state actors with correlative obligations (duty- bearers). It identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations) and works towards strengthening the capacities of rights-holders to make their claims, and of duty-bearers to meet their obligations.

Implications of a Human Rights-Based Approach to Development Programming of UN Agencies

Experience has shown that the use of a human rights-based approach requires the use of good programming practices. However, the application of "good programming practices" does not by itself constitute a human rights-based approach, and requires additional elements.

The following elements are necessary, specific, and unique to a human rights-based approach:

a) Assessment and analysis in order to identify the human rights claims of rights-holders and the corresponding human rights obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights.

b) Programmes assess the capacity of rights-holders to claim their rights, and of duty bearers to fulfil their obligations. They then develop strategies to build these capacities.

c) Programmes monitor and evaluate both outcomes and processes guided by human rights standards and principles.

d) Programming is informed by the recommendations of international human rights bodies and mechanisms.

Other elements of good programming practices that are also essential under a HRBA, include:

1. People are recognized as key actors in their own development, rather than passive recipients of commodities and services.

2. Participation is both a means and a goal.

3. Strategies are empowering, not disempowering.

4. Both outcomes and processes are monitored and evaluated.

5. Analysis includes all stakeholders.

6. Programmes focus on marginalized, disadvantaged, and excluded groups.

7. The development process is locally owned.

8. Programmes aim to reduce disparity.

9. Both top-down and bottom-up approaches are used in synergy.

10. Situation analysis is used to identity immediate, underlying, and basic causes of development problems.

11. Measurable goals and targets are important in programming.

12. Strategic partnerships are developed and sustained.

13. Programmes support accountability to all stakeholders.

Attachment B ▶ Mapping of Human Rights-Based Programmes Through the LLP

The following is a break-down of the rights issues included and considered in the two separate analysis of HRBA projects undertaken in 2007 and 2005.

- ▶ six case studies for LLP 2007
- ▶ 81 Applications for the LLP 2007
- ▶ 14 case Studies for LLP 2005 (includes three LLP projects that will be included in the LLP pilot projects in 2007)

Rights Explored LLP 2007: The rights issues that were addressed in these projects included (noting that some projects covered a range of rights); land rights (4), gender (2) Media (2) Sustainable Agriculture and Forestry Management (2), Justice (3) Primary Education (1) Secondary Education (1), Vocational Education (1) Water and Sanitation (1). It is interesting to note that Land and Justice Issues were the most common rights issues addressed. In part this reflects a particular focus of the UNDP in the region, though there were NGO initiated projects included in these figures (2 land, 1 social justice).

Rights Explored LLP 2005: Village Forest Management, Community Journalism and Rights, Social Justice, Water and Sanitation, Justice and Rule of Law, Sustainable Livelihoods and Pro small farmers rights, AIDS and gender sensitivity, Right to Food, Primary Education, Conflict Prevention and Resolution, Land Rights.

Rights Proposed Applications LLP 2007: Table 1 below shows the numbers of LLP project applications in 2007 that can be linked to the eight Millennium Development Goals and their indicators. These can only be presumed to be proxy figures as some of the projects that weren't funded included those that were adopting a HRBA to examine the relevant rights issues for the communities involved and hence the rights were not articulated at the point of the submission.

It should also be noted that certain projects proposed were to address more than one rights issue from the outset and therefore have been considered under more than one MDG. Furthermore, despite the fact that the rights to be addressed in some of these projects would have likely have resulted in incremental rights being realized, for the purpose of this analysis only the primary rights issues were listed next to the relevant development goal. A final caveat that should be noted is that some of the projects may have included elements of a MDG for example capacity development in the use of information and communications technology however, unless stated explicitly in the application and considered a core right this could not be included. Finally it should be noted that four of the projects that have not be included below directly examined various phases of planning and implementation of localized MDG plans in the Philippines[6].

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6   There was not enough information on these projects to ascertain the specific MDGs to which these projects related.

Table 1: Applications For LLP Funding 2007

MDG	Indicators	LLP 2005
Goal 1: **Eradicate extreme poverty and hunger**	▶ Halve, between 1990 and 2015, the proportion of people whose income is less than one dollar a day.	2
	▶ Achieve full and productive employment and *decent work* for all, including women and young people.	7
	▶ Halve, between 1990 and 2015, the proportion of people who suffer from hunger.	2
Goal 2: **Achieve universal primary education**	▶ Ensure that, by 2015, children everywhere, boys and girls alike, will be able to complete a full course of primary schooling.	1
Goal 3: **Promote gender equality and empower women**	▶ Eliminate gender disparity in primary and secondary education preferably by 2005, and at all levels by 2015.	2
Goal 4: **Reduce child mortality**	▶ Reduce by two-thirds, between 1990 and 2015, the under-five mortality rate. * (Excl. AIDS projects that didn't specify a focus on children)	0*
Goal 5: **Improve maternal health**	▶ Reduce by three quarters, between 1990 and 2015, the maternal mortality ratio.	0
	▶ Achieve, by 2015, universal access to reproductive health.	1
Goal 6: **Combat HIV/AIDS, malaria and other diseases**	▶ Have halted by 2015 and begun to reverse the spread of HIV/AIDS.	3
	▶ Achieve, by 2010, universal access to treatment for HIV/AIDS for all those who need it.	1
	▶ Have halted by 2015 and begun to reverse the incidence of malaria and other major diseases.	0
Goal 7: **Ensure environmental sustainability**	▶ Integrate the principles of sustainable development into country policies and programmes; reverse loss of environmental resources.	9
	▶ Reduce biodiversity loss, achieving, by 2010, a significant reduction in the rate of loss.	3
	▶ Halve, by 2015, the proportion of people without sustainable access to safe drinking water and basic sanitation (for more information see the entry on water supply).	0
	▶ By 2020, to have achieved a significant improvement in the lives of at least 100 million slum-dwellers.	2
Goal 8: **Develop a Global Partnership for Development**	▶ Develop further an open trading and financial system that is rule-based, predictable and non-discriminatory. Includes a commitment to good governance, development and poverty reduction – nationally and internationally.	4 (governance)
	▶ Address the special needs of the least developed countries. This includes tariff and quota free access for their exports; enhanced programme of debt relief for heavily indebted poor countries; and cancellation of official bilateral debt; and more generous official development assistance for countries committed to poverty reduction.	0
	Address the special needs of landlocked and small island developing states.	0
	▶ Deal comprehensively with the debt problems of developing countries through national and international measures in order to make debt sustainable in the long term.	0
	▶ In cooperation with developing countries, develop and implement strategies for decent and productive work for youth.	2
	▶ In cooperation with pharmaceutical companies, provide access to affordable essential drugs in developing countries.	0
	▶ In cooperation with the private sector, make available the benefits of new technologies, especially information and communications	2