HUMAN RIGHTS AND DEVELOPMENT
LEARNING FROM EXPERIENCES

RESULTS OF THE
CAPITALIZATION CONFERENCE
THUN, SWITZERLAND
11–13 SEPTEMBER 2006

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Contents

Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CFS	Child-friendly schools
COOF	Cooperation Office
CRC	Convention on the Rights of the Child
CSOs	Civil Society Organisations
EFA	Education for All
GBV	Gender-based violence
HRBA	Human rights-based approach
ICT	Information and communication technology
MDGs	Millennium Development Goals
NGOs	Non-governmental organisations
OECD/DAC	Development Committee of the Organisation for Economic Cooperation and Development
PCM	Project-cycle management
PRSPs	Poverty Reduction Strategy Papers
SDC	Swiss Agency for Development and Cooperation
SWAps	Sector-wide Approaches
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children's Fund
UNOHCHR	United Nations Office of the High Commissioner for Human Rights

Foreword

Learning from experiences...

The new SDC Human Rights Policy intends for SDC to fully integrate human rights into all its activities, both at the operational and policy level. Such a policy is important in terms of providing broad guidance to the institution – but how do we effectively integrate a human rights perspective into development cooperation in practice? Is there a common understanding – a common base?

In September 2006, over 80 development practitioners – colleagues from SDC headquarters and Swiss Cooperation Offices and close partner organizations – met for a three day conference in Thun, Switzerland, to address this very question. The aim was to learn from their manifold experiences in integrating human rights into development. Presentations and discussions focussed on a broad range of development issues, such as promoting access to education and access to justice, combating gender-based violence, and promoting transitional justice and local governance. The participants, coming from all regions of the world and representing various cultural backgrounds, developed common visions, a shared understanding, and a broad range of recommendations on how to implement SDC's Human Rights Policy and apply a human rights-based approach to development. Human rights proved to provide a sound base for a common language facilitating the understanding and the linking up of complex development issues. Presentations of experiences, be they from South Africa or the Ukraine, from Bhutan or Peru, from the Balkans or Central and South Asia, made clear that working towards poverty reduction and sustainable development is no longer considered a matter of charity but a matter of rights and hence closely linked to the promotion of good governance and gender equality.

The results of this constructive and very first gathering of SDC staff and partners around their experiences in integrating human rights into development are documented in the present conference report. The working group reports offer specific entry points – be it in the field of education, gender-based violence, access to justice, transitional justice or local governance. They are at the very heart of this report, representing a unique and rich harvest of very diverse experiences and practical recommendations.

The conclusions and recommendations make it very clear: Human rights and development is not a new field. Indeed, the growing recognition of the potential and importance of bringing together human rights and development is increasingly being reinforced by civil society movements fighting for social justice and gender equality, by the international development agenda, and by the evolving role of the human rights framework in a globalized world.

What also emerged very clearly is that there is such a rich potential to learn from each other, to link up, to network – to understand and to make a more coherent use of the fact that human rights are at the core of development cooperation. The results of the Thun Conference will hopefully help to further fill SDC's Human Rights Policy with life – thus, working together towards human dignity for all.

SDC Governance Division

Executive Summary

The Swiss Agency for Development and Cooperation (SDC) and its close partners have been working towards integrating human rights into development since the 90ties. The SDC Capitalization Conference «Human rights and Development: Learning from Experiences» in September 2006 aimed to bring together experiences made during the last 10 years in order to build a solid base implementing the 2006 SDC Human Rights Policy which adopts a human rights-based approach (HRBA) to development as a strategic orientation. In accordance with measures included in the Policy, the main objectives of the Conference were to share, review and document experiences in the work of SDC and its close partners and to make recommendations for the implementation of the Policy. Over 80 experienced SDC staff and close partners from all over the world worked in plenary as well as in six working groups on the following themes:

- Human rights and education: ensuring the right to education;
- Human rights and gender-based violence: protecting women's rights;
- Human rights and the rule of law: promoting access to justice for poor and marginalised people;
- Human rights in conflict and post-conflict societies: promoting transitional justice; and

■ Human rights and local governance: ensuring people's meaningful participation in political processes and equitable access to services.

Discussions centred on the following areas: how participants have integrated human rights into development; lessons learned, good practice and conclusions; and recommendations for implementing the SDC Human Rights Policy and applying a HRBA. The present report presents summaries of the working group discussions and goes on to synthesise the main findings of the Conference.

1. How have human rights been integrated into development projects, programmes and policies? Lessons learnt, good practice and major achievements in the integration of human rights into development

The presentations of projects and programmes including discussions resulted in identifying lessons learnt and defining major achievements which can be summarized as follows:

■ **The international human rights framework as a legitimate, relevant and useful framework.** The human rights framework represents a unique consensus. It is the only legally binding framework forming a common basis for harmonising development efforts. The indivisibility of human rights helps frame any development issue as a set of interconnected rights. The framework is used in various ways across countries and sectors, and is especially useful as a point of reference for: policy dialogue between governments; advocacy and policy influencing by civil society; intercultural dialogue between communities; and project and programme design. It can not always be used as an entry point, given its legal and technical language and international focus. As such, care should be taken to adapt the language and approach to local contexts.

■ **The national legal framework is crucial.** The national legal framework is a means for implementing international human rights standards as well as national constitutional principles. This is a useful starting point in terms of thinking about policy change and designing interventions. Focusing on the national frame-

work avoids removing the concept of human rights from a country's realities. But implementing national legal standards in conformity with human rights can present challenges at the national and local level, including in justice systems and accountability. Adequate resources are key here, but at the same time the legal framework is not enough: In many sectors, implementing human rights means also adequate policies, including adequate budget allocation.

■ **Good governance is key in making human rights a reality for people.** This is noted especially where there is a high level of decentralisation. It is necessary to clarify roles and responsibilities of duty bearers at national and local level, particularly to make local governments aware of their role in implementing human rights. Human rights have a broad role to play in decentralisation processes, particularly in that the framework can address unequal power relations at local level and can help strengthen transparency and accountability between duty bearers and citizens.

■ **Integrating human rights principles has value-added.** Human rights thinking and practice places human rights principles at the heart of development action, forming the basis for a holistic and comprehensive framework for development action.

■ **Transparency and the right to information are important as rights in themselves as well as requisites for other rights.** Access to good quality and relevant information is key in enabling rights holders to hold duty bearers to account. This means investing in monitoring mechanisms and data analysis, including shadow reporting, social monitoring/accountability and participatory budget monitoring.

■ **Access to justice and the role of the judicial systems.** Promoting access to justice as a means to promote and protect also other rights is crucial. When promoting legal reforms and law enforcement dual legal systems must be taken into account with a particular focus on women and girls and other marginalised groups.

■ **A long term commitment is vital for successful integration.** This should be reflected in policies, practices and funding arrangements. At the same time, the agenda can be too broad and idealistic: it is important to base projects and programmes on specific rights – and the linkages between them and with other rights.

This is an effective way of persuading rights holders and duty bearers of the relevance of human rights to development goals and of contributing to effective future expansion.

■ **There is a need to demystify human rights and adapt to local context.** Communication and dialoguing must start from context specific language and link up to indigenous values. The concept of human dignity laid down in the Universal Declaration on Human Rights offers an overarching paradigm. It is important not to compromise or dilute minimal standards enshrined in the human rights framework.

■ **Understanding roles and responsibilities of rights holders and duty bearers is a requirement and a benefit of a HRBA.** Often, the best results come when a project supports both: empowering rights holders to claim their rights and strengthening the capacity of duty bearers to fulfil their duties. One of the benefits of mapping rights holders and duty bearers is that it helps to identify marginalised groups and to ensure that steps are taken to include them.

■ **A HRBA has added value.** By focusing on linkages between the legal framework and policy making, political participation and economic and social issues, between various development sectors and problems, a HRBA implies a holistic approach to tackling issues which is more likely to lead to sustainable outcomes. A HRBA also helps to define the relationship between rights holders and duty bearers, through empowerment of and legitimacy for the former and demands for accountability from the latter. A HRBA links the concept of good governance with internationally agreed standards for non-discrimination, participation and accountability. A HRBA also gives more space and voice to the most vulnerable groups, which may need differential attention or institutions to protect and fulfil their rights. It links the support to civil society movements with capacity building of state actors. By focusing on individual responsibility for violations of human rights during conflict, a HRBA helps to prevent attitudes of collective blame/rights violations, which can undermine stability. As an HRBA sets equality and non discrimination as core principles the promotion of gender equality and fighting HIV/AIDS are underlined and strengthened by an HRBA.

2. Conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA to development

■ **Support for human rights should be sustained in the long term.** This implies a shift in the way resources are allocated in development activities, away from short-term projects in favour of more strategic and sustained involvement at policy and operational level

■ **There should be a focus on capacity development for staff and close partners in support of human rights and particularly a HRBA.** Learning opportunities and experience exchange should involve not only formal training but also knowledge management, mutual learning and conceptual development. Developing capacity for a HRBA should emphasize context analysis, objective setting and monitoring and evaluation. The focus could be on tools and methods or on documenting experiences, good practice and lessons learnt.

■ **All Swiss actors who engage in foreign policy dialogue and development need to speak with the same voice and commit to jointly promoting a human rights agenda.** This includes Switzerland's ongoing support for the UN Peacebuilding Commission and interaction with the UN Human Rights Council.

■ **It is important to adopt a «do no harm» policy.** In addition, there should be a Code of Conduct for SDC development work to ensure that its actions, personnel and partners do not contribute to violations of human rights Staff and partners should be trained and sensitised on such issues, with a particular emphasis on stereotypes that reinforce concepts of sexuality and abuse of vulnerable groups by expatriate staff.

■ **A HRBA requires organisational and behaviour change at all levels.** Principles and standards should be applied in the first place within the organisations that promote them in their external work. Concrete steps should be taken to promote such internal change in order to reinforce credibility.

1. Introduction

1. Introduction

Since the 90ties, and particularly since 1997 when SDC began implementing its first human rights guidelines entitled «Promoting Human rights in Development Cooperation», SDC and its close partners have made a broad range of experiences in integrating human rights into development. In 2003, SDC published an independent evaluation of its human rights and rule of law guidance documents. Its recommendations were to update SDC's human rights guidelines with a view at reflecting the international discussion on bringing poverty reduction and human rights together. As a first step SDC elaborated an issues paper «Integrating Human rights & Poverty Reduction: Towards a Human rights-Based Approach for SDC» and based on that subsequently elaborated the new SDC Human Rights Policy «SDC's Human Rights Policy: Towards a Life in Dignity – Realising Rights for Poor People». The new Policy was published in 2006. It aims at systematically integrating human rights into all its activities at all levels and adopts an HRBA to development as a strategic orientation for SDC. This means starting from the standards set out in the human rights framework, integrating human rights principles in its policies and programmes, and empowering rights holders and strengthening duty bearers.

One of the measures for implementing the Policy is to strengthen SDC capacity to understand and promote human rights in development by capitalising on experiences; thereby benefiting as much as possible from lessons learnt in particular country contexts. The SDC Capitalization Conference «Human Rights and Development: Learning from Experiences» took place in Thun, Switzerland, from 11 to 13 September 2006. The Conference served this very purpose. Its main objectives were to share, review and document experiences in the work of SDC and its close partners on integrating human rights into development, and – building on these concrete experiences – to make recommendations for implementing the SDC Human Rights Policy and applying a HRBA to development. Over 80 experienced SDC staff and close partners from all over the world joined the Conference.

Against this background, participants worked in five thematic working groups where – according to the registrations received – a critical mass of experience exists:
 – Human rights and education: ensuring the right to education

 – Human rights and gender-based violence: protecting women's rights
 – Human rights and the rule of law: promoting access to justice for poor and marginalized people
 – Human rights in conflict and post-conflict societies: promoting transitional justice
 – Human rights and local governance: ensuring people's meaningful participation in political processes and equitable access to services

The intensive work in the working groups was complemented by plenary case study presentations and enriched by feedback from the plenary on the findings of the respective working groups.

To guide the capitalization process throughout the Conference, a set of guiding working questions was prepared:
 – How have we integrated human rights into development projects, programmes and policies?
 – Which lessons have been learnt and which good practices exist? What have been the major achievements? How has the integration of human rights contributed to enhanced effectiveness?
 – What are the conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA – at the project, programme and policy level, as well as at the institutional level?

The present report contains two main sections: firstly, summaries of sector-specific findings from the respective working groups (Section 2), and secondly, a synthesis of the presentations and discussions in the working groups and the plenary (Section 3). Structured along the above-mentioned guiding questions, both attempt to present the main messages from the Conference, and at the same time demonstrate the range of experience and understanding of human rights in development and the consequent multiple challenges as experienced by the conference participants. To this end, they also include a number of concrete examples of policies, programmes and projects designed and implemented with the support of SDC.

2. Integrating human rights into development: lessons learnt, good practice, conclusions and recommendations

Below are summaries of the sector-specific findings from the six[1] working groups. Attached to this report are the full working group reports which provide for further more detailed reading (Appendix 1).

2.1. Human Rights and Education: Ensuring the Right to Education

The working group on ensuring the right to education was composed of 13 participants from: SDC partner organisations based in Bhutan (Helvetas); Burkina Faso (Association pour la Promotion de l'Education Non-Formelle APENF); Pakistan (ILO), Senegal (Environment Development Action in the Third World ENDA), South Africa (The Media in Education Trust MiET); and Switzerland (Institut d'Ethique et Droits de l'Homme, Ecole Instrument de Paix EIP, and Pestalozzi Foundation). Also in attendance were participants from the Government of Bhutan; the Swiss COOF in Serbia & Montenegro; and SDC Head Office in Bern (Social Development and West Africa Divisions). Discussions can be summarized as follows:

Lessons learnt – promoting the right to education is key for accessing other rights
The right to education entails four capacities: availability; accessibility; acceptability; and adaptability. It is also common to differentiate between the right *to* education (access) and the right *in* and *through* education (quality and relevance).

Access is a central concern in promoting access to inclusive education. A HRBA sets nondiscrimination, equality and participation of marginalized groups at the centre. HRBA has led to progress in data and statistics, although much remains to be done, especially regarding disaggregated data and reliability of official data. The child rights convention provides an excellent framework for implementing a HRBA to education. The HRBA implies a good analytical framework for understanding the causes of exclusion, as well as its consequences. These are strongly linked to other dimensions: this point must be the foundation for any targeted intervention. In addition, education can be disempowering if, for example, cultural, linguistic, gender or other discrimination occurs.

Quality and relevance are defined contextually and must be the result of a social and political dialogue process among various stakeholders. Education is a right in itself but is also a means to access other rights; this is key to definitions of quality and to inclusion of Human rights principles in education. Working on HRBA also entails a focus on accountability and transparency, and a new reflection on the roles of rights holders and duty bearers. It is clear, for example, that there is a need to aim for a constructive attitude with duty bearers rather than to undermine the ability of actors to fulfil their duties.

Obstacles to applying a HRBA – difficulties in challenging power structures
Obstacles to HRBA include the fact that education can often be deeply engrained as the fabric of structural inequities and exclusion: as such, it may be difficult to challenge power structures and identify who has an interest in reform in order to build a more equitable society. Some powerful groups may instrumentalise the human rights discourse, which could lead to it being discredited. Problems in implementation of legislation and in the trade-off between quality and quantity can be compounded by a focus on quantitative targets rather than a broader understanding of the right to education. Right to education is also hindered by challenges arising from issues outside of education, such as family, gender, discrimination etc.

Good practice – social and political dialogues
At the same time, HRBA has contributed to great progress, such as in EFA and the Dakar Framework for Action, which has led to the improvement of national policies in basic education. Progress is regularly monitored and conceptual definitions have improved thanks to HRBA. HRBA has also led to innovations regarding excluded learners and linking education to other rights, providing a framework for developing tools for diagnosis and intervention. This has often led to important social and political dialogue processes.

Conclusions and recommendations – facilitate joint learning and support exchange
There is a need to promote ownership of human rights principles on the bases of endogenous values and space for intercultural dialogue. SDC should support innovations and pay attention to excluded groups, facilitating links between rights and promoting a broad conception of education.

1 Given the large interest, two working groups worked on the rule of law and access to justice.

Citizens should be involved at all stages. At the same time, care must be taken not to alienate people. A human rights perspective should be integrated into PRSPs and, at the same time, SDC should facilitate joint learning on human rights in education, support exchange, training and knowledge management among Swiss COOFs/ SDC HQ/partner organisations, and continued conceptual work.

Follow up – keep networking
SDC and working group participants made commitments to keep in touch and keep networking towards further dialogue and understanding. Other issues for future reflection include: education in conflict situations; privatisation of education and its consequences; equality between different education provisions; strengthening the teaching and «living» of human rights in education; and mediation of relationships between different stakeholders.

2.2. Human Rights and Gender-based Violence: Protecting Women's Rights

The working group on gender-based violence (GBV) was composed of participants from: SDC partner organisations based in India (Unnati); Malaysia (Global Knowledge Partnership GKP); Lebanon (UNODC); Pakistan (UNICEF); the United Kingdom (International Planned Parenthood Federation IPPF); Zambia (Psychosocial Care and Support for Children REPSSI); and

Switzerland (CFD). Also in attendance were participants from the Swiss COOFs in Tajikistan and Vietnam; and SDC Head Office in Bern (Governance, Social Development, and UN Development Divisions). Discussions of this group can be summarized as follows:

Lessons learnt in integrating human rights – police as a key focus
Human rights are integrated through conventions and principles as a framework/reference (in particular CEDAW). Organisations use specific rights to develop policies and activities, or have a systematic and comprehensive HRBA. National laws on human rights are theoretically useful but in practice often not implemented. Issues for focus include: human rights language/communication; allocation of state budgets; the need for accurate and disaggregated data; working with human rights rather than just talking about it; the police as a key focus; the need for functioning implementation mechanisms and state institutions; capacity building for state and non-state actors; strategic alliances and local networks; culturally adjusted strategies; and a focus on men as well as women.

Good practice – promoting active participation of excluded stakeholders
Organisational change is crucial. At the same time, it is useful to choose implementation strategies for projects that are well adapted to the context. Sometimes, stakeholders are missed in implementation: it is key to promote active partic-

ipation of «forgotten» or excluded stakeholders. Human rights interventions can become more comprehensive: a narrow focus on one violation can lead to enlargement. Accordingly, a focus on GBV can be linked to one on HIV/AIDS in terms of human rights, among others. Concentrating on participation and inclusion as principles in themselves can help empower stakeholders to become involved in projects and programmes. It can often be useful to form a strategic alliance with other organisations to help in the implementation of policy and programmes. At the same time, increasing state accountability is vital; as such, the establishment of shadow reports by NGOs can be a useful means of enhancing this, often through the establishment of networks.

Conclusions and recommendations – works towards implementation of CEDAW
In terms of policy, it is important to provide adequate implementation mechanisms, human resources (capacity building) and financial resources/budgets for CEDAW implementation. In addition, scope should be widened: GBV should be noted as a public health issue. Work with police should address structural reproduction of masculinities, stereotypes and prejudice, while states should be supported to identify, establish and implement human rights tasks, roles and responsibilities. All partners should institutionalise a gender audit. Programmes should work on: i) networking; ii) services; iii) capacity building; and iv) advocacy and accountability. SDC should think towards long-term commitments rather than short-term projects.

GBV is a consequence of unequal power relations. Patriarchal culture leads to further vulnerability of women, although GBV is not only violence against women: other vulnerable groups, such as homosexual men and women, must be included in discussions. GBV is the most prevalent human rights violation and the most neglected universal problem, leading to isolation, stigmatisation and exclusion. As such, it is necessary to formulate, implement and enforce policies against any kind of GBV abuse within SDC and partner organisations. Conditionality should be applied to partners to ensure the mainstreaming of gender (including gender-responsive budgeting and gender audits) in all activities with full participation. SDC should not contribute to reinforcing stereotyped concepts of sexuality; at the same, SDC should consider policies to prevent/punish abuse of vulnerable groups by expa-

triate staff. Focus should be on a combination of access to justice, care and advocacy, at the same time as creating safe spaces for women to speak up against violence.

Meanwhile, GBV is the consequence of the non-respect of human rights in practice. SDC should support people to contribute to translating all human rights into women's rights and should use a comprehensive concept of GBV (violations of all women's rights), as the fulfilment of all human rights prevents discrimination against women. GBV is also closely linked to poverty and conflict. SDC should therefore ensure that all human rights discussions include gender as a focus.

2.3. Human Rights and the Rule of Law: Promoting Access to Justice for Poor and Marginalised People

According to the fact that the fields of rule of law and access to justice is the traditional home of human rights in development and that SDC lays a particular focus on promoting human rights through access to justice as part of its work to promote good governance, experiences presented in this field were the most comprehensive. Participants therefore worked in two groups.

The 1st working group on promoting access to justice for poor and marginalised people was composed of participants from: SDC partner organisations based in India (Centre for Social Justice); Vietnam (National Legal Aid Agency, Ministry of Justice); and Switzerland (Terre des Hommes, Institut Universitaire d'Etudes du Développement IUED). Also in attendance were participants from the Swiss COOFs in India, Pakistan and Russia; the Swiss Mission to the UN in Vienna; and SDC Head Office in Bern (Governance and East Asia Divisions). Discussions of this group can be summarized as follows:

Lessons learnt – a bridge between rights holders and duty bearers
Human rights norms and standards are used explicitly as an entry point: access to justice is both a right in itself and a means of achieving other rights. Justice requires a bridge between rights holders and duty bearers, taking into account the formal system but also traditional (customary law) and informal systems. Duty bearers should not automatically be considered the enemy: some human rights violations are made as a result of a lack of awareness and/or

capacity. Capacity building needed to work on attitude and behaviours over the long term, as well as on accountability towards rights holders. Meanwhile, a focus must be made on vulnerable groups as rights holders, including empowerment towards creation of a demand for own human rights. The principles of equality and non-discrimination are important in challenging laws and policies as well as promoting alternative mechanisms to respond to specific needs. Meanwhile, participation is also a duty and a right, one which deserves further consideration.

Access to justice is about challenging powers. It is, therefore, important to document human rights violations to make them visible and to bring them on to the decision-making agenda. Civil society has a key role to play in this process. Advocacy on reviewing the legal framework is successful when it is linked with field experiences. In addition, support to the informal system reinforces the formal system to the benefit of poor and marginalised people. In some countries, the existence of dual systems can create tensions. As such, it is important to see them as complementary and to make every effort to avoid opposition.

Good practice – demystify the law through rights awareness

The human rights framework provides long-term sustainability and coherence for analysing context and providing arguments to prioritise actions. HRBA can also help with countering corruption. There is a constant need to review existing laws to increase accountability and to moni-

tor the impact of enforcement on poor and excluded groups. Rights awareness should demystify the law and disseminate success stories in order to show the potential of law enforcement and its application in daily life. The use of local actors for rights awareness and legal services is one example of good practice in this sphere. HRBA can lead to a better focus on marginalised groups and a chance for people to recognise rights and participate actively in democratic transformation. HRBA also results in more legitimacy for development cooperation and more systemic analysis and thinking.

Conclusions – no rights without justice

It is important to demonstrate that justice can make a difference by publishing successes and proving that justice is relevant to people in their daily life. Support should be based on the realities of poor and marginalised groups by applying a bottom-up approach. Access to justice must be seen both as a sector and as a means of achieving other rights, and should therefore be promoted in other sectors: it is not possible to fight for rights without justice; an effective justice system supports the development of other sectors. Access to justice is also a key entry point to addressing power relations and abuse, working with both rights holders and duty bearers, at the levels of both formal and informal justice systems, and across policies, programmes and projects. More thought also needs to be given to addressing participation as a goal in itself.

Recommendations – integrate human rights in project cycle management

SDC should focus on capacity building of staff and partners, on the definitions of human rights and on the implications of working with HRBA. Human rights should be integrated at all stages of project cycle management. Meanwhile, it is important to use human rights language strategically and link the analysis of the context and the objectives of the programmes to specific human rights. Human rights language should be appropriate to context. Finally, it is key to build alliances with like-minded groups at policy and programme levels and to strengthen coherence among Swiss actors.

Human Rights and the Rule of Law: Promoting Access to Justice for Poor and Marginalised People

The 2nd working group on promoting access to justice for poor and marginalised people was composed of participants from: SDC partner organisations based in Pakistan (Society for the Protection of the Rights of the Child SPARC) and Bolivia (Capítulo Boliviano de Derechos Humanos, Democracia y Desarrollo). Also in attendance were participants from Swiss COOFs (Bosnia & Herzegovina, Peru, Russia, South Africa, Tajikistan, Ukraine) and SDC Head Office in Bern (Governance and South Asia Divisions); and an SDC consultant with experience in community policing. Discussions of this group can be summarized as follows:

Lessons learnt – focus on benefits for vulnerable groups

International and national human rights standards are used as an explicit reference framework for (state) duty bearers in institution building, advocacy, etc. It is less clear how international standards are used in designing, implementing and monitoring interventions. Human rights principles (equality/non-discrimination, empowerment, participation, accountability, transparency) are also often taken up in design, but it is not certain what impact these have. Few programmes address all of them; participation and accountability are rarely mentioned explicitly, for example. No programmes address all in a systematic manner. Some concentrate on capacity building of government institutions. Most focus on benefits for vulnerable groups, although impacts on the powerless are not clear. It remains open how much human rights are used to challenge mechanisms of social exclusion, which may be very complex. Many programmes design interventions in response to the distinction between duty bearers and rights holders, generally addressing both sides (although less on empowering rights holders).

Good practice – coherent and open approach by various donors

The international and regional framework has been seen as useful, particularly in legitimising interventions and defining state duties. NGOs can contribute to the effectiveness of international monitoring; outputs of this can be used for advocacy. In some cases, national frameworks are also seen as relevant. A main challenge is the identification of duty bearers; it is also difficult to motivate state authorities to have ownership of their duties. Accountability mechanisms are often not strong enough; awareness raising is important but not sufficient. A coherent and open approach by various donors, aligned around human rights towards a variety of duty bearers, is good practice here. International obligations can be decisive in building up political will for change. In addition, it is useful to approach both duty bearers and rights holders; working with the latter involves careful selection of CSO partners and consideration of whether rights holders are really empowered and whether efforts are sustainable.

Human rights challenge contexts where the legal system is repressive, to the benefit of vulnerable groups, although this can be difficult. Human rights are important as a normative basis for dealing with state partners. Meanwhile, they can serve as a common minimal standard and a basis for dialogue in reconciling traditional perceptions of justice with the formal justice system. Universality should be reconstructed bottom-up and recognise diversity. An important challenge exists in the Western bias in the interpretation of human rights, although, in general, human rights can offer a more comprehensive picture of development issues.

Recommendations and follow up – design a practical guide on HRBA

SDC should design a practical guide on the integration of HRBA and a set of concrete tools, along with capacity building throughout the organisation itself. Next steps could include establishing a forum for exchange of experiences. At the same time, SDC should ensure support for HRBA by management at all levels and enable COOFs adequate human resources in application of HRBA. The human rights agenda should be integrated coherently into the policy and programmes of all Swiss actors. There is a challenge of coherence: Swiss interventions in third countries can be conflicting. Intensifying policy dialogue with a view to advocating for human rights in Swiss economic cooperation with partner countries would be useful.

Specific focuses include demystifying human rights language and maintaining the link between «humanitarian» assistance to vulnerable groups and human rights advocacy. Human rights and development should be seen holistically, and different approaches should be balanced with each other. SDC should advocate for human rights within government institutions, by cooperating with state institutions, and foster intercultural dialogue. HRBA should be flexible enough to be accepted and applied in different contexts. In a long-term perspective, targeted investment in behavioural and institutional change as well as patience is needed.

2.4. Human rights in Conflict and Post-Conflict Societies: Promoting Transitional Justice

The working group on promoting transitional justice was composed of participants from: SDC partner organisations based in Colombia (Support to Victims for Emotional Recovery AVRE); Ecuador (OHCHR); the Occupied Palestinian Territory (Treatment and Rehabilitation Centre for Victims of Torture TRC, Palestinian Counseling Center PCC, Strengthening Human rights and Good Governance Mu'assasat) and Switzerland (International Council on Human rights Policy ICHRP, Helvetas). Also in attendance were participants from Minority Rights Group International (MRG); the Swiss COOF in the Occupied Palestinian Territory; the Political Division IV of the Swiss Department of Foreign Affairs; and SDC Head Office in Bern (Middle East and North Africa, Humanitarian Aid Africa, and Conflict Prevention and Transformation Divisions). Discussions of this group can be summarized as follows:

Lessons learnt in integrating human rights – human rights at the core

HRBA was often not formally applied, owing to the fact that projects had been planned prior to the new SDC Human rights Policy. Additionally, conflict situations make long-term planning based on strict HRBA principles difficult. Human rights were nevertheless at the core of all work. Primary activities include: working with rights

holders (supporting survivors, lobbying duty bearers, establishing mechanisms); working with duty bearers (providing training, reforming legislation); and providing core programme funding. Creating effective new human rights institutions with a strong mandate and guaranteed independence contribute to security and justice reform as well as monitoring broader human rights issues. Traditional dispute resolution and reconciliation mechanisms can also be an important tool. The protection of minority rights is also key to preventing conflict and creating conditions to bring sustainable peace.

Good practice – combining advocacy, assistance and empowerment

The transition can be a long-term process and attention to transitional justice must begin even before a conflict ends formally. Amnesty for human rights crimes in peace agreements can undermine long-term sustainability of peace. Politically necessary shortcuts on human rights taken in peace negotiations should be revisited in the future. Appropriate sequencing is required in accordance with the local context. Human rights achievements are fragile and their sustainability is always at risk. Transitional justice can address concerns that neither traditional nor formal justice systems do (e.g. truth and reconciliation, emphasis on the victim's perspective). Psychosocial and education activities are essential, already during conflict; it is key to build local capacity to deal with this aspect and to ensure its reflection in policy decisions. An effective strategy is to combine advocacy, assistance, empowerment and networking to enable civil society to engage with both rights holders and duty bearers. The international community has a critical role to play in integrating the humanitarian and development spheres through longer-term core funding support. During conflict, it is also important to gather information on human rights violations as a source for any truth and reconciliation processes. Many groups particularly targeted for human rights violations are marginalised from transitional justice processes; it is useful to establish consultation mechanisms with such groups to ensure their rights are respected.

Conclusions – HRBA aids in the identification of root causes of conflict

There is often an absence of clear duty bearers in conflict situations, which can lead to impunity and entrench hostility. Conflicts may also be between different groups; this makes collective rights important. It can also be hard to determine the level of involvement of civilian populations in human rights violations, and to hold non-state actors to account. This leads to problems when pushing for accountability. A HRBA can assist with this, as well as with opening up space for the most vulnerable groups to raise their voice and participate in the peace process. Despite challenges, a HRBA creates common ground and a shared understanding, as well as a comprehensive picture of a wide range of policy issues. A HRBA also helps prevent attitudes of collective blame/rights violations and aids in the identification of roots causes of conflict (e,g, violations of economic, social and cultural rights).

Recommendations – need for long-term and strategic support

Projects/programmes should offer long-term and strategic support and focus on building capacity and will of duty bearers, parallel to rights holder support. Information gathering on human rights is key. SDC projects should «do no harm» vis-à-vis human rights. SDC could create a Code of Conduct for its work; the Sphere Standards used by humanitarian actors could be a model. SDC should listen to what partners want and assess whether aid is genuinely contributing to empowerment and development. SDC itself should sensitise and train personnel on a HRBA. Other focus areas include: financial or symbolic reparations; establishing OECD guidelines on transitional justice; building capacity of national, regional and local justice mechanisms; increased advocacy on human rights and a HRBA; political pressure on duty bearers; and strengthened mechanisms to protect human rights at the international level. HRBA requires that Switzerland has a comprehensive approach to human rights in its foreign policy, consistent across government levels and bodies.

2.5. Human Rights and Local Governance: Ensuring Meaningful Participation in Political Processes and Equitable Access to Services

The working group on local governance was composed of participants from: SDC partner organisations based in Benin (Institute Kilimandjaro); Bosnia & Herzegovina (Municipal Development Project MDP); India (Kutch Mahila Vika

Sangathan KMVS); South Africa (Public Service Accountability Monitor PSAM, Electoral Institute of Southern Africa EISA); Vietnam (Helvetas); and Switzerland (International Council on Human rights Policy ICHRP). Also in attendance were participants from Swiss COOFs (Bolivia, Cuba, Ecuador, India, North Korea, Ukraine); and SDC Head Office in Bern (Governance, South Asia, and Social Development Divisions). Discussions of this group can be summarized as follows:

Lessons learnt – promoting accountability through HRBA at all levels
In the context of decentralisation, integrating HRBA is most commonly manifested in: strengthening wider participation of communities in governance; ensuring more equitable access to collective resources and services; supporting the emergence of more inclusive development approaches; addressing issues of discrimination in service provision; addressing the unequal power relations between duty bearers and rights holders; and strengthening accountability to local communities and/or citizens.

The space provided by mechanisms for community participation enshrined in legislation is a good starting point for dialogue on integration of human rights principles. Peer exchange and bilateral dialogue can be complemented by civil society representation. Collaboration between rights holders and duty bearers is a basis for progress, as is a multi-pronged and/or sectoral approach. Awareness generation should be accompanied by implementation; HRBA princi-

ples are most effective when articulated from the micro up to the macro policy levels. HRBA promotes relationships of accountability at every level and across stakeholders. Information provision is a good basis for mobilising communities and promoting transparency; monitoring by local communities is a good way of measuring effectiveness. Internal incentives can encourage local government officials to be more accountable.

HRBA promotes more inclusive public participation and citizenship at the same time as clear and precise standards for accountability and governance. HRBA makes it possible to address issues of balance between individual and collective rights and in terms of power relations and relative positions within communities and localities. This latter is particularly key against a setting of globalisation, where power relations are becoming more exaggerated. HRBA impacts standards within a country and within an institution, prioritising interventions and shifting away from project-style management. It allows for a greater engagement with the system as a whole: a greater sensitivity to the context is made possible.

Conclusions and recommendations – need for continuous process of discussion and reflection
Results are not quick to come by: it is necessary to find a balance between quick wins and long-term progress. Sustainability requires long-term and consistent donor support. It is difficult to scale up micro to macro; work must be both horizontal and vertical, which can be hard. Tracking

results is a challenge: effective measurement requires appropriate, participatory development of indicators. Addressing power relations can lead to conflict situations and, at the same time, human rights often challenge traditional values. Both situations require a delicate balance. Institutional stakeholders need to consider their own workings, and political will and ownership is necessary. Decentralisation is not a way for central and local governments to make a one-way transfer of their responsibilities to communities. The debate could be furthered by bringing in the private sector.

HRBA is not an end in itself: it needs to form the fundamental basis of all interactions across stakeholders. Rights and responsibilities should be promoted in tandem; skills building in social accountability merits particular support. Partnerships should be fostered between private sector/local government and marginalised communities. Priority could be given to issues of local concern, taking care to achieve a pragmatic realisation of solutions so as not to dash the initial high expectations of local communities. In general, SDC should articulate its strategies to leverage its position as a donor promoting HRBA. At the same time, there is a need to be more pragmatic and adapt human rights language to the context. Rather than produce a toolkit, it is more important to undertake a continuous process of sensitisation, discussion and reflection. Other concrete steps are: organising an HRBA meeting in Latin America and exploring the potential for a web-based discussion on HRBA in local governance.

3. Synthesis

The discussions in the six working groups as well as the plenary sessions provided a very broad range of experiences in integrating human rights into development. Below is a synthesis of the key messages which emerged during the Conference, accompanied by a selection of very concrete highlights and examples. This synthesis is based on the presentations and discussions in the working groups and the plenary. It is structured along the above-mentioned guiding questions.

3.1. How have human rights been integrated into development projects, programmes and policies?

«*It is time that human rights are applied not as a political framework, but as a fundamental approach and governing philosophy to address developmental goals… There has to be a reality check on all our efforts to make sure that the objectives of our development interventions are in fact aimed at the protection and fulfilment of fundamental human rights.*» (Sushima Iyengar, Kutch Mahila Vika Sangathan, India)

The participants' experience shows that human rights and development efforts are converging more than ever before. Despite the fact that identifying and tackling structural dimensions and root causes of poverty as human rights issues still challenges traditional development thinking in many cases, significant progress has been achieved by integrating human rights thinking and practice with development policies, programmes and projects, as the following examples and experiences demonstrate.

a) Importance of the human rights framework

According to participants, the international human rights framework is a *legitimate*, *relevant and useful* framework for development action. It is the only internationally agreed comprehensive and holistic framework for addressing all development issues/challenges which, in turn, are linked to specific human rights.

Two features of the international framework are of particular relevance: first of all, its principles and standards represent a unique consensus at the international level, having been ratified by many (in some cases almost all) states, making it the only *legally binding framework* that could form the basis for harmonising development

efforts among donors and with development country partners. Second, the *indivisibility* of all human rights helps to frame any development issue, not just in relation to a particular sector (e.g. health, education etc.), but rather as a set of interconnected rights which, if denied or violated, can affect the development of an individual, a group or a community. The explicit use of the international human rights framework in development programming varies accordingly not only to different countries but also to different sectors of interventions. An explicit link to the international human rights framework was found to be relevant and useful in education programming (Box 1) and in fighting GBV. The human rights international framework was also considered as being at the core for programming in the justice sector (Box 2) and as the base of promoting transitional justice.

> **Box 1: Integrating human rights in education programmes**
> The development of **Child Friendly Schools (CFS) in Asia** is an example of the application of the Convention on the Rights of the Child (CRC) in development practice. The following CRC principles form the basis of CFS:
> - Non-discrimination (inclusion of all children in schools)
> - Survival and optimal development
> - Participation (communication and consensus)
> - Best interest of the child
> - Progressive implementation and non-discrimination
>
> CFS acknowledges that *all* children have the right to be part of mainstream education. States are accountable for ensuring that schools incorporate difference and diversity and for supporting teachers in their role as duty bearers as well as rights holders. The roles and responsibilities of teachers are also drawn from CRC principles, including in job descriptions, teacher training and the curriculum.

> **Box 2: Integrating human rights in the justice sector**
> Most participants working on **access to justice** found the explicit reference to the international human rights framework a useful entry point for their work, not only because

of its legitimacy, but also because it helps to identify the responsibilities of authorities responsible for development. In **Bolivia**, for example, the initiative of a coalition of NGOs shows how development interventions can contribute directly to the effectiveness of the international monitoring process through the production of a «shadow report». Moreover, these NGOs used the output of the international monitoring system (concluding observations, general comments) for advocacy and lobbying at national level, thereby concretely contributing to the design of national development plans with human rights considerations. The agenda for agrarian reform, for example, was framed by the NGO coalition on the basis of the recommendations of the UN monitoring committees.

The legitimacy, relevance and practical value of the international human rights framework does not imply that it should be always used as an explicit entry point for development action in all contexts. Sometimes, the legal and technical language and the international focus of the framework can militate against a sense of ownership of the human rights agenda by national and local communities. On the basis of the experience of the majority of participants, it was strongly emphasised that the language and the approach for introducing human rights concepts and principles needed to be **adapted to local contexts**

(Boxes 3 and 4). However, this should not dilute the overall message that human rights are the very basis for promoting human dignity and working towards social justice. Even when it is not used as an explicit entry point for development action, international human rights frameworks, instruments and standards remain important points of reference for different dimensions of development work, including: policy dialogue between governments; advocacy and policy influencing from civil society; intercultural dialogue between communities; and project and programme design.

Box 3: Work on non-discrimination and inclusion in Ecuador
The **SDC country programme in Ecuador** does not work explicitly on human rights issues but the majority of projects are designed to promote the principles of non-discrimination, inclusion, participation and accountability. The approach to empowerment is also consistent with a HRBA to development: the programme provides communities with the skills necessary to engage with their social, political and economic environment; to use and share information with stakeholders at all levels; and to claim their entitlements. The programme promotes gender equality and institutional development as transversal themes.

Box 4: From implicit to explicit human rights language

In **Pakistan**, the **Girl Child Project** has been running for more than a decade. When it was first developed by UNICEF and its partners it was not explicitly grounded in the human rights framework: a conscious choice was made not to introduce the topic of child protection and gender discrimination as a human rights issue with the communities involved. Instead, the starting point was the recognition of a number of problems that girls faced, ranging from molestation and rape to wider discrimination and literacy, with the aim of raising awareness among girls and their communities. It was then possible to make more direct links between child protection and human rights, using the CRC as a framework. This was further supported by UNICEF adopting a HRBA across programmes and policies. This incremental approach to human rights contributed to bringing about a «silent revolutionary change» in 730 communities.

b) A crucial role for the national legal framework and for promoting access to justice

The **national legal framework** is essential in implementing human rights standards, and it plays a crucial role in defining national development policies. Participants often considered it the most useful starting point for integrating human rights and development work, contributing to policy change and for designing related development interventions. The reference to the national framework is also useful for addressing the common misconception that human rights are just a matter of international law and are hence removed from the realities of citizens and communities of a specific country. In some countries, the national constitutional and legal provisions are adequate and comprehensive in relation to human rights (e.g. India, South Africa, Tajikistan etc.). However, the implementation of legal standards at national and local level is a challenge in general: There is often a tremendous gap between legal norms and reality. This is particularly true for human rights standards which are often guaranteed on paper, but not respected in reality.

The **judicial system** is crucial to make legal standards meaningful in reality and to bring about accountability for human rights at a national level. In many countries, judicial mechanisms do not function effectively, and this is also seen as a key challenge for development. For fighting poverty, access to justice for marginalised groups without discrimination is crucial. Judicial reform without reference to human rights and non-discrimination will not serve the cause of poverty reduction and bring about change only for ruling elites. Given the fact that formal judicial systems are frequently dysfunctional, there is a growing interest for informal or traditional forms of justice which are often serving the needs for arbitrating between individuals and groups. However, the debate on the role and potential of informal or community judicial systems is a complex one, particularly since in many countries these are often reactionary, conservative and discriminatory systems operating in non-accountable ways.

Although legal and judicial systems are very relevant, they are not sufficient. In most cases, it is necessary to link legal and judicial frameworks with policy development and, crucially, with budget allocation (Box 5), to make legal standards real: For example, the right to education and health can only be implemented within a legal framework which is favourable to its realization, but the legal standards are not enough. To make basic education and health services available to everyone, there is a need to publicly invest in an adequate policy and budget allocation.

Box 5: Funding the implementation of national human rights legislation

The **Domestic Violence Act** was introduced in **South Africa** in 1998, and is an expression of the commitment of the state to eliminate domestic violence in line with its CEDAW obligations and with the South African constitution. NGOs welcomed the Act but were concerned that insufficient resources were being allocated for its implementation. The Gender Advocacy Programme, a Cape Town-based NGO, identified shortfalls in the budgets of the Departments of Safety and Security, Justice and Welfare/Social Services, in areas such as training for police and officials and victim support services in the Western Cape.

SDC financed a study that identified ways of making available the additional resources required to implement the Act by changing priorities and improving efficiency. Recommendations included: (Check with Sandra

■ Further resources for the implementation of the Domestic Violence Act by the South African Police Service could come by levying a charge on the budgets of all police programmes and transferring it to the implementation of a «women's safety plan». In effect this would be reallocating police time towards women's safety.

■ Money being wasted by the Department of Justice could be used instead to implement the Act.

c) Key role of good governance

Resources are not the only challenge for implementing international and national human rights legislation at local level. Good governance – and particularly good **local governance** – is also key for making human rights a reality for people, particularly in countries with highly decentralised government structures (or undergoing decentralisation processes). More clarity is needed to identify roles and responsibilities of duty bearers at national and local level, addressing the common misperception that human rights is only a matter for national or international actors. Recent research carried out by the International Council for Human rights[2] found that there was a need to build better links between local government and their human rights obligations. In particular, local government officials should become more aware of their role and responsibilities as duty bearers. Human rights can support and improve decentralisation processes in a number of ways. They can strengthen wider participation of local communities and ensure inclusion of marginalised groups; in doing so, they can ensure equitable access to services and address local or regional economic inequalities, and make public services more responsive to the needs of marginalized groups. Another important dimension is an explicit reference to the human rights framework in addressing unequal power relations and discrimination at the local level, particularly when local elites have a great deal of direct and individual power and control the running of public services. Finally, human rights can play a vital role in strengthening transparency and accountability in the relationship between local duty bearers and citizens (Box 6).

> ### Box 6: Supporting local communities to claim their rights
> The **Defensoria** was set up in **Peru** in 1998 with the objective of empowering local com-

munities from poor rural areas to protect themselves and claim their own rights, thereby improving accountability at local level. Itinerant teams travel in remote regions and support local poor communities to claim their rights and hold local duty bearers accountable. The work of the itinerant teams also supports local government officials in their role as duty bearers, mainly by identifying their responsibilities in ensuring the rights of the local communities. Main achievements include:

■ «Prestige» and trust among local communities

■ Increased number of complaints filed and requests for information by local communities

■ Improved governance and awareness of responsibilities of local government officials

■ *Defensoria's* own capacity to influence policy change increased, particularly in education and health

■ Increased capacity to reach remote communities in both urban and rural areas

This experience highlights some of the challenges involved in promoting human rights at local level. For example, it should not be assumed that the priorities of the national and local human rights agenda are the same. Also, special attention needs to be paid to the needs of rural communities living in remote areas: often, poor living conditions and general deprivation make it difficult to promote an approach that places emphasis on monitoring government action and the claiming of rights, as opposed to more direct action such as service delivery.

d) Integrating human rights principles

The four **human rights principles** of accountability, non-discrimination and equality, participation and universality are increasingly being integrated into development practice. However, as many pointed out during the discussions, these concepts are not new and some claimed that development policies and programmes have been working according to them for many years. So what is the value-added of human rights? The added value that human rights thinking and practice bring to these principles is twofold: it places them at the heart of development action, not at the margin. Thus, non-discrimination is no

2 Local Rule «Decentralisation and Human rights» – International Council on Humanr rights, Geneva 2001.

longer just a matter of, for instance, disaggregated data, but instead a priority in terms of development outcomes and policy change. Furthermore, from a human rights perspective, these principles are interrelated and enshrined in international law (and often national constitutional frameworks and legislation), thereby forming the basis for a holistic and comprehensive framework for development action and linking it to governance in particular with regard to accountability of the various actors involved (Box 7) Beneficiaries of development interventions are seen as rights holders - and not just as beneficiaries of charity.

> **Box 7: Integrating and interconnecting human rights principles: promoting the rights of girls in Pakistan**
> The multi-faceted **Girl Child Project** implemented by UNICEF in **Pakistan** has been running for over 10 years, with the aim of raising awareness for the promotion, protection and fulfilment of the rights of adolescent girls and of supporting the empowerment of adolescent girls and boys to act as role models and agents of change in their communities. The Project revolves around:
> - Attitudes, customs, behaviour and practices
> - Government commitment
> - Legislation and its enforcement
> - Capacity of communities and service providers
> - Children's life skills and knowledge
> - Monitoring and reporting
> - Services for victims of abuse
> - Open discussion/media attention
>
> In each of these mutually reinforcing areas, the specific human rights principles are identified and prioritised according to relevance. So, for example, accountability is the main underlying principle of monitoring and reporting, whereas all four principles are relevant in the context of essential services, with a particular focus on universality. The principle of equality and non-discrimination is particularly important, not only in relation to overall goals but also as an inclusive operational strategy. A combination of cultural factors has presented strong barriers to change; as a result, UNICEF builds alliances with boys in the community to educate them on gender issues and to gain their support for the education of girls.

> When boys saw the benefits of the programme for the wider community, including themselves, they were not only less resistant to the project but became a supportive and driving force for change.

e) Importance of transparency and the right to information

Transparency and the right to information are important both as rights in themselves, and as prerequisites for achieving other rights and foundations for accountability. They provide the basis for demanding better information, disaggregated data and transparency on budget allocation and other important «political» information. Access to good quality and relevant information is key to enabling rights holders to hold duty bearers accountable. In the experience of participants, this means investing in monitoring mechanisms and data analysis, including shadow reporting, social monitoring/accountability and participatory budget monitoring. As Box 8 below shows, these activities are increasingly important in improving accountability of public institutions and in providing relevant, accurate and timely information to all citizens about policy decisions and budget allocations that directly affect their lives.

> **Box 8: Social accountability and budget monitoring for human rights**
> The **South African** constitution provides an excellent legislative framework for economic and social rights. However, implementation so far has been weak, partly because CSOs have failed to use provisions and participate in governance, and partly because of a tendency to concentrate on budgeting and policy and neglect service delivery issues. The **Public Service Accountability Monitor (PSAM)** has developed tools to monitor provincial public expenditure with a view to strengthening accountability in relation to a selection of services and related economic and social rights. Mandate and strategy are based on two key principles: (i) social accountability is the right to obtain justifications and explanations for the use of public resources from those entrusted with their management; and (ii) officials have an obligation to explain/justify how decisions/actions have contributed to the progressive realisation of citizens' rights against set criteria.

Between 2000 and 2005, PSAM monitored expenditure and performance of four ministerial departments by means of indicators for different kinds of accountability (administrative, fiscal, political etc.), scorecards, expenditure tracking and evaluations, among others. Information sources include annual reports, service delivery reports, budgets and strategic plans. Findings show some of the causes of poor implementation of economic and social rights:

- The Department of Housing failed to identify the number and location of citizens requiring housing between 1996 and 2005.
- The Department of Health failed to account for 73% of its (provincial) HIV/AIDS budget between 2000 and 2003 (R90.2 m), 26% of the budget was unspent (R33 m).
- All departments displayed an inability and/or unwillingness to address problems raised by the Office of the Auditor-General. As such, the province could not adequately account for its use of R125 billion out of R157 billion and effectiveness of service delivery.

These findings were discussed during open briefings with local citizens and organizations. This resulted in sustained advocacy efforts which have contributed to:

- Improved financial reporting by government departments in the province: decrease in audit disclaimers from 99% of budget in 2000 to 54% in 2005.
- Creation of disciplinary databases in key provincial service delivery departments in 2005 (health, education).
- Improved civil society participation in governance processes and cooperation around public service delivery issues, e.g. establishment of a quarterly Human rights Working Group.

3.2. Lessons learnt, good practice and major achievements in the integration of human rights into development

«Our efforts to give effect to the human rights agenda are surely meaningless if they fail to penetrate beneath «rhetorical repackaging» and

technical innovations, getting into the structural, political, institutional and cultural questions upon which the realisation of human rights outcomes and sustainable development results most frequently depends.» (Ibrahim J. Wani, UNOHCHR)

A great number of lessons learnt and good practices can be drawn from the many examples provided by participants in relation to integrating human rights into development.

a) A long term commitment

Long-term commitment is key to successfully integrating human rights into development. This, in the eyes of participants, should be reflected in the policies, practices and, most importantly, funding arrangements of donors and other state and non-state actors who claim to adopt a HRBA to development. The 10 years' «silent revolutionary change» of the Girl Child Project in Pakistan (Box 7) is a good example of this.

The human rights agenda can be perceived as too broad and idealistic. Experiences on the ground show the importance of **identifying specific rights** – and the linkages between them and with other rights – as the basis for policies, programmes and projects. Identifying specific human rights that are relevant to development projects is an effective way of persuading rights holders and duty bearers of the relevance of human rights to development goals. For example, humanitarian aid programmes supported by SDC in the conflict-affected countries of the Great Lakes region used the violation of sexual rights of women in Eastern Congo and Burundi as an entry point. While also working with women in the post-war context, the approach was expanded – medical and legal aid was provided to women who were victims of violence and women's rights were treated in a more comprehensive way. In many cases, it was necessary to tackle violence and HIV/AIDS in tandem, both as health issues and as rights issues. Another example of identifying specific rights – at the policy-level – can be found in the SDC Policy on the Right to Water (Box 9) which was discussed in the context of local governance.

> **Box 9: Focus on specific rights: SDC experience with the right to water**
> - The SDC guidelines and principles on **Integrated Water Resource Management** are setting out the access to safe and secure drinking water and sanitation as a human right according to the human

rights framework, including the general comment No 15 of the committee on Economic, Social and Cultural Rights

The right to water not only entitles everyone to sufficient, safe, acceptable and physically accessible water, for personal and domestic use, but also implicitly includes the right to sanitation. Water is much more than an economic good; its functions and values can be divided into human rights complimentary categories:

- Water for life concerns (for the survival of human beings)
- Water for citizens (for the general interest of society e.g. public health)
- Water for development (for production activities)

The human right to water adds value to a more traditional development approach:

- It requires that the government prioritises the provision of services to those without basic access to water and sanitation (pro-poor).
- It ensures that access to water becomes a legal entitlement on the basis of which governments can be held to account.
- It safeguards against discrimination and neglect of vulnerable and marginalised groups through denial of access to water.
- It promotes genuine consultation and participation of communities in design and delivery of appropriate services.
- It provides a useful monitoring tool that can be used to promote accountability of states, the international community and the private sector.
- It reduces health costs.
- It promotes economic growth.

Water is not only linked to other human rights but is a *prerequisite* of them. For example, the right(s) to life, health and economic growth cannot be fully achieved without realising the right to water. As such, rights must be addressed in a comprehensive and holistic manner.

b) Demystifying human rights

One of the key challenges of operationalising a HRBA to development lies in the need to **demystify human rights** and communicate legal concepts, new frameworks and terminologies to diverse audiences. The need to use simple and relevant language to convey human rights principles and entitlements to rights holders and to develop a sense of local ownership for human rights was recognised by participants in several different contexts. This was often accompanied by the suggestions of entry points for human rights thinking in development which might be adapted to the context and anchored in endogenous cultures and social values. It can also be useful to rely on more traditional development concepts such as empowerment, social justice or citizenship. However, it was emphasised that this can pose the risk of diluting core messages as well as human rights principles and values, including the framework for duties and obligations that it entails.

c) Understanding roles and responsibilities

Understanding and mapping the **role and responsibilities of rights holders and duty bearers** is both a requirement and a benefit of a HRBA to development programming. Within a given project, once the specific rights and their interconnections have been defined, it is important to identify the full range of rights holders and duty bearers as well as their roles and responsibilities. Often, the best results are achieved if a project addresses the needs of both: empowering rights holders to claim their rights and strengthening the capacity of duty bearers to fulfil their duties. One of the main benefits of mapping rights holders and duty bearers, according to participants, is that it allows identification of marginalised or excluded groups, and steps to be taken to include them (Box 10).

Box 10: The right to participation: promoting child participation through children's committees

The **South Africa**-based **REPSSI** (Psychosocial Care and Support for Children) works with partners in 13 countries of East and Southern Africa to scale up psychosocial care and support for children affected by AIDS, poverty and conflict. In accordance with the CRC, the project emphasises child participation, i.e. active involvement of children in decisions and actions that affect their welfare. REPSSI works across a range of issues treating the social, emotional, intellectual, physical development and rights of children, including care for sick parents/care givers; loss and separation

from parents; forced separation from siblings; forced early marriages; child and sexual abuse; loss of school owing to non-payment of fees; property grabbing; homelessness; lack of food etc.

REPSSI recognises that children have traditionally been seen as weak, passive, ignorant and unable to make decisions within their communities. They are thus often excluded from family decisions and conversations. REPSSI promotes children as the best advocates of their own welfare through children's committees which give children the opportunity to:

■ Meet with ministers of health, education and youth/child development, as well as traditional/religious leaders (to influence policy)
■ Give and receive counselling to/from their peers
■ Investigate poor recreation facilities at local councils
■ Report cases of child abuse to the police
■ Compile and produce newsletters
■ Sensitise communities through theatre

d) The value-added of a HRBA

According to participants, the increasingly recognised **value-added of a HRBA to development** relies on a number of factors. First of all, a HRBA implies a comprehensive and holistic approach to tackling development issues. By drawing attention to the linkages between different rights, sectors and development problems, it promotes a holistic approach more likely to lead to sustainable outcomes.

A HRBA also helps to define the relationships between rights holders and duty bearers. It not only «empowers» rights holders by supporting them to be active participants of the development process and by giving greater legitimacy and moral force to their demands, but also fundamentally requires greater accountability from all actors in the development process: through legal, administrative or political mechanisms. Individuals, as right holders, can make claims on the conduct of individual and collective agents, including states, which, as duty holders, can be held responsible for not meeting their obligations.

As good governance is increasingly being considered central in development processes, human rights offer a unique opportunity to better

define its values and concepts, its principles and delimitations. For example, human rights play an important role in defining standards for accountability, transparency and participation at national and international level, and contribute to a clearer view on equality and non-discrimination, with a view to make State action more responsive to the needs of the poor. Finally, a HRBA gives more space and voice to the most vulnerable groups, which may need particular or differential attention or institutions to protect and fulfil their rights. By focusing on individual responsibility for violations of human rights during conflict, a HRBA helps to prevent attitudes of collective blame/rights violations, which can undermine stability.

Box 11 below summarises how a HRBA can be successfully implemented in the context of a particular country programme.

Box 11: Applying a HRBA to the SDC Pakistan country programme

The status of human rights in **Pakistan** is still a critical issue. The **SDC Cooperation Strategy** for 2000 to 2005 emphasised human rights as a priority for action. Activities included:

■ Supporting and building capacity of NGOs to work on human rights
■ Orientation workshops for SDC and project staff
■ Human rights dialogue with the Pakistan government

The new Cooperation Strategy (2006 to 2010) goes even further in recognising the value-added of a HRBA, as it:

■ Contributes to achieving development cooperation objectives, i.e. poverty alleviation, economic growth, etc.
■ Is based on universal, indivisible principles that provide legitimacy to efforts to:
  – Foster a «Why Culture»
  – Empower right holders to claim their rights
  – Strengthen authorities to meet their obligations
■ Explicitly focuses on both duty bearers and rights holders (dual approach)
■ Places an important emphasis on the analysis of power relations between duty bearers and rights holders
■ Works to improve existing systems and institutions rather than replacing them with new or temporary ones

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■ Promotes a shift away from a charity or needs-based approach to poverty alleviation towards a notion of rights and a shift in terminology from «beneficiaries» and «target groups» to «rights holders» and «duty bearers»

One of the core features of the SDC programme in Pakistan is that it acknowledges the congruence between core poverty dimensions and human rights dimensions. This adds legitimacy for development cooperation.

3. 3. Conclusions and recommendations for implementing the SDC Human rights Policy at the institutional level

A number of recommendations were made by participants to facilitate the implementation of the SDC Policy on Human rights and to apply a HRBA to development. Below is a summary of the **most common recommendations made at the institutional level**.

SDC commitment and support for human rights should be **sustained in the long-term**. Human rights work requires long-term and strategic commitment on the part of all those involved, donors in particular. This implies a shift in the way that SDC resources are allocated to development activities. There is a need to focus a more strategic and sustained involvement at the policy and operational level.

SDC should focus on **capacity development** for its staff and close partners in support of human rights and a HRBA. There is a real need for learning opportunities and exchange of experiences. SDC is ideally positioned to facilitate such processes. This should not only involve formal training on human rights issues, but also knowledge management, mutual learning and conceptual development both within SDC at different levels and with partners on the ground. Particular attention should be paid to developing capacity for applying a HRBA, at all levels and stages of the project cycle – with particular emphasis on context analysis, objective setting and monitoring and evaluation. Tools and methods for applying a HRBA should be experiences, good practice and lessons learnt should be continuously documented.

SDC is in an ideal position for further **facilitating networking** and strengthening processes for exchanging experiences with a view at cross-sectoral and cross regional learning and hence strengthening its effectiveness and coherence. It is also well-positioned to promote spaces for social and political dialogue within a particular theme. Building strategic alliances, work cross sectorally and strengthening local networks in order to create solid partnerships for HRBA is crucial, in particular with regard to linking work against gender based violence with promoting access to justice and transitional justice.

Switzerland as a whole faces a «**coherence**» **challenge** in relation to human rights. It is vital that all Swiss actors engaging in foreign policy dialogue and development speak with the same voice and commit jointly to promoting a human rights agenda. This includes Switzerland's ongoing support for the UN Peacebuilding Commission and its interaction with the UN Human rights Council.

SDC should adopt a «**do no harm**» policy and should create a Code of Conduct for its development work to ensure that its actions, personnel or partners do not contribute to violations of human rights. SDC should train and sensitise its staff and partners on these issues, with a particular emphasis on stereotypes that reinforce concepts of sexuality and abuse of vulnerable groups by expatriate staff. SDC's gender policies should address harassment and all other kinds of abuse.

Finally, a HRBA to development requires **organisational and behaviour change** at all levels. The principles and standards of human rights should be applied in the first place within the organisations which promote them in their external work. The focus should rather be on «living» a human rights culture then on teaching it. SDC, along with other agencies committed to promoting a HRBA to development, should take concrete steps to promote such internal organisational and behaviour change in order to reinforce its credibility in this domain.

Working Group 1: Report on Human rights and Education: Ensuring the Right to Education

Introduction to participants and brief overview of their experiences

The working group on ensuring the right to education was composed of 13 participants from: SDC partner organisations based in Bhutan (Helvetas); Burkina Faso (Association pour la Promotion de l'Education Non-Formelle APENF); Pakistan (ILO), Senegal (Environment Development Action in the Third World ENDA), South Africa (The Media in Education Trust MiET); and Switzerland (Institut d'Ethique et Droits de l'Homme, Ecole Instrument de Paix EIP, and Pestalozzi Foundation). Also in attendance were participants from the Government of Bhutan; the Swiss COOF in Serbia & Montenegro; and SDC Head Office in Bern (Social Development and West Africa Divisions).

Participants discussed the right to education based on eight presentations regarding:

■ Combating child labour through education and training (Pakistan).
■ Developing child friendly schools, a concept based on the Convention on the Rights of the Child (Bhutan).
■ Animating social processes to «rethink» the form of education inherited from colonial times, and which is still inadequate for most learners (Senegal).
■ Research on the measurement of the right to education (Burkina Faso).
■ Promoting the teaching of human rights in different countries.

■ Reducing the negative impact of poverty and HIV/AIDS on children through the programme «Schools as Centres of Care and Support» to reduce the negative impact of poverty and HIV/AIDS on children (South Africa).
■ Institutional efforts undertaken to shift from a «classic» charity to a «rights-based» organisation (Switzerland).
■ Support to education reform, with a specific focus on Roma children (Serbia & Montenegro).

The discussion was facilitated by Mr Alin Byll-Cataria, SDC West Africa Division. Ms Fabienne Lagier, SDC Social Development Division, was the rapporteur.

The presentations and discussion were diverse: some of the main points are summarised below. Lessons learnt are noted throughout the report where they become relevant.

Integration of human rights into development projects, programmes and policies

Right to education entails four capacities: availability; accessibility; acceptability; and adaptability. It is also common to differentiate between the right to education (access) and the right **in** and **through** education (quality and relevance). The analysis of the different experiences in integrating human rights principles is organised accordingly below.

Access dimension

Access to education (and, thus, non-discrimination and equality) for different marginalised groups was a central concern in all the experi-

ences presented. In some contexts, children excluded from the education system are not a «marginalised group» but a majority (e.g. in Senegal, where schooling rates are below 50% in many areas). Although the presenters did not report specifically on gender issues, equal access for boys and girls is a key issue.

A HRBA to education strengthens the conviction that «everybody counts» and «should be counted». This has generally led to progress in education data and statistics, although much remains to be done, especially regarding disaggregated data (according to gender, linguistic/ethnic communities, rural/urban, etc.), as well as data on who remains in education (e.g. who completes primary education and not just who accesses the first years) and, more generally, reliability of official data published by governments. Reliability is generally very low, for technical and political reasons, owing to, among other things, the pressure to reach the MDGs and other internationally agreed quantitative targets.

Generally speaking, a clearer picture on «patterns of access» to education has stimulated a better understanding of the causes for non-enrolment. A HRBA to education offers a good analytical framework for understanding the causes of exclusion, as well as its consequences. In this regard, the key question is: What other rights are denied as a consequence of the denial of the right to education, and why? (e.g. unbalanced gender roles; lack of access to (self)-employment, to information, etc.; lack of ability to exercise civic rights, etc.). The different presenters emphasised multiple obstacles to accessing education in their contexts. These included:

■ Pakistan: Poverty; no chance for children to combine support to their family and school attendance; rude teachers; etc.
■ Senegal: School/community gap; no learning happening in schools (only 6% of learners master 70% of the curriculum by the end of primary education); etc.
■ South Africa: Families affected by HIV/AIDS; poverty; patriarchal society; hunger affecting attendance and learning; lack of emotional wellbeing; etc.
■ Serbia: Discrimination against Roma communities in general; etc.
■ Bhutan: Remoteness of villages in rural areas; etc.

A HRBA fosters a systemic vision of education: both the causes and consequences of inclusion in or exclusion from education are strongly linked to other social, cultural, political and economic dimensions. This vision must be the foundation for any targeted education intervention. For example, an intervention to improve the realisation of the right to education of Roma children can not be focused on Roma communities alone. It is necessary to work with the «majority» and tackle more general patterns of discrimination.

Quality and relevance dimensions

Access to education in itself is not enough to guarantee the right to education. It also entails the dimensions of quality and relevance (reflected in the «acceptability» and «adaptability» capacities). Education is not «good in itself»: it can in fact be disempowering if, for example, cultural, linguistic, gender or other discrimination occurs.

While the right to education clearly states that education must be acceptable (for learners) and adapted to their situations, the key questions are: What is quality and relevance? Who defines it and how? The different presenters noted: i) that quality and relevance is defined contextually; and ii) that this definition must be the result of a social and political dialogue process among various stakeholders, including learners (and thus children) themselves. Examples of the contextual definition of quality include:

■ In Bhutan, where the national education policy is meant to contribute to Gross National Happiness, principles enshrined in the CRC provide a good framework to define the quality of education around the concept of child friendly schools.
■ In South Africa, in communities highly affected by HIV/AIDS, the relevance of education is linked to the ability of schools to provide healthcare and other social services to children and their families.
■ In Senegal, consistent work with learners and their communities helps them define what they consider to be relevance and quality. The results are quite far from the «classic» schooling «imported» through colonisation.

The **CRC provides a good framework** and/or starting point for defining the quality of education contextually. It entails the principles and dimensions of non-discrimination; participation; empowerment of children; cultural relevance; gender sensitivity; protection and health promotion; school/community partnerships; etc. The quality and relevance of education should be defined according to its contribution towards allowing learners to exercise other rights. **Education is a**

right in itself but also a **means of accessing other rights** (access to information, political participation, work and income, health, etc.).

Regarding the **inclusion of human rights principles** *in* **education** (in the classroom and in the teaching and learning process), it is important not only to teach the principles but also, more significantly, to **live them concretely**.

In order to be accessible and relevant to learners, education must be **adapted to different situations and characteristics of learners and their communities**. Adapting education does not, however, mean providing «special» education and measures to integrate children and young people from the margins into mainstream education system. **Education systems must be transformed to become more inclusive**, to respond to the diversity of learner situations and characteristics and to integrate this diversity in a coherent way.

Accountability and transparency
Presenters showed how **accountability and transparency are fostered**. For example, in Burkina Faso, research on the measurement of the right to education consisted in defining indicators to assess the situation in relation to the four capacities. Indicators were defined in a participatory process, involving researchers from different backgrounds, representatives of government and NGOs, etc. The results have been broadly communicated, including in African national languages, and are conceived as the starting point for a social and political dialogue on education and as a mechanism for the improvement of the education system. Various lessons can be learnt from the experience. Among others:
- A broad range of stakeholders (including parents, teachers, etc.) should have a say in the definition of the data that should be made available to them (they should not only be seen as consumers at the end of the process). In certain contexts, this means translating this information into different languages.
- Data allowing monitoring of progress should be used to **animate a social and political dialogue**. These should be used as a starting point for searching collectively for solutions in broadening access to quality and relevant education.

Rights holders and duty bearers
The group discussed how far the concepts of rights holders and duty bearers actually bring

real changes. A clearer vision of what a **HRBA** entails has **strengthened a reflection on the roles of the various stakeholders** involved in development. For example, it has helped the Pestalozzi Foundation move from a «classic» charity role of «helping beneficiaries or recipients» to one working with rights holders who should be strengthened in their actions to claim their own rights. It has helped Enda move from a «substitution» (for the state) role to a more political lobbying one (with both duty bearers and rights holders).

Presenters emphasised the need for **constructive attitudes with duty bearers** (negotiation; continuous dialogue; common search for solutions and common interests; capacity building of government officials; etc.). They also warned of civil society organisations carrying out work that undermines the ability of the state to fulfil its duties. The role of development agencies might very often be to help create a «space» for dialogue between rights holders and duty bearers and to strengthen the capacity of these actors to negotiate and collaborate.

There were some discussions about **teachers** as both duty bearers and right holders. It is crucial to make teachers not only aware of their duties but also more able to fulfil them. In South Africa and Pakistan, great progress has been made simply by showing teachers the reality of working with HIV/AIDS-affected children. There were also discussions on **children**, whose role as rights holders has been strongly reinforced by the CRC and, more generally, by a HRBA. Children also can be involved in defining the teaching and care that they need.

Lessons learnt, good practice and major achievements in the integration of human rights into development
As previously noted, lessons learnt have been incorporated throughout this report as necessary, including the previous section.

Obstacles, challenges and risks
The obstacles in adopting a HRBA to education are numerous and difficult to summarise. The following points, common to several presentations, can be noted:
- In general terms, a HRBA to education challenges the power structures in society. Education systems are often fabrics of structural inequities and exclusion. In most developing countries, the formal schooling system has

been an instrument in establishing colonial societies. «Knowledge is power»; access to quality education is a *sine qua non* condition for accessing all other types of resources. In this context, the main question is: **Who has an interest in changing education in order to build a more equitable society?**

■ The **right discourse can, in some places, be «instrumentalised»** by powerful groups and thus be discredited by other groups. In Senegal, the government has used the CRC to prevent children from working without looking at the causes of child labour, for which state policies may be partly responsible. Human rights are perceived as imposed from outside and used against the interests of the most vulnerable.

■ Many countries have **excellent legislation in education but problems in implementing** relevant public policies. In Pakistan, education beyond the fourth grade is not compulsory, making it more difficult to combat child labour.

■ There are also more technical problems linked to the **trade-off between quality and quantity**. In the context of limited resources, is it more appropriate to use resources to give lower quality education to a larger number of children or the opposite?

■ Another common obstacle is the **multidimensionality of obstacles** that hinder access to quality education leading to other rights. These often arise outside the education field (e.g. family structures; early marriage; unbalanced gender roles; discrimination; linguistic barriers, etc.) and require collaboration with many other stakeholders in other fields. A HRBA stimulates innovative thinking here.

■ The **new aid modalities** and financing mechanisms (PRSPs, SWAps or the Fast-Track Initiative to reach the two education MDGs) tend to **focus only on access**, quantitative targets and formal education for school-aged children. This is an obstacle to a broader understanding of the right to education. In many countries, **longer-term education policies** are the key to more consistent progress. However, these tend to be defined by experts and ministry officials without sufficient citizen participation.

Achievements
General achievements included the following:
■ Human rights and a HRBA have contributed greatly to international progress in education. The EFA movement and the subsequent 2000

Dakar Framework for Action entail many HRBA principles; the global EFA agenda has had a very important **impact on the improvement of national policies**, especially for basic education.

■ **Progress is regularly monitored** (e.g. through the Global Monitoring Report on EFA) as well as the ways in which governments fulfil their duties. Civil society organisations regularly remind duty bearers of their responsibilities. The UN special rapporteurs have also contributed to better monitoring of progress.

■ Progress has been made in the **conceptual definition of the right to education**, for example through the more concrete use of the four capacities. The various concepts and principles have also been, explicitly or implicitly, the **starting point for many important social and political dialogue processes** (Burkina Faso, Senegal, Bhutan). A HRBA has also been a **framework to develop concrete tools for diagnosis and interventions** related to education (Who has access? To what education? Whose rights are denied? Why? Who bears duties and responsibilities?) A HRBA to education can stimulate educationalists to «think outside the education box». The indivisibility of rights promotes efforts to **link education to other rights**.

■ The **use of the CRC** in defining education is increasing, e.g. in child friendly schools.

■ In some countries, great progress has been made at **legislative level** (South Africa).

■ In some countries (Burkina Faso, Senegal, South Africa), experiences have proved that **schools can be adapted to the needs and circumstances of learners** excluded from education. Some of these innovations have succeeded in **influencing mainstream education** and have the potential to improve the effectiveness of education provision and thus tackle the issue of waste of resources. Much remains to be done in making education systems more inclusive, however.

Conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA to development

Recommendations
The recommendations shared in plenary and addressed by the group both to SDC and to themselves were the following:
■ **Promote ownership of human rights princi-**

ples, especially by rights holders, on the basis of endogenous values (encourage and support local initiatives).

- ■ **Promote spaces for social and political dialogue** around an inclusive and consensual vision of education (strengthen capacity of different stakeholders to engage in this dialogue at different levels).

- ■ Keep paying specific **attention to excluded or underprivileged groups**, while working to **change the whole system**.

- ■ Keep supporting **innovations** and their **scaling-up** to improve the quality and relevance of education at the system level. Continue to support efforts at national levels to **promote equality between different education provisions** (e.g. promote standards, accreditation mechanisms, equivalencies between formal and non-formal provisions, etc.).

- ■ Assess how to strengthen the **teaching and «living» of human rights in education**. This must be done in relation to endogenous cultures and social values. In many countries where human rights and changes in curriculum are touchy issues (Pakistan), this should be driven by the non-formal education «sub-system». In other countries (Bhutan), it is better to work implicitly with HRBA principles (without explicitly mentioning human rights).

- ■ Promote a **broad conception of education** (the right to education is not only for school-aged children; young people and adults who were not able to access/complete basic education must be provided second chances).

- ■ **Link education with skills development** (and advocate for strengthening systems of vocational skills training). Basic education alone is not enough to access other rights, especially (self)-employment. Owing to its involvement in technical and vocational education and training, SDC should try to promote both this link and the design of **better training policies** (including non-formal training provisions).

- ■ Facilitate analytical and operational **links between the right to education and other rights**. **Conceptual work** on the HRBA still needs to be done (e.g. how can the framework «protect, respect, fulfil» be used?). SDC should continue to promote learning and exchange on these issues.

- ■ Strengthen SDC comparative advantage and its experience in **mediating relationships between the different stakeholders** involved in education (especially governments and

NGOs) and work with multi-stakeholder approaches.

- ■ Support the **integration of human rights in PRSPs** (design, implementation, monitoring, and evaluation).

- ■ Facilitate **exchanges and joint learning** on human rights in education among Swiss COOFs/SDC HQ/partner organisations. SDC should promote the **exchange of tools and experiences** linked to the HRBA. Many already exist and efforts should not be duplicated.

- ■ Facilitate **training and knowledge management** of SDC partner organisations on human rights and education.

(Open) questions
The discussion in plenary and the subsequent work in the cluster pointed at the following (open) questions, comments and priorities:

- ■ Many people think that education is the exclusive business of the state because the state usually controls the curriculum, trains the teachers, etc. More work should be done to build a participatory vision of education policies. **Education is too important for citizens to be kept out of democratic processes**. Education is usually among the main concerns of any parent in the world and people are generally very willing to engage in discussing education issues if they are empowered to do so.

- ■ The concept of **integrating diversity always requires careful explanations**. People tend to think that, for example, integrating minorities into public education means that they have to abandon their cultural identity. Official formal education systems are not static institutions. Even if the forces of inertia are strong, they must be transformed to become more inclusive institutions able to recognise and celebrate diversity.

- ■ The **role of education in conflict and post-conflict situations** should be looked at more carefully. Education systems are extremely powerful, able to disseminate distorted visions of «the other», of history, etc. Aid agencies can play a positive role in providing a space for democratic dialogue among different stakeholders around these issues (e.g. the teaching of history in the Balkans).

- ■ More attention should be paid to the issue of **privatisation**. What are the consequences, for example, when the children of the elite are all schooled in private institutions? What occurs in terms of widening social inequities? Where do

private stakeholders (including religious organisations, private-for-profit schools, etc.) stand in the duty bearers and rights holders scheme?

Next steps
- ■ **Keep networking!** Participants were highly motivated to stay in touch and deepen conceptual work and exchange of experiences.
- ■ As a first step, SDC headquarters will organise the joint **elaboration of a fact sheet on the right to education**. The participants will act as a sounding board in this process and in the elaboration of the new **SDC strategy for education and training**.
- ■ SDC headquarters will also **link participants to different existing networks** and bring to these the preoccupations raised by the cluster group.
- ■ Els Heijnen-Maathuis, based in Bhutan, will **share information** (through a newsletter) about **inclusive education in Asia** relating to different issues linked to HRBA.
- ■ All the participants can share **tools, documents and information about training opportunities**.
- ■ SDC headquarters, in collaboration with participants, will examine the opportunity to **organise a second meeting** in 12 to 18 months, to deepen understanding on the questions raised and foster collaborative learning on these issues.

Working Group 2: Report on Human rights and Gender-based Violence: Protecting Women's Rights

Introduction to participants and brief overview of their experiences

The working group on gender-based violence (GBV) was composed of participants from: SDC partner organisations based in India (Unnati); Malaysia (Global Knowledge Partnership GKP); Lebanon (UNODC); Pakistan (UNICEF); the United Kingdom (International Planned Parenthood Federation IPPF); Zambia (Psychosocial Care and Support for Children REPSSI); and Switzerland (CFD). Also in attendance were participants from the Swiss COOFs in Tajikistan and Vietnam; and SDC Head Office in Bern (Governance, Social Development, and UN Development Divisions).

Participants discussed the issue of gender-based violence based primarily on their experiences (as follows):

■ Using CEDAW as a reference for activities against domestic violence against women (South Africa and Nicaragua).
■ Integrating a HRBA into humanitarian assistance to survivors of sexual violence in conflict and post-conflict situations in the Great Lakes Region (Eastern Congo and Burundi).
■ Necessity of organisational change when embracing a HRBA.

■ Anti-domestic violence project (Vietnam).
■ Project on Reduction of Violence against Women (Tajikistan).
■ UNICEF's programme for the protection of children's rights (Pakistan).
■ Programme for the inclusion and protection of children (Zambia, Malawi).
■ Programme on juvenile justice (Lebanon, Jordan).

The discussion was facilitated by Ms Sandra Bernasconi, SDC Social Development Division. Ms Milena Mihajlovic, SDC Governance Division, was the rapporteur.

Integration of human rights into development projects, programmes and policies

All participants were consciously working with human rights, although in various ways. All were working at policy, programme or project level, but most presented project-based experiences. As cases and presentations were diverse and time was short, commonalities or differences/divergences of approaches were not discussed.

Human rights were mostly integrated into the organisations' work by using human rights conventions and human rights principles as a framework/reference for policies, programmes and projects (South Africa, Great Lakes, and Tajikistan). Organisations used specific rights to develop policies, activities, etc. (Pakistan, Zambia). Some organisations used a systematic and comprehensive HRBA. National laws on human

rights proved to be theoretically useful, but in practice were often not implemented (lack of will/mechanisms, South Africa and Tajikistan).

The most important issues discussed included: the problem of human rights language/communication; the allocation of state budgets for the implementation of human and especially women's rights; accurate sex-disaggregated data as a basis for human rights activities; working with human rights rather than just talking about them (as positive results sometimes help to convince reluctant authorities and partners); the fact that the police are an important but also problematic factor in fighting GBV; the need for functioning implementation mechanisms for human rights; capacity building for state and non-state actors; the usefulness of building strategic alliances and supporting local networks; the significance of accurate information (ICT); the importance of functioning state institutions (especially at local level); the significance of culturally adjusted implementation strategies; and the fact that men are often forgotten, as perpetrators and as victims, and that a HRBA can help include them.

Lessons learnt, good practice and major achievements in the integration of human rights into development
Promotion of organisational/cultural change
In the case of IPPF, the promotion of organisational change proved to be crucial. The boards of IPPF used to be all male; more women were included over time. At the beginning, the organisation distributed contraceptives to families; this focus had to move over time towards dealing with GBV. IPPF went on to create a charter of 12 rights, based on sexual and reproductive rights, which it is now using with partners. In the case of the Project on Reduction of Violence against Women (Tajikistan), the local implementing partner was able to realise that it was discriminating against local partners from rural areas. This problem was solved through a participatory approach.
Context-adapted strategies
It proved to be useful to choose implementation strategies for human rights-based projects that were well adapted to the context (political, cultural, etc.). In Lebanon, for example, a coffee shop for lawyers was set up in order to allow lawyers to communicate freely about legal reform.

Mapping of key stakeholders
Sometimes, important stakeholders are missed in the implementation of human rights projects because of prejudice or because they are «forgotten», especially women and children. The promotion of active participation of children as advocates for their own rights was useful in the context of REPSSI projects in Zambia and Malawi.

Strategic alliances
IPPF, after trying to do things alone, saw that strategic alliance with other organisations helped them to be more successful in the implementation of their policy and programmes. In Tajikistan, donor coordination helped to increase the positive outcome of the Project on Reduction of Violence against Women, as different donors coordinated and supported different but complementary activities.

Implementation of human rights principles (participation and inclusion)
In the cases of Pakistan and Zambia/Malawi, a focus on participation and inclusion helped to empower children and promote their rights in a much more effective way.

Support civil society (shadow reports)
Increasing state accountability was considered an important issue by the participants. The most useful approach had been supporting civil society organisations. The establishment of shadow reports by NGOs was mentioned as a useful means of enhancing state accountability.

HA interventions becoming more comprehensive
The example of the Humanitarian Aid Programme in the Great Lakes Region can be presented as a good practice: there, the entry point was the violation of sexual rights of women in war contexts in Eastern Congo and Burundi. Going on to work with women in the post-war context, the approach became successively enlarged: GBV became an issue, medical and legal aid was provided, and GBV and women's rights were treated in a more comprehensive way.
Linking GBV, HIV/AIDS and human rights
In several cases it was emphasised that GBV should be linked with HIV/AIDS, not only as a health matter but also as a comprehensive human rights issue. HIV/AIDS is connected with GBV, is a consequence of GBV, and can also be a consequence of human rights violations (e.g.

through rape by infected soldiers, a practice used consciously in certain war contexts as a «weapon»).

Conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA to development
Many general recommendations were made; a summary of these is as follows:

■ Contribute to empowerment of male and female vulnerable groups; contribute to creation of quality protection services for abused persons and establish self-help groups; support abused persons to advocate their rights; carry out risk analysis of a given advocacy strategy or action («do no harm»).

■ Build alliances, work cross-sectorally, strengthen local networks, and create solid partnerships for HRBA. Support participation of a broad stakeholder basis (e.g. children) and ensure mapping and analysis for strategic partnerships. Implementation partners/activists (social workers, human rights activists etc.) should be protected.

■ Promote strategic capacity building of governments, experts, NGOs and individuals, based on quality minimal standards. Address structural reproduction of masculinities, stereotypes and prejudice in the police. Build capacity regarding GBV and child protection. Monitor capacity building through the development of specific guidelines in different areas; make sure that activities/measures have their intended outcomes.

■ Provide adequate implementation mechanisms, human resources (capacity building according to minimal standards) and financial resources/budgets for CEDAW implementation. Support states/decentralised state structures (especially at local level) in identifying, establishing and implementing tasks, roles and responsibilities regarding human rights (especially women's rights), including budget allocation.

■ Go to the level of policy dialogue (e.g. collaboration in a national commission) and work on state accountability; adequate resource allocation for human rights realisation; and decentralisation and efficiency of ministries and commissions working on gender and women's rights at national, regional and local level. Promote strategies to increase state accountability by civil society (e.g. shadow reports by NGOs), parliament, media, etc.

■ Promote legal reforms at all levels, taking into account dual legal systems (e.g. family and inheritance law etc.) in favour of women and girls; support lobby groups for campaigning and research groups for screening and analysing laws; train judges on gender.

■ Widen scope; e.g., make GBV a public health issue. Link GBV to HIV/AIDS issues.

■ Support/promote sex-disaggregated data collection (high quality, legitimate, state and non-state/independent) towards making a case.

■ Institutionalise a gender audit of all partners.

■ Adjust human rights communication to partners/audience/target group/cultural background.

■ Choose a long-term commitment (at least six years).

Final recommendations for next steps based on context analysis
During the final discussion, participants preferred first to put together elements of a context analysis before moving on to formulate recommendations for next steps. The context analysis included the following points:

■ GBV always happens as a consequence of unequal power relations.

■ Patriarchal culture, values, institutions and structures lead to further vulnerability of women in terms of poverty, health, insecurity and lack of access to basic human rights (here, participants warned about linking poverty and GBV: GBV also happens in other contexts but poverty can still represent a cause and a consequence of GBV).

■ Patriarchal structures are linked to GBV.

■ GBV is not only violence against women; other vulnerable groups, such as homosexual men and women, must be included in GBV discussions.

■ GBV is the most prevalent human rights violation and the most neglected universal problem.

■ GBV leads to isolation, stigmatisation and exclusion.

After stating these points, the following recommendations were made:

■ The SDC institutional gender policy must address sexual harassment and all other kinds of abuse.

■ Formulate, implement and enforce policies against any kind of GBV abuse within SDC itself and within its partner organisations.

Make sure that GBV is taken on board by every partner and make sure that there is full participation on this issue.

■ In many cases, vulnerable persons are abused sexually and in other ways by peace keepers, aid workers and other expatriate staff. SDC should contribute to formulating, implementing and enforcing policies that prevent/punish abuse by expatriate staff.

■ SDC should promote and implement gender-responsive budgeting and gender audits in its gender mainstreaming policy and practice in its own organisation and with all partner organisations. Gender should be mainstreamed into all human rights policies. Apply conditionality to partners, who must mainstream gender in all their activities and work with abused persons (women, girls, young men, boys, etc.).

■ Take care not to contribute to reinforcing stereotyped concepts of sexuality.

■ A focus needs to be directed at accessing justice by the abused person; the focus should also be on care and protection: combine care and advocacy.

■ Create safe spaces/enabling environments for women to speak up against violence.

■ GBV is the consequence of the non-respect of human rights in practice: all human rights influence the implementation of women's rights. Support people to contribute to translating all human rights into women's rights and use a comprehensive concept of GBV (violations of all women's rights), as the fulfilment of all human rights prevents discrimination against women.

■ Recognise that GBV is closely linked to poverty and conflict – GBV is caught up in the vicious cycle of poverty and conflict.

■ Other clusters should include gender in their discussions: all clusters are linked and gender-integrated.

At the end, the following key question was asked: **Do we have the political will to implement human rights as women's rights?**

Working Group 3a: Report on Human rights and the Rule of Law: Promoting Access to Justice for Poor and Marginalised People

Introduction to participants and brief overview of their experiences

The 1st working group on promoting access to justice for poor and marginalised people was composed of participants from: SDC partner organisations based in India (Centre for Social Justice); Vietnam (National Legal Aid Agency, Ministry of Justice); and Switzerland (Terre des Hommes, Institut Universitaire d'Etudes du Développement IUED). Also in attendance were participants from the Swiss COOFs in India, Pakistan and Russia; the Swiss Mission to the UN in Vienna; and SDC Head Office in Bern (Governance and East Asia Divisions).

Participants discussed the issue of access to justice based primarily on their experiences (as follows):

■ Human rights projects in Russia, supporting NGOs addressing law enforcement
■ Juvenile justice programmes implemented by Terre des Hommes and the United Nations Organisation for Drug and Crime Prevention (UNODC)
■ A legal aid programme in Vietnam
■ Access to justice for the most marginalised in the State of Gujarat in India

The discussion was facilitated by Ms. Véronique Hulman, Swiss COOF India. Ms. Catherine Favre, SDC Governance Division, was the rapporteur.

Integration of human rights into development projects, programmes and policies
Human rights framework
In most of the presentations, human rights norms and standards were used explicitly as an entry point (right to fair trial, right to equal protection, rights of the child, freedom of expression). Participants stressed the fact that access to justice was both a right in itself and a means of achieving other rights. It was noted, however, that human rights language is sometimes too sensitive and that there is a need to use appropriate language adapted to context. At the same time, the adaptation of the language to context should not lead to the dilution of its content by the use of too soft a terminology.
Understanding partners as duty bearers and rights holders
First of all, justice must be understood as a system in which there is a need to build a bridge between the people (rights holders) and the judicial system (duty bearers). To be able to do this, it is necessary not only to consider the formal system but also to take into account traditional (customary law) and informal systems. For example, the Centre for Social Justice in Gujarat (India) promotes paralegal services as a way of using the legal system strategically for maximum benefit at the same time as being able to convert a social problem into a legal case while offering a

link between the individual, the community and the lawyer.

Participants agreed that there was a need to understand and recognise problems faced by duty bearers and to avoid considering them as the enemy. It is important to make the distinction between human rights violations that are intentional and those that are made as a result of a lack of awareness and/or capacity.

Participants stressed that capacity building of duty bearers was not just a technical issue and that there was a strong need to work on attitude and behaviours. This should occur over the long term, in order to allow time to build mutual confidence and space to challenge and change behaviours. A comprehensive programme for police on the rules of non-discriminatory behaviour with regard to ethnic minorities has been successful in Russia. In order to sensitise the police on respect of human rights, the programme started by informing them of their rights as citizens and civil servants. The use of role play brings good results in sensitising duty holders and rights holders on the problems faced in their respective functions, especially when used in a multidisciplinary setting (for police, social workers, judges, journalists etc.).

Participants raised some questions regarding the issue of duty bearers and rights holders: Is the state the only duty bearer? What about the responsibilities of NGOs when they are service providers? What about the accountability of the informal justice system, the private sector and donors?

Principle of equality and non-discrimination
The discussions identified that a focus on vulnerable groups was a must in terms of access to justice (gender, castes, ethnic minorities, children in conflict with the law). It is key to build support based on the realities of excluded and discriminated groups. This raises the responsibility not only of governments but also of donors, whose priorities sometimes do not reflect those of marginalised groups. Equality and non-discrimination not only are human rights principles but also are important values to be promoted in development cooperation in order to achieve mutual respect of rights and to mitigate conflicts.

The principles of equality and non-discrimination are important not only in enforcing the law but also in challenging laws and policies that are discriminatory. These principles are also the basis for promoting alternative mechanisms in order to

respond to specific needs (e.g. alternatives to detention for children in conflict with the law, alternative dispute mechanisms) and to avoid increasing the burden on the formal judiciary system.

Principle of accountability and transparency
Strengthening the capacity of duty bearers to implement human rights progressively should focus on accountability of duty bearers towards rights holders (supply side), linked with the empowerment of rights holders to create a demand for accountability. The use of observations and recommendations made by the human rights treaty bodies had proved to be a good instrument for monitoring the accountability of duty bearers.

Principle of participation and empowerment
This principle was less discussed. Development cooperation is putting a great deal of attention on participation, but mainly on the issue of the participation of beneficiaries in project management. Participation as a duty and a right is more difficult to address. In the area of access to justice, participants agreed that rights awareness and the provision of legal services were important, but that more was needed in terms of participation and empowerment of rights holders. In this perspective, the use of existing local committees and governance bodies as platforms to address issues of participation, justice delivery mechanisms and discrimination at local levels can be useful, as applied by the Centre for Social Justice in Gujarat.

Lessons learnt, good practice and major achievements in the integration of human rights into development
Access to justice is about challenging powers; we need to be aware that elites do not have an interest in this. Elites usually opt for the *status quo* and are suspicious about human rights. It is common to hear that the international human rights framework is an imposition of Western values. For this reason, it is important to document human rights violations to make them visible and to bring them on to the decision-making agenda. Civil society has a key role to play in this process.

The effectiveness of work to support access to justice is difficult to measure. However, examples show that advocacy on reviewing the legal framework is successful when it is linked with field experiences. It was also pointed out that support to the informal system reinforces the for-

mal system, to the benefit of poor and marginalised people. The institutionalisation of the informal system is a recognition of its value and effectiveness (e.g. paralegals at local level in India). Participants highlighted that human rights norms and principles brought new criteria and lenses for assessment, not only in the area of access to justice.

The issue of the **change of government and partners** was often a problem for development cooperation, although not specific to access to justice and the HRBA. In this regard, the human rights framework provides long-term coherence for analysing context and providing arguments to prioritise actions, beyond the ideological profile of the government and/or counterparts. It is important to **invest time** to build relationships with authorities and to create a space to address human rights violations openly.

In some countries, the existence of **dual systems** (formal judiciary and customary law) creates tensions (for example, the existence of the civil code and Sharia law in Muslim countries, and its consequences for women). In this case, it is important to see these two systems as complementary and to avoid opposition, in order to keep a space for dialogue with traditional leaders in adapting interpretations of the law.

Increasing accountability
In order to increase accountability, the legislative framework is necessary for leverage; loopholes in the law are not an excuse for a lack of action. There is a constant need to review existing laws and, if necessary, to challenge them, in order to ensure that the principle of accountability is duly referred to in the legal framework. At the same time, monitoring should focus on the impact of enforcement on poor and excluded groups to identify areas where laws need to be revised in order to better respect and protect the rights of the most vulnerable groups of the population.

Corruption is a key issue arising from a discussion of accountability and transparency, although it is not limited to the area of access to justice. Some experiences in this area were: ensuring the presence of lawyers in police stations or court; simplifying procedures and making them available and transparent (including fees); reviewing the legislative framework in order to reduce the power held by one person and thus the risk of corruption; organising litigants to make corruption public; working with existing anti-corruption organisations; publishing all court decisions;

allowing access to information; and using the media strategically, without putting pressure on the courts to influence their decisions.

Rights awareness
When it comes to rights awareness, it is important to demystify the law. The Centre for Social Justice in Gujarat has identified some common myths about the use of the law:
- **Taking recourse to the law will guarantee justice**. In reality, the law alone may not be able to achieve justice. The law must be used as one of the tools in the overall strategy of any movement/organisation. One must be aware of the limitations of using law as a strategy (e.g. not everything that is unjust is illegal, slow pace of the justice system, hidden costs involved in court procedures etc.).
- **Law is blind**. In reality, the legal system is strongly tilted in favour of the haves rather than the have-nots. Caste, gender and anti-poor biases are very strong in the law implementing machinery. The energy and resources needed to win a poor person's case are much more than those needed in a rich person's case. Judges operate with their own biases.
- **Lawyers know the law**. In reality, typical commercial lawyers, especially at the lower levels of the judiciary, have limited understanding and knowledge of social justice.

It is also important to disseminate success stories of people who have won their cases, in order to show the potential of law enforcement and its application in daily life. ICT can offer good tools to generate the interest of the public.

The use of local actors for rights awareness and legal services was also identified as a good practice. In Vietnam, one of the lessons learnt by the National Legal Aid Agency was that training and hiring minority and disadvantaged people as legal aid collaborators was very effective since these groups had the advantage of contact and access.

Conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA to development
Human rights bring humanity and dignity, and their respect and protection are a condition for poverty reduction: exclusion is the major cause of poverty and those who are deprived of justice are mainly the poor and excluded. Access to justice means bringing justice **close to the people**. However, even when poor people can access jus-

tice, they do not make use of it because they do not trust its rules and procedures (corruption). It is important to demonstrate that justice can make a difference by publishing successes and proving that justice is relevant to people in their daily life. To ensure that the real problems of poor and marginalised people are addressed, it is important to build support based on their realities by applying a **bottom-up approach**.

Access to justice must be seen both as a sector and as a means of achieving other rights. Access to justice should therefore be promoted in other sectors (e.g. health, education, natural resource management etc.): it is not possible to fight for rights without justice. At the same time, an effective justice system supports the development of other sectors. The consequences of lack of justice (poverty, conflicts) cost more than the building of an efficient justice system. As a result, supporting access to justice is a cost-effective strategy for poverty reduction.

Justice is key to addressing discriminatory mechanisms, but justice disconnected from human rights norms and principles is only a tool of power in the hands of the elite. Working in the field of access to justice is not only a technical issue but also a key entry point to **addressing power relations and abuse**. It is important to apply a **systemic approach**, which means working with both rights holders and duty bearers and supporting the creation of platforms to connect them. Supporting access to justice should include the formal and informal justice systems and address the three levels of policy, programmes and institutions.

Capacity building of SDC staff and its partners is key for implementation, first on the definitions of human rights and secondly on the implications of working with a HRBA. It is also important to critically review practices of development cooperation. Human rights must be integrated at all stages of **project cycle management** (PCM); to be credible, human rights principles must be applied within an organisation.

It is important to use **human rights language** strategically and link the analysis of the context and the objectives of the programmes to specific human rights (e.g. right to fair trial, right to education, right to food etc.). Participation and empowerment are at the core of development cooperation work, but more thought needs to be given to going beyond participation in the project and towards addressing **participation as a goal in itself**.

Finally, it is key to build alliances with like-minded groups (bilaterals, multilaterals, NGOs) at policy and programme levels and to **strengthen coherence among Swiss actors** (development cooperation, diplomacy, and economic development).

Value-added of a HRBA
Participants concluded that a HRBA allows for:
- A better focus on marginalised groups.
- Sustainability and long-term investment in programmes rather than short-term project-based assistance.
- A chance for people to recognise their rights and participate actively in democratic transformation.
- More legitimacy for development cooperation.
- Participation and common language.
- Participation as not only a tool but also a right.
- A more systemic analysis and thinking (power relations).
- A prerequisite for development.
- An effective toolbox and handbook for working in the field.

Working Group 3b: Report on Human rights and the Rule of Law: Promoting Access to Justice for Poor and Marginalised People

Introduction to participants and brief overview of their experiences

The 2nd working group on promoting access to justice for poor and marginalised people was composed of participants from: SDC partner organisations based in Pakistan (Society for the Protection of the Rights of the Child SPARC) and Bolivia (Capitulo Boliviano de Derechos Humanos, Democracia y Desarrollo). Also in attendance were participants from Swiss COOFs (Bosnia & Herzegovina, Peru, Russia, South Africa, Tajikistan, Ukraine) and SDC Head Office in Bern (Governance and South Asia Divisions); and an SDC consultant with experience in community policing.

Participants discussed the issue of access to justice based primarily on their experiences (as follows):

- The traditional justice system and its linkages to formal justice (Peru).
- The elaboration of shadow reports and the use of international monitoring mechanisms for policymaking at a national level (Bolivia).
- Community policing (Romania and Bosnia & Herzegovina).
- Juvenile justice (examples from both Pakistan and Ukraine).
- Free legal aid (Tajikistan).

- Capacity building of (small claims) courts (South Africa).
- Social rehabilitation in prison (Russia).
- Support for NGOs working on social inclusion (Bosnia & Herzegovina).
- Experience at policy level (India).

Some examples involved primarily governmental partners, some programmes/projects were dealing with both governmental and non-governmental partners, and some were focusing primarily on non-governmental partners.

The discussion was facilitated by Ms Anne-Claude Cavin, SDC Governance Division. Ms Erika Schlaeppi, SDC consultant on governance, was the rapporteur.

Integration of human rights into development projects, programmes and policies

Most experiences related explicitly to one or several human rights principles. In the short time available, participants could not clarify how relevant these principles really were in designing, implementing, monitoring and evaluating the programmes. Some trends did appear, though:

- Equality/non-discrimination was referred to as an important principle when designing programme objectives, beneficiaries and approach.
- The principle of participation was rarely mentioned, whereas «empowerment» was often used as a general key objective (or hypothesis?) of programmes/projects. Although implicit, the concept of intercultural dialogue used in the examples from Latin America is

very much based on active participation of vulnerable groups in the shaping of public decisions regarding the implementation of human rights and development.

■ Accountability, although at the core of a human rights-based justice system, was rarely mentioned explicitly.

■ Transparency was often seen as an important feature of the desired behaviour of judicial or enforcement authorities.

In general, experience shows that principles are often taken up in the design of objectives and approaches, but it is generally less clear how these influence the implementation process and its monitoring and evaluation. There is no answer to the question surrounding what impact programmes/projects effectively had with regard to equality and non-discrimination, participation and empowerment, and accountability. Only a few experiences explicitly addressed all the principles mentioned; no example seemed to link these principles systematically.

Some examples (particularly those from South Africa, Romania/Bosnia & Herzegovina) concentrated on capacity building of government institutions, but without a clear focus on particular groups of the population. Most examples did, by means of their objectives, focus on benefits for vulnerable groups (indigenous communities, juvenile detainees, the poor). However, it was not always clear whether the focus of the programmes was disaggregated enough to make the programmes/project impact positively on the powerless within the targeted groups (indigenous communities, the poor). It remains open how much human rights were used to challenge mechanisms of social exclusion, which may be very complex.

Most of the examples presented referred explicitly to duty bearers and rights holders, and designed their interventions in response to this distinction. In general, they aimed at addressing both sides, although not with the same intensity. A majority of examples focused on interventions with regard to duty bearers; only a few examples primarily addressed the empowering of rights holders.

In the majority of cases, international and national human rights standards are used as an explicit reference framework at various levels. As international human rights standards specify obligations of state authorities (duty bearers), the international framework is particularly used as a legitimate basis for dialogue with state authorities at a policy as well as at a programme level (for example, juvenile justice, prison conditions). Interestingly, the two programmes primarily targeting institutions and capacity building of courts and the police did not refer explicitly to the international human rights framework, although international standards are relatively explicit on rights in court and its independence and impartiality, as well as on arrest and detention. However, these programmes expressed the opinion that, without the human rights standards, institution building would clearly lack a normative frame. The programmes/projects working with non-governmental partners used the international framework for lobbying and political campaigning for the legitimate interests of marginalised and vulnerable groups in the development process (national development plans, for example Bolivia). In the majority of examples, the objectives of the interventions regularly referred to international human rights in general, or to specific human rights. It was less clear how international standards were used in designing, implementing and monitoring the interventions.

The example of the programme on juvenile justice from Ukraine illustrates the changes brought about by the introduction of a HRBA. From an isolated intervention on prisons, this went on to a much more systemic view of the issues at stake. Noting that Ukraine's prisons were overcrowded and in bad shape, the SDC intervention started by rehabilitating prison buildings and training prison staff. It then went through a phase of analysing the most relevant causes for overcrowded prisons and identifying the most vulnerable groups of detainees. It next focused on the quality and speed of judicial decisions related to juvenile offenders, and ended after some years with a focus on crime prevention for juveniles.

Lessons learnt, good practice and major achievements in the integration of human rights into development

The explicit reference to the **international and regional framework has been seen as very useful in many cases**, particularly when it comes to defining the duties and responsibilities of state authorities (Ukraine, Pakistan, Bolivia, Romania/Bosnia & Herzegovina). Without this framework, there would be no legitimacy, nor any reference system for asking state authorities for accountability. The example from Bolivia shows how development interventions can contribute

directly to the effectiveness of the international monitoring process, through the production of a «shadow report» by a large coalition of NGOs. In addition, NGOs supported used the output of the international monitoring system (concluding observations, general comments) for advocacy and lobbying at national level (and tried to feed the design of national development plans with human rights considerations). For example, the agenda for agrarian reform was framed by the NGO coalition with recommendations of the UN monitoring committees, in order to profit from their legitimacy. In other cases, the reference to the international framework was not seen as so crucial. For example, in India (and South Africa) the national constitutional framework is also very relevant.

The discussion showed in particular that **human rights stand for a particular role of the judicial system**. The legal framework and the judiciary should be accessible for vulnerable groups to defend their interests in society and in public decision making. In many countries and contexts, the legal system has a repressive history; the connotation of rights is at best ambiguous and the judicial system was and is often instrumentalised by powerful elites to frame and impose their interests. Human rights challenge this perspective but, in reality, it is hard to transform institutions, change mentalities and build trust in formal judicial mechanisms.

Justice is not only an issue of state authorities. The two examples from Latin America try to **reconcile traditional perceptions of justice and alternative dispute resolution mechanisms with the formal justice system**, by means of dialogue between respective stakeholders (communities and judges involved). In their experience, (international) human rights are a challenge for both, and serve as a common minimal standard and a basis for dialogue. On the basis of experience, however, the participant from Pakistan questioned the utility of referring to traditional systems. In her perspective, traditional leaders and judicial mechanisms most frequently do not want to see their power limited by international human rights standards perceived as a Western concept.

An important challenge was seen in the **Western bias in the interpretation of human rights**. While the universality of human rights was not really questioned, some participants stated that they were interpreted in the light of Western liberal concepts of modernity. This resulted in a focus on civil and political rights instead of a broader perspective including economic, social and cultural rights. Human rights are not only about individual rights, but also about groups. However, in their view, there was no antagonism per se between traditional systems and human rights. There are many chances to accommodate traditional perceptions and mechanisms of justice with human rights and formal justice. In this sense, universality needs to be reconstructed bottom-up, recognising the diversity of interpretation and practice. In the Latin American examples, intercultural dialogue has been identified as a successful tool for bringing these different perceptions together, under the umbrella of international human rights.

Human rights are a relevant framework for defining the **relationship between the state and the citizens as well as among citizens and groups of citizens** within the society. Human rights (particularly the principle of non-discrimination) have been seen as particularly important as a normative basis for dealing with state partners, in all kinds of areas seen as development issues (e.g. access to and management of natural resources). In this sense, non-discrimination has an important collective dimension.

Human rights influence the **conception of the judicial system**. In many countries and contexts, judiciary was and is a tool in the hands of powerful elites, being used to impose their interests and powers. Human rights challenge this perception: justice is seen as a tool for holding power to account for realising all kinds of human rights, particularly the principle of non-discrimination. In this sense, it is crucial to base justice systems on human rights. Without human rights standards (independence, impartiality, due process for everyone), the justice system is not accessible for poor and vulnerable groups. By defining everyone as a rights holder, human rights are seen as an important tool for protecting vulnerable groups from abuse and for realising their rights and interests in general.

A main challenge for many participants is the **identification of duty bearers**. Who has which responsibilities and tasks vis-à-vis the rights holders? According to the complexity of state structures and the distribution of responsibilities and resources, it is not always easy to identify concrete duties, the corresponding duty bearers and the relevant lines of accountability. Moreover, the various duty bearers often interact – and some of them are even rights holders vis-à-vis others. Positive experience has been made in investing in

coordinating various duty bearers (e.g. in the field of juvenile justice).

Another challenge was seen in the fact that it is often **difficult to motivate state authorities to comply with their duties**. Accountability mechanisms (for example internal disciplinary measures, the judicial system and supervision by parliament) are often not strong enough to counter incentives for bad behaviour (abuse of power, corruption). Awareness raising and training is important, but not sufficient to make state officials change their behaviour. In some cases, the fact that authorities were bound by international obligations and risked international criticism was seen as decisive for building up political will for change (e.g. Romania: the aspiration to join the European Union was a major factor for change).

Good practice with regard to partners and approaches: general principles have been confirmed, but some particular challenges and potentials with regard to human rights have been stressed:

■ **Ownership of duty bearers**. State authorities were often referred to as difficult partners, with their own agendas that are not only (or even not at all) based on realising human rights. Some good practice was mentioned, underlining the need for awareness raising within the state structures; a coherent approach by various donors/actors; aligning around human rights; an open and transparent approach by donors; the building of trustful partnerships; etc. However, since human rights can be seen as a challenge for power holders, the building of ownership is a general challenge.

■ There is a need for **cooperation with a variety of duty bearers**.

■ There have been good results when **approaching both duty bearers and rights holders**. It is necessary to assess gaps and needs with regard to both duty bearers and rights holders before focusing on one or the other.

■ **Ownership of rights holders**. It has been asked whether we can always reach rights holders by working with existing NGOs and civil society organisations. Are they representative and participative enough? Is working with CSOs always a means to get positive results for a reasonable number of rights holders? As an example of good practice, Bosnia & Herzegovina tried to select partners carefully in terms of outreach to vulnerable groups. The challenge remains with regard to really empowering rights holders, the question of

sustainability, and the fact that many NGOs are «donor driven».

■ Human rights are a **basis for alignment** among several actors (international donors, NGOs, government authorities) (e.g. Bolivia).

In general, human rights have the potential to give us a **more comprehensive picture of development «problems»** and issues. Development issues are seen in terms of duties and rights, of a relationship between rights holders and duty bearers, linked up with the existing legal framework and with judicial and political accountability.

From the SDC institutional point of view, there is a big challenge in terms of coherence. Since Swiss foreign policy is not only about promoting human rights, Swiss external interventions can be conflicting. What, for example, can be the role of human rights standards in Swiss economic cooperation with partner countries?

On several occasions it was emphasised that integrating human rights into development means a change in values and attitudes for duty bearers and rights holders as well as for actors supporting them (donors and NGOs). In a long-term perspective, targeted **investment in behavioural and institutional change as well as patience** is needed.

Conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA to development
Several participants emphasised that comparison with other contexts and identifying differences and similarities had been interesting and helpful in reflecting on their own work. For example, the idea of «intercultural dialogue» based on human rights put forward by the participants from Peru and Bolivia was seen as something to be explored also in Central Asia. The HRBA was identified as helpful and «not as a straightjacket». Several participants said that they were more conscious of the need for the involvement of both duty bearers and rights holders in their own working contexts: for example, it seems no longer to be appropriate to work only with informal judicial institutions; there is a need to explore the role of the state as a duty bearer in the field of justice. Others said that the notion and relevance of state obligations became much clearer to them, and the recommendations emerging from the international monitoring mechanisms could be used much more in policy dialogue with state institutions. The need for more dialogue between all actors was also underlined. Some

participants said that they would try to apply HRBA elements to their programme and project work. It was also stressed that there were still open questions to be clarified together with partners at home. What do they think about the HRBA? How can it be tackled more concretely?

Several recommendations were made to SDC with a view to implementing its Human rights Policy:

Institutional
- Design a practical guide on the integration of HRBA into SDC work. Develop a set of concrete tools (to be contextualised), to analyse, intervene/transform, mainstream, report and assess impact.
- Ensure support for a HRBA by management at all levels.
- Ensure that the human rights agenda is integrated coherently into the policy and programmes of all Swiss actors (including seco).

Methods and approaches
- Simplify/demystify human rights language, give concrete examples, and make links between concepts and good practices.
- Preserve the holistic vision of human rights and development.
- Foster intercultural dialogue for human rights.
- Balance different approaches (individual **and** collective rights, strengthen state **and** society, international conventions **and** cultural diversity).
- Advocate for human rights within government institutions.
- Cooperate with state institutions and strengthen them in their role as duty bearers.
- Adopt an approach that is flexible enough to be accepted and applied in different contexts.

Next concrete steps
- Develop a lexicon that defines important terms and concepts, with a view to developing a common understanding of the HRBA within SDC and among partners.
- Elaborate several operational tools (checklist for context analysis, for assessment/selection of partners, for integrating human rights into country strategies, programmes and projects).
- Establish a forum for exchange of good practice, information, advice on the internet and/or intranet.
- Allow for networking between COOFs and partners to exchange and learn from each other (via internet, field visits, etc.).

- Intensify policy dialogue with a view to advocating for human rights.
- Work with state institutions in their role as duty bearers.
- Ensure that COOFs have adequate human resources to apply the HRBA.
- Invest in capacity building on HRBA (headquarters, COOFs, partners).

Working Group 4: Report on Human rights in Conflict and Post-Conflict Societies: Promoting Transitional Justice

Introduction to participants and brief overview of their experiences

The working group on promoting transitional justice was composed of participants from: SDC partner organisations based in Colombia (Support to Victims for Emotional Recovery AVRE); Ecuador (OHCHR); the Occupied Palestinian Territory (Treatment and Rehabilitation Centre for Victims of Torture TRC, Palestinian Counseling Center PCC, Strengthening Human rights and Good Governance Mu'assasat) and Switzerland (International Council on Human rights Policy ICHRP, Helvetas). Also in attendance were participants from Minority Rights Group International (MRG); the Swiss COOF in the Occupied Palestinian Territory; the Political Division IV of the Swiss Department of Foreign Affairs; and SDC Head Office in Bern (Middle East and North Africa, Humanitarian Aid Africa, and Conflict Prevention and Transformation Divisions).

Participants discussed the issue of transitional justice based primarily on their experiences (as follows):

■ Country cases highlighting challenges and experiences of working on human rights in countries in conflict (Occupied Palestinian Territory, Colombia, Middle East and Africa, Sri Lanka).

■ Good practice project undertaken in Ecuador.
■ Research and advocacy experience by ICHRP and MRG.

The discussion was facilitated by Mr Jean-François Cuénod, SDC Conflict and Transformation Division. Ms Corinne Lennox, MRG, was the rapporteur.

Transitional justice focuses more than penal justice on the perspective and needs of the victim, giving victims redress but also the opportunity to express what and how they have suffered. It also addresses the needs of a society as a whole for reconciliation. This means investigating who is ultimately responsible for the human rights violations that occur during a conflict or crisis. Transitional justice focuses on much more than punishment: psychological and symbolic dimensions are also extremely important for peace building. Access to truth is crucial in addressing the pain individuals and communities suffer during conflict.

Transitional justice processes present a number of challenges. In working towards negotiation, there is a risk that promises of amnesty may be granted which can create problems for long-term sustainability of peace when the suffering of victims of human rights violations is left unaddressed and perpetrators go unpunished. Sequencing also represents a challenge: it is not always clear what the priorities should be for justice after a peace agreement. The relationship between traditional forms of justice and the formal justice system can also be unclear, although

it is acknowledged that traditional justice can be an important tool when used effectively and in conformity with human rights standards.

Participants noted that it was not always clear when «post-conflict» transitional justice measures should begin. The conceptual nature of «transitional justice» – implying as it does a post-conflict phase – became one focus of the discussion. Participants felt the need to consider transitional justice not as synonymous with peace but as something necessary to address **throughout** the conflict. Many of the measures taken by participants in their work (psychosocial support, advocacy on behalf of victims of human rights violations, training on human rights to duty bearers) have been undertaken while conflict is ongoing.

Integration of human rights into development projects, programmes and policies
In all cases, human rights were at the basis of what participants were supporting and HUMAN RIGHTS principles underlay their work. However, there was no conscious formal application of HRBA against which key questions could be evaluated. This is in part because of the exceptional circumstances presented by ongoing conflict situations.

In the **Occupied Palestinian Territory**, the occupation by Israel impacts significantly on the realisation of human rights, justice, governance and development. Democracy, public participation and the basic rights to freedom and independence that are essential to a HRBA are difficult if not impossible. Restrictions on freedom have contributed to the rise of the NGO sector which continues to deal daily with the challenges of securing human rights in an insecure and restricted environment. Primary activities of those who presented their experiences included: working with rights holders (supporting survivors and their families, lobbying duty bearers); working with duty bearers (providing training for security forces on human rights issues, cooperating with human rights NGOs); and providing core programme funding to human rights and good governance activities.

Human rights organisations in the Occupied Palestinian Territory have to react to emergencies, often at the expense of long-term strategic planning. Questions existed in terms of who was the clear duty bearer (the Palestinian Authority or the Israeli government) and what legal obligations applied under occupation. It was clear that even in times of conflict, certain human rights should not be derogated from. External actors, like the UN, could play a stronger advocacy role on human rights. In terms of a HRBA, principles were there to be lived by: this was deemed more important than being preoccupied with human rights and HRBA terminology.

In **Colombia**, the near end of the conflict has raised the problem of distinguishing combatants and non-combatants; in particular, it has proved difficult to determine the level of involvement of civilian populations. This is problematic for a HRBA in terms of accountability. The lack of acknowledgement of victims' rights has made this group even more vulnerable. Psychosocial support can be important both for victims and also combatants in overcoming impunity. On the issue of reparations, economic compensation is not always sufficient since damage caused is often cultural and humanitarian. For this reason, symbolic forms of reparation should be supported. Human rights and governance issues have been integrated by civil society at ethical, political and operational levels.

A joint initiative between UNDP and UNOHHR in **Ecuador** has created an advisory mechanism that facilitates the participation and empowerment of indigenous peoples in national development issues. This is part of a broader initiative to improve UNDP cooperation with indigenous peoples and state accountability to indigenous peoples' human rights, in particular their collective rights. It has proved useful to have an external actor (such as a Special Rapporteur) assessing the country situation, able to raise issues that internal actors can not. There is a need, however, to understand the implications of rights holding and duty bearing and to push for more accountability and improved application of other aspects of a HRBA; at present, the mere participation of indigenous peoples is seen as a success.

On **peace agreements and human rights**, among the key issues arising was the question of sequencing of transitional justice. The transition should be seen as a medium to long-term process within which certain shortcuts taken at the early stages can be revisited in the future. Amnesties and pardons can promote impunity and reduce the prospects of accountability but are often part of the price requested to achieve a ceasefire. Where possible, they should be avoided in agreements, or restricted to minor infractions. They will be invalid where they relate to war crimes and crimes against humanity.

Each situation is unique and therefore a multi-

layered approach is often most effective. During the transitional phase it is important to ensure all interested groups, including any minority groups, women, displaced people and others directly prejudiced in the conflict, are consulted and their status as victims in the past acknowledged and given redress; their full participation in the new arrangements should be guaranteed as fully as possible. Effective transitional justice often requires reform of old institutions such as the police, the military and the justice sector. Creating effective new human rights institutions with a strong mandate and guaranteed independence can contribute to security and justice reform in addition to monitoring and advising on broader human rights issues.

The protection of **minority rights** can be an important tool in preventing conflict and in creating the conditions and institutions that bring sustainable peace in post-conflict situations. Causes of conflict involving minorities can be linked directly to the four key pillars of minority rights, namely: the right to exist; the right to non-discrimination; the right to protection of identity; and the right to participation. There is a need to use protection of minority rights as a conflict prevention measure and to integrate these rights into transitional justice processes. In this regard, the areas of human security and institutional reform are key, with an emphasis on ensuring the right to non-discrimination. A HRBA assessment of transitional justice can help here. The use of traditional dispute resolution and reconciliation mechanisms used by minority communities can also be an important tool.

Lessons learnt, good practice and major achievements in the integration of human rights into development
Lessons learned
Transitional justice begins even before the conflict ends. Focusing on healing during the conflict can aid the transitional justice period greatly. Transitional justice deals with the past, which is essential to preparing for the future. Addressing pain, securing reparations and giving access to the truth are all necessary in achieving peace and transitional justice.

In conflict environments, human rights achievements are fragile and their sustainability is at risk. In the gap between formal and traditional justice, lawlessness and power struggles can emerge, often with negative consequences for human rights. Transitional justice can be one

means of filling this gap, by undertaking to address concerns that neither traditional nor formal justice systems can (e.g. truth and reconciliation processes). Formal justice processes can complement transitional justice, running in parallel; these may be more appropriate for the trial of high-level actors, providing a more detailed and thorough account of crimes. The criteria for using formal or transitional justice for the accused should be outlined clearly. The use of culturally accepted forms of justice, such as traditional law, can be highly effective; those which violate human rights principles, however, should not be used. There is also a need to recognise the limitations and purposes of traditional law so as not to weaken transitional justice or violate human rights.

The international community has a critical role to play in transitional justice. There is no simple continuum between the humanitarian and development spheres, and in countries with recurring conflict there is a need for integration of the two. In this situation, longer-term core funding support is more effective than the short-term, project-based interventions common in development activities. It can also be helpful to draw from the experiences of humanitarian actors to strengthen HRBA in bringing the two spheres together. The attitude and interests of international cooperation will have a decisive impact on how conflict will resolve/evolve. While external actors do not have the power to enforce human rights they do increasingly play an important advocacy role. In this regard, support to international justice mechanisms is of continued importance, as is pressure for cooperation with such mechanisms. International justice bodies can be used in transitional justice processes to great effect.

Good practice
Psychosocial activities are essential for transitional justice. Addressing psychosocial welfare even during conflict can be essential for ensuring long-term peace and can begin to mitigate the human rights impact of conflict. It is important to build local capacity to deal with psychosocial aspects/consequences of conflict and to ensure adequate reflection of this aspect of human rights in policy decisions. A focus on education, including as an aspect of psychosocial rehabilitation, is essential.

An effective strategy is to combine advocacy, assistance, empowerment and networking to enable civil society to engage both with rights hold-

ers and with duty bearers at different levels. Even where the state is weak, duty bearers can be engaged to help protect human rights. The justice sector can be strengthened through training on human rights for lawyers, judges, paralegals, police and correctional officers, even during conflict. Work can continue on reforming the legal and regulatory framework.

Also during conflict, it is important to try to gather information on human rights violations to be used not only in prosecution but also as a source for any truth and reconciliation processes. Human rights violations need not wait for transitional justice: civil society can support victims during conflict to prosecute legal cases.

Many groups can be marginalised from transitional justice processes or particularly targeted for human rights violations during conflict (e.g. minority women as targets of trafficking or rape). It is therefore useful to establish consultative bodies with such groups. Under a HRBA, enabling the participation of marginalised groups can be an important part of ensuring their **particular** rights are respected in transitional justice.

Challenges and value-added of a HRBA for transitional justice

A primary hindrance for using a HRBA is the absence during or after conflict of a clear duty bearer(s) able and willing to ensure the implementation of transitional justice decisions in a fair and transparent manner. There may be confusion as to who is the legitimate duty bearer: for example, there may be vast territories where the state is not present or where claims to authority overlap, clouding the issue of accountability for human rights. This can lead to impunity of massive human rights violations and entrench intercommunal hostility and distrust, setting the scene for a resurgence of conflict. Conflicts may also be between different groups – ethnic, religious or social – and this makes collective rights an important element. The so-called «privatisation» of the violation of human rights is a problem for the HRBA perspective since it can be difficult to hold non-state actors to account for human rights violations. This complicates the emphasis on duty bearers and accountability in such cases.

Attention to human rights can be compromised in peace negotiation processes. Trade-offs between amnesty and bringing parties to negotiate should not close the door to dealing subsequently with impunity, reconciliation and reparations issues. This may require a long-term view,

as the political power equilibrium may not allow for dealing with some issues in the immediate environment. Appropriate sequencing of the process of transitional justice may be required according to the local context. This has to be balanced sensitively with the desires of the victims and wider society. A HRBA does not give an easy and clear formula for how to sequence attention to rights given the underlying principle of interdependence and indivisibility of human rights.

There may also be a lack of reliable and accessible sources of information, in particular on human rights violations. This can hinder the success of a truth and reconciliation process and impede effective and legitimate prosecution of perpetrators of human rights abuses during the conflict.

Non-combatants are frequently excluded from peace negotiations and can have difficulty securing transitional justice. A HRBA highlights the exclusion of marginalised groups. The challenge remains to ensure that they are given a voice in defining and implementing transitional justice, to ensure that their rights are included in the peace agreement.

Despite these challenges, a HRBA offers many advantages in strengthening transitional justice work. The HRBA methodology gives to the different stakeholders a common ground and shared understanding of what is at stake when working to realise human rights across sectors. It also stresses the indivisibility and interdependence of rights to give a comprehensive picture of a wide range of policy issues. HRBA also reminds us that, even in conflict, some rights are non-derogable. It also forces us to look at violations of economic, social and cultural rights as well as civil and political rights: the former are often root causes of conflict and need to be considered for long-term peace and for transitional justice.

A HRBA leads us to distinguish between who are the victims (rights holders), who are the violators of rights and who are the duty bearers to remedy these violations. Where a clear duty bearer is identified, individuals understand that they are not to blame for the human rights violations made against them. With a HRBA, there is also recognition of obligation to act on the part of duty bearers. This reduces the risk of arbitrary decisions and the whims of political will in transitional processes. A HRBA encourages a focus on building up the capacities and will of government actors to function legitimately as duty bearers, in a non-discriminatory manner.

A HRBA opens space for the most vulnerable groups to raise their voice. These groups may need particular or differential attention or institutions to protect and fulfil their rights. By focusing on individual responsibility for violations of human rights during conflict, a HRBA helps to prevent attitudes of collective blame/rights violations, which can undermine stability.

At the operational level, a HRBA reminds us that equitable and transparent partner relations are also part of human rights principles. There is a power relationship between those who give aid and those who receive aid. SDC should listen to what partners really want and continuously assess whether aid is genuinely contributing to empowerment and development.

Conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA to development
Some of the following recommendations are specific to the transitional justice sector, whereas others have a more general applicability.

Project and programme level
- Promote initiatives to gather reliable information during conflict so a basis for future prosecution and reconciliation is possible. In some cases, it may be easier for external actors to support this when it is too dangerous for local actors. Information can be used also for shadow reports to target national and international actors.
- Focus on building up capacities and will of government actors to function legitimately as duty bearers, in a non-discriminatory manner as a basis for sustainable peace.
- SDC can also help build the capacity of national, regional and local mechanisms in the area of transitional justice in order to maximise the efficacy and ownership of the process; justice needs to take place as close as possible to the people who have suffered human rights violations.
- The reparations aspect of transitional justice should not be forgotten. Reparations come not only in the form of financial compensation but also in symbolic forms. SDC can support initiatives for reparations.
- SDC projects themselves should respect human rights. The application of «do no harm» approaches in conflict-sensitive environments will help to ensure that projects do not contribute indirectly to human rights violations.

There is a need for a mechanism and/or process to ensure that projects and programmes do not unintentionally further marginalise some groups. The monitoring system should be consistent with a HRBA and «do no harm» approaches. This applies also to partner organisations of SDC.
- In addition, it is essential that institutions promoting human rights are seen as credible and as not contributing to human rights violations. Codes of conduct – focusing on behaviour of staff not to act in violation of human rights – are one tool to foster such institutional credibility. SDC has developed such a Code of Conduct for humanitarian assistance workers and could consider elaborating one for the development side of SDC work.
- Ask partners to include or use the Sphere Standards (which are used principally by actors in humanitarian assistance and are based on human rights) in their project design as a tool for ensuring that assistance is consistent with internationally accepted standards. This would be a selection criterion for prioritising funding requests sent to SDC.
- Focus on strategic support to long-term and core programming – this will strengthen the sustainability of the results.

Institutional (SDC)
- A HRBA should cover all aspects of development in which SDC is engaged – this is the transversal dimension of human rights and development.
- There is a need for sensitisation and training of SDC personnel on HRBA, including protection of human rights in the humanitarian context, in order to strengthen the application of a HRBA throughout programme cycle management.
- In situations where emergencies occur, it is important to avoid a shift of priorities towards humanitarian assistance at the expense of a commitment to longer-term human rights programmes.
- SDC needs to examine to what extent any transitional justice is a fair and genuine process consistent with human rights principles in order to decide if and how to support it. When supporting the process, SDC should concentrate on working towards the increased legitimacy of transitional justice as well as compliance with rule of law and human rights principles.

Policy dialogue

- SDC should play a more prominent advocacy role on human rights and HRBA; it is not enough merely to have a Human rights Policy document.
- There is a need to increase political pressure on duty bearers to enforce decisions of international actors with respect to transitional justice (e.g. ICJ decision on the illegality of the wall in Israel separating the Palestinians).
- Continued work is recommended to strengthen mechanisms to protect human rights at international level. For example, the OECD-DAC work on conflict and governance is one space where the theme of transitional justice could be raised; through exchange of experiences some guidelines for donor agencies on how best to support transitional justice processes could be elaborated.
- A HRBA requires that Switzerland has a comprehensive approach to human rights across its foreign policy, bilateral or multilateral, in foreign affairs or development cooperation. Switzerland needs to adopt a comprehensive HRBA, consistent across government levels and bodies.
- Switzerland's ongoing support for the UN Peacebuilding Commission and interaction within the UN Human rights Council are also essential to underpinning international commitment to the promotion of transitional justice.

Conclusion

Transitional justice is a political process that is indispensable in bringing a war-torn society back to a social contract for development. There is, however, no «one size fits all» solution. We need the means and instruments to analyse the local situation and to ensure all voices are heard and the underlying power relations are understood. A HRBA can assist greatly in this process. Justice starts before the peace agreement. SDC and partners can prepare the ground for a consolidation of peace by supporting victims, working with parties committed to dialogue and helping marginalised groups secure their rights. These are conflict-preventive measures. Justice and peace may come at different times and at different levels. A HRBA pushes us to look beyond formal peace agreements and to consider how justice is being denied to individuals and groups at all stages of a conflict. A HRBA applies across humanitarian and development spheres. Even in a post-conflict stage, individuals will suffer long-lasting consequences (e.g. torture sufferers) and may continue to be denied protection of their rights. SDC needs to consider this longer-term and multi-level approach in transitional justice measures. Transitional justice may be a national need, but it is made with the support of the international community. A HRBA requires us to think of transitional justice as not only an interest of the international community but also a duty.

Working Group 5: Report on Human rights and Local Governance: Ensuring Meaningful Participation in Political Processes and Equitable Access to Services

Introduction to participants and brief overview of their experiences

The working group on local governance was composed of participants from: SDC partner organisations based in Benin (Institute Kilimandjaro); Bosnia & Herzegovina (Municipal Development Project MDP); India (Kutch Mahila Vika Sangathan KMVS); South Africa (Public Service Accountability Monitor PSAM, Electoral Institute of Southern Africa EISA); Vietnam (Helvetas); and Switzerland (International Council on Human rights Policy ICHRP). Also in attendance were participants from Swiss COOFs (Bolivia, Cuba, Ecuador, India, North Korea, Ukraine); and SDC Head Office in Bern (Governance, South Asia, and Social Development Divisions).

Participants discussed the issue of local governance based primarily on their experiences (as follows):

- Capacitating communities for engagement with electoral processes.
- Supporting and equipping municipalities to be more responsive to citizens' needs.
- Insights from research intending to assess the integration of human rights into decentralisation programmes.

- Comprehensive experiences of Swiss COOFs engaging with the integration of HRBA into local governance and decentralisation programmes.
- Strengthening service delivery through enhanced citizen participation in drinking water and sanitation.

Presentations by partner organisations from Benin, Switzerland, South Africa and Bosnia & Herzegovina were project-level presentations; those made by the Swiss COOFs represented in the group were more programme-level experiences.

Integration of human rights into development projects, programmes and policies

In the context of decentralisation, the experience of integrating a HRBA was most commonly manifested in:

- Strengthening wider participation of communities in governance.
- Ensuring more equitable access to collective resources and services.
- Supporting the emergence of more inclusive development approaches.
- Addressing issues of discrimination in service provisioning.
- Addressing unequal power relations between duty bearers and rights holders.
- Promoting transparency and strengthening accountability to local communities and/or citizens.

Lessons learnt, good practice and major achievements in the integration of human rights into development

The discussions following each of the presentations identified the following good practices allowing for the integration of a HRBA in decentralisation processes:

- The space provided by specific mechanisms for community participation that are enshrined in legislation/constitution is usually a good starting point for dialogue on the integration of human rights principles.
- Promoting active citizenship was seen as a good entry point and a strong basis for dialogue with rights holders as well as duty bearers on human rights issues in local governance.
- To promote the approach, bilateral dialogue can sometimes be complemented by the setting up of platforms with civil society representatives, which can also assist in advocating for poorest group interests.
- Some attention should be given to the creation of internal incentives to encourage local government officials to be more transparent and accountable.
- A sectoral approach, addressing problems of availability and access to services (e.g. water, energy, housing) can be an entry point as well as a means of addressing human rights concerns by: i) working on accessibility, affordability to resources and services; and ii) improving service delivery.
- As far as possible, awareness generation and mobilisation should be accompanied by implementation of activities so that communities can experience how principles manifest themselves in practice. Budgets should be devolved to local communities along with the power for them to define allocation. The emphasis here was on advocacy-related activities being balanced with field implementation activities so that lessons from the field can feed into advocacy efforts.
- There needs to be constructive collaboration between rights holders and duty bearers as a basis for progress, so as to avoid a confrontationist approach that may stall or even threaten development. Examples that came up in the presentations included: i) joint monitoring of implementation; and ii) collaborative research to improve dialogue between governance and human rights experts.
- It was stressed that there was a need to adopt a multi-pronged comprehensive approach to integrating human rights into governance, which would require engagement in a number of areas including awareness generation, budgeting, service provision etc.
- Information provision was seen by participants as a good basis for mobilising communities and promoting transparency and accountability. More specifically, community radio stations were seen as a good means of providing information in remote rural areas.
- Monitoring access to information by local communities was seen as a good way of measuring effectiveness in strengthening participation in decentralisation.
- The integration of a HRBA was addressed more comprehensively when the principles were articulated from the micro to the meso and finally to the macro policy levels (i.e. at the local, state/provincial and national levels). This allowed for a more coherent approach and for absorption of setbacks that might occur at one or another level.
- Promotion of peer exchange within sectors across countries can be a means for promoting human rights principles among policymakers.
- It was felt that occasionally there was a need to be more pragmatic and adapt the language to the context in order for it to be possible to promote the human rights agenda.

The following answers were given to the question of how HRBA integration has strengthened effectiveness:

- A HRBA promotes more inclusive public participation. It spells a clear and visible shift from passive involvement to active engagement.
- It provides standards for accountability and good governance that are clear and precise.
- It strengthens citizenship.
- It makes it possible to address issues of an unequal balance between individual rights and collective rights to resources, services etc.
- It impacts standards not only within a country but also within an institution, helping prioritise interventions and themes and shifting away from project-style management. It allows for a greater engagement with the system as a whole: a greater sensitivity to the context is made possible.
- It allows for a consistent raising of consciousness on the power relations and relative positions within communities and localities, as opposed to earlier development paradigms, which allowed a greater reflection on the collective conditions of communities.

■ In the present era of globalisation, power relations are becoming more and more exaggerated. In this situation, a HRBA appears to be the only means of addressing the issue.

■ It promotes relationships of accountability at every level, and also across different stakeholders.

The following challenges were noted:

■ Applying a HRBA promotes long-term change and is an intensive and time-consuming process in which results are not quick to come by. Therefore, the challenge lies in finding a balance between quick wins and long-term progress to keep the enthusiasm level of stakeholders high. Expectations of communities are sometimes raised too early, making it difficult to sustain collective interest.

■ Sufficient successes have been achieved in applying a HRBA in micro-level programmes piloting the approach. The biggest challenge is in scaling up the approach to macro programmes, which can not always be context sensitive.

■ Monitoring effectiveness spells a challenge, as does tracking the results in terms of evaluating a change in values, beliefs, tendencies and orientations. Effective measurement of progress and results requires appropriate, participatory development of indicators.

■ Sustainability of efforts invested in promoting human rights principles in local governance requires long-term and consistent donor support and well planned exit strategies. These can not be planned or implemented on a short-term basis and require a long-term commitment and engagement.

■ This is a political process, which requires addressing power relations; those intervening need to be conscious of the possibility of conflict situations emerging in the short run.

■ It is difficult to work on the issue selectively: it has to be addressed in a comprehensive manner, horizontally (touching on many intervention themes) as well as vertically (starting from the micro to the macro).

■ Human rights often challenge traditional values; the right interface needs to be promoted between communities valuing these traditions and the new paradigm – questioning these traditions – that communities have to internalise and legitimise.

■ While applying a HRBA, there is often a conflict between the needs of the local and of the global (especially in the case of environmental programmes). The challenge lies in articulating this balance.

■ A challenge in applying a HRBA lies in enabling each institutional stakeholder to consider its own workings. Often, stakeholders promote more inclusive governance without addressing issues within their own organisation.

■ Political will is necessary to promote decentralisation and human rights. A challenge lies in promoting ownership and commitment to the issue at the political level.

■ A challenge is posed in working with communities that are not recognised as citizens (e.g. asylum seekers, slum dwellers who may not have identity proof etc.).

■ Decentralisation is often misunderstood as a way for central and local governments to make a one-way transfer of their responsibilities and obligations to the communities.

■ The debate on governance and HRBA has concentrated so far on state and citizens. It needs also to bring the private sector within its ambit.

Conclusions and recommendations for implementing the SDC Human rights Policy and applying a HRBA to development
Some questions emerging during the cluster discussions

■ Is there such a thing as a hierarchy of rights? Which do you address first?

■ How to promote good local leadership which does not exclude other local citizens?

■ How does one ensure that advocacy efforts will be sustained and will survive the change of local governments/national regimes?

■ Is it possible to have development without civil and political freedom (e.g. North Korea, Cuba)?

■ Rights holders also have duties – is the terminology correct?

Recommendations

■ There should be a much stronger focus on livelihoods of marginal communities.

■ People are aware of rights but not always of their responsibilities. The two need to be promoted in tandem in the HRBA.

■ It is important to promote human rights in the education curriculum from the early stages.

■ It is important to keep in mind the high expectations of local communities, generated in the early stages, and to manage a pragmatic realisation of at least some of them so as to avoid frustration.

- When prioritising interventions, it may be useful to consider giving priority to issues of local concern. This allows local action in order to influence globally (the system as a whole).
- Partnerships should be fostered between private sector and local governments and vulnerable marginalised sections of the communities.
- Skills building in applying and monitoring social accountability merits support. More experience needs to be shared in this area.
- There is enough experience generated in areas relating to: i) promoting better service delivery – at the micro level; and ii) influencing policy – at the macro level. There is not enough experience at the meso level in terms of strengthening systems of accountability. More experience needs to be supported in this area.
- A HRBA is often a label for attracting funding. In fact, the approach needs to be the very life of development and governance initiatives. A HRBA represents a cross-cutting theme and is not an end in itself. It needs to form the fundamental basis of all interactions across stakeholders.
- In different country and policy contexts, SDC should articulate as clearly as possible its strategies to leverage its position as a donor to promote the HRBA.

Next steps for SDC
- Once again, it was emphasised that SDC needed to bring in a stronger focus on livelihoods of vulnerable communities in the human rights framework it is promoting.
- It was felt that in different country and policy contexts SDC should articulate as clearly as possible its strategies as a donor with regard to promoting a HRBA.
- It was reiterated that more experience needed to be supported by SDC in terms of creation of a mechanism promoting social accountability in programmes as well as with partnerships.
- The majority of participants felt that SDC should not reduce its process of applying a HRBA to the creation of a toolkit: it was felt more necessary to undertake a continuous process of sensitisation, discussion and reflection.
- A need was articulated to organise a regional meeting on HRBA in Latin America.
- Some felt that SDC should explore the interest and potential for initiating a web-based discussion/open platform on HRBA in local governance.

SDC Capitalization Conference
Human Rights and Development:
Learning from Experiences

11th–13th September 2006, Thun, Switzerland

Monday 11th Sept. **Objectives of Day 1:**
Participants have shared their experiences in integrating human rights into development

8:30– 9:30	Registration Coffee and tea
9:30–10.45	Welcome and introduction
	Challenges and achievements in integrating human rights into development
	Keynotes speeches by:
	■ **Ibrahim Wani**, Chief Research and Right to Development Branch UN Office of the High Commissioner for Human Rights/Geneva
	■ **Rinalia Abdul Rahim**, Executive Director Global Knowledge Partnership/Malaysia
	■ **Sushma Iyengar**, Vice-President Kutch Mahila Vikas Sangathan & Kutch Nav Nirman Abhiyan/India
10:45–11:15	Tea/coffee break
11:15–11:45	**Introduction to the conference programme and objectives and to SDC's human rights policy**
11:45–13:00	**Integrating human rights into development – Learning from experiences: capitalisation of experiences in the thematic clusters (working groups)**
13:00–14:15	Lunch break (in working groups)
14:15–16:00	**…Learning from experiences: capitalisation of experiences in the thematic clusters (working groups continued…)**
16:00–16:30	Tea/coffee break (in working groups)
16:30–17:30	**Panel presentations I – Integrating human rights into development: selected case studies**
17:30–18:00	**Conclusions & summary of days proceedings, outlook, introduction to open space**
18:30	Dinner

Tuesday 12th Sept. **Objective of Day 2:**
Participants have identified and discussed lessons learnt and good practices in integrating human rights into development

8:30–10:30 …Learning from experiences – Capitalisation of experiences in the thematic clusters (working groups continued…)

10:30–11:00 Tea/coffee break (in working groups)

11:00–12:30 Panel presentations II – Integrating human rights into development: selected case studies

12:30–14:00 Lunch break

14:00–16:00 Learning from experiences – Plenary presentations of results of work in thematic clusters (part I)

16:00–17.45 Open space discussions – Challenges and achievements in integrating human rights into development

18.15–21:45 Moonlight dinner on the Lake of Thun

Wednesday 13th Sept. **Objectives of Day 3:**
Conclusions and recommendations for implementing SDC's Human Rights Policy and next steps are discussed

8:30–10:30 Learning from experiences – Plenary presentations of results of work in thematic clusters (part II)

10:30–11:00 Tea/coffee break

11:00–12:30 Learning from experiences – Conclusions and recommendations for the way forward (working groups)

12:30–14:00 Networking lunch break

14:00–15:30 The way forward – Proposals, ideas and next steps (feedback from the working groups – panel discussion)
  ■ Feed-back by the panel of the overall workshop results
  ■ Comments and proposals by peer groups
  ■ Open panel discussion

15:30–16:00 Tea/coffee break

16:00–16:30 The way forward – Summary by Dr. René Holenstein, Head of Governance Division

16:30–17.00 Closing of the conference by Dr. Beate E. Wilhelm, Assistant Director General Thematic and Technical Resources Department

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