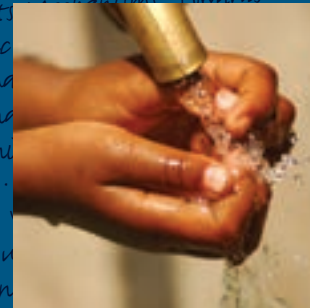
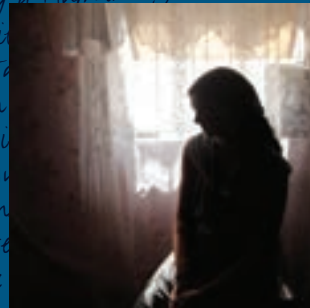
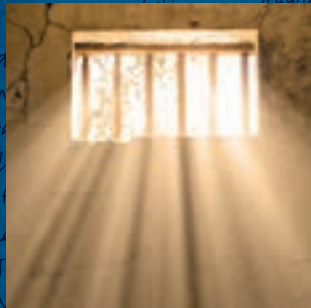


MAINSTREAMING HUMAN RIGHTS IN DEVELOPMENT



“STORIES FROM THE FIELD”



**UNITED NATIONS
DEVELOPMENT GROUP**

ACKNOWLEDGMENTS

DOCO Director: Deborah Landey

Deputy Director: Dena Assaf

Project Manager: Emilie Filmer-Wilson

Project Advisor: Karin Lucke

Production Manager: Daisy Leoncio

This publication was developed by the United Nations Development Group Human Rights Mainstreaming Mechanism (UNDG-HRM), under the leadership of Development Operations Coordination Office (DOCO). It was developed through a series of interviews with the United Nations staff, government, civil society representatives and Special Procedure mandate holders of the United Nations Human Rights Council directly involved in the case studies documented. We would like to warmly thank the following for all their valuable input and information shared during the course of drafting the case studies: Heiner Bielefeldt, (UN Special Rapporteur on freedom of religion or belief), Emmanuel Buendia (UNDP Philippines), Karin Bengtsson (Office of the UN Resident Coordinator, Viet Nam), Claude Cahn (Office of the UN Resident Coordinator, Moldova), Corina Călugăru, (Ministry of Foreign Affairs and European Integration of the Republic of Moldova); Aeneas C. Chuma, (UN Resident and Humanitarian Coordinator, Kenya), Fe Crisilla M. Banluta, (Department of the Interior and Local Government, Philippines); Jean Dupraz (UNICEF, New York), Uchenna Emelonye (Office of the UN Resident Coordinator, Kenya), Guido Fernandez de Velasco (Office of the UN Resident Coordinator, Uruguay), Gabriela Fulco, (Office of the Ministry of Interior, Uruguay), Javier Galdona, ('Entre Todos', Uruguay), Kaarina Immonen, (Former UN Resident Coordinator for Moldova, June 2007-July 2012), Alberic Kacou, (UN Resident Coordinator, Tanzania), Gay McDougall, (Former UN Independent Expert on minority issues), Epiphania Mfundo, (Commission for Human Rights and Good Governance, Tanzania), Susan McDade, (UN Resident Coordinator, Uruguay), Bernard Mogesa, (Kenya National Commission on Human Rights), Mary Ndeto, (Member of the Transition Authority, Kenya), Louise Nylin (Office of the UN Resident Coordinator, Viet Nam), Manfred Nowak, (Former UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment), Juan Miguel Petit (Office of the UN Resident Coordinator, Uruguay), Tobias Rahm (Office of the UN Resident Coordinator, Tanzania), Sergiu Rusanovschi, (Soros Foundation, Moldova), Nkasori Sarakikya, (Office of the Attorney General's Chamber, Tanzania), Mitsue Uemura (UNICEF, Viet Nam), Vi Van Dieu, (Institute of Education Science, Viet Nam).

We would also like to express particular thanks to the following colleagues and focal points of the UNDG-HRM, for their advice and input during the drafting of the case studies: Alfonso Barragues (UNFPA, New York), Beatrice Duncan (UNICEF, New York), Pablo Espiniella (OHCHR, Geneva), Rio Hada (OHCHR, Geneva), Shauna Olney (ILO, Geneva) and Sarah Rattray (UNDP, New York). A special thanks goes to Ian Thorpe, Anne-Laure Duval, and Rodrigo Morimoto (DOCO, New York). Finally this document benefited from preparatory research by Nav Purewall, independent consultant.

Concept and Design: Green Communication Design inc www.greencom.ca

The UNDG is an instrument for UN reform created by the Secretary-General in 1997 to improve the effectiveness of UN development work at the country level. Bringing together the operational agencies working on development, the UNDG is chaired by the Administrator of the United Nations Development Programme on behalf of the Secretary-General.

The UNDG develops policies and procedures that allow the UN system to work together and analyse country issues, plan support strategies, implement programmes, monitor results and advocate for change. These initiatives increase UN impact in helping countries to achieve the Millennium Development Goals.

The Human Rights Mainstreaming Mechanism of the UNDG aims to strengthen coordinated UN responses to requests from Member States for support in their efforts to fulfill international human rights commitments. The UNDG-HRM is made up of 19 Agencies, Funds and Programmes and is chaired by the Office of the High Commissioner for Human Rights (OHCHR) with a rotating Vice-Chair, reporting to the full UNDG.

UN Development Operations Coordination Office
One UN Plaza, DC1-1600, New York, NY 10017
Tel: 212-906-5053
www.undg.org

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FOREWORD



Achieving freedom from fear and freedom from want for all is the central mission of the United Nations. The importance of respecting, protecting, and promoting human rights in all of the UN's work is a principle enshrined in the United Nations Charter and confirmed time and again in our development work. The UN General Assembly in the 2012 resolution on the Quadrennial Comprehensive Policy Review of UN operational activities for development (QCPR) is the latest affirmation that development, peace and security, and human rights are interlinked and mutually reinforcing.

Human rights mainstreaming has become part of the core work of the United Nations development system. A United Development Group Human Rights Mainstreaming Mechanism (UNDG-HRM) was established in 2009 at the request of the United Nations Secretary-General. This mechanism aims to bolster system-wide coherence, collaboration, and support to Resident Coordinators and United Nations country teams, so that they can better provide support to Member States to strengthen national capacity for the promotion and protection of human rights.



Documenting good practices and lessons learned on mainstreaming human rights is one of the priorities of the UNDG-HRM. It responds to United Nations country teams' request for evidence-based guidance on human rights mainstreaming. This publication is a first step in collecting the experiences of UN country teams in integrating human rights into their development work.

The six case studies presented herein reflect the growing number of United Nations country teams supporting governments to fulfill international human rights commitments and to integrate human rights into national policies and programmes. The case studies from Moldova, Tanzania, Uruguay, and Vietnam highlight different ways in which United Nations country teams can support both government and civil society to engage with international human rights mechanisms, including the Universal Periodic Review and Special Procedures of the Human Rights Council. Drawing on the United Nations' normative mandate, convening role and impartiality, the United Nations country teams were able to support national partners to follow up on recommendations from these bodies, including on complex issues such as discrimination and social inclusion (Moldova), prison reform (Uruguay), and access to education for ethnic minorities (Viet Nam). In Tanzania, the Universal Periodic Review process provided an opportunity for the United Nations country team to support the government to conduct an inclusive and participatory consultation process, and to draw on the recommendations to inform development efforts.

The cases of Kenya and Philippines illustrate efforts to link international human rights norms and principles explicitly with development programmes and policies both at the sectoral level- water and sanitation for Philippines, and at the level of the national development plan for Kenya.

Through this publication, the UNDG aims to illustrate the value of mainstreaming human rights and ways in which UN country teams and Resident Coordinators have leveraged the normative authority of human rights in their development work for the benefit of people around the world. In doing so, we hope to encourage and inspire colleagues on the ground further in their efforts to take forward human rights mainstreaming initiatives.

HELEN CLARK
Chair, United Nations Development Group

NAVI PILLAY
United Nations High Commissioner
for Human Rights



URUGUAY

Applying a Human Rights Framework
to Justice Sector Reform

It is not every day that a Government allows the United Nations — let alone the Secretary-General — to review its efforts to promote prison reform...I applaud your commitment to follow the recommendations of the United Nations human rights bodies, including Special Rapporteur Manfred Nowak. Reform of penitentiary systems is not an easy task...I commend your decision to stress inmates' rehabilitation and reinsertion into society.

This is an excellent example of the role that the United Nations can play in middle income countries, bringing specialized expertise to bear on complex topics and in areas where national resources and national political commitment are leading the way.

- United Nations Secretary-General Ban Ki-moon,
speech at the Montevideo Penitentiary Centre, Uruguay, June 2011*

ABSTRACT

The critical situation of the prison system dominated the political agenda in Uruguay for many years, but efforts to make changes were slow and ineffective. In 2009, the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Uruguay and concluded that only a complete overhaul of the criminal justice system, based on international human rights norms, could improve the situation. His visit provided an objective evaluation

that galvanized public interest and political will to tackle the problem. The government turned to the United Nations system for support. The United Nation's impartiality, normative role and ability to leverage experiences from around the world were viewed as critical for addressing such a complex issue. The United Nations elaborated a Joint Programme that facilitated an inter-institutional and inter-agency approach to penal reform and aimed to foster changes across the entire justice system as well as the grounding

of all policies and programmes in international human rights standards. Through the work of the Joint Programme, significant advances have been made. These include a large increase in resources for prison reform, better infrastructure, officials trained on legal norms and standards regarding prisons, improvement of health care services in prisons, specific services for vulnerable groups in prison, as well as a substantial shift in favour of the social reintegration of prisoners and alternative sentences.

* <http://www.un.org/News/Press/docs/2011/sgsm13645.doc.htm>



BACKGROUND

Country context

Uruguay is a constitutional republic with a multi-party democracy. With a Gross National Income per capita of US\$ 14,640 (2011), the World Bank classifies Uruguay as an upper-middle-income country.¹ Positive human development indicators include high literacy rates, an educated workforce, low levels of unemployment and high levels

of social spending in relation to Gross Domestic Product. As an upper-middle-income country, official development assistance flows have not played a significant role in Uruguay's development.

The challenge has been to define Uruguay's needs as an upper-middle-income country and the international cooperation strategy that is required to meet them. In this context, the United Nations' normative role with regard to the protection of human rights,

promotion of universal values and pursuit of global dialogue, has been highly valued by national stakeholders.²

Uruguay is one of eight pilot countries for the United Nations Delivering as One initiative for system-wide coherence.

Human rights situation

While Uruguay has ratified core United Nations human rights treaties, the challenge remains to implement these obligations. In recent years, progress has been made in creating institutions to promote and protect human rights, such as the *Institución Nacional de Derechos Humanos y Defensoría del Pueblo* (National Human Rights Institution and Ombudsman), formed in 2012.

The most pressing human rights concerns in Uruguay include violence against women, trafficking in women and children, discrimination against persons of African descent and the poor conditions and severe overcrowding in prisons. The issue of prison conditions and related human rights abuses have dominated the public and political agenda for many years.

The situation of prisons

In 2005, the deteriorating situation in prisons prompted the

DELIVERING AS ONE

When the United Nations Secretary-General launched Delivering as One in 2007, the governments of eight countries—Albania, Cape Verde, Mozambique, Pakistan, Rwanda, Tanzania, Uruguay, and Viet Nam—volunteered to become “Delivering as One” pilots. The pilot countries agreed to work with the United Nations system to capitalize on the strengths and comparative advantages of the different members of the United Nations family. Since then, Delivering as One has been adopted by a total of 32 countries.³ Together they are seeking innovative ways to increase the United Nations system's impact through more coherent programmes, reduced transaction costs for governments, and lower overhead costs for the United Nations system. As called for by the UN General Assembly in the 2012 resolution on the Quadrennial Comprehensive Policy Review of UN operational activities for development (QCPR), the UN Development Group is currently developing the second generation of Delivering as One based on Standard Operating Procedures and a firm focus on results, monitoring and evaluation, and accountability.⁴

We were the neutral safe space for diverse actors with different interests to sit at the same table and work on these issues.

- Ms. Susan McDade,
UN Resident Coordinator, Uruguay

country's president to declare a State of Humanitarian Emergency within the prison system. However, despite the political priority placed on prison reform, change remained slow and ineffective. By 2009, the penitentiary system was in a state of virtual collapse. The magnitude of the penitentiary crisis, and the risk that it could lead to a highly volatile social and political situation, prompted the government to invite the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak, to visit Uruguay in March 2009. To prepare and support his visit, the United Nations convened working groups on the issue of prisons, and coordinated meetings with civil society and government to ensure all perspectives were brought to his attention.⁵

In his report to the Human Rights Council of December 2009⁶, the Special Rapporteur expressed deep concern about a series of issues related to his mandate. The report included the following major human rights concerns:

- major overcrowding, with some prisons housing five times more prisoners than their capacity;
- excessive use of pre-trial detention (65 percent of prisoners are pre-trial detainees);

- torture, excessive use of force and ill-treatment in police stations, prisons and juvenile detention facilities, as well as a culture of impunity for the perpetrators;
- lack of water, sanitation and access to medical treatment in certain detention centres;
- high rates of inter-prisoner violence and housing of pre-trial detainees with convicted prisoners;
- inadequate accommodation for female prisoners with children and those in late stages of pregnancy and lack of implementation of a national action plan on domestic violence;
- beatings and ill-treatment of juveniles in detention, poor conditions and lack of opportunities for education or vocational training; and
- few, if any, opportunities for education or vocational training to facilitate rehabilitation.

The Special Rapporteur concluded that nothing less than a complete overhaul of the criminal justice system, based on international human rights standards, could improve the situation.

The Special Rapporteur's visit proved to be instrumental in galvanizing political will and momentum to

tackle the issue of prison reform. It provided an external, independent and expert perspective, as well as an objective evaluation of prison conditions in Uruguay. The extensive media attention his visit received helped raise public awareness on the issue. In doing so, the Special Rapporteur's visit catalyzed action on the part of all national counterparts, making it possible to come to a political agreement that cut across political party lines. The incoming government (2010) attached great importance to the report and to following up on the recommendations. The issue was particularly poignant as many government ministers, including the president himself, had been political prisoners under a former military dictatorship.

STRATEGY

The recommendations of the Special Rapporteur called for an integrated approach that could make improvements across the entire criminal justice system. They also underlined the need to address the structural and root causes that lay behind the grave situation. These included the societal mindset that favoured criminalizing and punishing detainees over their rehabilitation.

In addressing such a complex and sensitive issue, the government

This administration upholds that as a basic principle, all policies for penal reform are based on international human rights norms and standards that Uruguay has committed to. This is the starting point for the penal reform process in Uruguay.

- Gabriela Fulco, Advisor, Ministry of the interior

turned to the United Nations as a trusted partner. The United Nations' impartiality, absence of a political agenda and ability to leverage experiences from around the world was highly valued. In response to the government's request for support, the United Nations elaborated the United Nations Joint Programme: *Support to the Reform of the Institutions of People Deprived of Liberty* (2010-2012). The Joint Programme was designed to facilitate an inter-institutional approach to penal reform. It was designed within the context of Delivering as One. As such, the programme is implemented through an inter-agency coordination mechanism, the Management Committee, which includes the following United Nations partners: The office of the UN Resident Coordinator, the International Labour Organisation (ILO), the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP) and UN-Women. The work of the Joint Programme is based on two key principles: an integrated approach to penal reform and human rights.

Integrated approach: The report of the Special Rapporteur had shown the need for a broader vision on the issue of penal reform; one that "moved

away from a punitive penal system to one aiming to reintegrate prisoners in society" (Special Rapporteur). To do so, it was necessary to explore and strengthen links within different parts of the penal system: the police, judiciary and correction facilities, as well as between the penal system and other relevant sectors, such as health and education. The Joint Programme, therefore, works with a broad range of sectors, in addition to the justice sector. These include social workers and education and health services.

The Joint Programme also provides a space for information exchange, bringing together over 400 stakeholders from different ministerial bodies, the police, social and health workers, education, the media, the private sector, civil society and the development community. This space provided a platform to enhance dialogue and coordination between line ministries that would not typically work together on penal issues, such as the Ministry of Interior and the Ministry of Education and Culture. Owing to the impartiality and legitimacy with which the United Nations was viewed, the Joint Programme provided a safe and neutral space to discuss sensitive issues, for example the issue of women with children in prisons and guidelines

for the treatment of detainees with drug addictions.

Through the Joint Programme, the United Nations was also able to reach out to civil society to include them in the penal reform efforts. Having a space convened by the United Nations also gave civil society direct access to governmental actors, an opportunity for dialogue not always easy to achieve.

A human rights framework for penal reform: Underlying the penal reform strategy was the acknowledgment that though prisoners may be deprived of their liberty, they should not be deprived of their *liberties*.

Basing penal reform on human rights standards meant:

- a change of mindset: from one of punishing and criminalizing the detainees to one where they are viewed as rights-holders. Hence it meant reframing education, health and training services in prisons as being a right, not an act of good will.
- seeking alternatives to incarceration and focusing on reintegrating the detainees into society;



- ensuring that policies, programmes and advocacy strategies are informed by international human rights obligations, such as the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and the Convention on the Rights of the Child, as well as recommendations of United Nations human rights mechanisms, including those from the United Nations Special Rapporteur on Torture.

With this in mind, the United Nations supported the establishment of a penitentiary school that provided training to the entire prison system, including police officers, prison security guards and civil servants. The aim of the school was to improve the treatment of prisoners, by sensitizing prison officials on the rights of prisoners and on the need to reintegrate convicts into society rather than focusing on punishment. Part of the training, which was provided by experts from the Office of the High Commissioner for Human Rights (OHCHR) Regional Office for South America, focused on human rights standards related to prisoners and the human rights commitments undertaken by Uruguay, including

as a State Party to the International Covenant on Civil and Political Rights and the Convention against Torture. Other United Nations agencies also contributed to the training, including UN-Women on gender issues, ILO on labour issues and UNODC on drug prevention and health issues.

To promote the public's understanding of and support for social reintegration, the Joint Programme, with the support of the United Nations country team and working with civil society actors, held open workshops throughout the country with neighbourhood associations and communities. These initiatives helped raise awareness of the rights of prisoners to access labour opportunities, education and vocational training, as well as drug rehabilitation programmes. The Resident Coordinator played an important role in raising these issues; at public events and in interviews with the media, the Resident Coordinator underlined that prisoners have rights and that a prosperous Uruguayan society is one in which prisoners are reintegrated into society.

The Joint Programme also worked with the media, conducting seminars that stressed the reasons why prison reform was so important and

helping them better understand why the government was spending considerable sums of money in that area. Journalists were also trained on how to report on prison issues. For example, they were sensitized to the fact that if an image of a prisoner is used, they should request the prisoner's permission first.

The expertise of the United Nations agencies was critical in taking forward the various initiatives of the Joint Programme, ensuring that these initiatives were informed by relevant human rights standards. UNICEF led advocacy on the age of penal responsibility and the need for a separate and autonomous judicial system for juveniles.⁷ UN-Women undertook an analysis of the specific vulnerabilities of women in prisons, including female prisoners who were pregnant, breastfeeding or with their children. ILO prepared a draft bill on labour rights in prisons with a view to facilitate social reintegration of inmates.

RESULTS

Such a comprehensive overhaul of a penal system requires time. It requires a cultural change, time to train people, to develop institutional capacity and to make changes in policies and legal and administrative systems that have been in place for decades. It will only be in the medium and long term that the impact of reform can be assessed.

Nevertheless, the activities of and the approach promoted by the Joint Programme have already shown results in the following areas:

1. On 15 July 2010, the government passed an emergency budget allowing for the construction of additional prison facilities. The initiative, intended to ease the chronic overcrowding in prisons, resulted in 2,000 new places within the prison capacity. It also enabled the refurbishment, where possible, or closing of facilities with severe infrastructural damage.
2. In 2011, the emergency budget also enabled the increase and restructuring of personnel in prisons, in line with a more integrated approach to prison services. 1,178 civil penitentiary educators were hired to replace the police guards, as well as 100 administrative posts and 184 technical specialists, such as physicians and social workers.
3. In June 2010, the government created the *Oficina de Supervisión de Libertad Asistida* (Office to Supervise Assisted Liberty), a bureau within the National Directorate of Prisons. Under this programme, 100 prisoners have received alternative sentences to perform community service work, under surveillance. The programme will be assessed and if successful, scaled up in the future.
4. The government has carried out a review of labour laws in order to provide inmates with legal work opportunities and facilitate social reintegration. ILO helped prepare the draft bill on labour rights in prisons, which was recently approved by the Ministry of Labour and the Ministry of Interior. It is now before parliament for discussion.
5. Specific guidelines have been prepared and submitted to the government on education and vocational training policies, and other productive activities to facilitate rehabilitation.
6. As a result of a comprehensive review on the conditions of women and their children in prisons, alternative procedures to deal with this highly vulnerable population have been designed; for example, an alternative sentencing programme has been developed which enables mothers with young children to expend their prison period at home, allowing them to care for their children.
7. Measures to improve health services in prisons have been introduced, including the creation of drug rehabilitation programs. These measures have created a new partnership between the Ministry of Public Health and the National Drug Commission. For the first time in more than 20 years, some of Uruguay's biggest prisons have a 24-hour health and emergency service in-house. These include mental health support services. The presence of psychologists and health teams has decreased the high pressure felt in many prison centres and reduced incidences of violence and vulnerability in the centres.
8. A series of human rights training sessions have been implemented, reaching 10 percent of penitentiary personnel at supervisor level within prisons and juvenile detention centres. As a result, the penitentiary system has, for the first time, a team of mid-ranking officials and supervisors trained on the legal norms and standards regarding prisons. They are aware of the rights of inmates and the corresponding obligations of state officials.
9. A full revision of the penal and penal procedure codes to bring them in line with human rights

standards has been submitted by the government to parliament. The report, prepared by a highly regarded jurist, is providing the basis for parliamentary discussions on the penal codes.

- 10. As a result of multi-stakeholder engagement in the penal reform process, civil society is playing an increasingly active role. They have been undertaking studies and diagnoses on the reform issue and participating in programmes relating to prison conditions and other reforms.
- 11. The government has carried out a comprehensive situation analysis of various demographic groups, such as women, within the prison system and has been consulting with these groups in the process. This has facilitated the creation of a model that responded more accurately to the interests and needs of detainees.

Three key factors have contributed to the success of the Joint Programme in achieving the above results: i) the inter-agency and inter-institutional approach; no agency on its own – at the national or international level – could have undertaken such an ambitious reform process; ii) the neutral space that the Joint Programme provided, which enabled open dialogue among all the relevant actors; iii) the focus on human rights norms, which galvanized action and attention across party lines and provided a new model for penal reform.

As an indicator of the success of the Joint Programme, the government has asked the United Nations to take the Joint Programme forward into a second phase. In phase two, the Joint Programme will focus on designing a new and improved institutional framework for the National Rehabilitation Institute (the body now in charge of managing prisons nationwide); supporting the implementation of labour policies in the penitentiary system; developing guidelines on the treatment of drug abusers; and continuing training for penitentiary directors and supervisors on human rights and prison management. At this stage, the United Nations financial contribution is no longer the significant factor.

.....
It is the convening power, normative role and political leadership of the United Nations that the government is keen to maintain and build upon for the benefit of the people of Uruguay.
.....

LESSONS LEARNED

- 1. The visit of a Special Procedure’s mandate holder of the United Nations Human Rights Council can serve as a powerful catalyst for reform on complex issues, while providing valuable expertise on how to carry out reforms, based on international human rights standards.
- 2. The United Nations’ normative mandate, convening role and political leadership can help bring diverse actors together to work jointly on complex and sensitive issues and ensure that reform efforts are guided by human rights standards and principles.
- 3. An inter-agency approach enables the United Nations to bring the different expertise of the agencies to bear on complex issues and promote an efficient and integrated process.
- 4. National leadership and ownership is critical in moving forward an ambitious rights-based reform agenda.






TANZANIA

The Universal Periodic Review:
An Opportunity to Enhance
Rights-Based Development Results





The government approached the Universal Periodic Review process with an open spirit and sincerity as it recognizes its potential to bring about productive outcomes in the areas of development and poverty alleviation under the umbrella of human rights. The linkages between human rights, law and development have been captured by the Universal Periodic Review.

- Interview with Ms. Nkasori Sarakikya, Office of the Attorney General's Chamber, Division of Constitutional Affairs and Human Rights, Tanzania

ABSTRACT

In 2011, Tanzania underwent its first Universal Periodic Review conducted by the United Nations Human Rights Council. This provided a valuable opportunity to address long-standing human rights issues in the country. However, challenges in engaging with the Universal Periodic Review process and leveraging these opportunities for the benefit of the population were multifold, in particular the lack of knowledge and experience and limited ability to ensure a transparent, inclusive and participatory process among national stakeholders.

The United Nations system, under the leadership of the Resident Coordinator and supported by an inter-agency framework, was able to step in at the request of government to provide the required technical support to both State and civil society actors. It also mobilized a wide range of actors, including state officials from different rural areas, civil society, the media and the donor community, to engage in the Universal Periodic Review preparatory and review process, as well as to support implementation of its recommendations.

As a result, the Universal Periodic Review process became viewed as a credible process, representing the genuine views of Tanzanians. The recommendations provide a powerful framework to take forward human rights reform in Tanzania and for policy makers and development partners to draw upon in advocacy, policy and programming initiatives.



BACKGROUND

The United Republic of Tanzania has an estimated population of 44.8 million. It is a stable, multi-party democracy, comprising some 120 ethnic groups, with the main languages spoken being Kiswahili and English. The country is classified as a lower income country, with 13 million (34 percent) of the population living below the basic needs poverty line. Tanzania has long-standing relations with development partners, including the United Nations. It is one of eight pilot countries for the Delivering as One initiative for United Nations System-Wide Coherence.⁸

Human rights situation

Tanzania has ratified many of the core international human rights conventions.¹⁰ The Union and Zanzibar Constitutions include Bills of Rights and oblige State organs to respect and uphold human rights in the spirit of the Universal Declaration of Human Rights. The government is in the process of elaborating a National Human Rights Action Plan that aims to address all categories of human rights, e.g., civil, cultural, economic, social and political rights, as well as the conditions of the most vulnerable groups in society. As part of the action plan's implementation framework, a periodic monitoring of the human rights situation by Tanzania's national human rights

institution and civil society, validated by the parliament, is planned. The National Human Rights Action Plan also aims to strengthen links between human rights and development. In doing so, it supports the objectives of the 2011 Five Year Development Plan and the two poverty reduction strategies – Mukukuta II and Mukukuza II (2011-2015)¹¹ – which identify human rights as underlying challenges to development that need to be addressed.

While these legal and policy provisions are in place, implementation of Tanzania's international human rights obligations is fragile. This is due to a number of factors, such as capacity weaknesses in the justice system, delays in incorporating human rights into national laws, and widespread gaps in the rule of law¹². Protection of some rights is also threatened by contravening customary rules. For instance, harmful traditional and cultural practices, such as polygamy, bride price and female genital mutilation, violate women and girls' right to equality and dignity, as well as their right to health and to be free from violence.¹³ In addition, as a lower-income country, the enjoyment of economic, social and cultural rights is a challenge for many Tanzanians

THE UNIVERSAL PERIODIC REVIEW

The Universal Periodic Review is a unique process which involves a review of the human rights records of all 193 United Nations Member States by their peers once every four years. The Universal Periodic Review is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. As one of the main features of the Council, the Universal Periodic Review is designed to ensure equal treatment for every country when their human rights situations are assessed.⁹

The process of drafting the national Universal Periodic Review report was a unique opportunity for the country to assess positive developments made and challenges faced, as well as share its best practices in the promotion and protection of human rights in the country.

- Ms. Nkasori Sarakikya, Office of the Attorney General's Chamber, Division of Constitutional Affairs and Human Rights, Tanzania

affected by poverty, food insecurity and limited access to health and education services. Other challenges in Tanzania are the persistent discrimination faced by people living with HIV/AIDS, persons with disabilities, and persons with albinism. Moreover, the State does not accord the status of indigenous peoples to members of groups identifying themselves as such, arguing that all citizens are indigenous to Tanzania.

The Opportunity of the Universal Periodic Review

Tanzania was due for its Universal Periodic Review by the United Nations Human Rights Council for the first time in October 2011. This was viewed as a valuable opportunity to address some of the long-standing human rights issues in Tanzania. It opened up the possibility to discuss these issues at a national level in an inclusive and de-politicized way. As a comprehensive overview mechanism for examining the state of all human rights in the country, it had the potential to capture what the people of Tanzania collectively considered the most pertinent human rights issues in the country.¹⁴ The credibility with which the Universal Periodic Review is viewed – as a mechanism where all Member States are reviewed by their

peers – powerfully reinforced these opportunities.¹⁵ In addition, the review was particularly well timed as it coincided with the development of both the National Human Rights Action Plan and United Nations Development Assistance Plan. It provided a major opportunity to increase momentum toward finalizing the National Human Rights Action Plan and to align both plans with recommendations emerging from the Universal Periodic Review.

There were, however, a number of challenges to engage with the Universal Periodic Review and to optimize the opportunities it presented. As Tanzania's first cycle of the Universal Periodic Review, national stakeholders lacked knowledge and experience of the process. A shortage of financial resources also represented a challenge in ensuring an inclusive and participatory preparatory process, which in turn jeopardized the legitimacy of how the process would be viewed. Moreover, the national human rights institution in Tanzania, the Commission for Good Governance and Human Rights, was finding it increasingly difficult to implement its mandate in recent years due to budget cuts. Channels of communication between this institution, the government, civil society and the media needed new impetus.

STRATEGY

This situation prompted the government to request the United Nations Resident Coordinator for technical and financial assistance in engaging with the Universal Periodic Review. The United Nations country team saw this request as an opportunity to support a transparent and inclusive Universal Periodic Review preparation process with full engagement of all stakeholders. The Delivering as One context, in which the United Nations operates in Tanzania, provided a solid platform from which the United Nations could deliver on this request.

Through the United Nations country team's Human Rights Working Group, a key pillar of the United Nations country team's structure, the United Nations was in a position to provide the expertise and coordination support needed to ensure a meaningful engagement with the Universal Periodic Review process.

Under the leadership of the Resident Coordinator, with support from the Human Rights Working Group and assistance from the OHCHR Regional Office for East Africa, the United Nations country team adopted the following strategies during the preparatory and follow-up stage of the Universal Periodic Review.

Preparation stage of the Universal Periodic Review

Capacity building and participation:

In response to the government's request for assistance, the Resident Coordinator facilitated a cost-sharing arrangement between OHCHR, UNDP, UNICEF and UN Women. This support facilitated the government's Universal Periodic Review report drafting team to organize a hearing with a broad range of ministries, departments and agency officials on the content of the national report. The funding provided by the United Nations also enabled government representatives from Zanzibar (including the fairly isolated island of Pemba) and local government officials from rural areas to participate in the process, hence ensuring that the issues and challenges affecting different parts of the country were included in the report.

The United Nations likewise advised the government on the rules of procedure of the Universal Periodic Review. It also supported the government to organize consultative workshops with civil society to provide them with the chance to dialogue with and provide feedback to the government on the national report. These consultations focused on a wide range of long-standing issues of concern, such as freedom of the media and abolition of

the death penalty. The United Nations provided technical advice during the workshops and helped bring to the fore issues not traditionally perceived as human rights, such as indirect discrimination, the right to an adequate standard of living, labour laws and indigenous peoples' rights. Once the national report was drafted, the United Nations country team organized a validation workshop on the national report which brought

together over 50 government officials and representatives from civil society.

The importance of having an inclusive and participatory approach throughout the Universal Periodic Review process was strongly promoted by the Resident Coordinator and Heads of Agencies. Public events and speeches, such as Human Rights Day (commemorated on 10 December) were used to continuously reinforce this message.

WHAT IS THE ROLE OF THE UNITED NATIONS COUNTRY TEAM INTER-AGENCY HUMAN RIGHTS WORKING GROUP?

Headed by the UN Resident Coordinator, the Human Rights Working Group provides strategic analysis and advisory services to the United Nations country team on a range of system-wide policy issues on human rights. It brings together a combination of specific United Nations agency mandates and expertise in the area of human rights. The group seeks to coordinate a cross-cutting and coherent United Nations approach to dealing with human rights. The group plays an important quality assurance role with regard to the mainstreaming of human rights in national programmes and policies, such as in the National Human Rights Action Plan. The technical expertise of the Human Rights Working Group is strongly valued by national counterparts.

In the case of the Universal Periodic Review process in Tanzania, twelve United Nations agencies provided active inputs to the United Nations country team compilation report for the Universal Periodic Review across an expansive range of issues. This input enabled the United Nations country team to establish a baseline in the report of human rights challenges connected to policy priorities of each agency.

The United Nations really became a partner for all stakeholders in the Universal Periodic Review process. They also gave the national human rights institution encouragement to engage with the Universal Periodic Review process and were a morale booster.

- Ms. Epiphania Mfundo, Commission for Human Rights and Good Governance, Tanzania

Supporting the national human rights institution to engage civil society:

The United Nations country team assisted Tanzania's Commission for Good Governance and Human Rights to mobilize civil society to engage in the Universal Periodic Review process. The United Nations country team advised the Commission and civil society on the principles and purposes of the Universal Periodic Review, as well as the role and opportunities for non-governmental stakeholders to engage in the process and to provide submissions. By supporting the national human rights institution in this convening role, the United Nations contributed to the formation of four civil society coalitions around the Universal Periodic Review, encompassing more than 60 non-governmental organizations, including trade unions.

Engaging the Media: To support government efforts to engage the media in the Universal Periodic Review process, the United Nations country team helped organize and facilitate a workshop for around sixty chief editors of Tanzanian news and media outlets – known as the Editors Forum in Tanzania. The workshop provided the editors with basic knowledge about the Human Rights Council and the Universal Periodic Review process, including information

on how to monitor the inter-state dialogue in Geneva. The Attorney General's Chamber also presented the draft State report to the editors, giving them an opportunity to provide feedback from their perspective on the independence of the media and on the state of human rights in Tanzania. As a result of the workshop, there was a steep increase in news stories and editorials on the Universal Periodic Review, including coverage of the interactive dialogue in Geneva and interviews with the State representatives upon their return from Geneva. Moreover, human rights became a standard agenda point in the United Nations country team's dialogue on the One UN reform with the Editors Forum in Tanzania. Human rights were understood to be at the core of the United Nations country team's normative agenda.

Engaging the Development

Community: The United Nations country team kept development partners informed of the various stages of the Universal Periodic Review process and of expectations from the inter-state dialogue in Geneva. The United Nations also organized briefings between government counterparts, the Commission for Good Governance and Human Rights and development partners

on the Universal Periodic Review recommendations and opportunities for supporting government follow-up. Consequently, a number of development partners are actively supporting follow-up. For example, the Canadian High Commission is supporting the Commission for Good Governance and Human Rights with advocacy on the Universal Periodic Review recommendations and with efforts to disseminate the recommendations widely across civil society.

Follow up to the Universal Periodic Review recommendations

Tanzania participated in the interactive dialogue in Geneva on 10 October 2011. Stemming from this dialogue, the Human Rights Council made 164 recommendations to Tanzania, of which Tanzania accepted 96, with 53 deferred for further consideration.

The United Nations country team took a number of steps to encourage and support the government in addressing the pending recommendations. It organized a Universal Periodic Review Dissemination Workshop with the government, which aimed to review and develop a final government position on the pending recommendations. Within this process, the

One advantage that we have in our Delivering as One initiative lies in our ability to bring together under one policy agenda the specific agency mandates and how they relate to human rights.

- Interview with Mr. Alberic Kacou,
United Nations Resident Coordinator, Tanzania

United Nations country team provided technical advice to the government on several of the standards and norms highlighted in the recommendations. For example, it sensitized the government on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocols to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which Tanzania had been recommended to ratify. The United Nations country team also invited two non-governmental organization coalitions – one concerned with media freedoms and the other with the rights of indigenous peoples – to present their views on the Universal Periodic Review recommendations concerning adopting a media bill and recognizing and acknowledging the notion of indigenous peoples.¹⁶ Following this process, a further eight recommendations were accepted by the government, including the ratification of the Convention against Torture and the International Convention on the Protection of All Persons from Enforced Disappearance, adopting a

new media law enshrining freedom of the press, aligning policies to ensure access to land and water for pastoralists, and strengthening efforts to protect women and girls from sexual violence.¹⁷

The United Nations has also set aside funding to respond to requests for capacity building of state attorneys and other government officials on the scope of the treaties and standards that the country has committed to

EXAMPLES OF RECOMMENDATIONS OF THE HUMAN RIGHTS COUNCIL TO TANZANIA

Of the 96 recommendations made by the Human Rights Council that Tanzania accepted immediately, some of the recommendations include:

1. Strengthen the capacity of the Commission for Good Governance and Human Rights.
 2. Complete as early as possible preparations for the National Human Rights Action Plan and ensure effective implementation.
 3. Put in place a comprehensive strategy and effective legislation to eliminate cultural practices that discriminate against women, such as Female Genital Mutilation.
 4. Harmonize legislation to eliminate all forms of discrimination against women.
 5. Strengthen legislative and policy measures to protect the rights of vulnerable groups, including people with Albinism and persons with disabilities.
 6. Take adequate measures to protect the population from violence committed by security forces and establish an independent body for investigating complaints.
 7. Address child labour in accordance with international commitments, notably ILO Conventions 138 and 182.
 8. Work with the media and other stakeholders to ensure that all organs of the state understand and appreciate the constitutional guarantees of freedom of press and assembly.
-

ratify or incorporate into national law, including the Convention Against Torture. Moreover, these commitments are informing the design and implementation of the activities of the United Nations Development Assistance Plan. Each “programme working group” of the United Nations Development Assistance Plan has been provided with an overview of the Universal Periodic Review recommendations that are relevant to the goals of their group; enabling them to draw upon these recommendations in advocacy and policy initiatives to take forward the objectives of the United Nations Development Assistance Plan.

Finally, the National Human Rights Action Plan has strong potential to support the government in taking forward the recommendations from the Universal Periodic Review. In response to the many recommendations from the Universal Periodic Review to finalize the plan, the government hastened to do so. This was an opportunity to reflect the recommendations within the plan, ensuring that follow up to the Universal Periodic Review became an integral part of the plan.



RESULTS

Delivering as One as an enabling framework for human rights: The wide range of human rights issues addressed by the Universal Periodic Review touched in some way on the mandates of all United Nations agencies in Tanzania. This helped bring together the United Nations around a common platform and framework, resulting in greater coherence in advocacy, policy dialogue and programming.

By being able to speak with 'One Voice' on human rights, the United Nations country team had a more powerful presence and impact.

Through the Human Rights Working Group, the United Nations country team also became recognized as a valuable source of expertise on human rights, providing advice to the government, civil society, the national human rights institution and development partners. This ultimately positioned it as a leader among development partners in Tanzania.

In addition, through the United Nations country team's deep engagement with the government and its efforts to keep international development partners continuously informed on the process, the United Nations country team managed to elevate human rights on the development cooperation agenda in Tanzania.

Discussion and advocacy on complex issues: One of the most significant outcomes from the Universal Periodic Review is that it provided a legitimate and inclusive forum to discuss complex issues, such as the death penalty, discrimination against marginalized groups and Female Genital Mutilation. This provided an exceptional advocacy opportunity. Civil society formed itself into working groups to advocate on specific issues. For example, one coalition focused on the rights of specific groups, addressing the issue of discrimination and inequality for Indigenous Peoples, People living with HIV/AIDS and Women. Others focused on the administration of justice, economic, social and cultural rights and media and freedom of expression. Individual agencies, including UNAIDS, UNDP, UNFPA, UNICEF and UN Women have capitalized on the new human rights commitments of the government. For instance, UNFPA has leveraged the recommendations of the Universal Periodic Review for its advocacy and awareness-raising efforts to prevent harmful traditional practices that discriminate against women, such as Female Genital Mutilation.

Credible and strategic policy and programming tools: The participatory and inclusive Universal Periodic Review process resulted in a national report that genuinely reflected country-wide perspectives on human rights priorities.

Both the national report and the recommendations from the Universal Periodic Review provide policy makers, advocates and development partners with credible and validated data on national priorities and State commitments.

These commitments can be drawn upon during the preparation of national development strategies, such as the poverty reduction strategy, the United Nations Development Assistance Plan and the National Human Rights Action Plan.

Enhancing civil society partnerships and the role of the national human rights institution:

The multi-stakeholder engagement strategy opened up new channels for communication and cooperation between the national human rights institution, civil society and government. As noted by a representative of the Commission for Good Governance and Human Rights, the Universal Periodic Review "has helped forge new roles for the Commission for Good Governance and Human Rights like never before". The Universal Periodic Review defined the valuable role that the national human rights institution could play in assuming a position between the government and non-governmental organizations and in creating greater awareness of certain human rights. Post Universal

Periodic Review, the development community is supporting the Commission for Good Governance and Human Rights to take forward its advocacy strategy for government implementation of the Universal Periodic Review recommendations¹⁸.

Acceptance of pending Universal Periodic Review recommendations:

Following the United Nations country team's guidance, a firm commitment by the government was made to the Convention against Torture in its final statement at the adoption of the Universal Periodic Review outcomes in March 2012. The government has also accepted that legal reform needs to be accelerated in the area of media and freedom of expression. The government recently informed the parliament of its plans to table a media bill for adoption in 2013. This was followed by a public commitment from the Minister representing the State during the Universal Periodic Review inter-active dialogue that civil society will be given a privileged seat in the drafting process for the new bill. While the government did not accept the recommendation on indigenous rights, it did recognize the 'special needs' of indigenous peoples and committed to further explore the issue with a study on the relevance of international standards to the situation of these groups in Tanzania as part of the National Human Rights Action Plan finalization process. Equally, while the government did not commit to implementing recommendations on the abolition

of the death penalty, it agreed to facilitate public awareness-raising on the issue and invited civil society actors to sensitize the public on global trends and submit proposals for consideration during the forthcoming constitutional review.

National Human Rights Action Plan:

Five recommendations of the Universal Periodic Review specifically urged the government to prioritize completion of the National Human Rights Action Plan. In doing so, national support and momentum was leveraged to take forward the National Human Rights Action Plan. The National Human Rights Action Plan has since been approved by concerned ministries, and is now only pending final endorsement from the government in Zanzibar.

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The National Human Rights Action Plan provides a road map for translating recommendations from international human rights mechanisms into national policy and practice.
.....

It also bridges an important gap – the mainstreaming of human rights into national development processes. One of the explicit goals of the National Human Rights Action Plan is to promote a human rights-based approach to development and poverty reduction.

LESSONS LEARNED

1. The United Nations has an important convening and capacity-development role to play at the preparatory phase of the Universal Periodic Review, in particular ensuring that the process is participatory and transparent. At the follow up stage of the Universal Periodic Review, the United Nations, through its development programmes, has a role in supporting the government in implementing these recommendations. It can also draw on the recommendations for its own advocacy and policy initiatives.
2. Human rights provide a common platform and framework for joint United Nations programmes and advocacy within the Delivering as One context. Conversely, speaking with one voice on human rights can enable the United Nations to have a more powerful presence and impact in addressing human rights issues.
3. The Universal Periodic Review provides an opportunity to bring national actors together to discuss complex and sensitive issues and work together to address them.






KENYA

Translating Kenya's Rights-Based
Constitution into Practice





The Government of Kenya acknowledges that development is primarily about people and therefore is adopting a human rights-based approach to development. This approach recognizes that for development to be meaningful, rights must be realized by those whose development is at stake.

- Kenya's draft National Policy on Human Rights 2010 ¹⁹

ABSTRACT

In 2010, Kenyans overwhelmingly endorsed a new Constitution – one of the most progressive in Africa in regard to human rights. The Constitution paves the way for redressing historical patterns of inequality and marginalization related to income and access to public services and, for the first time, guarantees economic, social and cultural rights. Yet, for effective change to be achieved the Constitution's far-reaching provisions need to be translated into concrete policies and practice. In its efforts to do so, the government requested the

United Nations to support the integration of human rights into the national development blueprint, Vision 2030, in order to shift its focus from infrastructure and economic growth to reducing disparities stemming from high levels of poverty and inequality, and to ensuring that development goals are guided by human rights standards. United Nations support began with broadening knowledge on how to apply a human rights-based approach to development and, in collaboration with the government and National Commission on Human Rights,

developing specific tools and policies that would support this approach. This includes a National Action Plan on Human Rights and strengthening of judicial institutions. As a result of these efforts, all government institutions have been requested to be guided by a human rights-based approach to development in carrying out their functions. Accountability has also been strengthened, with the court beginning to adjudicate on economic, social and cultural rights cases.



BACKGROUND

Country context

After nearly 40 years of single party rule under the Kenya African National Union,²⁰ multi-party democracy was restored to Kenya in 2002. This brought a wave of optimism for renewed commitment to democratic institutions and human rights. However, the violence that broke out after the December 2007 presidential election reflected deep historical grievances and tensions over ethnicity, equity and land that still had not been addressed. It also brought into sharp focus the limitations of the country's democratic governance systems which were unable to diffuse the conflict and to prevent human rights violations. The crisis underlined the need for the Grand Coalition Government²¹ to take forward far-reaching constitutional, legal, policy and institutional reforms. A central tenet of these reforms is Kenya's new Constitution, which was overwhelmingly approved in a national referendum in August 2010. The new Constitution paves the way for extensive restructuring of government, significant devolution of power to the counties²² to ensure that public resources are equitably distributed across regions, and radical reforms of the police and judiciary. It

establishes more checks and balances on executive power and provides for a series of electoral and land reforms.

Development and human rights situation

Kenya has a population of approximately 40 million and is classified as a low-income country.²³ Two of the major development challenges Kenya faces are poverty and inequality. An estimated 45.9% of the population live in absolute poverty²⁴, while large disparities exist in income and access to social services.²⁵ Kenya's development 'blueprint' – Vision 2030 – aims to help Kenya overcome these challenges and transform it into a Middle Income Country by 2030. It is being implemented through a series of medium-term plans, the first of which (2008-2012) is in its final stages²⁶. The second Medium Term Plan (2013-2018) is currently being drafted.

Kenya has ratified most core international and regional human rights treaties.²⁷ It has also shown a commitment to working closely with international human rights mechanisms as demonstrated by recent visits of a number of United Nations Special Rapporteurs.²⁸ Over the past few years significant efforts have also been made to strengthen national policy and the

legal and institutional environment aimed at advancing human rights. A number of specialized institutions with a specific mandate for human rights have been created. Chief among them is the Kenya National Commission on Human Rights (KNCHR)²⁹. The KNCHR is an internationally recognized and respected national human rights institution with a broad mandate of human rights promotion and protection.

Despite this strong human rights protection framework, important challenges endure in Kenya. Predominant human rights concerns in Kenya include the disparity in access to education, health, land rights, clean water and housing and sanitation services, which stem from high levels of poverty and inequality in Kenya. Corruption and impunity for human rights violations also remain serious problems. The weak administration of justice and low public confidence in governance and rule of law institutions have further exacerbated this situation.³⁰ Kenya's new Constitution offers a profound opportunity for addressing these deep-rooted human rights challenges.

Kenya's new Constitution

Kenya's new Constitution, promulgated in August 2010, is one of the most progressive in Africa in regard to human

Our role is to ensure that the new development plan is rights-based; we are doing this through the expertise of different United Nations agencies and in strong collaboration with the Kenya National Commission on Human Rights.

- Mr. Aeneas C. Chuma, United Nations Resident and Humanitarian Coordinator, Kenya

rights. It has a comprehensive Bill of Rights which sets out both the rights extending to all individuals and those of specific groups, including children, youth and persons with disabilities. Furthermore, it includes, for the first time in Kenya, economic, social and cultural rights. The right to the highest attainable standard of health, education, accessible and adequate housing and water and sanitation, as well as the right to food are all guaranteed in the Constitution as enforceable rights. The Constitution also establishes that any treaty ratified by Kenya will form part of national law.³¹

Other provisions offer the prospect of dramatically altering the status of women in Kenya. These include affirmative action to achieve gender parity in parliament and a guarantee of at least one-third of elected and appointed posts in government for women.

The new Constitution is a first step and a unique opportunity for profound legal, institutional and policy reform. It also offers a way to address historical patterns of inequality and marginalization. Yet the constitutional protections alone will not lead to change. What will be important is translating these provisions into policy and practice; for instance, by including them in the country's development policy, Vision 2030.

STRATEGY

Providing expertise in the constitutional review process

The government request for the United Nations support in mainstreaming human rights into Vision 2030 followed its prior collaboration on the constitutional review process. Several United Nations agencies had worked with the government and civil society to ensure that the Constitution was solidly anchored in human rights. The demand for greater inclusion of human rights in the Constitution was in direct response to the repeated recommendations from the United Nations Treaty Bodies, the strong involvement of civil society in the Constitutional review process, and the push from various stakeholders to adopt the South African model of a rights-based constitution.

UNDP provided technical advice to the Committee of Experts, a statutory body responsible for leading the constitutional drafting process. It also facilitated and financed meetings that brought together government, civil society and the Kenya National Commission on Human Rights. These meetings provided a platform for civil society and the Kenya National Commission on Human Rights to lobby for the inclusion in

the Constitution of strong provisions ensuring the protection of human rights, in particular economic, social and cultural rights.

In parallel, the United Nations country team's Human Rights Adviser worked with minority groups, such as the indigenous Ogiek community, to develop their capacity to voice human rights issues of concern to them and ensure the rights of minorities were included. Complementing these efforts, UN-Women supported civil society groups focusing on women's rights to engage with the constitutional review process. Equally, UNICEF facilitated the participation of children in the dialogues leading up to the final stages of the constitutional drafting process, thus ensuring that the views of children were appropriately reflected in the Constitution.

Moreover, prior to the referendum vote on the new Constitution in August 2010, UNDP carried out an extensive civic education programme. Working through grass roots civil society organizations, the United Nations worked with the media, using newspaper articles and editorials, to sensitize the public on the new constitutional provisions and encourage Kenyans to vote in the referendum. Once the Constitution was adopted,

One of the things we wanted to promote was that access to public services is not a privilege but a legitimate expectation of all Kenyans. It is a right – one has the right to be treated well by public officials. They are not doing the citizen a favour, but delivering on their obligations.

- Ms. Mary Ndeto, member of the Transition Authority, Kenya

the United Nations provided public education and information to communities on the outcome of the referendum, in this way ensuring that Kenyans were informed on the new remedies now available to them under the Constitution.

Finally, to ensure the government was able to draw upon available expertise and knowledge, the United Nations country team brokered experiences from around the world. For instance, it shared best practices from other countries that had constitutional provisions on economic, social and cultural rights. It also supported the visit of international experts from countries with strong rights-based constitutions, such as South Africa and India. These experts shared their experiences and advised on some of the more complex legal issues, such as the progressive realization of rights.³²

Moving from a rights-based constitution to a rights-based development plan

The revised Constitution provided a major opportunity for the Office of the Prime Minister to take forward its new strategy to support Vision 2030. The Office of the Prime Minister, whose role is to improve public services, had founded its new strategy on a human rights-based approach. In doing so, it

sought to create a paradigm shift in the way in which development was viewed. Other reform initiatives had so far failed to impact the lives of ordinary Kenyans. The Office of the Prime Minister was concerned that Vision 2030 relied too much on economic growth as the key driver for development. This approach posed the risk of generating inequality gaps in the process of economic growth.

Vision 2030 also emphasized physical infrastructure – building health centres, schools, roads, etc. These structures would be provided on a uniform basis to every constituency. However, an analysis of which constituencies needed these structures more than others was absent. No consideration had been given as to whether or not certain areas were particularly deprived of access; for example, communities having to walk long distances to access a health care centre. Mainstreaming human rights into Vision 2030 offered a way to shift this focus, encouraging and empowering development actors to think about the individuals with the strongest need for these services and whether any groups or areas are being left behind in the development process. The new Constitution, with its emphasis on economic, social and cultural rights and the rights of marginalized groups,

provided a legal and accountability framework to take forward the Office of the Prime Minister's strategy for a rights-based Vision 2030.

The challenge for the Office of the Prime Minister was implementing its vision for which it sought the support of the United Nations. The United Nations had the human rights-based approach expertise, a normative mandate and convening role to strategically support the Office of the Prime Minister in their efforts. The United Nations support focused on two main areas of support: i) developing a common understanding on a human rights-based approach to development in the country; and ii) supporting efforts to develop tools to facilitate the mainstreaming of human rights into Vision 2030. In taking forward these initiatives, the United Nations formed strategic partnerships with civil society, the KNCHR and the Equality and Gender Commission.

Developing a common understanding on a human rights-based approach to development

As a first step to engendering a common understanding on a human rights-based approach to development, the United Nations country team, through the technical support

of the Human Rights Adviser, trained over 500 staff from the government, Kenya National Commission on Human Rights, Gender and Equality Commission and Civil Society on a human rights-based approach to development. The training aimed to develop understanding and ownership on this approach among a wide representation of stakeholders. The training also aimed to form a pool of national human rights-based approach trainers, and in this way ensuring the information would trickle down to all levels, including the counties. Moreover, drawing on United Nations training material, a Kenya human rights-based approach training manual tailored to the Kenyan context was developed. Subsequently, Kenyans are training their peers and using Kenya-specific training material in the process. United Nations civil society partners have already begun implementing the training for members of their organizations.

Developing Tools

Inspired by the United Nations human rights-based approach training, the Ministry of Planning sought the United Nations support in developing indicators that would reflect human rights principles and standards. These indicators, which will be included



in the indicator framework for the next Medium-Term Plan (2013-2018), will provide accountability tools for ensuring the development process is guided by human rights. The indicators assess whether the principles of participation and non-discrimination have been abided by. For example, looking not only at whether there have been participatory processes but whether these have led to meaningful participation, with marginalized groups having a real say in the development process.

Specific indicators have also been developed for different development sectors, such as education and water and sanitation, to ensure these sectors are guided by human rights standards. For instance, in the water and sanitation sector, human rights indicators assess whether piped water is *affordable*, meets *quality* standards, whether marginalized and vulnerable groups are given *priority*, if local communities are involved in the initiatives, whether *responsibilities* for protecting consumers from being exploited by private water providers have been established, and whether *mechanisms for raising complaints* exist.

With technical support from the United Nations, the Ministry of Justice and the Kenya National Commission on Human Rights drove efforts to develop a National Policy and Action Plan on Human Rights. The Action Plan provides a comprehensive framework to guide efforts to mainstream human rights. It aims “to provide a framework for the integration and mainstreaming of human rights in development planning, implementation and evaluation in all sectors”. To support the Ministry of Justice in these efforts, the United Nations country team shared good practices in drafting Human Rights Action Plans from around the world. Drawing on its convening role, it also hosted country-wide public consultations with a large range of stakeholders on the Action Plan, including civil society, faith-based organizations and government agencies. This views-collection exercise provided the public with an avenue to voice the human rights issues that were of most concern to them. As a result, the Action Plan genuinely reflects national priorities. It has been approved by cabinet and is now awaiting parliamentary approval.

RESULTS

Efforts to implement the constitutional provisions are still in their early days. Continued work and vigilance is required. What is clear is a strong national commitment to creating a robust human rights architecture and culture within Kenya.

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The changing paradigm by which development is viewed is already visible.

.....

In the planning process for the Medium-Term Plan II, the government has made significant efforts to incorporate a human rights-based approach, which was not the case in the development of the first Medium-Term Plan. At the local level, there is a growing change in mind-set. Training on a human rights-based approach to development have underscored that local officials are 'duty bearers' with obligations toward the community. There is an understanding that when services are not provided, it is also their responsibility, not only that of central government. Local government officials are now being asked by the communities what is being done, "and when they have not taken certain actions, they realize that they cannot blame it on others."³³

Conversely, the new Constitution is starting to demonstrate its potential as an accountability tool for the respect and protection of human rights. In 2012, three

people living with HIV mounted a court challenge to a national act barring the importation of generic anti-retroviral drugs. When the court ruled that the State was violating the rights of its citizens to health, life and human dignity,³⁴ as provided for in the Constitution, it set an important precedent. The ruling clearly confirmed the principle of the inter-dependence of rights, such as the right to health and the right to life. Kenyans now have higher expectations of court protection on a range of other social and economic rights.

To further support the judiciary to adjudicate on economic, social and cultural rights, the United Nations country team is supporting national efforts to reform the judiciary. Together with the Ministry of Justice, the United Nations country team has embarked on an ambitious programme of judicial reform, including more transparent appointment and vetting of judges, the automation of court procedures and restructuring the court system to create a Supreme Court as the highest judicial authority. These on-going reform efforts were recently commended by the African Union Panel of Eminent African Personalities. In 2012, speaking on behalf of the Panel, the former United Nations Secretary General, Kofi Annan, called on Kenyans to back the judicial reforms to ensure every citizen has access to equal justice despite their social, economic or political status. In his message he underlined that,

.....

"We need three pillars to build healthy societies: security, development and respect of human rights; if you don't have everything rooted on that you may be building on sand."*

.....

Those Kenyans trained in applying a human rights-based approach to development now need to translate their knowledge into practical action. One significant opportunity for doing so is that the United Nations country team has been formally requested by the government to review the roadmap for Vision 2030's Second Medium-Term Plan (2013-2018) to better align it with human rights. As part of this review process, the United Nations country team helped foster an agreement that staff from the National Commission on Human Rights participate in all 19 sector working groups charged with drafting the 2013-2018 plan, slated for completion in mid-2013. Moreover, in efforts to strengthen knowledge exchange between different development actors on human rights-based approaches and to further support its implementation, the United Nations is supporting an initiative on rights-based budgeting. The initiative is driven by the Kenya National Commission on Human Rights in collaboration with the United Nations Millennium Campaign and aims to promote a dialogue between different professional groups (economists and human rights

* <http://kofiannanfoundation.org/taxonomy/term/184/0>

specialists) and gather feedback on how the budget is spent at the county level, with particular focus placed on the level of participation, transparency, accountability and equitable outcomes in the budget process. Another promising recent development is that the head of the public service issued a requirement that all government institutions operate according to a human rights-based approach.

Finally, in order to reflect and accompany the country's rights-based strategy, the United Nations country team has placed a human rights-based approach at the heart of its new United Nations Development Assistance Framework for 2014-2018. The new Framework will be based on three priority areas: governance and the realization of human rights, empowerment and reducing disparities and vulnerabilities.

LESSONS LEARNED


- 1.** Constitutional reform and national development plans are essential opportunities to reinforce the link between human rights and development.
- 2.** A strong national legal framework for human rights can be a powerful tool to support efforts to mainstream human rights into development and to strengthen accountability within the development process.
- 3.** Human rights standards provide useful guidance for strengthening the focus and quality of development goals, as well as the measurements used to assess progress in achieving these goals.
- 4.** Ensuring that human rights-based approach training is locally based, – through adapting the United Nations training material to the national context and training national partners to be trainers – can help strengthen national ownership and buy-in of the approach.





MOLDOVA

Moving Beyond Economic
and Political Transition Toward
Social Inclusion



My message to the government – and to the public – is that diversity is among our highest values. A democracy is only as strong as its ability to protect its most vulnerable... I have urged the government to redouble its efforts to tackle anti-Semitism and anti-Muslim attitudes, and to ensure that members of all religious, racial and ethnic groups are better protected in both the short and the long term.

- United Nations High Commissioner for Human Rights, Navi Pillay, following her mission to the Republic of Moldova, 5 November 2011³⁵

ABSTRACT

Social exclusion and discrimination of certain groups, including religious minorities, is one of Moldova's major development and human rights challenges. In 2011, the United Nations Special Rapporteur on freedom of religion or belief visited Moldova and provided critical insights into the main obstacles to overcome in eliminating discrimination. His visit catalyzed public discussion and action to tackle this sensitive issue. The United Nations country team helped facilitate the visit of the Special Rapporteur

and, most importantly, supported government and civil society follow-up to his recommendations.

Drawing on its normative and convening role, the United Nations country team: facilitated advocacy and dialogue between the government, church and civil society on the issues raised by the Special Rapporteur; provided technical advice on legal reform to better protect the rights of all persons and groups in Moldova; and supported national actors to effectively engage with international

human rights mechanisms – including the Universal Periodic Review. Recommendations from these mechanisms further strengthened the momentum for addressing discrimination issues. Following the visit of the Special Rapporteur and the follow-up support provided by the United Nations country team, important legal reforms were made, including the adoption of a comprehensive anti-discrimination law. Moreover, the political and public space to address the issue of discrimination has been opened.



BACKGROUND

Country context

Since the collapse of the Soviet Union and independence in 1991, the Republic of Moldova has been in a process of economic, political and social transformation. The July 2009 elections ended eight years of single-party communist rule and brought into power a governing coalition, known as the Alliance for European Integration. The previous government – although democratically elected – had, in the view of many, been both authoritarian and resistant to reform. For the new government, closer integration with the European Union is a key strategic priority and a powerful incentive driving domestic reform. The government has embarked on a process to strengthen democracy, rule of law and respect for human rights.³⁶

Human rights situation

Strengthening the promotion and protection of human rights has ranked high on the government's agenda, particularly in the context of closer European Union alignment. Moldova has ratified seven of the nine core international human rights treaties, most recently the Convention on the Rights of Persons with Disabilities.³⁷ Measures to strengthen the nation's

legal and institutional human rights framework include: establishing a national human rights institution, including an Ombudsman for Children's rights; amending laws on domestic violence, workers' rights, public assembly, sexual and reproductive health, protection of migrants' rights and the judiciary; and developing a National Human Rights Action Plan (2011-2014).

Despite the government's commitment and progress on human rights, significant challenges to fully realizing human rights remain. The 2009 elections were followed by civil unrest and large-scale reports of police violence and human rights violations. The events catapulted into the public eye matters such as arbitrary detention, torture and ill-treatment, freedom of expression and corruption within the police and judiciary, which for the first time galvanized public discussion on civil and political rights in Moldova. These issues came to be seen as fundamental human rights concerns for Moldova and were central to its human rights debate. What was typically not seen as a human rights concern, until recently, was the persistent and widespread discrimination and marginalization of minority groups in Moldova.

Social exclusion from civic participation, access to public spaces and social services is a daily reality for certain groups in Moldova. Religious minorities, including evangelical Christian groups, Muslims, Jehovah's Witnesses, Jews and Falun Gong, experience restrictions on freedom of religion (one example being the difficulties they face when attempting to hold religious ceremonies, such as processions or gatherings, in the public sphere). During the communist period, many religious minorities had problems registering as a religious group. Following measures to address this in 2009, many of the formal registration problems were resolved, but resistance hardened to the formal recognition of the Muslim community. This has resulted in discriminatory practices against the Muslim community accompanied by anti-Muslim sentiment in Moldova. Other marginalized groups include the Roma, who are among the country's poorest minority group with many living in segregated communities lacking basic infrastructure and access to social services. Discrimination against the Roma is widespread in education, employment, housing and health care. Discrimination on other grounds has also taken hold in the country. For example, children living with HIV/AIDS are commonly excluded from schools

I believe in long-term development: the visit of the Special Rapporteur can be seen as an event, or a tool, not leading to anything unless there is a wider structure. The United Nations country team can help ensure follow-up.

- Heiner Bielefeldt, United Nations
Special Rapporteur on freedom of religion or belief

on the basis of their positive status. There are reports of persistent societal violence and discrimination against women as well as widespread discrimination and intolerance on the basis of sexual orientation or gender identity. Persons with disabilities also experience deep exclusion in terms of access to public services. Persons with mental disabilities may be declared 'incapacitated' and placed under guardianship and hence deprived of their legal capacity.³⁸

Although the Moldovan Constitution guarantees equality and non-discrimination, the enforcement of these rights is a challenge. The judicial machinery has been slow in addressing cases of discrimination. Human rights institutions and budgets allocated to implementing equality policies and laws are weak. Moreover, until recently Moldova lacked a robust and comprehensive anti-discrimination legislation that incorporates international standards. In addition, Moldova's young civil society is at the early stages of developing its capacity to effectively monitor and advocate on human rights. As a result there is a gap between policy and practice. This situation is further exacerbated by widespread negative societal attitudes and stereotypes against religious and ethnic minorities.

Strengthening the national human rights protection system is necessary to effectively address the problem of discrimination and social exclusion in Moldova. This involves both reinforcing the judiciary and domestic legislation to protect human rights, as well as supporting a robust civil society that is able to contribute freely to the promotion and protection of human rights. Non-discrimination is a fundamental principle of dignity and permeates all the core human rights treaties. Fostering a human rights culture that values diversity is also fundamental to addressing discrimination and social exclusion in Moldova.

STRATEGY: toward unity and social inclusion

The United Nations country team has been uniquely placed to bolster national efforts to promote non-discrimination as part of the government's transformational agenda. Supported by the United Nations normative mandate, the United Nations country team has followed two principal strategies: 1) raise public awareness of the problem of discrimination in the country; and 2) underline that discrimination not only goes against Moldova's international human

rights obligations, but also poses a real challenge to achieving development results. The United Nations country team has also supported the government in strengthening the enabling legal and political framework for the protection of human rights. The United Nations country team has explicitly placed inclusion and human rights protection systems at the heart of its new United Nations Partnership Framework for the period 2013-2017.

Visit of the United Nations Special Rapporteur on freedom of religion or belief (1-8 September 2011)

In September 2011, the Government of Moldova issued an open invitation and welcomed the visit of the United Nations Special Rapporteur on freedom of religion or belief, Mr. Heiner Bielefeldt, to Moldova. The impartiality and credibility of the Special Rapporteur as an independent expert appointed by the United Nations Human Rights Council were expected to strengthen political momentum to move forward key policies and legislative revisions under debate, such as the draft anti-discrimination law (proposed to parliament but not yet adopted at the time of his visit³⁹). It would also draw on his expertise to advance the reform agenda.



The visit of the Special Rapporteur proved to be a transformational moment. The event served as a catalyst to raise and discuss the sensitive issues of discrimination, intolerance and social exclusion in Moldovan society. It provided a forum for different actors to come together to dialogue on these topics. The Special Rapporteur's expertise and insights provided the guiding legal and policy framework for the concrete measures needed to ensure Moldova's compliance with international human rights obligations. The Special Rapporteur shed light on individual incidents as well as systematic practices of discrimination and inequality, both in law and in the weak implementation of laws and policies. His public report, presented to

the Human Rights Council, was clear, frank and touched on pertinent issues. He noted wide ranging instances of discrimination in the enjoyment of freedom of religion or belief. He also raised concerns about discrimination against other groups such as the Roma and sexual minorities. He underlined that crucial to improving conditions for non-discrimination was a "public culture appreciative of diversity".⁴⁰ Notably, the Special Rapporteur stated that: "Remaining obstacles mainly derive from the predominant position of the Orthodox Church, which enjoys a privileged status at variance with the constitutional provisions of a secular state".⁴¹ Underlining the link between the church and anti-minority currents in Moldova drew significant media

and public debate, thus creating momentum and opportunity to openly tackle discriminatory social attitudes and negative stereotypes.

Moreover, the visit of the Special Rapporteur took place in an important broader context: for the first time, later that year, Moldova was to be reviewed under the Universal Periodic Review mechanism. The Special Rapporteur's conclusions provided important inputs for that process. Immediately after the Universal Periodic Review, the United Nations High Commissioner for Human Rights, Navi Pillay, visited Moldova for the first time. She called upon the government, civil society and the public to follow up swiftly on the Universal Periodic Review recommendations and those of the Special Rapporteur.

The United Nations country team played an important role in ensuring the successful visit of the Special Rapporteur on freedom of religion or belief. It facilitated the participation of civil society and religious groups in his visit, which contributed to a deeper analysis of the situation. The United Nations country team also coordinated media conferences to ensure wide coverage of the visit as well as of his recommendations. This helped broaden the outreach of the visit and

Human rights is an area relevant to all agencies, where everyone can feel they have their own interest and mandate. It has a very unifying impact.

- Kaarina Immonen, United Nations Resident Coordinator Moldova

promoted greater awareness of the situation faced by minority groups. To follow up on his recommendations, the United Nations country team, under the leadership of the Resident Coordinator, facilitated advocacy and dialogue between the government, the church and civil society on the issues raised in the report, often touching on highly sensitive concerns.

In these efforts, the UN's independence and impartiality in a sensitive environment was highly valued, adding to the UN's strengthened relevance and credibility.

Enabling environment

The United Nations country team, through the expertise of its human rights adviser, provided technical input and advice to the government during its preparation of a comprehensive anti-discrimination law, the *Law on Ensuring Equality*. The United Nations country team also advocated with the government to amend the legal basis for the establishment of religious communities and advised how to do so in accordance with international human rights norms.

Through the support of the Human Rights Working Group, the United Nations country team supported both

the government and civil society to engage more effectively with international human rights mechanisms, including the Universal Periodic Review (Moldova was reviewed by the Human Rights Council in December 2011). The United Nations country team: organized training seminars and roundtables for government and civil society partners to familiarize them with the Universal Periodic Review process; facilitated exchange of experiences with neighbouring countries that have undergone the process; and funded national actors to participate in the Geneva meetings of the UPR. In addition, the United Nations country team provided its own written submission for the Universal Periodic Review that outlined the human rights issues that the United Nations country team felt were a priority, such as discrimination.

One of the key recommendations of the Universal Periodic Review was that the government should approve a comprehensive anti-discrimination law, and 15 recommendations from the Human Rights Council explicitly touched on this topic. The Human Rights Council also expressed concern at discrimination against minorities, including the rights of members of minority religions, the Roma and

Lesbian, Gay, Bisexual and Transgender people. It urged Moldova to redouble efforts to protect such rights, including fostering greater public appreciation for the importance of according equal rights to all groups.⁴²

Supporting capacity development

A major contribution to government efforts toward strengthening the country's focus on equality and non-discrimination has been joint United Nations work with the National Bureau of Statistics. An inter-agency team, consisting of ILO, UNDP, UNICEF, UNFPA and UN-Women, has been working with the bureau to support better gender disaggregation in the national statistical system, while developing systems and capacities for other relevant types of disaggregated data. With United Nations assistance, gender and regional disaggregation of data has improved. Efforts are also underway to strengthen human rights-relevant information, in particular concerning Roma, non-citizens, persons with disabilities and people living with HIV/AIDS, as recommended by the United Nations Committee on Economic, Social and Cultural Rights, among other bodies.⁴³

RESULTS

The development of a human rights culture and respect for diversity remain challenges for Moldova, which has a direct impact on the path to achieving sustainable and equitable development goals. Still, from 2009 onward Moldova has made significant progress in raising the issue on the public agenda and strengthening legal and policy frameworks.

Legal and policy reform

The visit of the United Nations Special Rapporteur and the Universal Periodic Review process galvanized momentum toward legal reform.

In March 2011, the government approved the right to religious registration for the Islamic League. In May 2012, a comprehensive anti-discrimination law, the 'Law on Ensuring Equality', was adopted and entered into force in January 2013. To reinforce access to remedies for people who have suffered discrimination, the government is establishing a council for preventing and combating discrimination. Continued international attention – such as via the Universal Periodic Review and the 2011 visit of the High Commissioner – and advocacy by the United Nations country team has kept these issues high on the public agenda.

Widening of the democratic space

The visit of the Special Rapporteur provided an opportunity for a wide

range of society to express their views. This helped broaden the democratic space in Moldova. The media was encouraged to profile a diversity of opinions and give a voice to a multitude of views, including those not usually featured. As a result of his visit, the topics of discrimination and questions on national identity have become one of Moldova's most important conversations. Moldovans are asking themselves: What does it mean to be Moldovan? What is the place of various minorities in Moldova? Who is speaking on behalf of the 'mainstream'? And what is the role of religion in Moldova's public sphere?

Civil society has strengthened its voice on human rights and become active in addressing tolerance and non-discrimination as core parts of their work. The visit of the Special Rapporteur provided an opportunity for civil society to come together around this issue. Civil society actors assessed and acknowledged their role in promoting the Special Rapporteur's recommendations and advocating with the government to take them forward. One non-governmental organization recently published a report on how freedom of religion is being observed in Moldova.

Credibility

In supporting the government to address the issues of discrimination and inequality, it was critical that the United Nations country team had the capacity and expertise available

to follow up on requests for advice and support from stakeholders. Through the presence of a Human Rights Adviser and an inter-agency Human Rights Working Group that pools together and leverages human rights expertise, experience and resources across the agencies, the United Nations country team was able to provide pertinent and timely responses to government requests for support and advice. This in turn strengthened the credibility of the United Nations country team in Moldova vis-à-vis stakeholders.

Unifying and strategic impact of human rights for United Nations work

The visit of the Special Rapporteur opened up political space for addressing discrimination against religious minorities as an important issue for the United Nations country team to address in its development work. As a result, the United Nations country team now systematically examines all of its programmes through a discrimination lens. For example, the recommendations of the Committee on Economic, Social and Cultural Rights helped align the United Nations country team's HIV/AIDS policies and programming⁴⁴ along two human rights lines: discrimination against persons living with HIV/AIDS and weak systems for privacy and confidentiality.⁴⁵ Following strong advocacy efforts by the United Nations country team on these two issues, the Moldovan Parliament passed an amended Law on HIV/AIDS in April 2012. The

new law significantly strengthens non-discrimination guarantees and privacy and confidentiality safeguards.

As a cross-cutting issue that touches upon the mandates of each agency, human rights helped bring together the various United Nations agencies around one common platform.

Measures to promote human rights and address discrimination and social inclusion, including implementing the recommendations of the Special Rapporteur, are integrated throughout the United Nations Moldova Partnership Framework, which entered into force on 1 January 2013. A specific goal of the partnership framework is that “State bodies and other actors effectively promote and protect human rights, gender equality and non-discrimination, with particular attention to the marginalized and the vulnerable.”⁴⁶

Moreover, the United Nations country team systematically uses the opportunity of public events, such as International Human Rights Day, to promote and celebrate diversity. In addition, it has strengthened knowledge on the rights of minorities, including through a 2012 study that showed that poverty is more widespread among religious minorities than the population at large. These efforts, along with the United Nations country team’s continued advocacy on the value of diversity, have ensured continued engagement by the government and civil society on tackling discrimination and exclusion in Moldova.

LESSONS LEARNED

- 1.** The visit of a Special Procedures mandate holder of the United Nations Human Rights Council can galvanize momentum and openness to address relevant human rights issues. These visits provide a platform for relevant stakeholders to discuss common goals and human rights issues.
- 2.** To support a government to follow up on recommendations of a Special Rapporteur, the United Nations should be equipped to provide expert advice. An inter-agency human rights working group, which can coordinate the expertise available among the United Nations agencies, and/or the presence of a human rights adviser can help ensure that the United Nations country team is uniquely positioned to provide timely and relevant policy advice and support.
- 3.** The normative mandate of the United Nations provides the United Nations country team with a strong foundation and role for supporting national stakeholders in advancing a human rights mainstreaming agenda, thus placing the United Nations in a unique position vis-à-vis other development actors.
- 4.** The United Nations – through capacity development initiatives and its convening role that can bring different actors together at the discussion table – is a key player in supporting public dialogue and promoting the function of the media to tackle issues of discrimination.






PHILIPPINES

Applying a Human Rights-Based
Approach to Local Water and
Sanitation Development Planning





The children who have no clean water to drink, the women who fear for their safety, the young people who have no chance to receive a decent education have a right to better, and we have a responsibility to do better. All people have the right to safe drinking water, sanitation, shelter and basic services.

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

ABSTRACT

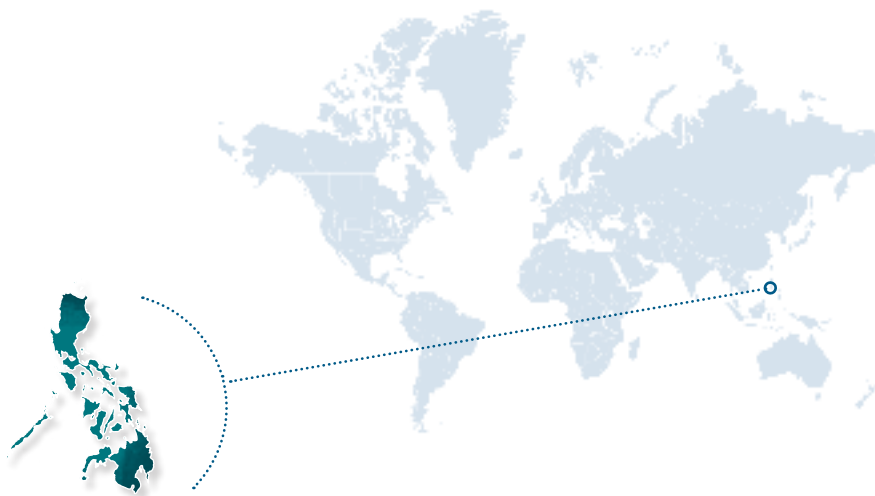
For the first time, the Philippines national development plan for 2011-2016 has been elaborated using a human rights-based approach to development. In 2010 - guided by this national development plan and with strong support from the United Nations system - the government created a tool box that can help improve the capacity of communities and water supply service providers to apply a human rights-based approach to the provision of water and sanitation services at the local level. By applying a human rights-based approach to water and sanitation, the government aims to improve access to

water and sanitation services for those communities in which access to water and sanitation are poorest.

The human right to water provides the overarching framework for the toolbox. The framework outlines the responsibilities of water service providers and the standards that need to be met for ensuring that the right to water and sanitation are realized. A human rights framework emphasizes the importance of participation and non-discrimination in the planning and management of these services.

Initial results from the piloting of the toolbox found that the communities are now involved in the planning and budgeting of facilities, with a notable increase in the participation of indigenous groups and women. This has helped draw a more accurate picture of the priorities and specific needs of these groups in regard to water and sanitation services. By establishing a social contract between the providers and users of services, formal accountability measurements are created that ensure that local service providers abide by their duties and that human rights standards for water and sanitation are met.

* http://www.un.org/waterforlifedecade/human_right_to_water.shtml



BACKGROUND

The Philippines is a multi-party, democratic republic with a population of close to 95 million. In 2009, the Philippines gained the status of a middle-income country. It has since shown resilience to recent external shocks, such as food and fuel price hikes, the global financial crisis and recession and the impact of natural disasters.

While the Philippines has experienced unprecedented economic growth over the past ten years, achieving inclusive growth that benefits the poor has been a continuing challenge. Poverty has remained at about the same level during the last decade, with a little over a quarter of the population below the poverty line.⁴⁷ Ensuring that social services reach the poor remains a major challenge. Corruption and political patronage have contributed to a worsening gap between the rich and the poor. Moreover, the Philippines' rapid population growth, which is one of the highest in Asia, has exacerbated poverty and fueled rapid urban population growth, overseas labour migration and unprecedented environmental degradation.⁴⁸

To respond to these challenges, the Government of the Philippines has made inclusive growth the primary objective of its national

development plan – the Medium Term Philippine Development Plan – for the next six years (2011-2016). Through the national development plan, the government has made a significant effort to strengthen the nexus between human rights and development. For the first time, a human rights-based approach was applied in elaborating the national development plan, which resulted in specific attention to those groups most marginalized and excluded in the Philippines, such as women, indigenous peoples, children, persons living with HIV/AIDS, the homeless and agricultural workers. Emphasis has also been placed on participatory approaches, with the plan strongly promoting community-driven social development. In addition, the accountability of the government for ensuring that services are provided features prominently in the plan.

Lastly, human rights standards, such as the quality/safety, acceptability, accessibility and affordability⁴⁹ of public services has guided the planning of development strategies and goals. For example, in regard to health, the plan aims to “ensure equitable access to essential medicines, health services and technologies of good quality, availability and safety.” In terms of population strategies,

the plan aims to “work for universal access (accessibility, availability and affordability) of all medically, ethically and legally approved family planning methods and services.” In education, the plan “reaffirms the highest priority for basic education as a right that should be enjoyed by all Filipinos.”⁵⁰

Human rights situation

The Philippine Government has ratified eight of the nine core international United Nations human rights instruments, including the Covenant on Civil and Political Rights, the Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination Against Women. The Philippine Constitution firmly recognizes the centrality of human rights and “guarantees full respect for human rights.” Among the rights enshrined in the Constitution are the rights to life, liberty, property, health, education, healthy environment, land, privacy and housing. The Philippines has created a Commission on Human Rights that is responsible for monitoring the situation of human rights in the country. Moreover, the country has a dynamic civil society and a vibrant media that help articulate the voice of the public on urgent human rights issues.

The lack of access to sufficient, acceptable, accessible and affordable water and sanitation is deeply rooted in poverty, weak governance, power imbalance and discrimination that directly impact the lives of persons living in poverty and the most vulnerable, effectively denying them a most basic human right: the right to water.

- *Karapatan, Kakayanan at Kaalaman sa Katubigan (The Human Rights-Based Local Water and Sanitation Governance Toolbox)*

In terms of economic, social and cultural rights, one of the main challenges is meeting the basic needs of the poor and other vulnerable groups.⁵¹ Indigenous peoples, who represent 15-20 percent of the population, in particular face high poverty rates and lack access to basic social services.⁵²

Access to water and sanitation

Despite the Philippines having met the MDG target for water, the water supply and sanitation situation in the Philippines remains a major challenge. A 2010 UNICEF and WHO Joint Monitoring Programme report found that 7.4 million Filipinos are still without access to any type of improved water source⁵³, while 24.2 million Filipinos lack access to sanitary toilets. In addition, national data sources indicate significant inequalities in coverage, particularly in the case of poor and rural households. Certain provinces also have very low service coverage. These issues were raised as a major concern by the Committee on the Rights of the Child in October 2009, which expressed concern at the regional disparities in access to safe drinking water and sanitation.⁵⁴

In April 2011, the National Anti-Poverty Commission identified 455 municipalities (out of 1,494) as being

'waterless'. Waterless municipalities in this context were defined as municipalities (or *barangays*)⁵⁵ where more than 50 percent of households have no access to safe water and where there is a particularly high incidence of water-borne and sanitation-related diseases and high rates of poverty. In these municipalities, people are forced daily to walk long distances to fetch potable water, queue for long hours at communal faucets and are exposed to health risks when using unsafe water.

STRATEGY: applying a human rights-based approach to local water and sanitation governance

Guided by the national development plan's prioritization of the poorest and most marginalized communities, in 2010 the government designed a programme that focuses on improving access to water and sanitation in waterless municipalities. The six-year programme (2011-2016), titled *Sagana at Ligtas na Tubig sa Lahat* (Abundance of Natural Water for All), aims to develop the capacity of local water supply service providers, e.g., Local Government Units⁵⁶, and local communities to plan, operate and manage

water and sanitary systems themselves. The programme also contributes infrastructure to the municipalities.

As part of this programme, the government created a 'toolbox' that could be used as a guide for water supply service providers and local communities. The toolbox is entitled *Karapatan, Kakayanan at Kaalaman sa Katubigan* (The Human Rights-Based Local Water and Sanitation Governance Toolbox)⁵⁷. The United Nations provided technical and financial support for the development of this toolbox. In particular, the United Nations supported the government's efforts in introducing a human rights-based approach as the guiding framework for the toolbox and hence ensuring it was coherent and consistent with the rights-based national development plan.

Applying a human rights-based approach to the toolbox broadened the way in which water and sanitation issues were viewed, going beyond an economic utility and infrastructure approach to understanding access to water and sanitation as a human right. Using a human rights lens enabled the identification of multi-dimensional and deep-rooted obstacles underlying lack of access to water and sanitation, such as corruption, discrimination, inequality and lack of accountability, thereby ensuring that steps to address

Water is much more than an economic good or a basic human need. Water is a human right: it is freedom, entitlement and a legally enforceable claim; it carries obligations and duties from which government and water service providers cannot escape.

- Karapatan, Kakayanan at Kaalaman sa Katubigan (The Human Rights-Based Local Water and Sanitation Governance Toolbox p. 10).

these obstacles were part of the water and sanitation strategies.

The United Nations agencies were involved in peer reviewing the toolkit for rights-based elements related to their specific mandates. For example, ILO reviewed the sections on the right to water and incorporated the ILO Conventions and tools into the toolbox, UN-Women incorporated material on gender analysis and the rights of women, UNICEF shared insights on the relationship between economics and human rights and suggested ways to translate the human rights principles of participation, non-discrimination and accountability into concrete programming interventions and UNFPA wrote the sections on sexual and reproductive health and the right to the highest attainable standard of health.

At the financial level, all members of the United Nations country team, under the leadership of UNDP, contributed to a common fund to cover the cost of developing the toolbox and rolling it out in 16 regions nationwide.⁵⁸

At the national level, a number of actors were involved in developing the toolbox. Not only were water and sanitation experts consulted, but also civil society and other sectors, such

as the Commission of Human Rights.

The Commission had a specific role in peer reviewing the toolbox to ensure it met national and international human rights standards and principles.

The toolbox was first piloted in 36 of the waterless municipalities. It is now being rolled out in 455 waterless municipalities across the Philippine archipelago. To support the roll out process, regional water and sanitation learning networks are being established, composed of locally-based learning institutions and civil society organizations. These networks are being mobilized and trained on how to use the toolbox so that they can support capacity building processes at the local level.

Content of the Human Rights-Based Local Water and Sanitation Governance Toolbox

The Human Rights-Based Local Water and Sanitation Governance Toolbox proposes a framework to support the realization of the right to water and sanitation. The toolbox outlines both the human rights standards and the human rights principles that should guide policy and programming for water and sanitation services.

Human rights standards

For the right to water to be realized, specific standards need to be met. These standards are outlined in General comment No. 15*, which defines the right to water as: “the right to sufficient, safe, acceptable, physically accessible and affordable water and sanitation facilities and services for personal and domestic use.” The tool box uses these standards to set clear criteria and targets to guide local development actors in planning and monitoring water services. For example, in order to respect the standard of ‘affordability’ of water and sanitation facilities, the toolbox suggests guidelines for ensuring fair and equitable tariffs.

Framing water and sanitation as a human right underlines the government’s obligations to ensure access to safe water and sanitation for personal and domestic uses. The toolbox outlines the duties that the Local Government Units hold in regard to facilitating the enjoyment of the right to water and sanitation by all. These responsibilities are broken down into three types of obligations: the need to respect, protect and fulfill. The obligation to *respect* includes ensuring that an individual’s access to water and sanitation is not arbitrarily interfered

* E/C.12/2002/11, 20 January 2003, General comment No. 15 of the Committee on Economic, Social and Cultural Rights

with, by, for example, removing traditional or indigenous rights to a water source or from unlawfully diminishing or polluting a water source. The obligation to *protect* includes preventing third parties from interfering with access to services, or polluting or inequitably extracting from a water source. The obligation to *fulfill* includes providing the legislative and policy framework to ensure that everyone has access to affordable, safe and acceptable water and sanitation services, and providing the water supplies and infrastructure when individuals or a group are unable for reasons beyond their control, to realize that right themselves by the means at their disposal.

Human rights principles

The toolbox mainstreams the human rights principles of non-discrimination, participation and accountability into local water governance processes.

Non-Discrimination and

participation: the toolbox encourages local water governance to engage in non-discriminatory activities and to pay special attention to those who are marginalized and disadvantaged from enjoying their right to water, including women, children, indigenous peoples, persons with disabilities, older persons, persons living with HIV and persons



living in poverty. For example, while the toolbox recognizes key performance indicators often used in the water sector, such as water supply coverage or per capita consumption, the toolbox notes that these indicators rarely distinguish between the most vulnerable and marginalized and the non-marginalized. Hence, to promote the human rights principles of non-discrimination and equality, the toolbox recommends that: (a) water supply coverage indicators are disaggregated by vulnerable groups/households; and (b) average tariffs are used as an indicator for water affordability by multiplying average tariff by average consumption, then comparing whether the amount is equivalent to, or less than, five percent of the disposable income of households living in poverty.

Moreover, the toolbox provides guidelines on how, at the municipal level, Local Government Units can facilitate consultative processes with those groups most affected by lack of access to water and sanitation. In these consultations the Local Government Units and the marginalized groups

jointly identify the challenges they face and realistic solutions to address them. This consultation process ensures that water and sanitation facilities provided by the government are designed around the specific needs of the target groups. As a next step, local communities are trained to manage and maintain water services themselves. Community participation during the planning and implementation stages of services and facilities instills a sense of ownership by local communities.

Accountability: Corruption and mismanagement are major challenges in the supply of water facilities. The toolbox recommends control and mitigation measures through which corruption can be minimized or eradicated. For example, risks of administrative corruption, such as fraud and kickbacks and bribery, can be addressed by ensuring the public availability of all important decisions, stricter implementation of procurement laws and active community monitoring.

RESULTS

While the project is at an early stage of implementation, some preliminary results are emerging.

Changing perspectives on how to plan for water and sanitation utilities

Prior to the toolbox, decisions over water and sanitation services were supply driven. The national government was planning based on its perspective, which resulted in a lack of ownership by local communities for managing the facilities.

.....
With the mainstreaming of a human rights-based approach, it became clear that users need to be involved in the planning stages, including the budgeting of facilities and identification of where facilities should be built. Now, for the first time, the national government is planning access to water from the perspective of the communities they serve.
.....

By gathering information from residents themselves, a more accurate picture has been painted of the water and sanitation conditions in pilot areas.

The adoption of affordable tariffs that reflect the community's willingness and ability to pay, the involvement

of community members through newly-created local water associations and the upgrading to household connections (as requested by members of the water associations) has also paved the way for more efficient use of water. This in turn has resulted in extended availability of supply and alleviation of pressure on water sources.

Localized Customer Service Code

One of the most significant innovations of the toolbox has been the adoption of Localized Customer Service Codes in the 36 pilot water-less municipalities. The Customer Service Code is a social contract or mutual agreement forged between the users (the communities, represented through local water associations) and providers of water (Local Government Units). The Code establishes the standards and parameters for measuring the quantity and quality of water services (informed by the normative standards of the human right to water), outlines the respective responsibilities of both parties in operating and maintaining the water facilities, and sets tariff rates for water services agreed to by the community. Working through water associations, poor and marginalized groups were given the chance to say how much they could afford to pay for water which was then reflected in the tariff structure decreed in the Code. With the adoption of the Code, and an affordable tariff structure agreed to

by the community, there has been an increase in pilot communities in the number of households covered by water supplies from 20 percent to 90 percent. Moreover, the quality of services and the level of customer satisfaction have also significantly increased. This is evident by a 10-15 percent increase in membership in local water associations, particularly among marginalized groups.

.....
The adoption of the Code has been especially successful in the pilot communities in improving access to water and sanitation services for indigenous peoples and women.
.....

Before introducing the human rights-based approach, indigenous peoples were not participating in decisions around water and sanitation services at the local level. Without consultative mechanisms or any concrete documents protecting their interests or outlining water provider responsibilities, many indigenous peoples were intimidated to become members, did not trust those managing the system and feared that they would not be able to pay the fees imposed. With the toolbox, indigenous peoples were made aware of their right to be provided with safe and adequate potable water that meets the Philippine National Standards for Drinking Water. Most importantly, this right was affirmed in the Code, a legally binding document, and

the responsibilities of the local water providers defined. This knowledge empowered indigenous peoples to demand better services from water providers. As a result of the social contract introduced by the Customer Service Code, and the training that accompanied it, there has been an increase in the number of indigenous peoples – from 0 to 141 – that participate as members of water associations. This participation has resulted in a greater understanding by the Local Government Units of indigenous peoples’ cultural norms and beliefs in regard to water and sanitation. The Local Government Units were subsequently better able to take these considerations into account in their education initiatives on water and sanitation practices. Local Government Units have also become more aware of the high risks of conflict over the use of water sources when indigenous peoples consider the source as sacred. To address these sensitive issues, a specific memorandum of agreement was developed to recognize and protect the cultural practices of indigenous peoples.

Finally, in many of the associations women are playing an important role as board members, treasurers, tariff collectors and presidents. Through this involvement, women’s specific needs for water and sanitation services, such as the need to shorten the time to fetch water and to have potable drinking water consistently available for their families, are reflected in the water Service Codes.

LESSONS LEARNED


- 1.** A national development policy that incorporates a human rights-based approach can provide the framework and momentum needed to start applying this approach to various development sectors, such as water and sanitation.
- 2.** The human right to water can provide a guiding framework for designing and implementing water and sanitation programs, ensuring that goals and targets focus on ensuring the right to sufficient, safe, acceptable, physically accessible and affordable water and sanitation facilities, and that the process towards reaching those goals is informed by human rights principles.
- 3.** Using a human rights lens broadens the analysis of water and sanitation matters, integrating, for example, issues of discrimination, corruption and weak governance. In doing so, it enables development practitioners to design more appropriate and informed policy and programmatic responses that specifically target these issues.





VIET NAM

Engaging with International Human Rights Mechanisms to Achieve Universal Access to Education



The most important reason for us to support mother tongue-based bilingual education is to promote social equality in education by creating equal opportunities for ethnic minority children to have access to quality education.

- Mr. Vi Van Dieu, Director, Research Centre for Ethnic Minority Education, Viet Nam Institute of Educational Sciences

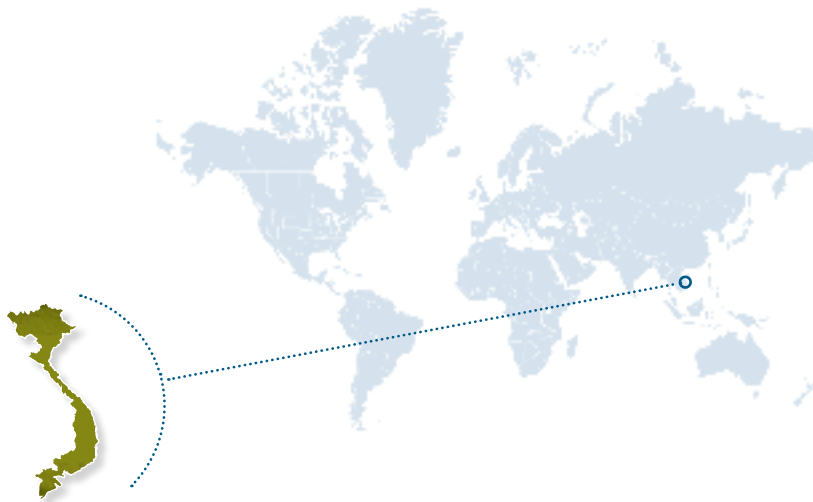
ABSTRACT

As a direct result of Viet Nam undergoing the Universal Periodic Review in May 2009, the government invited six Special Procedures mandate holders of the United Nations Human Rights Council to visit Viet Nam. Four Special Procedures visited Viet Nam during 2010-2011, one of whom was the United Nations Independent Expert on minority issues in July 2010. During her visit, the Independent Expert on minority issues engaged closely with the United Nations

country team, which contributed to ensuring that her recommendations reflected the realities, priorities and challenges in the country.

The recommendations from the Independent Expert proved a valuable tool for guiding and strengthening efforts to move forward on ensuring equitable and inclusive growth in Viet Nam. In particular, her engagement with UNICEF on the issue of bilingual education for children of ethnic minorities resulted in an explicit

reference to UNICEF's work in this area and a recommendation that this approach be supported and expanded in the country. These recommendations added significant weight and credibility to UNICEF's work on bilingual education, providing UNICEF with an advocacy tool to raise attention and commitment to this approach. Bilingual education has since been recognized by the Ministry of Education as one of the solutions to reducing disparities in access to education.



BACKGROUND

The Socialist Republic of Viet Nam is a one-party state ruled by the Communist Party of Viet Nam. It has an estimated population of 87.8 million people, of which 14.3 percent belong to one of 53 minority ethnic groups.⁵⁹ Many of these ethnic groups have their own distinct language, religion and cultural identity and live in remote parts of the country. The rest of the population belongs to the majority ethnic group, known as the Kinh.

Over the past two decades, Viet Nam has achieved rapid economic growth and has significantly reduced overall poverty rates from 58.1 percent in 1993 to 14.5 percent in 2008.⁶⁰ As a result of this growth, Viet Nam attained the status of a middle income country in 2010.⁶¹ One of the biggest development challenges that Viet Nam faces in the process of transitioning to a middle income country is the widening gap between rich and poor and between different regions. The ‘feminization of poverty’⁶² is also a growing challenge. Local customs, patriarchal attitudes and traditions have led to gender inequality in the labour market and in political and public life.

Furthermore, ethnic minorities continue to be particularly vulnerable to high levels of poverty and inequality. While in 1990, only 18 percent of those living in poverty belonged to ethnic minorities, by 2008 ethnic minorities accounted for almost 56 percent of the poor.⁶³ In 2012, the Committee on the Rights of the Child noted its concern over the lower level of development indicators among ethnic minorities, especially regarding access to health and education.⁶⁴

Viet Nam faces significant human rights challenges in the area of civil and political rights, including freedom of expression, association and assembly. Space for expressing views on government policies and practices is also limited.⁶⁵

Education for ethnic minorities

The official language used in schools in Viet Nam is Vietnamese. While the law recognizes that ethnic minorities have the right to use their mother tongue in schools in order to preserve and develop their ethnic and cultural identity, the lack of teaching capacity in minority languages has meant that in practice children are taught in Vietnamese only. As

many minority communities have only a limited understanding and proficiency in Vietnamese, this has created a language barrier for many of these children.

Lack of access to education in their mother tongue, together with the use of Vietnamese, is considered one of the reasons why the net primary school completion rate among ethnic minority children (61 percent) is significantly lower than the rate for Kinh (86 percent). For minority women the problem of illiteracy is particularly acute; literacy rates for ethnic minority women are just 22 percent, as compared to 92 percent for ethnic Kinh women.⁶⁶

STRATEGY

Engaging with international human rights processes and mechanisms

Since 2008, UNDP has been implementing a capacity-building project on human rights treaty reporting with the Ministry of Foreign Affairs. The project has provided an opportunity for the United Nations country team in Viet Nam to engage with and support the government in its interaction with international

human rights mechanisms. Supporting engagement with the Universal Periodic Review, human rights treaty body reporting, sharing knowledge on processes and procedures, and supporting the government in organizing visits of Special Procedures mandate holders of the Human Rights Council proved a useful way to concretize human rights concepts and provide expertise to the government.

In May 2009, Viet Nam was assessed under the Universal Periodic Review. This afforded the government an important chance to present an overview of the main opportunities and challenges they faced in meeting their international obligations, as well as to demonstrate progress made toward achieving key commitments under human rights treaties. It also provided an opportunity for the United Nations to support the government to engage effectively with this process. At the government's request, UNDP, in close coordination with the United Nations country team and with OHCHR Geneva support, facilitated training for government officials on the Universal Periodic Review. As part of this training, UNDP invited other countries from the region (Indonesia and Philippines) that had already undergone the process to share their experiences with Viet Nam. These activities helped



build the government's capacity and openness to engaging with international human rights mechanisms and, in doing so, strengthening the quality of Viet Nam's engagement in the Universal Periodic Review. Viet Nam ensured representation at the highest level, which reflected the importance given to the Universal Periodic Review by the government.

The Universal Periodic Review experience, in turn, generated greater momentum to engage with other human rights mechanisms of the United Nations. One of the follow-up measures to the Universal Periodic Review process was the government's invitation to six Special Procedures mandate holders of the Human Rights Council to visit Viet Nam.

UNITED NATIONS SPECIAL PROCEDURES:

The Special Procedures of the United Nations Human Rights Council are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. Special Procedures are either an individual (called Special Rapporteur or Independent Expert) or a working group, usually composed of five members. Mandate Holders serve in their personal capacities and do not receive salaries or other financial compensation for their work. They rely on government invitations and cooperation to carry out their work. Mandate holders are appointed by the Human Rights Council and their work is supported by Office of the High Commissioner for Human Rights (OHCHR).



Viet Nam received four visits of United Nations Special Procedures mandate holders between 2010 and 2011: the Independent Expert on minority issues (July 2010); the Independent Expert on extreme poverty and human rights (August 2010); the Independent Expert on the effects of foreign debt (March 2011); and the Special Rapporteur on the right to health (November – December 2011). These visits provided significant occasions for Viet Nam to benefit from the expertise of Special Procedures in its efforts to follow up on the recommendations of the Universal Periodic Review, and to address key human rights issues in the country.

The United Nations country team took a number of steps to maximize the value and impact of these visits and to optimize the benefits of the government's engagement with the

Special Procedures. As a first step, and in collaboration with OHCHR Geneva, the United Nations country team organized workshops for the government to provide guidance on the overall procedures of such visits and the mandates of the Special Procedures.

During the visits, the United Nations country team and technical experts from the agencies played an important role by providing the Special Procedures with technical expertise on issues falling within their mandates. This was particularly important in Viet Nam where civil society is developing its capacity to engage in these processes. In turn, being able to draw on this expertise ensured that the Special Procedures report and recommendations reflected the realities, opportunities and challenges in the country.

United Nations country team engagement with the Independent Expert on minority issues

In July 2010, the Independent Expert on minority issues, Gay McDougal, visited Viet Nam. The United Nations country team viewed the visit of the Independent Expert as an opportunity to strengthen and further reinforce government efforts to address widening inequalities and persistent poverty among minority ethnic groups. Supporting the government to achieve inclusive and equitable growth is a core part of the United Nations country team's development agenda.

At the beginning of the visit, the United Nations country team organized a formal briefing with the Independent Expert to discuss key issues, challenges and opportunities. This was followed by in-depth briefings with technical experts from several United Nations agencies. The United Nations' inter-agency approach proved extremely valuable in this process. Having all United Nations agencies around the same table provided the Independent Expert with a breadth of expertise and knowledge on a wide range of issues affecting her mandate – ethnic minority poverty,

The visit to the teacher training workshop was extremely enlightening. It became very clear to me through this process how critically important multi-lingual education is and the issue took on a life of its own. It became a central part of my recommendations.

- Interview with Gay McDougal, former United Nations Independent Expert on minority issues

cultural diversity, sexual reproductive health for minorities and bi-lingual education. United Nations agencies' expertise in the relevant areas enabled the Independent Expert to support the agencies' work. It allowed the Independent Expert to draw on agency expertise to make concrete and useful recommendations that could assist the government to move forward.

According to the Independent Expert, her visit was, "a great opportunity to re-introduce Viet Nam to the international human rights mechanisms. It allowed Viet Nam to share its accomplishments and the obstacles it has had to surmount with the Human Rights Council and human rights mechanisms. The government took my mission very seriously. They learned a lot from the mission on what they can expect in engaging with human rights mechanisms."

Engaging the United Nations Independent Expert on minority issues in support of bilingual education for ethnic minorities

Internationally there has been consistent recognition of the value of bilingual education in improving learning and reducing drop-out

rates.⁶⁷ To examine ways by which this concept can best work in Viet Nam, the Ministry of Education and Training worked together with UNICEF to pilot a project on bilingual education in three provinces (see Box 1). In addition, to generate support among government counterparts for this approach and to ensure the government would benefit from the expertise of international human rights mechanisms, UNICEF, in collaboration with the United Nations country team, strategically engaged with the Independent Expert on minority issues during her visit in July 2010.

UNICEF provided the Independent Expert with in-depth briefing notes on the legal framework for ethnic minority languages in education and their rights to use their mother tongue in school. UNICEF also held face to face meetings with the Independent Expert and organized her participation in a mother-tongue teacher training workshop. This participation enabled her to interact directly with teachers being trained.

BOX 1: UNICEF'S ACTION RESEARCH ON MOTHER TONGUE-BASED BILINGUAL EDUCATION IN VIET NAM

UNICEF has been supporting the Ministry of Education and Training to implement and monitor a pilot project on bilingual education since 2008. The pilot project is being carried out in three provinces – Lao Cai, Gia Lai and Tra Vinh – in the minority languages of H'mong, Jrai and Khmer, respectively. Students in each province will complete the pilot programme by 2015. Through the project, teachers are trained in bilingual education techniques and provided special teaching and learning materials developed in consultation with local communities. The project is being carefully monitored for evidence of improvements in the quality of education. The ultimate objective is to feed the research results into a national education strategy that supports bilingual education.⁶⁸

RESULTS

In the Independent Expert on minority issues' report to the United Nations Human Rights Council, the issue of bilingual education for ethnic minorities featured prominently among the key recommendations. The Independent Expert explicitly referred to the example of UNICEF's work in bilingual education and recommended that this approach be supported and expanded to other districts.

According to the Independent Expert's report,

.....
"the importance of improving the education outcomes of minorities cannot be overstated. Access to quality and appropriate education is a fundamental gateway to development and poverty eradication for minorities in Viet Nam..."
.....

The independent expert saw clear evidence that bilingual education ultimately serves to increase the potential of ethnic minority children and communities to learn and use Vietnamese. . . . The government should permit and support bilingual education for ethnic minority children."⁶⁹

Her recommendations to Viet Nam were fully in line with the United Nations country team's overall policy recommendations on minority issues outlined in the United Nations' One

Plan. This is an achievement realized through the engagement and cooperation of the United Nations country team with the Independent Expert during the course of her visit.

.....
Most importantly, the visit of the Independent Expert provided a powerful advocacy opportunity for the United Nations' efforts to promote bilingual education.
.....

By validating the methodology that UNICEF and the Ministry of Education were piloting and encouraging its institutionalization, the recommendations provided authoritative inputs for UNICEF to draw upon in advocating for this approach.⁷⁰ The recognition and support of the Independent Expert added weight and credibility to the methodology, providing a significant recommendation for its acceptance in the country. The Ministry of Education has now formally recognized that bilingual education is one of the solutions to strengthen ethnic minority children's education.⁷¹

Moreover, early results from the UNICEF Action Research on mother tongue-based bilingual education are promising. As a whole, children enrolled in the programme are performing better than minority children not enrolled in the programme in language competency tests in both their mother tongue and Vietnamese. They also outperform ethnic minority students not in the programme in listening comprehension and mathematics.

As a result of the encouraging results from the Action Research, this approach is increasingly being recognized as a good practice, both nationally and in the region. One provincial department of education and training has opted to use its own funds to more than double the number of bilingual education classes; 344 Mong ethnic minority children are now enrolled in these classes. Three additional provinces, Dien Ben, An Giang and Ninh Thuan, have also expressed interest in the methodology and have committed to applying the approach. The Provincial Department of Education and Training is supporting these efforts and has scaled up mother tongue-based bilingual education so that each school year from 2011 to 2015, a new group of 210 children aged five will enter mother tongue-based bilingual education classes. Specific policy recommendations on the use of bilingual education have also since been promulgated by the National Assembly and Committee for Ethnic Minorities. In addition, delegations from Myanmar and China visited Viet Nam to learn from this experience.

Equally, the report from the Independent Expert raised the visibility and interest in the approach among donors and development partners in Viet Nam. These partners have expressed interest in supporting the follow-up to the Independent Expert's recommendations. For example, the European Union delegation in Viet Nam welcomed the Independent Expert's recommendations on the expansion of

mother tongue-based instruction and requested UNICEF to prepare a concept note on how this approach could be expanded within the country.

The experience of Viet Nam also highlights the important role that the United Nations country team, through its long-term presence in the country, technical expertise and normative mandate, can play in supporting the government to follow up on recommendations of the Special Procedures mandate holders. As noted by the Independent Expert,

.....
“the United Nations country team is essential and may be the only possible mechanism for follow up, given the limited capacities of Special Procedures”.
.....

Since the visit of the Independent Expert on minority issues, Viet Nam’s growing engagement with other human rights mechanisms is leading to greater international exposure on the issue of bilingual education. The country recently reported to the Committee on the Elimination of Racial Discrimination (March 2012)⁷² and the Committee on the Rights of the Child (June 2012).⁷³ Both Committees, in their Concluding Observations to Viet Nam, urged the country to increase the provision of bilingual education programmes for ethnic minority children, further supporting and validating Viet Nam’s efforts in this area.

LESSONS LEARNED

- 1.** The Universal Periodic Review presents an opportunity for government to strengthen its engagement with all international human rights mechanisms and for the United Nations country team to support government capacity in engaging with these mechanisms.
- 2.** The United Nations country team can play an important role in maximizing the value and impact of the visits of Special Procedures mandate holders. Engaging with the United Nations country team during a country visit allows the Special Procedures to draw upon the expertise of development agencies to offer concrete and useful recommendations that can help the government move forward on human rights issues.
- 3.** Access to quality and appropriate education is a gateway to development and poverty reduction for minorities. The introduction of bilingual education for minority children can help these children to make better early progress and creates strong and culturally-appropriate foundations for their future schooling.
- 4.** The recommendations of international human rights mechanisms can provide valuable and authoritative inputs to integrate human rights into United Nations advocacy, policy and programming initiatives to further development outcomes.
- 5.** The visits of Special Procedures of the Human Rights Council can ensure that government efforts to address human rights challenges and to mainstream human rights into development programmes benefit from internationally-recognized expertise.



FURTHER INFORMATION

ABOUT THE UNDG HUMAN RIGHTS MAINSTREAMING MECHANISM (UNDG-HRM)

The **UNDG-HRM** was established in 2009 at the request of the Secretary General to institutionalize the mainstreaming of human rights in the UN's development work. It aims to strengthen coordinated UN responses to requests from Member States for support in their efforts to fulfill international human rights commitments. The UNDG-HRM is made up of 19 Agencies, Funds and Programmes and is chaired by the Office of the High Commissioner for Human Rights (OHCHR) with a rotating Vice-Chair, reporting to the full UNDG.

The objectives of the UNDG-HRM are to strengthen system-wide coherence and collaboration and provide catalytical support for Resident Coordinators, Regional UNDG Teams and UN country teams and their national partners in mainstreaming human rights.

In line with the overall UNDG Strategic Priorities, the UNDG-HRM focuses on four broad priorities:

1. Policy and operational coherence:

Promoting a coordinated and coherent UN system-wide approach towards the integration of human rights principles and international standards into UN operational activities for development.

2. Leadership:

Providing coherent and coordinated support to Resident Coordinators and UN country teams in mainstreaming human rights.

3. Support to national capacity building:

Developing a coherent UN system-wide approach, to providing support towards strengthening national human rights protection systems at the request of governments.

4. Advocacy and knowledge:

Contributing to the integration of human rights issues in the overall UNDG advocacy on development agenda and global issues

For more information on the UNDG-HRM, please visit:

- the UNDG-HRM webpage: <http://www.undg.org/hrm>
- the Multi Donor Trust Fund Fact Sheet for the UNDG Human Rights Mainstreaming Trust Fund: <http://mptf.undp.org/factsheet/fund/HRM00>

Or contact:

- Karin Lucke: karin.lucke@undg.org
- Emilie Filmer-Wilson: emilie.filmer-wilson@undg.org

Resources on Human Rights Mainstreaming

For further information and resources on human rights mainstreaming, the following sources will be of use:

- The UN Practitioner's Portal on Human Rights Based Approaches to Programming: <http://hrbportal.org/>
- The UN Common Learning Package on Human Rights Based Approaches to Development (available in Arabic, English, French and Spanish): <http://www.undg.org/index.cfm?P=1447>
- The Web-Based Guide on Engaging with the International Human Rights Machinery: <http://hrbportal.org/huritalk-corner>
- OHCHR information on the different human rights mechanisms, including the Universal Periodic Review, treaty bodies and Special Procedures: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>

ENDNOTES

- 1 <http://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD>
- 2 *United Nations Development Assistance Framework in Uruguay: 2011-2015*, p.14.
- 3 UNDG Website: www.undg.org/index.cfm?P=7.
- 4 UNDG Website: www.undg.org/index.cfm?P=7.
- 5 In preparation for the Special Rapporteur's visit, the United Nations country team in Uruguay convened a United Nations Working Group and coordinated with government and civil society organizations to ensure that: (i) all relevant perspectives were brought to the Special Rapporteur's attention; and (ii) that the Special Rapporteur was granted complete and unimpeded access to all places of detention, interviews with detainees and access to relevant documentation.
- 6 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Mission to Uruguay, United Nations Human Rights Council, 21 December 2009, A/HRC/13/39/Add.1.
- 7 These activities were undertaken in line with recommendations from the Committee on the Rights of the Child. See: CRC/C/URY/CO/2, paragraph 68.
- 8 When the Secretary-General launched *Delivering as One* in 2007, the governments of eight countries—Albania, Cape Verde, Mozambique, Pakistan, Rwanda, Tanzania, Uruguay, and Viet Nam—volunteered to become “*Delivering as One*” pilots. The pilot countries agreed to work with the United Nations system to capitalize on the strengths and comparative advantages of the different members of the United Nations family. Since then, *Delivering as One* has been adopted by a total of 32 countries.⁸ Together they are seeking innovative ways to increase the United Nations system's impact through more coherent programmes, reduced transaction costs for governments, and lower overhead costs for the United Nations system.
- 9 Source: www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx
- 10 Tanzania is party to the following instruments: International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of Racial Discrimination (ICERD), Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Rights of the Child (CRC) and Convention on Rights of Persons with Disabilities (CRPD).
- 11 Mukukuta II is the poverty reduction strategy for Tanzania, while Mukukuta II is the specific poverty reduction strategy for Zanzibar, a semi-autonomous part of Tanzania.
- 12 United Nations Development Assistance Plan, 2011-2015, Tanzania, p.18.
- 13 Committee on the Elimination of Discrimination Against Women, Concluding Observations, United Nations Tanzania, 2008/A/63/38. para.117
- 14 Interview with Ms. Nkasori Sarakikya, Office of the Attorney General's Chamber, Division of Constitutional Affairs and Human Rights, Tanzania.
- 15 Interview with Mr. Alberic Kacou, United Nations Resident Coordinator, Tanzania
- 16 The Universal Periodic Review recommendations called for Tanzania to: “Adopt new legislation that guarantees the freedom of the media as well as the right to information”, and “Recognize the notion of indigenous peoples with a view to effectively protecting their rights”.
- 17 www.upr-info.org/IMG/pdf/recommendations_to_tanzania_2012.pdf.
- 18 Interview with Epiphania Mfundo, Commission for Human Rights and Good Governance, Tanzania.
- 19 Ministry of Justice, National Cohesion and Constitutional Affairs and Kenya National Commission on Human Rights, draft National Policy on Human Rights: www.marsgroupkenya.org/pdfs/2010/08/Draft_National_Policy_on_Human_Rights_2010.pdf.
- 20 The Kenya African National Union party (KANU) had been in power since Kenya gained independence in 1963.
- 21 The coalition government was formed in 2008 following post-election violence.
- 22 The 2010 Constitution replaces the former provinces and districts with 47 counties.
- 23 United Nations DATA, Country Profile Kenya, available at: <http://data.un.org/CountryProfile.aspx?crName=kenya>.
- 24 Kenya United Nations Development Assistance Framework, 2008-2013: www.undg.org/docs/11551/KEN-UNDAF-2009-13.pdf.
- 25 Kenya's Draft National Human Rights Action Plan.
- 26 2011 Annual Report on Kenya, UNDP, available at: www.ke.undp.org/index.php/downloads/download/31.
- 27 Kenya has ratified: the International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance; and Convention on the Rights of Persons with Disabilities. However, Kenya is not party to the Optional Protocols to any of these instruments other than the Convention on the Rights of the Child.
- 28 Recent visits include the Special Rapporteur on internally displaced persons (19-27 September 2011) and the Special Rapporteur on extrajudicial, summary or arbitrary executions (16-25 February 2009).
- 29 The Kenya National Commission on Human Rights was established with the mandate to monitor government institutions, carry out investigations on alleged human rights violations and advise the government on how to strengthen the protection and promotion of human rights.
- 30 Report of the Working Group on the Universal Periodic Review, Kenya, Human Rights Council, 17 June, 2010, A/HRC/15/8 *
- 31 As established under article 6 of the Constitution, which states that “the State shall take legislative, policy and other measures, including the setting of standards, to achieve the progressive realization of the rights guaranteed under Article 43 (Economic, Social and Cultural Rights).
- 32 Under Article 23, the Constitution compels the state to set aside resources to achieve “progressive realization” of the Bill of Rights. The term progressive realization of rights reflects the understanding that some rights (for instance, health care) may take longer to ensure due to limited resources of a state, but nonetheless the state must do whatever is in its means to aim to achieve them. The principle of progressive realization of rights goes hand in hand with the principle of non-retrogression which reflects the understanding that the realization of human rights should not go backwards, and governments have a responsibility to ensure that past fulfilment of rights is maintained.

- 33 Interview with an official of the Kenya National Commission on Human Rights.
- 34 Daily Nation, 30 November 2012: www.nation.co.ke/News/Court+strikes+out+law+against+generic+drugs+/-/1056/1390714/-/40wv0j/-/index.html.
- 35 www.scoop.co.nz/stories/WO1111/S00124/un-high-commissioner-for-human-rights-navi-pillay.htm.
- 36 Moldova Country Analysis, United Nations, June 2011: www.undg.org/docs/12071/Country-Analysis---UN-Moldova_ENG.pdf.
- 37 Moldova is party to the following: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.
- 38 The United Nations Convention on the Rights of Persons with Disabilities guarantees, in Article 12, equal legal capacity for persons with disabilities. In practice, in the countries of the former Soviet bloc, persons with mental or intellectual disabilities are frequently placed under guardianship or similar arrangements. Persons placed under guardianship lose all legal personhood in practice and may not carry out basic socio-legal acts, such as concluding a work contract, marrying, divorcing, claiming social benefits, owning property or even legally challenging the guardianship measure.
- 39 The anti-discrimination law has since been adopted.
- 40 Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, on his mission to the Republic of Moldova, January 2012 (A/HRC/19/60/Add.2), page 9.
- 41 *Ibid.*
- 42 Report of the Working Group on the Universal Periodic Review, Moldova, December 2011, A/HRC/19/18.
- 43 In its Concluding Observations to the Republic of Moldova, the Committee on Economic, Social and Cultural Rights, recommended “that the State party take urgent measures to establish a system for the collection and monitoring of annual data on Covenant rights, disaggregated by disadvantaged and marginalized individuals and groups, including (although not exclusively) Roma, persons with disabilities, persons living with HIV/AIDS and non-citizens”. 12 July 2011, E/C.12/MDA/CO/2, paragraph 6.
- 44 UNAIDS, UNDP, UN Women, UNICEF and UNFPA.
- 45 Concluding observations of the Committee on Economic, Social and Cultural Rights, July 2011, E/C.12/MDA/CO/2: para. 23 states: “The Committee recommends that the State party ensure the confidentiality of a patient’s HIV status, including through reforming the Law on HIV/AIDS, and reform of the data management system on HIV/AIDS.”
- 46 United Nations Partnership Framework 2013-2017, Outcome 1.3.
- 47 The World Bank, Philippines Overview: www.worldbank.org/en/country/philippines/overview.
- 48 Philippines UNDAF 2011-2016: www.undp.org.ph/Downloads/knowledge_products/UnitedNations/UNDAF%202012-2018.pdf.
- 49 These normative standards have been defined by the Committee on Economic, Social and Cultural Rights in their interpretation of the content of the rights enshrined in the Covenant on Economic, Social and Cultural Rights.
- 50 www.neda.gov.ph/PDP/2011-2016/CHAPTER%201.pdf.
- 51 The Philippines, Universal Periodic Review, Report of the Working Group on the Universal Periodic Review. The Philippines 23 May 2008 A/HRC/8/28.
- 52 Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Mission to the Philippines, March 2003: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G03/115/21/PDF/G0311521.pdf?OpenElement>.
- 53 Access to an “improved water source” refers to access through either a household connection, public standpipe, borehole, protected dug well, protected spring or rainwater collection.
- 54 Committee on the Rights of the Child, Concluding Observations, The Philippines, October 2009, CRC/C/PHL/CO/3-4.
- 55 A *barangay* is the smallest administrative division in the Philippines and is the native Filipino term for a village, district or ward.
- 56 The Local Government Code of 1991 divided the Philippines into three administrative levels: provinces, municipalities and *barangays*. All three are called Local Government Units. The code devolved basic services to these units, including most health services and infrastructure provision, as well as the authority to create their own revenue sources and to enter into international aid agreements.
- 57 Human Rights Based Local Water and Sanitation Governance Water Toolbox: www.mdg1919-salintubig.org.ph/lwg/.
- 58 United Nations funding assistances was received through the UNDP Spanish Achievement Fund MDGF 1919.
- 59 UNICEF Action research brief www.unicef.org/vietnam/Tomtatchuongtrinh_Engl-final.pdf.
- 60 UNICEF, Vietnam and the Millennium Development Goals: www.unicef.org/vietnam/overview_14583.html.
- 61 United Nations in Viet Nam Website: www.un.org.vn/en/about-viet-nam/overview.html.
- 62 United Nations compilation report to the Universal Periodic Review, OHCHR, March 2009, A/HRC/WG.6/5/VNM/2.
- 63 Viet Nam Millennium Development Goals National Report 2010, p. 114.
- 64 Concluding Observations by the Committee on the Rights of the Child, Viet Nam, June, 2012, CRC/C/VNM/CO/3-4.
- 65 Concerns over access to freedom of information, the independence of the media from the State, freedom of assembly, the ability of individuals, groups and civil society to express their opinions or dissent publicly were noted at the interactive dialogue of the Universal Periodic Review of Viet Nam by the Human Rights Council in May 2009: A/HRC/12/11.
- 66 Report of the Independent Expert on minority issues, Gay McDougall, January 2011, A/HRC/16/45/Add.2. Mission to Viet Nam (5-15 July 2010)
- 67 UNICEF Annual Report 2010, p. 23.
- 68 UNICEF Action research brief www.unicef.org/vietnam/Tomtatchuongtrinh_Engl-final.pdf.
- 69 Report of the United Nations Independent Expert on minority issues, Gay McDougall, 24 January 2011, A/HRC/16/45/Add.2 paras. 85, 87 and 89. Mission to Viet Nam (5-15 July 2010)
- 70 UNESCO has been a key partner with UNICEF in advocating for and promoting multilingual education in Viet Nam.
- 71 The 2011 “Management Document on Teaching Vietnamese to Ethnic Minority Students” of the Ministry of Education and Training, explicitly cites the Action Research on mother tongue-based bilingual education as one of the four solutions to improving education for children of ethnic minorities.
- 72 Concluding Observations of the Committee on the Elimination of Racial Discrimination, Viet Nam, March 2012: CERD/C/VNM/CO/10-14.
- 73 Concluding Observations of the Committee on the Rights of the Child, Viet Nam, June 2012: CRC/C/VNM/CO/3-4.

ACRONYMS AND ABBREVIATIONS

DOCO	Development Operations Coordinaton Office
HRBA	Human Rights-Based Approach
ILO	International Labour Organisation
MDG	Millennium Development Goals
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNDESA	United Nations Department for Economic and Social Affairs
UNDG	United Nations Development Group
UNDG-HRM	United Nations Development Group's Human Rights Mainstreaming Mechanism
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crimes
UN-Women	United Nations Entity for Gender Equality and the Empowerment of Women
UPR	Universal Periodic Review
WHO	World Health Organisation

