

Human Rights-based Approach to Health and Environment

*Report of a Regional Seminar
Bangkok, Thailand, 20-21 August 2007*



**World Health
Organization**

Regional Office for South-East Asia

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1

Introduction

Human rights present a new and unique way to approach development questions. The human rights-based approach aims to ensure that development programmes and projects are designed to improve human well-being. Within the UN system, the human rights-based approach to development has been defined by a common understanding between UN agencies, which makes human rights the guiding principles of “all development cooperation and programming in all sectors and in all phases of the programming process.”¹ This holistic approach helps overcome the specialization that has made it difficult to respond to problems that do not fall neatly into one jurisdiction. Public health, for instance, has been considered the exclusive concern of ministries of health, whereas environmental affairs have fallen into the jurisdiction of the ministries of environment. Environmental health is one significant cross-cutting issue that is in danger of falling through the gaps between administrative and disciplinary boundaries.

The human rights-based approach places people – groups and individuals – at the centre of the development process. Under the human rights-based approach, health is not only seen to be related to environment, but also to rights such as the right to gain information about environmentally harmful activities, freedom of association and the right to participation, as well as the right to legal remedies and administrative review. Human rights are by their very nature indivisible, interdependent and interrelated. For instance, the realization of the right to health depends on the realization of the right to a healthy environment, whereas healthy environment is a precondition for the fulfillment of other rights, such as the right to life and the right to work. And as case studies discussed in the meeting demonstrate, respect for participatory rights – the right to information and the right to association – helps protect the environment.

¹ The Human Rights Based Approach to Development Cooperation – Towards a Common Understanding Among UN Agencies, The Second Interagency Workshop on Implementing a Human Rights-based Approach in the Context of UN Reform, Stamford, USA, 5-7 May 2003, http://www.undp.org/governance/docshurist/030617Stamford_Final_Report.doc, p. 1.

Human rights do not focus only on substantive issues such as the quality of drinking water or air; they also concern the methods in which these substantive objectives are achieved. The human rights-based approach is also an important advocacy tool. For example, despite evidence about environmental threats to health, this knowledge has not sufficiently influenced decision-making. One reason for this has been that development paradigms, such as the basic human needs approach, have regarded beneficiaries of development programmes as passive administrative subjects. The human rights-based approach, on the other hand, sees people as rights-holders. Fulfilment of human rights is an obligation of the duty-bearers, not an act of charity.

2 Regional seminar

The Regional Seminar on Human Rights-Based Approach to Health and Environment, held in Bangkok, Thailand, 20-21 August 2007, assessed the opportunities and the challenges of the human rights-based approach, taking stock of the instances in which human rights had been employed to advocate public health and environmental objectives. The key elements of the human rights-based approach include attention to vulnerable and marginalized groups, effective participation of beneficiaries in decision-making processes, identification of benchmarks and indicators to monitor the progressive realization of human rights and transparency and accountability. Participants were able to review and analyse their human rights activities, network with each other and obtain ideas and tools for development planning. The seminar was the first step towards the integration of the human rights-based approach into public health policies and programmes in the South-East Asia Region.

The 45 seminar participants included members of the national ministries of health, environment and justice from nine South-East Asian countries: Bangladesh, Bhutan, Indonesia, Maldives, Myanmar, Nepal, Sri Lanka, Thailand and Timor-Leste. Human rights commissions from Indonesia, Maldives and Thailand, as well as representatives from nongovernmental organizations, participated in the seminar. United Nations (UN) observers included representatives from the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), the Office of the High Commissioner for Human Rights (OHCHR), the United Nations Children's Fund (UNICEF) and the United Nations Development Programme (UNDP).

The seminar programme consisted of an opening session, four plenary sessions and a closing session. The message of the WHO Regional Director, Dr Samlee Plianbangchang, delivered by Director Dr Abdul Sattar Yoosuf, highlighted the significance of the human rights-based approach to WHO and the UN system as a whole (for full text see Annex 2). WHO Representative to Thailand, Dr P.T. Jayawickramarajah, urged the participants to continue their work with health and human rights in the whole Region. The plenary sessions focused on (i) the linkages between human rights, health and environment; (ii) the work of UN agencies on human rights advocacy in health and environment; (iii) the experiences of civil society groups; and (iv) government activities and lessons learnt. The seminar examined case studies, which are also reproduced here.

This report provides a thematic synthesis of the discussions at the seminar and describes the conceptual framework of the human rights-based approach to health and environment. The report also documents instances in which governments and civil society groups have employed human rights to promote legislative and policy changes and summarizes country presentations.

3

What are human rights?

Human rights are based on international agreements states have freely signed and ratified, thereby taking up the duty to respect, protect and fulfill the rights provided by the human rights treaties. The main international human rights agreements are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Nine of the eleven countries in the SEA Region have ratified these conventions: Bangladesh, DPR Korea, India, Indonesia, Maldives, Nepal, Sri Lanka, Thailand and Timor-Leste. All countries in the Region have ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The Universal Declaration on Human Rights is an international declaration that is binding universally and has significant moral value.

Human rights principles govern the application of human rights norms. Human rights are universal and they must be applied equally without discrimination. Human rights are also inalienable: it is not possible to contract out of human rights entitlements. For the health and human rights agenda, it is significant that human rights are considered indivisible, interdependent and interrelated. There is no hierarchy between human rights; the right to health is as important a human right as other human rights, including civil and political rights. Human rights obligations relate to all countries, rich and poor. The principle of progressive realization requires that states take concrete steps towards the fulfillment of human rights obligations using maximum available resources. Governments are held accountable for their actions under the principle of the rule of law. Moreover, human rights have to be implemented in a participatory and inclusive manner.

Human rights are applicable at all levels of development, but receive different treatment from one country to another. Some human rights, such as freedom from discrimination, become fully effective on governments upon the ratification of the human rights treaty in question. The realization of other rights, such as the right to health and the right to housing, depends on available resources. The principle of progressive realization obliges governments to take steps to realize such rights as expeditiously and effectively as possible.²

² For the human rights-based approach to development see OHCHR, *Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation* (2006).

The implementation of human rights treaties is monitored by treaty-specific bodies. Member States report at regular intervals on the implementation of the treaties. Treaty bodies evaluate these reports and issue recommendations for the conventions' implementation. Health-related human rights are monitored by several treaty bodies, including the Committee on Economic, Social and Cultural Rights, which is in charge of monitoring the ICESCR, and the CEDAW Committee. A treaty body database is maintained by the UN High Commissioner for Human Rights (<http://www.unhcr.ch/tbs/doc.nsf>).

United Nations Special Rapporteurs form one part of the human rights implementation mechanism. The Special Rapporteurs are appointed by the United Nations Secretary-General to report independently on specific human rights issues. Their reports are useful sources for human rights information. The Special Rapporteur on the Right to Health has a mandate to report on the global status of the right to health and to issue recommendations for the promotion of that right. There is also a Special Rapporteur on Toxic Waste and Human Rights, who investigates and examines the effects of the illicit dumping of toxic wastes on human rights.

4

Human rights-based approach to development

The norms, standards and principles of international human rights law should be used to design and evaluate development policies and programmes (see section 6). In the above-mentioned document outlining the common understanding among UN agencies on the human rights-based approach to development cooperation (see page 1), the following specific elements are described:

- Identification of rights-holders and the corresponding human rights obligations of duty-bearers;
- identification of the underlying causes of the non-realization of rights;
- assessment of the capacity of rights-holders to claim their rights, and of duty-bearers to fulfill their obligations;
- monitoring and evaluation of outcomes and processes through human rights standards and principles;
- application of recommendations of international human rights bodies and mechanisms.

Case study: the added-value of the human rights-based approach for UNICEF

Under agenda item 3, the seminar discussed UNICEF's use of the human rights-based approach. UNICEF bases its work on the promotion of child rights. The human rights-based approach differs from previous development paradigms, which emphasized social responsibility and compassion, by basing itself on the concepts of duty and justice. Since human rights are ends in themselves, there is no need to find economic justifications for causes that are important for UNICEF. Another benefit of the human rights-based approach is the concept of "equity". Equity, unlike "equality", implies fairness and impartiality. Both CEDAW and the CRC speak to the rights of every woman and every child. Finally, the human rights-based approach stresses the principle of the rule of law, freedom of assembly and freedom of information, all of which are crucial to the avoidance of famine and malnutrition. Human rights thus have a capacity to widen the scope of UNICEF's work.

The human rights-based approach is based on the identification of rights-holders and duty-bearers. In the case of UNICEF, children are the most important rights-holders. The duty bearers of children's rights are, first and foremost, their immediate care-givers. Also family members, local communities, and subnational, national and international institutions have duties towards children. These institutions include non-governmental organizations and actors within the private sector. According to UNICEF, UN agencies have a particular duty to monitor human rights enforcement and publish human rights indicators.

5 Public health and human rights

Public health and human rights relate to each other in several ways. For example, Nepal has progressively improved its standing in the human development index (HDI), but this has generally not correlated with health improvements in the rural areas, where about 80% of the population lives. Instead, health gaps between Nepal's rich and poor have increased in recent years. In rural areas, lack of sanitation and poor hygiene practices continue to compromise health conditions. Diarrhoea remains one of the leading causes of childhood deaths. Moreover, the scarcity of health care staff disproportionately affects rural areas, where only a quarter of children have access to a doctor. Consequently, infant and neonatal mortality remain high in rural Nepal. Poor water quality and sanitation infrastructure, as well as air and noise pollution, add to the health problems in Nepal's countryside.

The improvement of health services in Nepal's rural areas would promote the human rights situation in the country, both by realizing the rural populations' right to health and at the same time promoting the principle of non-discrimination. The improvement of the rural population's access to water and sanitation and the reduction of air and noise pollution would improve their human rights to health, water, housing and clean environment. On the other hand, the promotion of human rights, such as the right to education and information, would advance health through, for instance, improved sanitation practices. Community participation would help further the country's health policies in a non-discriminatory manner and improve the effectiveness of public health interventions.

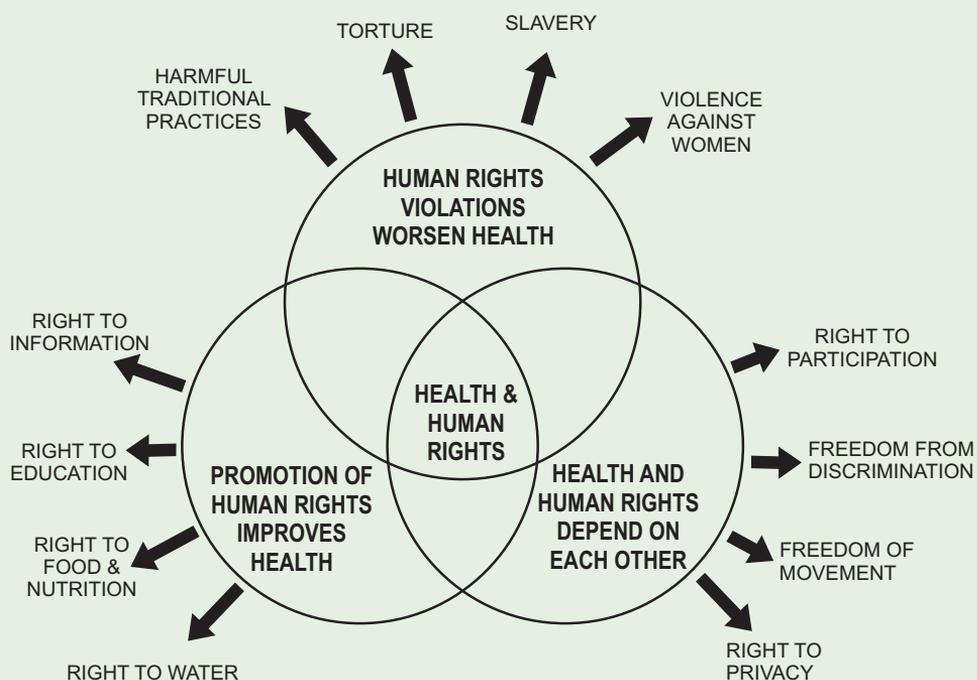
Generally, there are four distinct relationships between public health and human rights. First, human rights violations such as torture may affect public health adversely. Second, public health programmes may violate human rights obligations when, for instance, certain groups are discriminated against in the delivery of health services. Third, public health programmes may promote human rights, for example by enabling healthy people to use their participatory rights. Fourth, the promotion of human rights may correlate positively with the improvement of health. The rights to education and information, for instance, enable people to receive information on disease prevention.

While many human rights relate to health, there is also a specific human right to health. The central source for the right to health is article 12 of the International Covenant on Economic, Social and Cultural Rights, which has been ratified by the above-mentioned nine SEARO countries. The right to health is enshrined in a number of other international legal instruments, including the WHO Constitution, the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

The right to health is thought to consist of two parts: timely and appropriate health care and the underlying determinants of health. More specifically, the right to health includes four aspects. First, functioning public health and health care facilities, goods and services as well as programmes have to be available in sufficient quantity. Second, health facilities, goods and services have to be accessible to everyone. In Nepal, the access of rural children to health services needs to be improved as already mentioned, whereas in the Maldives, special attention is required to facilitating access to health facilities for inhabitants of distant islands. Third, health services must be respectful of medical ethics and culturally appropriate, as well as designed to respect the confidentiality of those concerned. Finally, health services must be scientifically and medically appropriate and of good quality. The Committee on Economic, Social and Cultural Rights has issued an authoritative interpretation of the right to health (see General Comment No. 14 on the Right to the Highest Attainable Standard of Health).

Most countries in the South-East Asia Region have implemented health-related human rights as part of their national health and human rights plans. The Maldives, for instance, joined the ICESCR and ICCPR in 2006, the year when the country also passed an act on the National Human Right Commission, which implemented the Paris Principles relating to the Status of National Institutions (adopted by General Assembly resolution 48/134 of 20 December 1993). The Maldives' Human Rights Strategic Plan for 2007-2009 accords priority to promoting the right to health and safe and sustainable environment and human rights associated with them. The right to treatment and confidentiality is a part of the country's HIV policy. Treatment for tuberculosis is also a right of patients. Nepal's National Health Plan for 1997-2017, on the other hand, aims to make essential health as well as specialized health care services universal. Health of the rural population is also underlined in the new Interim Constitution, which provides a right to live in a clean environment and to receive basic health care services free of charge. Universal rights will help to achieve a more equitable division of health benefits in Nepal.

Linkages between health and human rights



Case study: Right to health advocacy by civil society groups

Under agenda item 4, the seminar considered case studies of health advocacy by civil society groups. Human rights provide a tool for civil society groups to gather under a universally recognized banner. Arguments based on internationally agreed human rights are, at many forums, more persuasive than arguments based on charity or economics. Civil society groups have employed health-related human rights and, in particular, the right to health care, to advocate for the strengthening of the public health care system. NGOs have focused attention on the deterioration of public health services and the stagnant or declining public health budgets. Civil society groups have also been motivated by the rising costs of unregulated private health care services as well as by the negative effects of globalization. NGOs have organized public campaigns on the right to health care, lobbied for health care budget increases, engaged in a dialogue with parliamentarians, facilitated public hearings on health care, prepared policy briefs and advocacy material and pressed for legislative amendments. Also, public interest litigation has been a potent tool for civil society groups.

6

Health and environment

6.1 Right to a healthy environment

Many human rights – such as the right to life and the right to food – are frustrated by an unhealthy environment; this is underscored by the fact that the right to health extends to the underlying determinants of health, which include a healthy environment. However, it is also true that references to the word “environment” in key human rights treaties are scarce. The main international treaty on the right to health, ICESCR, mentions the word only once, in the context of industrial hygiene (article 12(2b)). The Universal Declaration of Human Rights, ICCPR and CEDAW do not mention environment at all.

Yet it is often the case that human rights obligations can be fulfilled only through achieving environmental goals. Moreover, many national constitutions in the South-East Asia Region also have been interpreted to include environmental rights. The linkages between environment and human rights have been reaffirmed in a number of human rights instruments. The first major instrument to do so was the 1972 Stockholm Declaration, which proclaimed that “[b]oth aspects of man’s environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights”.³ Similar links were made in the Vienna Declaration at the World Conference on Human Rights in 1993; the Rio Declaration on Environment and Development in 1992, which refers to sustainable development and a healthy environment as entitlements; and Agenda 21, adopted by the UN Conference on Environment and Development in 1992. Also, the Millennium Declaration provides commitments on both environment and human rights, although not in a single provision.

There are also several international instruments that provide explicit environmental rights. In addition to the above-mentioned General Comment on the Right to the Highest Attainable Standard of Health, and the General Comment on the Right to Water, the Convention on the Rights of the Child obliges parties to

³ Declaration of the United Nations Conference on the Human Environment, UN Doc. A/Conf.48/14/Rev. 1 (1973), art. 1.

take into consideration the dangers and risks of environmental pollution when promoting the right to health. Environmental rights are also enshrined in two regional conventions: the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

6.2 Substantive environmental rights

Environmental human rights are both substantive – they provide rights to different aspects of a healthy and safe environment – and procedural, for they ensure the public's access to environmental decision-making and to judicial review of environmental decisions. The substantive content of environmental rights can be deduced from human rights, which must be realized through a healthy environment. As mentioned above, such rights include the right to health, the right to food and nutrition, the right to water and the right to housing. In the ICESCR, rights to adequate food, clothing and housing are referred to collectively as the “right to an adequate standard of living” (art. 11). There also have been proposals for specific environmental rights. According to the proposed Draft Principles on Human Rights and the Environment, these would include:

- Right to freedom from pollution, environmental degradation and activities that adversely affect the environment;
- Right to protection and preservation of the air, soil, water, sea, ice, flora and fauna, and the essential processes and areas necessary to maintain biological diversity and ecosystems;
- Right to timely assistance in the event of natural or technological or other human-caused catastrophes;
- Right to preservation of unique sites, consistent with the fundamental rights of persons or groups living in the area.

International human rights treaties do not provide technical guidance in the form of microbial, chemical and radiological standards. However, in its General Comment on the Right to Water, the Commission on Social, Economic and Cultural Rights referred to WHO guidelines for drinking water quality, which may be used to develop national standards on safe drinking water. WHO has issued environmental guidelines also on air quality and food safety. These guidelines do not have binding legal force, but they may be used to define the content of substantive environmental rights.

⁴ UN Conference on Environment and Development: Rio Declaration on Environment and Development, UN Doc. A/CONF.151/5/Rev.1 (1992), Principle 10.

6.3 Procedural environmental rights

The human rights-based approach puts a strong emphasis on participatory development. The rights to information, education, participation and association ensure people's free and meaningful participation in decision-making processes. The participatory approach to sustainable development is endorsed by several international instruments, such as the Rio Declaration, which reaffirms the rights to participation, access to information and redress.⁴ Similar rights have been included, for instance, in the Dublin Statement on Water and Sustainable Development, which finds that "[w]ater development and management should be based on a participatory approach, involving users, planners and policy-makers at all levels".⁵ Also, some constitutions provide communities the right to right to participate in the management of their natural resources and environment.

Many international environmental treaties – for instance, the Convention on Transboundary Effects of Industrial Accidents – provide explicit procedural environmental rights. These may be categorized as the right to information, the right to participation and the right to redress. The right to information is mirrored by the duty to provide adequate information about environmentally harmful activities. According to the right to participation, the government must provide the public an opportunity to participate in relevant procedures to make known its views and concerns on prevention and preparedness measures. The right to redress corresponds with the government's duty to provide access to administrative and judicial remedies which may be used to stop illegal harmful activities.⁶

Freedom from discrimination is essential for the application of procedural environmental rights. Agenda 21 has separate chapters on women, children and youth, as well as on indigenous peoples. Other international instruments, such as the International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples in Independent Countries provide special measures for the protection of the environmental rights of indigenous and tribal peoples.

6.4 Environmental rights and international trade regimes

Under agenda item 3, the seminar discussed environmental rights as they relate to trade regimes. The realization of human rights is increasingly influenced by international trade regimes, such as World Trade Organization (WTO) agreements

⁵ Dublin Statement on Water and Sustainable Development, International Conference on Water and the Environment: Development Issues for the 21st Century, Dublin, Ireland (1992), Principle No 2.

⁶ Convention on Transboundary Effects of Industrial Accidents, 1992, art. 9; Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment, 1993, art. 13-16; Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters, 1998.

and bilateral investment agreements. On the one hand, trade regimes may affect environmental health negatively; on the other hand, national regulation on environmental protection and public health may hamper international trade and competition. The correct balance between the two has been subject to much debate. The decisions of the WTO dispute-settlement bodies have potentially far-reaching consequences for environmental health. One example is the asbestos case, decided by the WTO Appellate Body in 2001,⁷ which demonstrates that the technicalities of international trade agreements and WTO jurisprudence are important for the realization of environmental human rights. Advocates of health-related human rights cannot omit international trade from their scope.

⁷ WTO, WT/DS135/AB/R, European Communities - Measures Affecting Asbestos and Asbestos-Containing Products - AB-2000-11 - Report of the Appellate Body, available at http://www.wto.org/english/tratop_e/dispu_e/135abr_e.pdf.

7

Human rights-based approach as a development tool

7.1 Development planning

The human rights-based approach has several implications for health development. As already noted, the United Nations has drafted a common understanding on the content of the human rights-based approach to development. According to the document, “[a]ll programmes of development co-operation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments”. The document states that development cooperation should increase the capacity of “duty-bearers” to meet their obligations and the ability of “rights-holders” to claim their rights.

The identification of rights-holders and duty-bearers is the starting point of the human rights-based approach. The first step in the human rights-based approach is to consult international human rights instruments, such as the ICESCR and the General Comment on the Right to Water, to determine what norms are applicable to the particular development issue. These international norms need then to be given concrete meaning in the situation at hand. The OHCHR promotes a three-tier analysis to determine the concrete rights of rights-holders and the duties duty-bearers:

- First, causality analysis is used to identify the root causes of the development issue. For instance, lower-status people are particularly vulnerable to suffer from an unhealthy work environment because employers pay insufficient attention to their personal safety. Discrimination is thus one root cause of the poor work environment of lower-status workers.
- Second, role/obligation analysis is used to describe who owes what to whom. For instance, lower-status workers possess the right to safe working conditions under international law. Government authorities have the duty to regulate hazardous work, to enforce this legislation and to provide adequate health care services for the lower-status workers.

- Third, information from the causality and role/obligation analyses is used to identify the required interventions. Interventions must focus on the enforcement of existing legislation as well as on advocacy campaigns to that effect.

The interventions need to be informed by human rights principles. Human rights are considered to be indivisible, interdependent and interrelated. To realize all human rights, development planning should be conducted in a holistic manner. The same principle has been acknowledged in a number of environmental instruments. For instance, the Dublin Statement on Water and Sustainable Development states that “effective management of water resources demands a holistic approach, linking social and economic development with protection of natural ecosystems” (Dublin Statement on Water and Sustainable Development). The principles of equality and non-discrimination are fundamental for the human rights-based approach. Development programming should focus on alleviating poverty and eradicating discriminatory practices. Another goal of the human rights-based approach is to ensure people’s participation and inclusion into decision-making processes. Participatory development is both a value in itself and a means to achieve development goals through better planning and a sense of ownership. Development planning needs also to be transparent, and decision-makers need to be made accountable for achieving human rights standards. Finally, development programming should further the rule of law through the observance of rights and duties.

Human rights-guided interventions are partly carried out through institutional and legislative reforms. The fulfillment of procedural environmental rights requires the existence of participatory planning processes and administrative and legal review mechanisms. Various kinds of institutional and policy reforms are needed to fulfill substantive environmental rights. Also, legislative reforms may be needed to regulate hazardous activities. For instance, the Special Rapporteur on Toxic Waste and Human Rights has investigated whether countries have adopted adequate legal frameworks to deal with the particular issue of the import of toxic and dangerous products and wastes (see UN Doc. A/HRC/5/5/Add.1).

Case study: Human-rights-based programming at the Map-Ta-Put Industrial Estate, Thailand

Under agenda item 5, governments presented case studies of the implementation of human rights-based approaches. The Government of Thailand has employed elements of the human rights-based approaches in the evaluation and design of the Map-Ta-Put Industrial Estate. Located in the Province of Rayong, Map-Ta-Put estate is approximately 220 kilometres by road from Bangkok. The estate is connected to a harbour and serves primarily companies in the petrochemical industry.

The Government's investigation into the estate revealed a number of management problems. The estate's ambient standards and pollution control system were inadequate. There was little control of industries outside the estate's border. Health and disease surveillance systems were lacking and the local government and community did not take part in the management of the estate.

The Government based its improvement plans partly on human rights principles. Individuals and groups have the right to participate in health impact assessment of any public policy. They also have the right to be informed about projects and activities that may be harmful to their health as well as to express their views on the matter. To enhance community participation, the Government improved communication systems at the local level. It also established a community fund for health care, and supported community-level activities on pollution control and capacity building. The Government subsidizes a five-year plan on the health and environment of the area, which includes a community action plan.

According to the presentation of the Thai Government, the project taught several lessons about the management of industrial estates. Good governance and community participation are crucial for the improvement of environmental safety standards in industrial estates. The capacity of local authorities and communities needs to be strengthened. A comprehensive and integrated plan of action should not be seen merely as problem correction, but as an investment for future generations.

7.2 Evaluation of development policies and programmes

Under the human rights-based approach, international human rights rules and standards are used to monitor and evaluate public health policies. These rules and standards may be derived from international human rights instruments as well as from the recommendations of treaty bodies monitoring the implementation of human rights treaties. The evaluation assesses the extent to which development policies and programmes promote human rights principles, such as participation and non-discrimination.

Human rights instruments do not assign specific indicators for their monitoring. In practice, human rights evaluation is conducted on the basis of commonly used indicators. The United Nations Development Programme (UNDP) has prepared the following steps for using indicators to evaluate the human rights situation:

- Understanding the human rights situation at the country level through the identification and use of indicators that can provide an assessment of the baseline human rights situation;

- Understanding the capacities of individuals and groups as “rights-holders” to claim their rights as well as the capacities of state institutions as “duty-bearers” to promote and protect human rights on the ground;
- Identifying and using indicators for ensuring the incorporation of human rights principles in the design, implementation and monitoring of UNDP programmes;
- Identifying and using indicators to determine the likely impact of programmes on furthering human rights in the country.⁸

An indicator (such as the proportion of population with sustainable access to water) is used to identify the magnitude of the human rights problem and, when the data is disaggregated along socioeconomic lines, to assess disparities.

Case study: Human rights indicators at UNICEF

Under agenda item 3, the seminar considered the use of human rights indicators. UNICEF monitors the implementation of children’s right to health through:

- Data disaggregated by gender, geographic area, ethnicity, etc.;
- maternal anaemia as an example of women’s status; and
- stunting as an indicator of children’s rights to health, nutrition and environment.

Budgets also provide relevant data for UNICEF’s human rights evaluation. Combined with the analysis of statistical data, budgets help examine the extent to which various expenditures in social and other services are distributed among the diverse population groups. Some governments may be justified in not being able to afford quality health care services, but these governments also can distribute resources in a fair and impartial manner. Relevant questions include, according to UNICEF, the following:

- How much of the general budget is devoted to health, to food, to education and to poverty alleviation?
- Of the budget devoted to health, how much is going to primary health care versus tertiary care?
- To what degree are developed countries assisting developing countries to meet their health needs (brain drain, grants, debt relief, etc.)?

⁸ UNDP, Indicators for Human Rights Based Approaches to Development in UNDP Programming: A Users’ Guide, March 2006, page 1.

7.3 Human rights activities in health and environment

The human rights-based approach to health and environment has been promoted in different ways by governments, judiciaries, NGOs and international organizations. Some of these were examined under agenda item 5. In some countries, for example in Bangladesh and Sri Lanka, the judiciary has been able to take an active role in environmental matters. The High Court Division of the Supreme Court of Bangladesh has expanded the Constitution's fundamental right to life to include, *inter alia*, right to a healthy and clean environment and protection against degrading treatment.

The Sri Lankan Supreme Court has played a significant role in the promotion of environmental health in Sri Lanka. The country's judiciary has furthered environmental health by recognizing the right to a clean and healthy environment, the principles of sustainable development and inter-generational equity as well as public trust doctrines. The court has also given binding effect to the principles of the Rio Declaration and Stockholm Declaration. An important part of the court's jurisdiction has been the concept of duties, which are, according to the Sri Lankan Constitution, inseparable from rights.

Finally, international organizations have employed the human rights to advocate for environment and health. WHO, for instance, facilitates orientation on health and human rights for ministries of health and national human rights commissions, and provides technical assistance on health and human rights to health programming. WHO also develops human rights advocacy material, and commissions research on health and human rights topics. For instance, WHO has published a handbook on the right to water (WHO, *The Right to Water*, 2003).

Case study: Using law to mitigate harmful effects of gold mining in Indonesia

Under agenda item 5, the Government of Indonesia presented a case study related to gold mining and legal means to enforce environmental health regulations. In one incident, a transnational gold mining company had dumped mine waste into Indonesian waters without appropriate environmental precautions. A joint investigative team of the Indonesian Ministry of Health found that the hazardous waste had caused a number of health problems. Wells belonging to the local community contained dangerous levels of arsenic. A large number of people suffered from symptoms of arsenic poisoning: cramps, head and stomach pains as well as tumours appearing over the entire body. Also, the local fish population had been reduced, and some of the remaining fish had visible tumours on their skin.

The government initiated two legal proceedings against the mining company. First, the Ministry of Environment submitted a civil lawsuit demanding the defendant pay compensation of US\$ 117 million for environmental damage. The parties reached an out-of-court settlement in which the mining company agreed to pay US\$ 30 million over a period of ten years. Second, the government aims to prove that the mining company's activities were criminally negligible in an ongoing criminal process. The government's case was dismissed at the district level, but prosecutors have appealed the case to the Supreme Court.

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Conclusions: Lessons learnt

Experience from South-East Asian countries has shown that the human rights approach improves the effectiveness of public health interventions. From industrial estates in Thailand to rural villages in Indonesia, human rights-based approaches have helped countries to achieve public health objectives. Sensitivity to human rights has ensured that people, rather than abstract economic goals or public health objectives, have been at the centre of development planning.

South-East Asian civil society groups have seen human rights as a useful advocacy framework. Arguments for environmental health have generally been more effective when they have been supported with human rights. Also, South-East Asian national human rights commissions have taken up environmental health as one of their focus areas. Human rights have enabled certain South-East Asian judiciaries to play an active role in the promotion of environmental health. Progressive interpretation of constitutional rights has provided common-law courts an efficient means to promote environmental health.

The seminar participants stressed that human rights cut across disciplinary and bureaucratic boundaries; their realization necessitates cooperation between different branches of government. While such cooperation is difficult to achieve, it is vital for the promotion of environmental health. Good legislation, efficient law enforcement, just trade regimes, and good institutional arrangements are also important for the promotion of environmental health. Governments need to make sure that appropriate sanctions are available for human rights breaches.

Finally, participants pointed out that the international community, including international organizations such as WHO, have a duty to support countries to fulfill their human rights obligations. International organizations must monitor the materialization of human rights obligations and facilitate means for their further promotion. WHO, in particular, should promote the human rights-based approach through facilitating national workshops in specific health fields.



Annex 1 Agenda

- (1) Opening
- (2) Linkages between human rights, health and environment
- (3) UN Agencies and human rights advocacy in health and environment
- (4) Experiences of human rights organizations and civil society groups
- (5) Government activities and lessons learnt
- (6) Closing

Annex 2

Message from Dr Samlee Plianbangchang, Regional Director, WHO South-East Asia Region

Distinguished participants, colleagues, ladies and gentlemen:

It is with great pleasure that I welcome you all to this Regional Seminar on the Human Rights-Based Approaches to Health and Environment.

WHO, and the United Nations system as a whole, have always promoted human rights. The Charter of the United Nations includes human rights as one of the overarching purposes of the Organization. WHO's Constitution also states that "the enjoyment of the highest attainable standard of health" is "one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition."

The World Health Assembly, which is the governing body of WHO, has adopted several resolutions on the linkages between human rights and health. The major international declarations on health, the Alma Ata Declaration of 1978 and the World Health Declaration of 1998 reaffirmed health as a fundamental human right.

At the operational level, human rights have gained momentum since the 1990s. Within the last decade, human rights have been increasingly recognized as essential elements of development work. In 1997, in the context of UN reforms, the Secretary-General urged the UN to fully integrate human rights with the Organization's activities. Within the UN system as a whole, there is now a common understanding on a human rights-based approach to development cooperation. Many UN agencies have embraced the human rights-based approach in their work, establishing policies and programmes for its advancement.

Since the 1990s, increased attention has been paid to economic and social rights, including the right to health. The Vienna Declaration at the World Conference on Human Rights in 1993 identified a number of linkages between health, environment and human rights. Another milestone in the promotion of the right to health was the General Comment Number 14 on the Right to the Highest Attainable Standard of Health, which was issued by the Committee on Economic, Social and Cultural Rights in 2000. The General Comment clarified the contents of the right to health, and is a valuable tool for WHO and many other promoters of the right to health.

Human rights are included in WHO's General Programme of Work for 2006-2015 which sets out WHO's activities for the planning period. The Programme

directs WHO to place particular emphasis on cross-cutting issues such as environment, human rights and gender in its relations with the United Nations. The Programme also urges the international health community to promote universal coverage, gender equality, and health-related human rights.

The human rights-based approach is employed in a number of programmes and projects within WHO headquarters, WHO's regional offices and at the country level. The Health and Human Rights Team at WHO headquarters coordinates the Organization's human rights work. At the regional and country levels, WHO supports governments in the implementation of the human rights-based approach to health development. WHO provides human rights orientation to ministries of health and to national human rights commissions. The Organization also publishes advocacy material on health-related human rights, and develops tools for the further implementation of the approach.

At all levels, WHO cooperates systematically with the UN human rights mechanism. WHO facilitates country visits of the UN Special Rapporteur on the Right to Health and also works with the United Nations human rights treaty bodies, which monitor the implementation of human rights treaties.

Ladies and gentlemen,

WHO sees human rights as an important and deeply meaningful framework for health development. Health is not only an economic imperative, but a value in itself. Health is a goal, not just a tool. But how can we ensure that all stakeholders hold health in such high regard? In the human rights-based approach, the value of health is derived from internationally agreed human rights conventions. By ratifying human rights agreements, governments have expressed their willingness to respect, protect and fulfill the rights provided by the human rights treaties. All countries in WHO's South-East Asia Region have ratified at least one human rights convention which recognizes the right to health.

In order to promote ethically sound public health policies, it is important that health facilities, goods and services are provided in an equitable, accountable and transparent manner. Health development should benefit everybody, especially those who are most vulnerable. Attention to human rights will, thus, benefit public health objectives.

I am confident that this seminar will help in promoting human rights in health development as well as in environmental matters. I thank all the participants for attending this seminar and our colleagues from WHO Headquarters and country offices for their support. I would also like to convey our sincere gratitude to the organizers for the excellent arrangements.

I wish you all successful and productive deliberations.

Thank you.

Annex 3

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