

# **Rights based approaches and Humanitarian Interventions in Conflict Situations**

## **A Learning and Discussion Document**

Produced by the UK InterAgency Group on Rights  
Supported by ActionAid & CARE International

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## **Forward and acknowledgements:**

**The following publication is an encyclopaedia of work documenting the challenges and opportunities of working on rights in conflict contexts. It will be useful for policy makers and practitioners alike. Readers can dip into the different chapters to glean knowledge and information on effective practice. The introduction section provides a useful overview on the key concepts in the field of rights and conflict. The last chapter pulls together the different threads of argument. It highlights how rights based approaches can add value in conflict contexts and conversely, how conflict sensitive approaches can add value to rights based approaches. While it outlines the conceptual, operational and organisational challenges of working in these areas, it ends positively, and emphasises steps that can be taken to ensure that work is effective.**

The publication is a team effort supported by ActionAid and CARE UK. The idea for the publication came from work within the UK Inter Agency Group on rights based approaches, a loose network of NGOs concerned with integrating rights into development practice.

Kate Carroll (ActionAid), Rachel Goldwyn (CARE UK) and Magdalene Lagu (formerly CARE UK) were instrumental in pulling the papers together and writing the introduction and synthesis sections. They relied on the goodwill and dedication of each contributing speaker.

As well as facilitating the event, Maureen O Flynn has tirelessly edited the final document.

Edward and Charmian Goldwyn filmed the event and Edward's accompanying DVD resource is an invaluable learning resource.

Most important to mention are those people and organisations working for rights in conflict contexts and humanitarian crisis around the world at local, national and international levels. Their innovations provide the basis for this work and their continued struggle is an inspiration to us all.

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1. Conference Programme

## Acronyms:

AAN	Action Aid Nepal
AIHRC	Afghan Independent Human Rights Commission
AMA	Agreement on Movement and Access
CARE WBG	CARE West Bank Gaza
CDA	Collaborative for Development Action
CEDAW	Covenant on the Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CFN	Children's Forum Network
CoC	Code of Conduct
CofC	Convention on the Rights of the Child
COP	Community Outreach programme
CHASE	Conflict Humanitarian Affairs and Security Department
CPA	Coalition Provisional Authority
CRR	Conflict Risk Reduction
CSA	conflict sensitive approaches
CSO	Civil Society Organisation
DFID	Department for International Development
DSS	Department of Social Services
ESC	Economic Social and Cultural rights
HAI	Help Age International
HRA	Human Rights Act
IAG	Inter agency group
IASC	Inter-Agency Standing Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for Former Yugoslavia
ICVA	International Council for Voluntary Agencies
IDP	Internally Displaced Person
INGOs	International Non-Government Organisation
LRA	Lords Resistance Army
MOWA	Ministry of Women's Affairs
NGO	Non Government Organisation
OCHA	Office for the Coordination of Humanitarian Actions
ODI	Oversees Development Institute
PCAF	Participatory Conflict Analysis framework
PMO	Programme Management Office
PRA/PLA	Participatory Rural Appraisal/ Participatory Learning and Action
PVA	Participatory Vulnerability Analysis
RBA	Rights based Approaches
SCHR	Standing Committee for Humanitarian Response
SGBV	Sexual and gender based violence
UDHR	Universal Declaration of Human Rights
VAW	Violence against women

## Introduction

This publication has been developed as a result of a two day conference held in February 2007, “*Human Rights Based Development and Humanitarian Interventions in Conflict Situations*”. The aim of this conference was to introduce innovative theories, policies and practices and to facilitate debate from the various perspectives of development, humanitarian, human rights and peace and security academics and practitioners. The participation of speakers from developing countries was prioritised to ensure a two way learning process between academics and practitioners working in conflict contexts.

The aim of this publication is to capture and understand the challenges and opportunities of using rights based approaches to development and humanitarian assistance in conflict situations. While it provides ideas, examples and recommendations, it makes no attempt to answer all questions. In fact, it probably raises as many questions as it answers. We hope that the content of the publication will enable readers, whether they are practitioners or academics, to look more deeply and critically at their own work and ultimately enable them to respond more effectively in situations of conflict in the future.

The publication covers a large number of different issues and is set in a variety of contexts. It is not intended to be read from cover to cover. Rather, it is recommended that readers refer to the sections that are relevant to their own needs. Readers may find it helpful, however, to read the introduction and the concluding synthesis which draws together the key thoughts and discussions covered at the conference, and provides some reflection on ways to take some of these debates and challenges forward.

It should be noted that the views expressed by individual authors throughout this publication are their own, as is their writing style. They should not be read as organisational positions, rather as reflections of individuals at a particular point in time.

### **i. Background to the conference**

The Interagency Group (IAG) is a loose network of UK based NGOs concerned with integrating human rights into development and humanitarian practice. During a period of learning and evaluation to examine the impact of rights based and non-rights based work on the multidimensional experience of poverty and the realisation of the Millennium Development Goals, a major challenge was identified. In conflict contexts the question of rights is both more pertinent and more fraught.<sup>1</sup> Rights are more pertinent since conflict results in human rights violations, and human rights violations can result in conflict. Rights issues are more fraught because organisations have to be more aware that their interactions and impact can potentially exacerbate violent conflict or positively contribute to peace; because the space for working on rights is shrunk and because rights can be seen as irrelevant or impossible in such a limiting context. Working with a rights based approach is

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<sup>1</sup> Conflict is defined in multiple ways. The definition used here is outlined in section iii of this introduction.

thus challenging. A number of distinct organisational, operational and conceptual issues arise for organisations working in conflict affected areas.

These challenges are well recognized by other organisations. The ODI had raised a number of relevant questions, asking whether a rights based approach can play a positive role in conflict prevention or whether it simply exacerbates tensions. In post-conflict or fragile States situations, it asked whether donors and the human rights community should insist on standards being met, or whether approaches should be developed to help manage the process by making it clear which rights are to be prioritised in such circumstances and if and when it is permissible for States to derogate from core human rights obligations.

The IAG acknowledged a growing demand for sharing information and experiences. It also saw a need to bring together knowledge from both development and humanitarian organisations. This coincided with DFID's public consultation for the development of its Conflict Policy Paper and thus DFID was willing to host and fund a learning event in the form of the conference.

The conference, held in February 2007, aimed to create a space for participants to challenge their thinking with the overall aim of improving the impact of rights based programme and policy work in conflict situations. It offered debate, analysis of emerging challenges, tensions and questions and explored areas of synergy between the rights and conflict fields.

The conference introduced innovative theories, policies and practices and facilitated debate from various perspectives. Practitioners and academics from across the world gave presentations on development, humanitarian, human rights, peace and security issues. There was a mixture of plenary and breakout sessions, and time for facilitated reflection was also integrated into the agenda.<sup>2</sup>

## ii. Overview of this publication

The main body of the document is organized into three sections, each of which contains a number of papers by individual authors. Each section is followed by a brief summary and set of discussion questions which may stimulate further thought around the issues raised:

- *Chapter 1* tackles some of the key conceptual issues which challenge those who are trying to apply a rights based approach to their interventions in situations of conflict.
- *Chapter 2* focuses on the challenges and opportunities presented by applying RBAs in actual situations of conflict, and promotes the use of conflict and vulnerability analyses.
- *Chapter 3* offers a rich selection of experiences and reflections from the field. Papers from CARE, ActionAid and HelpAge International focus on some of the operational issues and challenges that affect the way in which organisations work with and for those involved in or affected by conflict. These are followed by a report of a panel discussion on working with advocacy, and three papers which focus specifically on

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<sup>2</sup> Please see Annex 1 for the Conference Agenda

advocacy from The Afghan Women's Education Centre, CARE in West Bank and Gaza, and the Children's Forum Network in Sierra Leone.

- *Chapter 4* draws together all this thinking and presents a series of conclusions around concepts raised.

It is hoped that this publication, along with a DVD which has been produced since the event and which shows ten minute talking heads of each speaker, will be useful for learning, influencing and advocacy around rights based approaches in conflict situations.

### **iii. Introduction to concepts**

#### *What is a Rights Based Approach?*

A Human Rights Based Approach emphasises the moral foundation that goes deeper than the 'on-off' legal commitments and rights granted by governments and highlights that *every* human has rights. We will use RBA rather than HRBA throughout the text as short hand.

Throughout this publication we understand the rights based approach (RBA) to mean a deliberate and explicit focus on enabling people to achieve the minimum conditions for living with dignity – in other words, achieving their human rights. A rights based approach is grounded in the International Human Rights Framework,<sup>3</sup> and is a value-based development approach which works for the inclusion of all people on ethical grounds, without discrimination, in building a fair, just and non-discriminatory society.

With this understanding, a rights based approach to development works to increase people's access to, and power in, decision making which affects their lives and their work. A central tenet of all rights based development is the issue of power. Using a "rights lens", we work on the basis that poverty is exacerbated by political powerlessness. That is, people living in poverty lack power not only in terms of an inability to obtain and maintain physical assets, but also in terms of finding it challenging to accrue social capital, to gain information and to be able to participate fully in society as active citizens.

An RBA also works to strengthen the willingness and readiness of all people – both as 'rights holders' (individuals and groups with valid claims) and as 'duty bearers' (State, non-State actors and other power-holders with correlative obligations) – to take up their responsibilities and to fulfil their obligations towards each other. The focus is on changing relationships in ways that ensure that power and responsibility can be shared safely between all stakeholders, building accountability and encouraging willingness to fulfil obligations.

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<sup>3</sup> Rights as defined by the 1948 Universal Declaration of Human Rights and thereafter in covenants and treaties known as the International Framework for Human Rights.



While different agencies have different interpretations of exactly what a RBA means in practice, most would agree with the main elements outlined in the UN Common Understanding<sup>4</sup> which agreed that:

- All [development] programmes should further the realisation of human rights;
- Human rights standards and principles guide all programming in all sectors and in all phases of the programming process;
- Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

### *Understanding terminology: conflict, peace, conflict sensitivity, and peace-building*

**Conflict** is an ambiguous term, often considered to be synonymous with violence. However violence is only one response to conflict. Conflict can be a positive phenomena, a social process that is part of change. Conflict is defined as "a relationship between two or more parties (individuals or groups) who have, or think they have, incompatible goals"<sup>5</sup>

Given that conflict can be a positive force, when we refer to conflict in this publication we are concerned with *violent* conflict – where damage is caused physically, psychologically, socially or environmentally. This ranges from direct violence such as sexual/gender based violence in the home to open hostilities between States. It also includes other more indirect or subtle forms of violence, including systems of subjugation and inequality that prevent people from reaching their full potential. Galtung classified violence into three forms:<sup>6</sup>

- Direct violence such as when children are murdered;
- Structural violence such as when children die through poverty created by the structures of society;
- Cultural violence such as whatever blinds us to structural violence, or ways we seek to justify it. This includes inequitable laws and institutions embedded within a society such as those that discriminate against women.

**Peace** is often understood as the absence of direct violence. However this can be only the existence of a negative peace. A positive peace involves not only eliminating direct violence, but also the structural and cultural violence that create and maintain conditions of inequality.

**Conflict sensitivity** means "the ability of your organisation to:

- understand the context in which you operate;
- understand the interaction between your interventions and the context;

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<sup>4</sup> The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies (2003)  
[http://www.hreoc.gov.au/social\\_justice/conference/engaging\\_communities/un\\_common\\_understanding\\_rba.pdf](http://www.hreoc.gov.au/social_justice/conference/engaging_communities/un_common_understanding_rba.pdf)

<sup>5</sup> Fisher, S., Ibrahim Abdi, D., Ludin, J., Smith, R., Williams, S., Williams, S. (2000) *Working with Conflict – Skills and Strategies for Action*, Zed Books in association with Responding to Conflict.

<sup>6</sup> Miall, H, Ramsbotham, O., Woodhouse, T. (2004) *Contemporary Conflict Resolution*, Polity Press p15.

- act upon the understanding of this interaction, in order to avoid negative impacts and maximise positive impacts.”<sup>7</sup>

Conflict sensitivity is an approach to programming. Conflict sensitivity is more than just the application of a ‘tool’ to specific programmes/projects. Carrying out conflict sensitive practice involves capacity and skills of staff, institutional policies and commitment, and flexibility of donors and other stakeholders. Conflict sensitivity is rooted in solid conflict analysis, which is linked to programming and informs decisions about the ‘what’ and the ‘how’ of the planned intervention.

**Peace building** is programming which seeks to:

- Consolidate peaceful relationships;
- Strengthen institutions and mechanisms (political, economic and cultural) to mediate conflict;
- Create the conditions for sustained peace.

Peace building may target individual change (such as people’s attitudes to others) or systems changes (such as systems of government or law). Peace building programming can be categorised into four key areas: <sup>8</sup>

- security (mine clearance, demobilisation, disarmament, and re-integration of ex-combatants, efforts to reduce the flow of small arms and light weapons);
- building socio-economic foundations (reconstruction, IDP return, micro-credit);
- establishing sound political framework (rule of law, media, human rights, democratisation);
- justice, reconciliation and healing efforts.

This definition is contested – some use a much more narrow definition, excluding the development and human security elements of the above. Peace building is often a deeply political affair, and can sometimes backfire. Thus there is a need to ensure even peace building programming is conflict sensitive.

We sometimes use the terms working ‘in’ ‘on’ or ‘around’ conflict. Working ‘in’ conflict refers to *conflict sensitive programming*, working ‘on’ conflict refers to *peace building programming*, and working ‘around’ conflict refers to operating only in areas where there is no potential for violence. There is a danger in working ‘around’ conflict since it suggests that an organisation is taking little notice of the inevitable impact of its actions on the conflict.

#### iv. **The evolution of Conflict Sensitive Approaches (CSA) and Rights based Approaches (RBAs)**

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<sup>7</sup> Africa Peace Forum, Centre for Conflict Resolution, Consortium of Humanitarian Agencies Forum on Early Warning and Early Response, International Alert, and Saferworld (2004) Conflict sensitive approaches to development, humanitarian assistance and peace building – a resource pack.

<sup>8</sup> The peace building palette – from Dan Smith (2004) Towards a Strategic Framework for Peace building: Getting their Act Together – Overview report of the Joint Utstein Study on Peace building, Peace Research Institute, Oslo.

Since the Biafra crisis in Nigeria in 1967, a critique of humanitarian assistance as feeding rather than alleviating conflict; and of development aid as exacerbating tensions has emerged. Much of the criticism of humanitarian aid stems from interventions misunderstanding the political economy of war, and the associated political economy of relief. Famine relief is now recognised as an instrument of war. For example, in Ethiopia (1980-5) the most famine stricken areas were those under offensive – drought and poor harvest were contributory, not causal factors. In Somalia, following the military intervention in 1992, humanitarian assistance was drawn into a symbiotic relationship with the militias; high diversion rates and violence against humanitarian workers necessitated the use of security and haulage contractors who had an interest in maintaining violence. Analysis of aid in Sri Lanka sharply contrasted the concentration of humanitarian assistance in the North East and development assistance in the South, a situation which accentuating regional imbalances and thus contributed to conflict.

The rights based approach to development has a more recent history, although many of the principles which are articulated as part of this approach are not new. Many were part of struggles for self-definition and for social justice long before the discourse of rights “went global” in the post-World War II period. The thinking around rights and development emerged in the post-Cold War period in the early 1990s, and gathered momentum in the build up to the Copenhagen Summit on Social Development in 1995. By the early part of this century, and defined by the Common Understanding, all UN Agencies and many other INGOs and others were consciously working to apply an RBA in their policies and practices. The impetus for the previously parallel disciplines of Human Rights and International Development to come together grew out of a recognition that “development” as it had been understood was not effective, and that together, human rights and development are more effective than either one on its own.

The international response to those fleeing genocide in Rwanda marked an important watershed for the development of RBAs and CSAs. It was recognized that “business as usual” was not working well and that interventions may inadvertently and negatively impact wider dynamics. The problems were common to both rights and conflict concerns: bad governance, exclusion, structural violence and direct violence.

Following the response to Rwanda, tools for conflict sensitivity began to emerge. The first generation tools included project level tools such as the ‘Do No Harm’<sup>9</sup> tool, and the beginnings of macro analysis. By 2000, a proliferation of agency specific tools emerged, although these tended to focus on conflict analysis rather than the sensitivity of any specific project. By 2003/4 there was a shift to the term ‘conflict sensitivity’ as an umbrella term for the range of tools/approaches, and it began to be applied in other fields, such as to business. Furthermore, reflection on CSAs triggered extensive reflection on the effectiveness of peace building programming.

In a parallel movement, agencies who were working to apply RBAs were also developing their own terminology, tools and methodologies which reflected the RBA guiding principles

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<sup>9</sup> Do No Harm – also known as the Local Capacities for Peace Project – was developed by Collaborative for Development Action as a conflict analysis and project planning tool.

of participation, inclusion and accountability. This included: developing a better understanding of the duty bearer/rights holders relationship; developing tools to support situation analyses which focus on root causes of denial (or non-enjoyment) of rights; and encouraging stakeholder participation at all stages of planning, implementation and monitoring and evaluation.

The two fields of RBA and CSA have progressed and become increasingly specialised. However, both fields appear to consider the same or similar problems, possibly from different angles. Thus there are potentially some considerable synergies to be achieved in bringing these two fields closer together. Links include, for example, that rights violations can be a cause of conflict; and that in conflict, the moments of change which come around a peace deal might create some space (as well as the potential funding) for a rights discussion. The table below attempts to give an overview of similarities/differences between RBAs and CSAs on specific dimensions.<sup>10</sup>

	RBA	CSA
Definition	A rights based approach “deliberately and explicitly focuses on people’s achieving the minimum conditions for living with dignity (i.e achieving human rights). It does so by exposing the roots of vulnerability and marginalization and expanding the range of responses. It empowers people to claim and exercise their rights and fulfil their responsibilities. A rights based approach recognizes poor, displaced, and war-affected people as having inherent rights essential to livelihood security—rights that are validated by international law” <sup>11</sup>	The ability of an organisation to understand the context in which it operates, understand the interaction between the intervention and that context, and act upon this understanding in order to avoid negative impacts and maximise positive ones.
What is it?	An analysis of poverty (understood through rights deprivation), leading to a definition of the objectives of an intervention(s) and the way it is implemented (i.e. the ‘what’ and the ‘how’).	An analysis of conflict, (causality of conflict could be human rights linked but also could be rooted elsewhere) leading to a review and redesign of a project, informing how it is planned and implemented (i.e. occasionally the ‘what’ and always the ‘how’).
Goals	A facilitative process of self empowerment for the poor and disenfranchised to help them achieve their rights and of duty bearers to understand and be able to fulfil those rights.	To ensure interventions do not inadvertently worsen conflict and contribute to peace where possible.
Strategies	Strengthen capacity of rights holders to understand their rights and to design a strategy to assert and claim that right. This may include advocacy as a means to achieve rights realisation.  Work with duty bearer to build their awareness of and capacity to fulfil their	Make the analysis of conflict as the foundational of all action, and link all interventions to that analysis.  Advocacy not usually a component of conflict sensitivity, however it could be an operational option in a given context. Advocacy itself needs to be assessed from a

<sup>10</sup> Rachel Goldwyn, “At the nexus between rights based approaches and conflict sensitivity: Discussion paper”, CARE International UK (unpublished document).

<sup>11</sup> “CARE Workshop on Human Rights and Rights based approaches to Programming” August 2000 in *Promoting Rights and Responsibilities*, from CARE International UK website: [www.careinternational.org.uk](http://www.careinternational.org.uk)

	obligations.	conflict sensitive perspective.
Frameworks	International human rights law: UDHR, ICCPR, ICESCR, CofC, CEDAW & CERD	
Principles	<ul style="list-style-type: none"> <li>• promote empowerment</li> <li>• work with partners</li> <li>• ensure accountability &amp; promote responsibility</li> <li>• address discrimination</li> <li>• promote the non-violent resolution of conflicts</li> <li>• seek sustainable results</li> </ul>	<ul style="list-style-type: none"> <li>• participatory process</li> <li>• inclusiveness of actors, issues and perceptions</li> <li>• impartiality in relation to actors and issues</li> <li>• transparency</li> <li>• respect for people's ownership of the conflict and their suffering</li> <li>• accountability for one's own actions</li> <li>• partnership and co-ordination</li> <li>• complementarity and coherence</li> <li>• timeliness<sup>12</sup></li> </ul>
Rationale	<p>Programming inevitably affects the balance of power and interacts with political structures and systems.</p> <p>Better to tackle the underlying causes of poverty.</p>	<p>Programming inevitably interacts with conflict context.</p> <p>A moral duty to avoid contributing to violence</p> <p>Enable sustainable interventions</p>
Conceptual development	Many agencies have developed their own definition of, and tools to implement an RBA. Even within CARE there are a whole range of experimental approaches to the RBA. It continues to evolve.	There is no one blueprint or overall coherent 'conflict sensitive approach' – the concept applies to a myriad of tools and means of working that continue to evolve.
Tools	<p>Causal Responsibility analysis</p> <p>Responsibility analysis</p> <p>Duty bearer mapping</p> <p>Benefits harms</p> <p>Power analysis</p>	<p>Conflict analysis (various)</p> <p>Do No Harm</p> <p>PCIA</p> <p>Making Sense of Turbulent Contexts (World Vision)</p> <p><i>And others...</i></p>
Institutional implications	RBA is a fundamental approach to programming – you can't 'add' rights to a conventional development programme. It demands organisational evolution <i>beyond</i> the application of a different sort of programming.	Conflict sensitivity is a 'lens' through which all things – programming, partnerships, recruitment, reward etc – should be seen. It requires changes not only to programming but also to policies and practices.
Application	RBA is currently applied to development and humanitarian assistance; however it could be applied to many other interventions.	Conflict sensitivity can be applied to any development, humanitarian or peace building intervention, and to many other interventions – such as to trade policy, private sector activities, democratisation programmes etc.
The macro framework	RBA identifies other actors for activities to reinforce the achievement of rights.	There is a bigger vision of peace within which CS intervention is situated, even if the intervention itself is not peace building
World view	RBA views the world in terms of rights holders and duty bearers and seeks to	CS views the world in terms of conflicts and interventions, and seeks to ensure the latter

<sup>12</sup> Africa Peace Forum, Centre for Conflict Resolution, Consortium of Humanitarian Agencies Forum on Early Warning and Early Response, International Alert, and Saferworld (2004) [Conflict sensitive approaches to development, humanitarian assistance and peace building – a resource pack.](#)

	ensure the latter fulfils their responsibilities to the former	do not worsen (and possible help resolve) the former. <sup>13</sup> Thus an RBA intervention could be one of those interventions.
Gender	From one RBA perspective gender is incorporated in RBA through CEDAW. From another RBA perspective gender programming is one form of RBA.	CS has not properly engaged with gender to date.

#### v. RBA in the context of Conflict

Applying a rights based approach to programming in a conflict may bring new challenges to the fore and galvanise domestic action or coalition formation, as well as international action. However implementing RBA programming in open conflict or new post-conflict situations carries additional complexities.

The first set of complexities relate to situations where violence is common. First, in a situation where many human rights violations have been committed, there are often fears about legal processes that may follow a peace deal. Indeed, threats of prosecution may put the brakes on a peace deal altogether.<sup>14</sup> Second, in some situations, the very use of rights language could cause tension. Third, impunity is often the norm in conflict, as law and order has broken down, yet an RBA often involves working on rule of law or justice concerns. Fourth, RBAs often challenge power relations and so may invite a backlash from those who will lose power. This might create increased conflict as in these situations violence may have become the ‘usual’ means to deal with disagreement. This means that much more care is needed when challenging the powerful as the risks are very high. In particular, advocacy may carry much higher sanctions/punishment than in other situations. Fifth, with the proliferation of weapons and a culture of aggression, there may be many more actors who can abuse human rights, as they may no longer be fettered by social norms since taboos against certain forms of violence are abandoned in open violence. Finally, in open conflict or newly post conflict situations politicisation and civil society fractures are heightened, making it harder for different NGOs to work together. The relationships between individuals may also be much more difficult to address, as the lines of division may have become very strong, and attitudes hardened.

The second set of complexities relate to determining appropriate legal systems and holding people to account within them, as well as capacity building to enable duty bearers to fulfil obligations. Our engagement with duty bearers is not simply to negotiate access, but also to work with them to build their capacity to fulfil rights obligations. As with any new resources brought into a war zone, it is likely that there will be a struggle to control the resources of these interventions. As with RBAs, when the resources include capacity building, there may be conflict over who controls the capacity building and whose capacity is built. Contrary to popular belief, human rights obligations do apply in situations of conflict, although certain obligations can be ‘derogated’ from in times of national emergency – provided that an emergency situation prevails and the derogation is enshrined in law and

<sup>13</sup> There is some disagreement on this point – for peacebuilders interested in conflict sensitivity the world view is one of conflict transformation and thus all interventions are vehicles towards this end, see [http://www.berghof-handbook.net/articles/PCIA\\_addABetal.pdf](http://www.berghof-handbook.net/articles/PCIA_addABetal.pdf)

<sup>14</sup> See Chapter 1.3 Tensions Between Peace and Justice in Transitional Contexts.

is proportionate to and necessary in relation to responding to the emergency situation. This means that in situations of conflict, International Humanitarian Law (IHL) exists in parallel to international human rights laws. Several human rights treaties agree on a number of non-derogable human rights norms that are of such fundamental importance that they can never be suspended, even in situations of national emergency. These are:

1. Right to be free from arbitrary deprivation of life;
2. Right to be free from torture and other inhumane or degrading treatment or punishment;
3. Right to be free from slavery or servitude;
4. Right to be free from retroactive application of penal laws.

However human rights law needs to be interpreted in the light of specific IHL. For instance under IHL it is lawful to kill combatants, and in some circumstances civilians, according to principles of military proportionality and necessity.

Under IHL, it may be necessary to consider a duty bearer other than the state. This presents challenges. For example, if an area is controlled by a rebel group then they become the duty bearer, yet working with them (in particular capacity building such that they protect, fulfil and promote the rights of people living in that area) may give them legitimacy. Similarly, capacity building of authoritarian governments may likewise provide legitimacy. In addition, capacity building of a State or an armed group to fulfil obligations may be much harder. The conflict experience may have undermined pre-existing capacity and, as noted above, impunity and using violence as a means to deal with disagreements can create additional hurdles to surmount when helping duty bearers understand their responsibilities.

## Chapter 1

### Understanding Rights in Situations of Conflict: Conceptual Issues and Challenges:

#### Introduction and overview

This chapter focuses on some of the conceptual challenges and issues that we face when we try to make connections between some of the key concepts that guide our interventions in conflict situations: rights, conflict sensitivity, protection, and the tensions between working for peace and working for justice.

**Peter Uvin** explores the linkages between the fields of rights and conflict sensitivity and examines what changes when working with rights based approaches in conflict; **Lola Gostelow** explores the links between protection and rights; and **Nahla Valji** discusses the tensions between peace and justice in transitional contexts. The fourth section by **Magdalene Lagu**, provides a synopsis of DFID's conceptual journey with regard to rights in the context of conflict. The chapter concludes with a summary and set of discussion questions.

#### 1.1 A Rights Based Approach in Post Conflict Countries: Can and Should it be Done?

*Peter Uvin*

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*Uvin's premise is that there are synergies between rights based approaches and conflict sensitivity, which emerged from the same questioning of traditional development practices. He welcomes the opportunity to reflect once more on the two fields and to make more dynamic linkages and actions. Uvin first gives a brief introduction on definitions. Posing the questions, "Should and can a rights based approach be implemented during or after war?", he explores the challenges in and outside development organisations of working in conflict contexts. Uvin has a positive approach to the challenges he presents. His vision is a set of institutionalized relationships with the State, the development system, and local elites, governed by predictable, transparent rules, in which individuals and groups are able to demand access to rights as citizens.*

#### Some history



The two fields—RBA and conflict sensitivity—grew up together from the mid 1990s. They are part of the same questioning of traditional development practice(s), which took place in the space that existed between the end of the Cold War and the beginning of the War on Terror. They grew out of the same observation: that “normal professionalism”—in both development and humanitarian aid—could lead to very sub-optimal outcomes. By being blind to social exclusion, for example, we often inadvertently and often unknowingly (but none the less really) supported its perpetuation. Many countries we worked in for those years were characterized both by systematic human rights violations and systematic conflict dynamics, with both these acting on each other, and we, in the field of development, seemed to be unable to meaningfully address these issues. As a result, our work’s impact was often limited, unsustainable, and may even have contributed to conflict. Change was needed.

Some became cynical about all aid. Other agencies started looking again into the values that had initially propelled their creation, often religious values. Others still began working on different ways of addressing the challenges that were now discussed more openly—the relation between development and development assistance on the one hand, and human rights and conflict dynamics on the other.

Our normal professionalism did not seem very capable of dealing with these matters, and hence it seemed imperative to do better, which meant incorporating these new concerns, which in turn entailed developing new methods of analyzing, new approaches of acting (in the old sectors we already worked in), as well as new sectors to act in (that were until then not part of our mandate).

And so what we now can call RBA and conflict sensitivity were born.

After finishing writing *Aiding Violence*,<sup>15</sup> it was clear not only that both these paths were evident next steps, but also that there was never any major difference between the two. They were part of the same process of intellectual and operational change. Professionals partook in both of them, in the field and in writing, and did not feel like a different people.

But it is true that in the meantime, on the ground, people kept on developing better and better assessment methodologies; experimenting with new approaches; moving into new, typically hybrid fields (reconciliation, village level justice, community-driven development with a conflict resolution component to it, work with traditional authorities, etc.); publishing fresh reports, and so on. *De facto*, most of this work, both on a rights based approach and a conflict-sensitive one, took place in post-conflict countries: those were places where the nature of the task seemed evident, the resistance was lowest, and the money most plentiful. In Rwanda a few years after the genocide for example, as much as 40% of all aid went to actions in these fields (this is no longer the case). In time however, these two paths/reactions became increasingly separated, as different people with different training and aims continued to develop their ideas. Indeed, these two paths have grown substantially in the decade since, to such an extent that it’s easy to lose count of the multitude of excellent methods, approaches, initiatives, and people now involved.

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<sup>15</sup> Uvin, P. (1998) *Aiding Violence – The Development Enterprise in Rwanda*, Kumarian Press.

There is a need to reflect on the relationships between the two agendas again: a great idea. For people on the ground, the two agendas are still very connected: if you are a Burundian CARE employee, for example, you will have received trainings or workshops in both conflict sensitivity and RBA over the last few years, and your organisation is applying both these frameworks in the same region and even with the same people (although likely in different projects). If you are a senior manager you may be juggling both approaches simultaneously. Also, you are aware at some level of the intersection between development, rights, and conflict concerns. That said, the experts and the methods they developed and the papers they wrote have become more and more separate—the unfortunate but unavoidable result of specialization and accumulation of knowledge. And, once again, it is a great idea to stand still and reflect on the intersections between the two, and reflect back on why we started doing this.

### **A few small intermediary remarks about the rights based approach**

Having something is not the same as having a right to it (the well-fed slave)—what is required is that enjoyment must be “socially guaranteed”, i.e., “arrangements [exist] so that one will be able to enjoy the substance of the right even if—especially if—it is not within one’s own power to arrange.” (Henry Shue).<sup>16</sup> This is a matter of law (if applied), but also of values, norms and knowledge, and organisation, power and resources. In short, human rights are not exclusively matters of law nor of services, nor are they exclusively in the realm of the State.

Talking loudly about rights doesn’t make these things happen. Rights education has a limited usefulness, as does ‘naming and shaming’ for development organisations. You can work on rights without ever mentioning them (although it is fair to say that the way you conceive of a problem *does* affect the way you will deal with it; and that talking to staff does therefore help.)

### **RBA in conflict context – what changes?**

Conflict sensitivity ought to act as a corrective on standard human rights approaches, and vice versa—and both of these on standard development programming. Deliberate choices ought to be made about what to do, where to start, how to do it, and these choices ought to be informed by conflict sensitivity and rights concerns.

We hear over and over the platitude that human rights violations are cause and consequence of violent conflict. This would suggest that a rights based approach always and automatically works to reduce conflict. While this may be generically true, it tells us nothing about the difficult job of prioritizing, or making choices and trade-offs, of dealing with the complex ethical and practical choices that need to be made.

In any case, the stronger relation is rather the inverse one: war is, without doubt, the biggest human rights violations producing machine that exists, not only at the very moment it is ongoing but also long afterwards—and this holds for *all* rights (Civil, Political and

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<sup>16</sup> Henry Shue (1996) Basic rights: Subsistence, Affluence, and U.S. Foreign Policy, Princeton University Press.

Economic, Social and Cultural). Ending (or preventing) war truly, any way at all, seems to be the biggest human rights contribution one can make anywhere.

A number of challenges present themselves when working with RBA:

### **Difficulties inside development organisations**

- Staff may have a hard time talking about human rights. Even if the country is not a dictatorial one, and one can speak about these things, in a conflict context, these matters may be very painful, very divisive, and interpreted very differently (e.g. genocide in Burundi and Rwanda). This suggests that, before human rights can be mainstreamed in a development organisation in a conflict context, serious work on conflict resolution *within* the organisation is required first, as well as broad work on creating a climate of trust, openness, etc. In any case, such a climate is important for decent conflict resolution work as well. Organisations that pull this off—i.e., that manage to create an atmosphere where local staff is representative of all parties to a conflict and works in a climate of trust and dialogue—can do both human rights and conflict reduction work even without much in the way of training or explicit talking, whereas the others will simply not get there, no matter how many trainings you throw at it.
- As said, there are many tools out there for conflict sensitivity and rights assessments. Some are better than others or more appropriate for some circumstances than others. Some are totally inappropriate. The biggest problem is for development organisations to organize to make this information operational. A recent study by Collaborative for Development Action (CDA) concluded that the quality of the conflict analysis made by organisations had nothing to do with the quality of their programming. In other words, some organisations had great conflict sensitivity tools whereas others did nothing—and all this had no detectable impact on the eventual conflict-related quality of the programming. That is worrisome and likely to be the same for rights-related tools.
- The central challenge, then, is to find ways to manage organisations better to make such knowledge become relevant. How this is done is a challenge. Part has to do with the workplace climate and the relations between personnel. But there is more, and it would be good to understand that better.
- The difficult question of capacity: human rights advocates or scholars have a hard time coming to grips with the real difficulties of capacity and resources. They essentially pretend these problems do not exist, or could be solved if good will simply existed; most frequently, they simply don't talk about it. But capacity and resource constraints do exist, especially in many of the poor countries we work in, and *a fortiori* in post-conflict countries where these constraints can be enormous—“binding,” as economists sometimes say. In Burundi and Rwanda coming out of violent conflict, for example, there is simply no way most rights can be materialized—surely not the ESC ones, but not even many of the political ones, which are not simply negative in nature (i.e. they are not only about abstaining from

bad actions—think justice here: it does have a real cost). In Burundi now, the State would be hard pressed, even with perfect good will, to fully implement one single human right. Everybody knows that—the managers, the politicians, even the population, our own employees, our own managers. Yet, the rights language cannot come to grips with it. As a result, it is easily dismissed and loses credibility.

### **Difficulties outside the development organisation**

Governments do not appreciate RBA. Even if they are not totalitarian, they typically are and feel weak; they want to consolidate without being criticized right away; they are former rebels and soldiers who aren't exactly champions of human rights or deeply imbued with an understanding of the need for this; they feel that they have security needs that are more important than human rights concerns (see the Bush administration); and they are suspicious if not outright paranoid regarding anyone who criticizes them.

In societies where there has been violent conflict, large chunks of the population may be unwilling to think through human rights implications of actions, and/or may be very partisan when they do so. Human rights concepts are very politicized. In all situations, but particularly in post-conflict ones, human rights language is appropriated for political reasons.

A rights based approach is *de facto* still very State oriented—the locus of violations, and the actor in charge of doing something about it, is the State. In violent conflicts, the State surely is important, but in many cases society plays major part of it too—society is pervaded by the conflict, is an active agent in violating rights and perpetuating conflict, etc. So any analysis that focuses only on the State is bound to be intellectually and operationally partial. This weakens its capacity to work in a conflict-reducing manner. Human rights specialists will tell you that this may be true, but that it is ultimately the State that is responsible for regulating these problems, and hence human rights focus on the State only—the sole actor in international law out of which human rights law emerges. This is a legalistic answer that does not help you much in practice.

In many countries at war, the State, while it does exist, has offices, meets foreign delegations and produces the occasional report and policy, is only weakly in charge. It may weakly control parts of the territory, or even the entire territory. It may be beholden to or dependent on local power holders located both in the State, in the security forces, and in society at large. It may be riveted by internal divisions. As a result, the government may literally be incapable of resolving human rights violations, and putting more pressure on it just weakens it and strengthens its opponents.

During and soon after violent conflict, the level of urgent needs tends to be enormous. There is a general sense that responding to these urgent needs must take priority over “softer” issues such as human rights and conflict sensitivity. Do we really have time to talk about human rights, to hire conflict specialists, when children are dying? The answer to this question is not easy.

Another related problem is that, in RBA we work to higher level, long term goals. This is always a difficult proposition to sell to agencies whose horizon is not so long; project funding modalities run counter to long term goals as well. Another problem that follows from that is that as aims are big and far away, it becomes possible to call basically everything a rights or conflict sensitive project and leave it at that. This may be either too interventionist, or too vague and uncontrollable. We need to figure out what not to do.

### **What can still be done?**

Some of the more original ideas discussed in *“Development and Human Rights”* (Uvin 2004) include:

*Apply human rights principles to oneself:*

- Local employees and partners are aware of the human rights stakes in their own societies: they have to deal with these issues in their daily lives through avoidance, protection, active participation in violations, silence and so on. Creating an atmosphere of critical internal debate about human rights with staff and partners is important. People may begin reporting the truth to their superiors (orally where the written word is too threatening), create explicit ethical bases for joint action, develop with senior foreign staff strategies of advocacy and protection of their employees, and learn to think in advance through the likely impacts of various scenarios of action.
- The quality of the workplace of aid agencies can be evaluated in human rights terms: are minorities, lower castes, vulnerable groups, or women, for example, treated equally in hiring and compensation? Do local employees participate significantly in organisational decision-making? Is there oversight and counter-power in internal management? And towards clients and partners? While not strictly human rights matters, they are a good place to begin when it comes to adopting a rights based approach – an instance of getting your own house in order before spreading the gospel to others. It also acts as a teaching laboratory for employees on what an RBA approach towards clients/beneficiaries looks like.

*Apply the Rule of Law approach:*

This is not the same as democracy, nor exclusively a legal thing. The Rule of Law is always a major problem at the end of violent conflict, and a rights based approach can be very helpful in creating bottom-up innovations that teach people about this. This can take many non-legal forms: the multiplication of channels of information and (administrative and social) mechanisms for redress; the mobilization of grassroots and citizen power in favour of certain rules and procedures; a systematic and constant concern with the creation of all types of mechanisms of accountability, information, control, and redress, available to all citizens; the example given by the behaviour of aid actors themselves; project-based mechanisms of redress.

*Create incentives for collective action:*

Promote an environment (including State) which is favourable to self-organisation: not only supporting some favoured NGOs but a wider range of actors. This calls for tolerance, predictability, credibility, and rights. It will be important to use new political openings that typically exist for that purpose.

What we are aiming for is the transition from a set of highly personalized relationships, in which individuals and organisations seek access to ad hoc benefits as clients (of the State, of local elites, and of the development aid system), to much more institutionalized relationships governed by predictable, transparent rules, in which individuals and groups are able to demand access to rights as citizens.

## 1.2 Rights and Protection: Clarifying the relationship

### *Lola Gostelow*

*Lola Gostelow is an independent humanitarian consultant with 18 years experience in the aid sector. Originally a nutritionist and food security analyst, the last ten years of her work have focused on emergency programming and humanitarian policy. As Humanitarian Policy Advisory to Save the Children UK, Gostelow developed a strong research and advocacy agenda on the humanitarian-military interface; on quality and accountability (including as chair of the board of the Sphere Project); and on (child) rights programming in emergencies. As a consultant, Gostelow continues to be involved in debates on the civil-military nexus; she was commissioned to work on the human rights based approach to programming in emergencies by UNICEF; and accountability continues to be a central concern, most recently through her work with the Steering Committee on Humanitarian Response, which is using peer review as a way of capturing learning about the accountability of humanitarian agencies to disaster-affected persons. Gostelow is based in London.*

*This paper focuses on the overlap between protection and rights based approaches and discusses related conceptual and operational issues. Gostelow makes the point that both protection and RBA refer to all rights; and they both take the long term view, but that there are differences in their primary foci. This has operational implications which may bring with it risks to programming for protection. She revises the well-known ICRC protection “egg” diagram to highlight the linkages between protection and RBA*

There is a certain level of frustration and confusion in the humanitarian sector caused by a collision between two separate streams of debate that have been flowing in recent years – the Protection and the Rights Based Approaches (RBA) debates. This paper draws on experiences with UNICEF. It explores UNICEF’s human rights based approach to programming in emergencies. This paper recommends that protection can usefully be defined under the scope of civil and political rights which require immediate realisation and

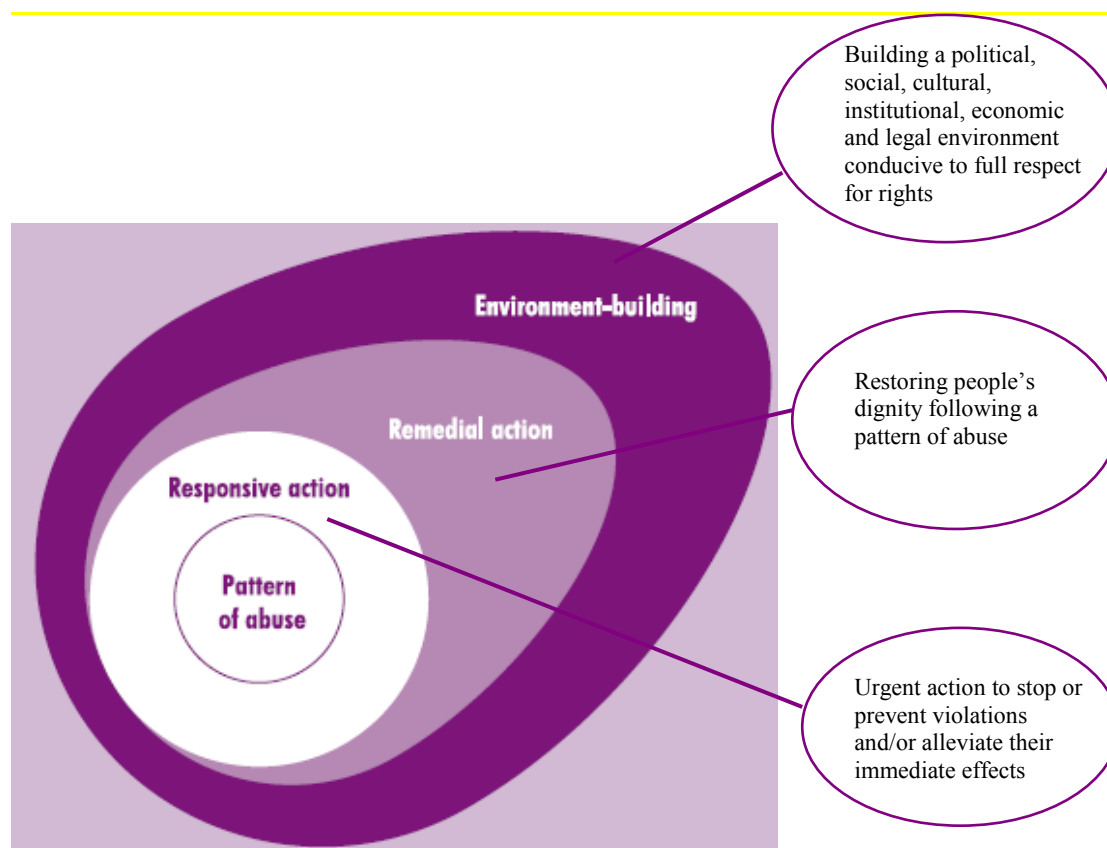
can be broadened to include International Humanitarian Law, including the right to humanitarian access in conflict contexts. In contrast, RBA covers ALL rights, including social, economic and political rights which all programmes – health, education, food distribution etc. - are capable of integrating.

### Protection

The first stream of debate is the protection one. Under the leadership of the ICRC, a 4-year discussion process which began in 1996 culminated in a definition of protection which was then adopted by the Inter-Agency Standing Committee (IASC) in 2002:

*All activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law).*

This definition has been adopted by most non-donor agencies since the IASC includes the main UN agencies, the Red Cross Movement RCM and most NGOs through their membership of the Standing Committee for Humanitarian Response (SCHR) and/or the International Council for Voluntary Agencies (ICVA). The definition is pretty clear, and is made clearer through the diagram below.



**The ICRC Protection 'egg' – depicting different types of protection interventions** <sup>17</sup>

The protection egg is pretty all-encompassing, but it is not intended to be. It's not intended to cover everything we do on the ground. Protection does not include all forms of assistance

<sup>17</sup> ICRC (2001) Strengthening Protection in War, ICRC, Geneva.

– fulfilling an immediate life sustaining need without addressing the cause is not a ‘protection’ activity. The IASC argues that *“It cannot be assumed that humanitarian programmes always consciously aim to prevent or stop violations of international humanitarian, human rights or refugee law or seek to assist people in achieving those rights. Programmes may not be strategically designed to enhance the protection of civilians.”*

Protection and assistance are therefore two sides of the same “humanitarian action” coin. And so protection is intended to complement humanitarian assistance, where assistance is not explicitly concerned with preventing or halting human rights violations. But what if it is?

### **Rights-Based Programming**

We move to rights-based programming or the rights based approach (RBA). Roughly at the same time as the protection debates, and with added vigour from around 1997, the launch of the UN reforms placed human rights centre-fold in the UN’s thinking (some would argue that NGOs were ahead of the game, but this debate is beyond the scope of this paper). Human rights were expected to be internalised and integrated in all the workings of the UN. But how? What does it mean to internalise human rights? In 2003, substantive progress was made with the development of an inter-agency “Common Understanding” on the human rights based approach which agreed that:

- *All [development] programmes should further the realisation of human rights;*
- *Human rights standards and principles guide all programming in all sectors and in all phases of the programming process;*
- *Development cooperation contributes to the development of the capacities of ‘duty-bearers’ to meet their obligations and/or of ‘rights-holders’ to claim their rights.*<sup>18</sup>

There are clear overlaps between RBA and protection as both refer to the realisation of all rights and both take a long-term view to achieving this.

However, there are also several distinctions: Protection includes International Humanitarian Law, alongside International Human Rights Law and Refugee Law, whereas RBA refers to human rights instruments only. Protection talks about ‘full respect for rights’ whereas RBA talks about ‘furthering the realisation of rights – i.e. RBA is progressive.’ This progressive approach of RBA, requiring the capacity-building of rights-holders and duty-bearers to claim their rights and meet their responsibilities respectively arguably fits into the environment building section of the egg illustrated above.

### **The overlap between protection and rights based programming**

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<sup>18</sup> [The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies](http://www.hreoc.gov.au/social_justice/conference/engaging_communities/un_common_understanding_rba.pdf) (2003)



Does it really matter whether and how these two concepts overlap? There are two reasons why we need to be conceptually clearer and distinct in the use of these terms: firstly, confusion is beginning to influence some of the processes we work through as humanitarians, diluting the concept of protection and limiting the application of RBA. For example one mechanism humanitarians work through is the IASC clusters, including the Protection Cluster. The main concern is that this cluster seems to have become the default 'human rights' cluster. This risks Protection losing the specific focus on special measures required to halt or prevent patterns of abuse; and it risks human rights becoming boxed under the workings of only the protection cluster rather than being integral to the workings of all 10 clusters.<sup>19</sup>

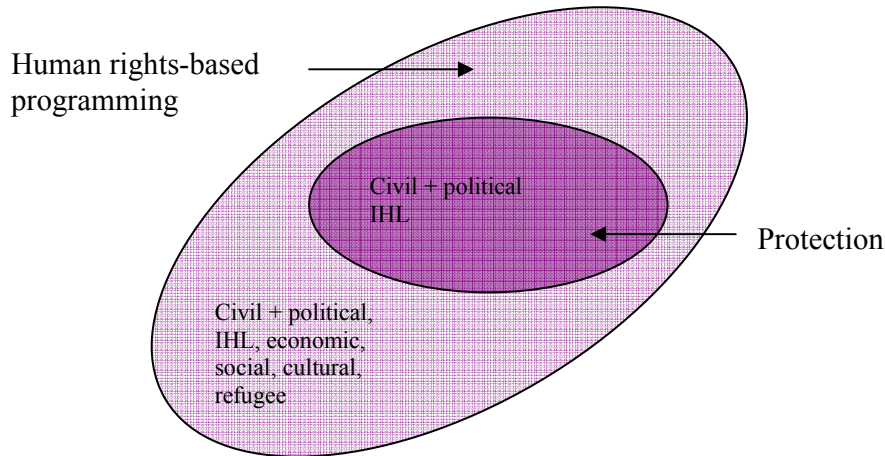
Secondly, we need to be clear about the operational implications of the two definitions and of the necessary skills-set required to programme responses appropriately. Protection against acts of violation requires urgent and concerted effort on the ground as well as nationally and internationally to leverage political pressure on perpetrators to halt their abuses and/or to pressure duty-bearers to act to prevent them. On the ground, this might be supporting survivors of gender-based violence; providing protection for children and youth at risk of recruitment into armed groups; or putting in place measures to prevent violence against women.

In contrast, a rights based approach to programming requires attention to key HR principles: participation, non-discrimination, accountability – all of which contribute to creating conditions and relationships that respect people's dignity. All programmes are capable of being run along these lines: health information systems can, with appropriate formats, reveal whether certain groups are not accessing services. Water supply programmes can be planned through consultative processes and managed with active participation of affected persons. Food aid distributions can include beneficiary feedback loops to ensure accountability of the food agency to the recipients. Distributions of non-food items should be preceded by information campaigns outlining the entitlements of target groups, again an accountability measure to avoid abuse of power. Assessments and situation analyses should explore the human rights environment – in terms of existing or possible violations and also in terms of the non-fulfilment of rights to food, water, shelter, education and so on.

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<sup>19</sup> The cluster approach was proposed as a way of addressing gaps and strengthening the effectiveness of humanitarian response through building partnerships. The cluster approach ensures predictability and accountability in international responses to humanitarian emergencies, by clarifying the division of labour among organisations, and better defining their roles and responsibilities within the different sectors of the response.

## A New Egg?



This paper concludes that Protection could usefully be defined in terms of civil and political rights which require immediate realisation – covering torture, slavery, cruel or inhuman treatment, liberty and security of person. In conflicts, this could be broadened to include International Humanitarian Law, including the right to humanitarian access. In contrast RBA would cover all rights, including social, economic cultural rights including an adequate standard of living, education, health and the right to work. Hopefully this distinction will be a useful step for operational agencies and their staff and not more rhetoric

### 1.3 Tensions between Peace and Justice in Transitional Contexts

*Nahla Valji*

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*This paper addresses the debate about whether to prioritise peace or justice in situations of political transition; and the tensions that surround it. Valji asserts that the 'peace versus justice' debate has become overly polarised to the detriment of anyone's rights. She questions both of the perceived sides of the argument. She makes some initial recommendations on moving beyond this polarization to securing both accountability as well as reconciliation during and immediately following times of conflict. She maintains that any transitional justice mechanism must be contextualised, with justice defined within the local context, values and needs.*

Transitional justice describes the range of mechanisms societies employ to address past human rights violations during a transition away from conflict and, ideally, towards democracy. The field itself is relatively new. Whilst some scholars date it to the Nuremberg trials after the second world war, some even earlier, it has evolved and changed since then. In the past twenty years transitional justice has expanded from involving purely legal and retributive actions, such as the trials at Nuremberg and Tokyo, to encompassing a wider range of mechanisms and goals related to the legacy of past conflict. These include reparations programmes, truth-seeking measures, institutional transformation, memory initiatives, and local justice and reconciliation practices.

The broadening of this field has given rise to a debate which goes to the heart of the goals of transitional justice, and is characterized rather crudely as a tension between peace and justice. Nowhere has this tension been more starkly and internationally highlighted than in the recent situation in Uganda.

The newly established International Criminal Court<sup>20</sup> (ICC) took the conflict in Uganda as its first case and issued arrest warrants for five key commanders of the Lord's Resistance Army<sup>21</sup> (LRA) in the midst of a negotiation process between the LRA and the Government of Uganda. Opinions over the appropriateness of the ICC intervention vary. The justice of the ICC is characterized as a Western based retributive approach focused on individuals and punishment. Those who advocate the view of the ICC as inappropriate to the Ugandan context argue that the Court's intervention threatened to prolong the conflict as rebel leaders refused to negotiate peace with the threat of arrest hanging over them. Furthermore they argue that the focus on a 'blame' culture is perpetrator-centred and does not address the needs of victims nor the challenges of reintegration and accountability for the large numbers of foot soldiers – allowing a culture of impunity to take root.

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<sup>20</sup> The International Criminal Court (ICC) is the first permanent international court dedicated to securing justice for the worst violations of international law – including crimes against humanity, war crimes, and genocide wherever they may occur. Established by the Rome Statute, the ICC came into effect in 2002 and is intended as a 'court of last resort' to be utilized where domestic governments lack either the political will or capacity to prosecute. See, Rome Statute of the International Criminal Court (Rome Statute), A/CONF.183/9, July 17, 1998, entered into force July 1, 2002: [http://www.icc-cpi.int/library/about/officialjournal/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/library/about/officialjournal/Rome_Statute_English.pdf)

<sup>21</sup> The LRA is a rebel group based in northern Uganda (and southern Sudan) and headed by Joseph Kony. Whilst the movement originally cast itself as a 'spiritual' movement pursuing the establishment of a new Uganda governed by the Ten Commandments, it has recast itself over the years as freedom fighters for northern Ugandans (who have ironically paid the heaviest toll for the LRA's war). Over the past 20 years the group has been responsible for mass atrocities, in particular the kidnapping and forced recruitment of some 30,000 northern Ugandan children into the conflict.

The ICC, in this view, is contrasted with 'traditional' restorative justice practices such as *Mato Oput*<sup>22</sup> which are currently being suggested as alternative mechanisms for dealing with returning combatants, community reintegration and accountability; mechanisms which are seen to be less likely to lead to further challenges and conflict. In short, the debate in Uganda has been depicted variously as a clash between cultures, between 'peace' and 'justice', and between modernity and tradition.

This debate can also be seen as a tension between competing rights, heightened during a time of conflict. Without peace there can be no development; access to basic services; security of person; right to life or the myriad other rights which are due to each individual. However without justice the very foundation of rights and recourse is threatened. Using the example of the situation in Uganda, this paper will explore the tensions between competing human rights during times of conflict as they relate to the objectives, mechanisms and processes of transitional justice. It will make some initial recommendations on moving beyond the polarization of 'peace versus justice' to securing both accountability as well as reconciliation during and immediately following times of conflict.

The polarized 'peace versus justice' debate locks the discussion into exclusive paradigms – neither of which can address the needs for both peace *and* justice on the ground. It suggests a necessary tension between peace and justice, reducing justice to trials, and peace to negotiation processes aimed at stopping the immediate bloodshed. This simplification is not helpful to the pursuit of positive peace<sup>23</sup> and social justice writ large.

The 'justice' paradigm has adopted a definition of justice which is constrained to judicial justice through a formal court system. This is to the exclusion of a more holistic definition of justice – one which is defined locally, victim-centred, and which encompasses social, economic, restorative<sup>24</sup> and retributive<sup>25</sup> justice: in other words, a holistic definition of justice in which retributive justice is only one component. Whilst justice does have universal elements, there are also elements which must be open to local definitions.

This can be seen in Rwanda where the justice of the International Criminal Tribunal for Rwanda (ICTR) has had little impact on local Rwandans, many of whom are either oblivious to the work of the Court or view it as a body which has overridden local desires for justice. Critics assert that the ICTR has consumed vast resources which would have been better spent on developing the country and addressing many of the social and economic motivations which gave rise to the violence in the first place. The Court is seen to have spent millions of dollars on housing those who perpetrated the genocide in comfortable accommodation, with access to anti-retroviral treatment for HIV and other resources whilst

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<sup>22</sup> *Mato Oput*, 'or drinking the bitter root' is a traditional Acholi ceremony. The roots of the Oput tree are "mixed with a local brew and drunk by both sides to the conflict, symbolizing their willingness to swallow and wash away all the bitterness that once existed between them." Erin Baines (2007) "The Haunting of Alice", *International Journal of Transitional Justice* 1(1).

<sup>23</sup> Whilst negative peace is simply the absence of violent conflict, positive peace is defined by Johan Galtung as "...the presence of social justice through equal opportunity, a fair distribution of power and resources, equal protection and impartial enforcement of law." Galtung, J (1964) An Editorial. *Journal of Peace Research*, 1 (1), 1-4.

<sup>24</sup> Restorative justice is victim-centred justice and is concerned first and foremost with restoring the victim and the community as a whole rather than with punishment of the perpetrator.

<sup>25</sup> Retributive justice is concerned with punishment of the perpetrator, in particular through prosecution and the formal court system.

their victims remain impoverished; many having already died of the AIDS contracted through the crimes in question. With the exception of the International Criminal Tribunal for the Former Yugoslavia, all special and hybrid courts as well as ICC investigations to date have taken place in contexts of mass poverty – the majority on the African continent. These institutions have largely ignored how ‘justice’ is defined by victims themselves in such a context.

The pursuit of victim-centred justice is particularly important in a post-conflict context, where perceptions of injustice can give rise to recurring cycles of conflict. As such, the pursuit of a narrowly defined justice solely through legalistic mechanisms gives rise to the questions of ‘whose justice?’ and ‘for whom?’ For example, there have been recent statements by some proponents of the ICC that the progress of international law and a universalizing of human rights may come at a price, but that such a price is demanded for the greater goal of ‘justice’. Such statements ignore the views of those who see themselves as paying this price, inadvertently portraying the ICC as a new form of Western imperialism rather than as a body concerned with justice for victims. The justice of the ICC has a narrow definition and a narrow reach. The real issue is the need to secure both accountability, not necessarily defined only as prosecutions, and reconciliation.

Closely linked is the tension between local mechanisms of justice and reconciliation and the ICC. A number of civil society groupings in Uganda, and some internationally, have begun advocating for the use of traditional justice practices for the road to peace and reconciliation in the North. Much of this revolves around a specific traditional practice, Mato Oput: a practice which involves the perpetrator taking responsibility for their crimes, paying compensation, and completing the reconciliation between the communities of both parties with the drinking of a bitter herb. Some argue that Mato Oput would satisfy principles of accountability as demanded in the Rome Statute,<sup>26</sup> and that the ICC would then be compelled to drop its case against the LRA as the existence of domestic accountability mechanisms would oust the jurisdiction of the international court.

International legal institutions also claim to tackle impunity and deter future violations. However these assertions are debatable. The worst massacre in the former Yugoslavia took place *after* the establishment of the International Criminal Tribunal for former Yugoslavia (ICTY), pointing to just how difficult it is to measure impact or attribute causality with regards to deterrence. In a context of long term and widespread atrocities, only five arrest warrants have been issued in Uganda. All of these were for the LRA, leaving similar atrocities perpetrated by the Government of Uganda’s army unquestioned and justice for the vast majority of perpetrators unaddressed. Regardless of whether the ICC prosecutions proceed, the impunity gap that will need to be addressed in Uganda is massive.

Having identified some of the limitations of international justice, it must be stated that these institutions have an important role to play in the furtherance of human rights norms and standards. Blaming the ICC warrants often serves merely as a convenient excuse during breakdowns in peace negotiations. This has been used as a political tool by both sides in

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<sup>26</sup> Rome Statute of the International Criminal Court (entered into force 1 July 2002) [http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome\\_Statute\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf)

Uganda and yet the link between the warrant issue and the negotiation breakdown is unverifiable. It is equally arguable that the peace talks in Juba would not have occurred if there wasn't the threat of international prosecutions sitting heavily on the process. Moreover, since the issuing of the arrest warrants, the number of combatants going through the Amnesty Commission<sup>27</sup> and reintegrating back into communities has reportedly increased. Thus, to point out the gaps is not to dismiss the validity or need for such mechanisms. The issue is rather one of role, context, content, appropriateness and timing.

Just as with the narrowly defined 'justice' argument, the so called 'peace' position has similar weaknesses in its approach. First it proclaims to draw upon traditional African notions of forgiveness as a shared value, when the realities are far more complex. For some, an eye for an eye is the accepted and 'traditional' response – there are not such shared values of forgiveness. For example in Liberia there are over 18 different cultural groupings, each with their own practices relating to community justice and mediation. Any solution which only pursues reintegration and reconciliation would be making unjust demands on those victims who may desire retributive justice, but upon whom this system is simply imposed. Further, traditional peace practices can function as sites for human rights violations and the perpetuation of anti-democratic values themselves, particularly in their treatment of women's rights and gender justice. The depiction of African culture as being unchanging and based on communal and shared values such as forgiveness further fails to take into account the impact of colonization and consequences of attempts to either codify or destroy community dispute resolution practices.

There are also practical limitations to traditional mechanisms in the context of violent conflict. The community level justice mechanisms of Uganda were not created to deal with the scale or types of atrocities that have been perpetrated in this conflict. Using Mato Oput in particular would throw up complex questions such as who would undertake Mato Oput; and with whom? These mechanisms take place between the clans of the various parties, which would mean that one would first need to know what crimes were committed and by whom. The practice is also premised on the principle of reparations<sup>28</sup> being given by the perpetrator for the wrong committed. In a context of both mass poverty and mass atrocity, how will such reparation be paid? And by whom? Accountability and compensation are very difficult in the context of mass violation and poverty.

Traditional mechanisms may have been lost in dislocation.<sup>29</sup> After many years of living in the internally displaced persons (IDP) camps, populations have been cut off from their

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<sup>27</sup> The Amnesty Commission was established in 2000 to assist in the reintegration of combatants from all rebel groups in Uganda (not just LRA combatants). The Commission grants amnesty for applicants and assists with their reintegration through the provision of a resettlement package which includes a lump sum of approx US\$150, a mattress, blanket, hoe and some seeds. For more information and the Commission's mandate see, [http://www.justiceinperspective.org.za/index.php?option=com\\_content&task=view&id=39&Itemid=79](http://www.justiceinperspective.org.za/index.php?option=com_content&task=view&id=39&Itemid=79)

<sup>28</sup> Victims of gross violations of human rights are due comprehensive redress or reparation under international law. The United Nations' Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law notes that comprehensive reparations programmes should include restitution, rehabilitation, compensation, satisfaction, and guarantees of non-repetition. See, OHCHR Rule of Law Tools for Post Conflict States: Reparations Programmes. Available at <http://www.ohchr.org/Documents/Publications/ReparationsProgrammes.pdf>

<sup>29</sup> Erin Baines (2007) "The Haunting of Alice", *International Journal of Transitional Justice* 1

traditional practices, and the credibility of these practices has been weakened. Furthermore the credibility of the traditional leaders who are meant to uphold and lead these practices has been severely compromised.

Given that traditional mechanisms are highly localized, they may not be appropriate to other communities. *Mato Oput* is an Acholi practice and whilst it may serve some value for achieving justice within the Acholi communities it is unlikely to be suitable to address the range of atrocities that have taken place amongst the various ethnic groups.

The employment of local practices needs to find creative solutions to a number of issues: the eroded credibility of local leaders; the questionable applicability of local mechanisms to a context of mass killings and atrocities; issues of responsibility in a context of abductions and a blurring line between victim and perpetrator; and the often anti-democratic principles which underlie these mechanisms. Structural change would need to take into consideration and be inclusive of women and youth in particular.

Having noted the limitations of both sides of this falsely polarized debate – where are we left and how do we move forward: not just in the context of Uganda but more generally on the question of justice in transitions? I would like to conclude by drawing a few key lessons for organisations working in the field of human rights in a transitional context.

The key recommendation is that whilst there must of course be some universal standards of justice in the same way in which we have universal standards of human rights, there needs to be a definition of justice which is broad, and which considers local context, values and needs. Further, we need to be thinking about these issues in a way that is not an ‘either / or’. We must seek innovative solutions which take us beyond the gaps and weaknesses of both the ‘peace’ and ‘justice’ positions. For example, not making prosecutions now should not mean not being able to make prosecutions ever. The basket of policies and mechanisms adopted will need to collectively deliver accountability as well as reconciliation and should include assurances of acknowledgement, truth, reparation and accountability.

An exploration of creative responses to these constraints has begun to take place on the ground in Uganda. For example, a national truth mechanism that codifies and includes common principles extracted from the array of local mechanisms utilized in communities across the country has been suggested. This would ensure accountability at the grass roots level (not just justice for a few and impunity for the rest) and would deal with the complexities of an indistinct victim / perpetrator division as it stresses accountability and reintegration rather than individual criminal blame and punishment. It would take the current discussion beyond the peace talks and the narrow focus on the war in the North to examine the range of conflicts and violations that have occurred across the country, and would give Ugandans space to publicly discuss the marginalization and inequality that lie at the heart of these conflicts. This is not the first time such an institution has been proposed, nor is it the only locally developed proposal that is being discussed. It is precisely these ideas, which could potentially blend accountability and local relevance, which need to be encouraged.

To idealise customary practice; accepting all local practices as ‘authentic’ without critically evaluating who these practices serve, or the extent to which they may have been undermined over time is unhelpful. But at the same time, we must recognize that the appeal to ‘custom’ and to forms of justice that resonate with local needs, meanings and practices is important. Justice is, by its nature, both objective and subjective and thus we must take into account what is perceived as justice locally.

Any solution should be guided primarily by the needs of victims, yet none of the mechanisms thus far proposed can achieve this. In a recent survey conducted in North Uganda,<sup>30</sup> 81% of respondents stated that they wanted to talk publicly about their experiences of violence. When asked about their needs, most victim communities identified immediate needs – food and peace. Peace is a necessary prerequisite to development and without it, basic needs cannot be met. Development and the meeting of basic needs are both in themselves essential elements of holistic justice and positive peace.

To achieve both peace and justice will mean addressing the root causes of conflict. In Uganda these include marginalization, exclusion and the lack of democratic space. There have been over 20 violent insurgencies since Museveni took power in the mid 1980s. Investment needs to be made in rebuilding the country in the short term, including resolving issues around the judiciary and its independence. This may mean that prosecutions are put on hold for some time – but does not exclude them, i.e., it is an issue of sequencing. Retributive justice is only one component of justice and should not be used in the short term at the expense of all other forms of justice. This is linked to the issue of how limited resources would be best focused to enable a victim-informed definition of justice. Unless we redress the underlying grievances upon which politicians mobilize ethnic and cultural identities, the fault lines for re-emerging conflict will thrive; peace will not be sustainable; and as a result justice will not be perceived to have been done, irrespective of whether trials have been undertaken or not.

We should be aware of who is advocating what position, what agenda they are pushing and why. The needs of victims and victim communities should be heard in their full complexity. Their voices should not just be espoused through leaders or civil society actors, nor filtered through international human rights agencies. Drawing from experiences in other post-conflict contexts we can see that victims are not a homogenous grouping, nor do their views and needs remain static over time. Instead they change and are influenced by factors such as distance from the conflict and trauma, social and economic realities, and shifts in political climate. Incorporating the views of victims should be done through ongoing dialogue; and the definition of justice should be broad and flexible enough to encompass the range of needs espoused.

The debate must be taken beyond the current limitations of ‘justice’ versus ‘peace’. In the context of Uganda, this translates as the ICC versus local justice and reconciliation practices.

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<sup>30</sup> Pham, Phuong, Patrick Vinck, Marieke Wierda, Eric Stover, and Adrian di Giovanni (2005) Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda, International Center for Transitional Justice and the Human Rights Center, University of California, Berkeley. Available at [www.ictj.org/images/content/1/2/127.pdf](http://www.ictj.org/images/content/1/2/127.pdf)



The ICC was always intended to serve as a court of last resort, and alternative solutions need to be fully explored and exhausted. No matter what the role of the ICC, domestic systems of justice will remain after the court's departure, and it is imperative for the resolution of future tensions that there is a legal system and local mechanisms that have the confidence of the local population. This should be coupled with creative solutions for achieving a holistic justice which includes key elements of reintegration, accountability, reparations and acknowledgement for victims. We can neither romanticize customary systems nor should we demonize them as inherently incapable of accommodating a human rights discourse and international obligations. The focus of this debate must shift to achieving a durable peace, broader accountability (not just of a legal kind) and acknowledgement of victims through a range of means which fit the local context and the needs for both peace *and* justice which, when properly defined, are in fact inherently dependent upon each other, not mutually exclusive.

## 1.4 Summary and discussion

The first three papers in this section provide fertile thinking ground for some of the more important current debates related to working with rights in the context of conflict. Challenges arise for all three around how best to work with paradigms or conceptual approaches which enjoy some complementarity but which have differing operational implications. They address some of the confusion surrounding the overlap between these paradigms; discuss responses to polarisation; and suggest how to create more innovative and effective ways forward which would capture the strengths of both ends of the spectra without losing sight of the value of each.

For Peter Uvin, RBA and conflict sensitive approaches emerged from a realisation that traditional development practices were both often inadvertently leading to social exclusion and unable to address systemic rights violations. Uvin maintains that although the two fields have become increasingly separate due to increased specialisation, RBA and conflict sensitive approaches share core objectives. However, in the question session, Uvin distinguished a conflict sensitive from a Rights Based Approach by arguing that a RBA will actively seek a change in power relations – ‘conflict transformation’ – whereas conflict sensitivity focuses on existing processes.

Having interpreted rights as social guarantees, Uvin notes some of the challenges to RBAs in conflict or newly emergent peace contexts. These include that staff may struggle to talk about rights; governments and communities may not want to adopt the rights agenda or may do so to pursue personal political ambitions; the heavy State focus in the human rights field as both the perpetrator of human rights violation and the protector of those rights; that the realisation of rights requires resources and this results in the sequencing of efforts to realise some rights before others; coping with the mismatch between short-run project bound solutions to long run problems; and the frequent deprioritisation of rights/peace promotion in situations of extreme and urgent need.

Uvin stresses the value of RBA throughout conflict: in conflict prevention, where community voices should be central as a mode of ensuring inclusivity and positive identity; during the conflict, and in post conflict contexts. He provides a clear list of concrete ways in which an RBA can effectively be built into organisational development and implementation strategies.

Lola Gostelow also refers to complementarities, as she talks about rights and protection. Both concepts refer to rights and both take a long term view. However, in operational terms, a protection approach necessarily demands a focus on urgent and concerted action on the ground, as well as political leverage, whilst an RBA requires a greater focus on the key human rights principles of participation, accountability, inclusion, and the building of capacity of duty bearers and rights holders to claim their rights and meet their responsibilities. She asks whether NGOs would benefit from a clearer demarcation between protection and RBA and wonders whether protection should be defined only in terms of remedial action. She finally proposes that protection could be defined in terms of civil and political rights which require immediate realisation whilst RBA would cover all rights.

Nahla Valji's paper addresses the debate about whether to prioritise peace or justice in situations of political transition. Those interested in the different sides of the debate tend not to share view points. Those interested in the peace debate say that peace can not occur if perpetrators fear to negotiate when legal processes threaten them, and without peace there can be no fulfilment of rights. Those interested in the justice debate say that basic rights are being violated if there is no legal retribution for the perpetrators, and that peace can only take root when a functioning judicial systems challenges impunity.

Valji asserts that the 'peace versus justice' debate has become overly polarised to the detriment of anyone's rights. The 'peace' position has been overly simplified into peace talks, and the 'justice' position to trials, neither of which – in isolation – can achieve *positive* peace, where violence is ended and the structural causes of conflict (such as discrimination) are addressed, along with people's rights.

Valji makes some initial recommendations on moving beyond the polarization of 'peace versus justice' to securing both accountability as well as reconciliation during and immediately following times of conflict. She maintains that any transitional justice mechanism must be contextualised, with justice defined within the local context, values and needs. Creative means to combine the best of both 'peace' and 'justice' approaches should be developed. These should provide accountability as well as reconciliation, which is also guided primarily by the needs of victims. Sequencing is key: choosing not to prosecute in the short term does not prevent prosecution in the future, and allowing time for the strengthening of judiciary may be an essential first step. Peace and justice need to be understood as dependent on each other rather than mutually exclusive.

In response to questions around the fact that indictments tend to sit heavily over other on-going processes (as, for example, when sanctions such as the ICC arrest warrants were issued at a time when the peace talks between the LRA and the Government of Uganda in Juba were taking place), Valji suggests that it might be possible for the ICC indictments to sit heavily on the process in a positive way – for example by suspending ICC processes for a year in the agreement that certain conditions are met (such as accountability, national reconciliation etc.) An annual review of the components of such an agreement could help prompt action.

Further conversations around indictments pointed out that the ICC indictments represent new limits to international interventions, at a time when there is generally less confidence in international institutions. It was noted that indictments are supposed to be used only in the last resort, when the judicial system is weak. Using Uganda as a case study, Valji noted that although the judicial system in Uganda is strong, the Ugandan Government has been unable to capture the LRA leadership and it expected the ICC to arrive with an international force that would go into the jungle and arrest the LRA. However the ICC has no such force, and relies on the same military structure that had failed to arrest LRA leadership for the past 20 years. Valji concurred that the ICC indictments were not appropriately used as a 'last resort'. She further noted that the marginalisation and exclusion of people in Northern Uganda is at the centre of the conflict, and that the ICC process may neither address root causes nor be an appropriate use of limited resources.

## Chapter 2

### Rights in Practice

#### Introduction and Overview

This section focuses on tools and strategies that are used and promoted in conflict situations where agencies are applying rights based approaches. **Anil Pant**, ActionAid Nepal, challenges us to consider whether rights are feasible in a conflict situation; **Liz Philipson** underlines the importance of conducting Conflict Analysis, and how it might be used in different stages of the conflict; and **Ayodeji Ajayeoba** describes an empowering analysis tool for use in conflict contexts.

#### 2.1 Challenges and Opportunities of Working in a Conflict using a Rights Based Approach

*Anil Pant, ActionAid Nepal*

*Anil Pant works as the Deputy Programme Director of the International Mobilization Programme at Amnesty International (AI), International Secretariat, London. He has previously worked as the Head of Action Aid International's Affiliate and Associate Development Unit, Johannesburg and as a Team Leader of Human Security and Governance Team in ActionAid Nepal. He has several years experience of working in a hostile environment in conflict zones of Nepal. He served as the director of AI Nepal and in the several international committees of AI, including as the Coordinator of Asia Pacific Amnesty International Forum and as a member of international Standing Committee on Organisation and Development. He has written papers and made deliberations on rights based approaches to development and Nepal's conflict at different national and international forums. He has travelled to more than 25 countries from all continents in relation to his work on conflict, human rights and development.*

*This paper challenges us to consider whether rights approaches are feasible in conflict situations. It concludes that they are not only feasible but beneficial. While the context provides security challenges, amongst others, Pant outlines some of aspects which make a rights approach more feasible. He mentions that the benefits of engaging with rights during conflict are many: communities will trust an organisation which has been with them through vulnerable periods, there will be legitimacy in the future and a greater organisational capacity can be achieved.*

#### Is RBA feasible in a conflict situation?

Is RBA only an idea or an aspiration in a hostile environment or it is something which can be done?

An agency in itself may not be able to contribute in changing the course of a conflict. However, it can certainly assist in reducing people's suffering and ensuring that they can negotiate greater space for development, at least in pockets of a conflict area. These agencies should understand that engaging with communities during conflict when they are vulnerable builds much greater legitimacy for those agencies to make a meaningful contribution to transformation process in a post-conflict situation. Thus, RBA is not only possible during conflict but is also desirable for its benefits both in conflict and post-conflict situations.

### **Challenges and opportunities**

An organisation working through a rights based approach is looked at differently than an organisation working through service delivery mode. The main challenge of RBA in a conflict is the expectation of the communities and other civil society organisations that the concerned organisation will speak out on matters of human rights violations – civil and political rights as well as economic, social and cultural rights. Speaking out in a conflict may be hugely risky. Sometimes it may be good not to speak so that the assistance being provided to communities can continue. However, this may be seen as indifference on the part of the organisation to the plight of the people. Ensuring a reasonable balance between security challenges and a need to protect organisational image is the key challenge of RBA in a situation of conflict.

An organisation must build the capacity for conflict analysis, including its changing dynamics, and identify its matter of concerns. This should be followed by risk analysis. Then, if the organisation can not speak out alone, it can join hands with others. Alternatively, it can decide to do lobbying at certain senior levels to express its concerns if it is safer to do so. An organisation not speaking out on pressing rights issues in a conflict situation should be a conscious choice based on conflict and risk analysis, and not because of ignorance or indifference.

An organisation should be willing to become 'political'. Becoming political means an understanding of as well as ability and willingness to speak on certain matters that may have a direct or indirect bearing on politics. The organisation must draw a distinction between avoiding speaking on partisan politics, but not becoming indifferent to human rights issues that may have political flavour. Even if a decision is made not to speak out, an organisation must keep a capacity to understand the political dynamics related with the conflict.

Any impact of or response to an organisation's voice greatly depends on the legitimacy of that organisation. Legitimacy can be drawn in different ways. Working with the conflict affected communities is the greatest source of legitimacy. Hiring local staff enhances legitimacy, though sometimes employing external staff may be safer. Local staff hiring processes should be carefully done so that the local dynamics do not contribute to developing tension in the organisation. An organisational composition that is representative of the population composition helps to boost legitimacy. Thus, efforts should be made for multicultural organisational development.

Transparency of conduct is a major component of drawing more legitimacy as well as enhancing the security of programmes. Formal processes of transparency should be laid out and followed to repeal the spread of any incorrect information. Community participation in programme planning, design and implementation is another source of increasing legitimacy and programme security.

In the heightening conflict, ActionAid Nepal (AAN) prioritized recruitment of staff coming from more excluded groups. It started working more with those NGOs which had been set up by excluded communities. Local staff hiring was promoted in partner NGOs and AAN. In the case of AAN, all staff were Nepali nationals.

In one instance, the programme continued to operate for one additional year because the local staff had access to information about the policy of the insurgents not to physically harm the staff of this NGO, despite threats. The local staff had contacts with other local people who had joined the insurgency. However, the field office of the NGO later received a physical attack. One local staff described that one person who had earlier failed to qualify in one of the positions advertised by this NGO had joined the insurgency. This was a catalyst in the attack. Staff of this NGO had been receiving threats of physical attacks for several months but still continuing their work. A couple of weeks before the physical attack on the office, the staff had already stopped their work because they knew that this time the threat was not hollow!

AAN actively promoted the social audit of programmes to ensure programme and financial transparency. This helped to reduce risks by establishing the truth. It also helped to clarify that AAN was “not an agent of imperialists”- a view that was commonly held by the insurgents. The social audit also helped to clarify with the government agencies that the programmes of AAN were focused on poor and excluded people and that such programmes had nothing to do with the activities of the insurgents.

In Nepal, a strategy of speaking through an alliance was adopted to avoid drawing direct attention to any individual organisation and to create media importance to the issues being raised. Some politically contentious issues were also taken up and advocated by development agencies in coordinated ways. Sometimes the strategy of active opposition was taken; in others, an approach of active or passive resistance was adopted. On occasions, a strategy was followed by ActionAid to speak from headquarters, rather than from within Nepal, when the analysis showed that this may be safer.

The content of any communication expressing organisational positions and concerns must be developed in a careful way in a situation of conflict. Such communication may include issues being advocated by one conflict party. Thus, the content must try to avoid using the language being used by any conflict party. It must explain the basis of agency concern and the roots of such concerns in human rights norms. It should give a clear sense that the agency concern is due to an interest in the rights of the affected people rather than any direct interest in political affairs or controversial issues.

An agency must ensure that the framework of human rights provides the basis for its work in a conflict situation. However, it should not forget that human rights principles also imply

duties not to compromise on certain principles. So, an organisation should avoid pragmatism that compromises on core principles. Such compromises may sometimes be tempting because of exigency of the situation, as they can provide some cushion. However, they can be fatal to the organisation's reputation and the security of the programme and staff subsequently. Thus, an organisation must prepare a Code of Conduct (COC) which lays out a work modality. It is mostly beneficial for several organisations to prepare a common COC and disseminate it widely.

RBA work in a conflict is fraught with challenges but it brings opportunities too. The main opportunity is to build the organisational legitimacy to contribute in a post-conflict situation. The communities will trust an organisation which stood by them during difficult times. Most conflicts trigger a discussion on the structural causes of poverty and exclusion. Working during conflict builds the organisational capacity to understand such underlying causes. A conflict transformation process involves a greater willingness to address those structural causes. Greater understanding of the structural causes of conflict will help the organisation to effectively engage on those issues and contribute to a conflict transformation process.

A just and sustainable peace can be ensured when civil society of a country commands the trust of the people. Working for the rights of the people during conflict enhances such trust. Nepal's conflict resolution process was hugely supported by the civil society which remained with the people when they were caught in a cycle of violence. The civil society was at the frontline of the historic April 2006 uprising that is leading to a great hope and concrete steps in institutionalizing people's democracy and transforming the conflict.

## 2.2 Working in Conflict Contexts: The Importance of Analysis in Rights Based Approaches

*Liz Philipson, Senior Conflict Advisor*

*Liz Philipson is an independent researcher and analyst specialising in conflict analysis, conflict and development, peace building, Asia, human rights, political economy and change. She has previously lectured at LSE in conflict analysis and peace building and continues to give guest lectures there and at Kings College. She has considerable experience of politics, conflict and human rights in South Asia where she has a 25 year engagement as a scholar and practitioner. Liz also undertakes facilitation and training in conflict transformation and is involved in human rights training for Amnesty International researchers. She generally undertakes longer term contracts and was part time Senior Conflict Adviser for Action Aid for two years.*

*For Philipson, the analysis is the critical part of an organisation's rights based approach strategy in conflict contexts, and for sharp analysis defining key terms is vital. Philipson unpacks the word conflict and explains the different approaches she sees to organisations' conflict work. Her overall aim is to identify the complementarities and challenges in following a rights approach when working in conflict. Whilst Philipson is positive about this approach, she acknowledges that it is not a panacea and brings problems and solutions in equal measures. She concludes that to attempt rights based work in conflict*

*situations without committing to strong power and vulnerability analysis is 'dangerous and irresponsible'.*

When working on Rights Based Approaches (RBA) to poverty and development, the focus is on both the content and process of securing rights. Approaches which pay attention to processes as well as content are critically important in conflict situations. However RBA, which involves supporting people to claim and enjoy their rights, places a greater emphasis on advocacy than more traditional development approaches. Advocacy is not an activity that is always easy within conflict dynamics. So there are both complementarities and challenges in following RBA when working in conflict. This paper identifies some of these.<sup>31</sup>

### **Definitions**

Poor communication is one aspect of the difficulty of negotiation and reconciliation. This is exacerbated by the fact that much of the basic language is expressing contested concepts. Conflict is more complex than just physical violence, as it can include structural and cultural violence, representing a wide range of forms and intensities of violence along the conflict spectrum. A RBA upholds people's right to freedom from all forms of violence at all stages of conflict and many of these rights are encapsulated in international humanitarian and human rights laws and norms. Similarly, peace is a complex and contested term and a RBA would insist on peace with justice (positive peace) and not just a cessation of violence (negative peace). A RBA emphasises the rights and needs of the most vulnerable, the poor, the excluded, women, children and youth. It aims to help empower those affected by conflict to raise their voices above the sound of the guns, though it should be recognised that the poor and vulnerable may often be actively engaged in conflict. Furthermore, duty bearers and perpetrators are also rights holders.

### **Approaches to working in conflict**

Traditional development activities have often tried to ignore or work "around" conflict. Working "in" conflict refers to activities with traditional development objectives but which explicitly try to minimise the negative, and maximise the positive impact they have on the conflict in which they take place. Working "on" conflict refers to interventions which directly address the causes and dynamics of conflict. However, working "in" and "on" conflict are in fact part of the same spectrum, bridged by a conflict sensitive approach. This approach emphasizes the interaction between the intervention and its context and incorporates conflict analysis into every level of planning and implementation.

### **Power and conflict analysis**

A robust analysis can help to identify threats and opportunities to rights, even in the dynamics of conflict contexts. A robust analysis must be strong, systematic, shared, multi layered, documented, and predictive and adopt a 360-degree perspective. It must also consider the root causes of the conflict. Conflict analysis should not be entirely externally contracted and must draw on the existing skills and knowledge of the staff from the implementing organisation. The analysis must take place at all levels, especially at the sub-

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<sup>31</sup> This mini paper is taken from a broader paper: *Rights based Approaches to working in and on conflict*: Liz Philipson, August 2006. For examples of the impact that conceptual thinking can have on work in the field, see the broader paper.



national and rural levels where most conflicts are played out. The analysis should be bottom-up and thereby reflect the voices and needs of those directly affected by the conflict, including the poor and most vulnerable.

Conflict sensitive development requires not only a vulnerability and power analysis but also an analysis of the impact of the development intervention. Successful development interventions are about change and usually changes in power and economic relations, thus they are themselves potentially conflictual. Similarly, relief activities introduce new resources into a fraught situation and many conflicts are about competition for resources. Both development and relief activities are essentially political activities as they affect power relations within communities at local and national levels. Analysis must therefore also be political, and based on recognition that successful NGOs' activities are likely to themselves generate conflict. Learning to manage the consequences of their own interventions is the challenge. Conflict analysis helps us to understand the complexities, risks and possibilities for action. Strong analysis is a key component, but alone it will change nothing – its purpose is to assess the risks and possibilities for programming, assess staff exposure to risk and identify opportunities for action. It is the action that will have the impact.

### **The organisational challenge of regular analysis**

Encouraging people to do analysis is a challenge, particularly in “hot” conflicts when other priorities abound. Achieving frequent and regular, timely analysis relies on good communications and smooth relationships between staff in the workplace. However, it is unrealistic to expect the NGO and INGO communities to be immune to the politics of conflicts within their country, particularly as most organisations pride themselves on an inclusive staff intake. In Sri Lanka, one local long-established progressive NGO was torn apart by a dispute between Sinhala and Tamil staff which mirrored the national conflict. Ideally staff should be representative for the communities they serve, and managers need to be able to deal with this effectively, understanding the drivers of these interactions and seeking to understand the grey areas. Formal information sharing is a particular challenge and often informal discussions yield the most effective information. Documentation of analysis, and ensuring that the analysis stays “live” with practical application and shared ownership is the ideal.

### **The disadvantage of reliance on “tools”**

Tools are a useful means for training techniques but it is only when the principles of analysis are internalised that an effective analysis is generated. Tools based analyses tend to be partial, depending upon which tools are chosen, and static. Books of political analysis on many conflicts abound but few are from the perspective of conflict affected communities. Participatory Vulnerability Analysis<sup>32</sup> (PVA) is a comprehensive tool that is a strong example of bottom up analysis. It is a useful way of organising thinking, and giving people the support to work out how to move forward, but, all too often, it suffers from lack of follow up and becomes a photograph of the dynamics at one point in time.

### **The challenges of advocacy**

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<sup>32</sup> PVA is an analysis tool developed by Action Aid to involve communities in an in-depth examination of their vulnerability and what can be done to reduce it. See <http://www.actionaid.org/main.aspx?PageID=196>

A RBA emphasises advocacy and campaigning. In politically sensitive and dangerous conflict situations it is discrete and carefully targeted advocacy which might be possible. Analysis identifies the political space within which advocacy might be possible and it is key for the careful construction of an appropriate advocacy strategy. It might identify, for example, that it is more appropriate to do international lobbying on issues; to try to hold conflict parties accountable for their responsibilities under international standards, rather than national or sub-national advocacy. A challenge here is ensuring that these efforts do not undermine local priorities, or expose local actors and make them more vulnerable. As well as this international focus, it is vital to recognise that central to a RBA in conflict situations is supporting communities to create space to survive; this may involve support for communities to negotiate directly with local actors. Political space opens and closes, sometimes quite quickly in conflict contexts. It is key to identify the opportunities for potential lobbying efforts. A regularly updated conflict analysis helps ascertain the opportunities and threats at a local, national and international level. An additional challenge is to ensure that that local conflict analysis is captured at the local level and communicated to the national or international level within an organisation.

### **The challenges of ensuring rights and justice**

RBA is applicable to all stages of conflict. It stresses a conflict transformation approach and supports peace building, which emphasises the importance of processes and inclusive mechanisms in peace negotiations. Instead of a return to a pre-conflict situation, a RBA to conflict emphasises transformation, addressing issues of rights and justice for all groups (including the poor, women, refugees and IDPs and ex-combatants). An inclusive, lasting peace is the ultimate goal of a RBA, though this necessitates an extremely long transitional process. RBA is appropriate for pre-conflict situations, situations of political tension, peacemaking and peace building, and post conflict situations.

Transitional justice all too often is focused on high profile political trials, usually fuelled by international agendas. For example, in Sierra Leone the Special Court and the Truth Commission have received considerable attention and funding internationally. In particular, international cooperation and pressure resulted in Charles Taylor being brought to trial. However, much less emphasis has been placed on the need for reparations for conflict survivors. Not only do they have a right to this, it is also part of the reconciliation process that is critical to the country establishing lasting peace; as is reconciliation and justice within and between communities, which is frequently starved of funds after a short burst of donor interest immediately after a negotiation. Furthermore, it is important to focus on the day to day impunity which often bedevils communities in the post conflict period and not solely on impunity for past high profile crimes.

### **The challenges to putting community voices at the heart of conflict prevention**

A RBA in conflict creates the opportunity to put the voice and needs of the local communities most affected at the heart of interventions designed to prevent future conflict. Analysis will identify opportunities for advocacy and practical interventions, as well as the risks and limitations of these. Thus, local analysis is crucial for creating space at the local level for citizens to participate in the political process and to ensure that there is citizen intervention in conflict power plays. Extensive migration, and times of particularly hot

conflict may result in a level of confusion that temporarily disorients communities and makes analysis particularly difficult. Assisting affected communities to re-develop their “antennae” strengthens the community to re-engage in rights based activities. RBA does not simply identify which rights are violated as a result of violent conflict, but aims to empower communities and vulnerable groups, including women, with the capacity to claim these rights and address the causes of conflict.

### **The challenges of inclusivity**

However, while a rights based approach to working in conflict seeks to help conflict affected communities and excluded people regain their own agency, conflict creates its own complexities. Local communities are not monolithic and are most likely to be divided along national and local conflict cleavages as well as by gender, caste, class, and poverty. It is very often excluded people who resort to arms as a result of their exclusion and vulnerability. Exclusion from development and resources and unequal power relations are at the heart of conflicts. A RBA means ensuring that people are included in development and political processes. This also means addressing the rights and needs of all of those involved in conflict, not just the victims, and it requires the confidence to listen to opposing views, understand their needs and seek a joint solution to the problem. Inclusivity of all groups – conflict parties, women, ethnic groups and minorities - is at the heart of conflict transformation.

### **The challenges of negotiating rights in the absence of government**

Realising rights is a key challenge; identifying, engaging and influencing key duty bearers with the capacity to deliver rights to local populations during and after conflict may appear impossible in the absence of any local governance. In conditions of conflict it is important that conflict parties are held accountable for their responsibilities under international standards. Immediately after a ceasefire, and certainly after demobilisation or decommissioning, there is often a power and governance vacuum. The local armed leaders have gone to ground but local government does not exist. Local communities and civil society can be mobilised to help ensure that the new power system does not replicate the injustices of the old, particularly so that the evolving power systems are encouraged to challenge patriarchy. In Sierra Leone and Liberia, ActionAid supported ‘peace circles’. These often become types of village forums; powerful vehicles for empowerment and accountability – especially as they relate to democratic practice. It is important to realise that it might be important to create a space for women to discuss things separately before entering these discussions.

During violent conflict, power may shift between armed rebel groups and government forces as the battle lines move across the country. Thus communities, trying to survive in the space between competing guns, may be faced with no choice but to negotiate directly with the local armed leaders of both sides. This is fraught with danger, but survival may depend upon it and support for communities in this situation is vital. For example, during the Sri Lanka war in the 1990s, Muslim communities in the East negotiated with the LTTE for permission to cross the lagoon to harvest their crops on fields on the other side. They were able to do this, though their harvest was taxed.

### **The challenges of including people’s voices in the peace process**

RBA will support process approaches and in particular press for more inclusive approaches, particularly for vulnerable people on the margins. In Sri Lanka, a more inclusive process has been rejected in favour of a bilateral process between the LTTE and the government of Sri Lanka, despite considerable lobbying and campaigning by civil society. As a consequence the track of the negotiations has become less and less relevant to the ground situation, killings of civilians are on the increase and there is total impunity. This has contributed to the failure of the peace process.

Elite brokered and dominated negotiations are not only undesirable; they are usually unsustainable. Similarly, externally imposed solutions will fail unless they quickly develop strong local roots. Research shows that many countries in civil war fall back into conflict five or six years after a peace agreement.<sup>33</sup> The challenge is in pushing to develop participatory processes of implementation (and sometimes in pushing for any implementation) and interpretation. This takes longer and is therefore often seen as obstructive. An inclusive process can support the settlement in the longer-term; failure usually means that the settlement is short-lived.

A RBA means being prepared to challenge those who are prizing an elite, political peace above a peace that brings some justice to conflict affected communities. A RBA will ensure that accountability is upheld at all levels. Whether the intervention is on a large-scale by the UN as for example in Sierra Leone and Liberia, or purely a facilitation initiative such as that begun by the Norwegians in Sri Lanka, accountability is important. A rights based approach will support communities in conflict to hold accountable those shaping their futures both at the local, national, regional and international levels.

### **The challenges of funding**

Supporting local communities in conflict requires money. Despite the acknowledgement by many donors that analysis is critical in conflict situations, few will fund organisations for analysis programmes. In this donor driven world, it means that analysis is not prioritised, and this tends to mean that situations are reactive. Financing becomes a challenge post conflict as well. RBA requires support for local communities to make demands on their own governments regarding post conflict recovery and should ensure that their voice is part of the process of the recovery planning and tendering process. Examples of international contractors benefiting more from aid than conflict affected communities abound, here the pattern of post conflict reconstruction in Iraq and Afghanistan has underscored the need for this to change. Aid is for the people recovering from conflict – not the contractors. Challenging the culture of international post conflict contracting and the power of contractors will not be easy. Persuading donors to ensure that there are clauses, with penalties for breach, in international contracts that insist that contractors must involve local people in both the planning and implementation of economic and structural regeneration at national and sub-national levels, would be a beginning.

### **Challenges when conflict and emergencies coincide**

Lastly, when conflict and emergencies coincide, vulnerability multiplies along with the inherent challenges. Furthermore, the complexities of aid and relief interventions also

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<sup>33</sup> See Paul Collier, (2007), <http://users.ox.ac.uk/~econpco/research/pdfs/PostConflict-Recovery.pdf>

multiply. Conflict dynamics can lessen the speed and effectiveness of emergency relief and emergency relief can change and deepen the conflict contours. Emergency workers are often not conflict sensitive and conflict workers are often not emergency trained. In Sri Lanka, the tsunami aid intervention had a very negative effect on the conflict. At the macro level it deepened the suspicions between the main actors as they both wanted control of resources. At the local level, conflict insensitive interventions created new contours of conflict bringing new actors and new disputes into the locality, particularly in the Eastern part of Sri Lanka. Conversely, in Aceh which had been isolated from direct in-country international contact for some time, and was also very badly affected by the tsunami, the shock of the devastation was followed by aid that was badly needed and had a strong mediation effort. This resulted in the negotiation of a peace agreement and disarmament. The contexts were different, but the mutual struggle with the elements immediately after the tsunami struck united all communities in both countries – a unity which was lost in Sri Lanka but maintained in Aceh.

Even where the impact is not so dramatic, valuable local initiatives can impact positively on both the emergency and the conflict. For example, in Kashmir, Action Aid's quake related activities led to the creation of village-level committees that plan and oversee rehabilitation works being undertaken. This has created a *de facto* grassroots democratic model that has not previously been put into practice due to decades of armed conflict and political instability. Such local initiatives, even if they are only temporary, can add to learning at the international level both for Action Aid and the donor and conflict communities. The Kashmir example also illustrates that the coincidence of emergency and conflict offers opportunities to demonstrate the effectiveness of RBA in our work across the board.

### **RBA – a Utopia?**

It is easy to portray a RBA as the answer to all problems. In fact, RBA brings as many challenges as solutions. A RBA is an ambitious concept that challenges existing power relations at all levels. It is inevitable that development work based on RBA will be criticised and undermined by existing power holders. It is likely to suffer setbacks on the ground in any situation and in volatile conflict situations more so. But strong power and vulnerability analysis, as an integral part of the RBA approach, is critical in any RBA programme. To attempt RBA in conflict situations without an institutional commitment to analysis is dangerous and irresponsible.

## 2.3 Participatory Vulnerability Analysis [PVA]: An Empowering Methodology for Use in Conflict Contexts

*Ayodeji Ajayeoba*

*Ayodeji Ajayeoba was, until March 2008, the global conflict advisor for ActionAid International. He has been involved with conflict prevention, peace building, governance and development issues for over a decade. He has engaged with conflict contexts across countries in Africa and Asia. His main expertise lies in the area of conflict analysis and conflict response programming; capacity building around conflict prevention, peace building, protection and governance in conflict. He worked with ActionAid for four and half years in various capacities and at various levels: as conflict advisor in Nigeria; regional human security advisor for West Africa, and global conflict advisor supporting country programmes in 45 countries. His most recent experience of work in conflict was with ActionAid's intervention in the DRC crisis, where AAI facilitated the active agency of women and survivors of violence against women [VAW], in ensuring protection and participating in the peace process. He now works for Oxfam GB in Nigeria.*

*In this paper he provides a brief overview of Participatory Vulnerability Analysis, how it works and opportunities and challenges for using PVA in situations of conflict.*

### **What is Participatory Vulnerability Analysis about?**

PVA is a rights-based methodological approach. It involves communities and other stakeholders in identifying and understanding the nature of the threats and hazards they face. It seeks to break down the different levels of exposure to these threats and hazards, and to understand their causes and impact. The approach aims to explore the effect of poverty, power and the denial of rights on people's vulnerabilities, and enable them to take action. This is achieved through the creative, innovative and combined use of participatory rural appraisal/participatory learning and action [PRA/PLA] tools and good facilitation.

The approach enables people to understand simply and clearly the rights they have, what policies exist, and institutions that are there to serve them. It enables communities and other stakeholders to review existing policies and make their recommendations on what needs to be changed. Field workers work with communities to draw up action plans, mobilise resources and enact appropriate policies, laws and strategies to reduce vulnerability.

Using PVA in conflict therefore ensures a bottom-up approach that reflects the voices and needs of those directly affected by the conflict, including the poor and most vulnerable.

The approach has four distinctive characteristics:

### Four distinctive characteristics of PVA

#### 1. **Multi step analytical framework:**

PVA involves five clusters of analysis:

- a. Situation or context analysis (stakeholder analysis, sensitization)
- b. Cause and effect analysis
- c. Analysis of coping mechanisms and current responses
- d. Drawing action from analysis (building on current responses, and linking new responses with existing responses)
- e. Follow up programming (implementation of and finding resources for plans; setting up a participatory monitoring and evaluation process; and advocacy to transform the environment)

#### 2. **Multi stakeholder process:**

PVA involves a number of actors through a collective analysis and action planning process.

#### 3. **Multi level approach:**

Community level analysis is the foundation for national and international level analysis. This enables clarifying linkages between a community's vulnerabilities and policies and legislation at local, national and international levels. It also provides the basis for interaction between communities and stakeholders at various levels of governance, thereby creating an enabling environment for purposeful life-transforming advocacy.

#### 4. **Multi dimensional focus:**

The process is built on an understanding of communities' multiple vulnerabilities and the interaction between these. It provides a forum for the discussion of political, economic, social and security issues which contribute to peoples' vulnerability.

### **Participatory Vulnerability Analysis, rights based approach and conflict**

PVA is particularly valuable in conflict contexts because people have an increased exposure to threats and hazards, and thus increased vulnerability. Addressing these through a rights-based approach appears to bring advantages. A rights-based process asks questions about power and the structures in place which make people poor and vulnerable, rather than regarding people's vulnerability as necessarily being their 'fault'. Participatory vulnerability analysis facilitates the identification of actions which change the structures causing vulnerability and poverty rather than merely addressing short term needs. This is extremely important when working on conflict since there is general agreement that returning to a pre-conflict state may not be appropriate: structural changes are necessary in many cases. Indeed addressing short term needs may in fact prolong conflict, keeping people in refugee camps

for example, without thinking of how and whether they could reclaim their land and livelihoods. Participatory vulnerability analysis has potential not just in terms of identifying a 'solution' but as a process which may lead to different positive rights claiming outcomes.

The approach is empowering rather than extractive. It involves communities in information collation, processes, and analysis which lead to community cohesion and empowerment. This suggests that, while PVA is useful in all contexts as a rights-based methodology, it is particularly useful in conflict contexts because of its increasingly empowering nature. In addition, due to a strong likelihood of a collapse of community structures during conflict, approaches which identify solutions as well as enabling community cohesion become worthwhile. This is therefore one unique quality of PVA.

This is all the more imperative as it is possible in conflict that support in the form of aid or better governance structures may not be available for a long time and therefore communities need to be able to design solutions themselves. PVA aims to kick start this process.

### **Opportunities for using PVA in conflict and humanitarian response environments**

Some practitioners claim that PVA is time consuming in hot conflict situations. Rapid assessment is therefore recommended as more appropriate. However, PVA does have a part to play in rights based approaches to conflict.

First, ideally PVA takes place before hot conflict. When conflict becomes hot, rapid assessment may be most appropriate, but this too would benefit from prior PVA. For example, PVA is core to ActionAid's approach to programming in conflict and emergencies, in which the focus is on Conflict Risk Reduction (CRR), so it is likely that PVA processes would have taken place prior to conflict breaking out. The outcome of the process would have contributed to predicting the trend of the conflict and to building some resilience in the affected communities. Where no previous PVA process has occurred, it is important and possible to initiate one quickly. The process builds community ownership and acceptance for a response, which lays the foundation for long term sustainability.

Doing a rapid PVA will ensure that the crisis is addressed holistically, addressing the structures which cause and create vulnerability. For example, in Kenya recently, and in the ongoing conflicts in Zimbabwe and Sri Lanka, rapid assessments using the PVA framework were deployed. This was done by integrating into rapid field visits and assessments the use of selected PRA tools from each of the four analytical steps of the PVA framework. Focus group discussions were held, the problem tree was used, a historical profile was taken, trend analysis done, ranking was done to prioritise issues, and the triangle analysis was used to identify policy gaps, while the solution trees for causes and effects were used to identify solutions from short through medium to long term. In Kenya as well as in Democratic Republic of Congo these were done rapidly among displaced persons in camps and the outcomes used as the basis for conflict transformation and peace-building initiatives.

Second, as the PVA framework is both flexible and firm, it is of particular value in conflicts as their unpredictable nature requires an adaptable set of structures and systems to work effectively. The PVA framework is firm because it is marked out in its outer limits by the five analytical steps, and the four phases involved. It is flexible because the composition of



participatory tools which can be deployed within the framework is not fixed and depends on the context. Herein lies its greatest potential. For example, power analysis and relationship mapping of threats – so important in conflict situations – can and have been integrated into the PVA framework.

Furthermore, participatory analytical tools such as triangle analysis, important for understanding how culture, policy, law, institutions and funding mechanisms aid or abet a particular situation, have been integrated into the framework in conflict contexts. Important and decisive gender analytical tools have also been integrated. These include such tools as Access and Control, Priority Group Analysis, as well as the Gender Equality Framework. These tools were not originally part of the PVA framework when it was developed. The multi-country Violence Against Women project in Sierra Leone, Burundi and DRC provided the opportunity for this integration to be developed and piloted.

Third, PVA is particularly valued in conflict because specific conflict analysis tools such as the Participatory Conflict Analysis Framework [PCAF] can be used within the overall framework. The PCAF is modelled on the PVA multi step, multi level, multi stakeholder and multi dimensional framework. Using this in combination with PVA makes the analysis of a conflict more effective, and the solutions more long lasting. For example in Nigeria, in the course of a project around community based approaches to conflict transformation, a human security network emerged. The network has begun to identify policy and advocacy issues, such as the establishment of the Niger Delta Ministry to take care of the special developmental needs of the conflict-endemic oil-rich region. In Plateaus state in North Central Nigeria the network has obtained support from some legislators to support a bill to establish a conflict transformation and peace building bureau.

Fourth, PVA facilitates a strong potential for advocacy and engagement with duty bearers which contributes to the processes leading to transformation of power relationships. This is particularly useful in conflict contexts where relationships with duty bearers may have broken down. PVA also facilitates processes which significantly contribute to the strengthening of the community infrastructure of protection and cohesion through enabling various material and tangible responses at community and local levels. For example, in countries such as Namibia, Nepal, and Sri Lanka, the process has contributed significantly towards networking and alliance building for organisations of poor communities around issues of transforming relationships thus helping to empower those affected by the conflict to raise their voices above the sound of the guns.

### **Challenges of using PVA in conflict and humanitarian environments**

The major challenge associated with deploying the PVA process in humanitarian and conflict environments is that it is time consuming. However, there are a number of ways to overcome this challenge. The most preferred is to integrate the rapid assessment into the initial phases of the PVA process, and to ensure that whatever programming that will emerge from the rapid assessment is enhanced by a foundational PVA process.

The second challenge is in undertaking PVA where there is no community. The way to overcome this challenge is to follow affected communities into their places of displacement and deploy the process focusing on the displaced as well as the 'host' or neighbouring

community for the community level analysis. There is evidence that, in doing this, the process can foster networking and alliance building and begin to lay the foundations for peace building and reconstruction initiatives. This is clear in Sri Lanka and Kenya, where incipient activities along these lines are creating the conditions for the emergence of networks of displaced persons active in protection and peace building initiatives. In Sri Lanka the process has enabled ActionAid to integrate analysis of vulnerability to the conflict with analysis of impacts of the tsunami thereby enabling ActionAid to address this in a combined and integrated manner. For example, rehabilitation of shelter and livelihoods had to take security and protection into consideration.

### **Outstanding issues**

The main outstanding issue in the use of the approach is in setting aside sufficient time for the process. The PVA process has demonstrated its versatility and usefulness as a rights based and community centred approach that can be valuable particularly in a conflict context. Experience shows that if the process is to be empowering and not extractive then it will take minimum of twelve days. This is often challenging to initiate in practice. What is clear is that ActionAid will continue to push for this exercise, and for the necessary investment in time and resources to ensure that its full potential is realised. In this way the benefits of the process will be long lasting to communities in conflict. In conflict in particular, the adapted PVA for conflict can enable the creation, opening up, or expansion of the political space to begin to rebuild fractured relationships.

## 2.4 Summary and discussion

Having established that applying a rights based approach in conflict situations is both feasible and beneficial, Anil Pant charts some of the associated challenges and opportunities. First, he stresses the importance of ActionAid Nepal's perceived legitimacy due to the fact that the organisation was not seen as an agent of imperialism. He suggests that all agencies should employ local staff and ensure they represent the community they seek to help. He also recommends transparency of conduct and practice, and community participation, such as through social audits of programmes. He notes that ActionAid's perceived *post*-conflict legitimacy was improved by having stood by the community during conflict.

He also charts the delicate balance of speaking out on human rights violations, which is important to ensure the organisation's image of non-indifference, and the potential risks to programme security. He notes that taking a rights approach raises people's expectations that the organisation will act. Pant maintains that it is essential that organisations do not speak out on partisan politics, but instead focus on the interests of affected people. To this end he advises agencies against using the terminology of conflict parties, and suggests instead that human rights language, which can draw consensus from both sides, is used. However, it is interesting to note that this strategy would not work in some contexts: in Iraq, for example, the very concept of rights is considered a Western Imperialist notion and using the language of rights is ill-advised. Finally, Pant recommends speaking through alliances and coalitions as a safety strategy.

Pant also speaks of the importance of building organisational capacity for conflict analysis and a risk analysis. Liz Philipson's paper builds on this. Philipson points out that working in the context of conflict without a conflict analysis is potentially dangerous. She first clarifies that conflict, while often seen as negative, can in fact be a positive force for change, provided that it does not become violent and that agencies engage in an appropriate way. An 'appropriate way' is ensuring that work is either 'in' or 'on' conflict with the conflict as central to the work, rather than working 'around' conflict and being 'conflict blind'. Philipson mentions several key elements to analysis: it should be 360 degree, drawn from existing skills, be bottom up and listen to all parties including the perspectives of conflict affected communities, and be timely, dynamic and regular.

Philipson also describes how a conflict analysis will be key to ensuring the success of advocacy. Where conflict obstructs sub/national advocacy, Philipson suggests international lobbying instead. However, she states that while advocacy is important and possible, it is equally important to empower communities, enabling all members, especially the poor, women, refugees and ex-combatants, to participate in the political process. This is one of the central challenges in conflict, but is vital to ensure that solutions are just and peace is inclusive and sustainable.

Having identified conflict analysis as an empowering rights based strategy which involves communities and other stakeholders exploring what effects poverty, power and the denial of rights have on their own vulnerabilities, Ayodeji Ajayeoba provides a detailed description of both the rationale for using a Participatory Vulnerability Analysis, and what it involves. The two key challenges that he identifies: the fact that it can be very time consuming, and that it

is sometimes difficult to identify a “community”, can, with forethought, be effectively addressed.

A key point to take away from these presentations is that a reliance on tools is misguided. To quote Philipson, “Tools are a useful means for training techniques, but it is only when the principles of analysis are internalized that effective analysis is generated”.

## Chapter 3

### Experiences from the Field: RBA, with a Focus on Advocacy

This section focuses on six practitioners' experiences in the field. Each paper considers opportunities and challenges of applying RBA in their working context. Not surprisingly, advocacy is a key component of all of these efforts. The first three papers include advocacy implicitly in their work, the second three papers focus specifically on how they have been able to operationalise their advocacy strategies. A short introduction to some of the issues around doing advocacy in situations of conflict precedes the three individual presentations; and a summary note at the end of the section draws together the lessons learned from these six field experiences. The presentations are as follows:

**Dhruba Karki** (CARE Nepal) provides an overview of the challenges faced in applying rights based approaches in Nepal in 2002; **Rezgar Ghafor** (HelpAge International) focuses on the challenges of working with a rights based approach in Iraq; **Harriet Dodd** (CARE Jordan) considers how best to respond to refugees and asylum seekers fleeing Iraq; **Najia Haneefi** (Afghan Women's Education Centre) explores the issues around working with the constraints of legal pluralism in Afghanistan; **Chernor Bah** focuses on challenges and opportunities around children's advocacy, based on his experience in post-conflict Sierra Leone; and **Juliette Seibold** (CARE WBG) presents an advocacy strategy for CARE in West Bank Gaza

#### 3.1 Right Based Approach in the Conflict Situation in Nepal: Experiences of CARE Nepal<sup>34</sup>

##### *Mr Dhruba Karki*

*Dhruba Karki is the Team Leader of a Water and Sanitation Programme. With more than 15 years experience of working at the community level as well as in management of livelihoods and emergency programmes, Mr. Karki is an expert of social mobilisation. He has a unique quality of stepping ahead in between hurdles, conflicting interests and difficult situations. A sociologist by education, he is a people- focussed professional. Mr Karki led programmes during the height of Maoist--led armed insurgency in Nepal. He has emerged as a polished practitioner of rights based approach during emergency, humanitarian and relief operations.*

*Mr. Karki was the first practitioner of Do No Harm in Nepal. He has made wider deliberations with this tool within CARE, and in national and international agencies including the government. He has*

<sup>34</sup> CARE Nepal was set up in 1978 with small package of relief programmes enhancing staff nurse capacity in Kathmandu hospitals. The organisation shifted its approach towards integrated development process in the 1990s involving health, education, forestry, agriculture, community infrastructure, institution building and economic empowerment sectors. Since 2001 CARE-Nepal has shifted programme strategy toward rights based approaches targeting poor, vulnerable and socially excluded people to improve their livelihoods and enhance social justice in the society.

*been a pioneer in designing and applying concept of public audits that was later adopted by various development agencies in Nepal. A member of the Sociological and Anthropological Society of Nepal, he is also an Invitee Member of National Sanitation Steering Committee, Government of Nepal.*

*In this contribution, Mr Karki gives an excellent overview of the nature of the armed conflict and the challenges of working in Nepal during the peak of Maoist- led armed insurgency. These include lack of mobility and communications, risk associated with travel, absence of government and service agencies, and a lack of trust among all including the targeted recipients. Karki explores the journey that CARE took in developing its rights approach and conflict-sensitive tools and details how changes led to more programme innovation, greater accountability through public auditing and improved communication flows and increased empowerment for partners and communities. All these factors resulted in a greater space for civil society to organise and mobilise on specific issues, as well as greater recognition of the dynamics of the greater conflict between Maoists and security forces and of the household rights abuses that took place.*

## **Introduction**

CARE Nepal has faced many challenges in delivering development programming in the conflict context of Nepal. Since 2002 there have been efforts to understand, pilot and then mainstream rights based approaches through both top down conceptualisation and bottom up innovation. These field based innovations were developed in response to the challenges of operating in a conflict environment. Innovations included delegating authority to user groups, public auditing, and involving communities in the design of implementation procedures. These programming approaches have helped build a rights culture at the community level and initiate rights advocacy. They have begun to reduce the vacuum between the State and people (there had been a complete withdrawal of government in the highly conflict affected areas) by encouraging interaction between government officials and communities on development needs. RBA programming in Nepal is not without its challenges, but it has contributed towards transforming conflict into peace by mobilising a grassroots voice for peace and building a confident and respected civil society.

## **The causes of conflict in Nepal**

The root causes of conflict in Nepal are exclusion, poor governance, and poverty. Nepal has been an agrarian feudal society for the past 237 years, under both the monarchy and the autocratic Rana system.<sup>35</sup> Power and access to resources were strongly controlled by these elite<sup>36</sup> groups: they designed laws to serve their needs, and excluded all non-elites from decision making. The caste system as structured by the Hindu religion imposes various subdivisions of classes, where each class is assigned a specific work task in the society. This system has deprived certain people of equal opportunities in political, economic, administrative and educational sectors. The exploitation of certain groups and the enforcement of social taboos and other superstitions have become strongly ingrained in society.<sup>37</sup> Many caste groups were specifically constructed to serve the elites.<sup>38</sup> Women face

<sup>35</sup> *Rana* is a subdivision group of Hindus in Nepal. They had captured all power of the State through massacre of all power holders in 1846 and ruled as an autocratic regime over 104 years in a dynastic system.

<sup>36</sup> Elites in this article does not refer to a particular caste, but instead to the positions of power.

<sup>37</sup> A 1963 law changed the caste system.

<sup>38</sup> For instance lower caste groups were created such as tailors, shoe makers, blacksmiths and toilet cleaners.

further discrimination as they have no property rights, no role in decision making, and no access to resources or income.

Since the 1950s there have been various efforts to establish a democracy, marred by a continual struggle between the political parties and the King for control of the State. The King and the political parties acted only in their own self interest and those of other elites, despite claims to addressing the issues of the poor, vulnerable and socially excluded people. The political parties and the King have lost much respect in the eyes of the people.

### **The armed conflict in Nepal**

One of the political parties active in Parliament in the 1990s was the Nepal Communist Party – Maoist. Their manifesto was to fulfil the needs of the poor, vulnerable and socially excluded people, and they fundamentally disagreed with the constitutional role of the King, and the exclusionary behaviour of the ruling party in Parliament. The Maoist party made a 44 point demand to the government concerning inclusion, equal opportunity and better services, which were directly linked to the governance system in Nepal. These demands were not even acknowledged by the government, and in 1996 the Maoists began an armed insurrection in mid-western region of Nepal in the name of 'The People's War'.

The armed conflict spread rapidly and extensively across the country. Over the course of the next 10 years, over 13,000 people lost their lives and thousands more suffered human rights violations at the hands of both the Maoists and the security forces. Essential physical infrastructures, such as bridges, telephone systems, and government offices were destroyed across Nepal. Services to the rural areas, such as medical supplies, agricultural support services, banks and communications systems were withdrawn. Nearly all existing government, private and non-government service providers retreated to the district, regional and central level offices. The ability of the rural poor to secure a decent livelihood and meet their basic needs was severely constrained. They experienced considerable impoverishment as a direct result.

During the armed conflict 1996-2006, a number of other issues and grievances emerged or worsened, further fuelling the conflict:

- Corruption became institutionalized, from Ministerial positions to grassroots user committees at field level, creating mistrust at all levels.
- Bribery became entrenched in government services, with services such as health and education deteriorating, and popular frustration at the government.
- Only those connected to the political parties in government were able to get access to the resources of the State. So for instance when land was freely distributed for landless people, relatives and friends of the ruling parties captured these resources and used the resources to strengthen their patron-client relations, likewise for civil service positions. This undermined confidence in the State.
- Individuals with positions within the political parties were able to use this political connection to exert pressure on all decision making structures to rule in their favour. Key decisions even in remote rural areas were controlled by these local elites. So for instance bodies that made decision on designs of shared infrastructure such as irrigation canals, would be controlled by local elites who would prioritise their

personal benefit over the poor and vulnerable. This raised agitation towards higher classes and castes.

- Development programming was not immune to these processes. As one author explained:

*“the most common forms of conflict related to development interventions were misuse of externally obtained financial sources (cash and kind) and abuse of authority. ... conflict due to nepotism in the allocation of development funds to party supporters, elites, relatives, and influential people is a well-established reality in villages.”<sup>39</sup>*

- From 1990 to 2002, a period of ‘multiparty democracy’, politics became a game for political parties to continuously form and re-form coalitions to achieve numerical majority, thus the government frequently collapsed. Their actions were driven not by a desire to meet the needs of the people, but merely to hold on to power. No long term policies were developed in such an unstable situation.
- Widespread physical abuse, such as beatings, killings and harassment of the rural communities were perpetrated by the security forces and the Maoists, although the targets were different – the Maoists attacked the rural political elites and those who spoke against the Maoists, while the security forces targeted the Dalits<sup>40</sup> and the poor, as they were presumed to be Maoist activists.<sup>41</sup> Further, the security forces committed acts of sexual violence.

### **Challenges of the operating environment**

The conflict created immense operational challenges for development agencies in Nepal – both international and local NGOs. Fearing that information might be passed to security forces, the Maoists severely constrained the mobility of community members, who had to seek written permission to visit the district headquarters. This made communications between NGOs and communities very difficult as the offices of the NGOs were based in the district headquarters. Likewise NGO staff had to get written permission from the Maoists to visit the communities. Getting such written permission was not only very difficult, it was also very dangerous as the security forces occasionally killed NGO staff bearing such documents. Regular strikes and road closures made movement difficult. Further restrictions by the government prevented the transportation of materials to beneficiary communities.

Beneficiary communities were often physically abused by both sides. Seeking acceptance from the Maoists for a development project was very risky – people were sometimes beaten and/or harassed for initiating this dialogue. The Maoists were against any connections between communities and the State, and considered development programming to be making such connections. Thus connecting with outsiders, such as NGO staff, was considered a threat. Even the act of describing a community’s needs was considered by the

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<sup>39</sup> Bishnu Raj Upreti (Jan 2004) The Price of neglect – from resource conflict to Maoist insurgency in the Himalayan Kingdom p. 96.

<sup>40</sup> *Dalit*: The root for the word “Dalit” is found both in Hebrew and in Sanskrit. It refers to people who are socially, religiously, economically and politically oppressed, deprived and exploited in India. The word “Dalit” is often used to describe a person who comes from any lower caste, even though technically authentic Dalits are kept outside the caste system as unworthy to enter the social and religious life of society. They are generally considered to be polluted socially, poor economically and powerless politically. They are not allowed to touch caste Hindus and are therefore treated as “untouchables”. Dalits are found spread throughout the nation of India, South Asia, and among the Indian diaspora around the world.

<http://www.dalitnetwork.org/go?/dfn/about/C20/#dalit>

<sup>41</sup> Those targeted by the Maoists tended to become IDPs, but not to join either side, while those targeted by the security forces tended to join the Maoist cause.



Maoists to be a criticism of their movement. Visits by NGO staff to the communities were not welcome by the Maoists, who feared that information would be passed to the security forces and the media. Communities had to provide the security for staff to visit project sites, and were themselves sometimes beaten for allowing outsiders to visit. Community members sometimes had to visit the district headquarters for project implementation purposes. In doing so, they faced questioning/interrogation and sometimes beatings or arrest from the security forces who were looking for information about the Maoists, and who presumed that those living in Maoist controlled areas were in fact Maoist cadres.

Misperceptions of NGOs were held on both sides. The security forces thought that NGOs were providing resources to the Maoist cause. The Maoists thought that NGO staff were spies for Western governments, especially the USA, and that our programming was diverting potential recruits from their cause. The threat of abduction and/or physical abuse was ever present, and many staff were taken for 'meetings' with the Maoists which sometimes lasted several days.

The prevalence of corruption and exclusion created pervasive mistrust – between beneficiaries, members of the user committees, between varying user committees and contactors, and towards staff. It undermined relationships, increased risks and threats, created many questions about the use of project funds and ultimately undermined the impact of programming. Maoist ideology was against gambling, alcoholism and sexual promiscuity. This meant that staff had to behave in an exemplary way, as Maoists would investigate staff background, and would physically punish staff who had poor previous conduct or connections to elites.

Maoists asked for 'contributions' from NGOs, projects, staff, and beneficiaries themselves. They demanded that NGOs register with them to be able to operate in the rural areas, thereby increasing their own legitimacy. It was a continuous struggle to try to prevent the leakage of resources, in various forms, to the Maoists. Property was sometimes stolen by Maoists.

Both Maoists and security forces made meetings dangerous to organize. The security forces believed that large gatherings, as needed for project planning, were simply a cover for Maoist activities, and sometimes even attacked such meetings. The Maoists feared that such meetings represented an empowered community, which was a threat to the Maoist power.

Implementing a rights based approach also brings with it further challenges. In Nepal the proclamation of a State of emergency (1<sup>st</sup> February 2005) severely undermined the protection of rights. Further, the King perceived human rights as a threat to his power, and so most people feared discussing human rights. The recently established National Human Rights Commission, set up by the government, has not acted impartially nor acted to protect human rights activists, so has not gained the confidence of the Nepali people. Staff members often witnessed or heard about extensive human rights violations committed by both conflict parties. However to speak out about these would have put staff, partners and project communities at much risk.

CARE Nepal has developed many policies, procedures and programming strategies to implement in this very complex conflict environment. Some of these are risk management activities and country office wide actions to understand and mainstream RBA. Others relate to the use of Do No Harm, a tool to analyse the interactions of projects with conflict and to redesign these to minimize conflict escalating impacts. The use of Do No Harm provoked innovation at the field level around particular rights based strategies.

### **CARE Nepal's RBA journey**

Adopting rights based programming is a shared principle across the CARE family, although uptake has been varied across different country offices. The vision and mission of CARE Nepal is to oppose discrimination and stand in solidarity with poor, vulnerable and socially excluded people. This inevitably leads us to rights based programming.

The journey for the country office began in 2000 with discussions and exposure, leading to trainings and pilot projects in 2002, with two large projects adopting RBA in 2003. Further discussions and critical reflections fed into mainstreaming efforts in 2005, culminating in the adoption of RBA as a cross cutting issue for programming and organisational development in 2006, and its adaptation to the Nepali context.

Efforts to implement rights based programming have focused on projects relating to governance in natural resources management, women's empowerment, community infrastructure development, and health and land rights.

Two programmes were designed to enhance governance in natural resource management. Key to these programmes were:

- Creating in-depth understanding of the roles and responsibilities of those accessing forest and water resources, and the users groups for these.
- Advocacy training concerning the policy environment for these resources.
- Enhancing resource management skills on protection, distribution, and utilization of resources.

A women's empowerment programme was initiated incorporating awareness raising on fundamental rights and governance; and analysing and enabling women's representation in all decision-making processes.

Several programmes were initiated in high conflict conditions where development activities were non-existent, and a vacuum existed between the people and the government. No other non-governmental or private service providers were able to operate in these areas at that time. The programmes involved infrastructure development projects and as such did not try to connect duty bearers (i.e. government or Maoists) to rights holders in a conventional rights based approach – this would have been impossible given the complete absence of government in this area. However the project began to reduce the vacuum by encouraging interaction between communities and government officials concerning development needs. Through the application of Do No Harm, a number of programming strategies were revised. These innovations include shifting the design of programme implementation strategy to the communities, the delegation of authority to users groups, the development of public

auditing, neutrality, a code of conduct for staff, a geographical spread of interventions, and the hiring of local staff.<sup>42</sup> The first three of these have helped build a rights culture at the community level and begin rights advocacy.

### **Programming innovation**

Previously, the design of implementation procedures had been done in-house, usually by senior staff. The decisions reached were then taken to the communities who were 'oriented' on these procedures. The new approach shifts decision making to a shared process between staff and the community. So for example, previously we took decisions in-house that communities would have to contribute a certain percentage of projects costs (in money or in kind). Communities were confused about how we reached this specific percentage figure. Now we ask the communities what support they need from the project, and what they are able to contribute themselves. Together we decide the respective contributions. Communities are now entirely clear about what is expected of them and why, and are able to explain this to others, in particular the Maoists. They now own these roles, policies and procedures, when before they experienced them as externally imposed. It has ensured their right to participate in decisions affecting them, and clarified roles and responsibilities.

Delegating authority to user groups involves handing over all decision making concerning project expenditure to the user groups who represent the beneficiary community.<sup>43</sup> They decide how the project funds will be spent, self-managing all issues relating to procurement, transportation and labour on the project. The user groups are responsible for approving all expenses. The outcomes of this have been to generate strong community ownership of projects and a sense of responsibility for the success of the work. The results have been wide ranging. It has united the community and enabled them to develop a common voice for their needs. It has empowered them to take their development agenda to the Maoists and the government. The positive outcome of this was the creation of a two-way dialogue between communities and Maoists, where previously there had been a one-way dialogue, of Maoists presenting their agenda to communities. The negative outcome of this was some increased risk for communities, as advocating for projects with the Maoists could create tensions between communities and Maoists.

In conjunction with this was the development of a public auditing process for ensuring transparency and accountability. This involves the entire community in not only the planning of projects, but importantly the monitoring of the roles performed by stakeholders, the process for implementation, and the planned and actual expenditures. All details about incomes and expenditures on the project are on permanent display for all to see. Large public meetings are held at the planning, implementation and evaluation phases of the

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<sup>42</sup> CARE Nepal developed local hire policy with affirmative action for women, poor and socially excluded people. The challenges regarding technical expertise were more than offset by enhanced relations between the project and local community, in particular in building local ownership and enhancing knowledge and capacity of local people. The transparent and competitive recruitment processes were important in achieving this. Further it increased the confidence of the Maoists in the project since they knew the attitudes and behaviours of these local recruits, thought it unlikely that sensitive information would pass to the security forces, and thus allowed greater freedom of movement to these staff.

<sup>43</sup> In the past there was a central procurement policy among all development agencies in managing materials for their community development activities and the field based staff were responsible for managing funds for local level requirements. The system ultimately resulted in discouraging people to be responsive and accountable to those programmes.

project in which all expenditures are discussed. All documents are prepared in Nepali. Thus there is complete transparency about funds. Poor past development practice, lack of trust, and rampant corruption meant these were important strategies for CARE. We were able to role model appropriate duty bearer behaviour by equipping people with full and clear information of the programme. This approach has caught the communities' imagination, they now demand such practices from all development agencies, and in particular from the government. Thus it has helped build the State-citizen link, and given them the awareness that access to information concerning development activities is a right. Peter Uvin describes just how important information is for effective development and governance:

*"Improving flows of information for the poor is one of the most important things international aid actors can assist with. We know from basic political-science thinking that the dismantling of asymmetrical information is crucial for the establishment of civil society and eventually of development... When poor and small farmers have access to at least two independent sources of information, their degree of empowerment rises dramatically. Suddenly they can compare information about prices, policies, rights and rates without being dependent on middlemen and local leaders, and they can make up their own minds on these matters, availing themselves of opportunities that may have existed but were denied them for lack of information and knowledge (in other words, like markets, systems of governance need widespread information to function effectively)."*<sup>44</sup>

Further, the public auditing process has enhanced a sense of responsibility among the communities to ensure better development programming – where previously few would have challenged sloppy work by contractors, now communities will act as watchdogs and ensure contracted or other work is completed as planned. However, the demands for public audits by communities to the government has created tensions as the practice is not yet accepted by local government officials nor do they have the means to implement it.<sup>45</sup>

Interestingly these programming approaches which embody rights based approaches were developed in response to the conflict environment, and were identified through the use of a specific conflict sensitive tool – Do No Harm. They represent an organic growth of programming that promotes rights and creates an enabling environment to claim those rights, as well as connecting rights holders with duty bearers where there was no interaction, or only one-way interaction before.

### **Lessons learned**

RBA programming has helped mobilise a grassroots voice for peace. The entry point for the natural resource programmes has been user groups and their networks. This has meant the programmes have had a very wide reach. The practice of public auditing has improved trust in communities by tackling corruption with transparency. The natural resource programmes have focussed work on rights relating to natural resources, but have also given communities awareness about their fundamental rights. By supporting them to advocate about natural resource rights, they have gained confidence to dialogue on other rights. They have found

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<sup>44</sup> Uvin (2004) Human rights and development, p.157.

<sup>45</sup> The Government Auditor General's team, when visiting a CARE project, commented that the practice of public auditing is valuable and recommended that it be taken up across government.

new voice and leadership, and feel they now have the right to put their interests forward – and the overwhelming interest of the Nepali people is for peace. So RBA programming, through creating unity, awareness, and confidence, has contributed to empowering people to convert their hidden interests into vocal demands. In this context, communities have placed considerable informal pressure on both the Maoists and security forces for peace.

The confidence also has had repercussions for better development practice. Previously the Maoists would strongly direct development – i.e. decide which NGO projects were allowed in which areas. However this new voice and leadership, supported through rights based programming, has also given communities confidence to better negotiate their development space.

The space for civil society organisations to organise and mobilise on specific issues has grown. Previously communities could only participate in Maoist activities, and did not initiate any of their own. RBA has encouraged people to organise activities on issues that coincided within the Maoist agenda, but were not organised within the Maoist structures. The Maoists did not obstruct these activities, despite such collective action representing a challenge to their power. So for example women have organised demonstrations concerning domestic violence. Thus people have begun to organise around their interests outside the Maoist structure, helping build civil society as an alternative and non-violent means of mobilisation.

Bad governance was a key cause and on-going driver of conflict in Nepal. CARE's Rights based programming in Nepal improves governance from the community level upwards. Our programming works on social exclusion, a key element of the Maoist agenda. There was a co-incidence of objectives of rights based programming and the Maoist agenda – although the way we tried to realise those rights was different!

RBA has not only contributed to addressing the macro conflict of the Maoists versus the security forces, it has also brought to the surface household level violence, in particular, domestic violence against women. The movement for change on domestic violence is growing in size and becoming recognised. Thus it has helped create the space to tackle these other levels of violence in Nepali society.

### **Unanswered questions:**

In 2005 negotiations began between the Maoists and the political parties. This gave the Nepali people courage, and triggered the re-birth of a popular grassroots movement for peace, 'The People's Movement'. Demonstrations throughout Nepal cutting across society demanded that the King re-establish Parliament and hand back powers he had seized in 2005. The movement was very powerful and resulted in the King's retreat, and a comprehensive peace agreement between the Maoists and the political parties. In the agreement there are provisions for a truth commission and for legal proceedings against those who have committed human rights violations during the conflict. The King has now rescinded his authority to the Parliament. An interim constitution and Parliament is in place in which the Maoists hold 25% of seats. Maoist cadres are demobilising across Nepal. Once

the Maoists are demobilised a constitutional assembly will form. This will write the final constitution and decide on the role of the King. Elections were held in 2008 to do this.

### **How do we ensure that working on discrimination does not trigger a violent backlash?**

In a December 2006 study, staff and partners of CARE expressed that RBA is “fundamental” in the current context, as people see the need to transform social relations. During the conflict period it was very difficult to work on such transformative issues. As operational NGOs we had to cope with working in a context of direct violence. Now, in the new peace, we are concerned to work on other forms of violence – in particular to work on discrimination. In the Nepali context, while caste discrimination was prohibited by law in 1969, it remains widely practiced as it is so ingrained in the culture. As with all rights based programming, challenging those with power can invite a backlash.

*“The ‘rules of the game’, developed by power holders in the societies are considered as social policies and norms. Discriminatory and exclusionary rules are created and perpetuated because they benefit those who hold power. Rules do not change on their own. Those who hold power don’t change these rules easily.”<sup>46</sup>*

There is an immense appetite amongst CARE staff and partners to work on social transformation. However there are risks involved, as working to transform this ‘accepted’ cultural violence can erupt into direct violence. There is an obligation to ensure that people are not put at risk and that conflict can be managed constructively rather than destructively. The struggle for access to the Saileswori Temple in Doti is one example of this challenge. Despite the 1969 law and an affirmative policy to enable equal access for Dalits, Dalits<sup>47</sup> have not been allowed by the elites to enter temples. In September 2006 an agreement was brokered between the Dalits, the political parties and the elites, to allow Dalit access to this temple. Exercising their rights, Dalits entered the temple. However, despite the September agreement and the 1969 law, the elites did not accept the Dalit entry, and beat them and destroyed the offices of NGOs who supported the Dalit actions. The issue became nationalized, being captured in the media and discussed in Parliament. Civil society, the media and the government all now stand in favour of the Dalit movement, and they have succeeded in gaining access to the Saileswori temple. But despite efforts to prevent violence through the 2006 agreement, violence still erupted in this social transformation effort. The question that remains is, could this have been prevented? If so, how?

### **How do you manage claims for self determination?**

The concepts of rights have spread far and wide in Nepal, resulting in some unforeseen impacts. For example, the Madhise people, an ethnic group concentrated in the Eastern Terai, are now demanding a federal structure for Nepal, in which they control a State formed along ethnic lines, and in which civil service roles are awarded to the Madhise. Similarly Mongols, Newars and other ethnic minority groups are demanding federal States formed along ethnic boundaries. This is a worrying tendency, as it could result in Nepal fracturing along ethnic lines, as has happened in Yugoslavia. These emergent struggles in Nepal have become violent. Despite efforts to bring these activists to the negotiating table,

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<sup>46</sup> CARE Nepal (September 2006) Reflection on Rights Based Initiatives and Ways Forward, p.16, emphasis in original text.

<sup>47</sup> Dalits are also Hindus.

there has been no progress. Some people suspect that pro-royalists may be fomenting this issue. The question is, what is the role of RBA in this situation?

### **Attribution**

Rural communities have been incredibly resilient in Nepal throughout the period of armed conflict. As yet, we have not properly understood the links between rights based programming and the emergence of a voice for peace amongst communities. This is an important area for research. The question is, can we identify the links and demonstrate attribution or contribution?

### **Neutrality**

CARE Nepal promoted the concept of neutrality as a means to negotiate access and promote acceptance with both sides of the conflict, to enable us to operate in the highly conflict ridden areas of Nepal. As classically-defined under international humanitarian law and the Red Cross Code of Conduct, 'neutrality' implies that neutral organisations remain silent on the justifications for waging war or 'root causes' of the conflict. However development is a political process and rights based approaches in particular challenge power relations. CARE Nepal has adapted the concept of neutrality to mean siding with the poor and disadvantaged groups who have been denied their fundamental rights, although it remains non-partisan in that it will not be involved in any way with political parties.

*"Development is a political process; it cannot be achieved through a purely technical or politically neutral process. CARE Nepal facilitates empowerment of poor and disadvantaged groups who have been denied of their fundamental rights, but it remains non-partisan and provides inputs towards the positive transformation of unequal power-relations."<sup>48</sup>*

The question is, does RBA force agencies to abandon neutrality? If so, what does this mean for the broad spectrum of interventions, in particular emergency response?

### **Conclusion**

During the implementation of projects/programmes in Nepal community members and development staff faced difficulties. Many were harassed, beaten and even abducted and killed by the insurgents and security forces. Nevertheless, rights based approaches have been a contributory factor in creating a grassroots voice for peace, expanding the space for civil society, connecting citizen and State where previously there was no connection, and mobilized people to exercise their rights.

## **3.2 HelpAge International – Iraq Programme: A Human Rights Approach**

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<sup>48</sup> CARE Nepal (July 2006) Organisational Position on rights and approaches to promoting rights based development, (internal document).

## *Rezghar Ghafor*

*Rezghar Ghafor was former Iraq Country Director for Help Age International. He is a Human Rights specialist with a Masters degree (LLM) in International Law. He has over 18 years of experience in international relief and development and has worked for a number of international agencies including Save the Children UK and UNDP, in various regions and countries including Albania, Kosovo, Georgia (the Caucasus), Lao PDR, and Iran.*

*Ghafor explores the complexities and challenges of working with a rights approach in Iraq. The particular context throws up challenges in securing funds for long term programming and adapting rights based approaches to local contexts where rights are seen as a Western imperialist agenda and legal authorities are uncoordinated. The conclusion is positive however, with options arising if organisations use a holistic and integrated approach involving all relevant agencies, if sustainability is addressed from the outset, if different aid agencies coordinate. The paper asks for an acknowledgement that whilst there are challenges in working with a rights approach, failing to realize social and economic rights can lead to further violence.*

### **The situation in Iraq**

Decades of war, sanctions and the recent occupation have not only changed the political landscape of Iraq but have also left behind deep rooted social and economic problems in all parts of the country. This includes a decline of social values, deterioration (disruption) of social services, the impoverishment of families and increased vulnerability and marginalisation of certain groups.

Although some parts of the country are relatively stable, the infrastructure is largely run down and at best service provisions have failed to rise to the levels of population demand in terms of quality, quantity and access. Policies are largely ad hoc and are not based on evidence, research or conceptualisation. Staff in many areas lack proper training. The limited services available are concentrated in the main urban areas. Rural populations, children, women and older people are clearly at a disadvantage. Among these groups there are individuals who are particularly vulnerable due to their physical and social circumstances; those with mental health issues, the physically disabled, orphans, the chronically ill, and older people need special attention in order to ensure that they get basic care.

Social service delivery in Iraq prior to the war was based upon a socialist (communist) model developed in the 1970s. Health care was curative in emphasis, with priority investment in tertiary services. Primary health care services existed in principle but were largely moribund. Community contact with both health and social services was minimal, the latter concentrating upon a centralised care principle. Untrammelled civil society development and the notion of non-governmental services or humanitarian assistance were virtually non-existent.

The change of regime presented many opportunities for radical change both in attitudes to social and health care and its delivery and in notions of independent civil society activities.



However, the competing influences within and upon the Coalition Provisional Authority and later the interim government, coupled with increasing insecurity, and fragmentation of the country, has left a policy vacuum. This is unlikely to be filled in current circumstances where there is clearly very little, if any, political progress.

### **Securing economic and social rights in conflict settings**

International aid agencies, a burgeoning civil society and private contractors have, therefore, been implementing or supporting programmes to strengthen social care delivery in the absence of any formal strategic or policy framework. Given the ideological imperatives of the various sponsors and opponents of the post-war Iraq, strategic choices in service delivery have been presented ranging from complete privatisation through contracting out within a regulated environment, to State provision.

In this environment, Help Age International (HAI) has concentrated its efforts on:

- strengthening the capacity of regional and local governments to deliver and manage sustainable and appropriate health and social welfare services at community level;
- building the capacity of health workers to implement a sustainable primary health care approach;
- linking voluntary and formal initiatives to improve the most vulnerable groups' access to community services;
- developing replicable models of health and social care delivery for government and voluntary sector service delivery in the new Iraq (with the assumption that contracting out of services might be seen as an acceptable compromise to the alternatives on offer).

The wider purpose of HAI's programme in Iraq is to promote the social and economic rights of older people in particular, and the wider communities in general. This has been pursued through an integrated approach linking multiple objectives in the areas above to ensure sustainability and self-sufficiency.

The specific objectives of the programme are:

#### *Civil society capacity building:*

- To upgrade skills of social work practitioners working in the voluntary sector involved in community development and health and social care provisions;
- To strengthen and develop governance and organisational capacity of local NGOs involved in social development and community care.

#### *Local authorities capacity building (governance):*

- To upgrade skills of social work practitioners working for Health and Social Care Directorates;
- To improve and further the technical and organisational capacity of the departments/directorates;
- To support local authorities in the development of and formulation of appropriate policy frameworks for provisions of social care in particular at community level.

#### *Academic institutes:*

- To develop the training capacity of universities through the establishment of a Social Work qualification at a minimum of two northern universities leading to a future Diploma course in Social Work Practice.

*Targeted interventions:*

- To support and/or provide community based care services for vulnerable older people and their dependants.

## **Challenges faced in taking a rights based approach**

### *Long term programming versus emergency responses:*

Adopting a rights based approach in conflict is never an easy option, especially in situations where violence is continuing. Part of the difficulty is due to the various approaches adopted by international donors and aid agencies. Most agencies still tend to classify and divide humanitarian assistance into Emergencies and Development while human rights programmes are seen as long-term measures. The existence of this division often leads to a lack of coordinated and unified approach amongst international agencies in conflict situations, and a lack of effectiveness. Despite these weaknesses, donors and aid agencies remain important 'players' in any given conflict situation.

Whenever a new conflict breaks out, international aid agencies are, of course, very quickly in evidence. Whilst responding to an emergency situation is a moral duty, their involvement often creates false expectations which may exasperate the situation. In the immediate aftermath of the American led invasion of Iraq, most of the aid agencies argued long and hard (and some of them still do) that the situation in Iraq was a humanitarian crisis and an emergency situation that needed a rapid response. In the meantime, the same agencies were struggling to find things to do. There were no masses of displaced population in camps that needed relief distribution or emergency health care nor were there thousands of wounded civilian Iraqis needing immediate medical surgery. This was against a backdrop where all pre-war services had been disrupted. Power stations were destroyed; hospitals and all other government buildings and installations were looted and ransacked while the US army stood idle, failing to take control of the situation. While the US lacked a clear post-Saddam era policy, the aid agencies also need to share some responsibility for the lack of a co-ordinated response. Present in Baghdad and other parts of the country in their hundreds, aid agencies raised huge expectations not only amongst the ordinary Iraqi population but also amongst the occupying forces. They were all led to believe that these were professional agencies who were going to restore the services. Influenced by most of the aid agencies, international donors also dealt with the situation in a similar way by allocating funds only for short-term measures. In such circumstances, agencies taking a rights based approach faced from the outset challenges in securing funds, and this significantly delayed the planning and implementation of such programmes.

### *Adopting rights based approaches to local contexts:*

Definitions and approaches to 'human rights' vary between different cultures, and therefore practices and values also vary from place to place. Taking a rights based approach in a conflict situation could at times lead to a negative reaction by local communities who may already be emotionally unstable due to the conflict situation. In the Middle East, 'human

rights' is often referred to as a Western imperialist agenda that goes against local cultural and religious values. Therefore, agencies adopting the rights based approach needed to develop a clear understanding of local cultures and values in order to interpret a wider understanding of human rights in a culturally appropriate way. While it is acknowledged that acquiring good knowledge of local communities' culture takes a long time, trusting and involving local programme staff in the decision making process can significantly reduce difficulties.

***Dealing with legal authorities:***

Regardless of their approach aid agencies are consistently faced with the challenge of coordinating with other agencies. Lack of coordination often stems from a lack of understanding by the aid agencies of the legal framework relevant to the situation. A large number of the aid agencies working in Iraq did not have an understanding of the legal issues surrounding the occupation. These agencies refused to abide by any directive given by the Coalition Provisional Authority (CPA) and refused to attend all coordination meetings called for or organised by the CPA. The basis of such action by these agencies was that the US occupation and the war was illegal therefore they should not have any contact with the Americans. While remaining impartial and challenging decisions and policies that may infringe rights is a moral imperative, the occupying power in the country remained the legal "Authority" according to International Law. Working in an environment of 'legal confusion' poses a real challenge to agencies wanting to take a rights based approach as the agency faces the risk of being marginalised by its counterparts or other agencies. The setting up and creation of mechanisms for the promotion of rights requires working with all relevant authorities concerned.

**Lessons learned:**

Through HAI's recent experience in Iraq, it is evident that taking a rights based approach allows for the pursuit of multiple objectives. Rights-based programming requires a long-term approach in order to create mechanisms by which the rights of people are protected. Creation of such mechanisms is about creation of a 'rights' culture; this cannot happen overnight and requires effective participation of all stakeholders. Such an approach thus allows for development of wider policies and practices from and within communities.

***Using a holistic and integrated approach:***

Rights programming requires a holistic and integrated approach involving all relevant agencies, government departments, CSOs, and more importantly the community. All of these parties can be mobilised to participate in community-based projects that not only would benefit the vulnerable but also can be used as a model for wider projects and policy influence. Through its Community Outreach Programme (COP), HAI has been able to influence the Kurdish Regional Government to alter its approach to services from one of a centralised service delivery to contracting out services to local CSOs. Furthermore, HAI through its programme has been able to successfully seek the Kurdish Government's approval and involvement in a process of a review of current government social policies and practices through a 'Joint Committee' involving members of relevant government departments, CSOs and academic bodies. Also, HAI's participatory COP has been used to serve as a platform for training. While the programme supports the most vulnerable it also

aims to build the capacity of the social services departments and the CSOs involved in community development. Working with Departments of Social Services (DSS) and local CSOs as partners in the implementation of the community-based projects, COP provides an opportunity for 'on the job training' for these partners. Such an approach also has significant cost implications as it reduces training programming costs.

***Addressing sustainability from the outset:***

The most important aspect of rights-based programming is that it almost forces the agency to take the 'sustainability' issue seriously from the outset. When HAI planned for its current 'Local Capacity Building' programme, it did not stop at provision of training for local social services departments and CSO staff but also involved the universities with the aim of establishing a 'Social Work Qualification' in two institutions. These training centres will then upgrade the skills of social workers in a progressive manner whilst efforts are made to influence the authorities in their formulation of appropriate policy frameworks.

***Failing to realise social and economic rights can lead to further violence:***

The situation in Iraq today is clearly no better than the immediate post-war environment. The US policy for the wider Iraq reconstruction has failed, mostly due to its failure to involve Iraqis in the decision-making process. Lack of progress with rebuilding Iraq has not only been due to the security situation. The project of reconstruction lacked a holistic and integrated approach. Despite the availability of massive funds to policy makers and planners, most projects planned and implemented by the Programme Management Office (PMO) of the Coalition Provisional Authority have failed or not been completed to date. This has prolonged the disruption of all services, exasperated poverty and lack of economic progress, and consequently led to an increase in violence. The PMO's projects did not address or plan appropriately for protection of economic and social rights as it focused on projects or project contracts that provided headlines for quick success stories. There is a pressing need for the development of a nationwide long-term social and economic plan that provides protection for the people in Iraq. The Iraqi government and politicians should be assisted and encouraged by the international community to think outside of the circle of violence in order to be able to address the real needs of Iraqis. The spread of extreme violence in many parts of the country should not, and cannot, hold the minds of decision-makers to ransom.

***Co-ordinating the approach of aid agencies:***

Aid agencies working in conflict situations need to focus on community-based participatory projects, addressing needs from the outset. Had the aid agencies in Iraq spent less time worrying about the rights and wrongs of the Iraq War but instead focused on addressing real needs then the impact of their work and presence in the country would have been far more effective. The international aid agencies should agree among themselves on a common approach. This cannot be solely in the form of paper guidelines and codes of conduct but instead should take the form of workable practical mechanisms that unite their efforts for the common interests of their beneficiaries. Policy think-tanks and academics in the aid sector needs to get closer to the practitioners, and vice versa, in order to reduce or overcome the misunderstandings, and at times conflict, of different approaches.

### 3.3 Conflict Programming: Concerns in Responding to Refugees

*Harriet Dodd, CARE Jordan*

*Harriet Dodd joined CARE in 2005 as the director of the CARE International in Jordan programme which is part of CARE's Middle East and Eastern European Region. She has more than 22 years of programme management experience in Middle East and North Africa, Sub Saharan and West Africa in both emergency and development contexts. She has worked with a number of different agencies including Action Aid, Oxfam, Save the Children, International Planned Parenthood and VSO and as a consultant for national and international agencies.*

*This paper considers CARE's response to the needs of Iraqis fleeing insecurity and conflict in Iraq. Using CARE's stated principles of operation as a framework for assessing work against standards of a RBA, the paper highlights difficulties faced and makes some recommendations for action*

This paper is written in response to a request to draw on CARE's experience in Jordan in responding to the needs of those affected by the war in Iraq. It makes two key points. The first is that refugees and displaced people are almost always an outcome of conflict and so any organisation-wide adoption of conflict programming must include a readiness and skill to respond to their needs effectively and appropriately. In the case of war in Iraq it is estimated that some four million have been displaced: two million inside Iraq and two million have fled beyond its borders. The second is that in considering a rights based approach, refugees present a special case in which the 'normal' approaches of NGOs and others who may seek to serve and support a given group and restore their ability to cope need to be reconsidered.

CARE's mission is couched in the discourse of rights where 'tolerance and social justice' are promoted to restore dignity and preserve security. In practice, work is governed by values of respect, integrity, commitment and excellence. More specifically, CARE uses a set of principles to guide its operations. They are summarised together with CARE Jordan's interpretation as follows:

- Empowerment – those served will be actors in the design and determination of what is done;
- Partnership – with others for greater strategic impact;
- Accountability and responsibility – in our actions and use of funds on behalf of others;
- Addressing discrimination – and ensuring our work is free of it;
- Opposing violent conflict – between individuals, groups, factions and States;
- Seeking sustainable results – that reach beyond the life of project funding.

These principles, while providing an excellent framework for a rights based approach where beneficiaries are both actors and protected in the pursuit of sustainable change to their situation, are highly challenged in the context of responding to the needs of refugees.

CARE Jordan began working with people displaced by war in Iraq in 2004. At that time some 1000 persons remaining from groups who had arrived prior to the 2003 invasion had full refugee status under a Temporary Protection Agreement between the Government of Jordan and UNHCR. Those fleeing insecurity and loss subsequent to 2003 have not been recognised as refugees and have no official status in Jordan which is not a signatory of the 1951 Convention of the Rights of Refugees. Subsequently UNHCR's ability to provide protection and other services has been constrained by this uncertain status. In addition, since 2006, the numbers of refugees present in Jordan has become a highly contentious issue and research into it obstructed. Until 2006 some non-Iraqi groups (Palestinian and Iranian Kurds) were sheltered in camps on Jordan's eastern border with Iraq. These have all now been resettled. The vast majority of the displaced Iraqis who need assistance live in Amman. They are not housed in camps but rather rent accommodation throughout the poorer districts, working illegally when they can.

The following general observations can be made about the individual refugees and their families served by CARE's work in Jordan:

- All those we serve have suffered immeasurable loss. Oftentimes in situations of profound trauma and insecurity to themselves or those dear to them, they have lost both physically and spiritually: homes, livelihoods, security, identity and aspirations. Many of this group are well educated and prior to the war had not ever known dependence on others. They have now been under or totally unemployed for five years.
- All those we serve live in equivocal legal status. Officially they are not permitted to work but many do without apparent sanction. In 2007 the Government of Jordan permitted children to attend schools and all families to seek primary health care services. As a community they often face discrimination and hardship from a hostile Jordanian community. Those in work are highly vulnerable to exploitation. Thousands of children have suffered considerable disruption to schooling and that which is provided – in mainstream Jordanian schools – is arguably inappropriate to their circumstances. The health needs of Iraqis are like those of a first-world community with high numbers suffering cancer, diabetes and hyper-tension.<sup>49</sup> These are not served by aid programmes.
- Many are drawing from life savings, are dependent on remittances from relatives elsewhere in the world or, increasingly, depend on aid. Recent returns to Iraq indicate that this risky decision is based on extreme hardship more than confidence in changed circumstances there.<sup>50</sup>

CARE over the last five years has provided social-counselling, material assistance and community based recreational activities to some 12000 individuals (see [www.caremiddleeast.org](http://www.caremiddleeast.org) for full details).

Using the principles as a framework, this paper outlines in the table below how they have been applied in the work to serve Iraqis and the challenges posed to their implementation specifically with Iraqi refugees in Jordan. In conclusion, it outlines the most recent changes

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<sup>49</sup> Iraqis in Jordan in 2007, their number and characteristics (Fafo 2007)  
<http://www.fafo.no/ais/middeast/jordan/IJ.pdf>

<sup>50</sup> Protection Unit UNHCR Jordan.

made to the programme to ensure a more vigorous rights based approach and highlights on-going challenges and the relevance of this work to other similar settings.

<b>Principle</b>	<b>Implementation</b>	<b>Challenge</b>
<b>Empowerment</b>	CARE has had some success in creating committees or groups of refugees representative of different sects, ages and gender to voice concerns, assist in outreach to others in the community and comment on services and support.	<p>This principle would generally be adhered to using an analysis of a community and the power relations existing with it. The hidden and fractured groups of Iraqis that are living in Jordan are not a homogenous community. They do not even share an analysis of the events that have resulted in their displacement.</p> <p>Refugees from Iraq have been used to a highly effective and dominant State-system (even after ten years of sanctions) that provided for their needs (livelihoods, services etc). They resist new self-help approaches in part perhaps because they perceive this as undermining justified political claims to rights protection.</p> <p>Liaison Committees have faced difficulties of political dominance by certain groups.</p>
<b>Partnership</b>	CARE has coordinated and delivered its work in partnership with UNHCR, IRC, Nour Hussein Foundation and Jordan Women's Union and in collaboration with other INGOs.	<p>All funding for the Iraqis is from short term emergency budgets of no more than 12 months. Coordination is necessarily affected by the resulting competition for these funds. In addition, the lack of clarity regarding the actual numbers has contributed to the possibility that organisations are competing for the same beneficiaries.</p> <p>Political ambivalence to the target group by the host nation has resulted in great caution exercised within and between partner agencies on key advocacy issues such as protection of status and the right to work and how to promote them without risking their own right to operate.</p>
<b>Accountability</b>	CARE has run transparent and	CARE's projects targeting Iraqis must be

<p><b>and responsibility</b></p>	<p>clear processes for the distribution of material assistance. Throughout 2007 CARE was providing cash assistance to 3000 families monthly without major incident.</p>	<p>approved by an inter-ministerial committee of the Government of Jordan but accountability to beneficiaries is much more problematic. Everyone is convinced their case is special – which it is – and yet funds and time are limited resulting in inevitable prioritisation of some cases over others. Even with standard operating procedures<sup>51</sup> applied, they are questioned and cause dismay. How do you explain to someone that has lost so much that s/he is less needy than someone else?</p> <p>CARE’s frontline staff are all Jordanian and all subject to prevailing propaganda that accuses Iraqis of making wrongful claims, or of affecting the local economy negatively. It is extremely difficult to remain objective and just.</p>
<p><b>Addressing discrimination</b></p>	<p>CARE’s work has reached all groups in the refugee community across gender, sect, age and (dis)ability analysing needs against non-discriminatory criteria. CARE has sometimes had to actively promote the inclusion of some groups from minority Iraqi groups who are routinely excluded and viewed with suspicion.</p> <p>In particular CARE has sought to reach young men (17-30). This group is often routinely de-prioritised in favour of women and children. However in conflict it may be that this group are more at risk from attack, less likely to be given asylum because they pose a threat and more likely to be deported. In CARE’s</p>	<p>With a community hidden within the urban setting in this way, reaching those who are routinely discriminated against can be problematic. Disabled adults are harder to move and their carers may be similarly housebound. Girls may face restrictions over their participation in community activities. This would be in line with cultural norms that in some ways can restore a sense of identity, but at the same time prevents them from accessing valuable ‘recovery’ time away from what may be a depressing or unstimulating home where the past is ever present. A further complexity with issues of culture is that in a situation of displacement these too may be shifting as new realities impact on people’s lives.</p> <p>CARE’s own staff live within a culture where deep prejudices and discriminatory behaviours are at play. It requires vigilance and training to monitor and respond to acts of unwitting</p>

<sup>51</sup> UNHCR has Standard Operating Procedures (SOP) for all assistance



	experience they often have fewer coping skills to draw on.	discrimination.
<b>Opposing violent conflict</b>	<p>CARE has run projects of Sexual and Gender Based Violence (SGBV) with staff and refugees, exploring the prevalence of violence in the host community, in the family and in the workplace.</p> <p>Work has taken place together with UN agencies on the development of complaints mechanisms.<sup>52</sup></p>	<p>Many families have faced extreme violence before leaving Iraq and continue to face discrimination and hardship in Jordan. With the exception of some minority sects, Iraqi culture expects men to be able to defend their families and their honour, with violence if necessary.</p> <p>Opposing violence requires subtlety and sensitivity in approach, supported by a fair legal system. Where refugees are unprotected legally and may face deportation when guilty of a crime which may in fact be stress related, it is clear that operating within this principle can present problems.</p>
<b>Seeking sustainable results</b>	<p>CARE's work aims to "restore confidence and competence" of those affected and displaced by conflict in Iraq. Sustainability lies in the restoration of individual capacity to cope. CARE has advocated strongly locally and internationally for refugees to be given the right to work and use their often considerable skills.</p>	<p>The instruments at our disposal and the context in which we operate make this very difficult. Funding is short term and predicated humanitarian funding dominated by hand-outs. Iraqis are not permitted to work and thus training and vocational skills development are rendered meaningless.</p> <p>Long term unemployment is detrimental to sustainable recovery, impacting on adults' long-term ability ever to work again; poor models for children; and a reduced ability to restore assets in readiness for workable return.</p>

All emergencies beg the question: whose emergency is this and why should we respond? Authors like Smillie<sup>53</sup> have argued that in responding on the basis of our humanitarian mandates, INGOs have exacerbated the systemic causes of emergencies. For two years the European Union refused to make funds available to the humanitarian outcome of the Iraq war, believing it was not of their making. Now six years after the invasion and with a fledgling – but very wealthy – government in place the argument is made that the Government of Iraq must make more effort to enable the displaced to return safely. Iraqis in Jordan continue to be vulnerable and damaged. They are running out of assets and their

<sup>52</sup> UN Secretary General 2006 Statement against SEA.

<sup>53</sup> Ian Smillie, 'The Alms Bazaar' (IT Press, 2005) Nonprofit organizations and international development

identity as Iraqis is slipping away: many children have been born to statelessness in Jordan. Funding is still year by year and no political strategy is in place either from the international community or the governments of the region, including Iraq, as to how the displaced can be assisted to return when security fully allows.

CARE has responded to this situation in two ways. First, we have restructured the programme so that an integrated set of services provides for all refugees equitably. Local partnership is now extended to eight locally based agencies who are supported and strengthened as they gradually take over the services and integrate them with their own work for Jordanian communities. This has the added strategic impact of improving local relations and building capacity for work that is likely to continue for a few years yet. In this structure, donor funding is combined and integrated so that different aspects of funding can be complementary and disruption from late project funding is minimised. Second, we continue to lobby vigorously for the development of a clear strategy among donors and the political community that recognises that the restoration of “confidence and competence” either in Jordan, in a place of resettlement or on return is essential and must include livelihood options that enable assets to be recovered not simply returned.

This paper has drawn specifically of the case of CARE’s work in Jordan. Much of the experience is likely to be repeated and may provide lessons for other actors or agencies, particularly where conflict results in urban-based refugees in contexts where their rights to refugee status is denied.

### **3.4 The Challenge of Advocating for Dignity and Peace in Situations of Conflict: A Short Introduction**

*(based on a panel discussion which took place at the conference)*

Advocacy is rights based in content in that the ‘asks’ will be based on rights. It is rights based in process as it opens political space to those whose voice is most marginalised. Advocacy work in conflict contexts need not lead to advocacy itself, but to an increased capacity for advocacy. There are a number of challenges to doing advocacy work in conflict contexts, but conflict can also provide a number of opportunities and the creation of space. Challenges include: How do you mitigate the risks of advocacy? Does concern for staff security muzzle advocacy? What is the entry point when there are such risks? In an uncertain political environment, who is the target of advocacy efforts?

When an NGO is operational it might find it challenging to do advocacy work in conflict due to security issues. Of course, when not operational, the scope and evidence for advocacy is lacking. This is in addition to the challenges of advocacy in general – Whose voice? Saying What? Why? How?

One participant noted that risks of advocacy in conflict relate to all other agencies, partners, and contacts within the country, not just the NGO making decisions. A lot of advocacy

depends on the risk analysis. There are some situations where you have to keep quiet, where governments or armed groups will restrict and constrain your ability to speak out.

However, one can argue that there is usually more room for manoeuvre in advocacy than generally appreciated, and that NGOs should be strategic. There is no obligation to speak out, but doing so can be effective in some cases and space can be expanded. This is effective if initiated on the basis of an analysis of the potential change that can occur as a result of advocacy efforts, and on the analysis of the entry points available for initiating this work. This analysis must be carried out by those on the ground.

To avoid security issues, it was clarified that although advocacy may not be risk free, it can be non-confrontational. Asking for a dialogue to take place, for example, should be impartial. It was also highlighted how sometimes it is important to speak out or legitimacy might be compromised. For example, ActionAid Nepal felt compelled to speak out against the abuse of rights during the popular uprising of 2006, since they had been working on rights for many years and not doing so would have undermined their credibility.

In terms of security, while there can be advantages of having nationally based staff, it is clear that there is value in speaking from all positions (the local, the international), and taking analysis from all these levels. For example, a national NGO may be working under great constraints, and communities may not want to lobby, but if the NGO has an international office, then this office can lobby. There are challenges with this particular approach as international and local lobbying agendas may undermine each other. For example, in Afghanistan INGOs were so worried about their own cultural imperialism, they didn't speak out about women's rights, which set the agenda back for local women's rights groups. On the other hand, INGOs might work on issues that result in local NGOs getting into trouble – for example, one INGO's work on the freedom for people to convert from Islam created issues for those aligned with this organisation. There is no monopoly on analysis, and it is valuable at international and national and local levels. However, it is important to ensure that actions are rooted to local analysis.

Where speaking out directly is not possible, there may be potential in supplying information to others, working on joint press releases to play to the advantages of each organisation, and arranging private memos and letters.

Working in a coalition can be one way of doing joint advocacy in conflict, especially if the coalition is prepared to adapt to different contexts, opting 'in' to individual tactical alliances to follow particular issues, which will ensure a higher common denominator than having a blanket engagement. It's important that the coalition has a clear goal. If the goal is to help in the development of a vibrant civil society, forming a strong coalition may be counterproductive, as an effective civil society needs to be diverse, and not forced into producing a common message. It's also important that INGOs do not impose their views on local coalitions. Anil Pant commented that ActionAid deliberately didn't work with certain coalitions so as not to undermine them, while others they did choose to work with.

In selecting the target of advocacy efforts, it is important to avoid simply focussing on the State, which might not be best placed to respond. A tension arises when those who are most

able to make rights provisions for the poor and most vulnerable may not be democratically elected, or may not espouse the qualities of 'good governance' that are normally sought. A good situational analysis can help considerably to bring out the key actors, for example in Sierra Leone, the State was effectively powerless, and rebel forces had control of many areas – the analysis showed that the UN was the best target to effect change. It can also be important to do advocacy with donors.

In sum, an NGO does not have to stand up and be confrontational to be counted, good analysis of the change mechanisms will show where and how rights based change can be most effective. While there are many challenges in doing advocacy work – and as shown, these are exacerbated in conflict – there are many types of advocacy, many ways of doing advocacy, and many tools other than advocacy which will promote vulnerable people's rights. Analysing each context will provide the entry point for which approach will be the most useful in each case.

### **3.5 Defending Women's Rights in Conflict and Post-Conflict Situations: Risks, challenges and Successes from Afghanistan**

*Najia Haneefi*

*Najia Haneefi was Director of the Afghan Women's Education Centre (AWEC), which is a partner of WOMANKIND Worldwide and is one of Afghanistan's largest grassroots women's NGOs. The centre promotes the rights, self sufficiency and empowerment of Afghan women.*

*Najia has been campaigning for Afghan women's rights for many years. She worked to empower women throughout the civil war and the Taliban regime even though her activities provoked threats and attacks from fundamentalists. One of her most memorable achievements was successfully leading a campaign against the reintroduction of a Ministry of Vice and Virtue. In 2007 she won the International Service award for women's human rights.*

*Haneefi explores the specific challenges of working with a rights approach in Afghanistan. One of the central issues is the presence of legal pluralism. There are multiple rights systems (Sharia law, customary law, State law as well as the international frameworks). This means there will potentially be future legal insecurity and conflict. This is not helped by the weak transitional State. Other issues span conflict and non conflict contexts. Haneefi explores some responses to the context. These include ensuring a culturally sensitive approach, implementing at a local level, engaging with religious councils and emphasizing protection, participation and promotion of rights.*

#### **Background**

Afghanistan is a Central Asian country bordered by Turkmenistan, Uzbekistan, Tajikistan, China, Pakistan and Iran. The total area of Afghanistan is 647,500 sq km and more than half the landmass is mountainous. The country is split in half by the Hindu Kush mountain range. The total population of the country is 31 million (2006) with a growth rate of 2.6% and 52% of the population live in urban areas. The major ethnicities are Tajik, Pashtoon, Hazara, Turkman and Baloch. The main practicing religion is Islam although there are a few other

minority religions such as Hindu and Buddhism. Afghanistan is one of the poorest countries in the world with a literacy rate of 36% (14% women and 43% men).

Following years of conflict, the new Afghan Constitution was approved in early 2004. The main legislative body in Afghanistan is now the National Assembly which is made up of the Lower House (Wolisi Jirga) and the Upper House (Meshrano Jirga). The Wolisi Jirga includes 249 elected seats and can amend the provisions of the constitution and hold the president to account. The Meshrano Jirga has 102 seats including a third made up of presidential appointees, of whom half are women.

The judiciary's highest court is the Supreme Court, which includes nine judges appointed by the president (and approved by the Wolesi Jirga) for 10 year terms. The Ministry of Justice ([www.moj.gov.af](http://www.moj.gov.af)) has responsibility for law reform and the drafting of new laws. The Afghan Independent Human Rights Commission (AIHRC) was established by the Bonn Agreement in 2001 and is empowered by the constitution to investigate human rights abuses and war crimes and to promote and protect human rights.

### **Legal pluralism in Afghanistan**

Most legal systems in conflict and post conflict countries contain parallel and often contradictory regulations of social, economic and political systems which are a potential source of future legal insecurity and social and political conflict, and Afghanistan is no exception. Afghanistan is a party to a variety of international instruments including the Convention for the Elimination of All forms of Discrimination against Women (CEDAW) and UN Security Council Resolution 1325, both of which guarantee rights for women. In addition, the Afghanistan constitution obliges the government to create a prosperous and progressive society based on social justice, protection of human dignity, protection of human rights, realization of democracy, and to ensure national unity and equality among all ethnic groups and tribes. However, the constitution also States a clear provision that no law should be "contrary to Islam", which can be problematical for women's human rights, particularly when Sharia Law is imperfectly interpreted.

As such, legal pluralism in Afghanistan is based on different types of legitimating sources including international law, State law, religious law and customary law. Particularly in rural areas, where the State still has only limited reach, it is customary practices in particular that maintain social order and each village has its own informal customs and processes for enforcing norms and resolving disputes. Community councils therefore still act as the main judicial system in the country and almost 80% of disputes are settled outside the formal court system and without any written documentation. This is partly due to a lack of access to formal courts and partly due to a distrust of them.

Community councils can be problematic in that they reject anything which is perceived as being contrary to their beliefs. As such, disputes around marriage, divorce, polygamy and child custody can be poorly judged. In addition, these councils are dominated by men and have a patriarchal structure in which women are strongly under-represented. In a country where women symbolize family honour and are at risk of being considered as goods and properties to be used and exchanged for this purpose, violence against women is widely

tolerated at household, community and national levels due to traditional justice mechanisms being unresponsive to women's human rights.

### **Using a rights based approach in Afghanistan**

In using a RBA in a context such as Afghanistan, particularly when focusing on women's human rights, there are a number of considerations that need to be taken into account:

#### ***Implementation at a local level:***

International conventions can be useful tools for promoting women's human rights, but mean little without implementation at a local level. Currently legal equality for women, even though constitutionally guaranteed, is often negated by the retention of discriminatory personal status laws derived from interpretations of religious and customary laws, or even by the constitution's own recognition of customary or Sharia law. For example, if a woman runs away from an abusive marriage she will be subjected to imprisonment by the judicial authorities, although this has no basis in Afghanistan's civil law, family law, criminal law or criminal code. Despite a lack of legal base in Afghan domestic laws, such punishments are distributed based on the judge's understanding of Sharia. As such, political will and resources are required to take the appropriate steps to reform local laws in line with the State's international obligations. As long as Afghanistan doesn't have a proper system that can realistically guarantee the rights of women in all spheres and at all levels of society, the obligations that the Afghan government has made will remain only on paper.

#### ***Culturally sensitive approach:***

As Afghanistan is a traditional Islamic country, no rights based approach will be socially acceptable unless it fits within an Islamic approach and the Islamic belief system. Lessons can be drawn from other Islamic countries in the region, including neighbouring Iran and Pakistan, where the situation is different. As the main problems in Afghanistan result from a lack of proper knowledge and interpretations of Sharia, it is essential to work with Islamic scholars from other liberal Islamic countries to exchange views with the scholars in Afghanistan, especially on the issue of women. As such, a liberal and gender-based interpretation of the Quranic verses needs to be undertaken by Islamic scholars on which to base rights training for women and to empower the Muslim feminist movement in Afghanistan. In addition, any RBA needs to be balanced with a respect for women's traditional family duties.

#### ***Engaging with powerful religious councils:***

There is a need to engage with powerful religious councils in order to tackle a variety of challenges to women's human rights including polygamy, child custody, child marriage, forced marriage, divorce and the right to choose a life partner, which are decisions currently made in the male domain with little say or input from women. Because of the low literacy rate among the Afghan population people usually listen to the religious leaders (Mullahs), who hold a great deal of influence over their local communities. As such, these leaders can potentially provide access and support to NGOs and women's right activists aiming to educate people on rights.

Crucially therefore, these Mullahs and religious scholars should be sensitized to women's human rights and gender issues so that mentally and spiritually they themselves accept and understand the rights of women. They can then play a role as change makers in helping communities broaden their views and making them understand the existing differences among the traditions and religious beliefs towards eliminating tradition based violence against Afghan women and girls. They can also explain the Quran-based rights of women and girls to communities with an emphasis on an obligation to respect these rights.

***Representation within judiciary and legal processes:***

Women are under-represented within the Afghan judicial system and as such, legal provisions designed to protect women's rights often fail to be practiced in reality. The Supreme Court in Afghanistan has no women judges and women at the community-level also suffer from a lack of female representation within the local courts and judiciary offices due to a misinterpretation of some Sharia laws relating to women's inability to make judgments. As such, the judiciary system is highly male dominated and biased.

In addition, legal and judicial reform has been painfully slow. After the fall of the Taliban regime it was hoped that the common laws of Afghanistan in relation to women's rights would be quickly developed and revised according to international principles of human rights, but unfortunately judiciary reform has moved very slowly, with the judiciary preferring to re-adopt existing laws than to develop new laws. As such, the only major actions so far has been to build some premises for courts in the provinces and some training programmes. Only one family court has been established, which operates only in Kabul and a few other nearby provinces.

All these factors combine to produce a low level of public awareness of new laws and procedures, particularly those relating to women's rights, in the provinces, districts and villages, which contributes to the broad practice of informal justice. Without representation in the judiciary, reform of the judicial system, and an increased awareness of these reforms, women's human rights will not be protected.

***Mobility and security:***

Not only is there a severe lack of physical, social and economic security for women's NGOs and activists, but challenges relating to mobility and security remain for women in Afghanistan from all walks of life. Honour in Afghan culture defines the reputation and worth of an individual, as well as those they are associated with, and drives much of the behaviour surrounding the protection of women, modes of dress, social interaction, education and economic activity. As the male head of the family is responsible for protecting the honour of the family, women are often not allowed to be seen by outsiders or to leave the home on their own. As such, there remain serious challenges in gaining access to women in order to begin rights-based training and educational programmes. Their limited access to public life contributes to their lack of knowledge of justice and the judicial structures. Only NGOs with close connections with the community, who are operating with the permission of the religious and community leaders, can have a hope of reaching those women most in need.

### ***Weak transitional state:***

As we have seen, the main problem in applying the rule of law and ensuring justice in Afghanistan is the existence of traditional practices and traditional structures which act as informal justice systems throughout the country. As formal judicial structures and personnel do not exist everywhere in the country, these informal structures are becoming stronger day to day. Such processes are furthered when judicial personnel also head local councils and are therefore perceived as the prime source of traditional norms. In addition, while people don't have any other means to solve their problems in their local area due to a lack of infrastructure and transport, their trust in the formal justice systems is slowly reducing. As such, as informal justice systems grow and strengthen, which legal system will dominate in the future is still uncertain.

### **The way forward for rights based approaches**

Even within these challenges and constraints, women's rights NGOs continue to work towards women's empowerment. In line with UN Security Council Resolution 1325, activities are guided by the three principles of protection, participation and promotion of women's human rights.

#### ***Protection:***

To ensure the protection of women, NGOs have been active in working with the Ministry of Women's Affairs (MOWA), and the network of 'Women Living Under Muslim Laws' in drafting new family, marriage and violence against women laws. There has also been lobbying and advocating for gender mainstreaming within other newly drafted and reformed laws. Such legislation is crucial in ensuring the basic legal system is in place to ensure women are able to claim their rights. In addition, NGOs have been working with MOWA to establish women's shelters and support centres for those experiencing violence and abuse, and ensuring some of women's most basic health and economic needs are met. Training and empowering women is also being undertaken by different national and international organisations to enable women to advocate for and protect themselves at household and community levels. Thus, approaches to ensure protection include new legislation, social and economic protection for those surviving violence and rights-based education.

#### ***Participation:***

Ensuring women's participation in decision-making bodies is a key step towards ensuring their basic human rights. As such, within the Afghanistan National Solidarity Programme, national and international agencies have been working to establish women's *shuras* (decision-making councils) within tribal communities. These councils aim to work within and mirror those local and traditional structures already in place, but with women's participation to ensure their rights and needs are taken into account. In addition, there has been a variety of moves from the NGO and political community to raise the voice of women and promote their participation through various networks such as the Women's Political Participation Committee and the Afghan Women's Network. These networks not only bring a sense of solidarity and support to women's rights activists, they also create alliances with female MPs at a national level. In addition, there have been ongoing campaigns for women judges to be included in the Supreme Court. As such, the women's movement has been



developing a variety of advocacy tools around legal reform and political participation to work at each level of the existing system.

***Promotion of women's human rights:***

Activities to promote and raise awareness of women's human rights by NGOs have included workshops, conferences, and media campaigns. In particular, women's organisations have been working with the AIHRC to campaign against Violence against Women (VAW) and to produce a first Alternative Report to the UN CEDAW Committee. Particularly within the context of Afghanistan, where we have seen the importance of an Islamic approach, entry points for RBA must include engaging with the religious community, targeting men for sensitisation on women's human rights and training Muslim feminist scholars on Hanafi (Islamic) law. As part of this agenda, research into legal pluralism and the situation for women is a crucial part of raising this issue at the local, national and international levels.

**Conclusion**

We have seen that Afghanistan represents many relevant issues relating to using a RBA in conflict and post-conflict situations. Due to the weak nature of the State and the legal pluralism that has followed, NGOs working on rights-based issues must take into account a number of factors including working within an Islamic belief system in a culturally sensitive way, ensuring participation of women within existing and new judicial systems, recognizing challenges relating to mobility and security, and ensuring implementation of rights within local traditional decision-making structures where the State has no reach. Despite these challenges, NGOs continue to operate around the three basic principles of protection of women's rights, participation of women within decision-making and promotion of women's human rights. Only when these principles have been fully established can it be said that women's human rights have progressed from paper to reality.

**3.6 Movement, Access and Livelihoods: An Advocacy Strategy**  
***Juliette Seibold, CARE West bank Gaza***

*Juliette Seibold has 18 years of development experience working with governments, bilateral and multi-lateral donors, and NGOs in Asia, Africa and the Middle East. She has a Masters degree in Development from the Institute of Development Studies, Sussex. She began her career in the North West Frontier of Pakistan teaching as a volunteer in the remote district of Chitral in the Hindu Kush mountain range. Since then she has worked for UNICEF on community approaches to water and sanitation, for DFID on aid policy, managing a multi-sector budget support programme in Pakistan. She has also worked on promoting the media as a development tool in Afghanistan and Somalia. She is particularly interested in social development issues, aid effectiveness and policy change. Most recently she has worked for CARE as their policy and advocacy advisor in the West Bank and Gaza.*

*In this paper, Seibold provides a detailed picture of how movement and access restrictions directly affect the lives of ordinary Palestinians. She describes CARE's advocacy strategy in this very challenging environment and offers a number of "successful tactics". The paper presents the unanswered and challenging questions around the impact of the conflict on women's empowerment and on whether CARE can actually affect change in the Palestinian Territory.*

## **Introduction**

The situation for ordinary Palestinians continues to deteriorate: 66% of households live in poverty, and unemployment is high and rising especially among young people. The Annapolis Middle East peace process is shaky with very little buy-in. The recent conflict in Gaza has exacerbated an already difficult situation. It has resulted in approximately 1,300 deaths with over 5,500 people injured. Over 23,000 homes in Gaza are now destroyed along with livelihoods and civilian infrastructure including schools and hospitals. Over 300,000 people lack adequate access to water. The private sector, largely dismantled by a continuing 19 month embargo, is now in ruins. It will take an estimated \$3 billion to reconstruct Gaza but little will be done until Israel agrees to open the crossings and Palestinian factions unite. Humanitarian access to Gaza has been seriously compromised since November 2008.

Israel's restrictions on movement and access in the West Bank, known as 'closures', have brought additional suffering. Israel argues its closure policies are driven by its security concerns. However actions taken by States should always be proportionate and respectful of international humanitarian and human rights laws.

CARE is a rights based organisation whose mandate is to reduce poverty and improve livelihoods and good governance. This means addressing social injustice, discrimination and marginalization. Rights based advocacy would therefore imply action to ensure that policies agreed by the international community to protect human rights and promote social justice are implemented. This includes UN conventions and resolutions, European Union Human Rights Frameworks and International Humanitarian Law, including the Geneva Conventions which lay out laws governing occupation.

CARE West Bank and Gaza's (CARE WBG) advocacy objective supports programme efforts on the ground to reduce Palestinian poverty and improve access to livelihoods and key services. In this respect, CARE and other agencies, including the World Bank and the Office for the Coordination of Humanitarian Action (OCHA) recognize that the most important obstacles to Palestinian livelihoods and access to essential services are Israel's closure policies including movement and access restrictions. These policies include: checkpoints, a permit system, restricted roads, Israeli settlements and the West Bank barrier which all work to slow movement of people and goods down, incurring heavy transaction costs and hindering Palestinian's economic and social life.

In recognition of the havoc closures were playing on the Palestinian economy, the US government brokered in November 2005 the Agreement on Movement and Access (AMA) which was signed by Israel and the Palestinian Authority. This agreement, if implemented, would allow movement and access of goods and people in and out of Gaza and between

and within the West Bank and to the outside world. In essence it would create conditions on the ground that would promote peace and economic development. It has never been implemented.

Advocating in a context of occupation presents a number of risks and challenges. CARE members have to accept that its mandate has to be translated from words into action that champion rights and address the root causes of poverty. Talking about rights and social injustices in relation to Israel and the Palestinians is difficult and contentious ground. Foreign policy interests and humanitarian imperatives make awkward bedfellows and there are risks in speaking truth to power.

A further question to be asked is: can CARE actually affect change in policies towards the Palestinian Territory? The UN, the US and several European governments are placing pressure on Israel to lift restrictions on access and mobility and yet very few improvements have been made. To address these challenges CARE is employing a number of tactics including: basing advocacy on evidence derived from programming in the Palestinian Territory; putting forward the voices of ordinary Palestinians; working collectively as a global organisation with advocates in the US, Canada, Australia the UK, France, Austria, Germany, Brussels and New York; advocating with other like-minded organisations and coalitions; anticipating and preparing for criticism and reaching out to Israelis and the wider Jewish community.

## **Background**

The situation for ordinary Palestinians continues to deteriorate with ever greater numbers of ordinary people unable to feed their families, get medical care, or pay their bills. Per capita GDP remains 40% below its 1999 levels and according to some estimates 66% of households live in poverty. Unemployment has increased significantly and as many as 60% of youth cannot find work.

Poverty and aid dependency has risen dramatically in the last year. The 22 day bombardment of Gaza which began on 27<sup>th</sup> December 2008 and ended on 18<sup>th</sup> January 2009 aside from killing people and destroying homes, also damaged 35 – 65% of agricultural lands, civilian infrastructure, electrical and water and sanitation networks. It also destroyed the last remnants of Gaza's private sector which once accounted for 53% of all jobs in the Gaza Strip. Before January 2009 more than 80% of Palestinians in Gaza (1.1 million people) were reliant on some form of aid, and unemployment was close to 40%. Today 95% of the population are dependent on aid, even while humanitarian access remains compromised.

Movement and access restrictions in the West Bank are also choking the Palestinian economy, undermining livelihoods and damaging health status, social life and access to education. These measures include over 561 obstacles (checkpoints, road barriers, earth mounds, road gates, road blocks, trenches); the West Bank barrier (illegal where it veers off the Green Line under international humanitarian law); a restricted road network 1,661 km long reserved largely for Israeli settlers in the West Bank and a matrix of administrative procedures.

Movement and access restrictions are driven by settlements (149 in total) and outposts (approximately 105). The population of settlers in East Jerusalem and the West Bank is over 470,000. Settlements and outposts are illegal under international law but only outposts are illegal under Israeli law. Despite requests from the international community, including from the USA, UN and EU, to Israel to halt settlement expansion, construction continues.

Displacement is a further factor in reduced access to livelihoods. Since the beginning of the Israeli occupation of the West Bank and Gaza, 50,000 homes have been destroyed – 18,000 between 1967 and 2008 and over 23,000 in Gaza in January 2009. As despair grows, the hope of peace achieved through non-violent means recedes.

### **The Strategy**

CARE's overall programme goal in the West Bank and Gaza is to strengthen the capacity of Palestinians to overcome poverty through economic opportunity that will come from increased access to markets and land.

CARE WBG's advocacy objective for 2008–2010 is for movement and access restrictions to be eased significantly so that the economy improves, livelihoods are assured and the conditions on the ground are more favourable for peace. CARE supports the implementation of the November 5th 2005 AMA, the third of a series of agreements to counter movement restrictions in the West Bank and Gaza and enable Palestinian people freedom to move, to trade, to live ordinary lives. The agreement – announced by US Secretary of State Condoleezza Rice and signed by Israel and the Palestinian Authority – recognizes Israel's security concerns but notes that Israeli actions should not instigate or promote Palestinian social and economic hardship and collapse.<sup>54</sup>

One year after the signing of the agreement there was no progress; two years on, the situation in both Gaza and the West Bank was even worse. The ability of Palestinian residents of the Gaza Strip to access either the West Bank or the outside world is now non-existent and even essential aid cannot get through. This situation does not bode well for Palestinians in the West Bank and Gaza or for peace negotiations as a whole.

### **Rights based advocacy**

CARE defines advocacy as 'creating policies where they are needed and where none exist, reforming harmful or ineffective policies, and ensuring that good policies are implemented and enforced'. CARE's mandate is to reduce poverty and improve livelihoods and good governance, which also means addressing social injustice, discrimination and marginalization. CARE has embraced a rights based approach which in advocacy terms implies efforts to ensure policies agreed by the international community to protect human rights and promote social justice are implemented.

CARE is well placed to undertake advocacy because of its international stature and mission to advocate for global responsibility and social justice. Its humanitarian programmes are

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<sup>54</sup> U.S. Department of State. Joint Press Statement on the Agreement on Movement and Access, [www.State.gov/secretary/rm/2005/56890.htm](http://www.State.gov/secretary/rm/2005/56890.htm)

respected and it has a significant worldwide outreach at multiple levels – including access to and influence with opinion leaders and decision-makers in the US, Europe and the UN.

As a result of closures in the West Bank and Gaza, CARE is currently providing emergency support through local NGOs to sustain the livelihoods of approximately 17,000 people (men and women) in Jenin and Toubas areas of the West Bank. CARE is also working to improve access to water and sanitation and medical services particularly in enclaves created by the West Bank barrier. In Gaza, CARE provides fresh food to over 60,000 people and social institutions. CARE is also repairing damaged water networks and providing temporary repairs to those with damaged homes. These operations provide insights into and an evidence base concerning the structural causes of poverty in the Palestinian Territory.

The advocacy initiative provides a platform for CARE to influence policy decisions at several levels and to address a particularly egregious form of discrimination. Through the development and the dissemination of analysis regarding the closure regime and its impact both on poverty and gender, CARE supports the advocacy efforts of members working with policy and decision makers in the US, UK, other EU capitals, Canada and Australia, as well as other advocacy partners, the media, and the general public.

### **Successful tactics**

Through its rights based advocacy, CARE has found the following tactics to be successful in minimising risk and achieving impact on targets:

- **Basing advocacy on credible empirical evidence:** During the past six months CARE WBG piloted the Most Significant Change methodology to collect and record the real experiences of men and women who face the daily challenge of movement restrictions. This qualitative data has put ‘flesh and bones’ on the more widely available, but somewhat dry, quantitative data from the World Bank, OCHA and others to examine, analyze and illustrate the household level impacts of closures, displacements and water access issues on livelihoods.
- **Working collectively:** In a challenging advocacy environment CARE’s advantage has been to work collectively as an organisation and in coalition with other agencies in Europe and the USA. Most advocacy activities with government and other policy and decision-makers is taking place in the US, the UK, Brussels, European capitals (France, Austria and Germany) and in Jerusalem.
- **Developing clear lines of reporting:** The CARE regional office in Egypt and CARE WBG are playing the lead role in mediating and coordinating reports, statements and press releases. The sign-off process is complex. It requires participating CARE International members to be up-to-speed with the key issues and to be prepared to champion them with key decision makers in ministries of foreign affairs and in press interviews. This requires engagement and clear lines of reporting.
- **Anticipating and preparing for criticism:** This may come from the Israeli government and lobby, including the Israeli media and in some cases, donors. In

developing its strategy CARE has consulted and worked with like-minded partners who have experience and strategies in place, such as the Ford Foundation, International Crisis Group, OXFAM and Human Rights Watch. This is particularly important in the USA. Ensuring that advocacy materials (reports, press releases etc) are factually correct and that CARE advocates are properly briefed and trained to deal with press inquiries is also helping. Working in coalition militates against being singled out for criticism to some degree.

- **Advocating with other like-minded organisations** such as the World Bank and OCHA, SAVE and OXFAM. There is a distinct advantage in continuing to work with four specific consortium groups, capitalizing on shared resources and outreach: i) the Crisis Action group of NGOs in the UK (CARE UK, OXFAM, SAVE, CAFOD, Amnesty, Christian Aid etc); ii) a French group of NGOs (CARE France, Amnesty, Medecins du Monde, OXFAM) iii) INGOs in the USA and iv) the Inter-Agency Sub Sector Working Group on Displacement which includes key UN agencies, ICRC and Save the Children.
- **Reaching out and explaining CARE's work to Israelis and the wider Jewish community:** Very few international organisations and INGOs working in the Occupied Palestinian Territory do this. Consequently their activities are often viewed with distrust. CARE is well positioned to explain its work and advocate in Israel although the climate is increasingly hostile. However, the organisation needs to prepare and find credible partners.
- **Allocating adequate resources:** Now that the strategy is finalized and agreed, costs need to be shared by participating CARE members.

In the last year, CARE has made progress in developing, agreeing and implementing its advocacy strategy. CARE team members are engaged, pulling together and working hard to influence policy in a positive direction in France, UK, Germany, Austria and the USA. They are supported by CARE representatives in New York and in Brussels. Day by day CARE is building coalitions of like-minded partners (NGOs, think-tanks, and civil society organisations) who are Israeli, Palestinian, European and American.

### Challenges

The biggest challenges in implementing the strategy are **resources** (human and financial) and in ensuring that the CARE advocacy team in Europe, the UK and the USA are up to speed with the issues and ready and confident for action. However, a lot of work is being done within CARE to build capacity and it is going well.

A more serious challenge is helping all CARE members recognise that its rights based mandate to address the root causes of poverty and social injustice does in fact need to be translated from words to action. Talking about rights and social injustices in relation to Israel and the Palestinians is challenging and more work needs to be done to agree an acceptable narrative with particular attention to key terms (occupied; embargo; siege; blockade; illegal under international law; collective punishment; the barrier; the Wall – to name but a few).

While developing the advocacy strategy CARE had to consider some of the risks presented by the context of occupation. These included: the challenge of explaining to those who don't necessarily understand or wish to acknowledge the Israeli occupation, how it works and what rules govern it. We have had to justify to ourselves why as an organisation CARE has a role in supporting, for example, adherence to the Geneva Convention and other aspects of International Humanitarian Law. There is always a risk of being targeted by the pro-Israeli lobby and of being branded anti-Semitic or anti-Israel. These risks can be addressed in a number of the ways discussed as well as by remembering that CARE has a history of helping Israelis too – CARE assisted refugees fleeing Eastern Europe from 1948 until mid 1950s – and that we are always concerned with the well being of ordinary people on both sides of the conflict.

Communicating and raising awareness about complex conflict situations helps reinforce advocacy messages. However, although there is no shortage of information about the impact of closures, this information has not been successful in affecting change for ordinary Palestinians. Nevertheless, we know from experience that implementing an evidence-based strategy has greater chances of success. CARE has strong links at the community level and is able to help local voices reach policy levels. When the international media was banned from entering Gaza to cover the conflict, CARE and other agencies played an important role in ensuring that local voices, including those of our staff in Gaza, were heard. This had a very real impact on how the conflict was viewed, particularly in the UK and Europe where Gaza was top of the news for almost 20 days. For the first time, TV viewers were able to see Gazans as ordinary people caught in a deplorable situation which was not of their own making. British MPs told CARE that the number of letters they received from constituents during this period was unprecedented. One MP said: 'The letters all said the same thing. They asked us to help stop the conflict.' These MPs had also read the reports that CARE co-wrote. CARE is therefore committed to deriving evidence from its own programme work and basing its advocacy strategy on work with communities and with partners.

To date, 'speaking out' has not negatively impacted staff security, the wellbeing of the communities and partners with whom we work, nor the operational viability of the Country Office. Nevertheless, CARE continuously monitors the situation.

### **Unanswered questions**

A key question which remains unanswered is the impact of the conflict and the closures on **women's empowerment**. A joint research project with the World Bank, Birzeit University and CARE West Bank and Gaza will examine this question with a particular focus on barriers to women's employment in the Occupied Palestinian Territory. CARE will contribute to the study using the Most Significant Change methodology. The report will be launched in April – June 2009.

CARE also aims to add a new element to its advocacy initiative – a **campaign to end house demolitions and displacement**. The displacement of families as homes are destroyed increases poverty and violates rights to non-discrimination. While Israelis are vulnerable to rocket attacks and other targeted violence, increasing numbers of Palestinians are being

displaced. Since 1976 about 115,000 Palestinian refugees and non-refugees living in West Bank and Gaza have been moved, and a further 300,000 who reside between the West Bank barrier and the Green Line are at risk of displacement. Palestinians have been displaced for a variety of reasons including the lack of a permit to build, to make way for the construction of the barrier, or for settler roads and other Israeli infrastructure etc.

Very few international organisations currently engage Israelis and the wider Jewish community to explain and discuss their purpose in the region or their activities in the West Bank and Gaza. CARE needs to scope out potential Israeli advocacy partners and to begin a process of engagement. A tentative beginning in explaining its work could be through a web-linked slide show which presents archive photos from 1948 and photos of its work today along with an audio description of the history of its work in the region.

### 3.7 Young People's Advocacy in Post Conflict Sierra Leone *Chernor Bah*

*Chernor Bah is from Sierra Leone. He first came into contact with Plan International UK as an active member of the Plan-supported Children's Forum Network (CFN), set up after the civil war to ensure children's voices were heard in the process of gradually rebuilding the country. Now 22, he established CFN, the first children's advocacy organisation in Sierra Leone, when he was 15. Bah believes it's crucial that young people should be involved in the reshaping of Sierra Leone post conflict as it was this group who suffered the most in the war which tore Sierra Leone apart throughout the 1990s. Despite the country's efforts to rebuild and move forward, the estimated 70,000 children used as soldiers by rebel and government forces are still swelling the ranks of the country's unemployed and homeless.*

*Since founding CFN, he continues to be one of the most vocal activists for children's rights. He spent three years working for the Fourah Bay Human Rights Clinic, and prior to this he produced a children's radio project which was the first of its kind and was established by the UN to give a voice to young people in post conflict national discourse. Bah has gone on to get his Bachelors Degree in social sciences. In 2006, he was 'Statesman of the year' in Fourah Bay College students' union*

*Chernor Bah's paper outlines his work to create a children's youth forum. It articulates the disparity between the discussions promoting advocacy at international levels and the potential for action on the ground. For Bah, the challenges in doing advocacy in Sierra Leone are largely connected to Sierra Leonean culture, where the central expectation from children is that they should be 'seen and well fed'. CFN found during efforts to also get children heard that their voices are often manipulated by those with greater influence. Challenges faced specifically in following a rights based approach in post conflict include a lack of funding available generally, and particularly for "development" and "rights" projects in the context of war, when money is directed towards relief efforts. Bah articulates that despite these challenges, it is vital to include children's voices since they are such key players in the*



*conflict. This goes for many violent contexts, when the most vulnerable communities have been involved in the fighting.*

Children and young people suffered the most in the war which tore Sierra Leone apart throughout the 1990s. The decade long armed conflict had a corrosive effect on children's rights as well as on the social and economic structures that must sustain them. The Children's Forum Network (CFN), a child-led rights organisation, was established on the basis that children and young people should play an important part in the post conflict peace building dialogue and national reconstruction effort. With over a hundred branches and clubs throughout the country and the first child-led radio station, CFN created recognised platforms and processes to enable children and young people to voice their concerns. This is regarded by many as a significant success in its own right. Child participation enabled children and young people to exercise agency which brought benefits such as increased confidence, knowledge of rights and an opportunity to practise important life skills. It also empowered children and young people as members of civil society and as active and responsible citizens to hold powerful actors to account on issues affecting children's lives. Ultimately this led to increased interventions aimed at improving children and young people's participation in, and benefit from, the national reconstruction effort.

However, CFN faced many challenges while undertaking their advocacy initiatives in a politically charged post conflict context. The rapid spread of CFN clubs and branches throughout the country initially resulted in some tension between children and their communities as members felt empowered to challenge authorities in ways that contradicted community traditions, and members demanded rights that the authorities had no capacity to fulfil. As the first child-led rights organisation in Sierra Leone, CFN also faced the challenge of not being taken seriously. In Sierra Leonean culture "*children are to be seen and well fed!*" CFN made the point that this very culture was a contributing factor to the war, and that children and young people are central stakeholders in the peace building and national reconstruction process. However, even when they were heard, CFN leaders found that their voices were being manipulated and co-opted by adults with greater influence and that many promises made to children and young people as part of the Disarmament, Demobilisation and Reintegration process and the Truth and Reconciliation process for example, were not honoured. Unfortunately, CFN leaders also felt held back by lack of capacity within the very government institutions that are supposed to be facilitating the participation of children and young people.

Despite the country's efforts to rebuild and move forward, the estimated 70,000 children used as soldiers by rebel and government forces are still swelling the ranks of the country's unemployed and homeless. The psychological damage has been immeasurable. If Sierra Leone is to move forward it needs to harness the strengths of its youth.

## **Background**

Sierra Leone gained independence in 1961 with arguably the brightest prospect for development in West Africa. Sierra Leone is abundant in mineral resources and fertile arable land. At independence the country boasted the best educational facilities in the region, a determined and optimum population and a host of other positive attributes that raised expectations for a bright and prosperous nation. So what went wrong?

Among the underlying causes of the conflict are an incapable political dictatorship; a cruel and unaccountable one party system; filth and unbridled corruption; a politicized military police and judiciary; nepotism, exclusion and marginalization; and, a host of other related problems. The result was a high level of illiteracy, hunger, widespread unemployment among youths, an intimidated, disenchanted and dispirited populace and a dangerous resignation to fate. To make matters worse, there was no freedom of press to challenge government corruption. Sierra Leone was ranked the worst place to live on earth in 1989, two full years before the first shot was fired. Long before the war, the country was at boiling point waiting to explode; and explode it did!

The already miserable human development situation was compounded by over a decade of a war which was no ordinary war. It was characterized by some of the most terrible crimes against humanity ever committed, including killings and mass killings; the burning and looting of homes, schools, hospitals and other public properties; and, the recruitment of child combatants as young as 8-10 years old to commit unspeakable offences, including the amputation of the arms and feet of victims.

### **Challenges**

Children suffered disproportionately during the war and, some at least, were desperate to benefit disproportionately from the peace by ensuring their inclusion in the national reconstruction effort. It was out of this desperation that in 2001 a group of about six children led by Chernor Bah decided to approach the relevant authorities for help to set up a Children's Forum in Sierra Leone. However, at the time the concept of child participation was not in the radar of many NGOs or UN agencies, who were concentrating on what they considered to be "serious business". The children eventually got a positive response from PLAN International who, in collaboration with the Ministry of Social Welfare, Gender and Children's Affairs, provided funds for an inception workshop which brought together children and young people from diverse backgrounds and regions. Delegates discussed strategies to get their voices heard and the Children's Forum Network (CFN) emerged as the most promising strategy.

### ***Not taken seriously***

*"Everyone thought we were completely strange kids and even those who gave us attention were basically only complimenting a group of "interesting kids". The fact is that the very culture of the traditional home in Sierra Leone is, or should I proudly but cautiously say, was, never one that heard children. Children were to be seen and well fed! We had to make the point that that very culture was a contributing factor to the war and for us to avoid returning to that state, there must be a radical and positive change".*

The CFN made its case: children were too important not to be heard in a country where about 40% of the population was under 18 years. It is vital to include the voice of children and young people since they had been such key players in the conflict. *"Atrocities committed during the war had shown that a child of eight years could carry a gun and kill. So, that same child has a role to play in ensuring a lasting peace".*

CFN travelled across the country encouraging other children and young people to join the network and let their voices be heard. They formed clubs in schools, child-care centres and other hubs in the community where children and young people congregate. To respond to and maintain the excitement and demand generated, CFN was organised by zones, districts and regions with coordinating executives at the various levels. The executives held weekly meetings during which children planned and discussed the progress of their various advocacy initiatives.

### ***Tensions between children and their communities***

The rapid formation of these structures initially resulted in some tensions. Some children felt that they could now challenge the authorities and condemn them in ways that contradicted the culture and traditions of their respective communities. Moreover, children began to demand rights that the authorities clearly did not have the capacity to respond to. To address these tensions, the CFN had to improve and clarify its messages on rights and responsibilities. Leadership training was also provided for the various executives on how to lead effective advocacy within their specific contexts. Nevertheless, whenever children displayed attitudes or action considered “negative”, whether organised or isolated, sceptical adults attributed this to CFN’s message of children’s rights.

*“I remember once an elderly uncle and aunt of mine came purposely to our house to rebuke my parents for allowing me to publicly commit the “abominable act of challenging the parents’ authority to beat their children in public””.*

Lack of capacity within CFN itself and among the various institutions it worked with was a recurring challenge.

### ***Co-option by adults***

As an organisation led by children under the age of 18 with very little adult facilitation, Network leaders felt that they didn’t have the information they needed to understand certain issues and make sound judgments and decisions. With hindsight, leaders now realise that this made them extremely vulnerable to being co-opted and used by adults to spread their messages. The Disarmament, Demobilization and Reintegration Commission asked the Forum to help spread information on the benefits of taking part in the process. The Forum was also asked to sensitise and mobilise children to take part in the country’s Truth and Reconciliation process. In retrospect, CFN leaders feel that they were transmitting adult messages and making promises that were not fulfilled which leaves them with a deep sense of regret.

### ***Relationships with donors***

CFN was unable to establish a direct relationship with its donors. Firstly, the Network didn’t have the capacity and know-how to apply for donor funds directly, and secondly, donors were reluctant to accept a direct funding relationship with an organisation led by children. This posed a serious obstacle for the Network which had to channel its ideas through the ill-capacitated Ministry of Social Welfare, Gender and Children’s Affairs. Although the Ministry provided the Network with an adult facilitator, it was a relatively new ministry which severely lacked both human and financial resources and was crippled by its own bureaucratic processes. Furthermore, very few staff demonstrated sound knowledge on

children's rights issues. The Ministry could therefore not provide the Network with the support it required. Network members had to be creative and proactive in undertaking their advocacy initiatives which, on numerous occasions, meant financing activities from personal meagre resources in order to by-pass the Ministry's bureaucratic processes.

A particular challenge faced in the pursuit of a rights based approach in a post conflict context was the lack of funding available generally, and particularly for 'long-term development efforts' and 'rights initiatives', as money was mostly directed towards short-term humanitarian relief.

### **Success stories**

CFN established over a hundred branches in all regions of the country, creating recognised platforms and processes to enable children and young people to discuss their concerns and advocate for issues affecting their lives. Enhancing **children's rights to participate** in post conflict peace building dialogue and national reconstruction is regarded as a significant impact in its own right.

Child participation enabled children to practice their own **agency** which brought benefits such as increased confidence, knowledge of rights and an opportunity to practice important life skills. For example, CFN organized various national campaigns on issues such as children's rights, HIV and AIDS and Education For All, which resulted in open dialogue and increased awareness on these pertinent issues and led to an increase in the school enrolment and completion rates among participating children. CFN also helped establish the country's first children's radio stations – the nation-wide Voice of Children Radio and the Moyamba District Children's Radio – with programmes produced and presented by young children. Radio drew larger audiences and gave children and young people a further platform to address common issues and concerns.

Enhanced child participation through CFN also empowered children as members of civil society and as **active and responsible citizens**. On the supply side, it ensured that people in power are held to account by children on decisions and actions that affect children's lives and it increased interventions aimed at improving children's lives. For example, one of the key objectives of CFN was to ensure that Sierra Leone enacts a **Child Rights Act**. After years of advocacy, CFN actively participated in the Act's drafting process, and after overcoming a series of setbacks instigated by so called traditionalists, the Act was passed in 2007. This is a major landmark as it domesticates the UN Convention on the Rights of the Child and its Optional Protocols and the African Charter on the Rights and Welfare of the Child, offering mechanisms for greater protection of children's rights in Sierra Leone.

More specifically, CFN actively participated in the post conflict peace building dialogue through the various **transitional justice mechanisms** established in Sierra Leone. The Network helped to increase awareness among children and young people on the proceedings of the Special Court set up to try those "most responsible" for atrocities committed during the war and on the proceedings of the Truth and Reconciliation Commission. Significantly, the Network advocated for, and took part in the creation of a framework for the protection and participation of children in these processes. CFN also compiled and submitted a national Children's Report to the Truth and Reconciliation

Commission outlining what had happened to children and young people during the war and making recommendations for the future. Among other things, CFN asked for a child friendly version of the commission's report and successfully lobbied UNICEF and the Commission to hire a consultant who worked with the Network to produce this. This version is still being widely disseminated in schools and is making the story of the war accessible to children and young people.

CFN produced various policy papers including the 2002 **National Children's Manifesto** which was a collection of demands from children, who were legally disenfranchised, to the political leaders of the country in the period preceding the democratic elections. They invited political party leaders to sign the Manifesto and commit to implementing its provisions. As this document, which was based on views collected through surveys, radio discussions etc, proved to be a powerful tool for engaging political parties, a similar report was produced for the August 2007 presidential and parliamentary elections.

### **Remaining challenges**

There are still challenges to doing advocacy work in conflict. At present, it is still unclear whether or not child rights will be strongly recognised and given the priority they deserve in the future of Sierra Leone. Although the Child Rights Bill was completed and passed in June 2007, it remains unclear what its impact will be. This leaves many issues of children's rights in Sierra Leone untouched as there is a lack of legal basis to seek redress.

Furthermore, there is a conspicuous lack of recognized youth structures in the country to lead effective youth advocacy. As a result, the government continues to pay lip service to children and youth issues with, for example, less than 2% of its annual budget allocated to the two relevant ministries combined.

The country continues to suffer from a lack of social structures and other opportunities for young people. The social problems which gave rise to the conflict are still present: there is a significant number of street children; more and more unemployed people; more and more economic hardship giving rise to homelessness and a host of other problems, all of which create a recipe for chaos. The question remains whether these challenges will be effectively addressed in the near future.

The capacity of the succeeding leaders of the Children's Forum to clearly understand the issues and have adequate access to the required resources to facilitate their work needs to be seriously enhanced. But this capacity is also by itself not enough. The government and the numerous international NGOs and UN agencies working for and with children and young people need to seriously reconsider their approaches by giving children and young people a bigger stake in designing, implementing and monitoring programmes, within the scope of their evolving capacities.

### **3.8 Summary and discussion**

All presenters illustrate that although there are major challenges to implementing a rights based approach in the context of conflict, such practice is not only possible but also beneficial. Furthermore, conflict – and the state of flux it brings – may provide an opportunity for work on human rights.

Each presenter outlines a number of challenges to their operational, conceptual and organisational practices. These challenges are organised here under the headings of legitimacy; cultural resistance; the neutrality of NGOs; and the risks of targeting duty bearers. They are followed by some specific thinking around doing advocacy in the context of conflict

#### **Perceived legitimacy of organisations:**

The first group of challenges were around the organisation's perceived legitimacy. It was considered essential that organisations working in the context of conflict were not seen as "agents of imperialism". One key way to address this issue is to ensure community participation and ownership of projects and programmes. Harriet Dodd mentions CARE's strategy of working with refugees and asylum seekers in Jordan through two elected bodies: a Men's Committee and a Women's Committee. Dhruva Karki, from Nepal, highlights further benefits of transparency and community ownership of programmes. CARE first empowered communities, enabling them to fully understand their roles and responsibilities. This had a unifying function and enabled the community to better vocalise and secure their needs. Second, CARE secured trust not only from targeted communities but also suspicious conflict parties, namely the Maoists and security forces in Nepal. Finally, communities became accustomed to this approach and increasingly demanded it from all development agencies and even government.

#### **Cultural resistance to rights:**

A second group of challenges was around cultural resistance to rights in the target area. It was acknowledged that showing that the organisation's core values are grounded in those of the community in question is key to ensuring the organisation's cultural legitimacy. In Iraq, where human rights are seen as instruments of Western imperialism directed against local cultural and religious values, HelpAge International stressed the importance of cultural sensitivity and of developing culturally-appropriate philosophical groundings for rights. Najia Haneefi highlights the necessity of an Islamic grounding for rights-based advocacy in Afghanistan. She illustrates that although women's equality is constitutionally guaranteed, this is largely irrelevant as the vast majority of Afghanistan's dispute resolution is delivered by informal, traditional Islamic practices. As such, any RBA must present itself as grounded in the Qur'an. This shows how rights in law are not enough: citizens must be able to understand and live these rights in dignity. Haneefi's organisation seeks to engage Mullahs, sensitise them to the idea of women's rights and persuade them to communicate a Qur'an-based account of women's rights. There are many women activists with whom NGOs could work. If NGOs started 'where the women were' and supported them to develop their ideas and influence others, there is great potential for breaking down cultural resistance. Harriet Dodd identifies the added challenge of working with people who have experienced

dislocation from their homes; and for whom the cultural and social norms by which they were once guided are not valid. She highlights that as “RBA” does not translate comfortably into Arabic, staff are asked to evaluate their work against CARE’s six programming principles which do have currency in the area in which they work.

### **NGOs and neutrality:**

A third group of issues arose around the neutrality of NGOs, and their capacity to speak out against human rights violations without being challenged on their political orientation. Karki describes how CARE Nepal promoted a revised concept of ‘neutrality’. This implies solidarity with disadvantaged groups, remaining non partisan and yet speaking out where appropriate. The Iraq paper illustrated the related problem of when development agencies become overly concerned with politics, to the disadvantage of those in need. For example, development agencies in Iraq were so immersed in their opposition to the war that they refused to adhere to the directives or attend any meetings of the [now dissolved] Coalition Provisional Authority (CPA) thus preventing the legal side from moving forward. The paper stresses the need for a holistic and integrated approach, involving all relevant development agencies, government departments, CSOs and crucially the Iraqi communities.

### **Targeting duty bearers and the risks attached:**

Finally there were issues around who to target as a duty bearer, and the related dangers of speaking out against duty bearers at all. In Iraq, many NGOs did not believe in the CPA as a duty bearing institution, and the occupying force did not believe that the situation required rights based responses. In Afghanistan, the authority of the law holds less power than the customary laws, creating parallel, contradictory and potentially conflicting systems and insecurity. In both these situations it is challenging to see who to target for change. Where a rebel government is in charge, NGOs are placed in a moral quandary of whether to support the institution or not. Doing so may bolster potentially unsavoury regimes or practices, or result in being punished by de jure authorities. It is clear that flexibility is required, and that there are many potential duty bearers beyond the government such as the UN and external powers and institutions. These papers highlight that when working with a rights approach, advocacy is not the only option, and should only be used when analysis shows it will be effective and safe: all papers brought up the challenges of working in an unsafe context and the potential dangers for staff and partners alike. Working with a rights approach does not only mean trying to change laws, but also means recognising that people have rights, and thus should be treated throughout the intervention with respect and dignity.

### **Challenges and opportunities associated with advocacy:**

The presenters provide a clear picture that, in their diverse experiences, advocacy opens political space to those whose voice is most marginalised. For CARE, advocacy means *“creating policies where they are needed and where none exist, reforming harmful or ineffective policies, and ensuring that good policies are implemented and enforced”*.<sup>55</sup> In the context of conflict, this specifically involves working to ensure that policies agreed by the international community to protect human rights and to promote social justice are implemented. What

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<sup>55</sup> See Juliette Seibold, paper 3.6 Movement, Access and Livelihoods An Advocacy Strategy, CARE West bank Gaza.

clearly emerges from the presentations is that advocacy in conflict contexts need not always lead to advocacy itself, but rather to an increased capacity for advocacy.

Nevertheless, a consensus was that there was usually more room for manoeuvre in advocacy than generally appreciated. NGOs should be strategic. There is no obligation to speak out, but doing so can be effective in some cases, if initiated on the basis of an analysis of the potential change that can occur as a result of advocacy efforts, and the entry points available for initiating work. Of particular value was the recognition that advocacy can and should be based on evidence derived from programme responses. This means that the voice of the people is represented at all levels.

To avoid security issues, it was clarified that although advocacy may not be risk free, it can be non confrontational. Asking for a voice, for example, should be impartial. It was also highlighted that sometimes it may be important to speak out to avoid risking legitimacy. For example, ActionAid Nepal felt compelled to speak out against the abuse of rights in the conflict in 2002 because they had been working on rights for many years, and not doing so could have undermined their message.

Where speaking out directly is not possible, there may be potential in supplying information to others, working on joint press releases to play to the advantages of each organisation, and arranging private memos. Working in a coalition, if one exists, is a powerful way of doing joint advocacy in conflict, especially if members of the coalition have the opportunity to opt 'in' to individual tactical alliances to follow particular issues, which will ensure a higher common denominator than having blanket engagement. It is important that the coalition has a clear goal, and promotes critical engagement.

In terms of security, there are advantages of having nationally based staff. In addition, it is clear that there is added value in speaking from all positions (the local, the international), and taking analysis from all these levels. For example, a national NGO may be under great constraints, and communities may not want to lobby, but if the NGO has an international office, then this office can lobby. In one instance, the ActionAid International offices in London and South Africa lobbied the UK and US governments to stop providing arms and support to Nepal during the 2002 conflict. This protected the Nepal programme but also prevented a helicopter from being sent as planned. Although this helicopter was non firing, it was important to stop it as its presence would have been seen as legitimising the government violence. However, there can also be challenges associated with this particular approach as there is a risk that international and local lobbying agendas may undermine each other. For example, in Afghanistan, INGOs were so worried about their own cultural imperialism that they didn't speak out about women's rights. This lack of action set the agenda back for local women's rights groups.

In selecting the target of advocacy efforts, it is important to avoid simply focussing on the State, which might not be best placed to respond. A tension arises when those who are most able to make rights provisions for the poor and most vulnerable may not be democratically elected, or may not espouse the qualities of 'good governance' that are normally sought. A good situational analysis can help considerably to bring out the key actors, for example in



Sierra Leone during the war, the State was effectively powerless and rebel forces had control of many areas – the analysis showed that the UN was a primary duty bearer here.

All papers recognised the challenges confronting a rights based approach in conflict. However, while issues may be exacerbated due to conflict, many of the challenges were in implementing rights based approaches *in general*. But presenters remained confident in the capacity of a RBA to secure a just, sustainable and positive peace and to remedy rights violations through a process of conflict transformation, which addresses the causes and not just the effects of conflict. In order to achieve this, analysis was seen as key, as was ensuring that civil society, especially women, played a strong role in conflict transformation.

In relation to advocacy, NGOs do not have to stand up and be confrontational to be counted. The summary of “successful tactics” provided by Juliette Seibold in her presentation serves as a very useful checklist for those considering the development of an advocacy strategy. Robust analysis of the change mechanisms will show where and how rights based change can be most effective. While there are many challenges in doing advocacy work, and as shown, these are exacerbated in conflict, there are many types of advocacy, many ways of doing advocacy, and many tools other than advocacy which will promote vulnerable people’s rights.

## Chapter 4

### Pulling it All Together

#### Introduction

There are multiple challenges to working with a rights approach in a conflict context, occurring in organisational, operational and conceptual spheres. There are, however, ways of overcoming these challenges, and in many contexts working with a rights based approach before, during and after the conflict context appears to have a positive impact on effective peace. This section summarises some of these advantages and then considers the challenges under the headings 'conceptual challenges', 'operational challenges' and 'organisational challenges', although there are clearly links and overlaps amongst these themes. Under each heading, there is a discussion which draws on examples from the global south. The final section considers how we can take this thinking forward.

#### 4.1 How RBA adds value to programming in conflict contexts

Using a rights based approach in a conflict context can help with analysis of the problem, and identification of responses that address both poverty and conflict. A rights based approach focuses our interventions on the underlying causes of poverty, rather than simply addressing unmet needs, i.e. it sharpens our focus on causes rather than only on symptoms. This can be transformative of conflict, as those underlying causes of poverty may also be the causes of the conflict, for instance where caste exclusion causes deprivation. Assessing a problem using a RBA presents us with an imperative to understand and analyse power and structural determinants. A needs based approach could inadvertently re-enforce existing and unequal power relations.

Causal responsibility analysis of problems using a RBA is an inclusive process, which should be undertaken from the bottom up. This is an empowering process, which contributes to dignity and self confidence. These qualities are often crushed by violence, and rebuilding them can help traumatised communities cope with their negative experiences of conflict. Using an analysis that considers the holistic person, with a full range of rights, can likewise contribute to healing, as the individual or community is not essentialised into a passive victim, beneficiary or refugee, but instead is an active protagonist in the realisation of their full potential. The advocacy component of RBAs further develops this by providing capacity building for voice.

A rights based approach provides a legal framework for holding people and governments to account, which is particularly pertinent to conflict situations where a lack of accountability is often the norm. RBA provides universally agreed authoritative standards, with bottom line entitlements that are *not* context specific. It directs us to the duty bearers, promoting accountability and responsibility. In situations of violence people often fall below the law

(are not protected) or rise above it (are not prosecuted for violations) and therefore contributing to re-instating legal accountability constitutes peace building action.

To augment this accountability, support is provided through RBA for the fulfilment of responsibilities by duty bearers including by building the citizen–State link, a relationship that may be totally destroyed in situations when the State has been in violent conflict with its people. By creating a positive experience of this relationship, RBA can help (re)-construct positive expectations of it.

Rights based programming in conflict can create space for other interventions that specifically target the causes of conflict. This is achieved through building legitimacy through rights based interventions. Alternatively, a rights based intervention may create a mechanism – formal or informal – for active conflict resolution. Using a RBA may bring other issues to the surface that had previously been ignored, such as sexual and gender based violence, and it may create a space to work on these other forms of violence. In the Nepali example, the use of RBA enabled women to organise around the issue of domestic violence, and helped build civil society as an alternative and non-violent means of mobilisation.

#### **4.2 How conflict sensitivity can add value to RBA**

The challenges of implementing RBA in a conflict context demonstrate the need for conflict sensitivity, but conversely conflict sensitivity can also add value to rights based programming. The CARE Nepal case study described an experience where the use of a conflict sensitive tool – Do No Harm – led the project team to a series of project design options that capture the essence of RBA. These included delegating authority to user groups, and transparent public auditing of projects. Thus the application of CSA actively led to the development of RBA.

The case study further noted that these design options, and other rights-based interventions in Nepal have helped create unity, awareness and confidence within communities, as well as build capacity for advocacy activities. The case study posed the question whether these RBA interventions had contributed in some way to the People’s Movement in 2006 in Nepal. Could such RBA work have helped contribute to people’s voice and mobilisation for peace? Yet in conflict contexts the sanctions for advocacy may be particularly harsh – so conflict sensitivity can help us think through these challenges.

It is worth noting that conflict sensitivity ought not to block a struggle to realise rights. Some confusion exists that conflict sensitivity may *prevent* social change or simply try to maintain ‘peace’ in a situation where structural violence occurs. Promoting social justice and encouraging people to struggle for their rights may raise tensions and could possibly erupt into violence. Rights based programming often focuses on structural and cultural violence – such as work on discrimination against lower castes. A conflict sensitive approach ought to recognise such structural and cultural violence as exactly that – violence – and so should consider indirect as well as direct forms of violence. RBA empowers people to organize themselves and encourages them to mobilize and put their own agenda forward. Struggling

for rights can create a backlash by those who will lose power and sometimes this struggle manifests into direct violence as latent tensions surface. Conflict sensitivity can help us look more deeply at relationships as part of conflict prevention/management when implementing a rights based programme.

### 4.3 Conceptual challenges

- **Universal standards:**

RBA means different things to different people, this confusion may be further complicated in conflict contexts. It also does not translate well into some languages, further adding to this confusion.

Some argue that human rights are a western imperialist agenda, and do not fit with certain cultures. This debate is not new – and has been largely resolved through the very widespread adoption of human rights laws across the world. However conference participants questioned whether it was possible to apply all standards at all times in specific contexts, and that contextualisation is needed. There is clearly a tension between contextualisation and universality. Two strategies were identified in the conference. First that there should remain universal standards, but locally nuanced definitions of justice. Second, that the intervener needs to approach the issue with good field craft – i.e. that some level of bending of standards and laws to make them fit a purpose can be useful in the field. However this does raise further concerns, as weak interpretations of protection can undermine the entire concept, and provide justifications to those who deliberately violate human rights.

- **The tensions between protection and RBA:**

The overlap between protection and RBA, and the skills-set required for programming, has caused some confusion in the humanitarian sector.

The Inter-Agency standing committee defines protection as:

*All activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. human rights, humanitarian and refugee law).*

This all-encompassing definition includes urgent action to stop or prevent violations and/or alleviate their immediate effects; restoring people's dignity following a pattern of abuse; and building a political, social, cultural, institutional, economic and legal environment conducive to full respect for rights. Protection complements but goes beyond humanitarian assistance. Humanitarian assistance programmes are often not strategically or explicitly designed to prevent or halt human rights violations, being concerned with alleviating the immediate effects of rights violations.

There are clear overlaps between RBA and protection as both refer to all rights and both take a long-term view. However, there are also several distinctions: protection interventions take account of International Humanitarian Law, alongside International Human Rights Law and Refugee Law, whereas RBA refers to human rights instruments only. Protection approaches talk about “full respect for rights” whereas RBA talks about “furthering the realisation of

rights". Protection has a specific focus on urgent and remedial action required to halt or prevent patterns of abuse. RBA on the other hand requires attention to the key human rights principles of participation, non-discrimination and accountability which should guide all programming in all sectors and in all phases of the programming process. Furthermore, RBA demands the capacity building of rights-holders and duty-bearers to claim their rights and meet their responsibilities respectively.

So would NGOs gain confidence and clarity of role with a clearer demarcation between protection and rights-based programming? In order not to confuse humanitarian processes, mechanisms and skills-sets, we might want to limit the definition of protection under the scope of civil and political rights which require immediate realisation and can be broadened to include International Humanitarian Law, including the right to humanitarian access in conflict contexts. In contrast, we can have a broader definition of RBA as covering ALL rights, including social, economic and political rights which all programmes – health, education, food distribution etc – are capable of integrating.

- **Working for peace or justice?**

Many argue that there is a tension between peace and justice. This tension is rooted in a simplification of the two concepts, conflating 'peace' with talks/deals, and 'justice' with trials. This simplification has resulted in an overly polarised debate, in which the 'peace' camp assert that trials will undermine a peace deal, while the 'justice' camp argue that without the assertion of human rights standards no peace can be sustainable. This tension was hotly debated in the case of the International Criminal Court indictments against the Lords Resistance Army of Uganda.

The ICC indictments were described as 'sitting heavily' over the Juba peace talks, a blunt instrument rather than targeted towards supporting the talks. Strategies to cope with or avoid this tension were wide ranging. There is a need to recognise that justice is both subjective and objective, and should be addressed at both levels. Appropriate forms of justice should be identified for each different context, and social justice (such as the redistribution of wealth and/or power) may be more applicable than retributive justice. The needs of victims should be central to the determination of what is appropriate justice. It may be that work to promote the rule of law is more valuable than undertaking big trials of key figures, particularly where resources are severely constrained. Further, high level trials can result in an impunity gap where the majority of perpetrators go unpunished. Alternatively, compensation may be a valuable justice mechanism, although this too presents further challenges when poverty is widespread. The sequencing of prosecutions is another strategy – delaying prosecutions may enable peace talks to proceed without creating impunity.

- **RBA or peace building?**

Some participants suggested that peace building programming seeks to re-create the situation as it was prior to conflict. They suggested that this was diametrically opposed to RBA, in which people are working towards a situation in which all rights are realised. However this represents a misunderstanding of peace building. Peace building programming may use terms such as 'rehabilitation' 'reconciliation', 'reconstruction' and 'reintegration' but it is not trying to create the same circumstances that preceded the violence – indeed this situation generated the seeds of violence. Peace building seeks to

transform the situation, bringing out latent conflict and creating new sets of relationships, institutions etc. It is strongly connected to the concept of positive peace.

- **How DFID conceptualises the relationship between rights and conflict**

The Human Rights Act 1998 (HRA) incorporates the rights and freedoms guaranteed under the European Convention on Human Rights into UK law. The HRA is binding on all UK public authorities including DFID. This means that DFID must ensure that human rights are part of the organisation's core values. Human rights should inform and guide all of DFID's actions including policies and programmes.<sup>56</sup>

DFID has to take a policy of "do no harm" – where there are human rights concerns, it must take these into account. Most importantly, DFID must not only take human rights as something it is afraid of falling foul of, or afraid of being sued over, but with a positive approach which seeks opportunities to support progress on rights. In other words, the HRA can be a driver and an opportunity to improve conflict and development practice.

So the HRA binds DFID to realise both internal organisational and external programmatic progress on rights. However, like many other organisations DFID is asking itself some pertinent questions: What does the internal process look like? How will DFID know when it has achieved it? Can human rights ever be 'a way of seeing and talking' for DFID in terms of behaviours, attitudes and practices? How does this differ when working in and on conflict?

DFID has made some initial progress in this area. DFID is running human rights training for all staff including Conflict Advisors. The aim is to enable staff to understand what human rights means for their specific field of work and how they can apply it in their day to day work from analysis, to dialogue with partner governments, from setting objectives to choosing instruments and tools. DFID has also developed a practical guide for assessing human rights at the country level which will feed into country governance analysis. However, the question remains: How far have these efforts changed conflict policies and practices? What is the impact of these changed policies and practices?

### **DFID's policies**

DFID has a very rich tapestry of policies and references dating back to the HRA but these mostly discuss efforts to integrate human rights and conflict prevention and resolution as separate spheres of work. DFID has a conflict and humanitarian department and a policy department looking at human rights. The organisation doesn't always come together on these issues and needs a common narrative.

Where the overlap between conflict and human rights is discussed in key policies and references, the key messages are:

- Conflict leads to human rights violations and insecurity.
- Discrimination and social exclusion are key underlying causes of conflict. It's therefore imperative to continue to promote inclusive development because societies will generally be less vulnerable to violence where economic and political systems are more inclusive.

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<sup>56</sup> Human rights obligations do apply in 'emergency' situations, including situations of armed conflict, but certain obligations can be 'derogated' from in times of national emergency, see Introduction to this publication.

DFID should therefore step up efforts to include analysis of exclusion as a cause of conflict and insecurity in its approaches and responses to conflict prevention and reduction.<sup>57</sup>

- Respecting human rights is central to DFID's 2005 Conditionality Policy. Thus, a country in significant violation of human rights risks the UK Government reducing or interrupting committed aid. In fragile States where DFID can work with government it will apply its policy principles as far as possible. In countries where it is not possible to work with government, DFID will focus on political dialogue, working with NGOs on service provision and on sanction where these will help the pace of reform.<sup>58</sup>
- Promoting better governance for the benefit of the poor will ensure peace and security.<sup>59</sup>
- Formal and informal systems to manage conflict without resort to violence must be promoted and rights based mechanisms are key to this. This will require a focus on promoting equality and inclusion; supporting mechanisms for peaceful resolution (political processes and international responses); human rights (monitoring and support to CSOs); and a focus on women and peacemaking (1325 Action plan).<sup>60</sup>

#### 4.4 Operational challenges

How should organisations operationalise their work within this challenging context? There are many difficulties in development and particularly in conflict contexts, such as around access, infrastructure and the ability to move around the country. Outlined below are challenges that are particularly connected to working with a rights approach.

- **Challenging power relations constructively**

Working with a rights approach inherently means addressing power. This prompts a challenge from elites and those whose power will be potentially undermined. The relationship between those who had power and those who are new to their positions of power needs to be managed effectively so as the relationships can be challenged constructively whilst violent conflict is avoided. If conflict becomes violent it is likely only to disadvantage those who have no protection.

There are a number of ways of overcoming such challenges. First, an organisation can ensure mobility and security for existing activists. For example, in Afghanistan, Haneefi supports the coming together of groups of women, within their own time and geographical boundaries. This involves working on women's rights at a community and household level, which is where the power imbalance is most apparent, but also where it is needed and can be addressed. Haneefi describes how the organisation worked with powerful local religious councils, Mullahs and other influential leaders so that they could promote equality. Identifying authority and seeking justification for women's empowerment within these powerful structures as a way of bringing them on board may be a way of shifting power dynamics. In parallel, equality in community representation at the local level creates a base from which a more democratic and egalitarian society may grow.

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<sup>57</sup> TSP DFID, 2000, Globalisation DFID, 2000; social exclusion DFID, 2005.

<sup>58</sup> Conditionality policy, DFID, 2005.

<sup>59</sup> Governance White Paper, DFID, 2006

<sup>60</sup> Conflict Policy Paper, DFID, 2006

Second, communities need to be part of the design, monitoring and evaluation of a project. This creates active ownership and empowerment. One further step is to ensure that the action for a project is carried out at a local level. For example, CARE Nepal has a delegation policy whereby each local office is solely responsible for the running of its own building. Where authority is delegated to users' groups, for example in a CARE water project, a more sustainable relationship is created. For sustainable work and positive peace, it is important that communities have the confidence to dialogue with conflict parties. This communication potentially has a positive impact on power relations because instead of those in power imposing a strategy, dialogue means that there may be a sharing of opinions. Of course, dialoguing with different conflict parties bears a risk for communities, but if it is sensitively achieved and with adequate analysis, it may be an effective strategy.

Third, it is possible to use tools and techniques to challenge power relations. For example social audits do not only help to create transparency but also model good governance. In Nepal, CARE report that people became so accustomed to the positive relationship between the INGO and the community, that they began to demand the government take the same approach. The space that was created for dialogue saw people organising around issues that concerned them. For example, women began to demonstrate around domestic violence, and this increased voice and agency began to shift the power balance.

In Jordan, the equivalent of a social audit is a townhall meeting. CARE acts an interlocutor with UNHCR in Jordan but often sets up these townhall meetings for the refugees themselves to raise issues. In parallel with these meetings, CARE's work is presented regularly to other agencies. As a result, a number of local and international agencies have met with refugees and linked their services with CARE's.

- **Where there is no State**

INGOs are challenged when the body occupying the State position does not understand or are not in control of the legal context. For example in Iraq, the occupying army did not synergise with the Coalition Provisional Authority. Another example is when a rebel army is in government, since they might not adhere to International Humanitarian Law.<sup>61</sup> Where there is no State there is an issue of who becomes the duty bearer. In such circumstances, the wider international community may become the duty bearers, or an international agency might become responsible. This can happen to the degree that the agency has complete control over the territory, such as in Kosovo.

- **Where there is no law or bad and unimplemented law**

When there is inappropriate protection in law, for example with regards to women's rights, INGOs have to use multiple strategies to raise awareness of rights approaches. Various approaches can be effective. For example in Afghanistan, the Afghan Women's Education Centre used learnings from other Islamic countries in the region to develop a culturally sensitive approach to ensuring women's rights are prioritised. This involved working with Islamic scholars to exchange views with scholars in Afghanistan and moving towards creating a liberal and gender based interpretation of the Quranic verses on which to base

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<sup>61</sup> For more in international humanitarian law see: <http://www.icrc.org/eng/ihl>



training for women, and with which to empower the Muslim feminist movement in Afghanistan. In addition, the group engaged with religious councils to tackle the challenges to women's rights in the country, including polygamy, child marriage and forced marriage. As many of the population listen to these religious leaders, it is important that they are sensitized so they can play a role as change makers in communities. Lastly, the group is working to improve the under-representation of women in the Afghan judicial system, which acts as a barrier to reform. The formation of the Women's Political Participation Committee and the Afghan Women's Network bring a sense of solidarity and support to women's rights activists, and also create alliances with female MPs. However, it is challenging to continue to prioritise this work when it is seen to compete with work on immediate needs. As mentioned earlier, organisations need to be clear that immediate needs may be an entry point to using a rights based process.

- **Where there is competing law**

In a context of competing laws in contexts of legal pluralism where often some laws are upheld above others, INGOs must use a range of techniques to ensure that international law is upheld. Situations like this arise in Iraq and in Afghanistan. Afghanistan is party to a number of international instruments including the Convention for the Elimination of All forms of Discrimination against women (CEDAW), and UN Security Council 1325 which guarantees rights for women. In addition, the Afghanistan constitution obliges the government to protect all human rights. However, there is also a clear provision that no law should be contrary to Islam, which can be problematic for women's human rights. This is because local customs which tend to reinforce patriarchy and violence against women might be upheld. In Afghanistan, WomenKind's partner worked with allies to better understand how to fit international treaties with local customs. Using an Islamic approach is a key and entry points include engaging with the religious community, targeting men for sensitization on women's human rights and training Muslim feminist scholars on Islamic law.

- **Where the duty bearer is weak or resistant**

It is a challenge to operationalise work when there is a weak or resistant State. Working with the State is an integral part of working with a rights approach which recognises the State as the primary duty bearer responsible for realising rights. However, some governments consider the implementation of this commitment a challenge. It may be challenging to convince the government during or post conflict since State capacity is more likely to be weak. In addition, the actor in power may have committed war crimes, there may be no rule of law and legal pluralism, and the governments' priority will be to secure their own power and territory. In addition, INGOs may not want to be seen as legitimising actors such as these by lobbying them to continue as the duty bearer.

In such circumstances, INGOs can use economic, social and cultural rights as an entry point into working in a country where civil and political rights are suppressed. This is technique is being used to initiate work in Burma. For example, CARE is working on HIV&AIDS education, agriculture, and water and sanitation, which are issues least likely to create tensions at present.

Even if the government is keen to work with rights, it may be tied by being under-resourced, and potentially unable to secure the rule of law. Talking about rights in this context might

invite a strong backlash, which may only serve to disadvantage the poor and vulnerable who would be the first to suffer if there was further conflict or if the government withdrew support entirely. In some places a further challenge arises when there is no standard against which to hold the State to account, for example if the State has not signed the 1951 convention, or if there is a State of emergency.

INGOs response to this may be to work according to the principles and behaviours of a rights approach, and maintain the principles orientation until it is possible to engage on rights and standards. There are also other possible responses, but no consensus around them. One response may be to focus on other actors as well as the State, considering in the analysis whether there are other actors better placed to be able to realise rights. For example, in Iraq, the CPA, UN, aid agencies and Iraq government army may all be notable actors, but since it is the US and the UK coalition which is creating the refugee flow and other violations which deprive people, they too should be an object for lobbying. However, there are also arguments against this approach. First, INGOs would be taking the power from the State, and relieving it of its rightful responsibility to realise citizen's rights. Second, in running a parallel State support system, INGOs would be diverting resources which may otherwise go towards tackling the belligerents, and thus would not be addressing the core structural reasons behind the conflict.

In some places, communities will have to negotiate with armed leaders. Skills to achieve this can be supported by organisations. This will be particularly important where there is no government. In such circumstances, local community structures can be revived as local governance structures which, in a system of multiple duty bearers, have certain responsibilities. Philipson points out in her paper that this strategy should be approached such that injustices in the old system are not replicated. For example, the Bashingantaha structure of peace building and conflict resolution was revived by ActionAid in Burundi during its long running conflict, and as the word Bashingantaha roughly means 'old wise men' a critique was aimed at the lack of women's rights focus to the programme. In fact this programme did initially train equal numbers of men and women (210 men to 209 women). However, the example shows that, whether or not the reality is different, there are times when there will be significant backlash to traditional structures.

Organisations also need to be wary of being negative about the State as an effective mechanism for the realisation of rights. For example, Uvin remarks that in Rwanda, a few NGOs' anti-State attitude led some donors to see theirs as the most thorough critique of the government, but their were overwhelmingly, and perhaps unhelpfully, critical. In other places, Uvin adds, the government's inability to resolve humanitarian rights violations highlighted by NGO attention can simply undermine it and strengthen opponents. There are times when organisations can also learn from and support the State.

- **Determining priorities**

While all rights are equal and organisations should recognise this, it is not practical work on everything. It is therefore a challenge to decide which rights to focus on with limited resources and within a project timeline. This decision may be more nuanced when working within a conflict context, which presents two sides to the debate. Some believe that rights based work in a conflict context should focus on the key causes of conflict: issues of identity,

economics, ideology, exclusion and human rights violations. Advocates of this approach suggest all programmes in conflict should be both conflict sensitive and transformative (i.e. endeavour to act to alleviate the conflict). There is a danger in these situations that certain rights will be ignored. For example, experience from CARE in West Bank Gaza suggested that no one is interested in women's rights as the major conflict focus is on self determination. Others believe that unless a tangible link is highlighted between conflict and human rights violations, a programme will not have peace building as a central aim. Then the danger is that the programmes might not work to transform the conflict context.

It is worth re-stating that decision making around which rights which to focus on should come from rights holders themselves. This can be challenging, as those in the field might not understand rights, there might not be time to work on these knowledge gaps during conflict, and where there is hot conflict, information transfers may not always be possible and trade-offs are necessary. For example, an organisation can work with excellent analysis to identify the poorest and most vulnerable people in a community with whom to work, but where duty bearers are advocating an inclusive society singling out a particular group of people to work with in this way may be seen as discriminatory and create tensions.

One of the challenges of working on rights in conflict lies in determining the balance between the humanitarian imperative and rights. There is a perceived tension between needs and rights: working on rights is sometimes seen as an inappropriate response in an emergency context, but working only on needs is perceived as unsustainable. The key message to convey in this debate is that needs might be an entry point to sustainable and long term development work, and agencies working with communities can follow rights principles and have the realisation of rights as the objective driving good development practice.

- **Participation and voice**

Working with a rights approach requires not the only the outcome of realising rights, but also the process of following rights principles. This means that people are treated as central to work, and are treated with respect and dignity. A key aspect is voice, but ensuring that the views of the poor and vulnerable are sufficiently heard can present a number of difficulties.

It is relatively easy to identify warlords, men and perpetrators as they tend to be the most visible in conflict, even though engaging with them is very challenging. Identifying and engaging with the most marginalised can be even more challenging: refugees may be traumatised and fearful of speaking even in private; public meetings may be even more difficult; speaking out, particularly by women, can undermine cultural and social norms and may make people more vulnerable.

It can be also be hard to ensure sufficient community input into the peace process. Philipson reminds us here that negotiations brokered by the powerful in a country can be unsustainable as well as potentially undesirable. A bottom up process may be desired and valuable but it is often not feasible if elites broker the deal in such a way that protects their own power. Experience suggests that agreements with constituencies brokered by elites are not necessarily achievable.

Is it worse to not involve constituencies at all? In Iraq the US reconstruction arrangements did not involve Iraqis. In Sierra Leone, the people were not consulted over which transitional justice processes to use. The special court and truth process put into action was arguably more a result of international pressure than internal demand. The international community may in effect have been superseding national objectives by including civil defence militias – regarded as national heroes in their communities – in the trials in order to dispel a perception of the trials a court only of victors.

Even if decision makers listen to the marginalised and vulnerable, they may not be actively heard or understood and it may be a challenge to ensure their voices are taken seriously and not simply used as political tools. This applies particularly to children. In Sierra Leone, for example, children were immersed in the conflict as both victims and perpetrators, but their rights were violated in both situations. In neither position were their voices heard. As victims their voices were stifled – Cherner Bah comments how the children's forum was always in danger of being manipulated by adults. As perpetrators and victims, their voices post conflict have also been hidden, and they were not initially invited to contribute to the peace process.

The manipulation of voice is common, including that of international actors doing development programming. For example, Uvin points out how in Rwanda the victims in the regime used human rights discourse and mechanisms to further their party politics and became political activists.

A further challenge lies in ensuring the multiple voices of a fractured civil society are heard. Local communities are diverse and divided along many lines including those grouping ethnicities, gender, religion and class. Their voices are thus polarised. INGOs must be careful not to force consensus on communities since this diversity is important for democracy. However, it is important also to be alert to those civil society actors who will deliberately attempt to spoil a process and prevent it from moving forward.

Organisations who have professed human rights ideologies cannot sit back and watch whilst rights are violated, and have a responsibility to speak out. For example, Anil Pant mentions that having advocated for human rights since 1996, if the ActionAid Nepal programme had not reacted during the 2002 tensions, it would have lost respect and legitimacy: staff were keen to 'walk the talk' and go out on demonstrations even though the outcome was prison – along with other civil society actors. There is a delicate balance between speaking out and moving people forward and also ensuring that all groups are included in conflict transformation.

In these circumstances, one response may be to work slowly, introducing rights work as a two phase process, first concerned with attitudes and behaviours and then looking at the rights principles. In parallel, holding awareness sessions, capacity developing, empowerment and community relations exercises – potentially using Reflect or PVA for example – may be effective. It may also be important to lobby those in control of the peace process to ensure that there is community involvement in the process, and that women are central.

At the same time, organisations must look inwards at what kind of forum they could create for people to debate issues. Uvin identifies two types of activity here: first, organisations can create internal debates; and second they can ensure their own houses are in order. The first involves putting critical questions on the table for the organisation as a whole to consider in times when conflict is not 'red hot'. This might involve training, or perhaps action learning and sharing. The second is an ongoing process which might evolve from the outset. It might involve looking at internal security structures and processes of understanding to ensure that the staff are clear as to the position that they will take and the actions they will make if an emergency is forthcoming. Both are key processes.

- **Advocacy**

Advocacy and rights are inextricably linked. Approaches to advocacy can follow a rights based process: it can be people centred and ensure that the voices of the marginalised are brought to the policy stage. In addition, the content of advocacy is often around rights issues. This is shown clearly by Chernor Bah who advocates for a child rights act in Sierra Leone and by Stephanie Baric in West Bank Gaza who explains how CARE's strategy is to ensure the implementation of policies to protect human rights and promote social justice agreed by the international community. Advocacy in conflict contexts is a particular challenge because difficulties faced in any context concerning the identification of targets and amplifying the voices of the marginalised are exacerbated; the space for advocacy is reduced; and the target for advocacy – usually the State – may not exist. In place of the State, there may also be a more autocratic regime which is attempting to limit political space.

However, there are also opportunities. The state of flux that is often present where there is conflict may provide openings for change. In order to overcome challenges and harness opportunities there are several ways forward. First, evidence suggests that clear analysis of the situation is key. Analysis should be done at all levels and it is vital that the safety and views of those who will be affected are central. As Chernor Bah comments in his paper, it is important to involve children and other marginalised groups. Even though these groups may play central parts in the conflict, as perpetrators or affected persons, their views are often not considered in any response.

In the analysis it is important to consider who advocacy should be targeted to. Where, in conflict, the government may be in a State of chaos, donors or international actors may be more appropriate targets. It may be particularly important to consider donors since the way in which funding is allocated can have a huge impact on how change can happen.

If the analysis suggests that there is an opportunity for influencing, actors can acknowledge and push the boundaries of limited space. Advocacy does not need to be loud and confrontational. It need not be even in the same country. For example, if there are organisations involved in advocacy that have bases in different countries, it is possible to do work from these locations as long as it does not undermine local partner action. For example, in 2002 ActionAid lobbied DFID from the UK with regards to its arms policy concerning Nepal, rather than having all advocacy work focused on the national level.

One concern of doing advocacy in conflict contexts is that of being 'political'. Organisations working on rights are unashamedly political, but need to be careful not to speak out on partisan politics. This is where the language of human rights can be useful since it is not necessarily associated with any political party.

As in non-conflict contexts, it's important for organisations to consider carefully who they work with. Working in coalitions can be very useful, since different members of the coalition have differing expertise. Coalitions can also avoid drawing direct attention to any individual organisation whilst still creating media attention, which may be particularly useful in conflict. On the other hand, INGOs must be careful to avoid overwhelming indigenous action. An alternative to working in a coalition is doing behind the scenes work, and supplying information and knowledge to those more able to act.

#### **4.5 Organisational challenges**

All of the challenges cited above, and ways of addressing these challenges are intricately bound up with individual organisations' policies, processes and ways of working. Clearly an organisation that has successfully internalized rights and built the capacity of its staff to work with RBA will be able to address the various conceptual and operational challenges that they face with confidence and creativity more successfully than those who have not invested time and energy with their staff. This penultimate section highlights the key areas that organisations should consider in terms of planning and capacity building.

- **Internalising rights**

It can be challenging for staff to internalise rights approaches. The decision to work with a rights based approach may emerge from one particular part of the organisation and communicating this throughout takes time. Organisations have tended to depend on a 'trickle down' approach whereby policies decided in head office are filtered through to operational levels. While this is supported in many cases by training, in other cases people at the field level have not always received adequate support to enable internalising the concept. In addition, the language used to describe a shift in strategy can be confusing, as can the concept of a rights based approaches itself. The term does not translate well into Arabic, for example, which can present problems for organisations with international mandates unless there is flexibility.

Working with a rights approach is sometimes equated solely with the realisation of the human rights frameworks. There is a perception that unless staff have an understanding of the legal frameworks, work cannot be rights based. However, country programmes and partners are often already working with rights based *processes*. One way of overcoming staff and partner confusion is to focus on the principles of a rights approach. Principles can be useful at outlining how one can act. They can ensure that the process of working with people around rights is itself rights based. ActionAid for example, outlines six values in its strategy 'Rights to End Poverty'. These values – mutual respect, equity and justice, honesty and transparency, solidarity, courage of conviction, independence and humility – are benchmarks of how ActionAid might approach its programme and policy work. ActionAid

may also approach the issue of rights through its Accountability, Learning and Planning System (ALPS). ALPS outlines principles, behaviours and organisational processes as ways of ensuring effective accountability, learning and planning. Principles include accountability, women's rights, power, learning and transparency.

Behaviours are multiple and facilitating behaviour and attitudinal change is a continual process. ActionAid uses various different techniques such as coaching, mentoring and feedback mechanisms to support staff, volunteers, trustees and partners in examining behaviours, contradictions and values. If organisations focus on getting how people work together right, rights based actions are likely to emerge in ways which may not happen if organisations focus only on the legal aspects of rights work. However, the legal framework does provide a guide, goal and direction to an organisations' work.

Working to ensure a rights based process may also alleviate the challenge that organisations have had to deal with when working with refugees. Refugees have legal rights under the Geneva Convention, but they may also be seriously stigmatised, sometimes on the basis of race. The difficulties of working against such stigma may be exacerbated if the State is not a signatory to the Geneva Convention. While working to realise rights in such contexts may be a challenge, organisations' approaches can be consistent: using rights based processes, even if legal rights can not be immediately realised, is a good approach to development.

The challenge of internalising rights approaches is not specific to conflict contexts. However, conflict contexts do make the decision to follow a rights approach more challenging. For example, even where it is easy to speak freely in a country, staff might find it challenging to talk about rights, as the issues arising are open to interpretation and opinions can be divisive. In such cases there is need for analysis around how to behave politically without becoming involved in partisan politics. This was challenging in the 2002 Nepal conflict where there was great similarity between NGOs and Maoist positions, with both supporting the voices of the poor and vulnerable, making it difficult for organisations to be seen as 'neutral'. It may be possible however, to avoid using exactly the same language as political parties to ensure that neutrality is perceived to have been at least attempted. CARE Rwanda's programme similarly faced disquiet when the programme appeared to contradict the government's policy of not distinguishing between ethnic groups, by focusing a project on Batwa literacy. Organisation's relationship with governments is key to longevity, and relationships with marginalised groups should be approached with sensitivity.

- **Conflict in the workplace**

Risks and opportunities also emerge from within the workplace. Organisations are likely to be microcosms of society. This diversity in the workplace can mean that conflict is brought into the office, and can make shared analysis challenging. For example, Philipson describes how in Sri Lanka a local progressive NGO was fractured by a conflict between Sinhala and Tamil staff which mirrored the national context. Similarly in Rwanda and Burundi, country programme directors have had to deal with resentment between staff of different ethnic backgrounds which has served to hinder effective working relationships. But these challenges can also provide opportunities: an organisation's responses to these issues are likely to be of greater relevance to society and with less bias, having been created with a broader range of perspectives in mind. Organisations must first seek to encourage

recruitment from all sectors of society to ensure representation and diversity. This may only occur if diversity is explicitly and deliberately recognised and harnessed. Many organisations have human resources policies which attempt to tackle leverage areas for change. For instance, CARE's policies detail first the need to 'advance representation by building diversity at all levels throughout the organisation', and second the need to 'learn about diversity'.<sup>62</sup> In addition, organisations should create a trusting environment. This might be a third pillar of a human resources policy and indeed the need to 'facilitate an environment of trust by effectively managing change' is mentioned at CARE. Building trust and ensuring effective internal communication is vital before addressing the conflict outside. Peter Uvin suggests undertaking an audit of human rights within the organisation. This may facilitate discussion, as staff are encouraged and given the confidential support to report human rights violations. Initiating a culture of communication may be a step towards transforming relationships.

- **Risks to staff**

The risk to staff and partners of working in conflict are high. This may be exacerbated by working with a rights approach since the organisation is even more politicised than it already may be, and politicisation may be seen to be more sensitive, and thus open to attack. As mentioned, organisations are political and yet attempt not to side with parties. This has proved challenging on a number of occasions. In Sri Lanka, CARE did not want to use the concept of rights initially, as it could be overly divisive. Staff and partners thus talked of working for 'important needs'. In such circumstances, decisions have to be made as to the appropriateness of staff and partners' movements and the degree to which they can take risks. Who makes these decisions is key, and the decision has to be made openly, transparently, and with a thorough degree of analysis. In Nepal in 2002 many organisations including ActionAid and CARE made the decision to continue work, even though it meant that staff were at risk.

- **Analysis and good enough thinking**

Organisations are challenged to undertake sufficient analysis of the conflict situation. This is due to a number of factors. First, donors may not prioritise analysis, which may be seen as overly time consuming, or not as important as acting immediately. In addition, analysis needs to be regular, and ideally would take place before a conflict. Of course, this ideal is often not realised. A natural disaster such as the Asia Tsunami in 2003 surprised the world, and response and analysis took place immediately. An effective analysis post disaster, or after the onset of violent conflict is also possible, but the potential for mistakes is higher. Funds for ongoing analysis for both conflict and emergencies can be very helpful. Anil Pant of ActionAid said that his one regret following the agency's response to the 2002 conflict in Nepal was that 'analysis had not taken place beforehand'.

Second, analysis is challenged in conflict where staff have differing views. As mentioned, INGO staff are from diverse set of backgrounds and discussion around what conflict might mean and its implications for wider society may be fraught.

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<sup>62</sup> Human Resources Policy, CARE International. This policy highlights that 'once staff confront issues of diversity they are better able to work for the fulfilment of our rights based vision Statement and programming principles in all that they do'.



Third, it is challenging to do effective analysis. Philipson is clear that:

A robust analysis must be strong, systematic, shared, multi layered, documented, predictive, and adopt a 360-degree perspective. It must also consider the root causes of the conflict. Conflict analysis should not be entirely externally contracted and must draw on the existing skills and knowledge of the staff from the implementing organisation. The analysis must take place at all levels, especially at the sub-national and rural levels where most conflicts are played out. The analysis should be bottom-up and thereby reflect the voices and needs of those directly affected by the conflict, including the poor and most vulnerable.

Within this analysis there must be understanding of different aspects of risk and power. Doing this analysis regularly is challenging for organisation due to resource and time constraints.

In addition, when organisations do analysis there is sometimes a reliance on tools in the manner of a 'tick box' exercise. One tool that can be effective for bottom up conflict analysis is Poverty Vulnerability Analysis (PVA). As Ajayeoba explains, PVA is a participatory methodological approach which allows for the creative, innovative and combined use of tools broadly grouped together and described under the category of participatory rural appraisal/participatory learning and action [PRA/PLA] tools. PVA maps the risks and hazards to people with regards to their vulnerability in conflict. Alongside its other ambitions it aims to find non violent solutions to conflict. The process has been credited with bringing together twelve communities to advocate for a Peace Building Protection Agency in Nigeria and a law for IDPs' protection, and the bringing together of different conflicting youth groups in Sierra Leone. Even so, there is a danger, Ajayeoba mentions, of making PVA a doctrine rather than a process, and of not following up the analysis with action.

On the other hand, there is a perception that organisations may be paralysed by the extent of their analysis, which may prevent action. Organisations must be wary of allowing this to happen, and achieve a careful balance. Philipson highlights that it is important to understand that analysis alone can not create change unless it identifies opportunities for action which are then acted on. The consensus appears to be that some analysis is better than no analysis, but that it is not always realistic to do ideal analysis given the complexity of conflict and natural disasters. Analysis thus needs to be as good as it can be in the circumstances. The *'Good Enough Guide'* outlines practical actions that INGOS can realistically do given the challenges of an emergency context.<sup>63</sup>

- **Positioning to government**

Organisations have to decide how to position themselves on rights with regard to government policy. When a government is very negative about a rights agenda, as at times in Afghanistan and Nepal, it might be expedient to be cautious about language and communications to avoid being seen as overtly politically and to tread the line carefully between politicised action recognising power and party politics. As mentioned, in Nepal in 2002 organisations were inevitably associated with the Maoists who were more inclined to

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<sup>63</sup> Oxfam (2007) *Impact Measurement and Accountability in Emergencies, the Good Enough Guide*, Oxfam.

support the human rights agenda. Anil Pant explained how ActionAid attempted to prevent this by avoiding adopting the language of political parties and firmly sticking to the terminology of the human rights frameworks, prioritising the internationally agreed principles for political weight. In addition, ActionAid maintained the principle of working with the poorest and most vulnerable whatever their political alignment, and ensured that all work was transparent and accountable

In some contexts there is no government, and the institutions capable of working on rights may be rebels, or may be the UN. In such circumstances, organisations have the challenge of deciding whether or not working with such groups would undermine or contribute to the realisation of rights. This depends on the space for working with such institutions, and the activity involved, and there are issues with both building institutions' capacity and ensuring their accountability. For example, organisations may want to continue to encourage these new institutions to be responsive to the rights of people they claim to have power over, but this presents challenges since support is nevertheless being made available to an unelected body.

Undertaking an analysis of actors applies across the board before organisations decide on where and when to speak out on human rights violations, which violations will be prioritised, and the risks it will take. Unless analysis is thorough, there are risks about speaking out. One solution for organisations in Sudan and Nepal has been to work in coalition with others to avoid being singled out as particularly outspoken.

Part of organisations' analysis will be to consider whether speaking out will benefit or damage the communities they work with. In Nepal again, organisations found it helpful to develop a code of conduct. The Associating of International NGOs' code of conduct was a set of basic operating guidelines through which NGOs worked, outlining a range of points such as how they move about, what they would wear and what language they would use. This was an attempt to avoid organisations being singled out for causing offence, and demonstrates how all activities, not just speaking out, are political in that they demonstrate the agenda that an organisation is following.

- **Positioning to donors**

Organisations must also consider how they align with donors. Donors' appreciation of the challenges of working in conflict is varied. Some have a very simplistic view of conflict dynamics and of appropriate responses. Many donors do not prioritise human rights work in conflict and do not necessarily provide funds for a long enough period to ensure positive peace is secured.

Operationalising rights in conflict requires flexibility as opportunities for dialogue, political spaces and the spaces to realise rights open and close frequently and unpredictably. There is a need to respond to these windows of opportunities, and this means having done regular analysis. However, this degree of flexibility is not something which necessarily fits with donors' log frame requirements. The unpredictability of funding can be disconcerting for some agencies. In such situations, donor education may be valuable. Various clauses in contracts might also be adopted, such as process clauses outlining that contractors must

involve local people in planning. In addition, as explained by the DFID Rights and Gender Advisor, all funding strategies for post conflict transitions should have 10-20 year horizons.

A further complexity to ensuring funding throughout a conflict is donors' sometimes incoherent relationship between development and foreign policy, in particular where they are a military actor. For example, development was given as a key reason for the Iraq invasion, and security agencies themselves are actors implementing development 'solutions'.

- **Positioning to civil society**

INGOs must also consider their relationship with social movements and civil society. This relationship is complicated since NGOs such as ActionAid, with solely national staff and a national board, are at the same time part of civil society, and considered separated from civil society through being connected with an international organisation. Due to this power imbalance, where there are burgeoning movements, organisations - and particularly international organisations - must be aware to support and prioritise civil society ambitions to grow and voice their views. This should be the case even if people's views are conflicting. Organisations should not swamp people's voices, try to drive the agenda, or try to force consensus. Since, as Dan Smith mentions, effective democracy is messy and requires many voices competing to voice their different opinions, actions such as forcing consensus will undermine the concept.

On the other hand, organisations cannot leave civil society to do everything. Having set itself up as an organisation working with a rights approach, the organisation has to continue to stand by this position in adversity. Thus in Nepal when the people went to protest on the streets, they asked ActionAid why it wasn't on the street with them, since they were attempting to claim rights as ActionAid had been suggesting. To maintain principles ActionAid had to act.

It is not only governments and donors who might see working with a rights approach as 'an obscene luxury'. In some cases civil society may not prioritise rights, or may be frustrated with the rights approach as it sets up expectations but change takes a long time. In particular refugees can be unwilling to work for a long term rights solution since they believe they will return home. In addition, there may be anger that organisations are working on long term rights, whilst people have unmet immediate needs. On the other hand, there are also civil society organisations who are frustrated with INGOs for not being sufficiently political. It is challenging to balance the two

A response to a dilemma of this nature may be to communicate and demonstrate a rights approach more wholeheartedly, reiterating that within this approach, an organisation is not only going to be working on the realisation of all rights, but will be working on immediate needs with rights principles and process. For example, organisations will treat individuals with respect and dignity.

In addition, in order to build a positive relationship with the community, organisations can be made up of local staff. This also has advantages in terms of security. In Nepal, local staff knew about potential Maoist attacks. There were many threats of attack, but it was only

when the local staff were concerned and did not come into the office, that ActionAid knew to take the threats seriously. Hiring or working with local staff also has advantages for quality work, as does working in partnership with local organisations. In such a relationship the INGO might provide resources, capacity, and linkages with the national and international environments. Haneefi explains how working with partner organisations in Afghanistan ensures easier access to women.

A trusting relationship between an INGO and the community can also be built through participatory planning tools and techniques such as social audits. Social audits were used in Nepal to build a relationship with the community and empower the community to be agents of their own change.

- **Accountability**

Social audits are one of a number of ways in which INGOs can demonstrate their accountability to wider civil society and community based organisations. Organisations can model other forms of transparency with mechanisms such as an open information policy on budgets, public auditing and delegating authority to communities and rights holders. Dhruva Karki explains how the entire community were involved not only in the planning of CARE Nepal projects, but in monitoring the roles of stakeholders, implementation processes, and planned and actual expenditures. All details around incomes and expenditures are on permanent public display and are discussed in public meetings which are held at planning, implementation and evaluation phases. Such is the degree of trust in the process that they now demand such practices from all development agencies, and in particular from the government. It has thus helped build the State-citizen link, and demonstrated the right to and feasibility of access to information about development.

A second initiative used by CARE in Nepal delegates decision making concerning project expenditure to community user groups. This is in contrast to the past, when there was a central procurement policy amongst all development agencies in managing materials for their community development activities, with field based staff responsible for handling funds and managing local level requirements. The new system, whereby user groups decide how project funds will be spent and self-manage all issues pertaining to procurement, transportation, labour and accounting, ensures that communities have a greater ownership and understanding of the issues involved, and programmes are more responsive to community needs.

### 3.8 What we need to do next

As a first step there is a need for agencies to **develop a common language** on RBA and protection, as the confusion over terms is playing out in how agencies respond to particular situations. Given the vast literature and amount of work on protection, organisations need to be careful to keep a focus and develop a niche within this area. It would also be useful to clarify the different meanings of RBA to different types of organisation – i.e. development agencies, human rights agencies, and conflict agencies so that there is an understanding of what others mean by the terms to enable work to be more effective.

There is a need for **further conceptual development** on RBA in conflict contexts. For instance, we should challenge ourselves as to whether RBA *inevitably* leads us to building a stronger State, and what that means in situations of conflict or authoritarian regimes.

Similarly, **a review of processes of analysis** for both CSA and RBA would be helpful – to enable identifying how an examination of vulnerabilities, for example, differs between conflict and peace situations. It would be valuable to **explore how we can merge processes of analysis** for RBA and CSA, to avoid duplication and accelerate the drawing together of these two fields.

At a more practical level, the agencies participating in the conference found it useful to share experiences, and so more **knowledge sharing** on what has worked and why would be useful for building the field. The conference was particularly useful for practitioners, and next steps should also consider how similar conferences can be held in southern regional centres so practitioners can share experiences and learn from one another. The video from the London conference could be used as a resource.

Building on this knowledge sharing, there is also a need for **research and skills sharing** on where RBA has been applied in a conflict context. More consolidated work is needed to identify lessons learned, and demonstrate how RBA has had a causal role in enhancing conflict sensitivity (or otherwise).

Organisations with different expertise will benefit from working together on these issues. This will provide a united front for donors, and it will enhance research capacity and advocacy measures at a national and international level. It may also influence practice.

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Beyond Juba Project: [www.beyondjuba.org](http://www.beyondjuba.org)

Centre for International Development and Conflict Management:  
<http://www.cidcm.umd.edu/>

Conciliation Resources: <http://www.c-r.org/>

Conflict Prevention and Post-Conflict Reconstruction Network: <http://cpr.web.cern.ch/cpr/>

Conflict Resolution Information Source: <http://v4.crinfor.org/index.jsp>

Crisis States Programme (LSE): <http://www.crisisStates.com/index.htm>

Department of Peace Studies (University of Bradford):  
<http://www.brad.ac.uk/acad/peace/tmp/publications/>

DFID: <http://www.dfid.gov.uk/aboutdfid/organisation/conflicthumanitarianassistance.asp>

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GRC Exchange: [http://www.grc-exchange.org/g\\_themes/conflict.html](http://www.grc-exchange.org/g_themes/conflict.html)

Human Security Centre: <http://www.humansecuritycentre.org/>

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<http://www.peacestudiesjournal.org.uk/>

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The World Bank:  
<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTSOCIALDEVELOPMENT/EXTCPR/0,,contentMDK:20486307~menuPK:1260728~pagePK:148956~piPK:216618~theSitePK:407740,00.html>

UN Department of Peacekeeping Operations:  
<http://www.un.org/Depts/dpko/dpko/index.asp>

USAID: [http://www.usaid.gov/our\\_work/cross-cutting\\_programs/conflict/](http://www.usaid.gov/our_work/cross-cutting_programs/conflict/)

## Annex 1 Conference Agenda

### CONFERENCE: RIGHTS BASED DEVELOPMENT AND HUMANITARIAN INTERVENTIONS IN CONFLICT SITUATIONS

8 – 9 February 2007

9:00am – 5:30pm

## UK Inter-Agency Group on Rights Based Approaches

### AGENDA

The purpose of this exploratory conference is to learn, challenge our thinking and improve the impact of our rights based programme and policy work in conflict situations through the creation of space for issue-raising, debate and analysis of emerging challenges, tensions and questions as well as areas of complementarity.

The conference will introduce innovative theories, policies and practices and facilitate debate from the various perspectives of development, humanitarian, human rights and peace and security academics and practitioners. A concrete output will be a publication which captures the challenges and tensions but also clarifies areas of complementarity between human rights and conflict prevention. It is hoped that this open forum will push us to look more deeply and critically at our own work and ultimately enable us to respond more effectively in the future. The conference will comprise a mixture of plenary and breakout sessions, which sessions for facilitated reflection built in.

#### DAY ONE

8 February 2007

TIME	SUBJECT	SPEAKER	OBJECTIVE
0900 – 0920	Coffee & Tea		
0920 – 0940	<b>Introduction to the Conference</b>	<ul style="list-style-type: none"> <li>Magdalene Lagu, CARE International UK (and IAG Coordinator)</li> <li>Maureen O'Flynn, Conference Facilitator</li> </ul>	<ul style="list-style-type: none"> <li>To introduce the Interagency Group on RBA and explain why the conference is taking place including the purpose and intended outcomes.</li> <li>To explain the conference agenda and logistics issues.</li> </ul>
0940 - 1040	<b>Understanding HRBA in conflict contexts</b>	Peter Uvin, Tufts University	<ul style="list-style-type: none"> <li>To understand why HRBAs are considered important in conflict contexts, and the arguments against using HRBAs in these contexts.</li> <li>To explain the history of working on HRBAs in conflict contexts.</li> <li>To explore the tensions of using such an approach in conflict contexts including: how rights can be both a cause and a result of conflict; and, the challenges of working on rights in conflict, organisationally and otherwise.</li> </ul>
1040 – 1100	Break		

1100 – 1200	<b>Analysis of challenges and dilemmas to HRBA and conflict at the local national &amp; international level</b>	Liz Philipson	<ul style="list-style-type: none"> <li>To consider challenges and dilemmas faced when working on HRBA on conflict at local, national &amp; International levels.</li> <li>To consider how conflict -analysis may help us to understand the complexities and possibilities for action in terms of identifying opportunities for advocacy and potential for programming.</li> </ul>
1200 – 1245	<b>Participants' Forum: Identifying Personal and Organisational Challenges</b>	Maureen O'Flynn, Conference Facilitator	<ul style="list-style-type: none"> <li>To enable participants to reflect upon and voice their own challenges and issues in relation to rights based development and humanitarian interventions in conflict situations.</li> <li>To demonstrate and work with rights based principles of inclusion and participation.</li> <li>To inform presenters and speakers about participants' specific concerns, which they may be able to weave into their presentations.</li> </ul>
1245 – 1345	LUNCH		
1345 - 1545	<b>Challenge to Implementing HRBA in conflict: practice</b>	<ul style="list-style-type: none"> <li>Anil Pant, Action Aid International Nepal</li> <li>Dhruba Karki, CARE Nepal</li> <li>Rezgar Ghafor, HelpAge Iraq</li> <li>Najia Haneefi, Afghan Women's Educational Centre</li> </ul>	<ul style="list-style-type: none"> <li>To share experiences of working on HRBAs in conflict situations by using country cases to highlight the positive results and challenges encountered, and to demonstrate options for working on rights in conflict environments.</li> </ul>
1545 - 1600	Break		<ul style="list-style-type: none"> <li></li> </ul>
1600 – 1700	<b>Tensions between peace &amp; justice in conflict contexts</b>	<ul style="list-style-type: none"> <li>Nahla Valji, Centre for the Study of Violence &amp; Reconciliation – South Africa</li> </ul>	<ul style="list-style-type: none"> <li>To understand the tensions between peace and justice, and how this adds challenges to following a rights based approach.</li> </ul>
1700 - 1730	<b>Taking Stock: Synthesis of Challenges and Issues Identified So Far:</b>	<ul style="list-style-type: none"> <li>Maureen O'Flynn, Conference Facilitator</li> </ul>	<ul style="list-style-type: none"> <li>To enable delegates to reflect upon what they have learned during the course of the day and to begin to make links between causes and consequences of identified challenges.</li> <li>To wrap up the first day of the conference.</li> </ul>

## DAY TWO

9 February 2007

TIME	SUBJECT	SPEAKER	OBJECTIVE
0900 - 930	Coffee & Tea		
0930 – 0945	<b>Playback</b>	<ul style="list-style-type: none"> <li>Maureen O'Flynn, Conference Facilitator</li> </ul>	<ul style="list-style-type: none"> <li>To review the challenges and issues raised in Day 1</li> <li>To introduce the content for day 2</li> </ul>
0945 – 1145	<b>Challenges to HRBA in humanitarian interventions</b>	<ul style="list-style-type: none"> <li>Ayodeji Ajayeoba, Action Aid International, West Africa conflict advisor</li> </ul>	<ul style="list-style-type: none"> <li>To explore the challenges of implementing a rights based approach to humanitarian action in conflict; with a particular focus on accountability to beneficiaries, and humanitarian agency involvement in the</li> </ul>

		<ul style="list-style-type: none"> <li>• Harriet Dodd, CARE Jordan</li> <li>• ICRC representative (TBC)</li> </ul>	protection of civilians.
1145 - 1200	Break		•
1200-1300	<b>Donor and Government Perspectives</b>	<ul style="list-style-type: none"> <li>• Gerard Howe, Senior Rights and Gender Adviser, DFID</li> </ul>	<ul style="list-style-type: none"> <li>• To provide clarity on DFID's approach to conflict and its approach to integrating rights into its development programming, and where these fit together. To discuss and suggest ideas on how DFID can better integrate human rights in their responses to conflict, fragile and humanitarian situations.</li> </ul>
1300 - 1400	Lunch		
1400 – 1600 (with break from 1500 – 1515)	<b>Advocacy Challenges in Conflict Contexts</b>	<ul style="list-style-type: none"> <li>• Stephanie Baric, CARE West Bank Gaza</li> <li>• Chernor Bah, PLAN International UK, Sierra Leone</li> </ul> <p>Panel:</p> <ul style="list-style-type: none"> <li>• Advocacy Group</li> <li>• Dan Smith, International Alert</li> <li>• Brendan Cox, Crisis Action</li> </ul>	<ul style="list-style-type: none"> <li>• To share experiences of advocacy and HRBAs in conflict situations, using country cases to highlight the positive results and challenges encountered, as well as to discuss the aspects of advocacy techniques employed effectively in different situations.</li> </ul>
1600 - 1700	<b>Pulling the Threads Together: Common Ground, Challenges and Next Steps</b>	<ul style="list-style-type: none"> <li>• Maureen O'Flynn, Conference Facilitator</li> </ul>	<ul style="list-style-type: none"> <li>• To draw together all aspects of learning during the conference in order to articulate areas both of common ground and (potential) dissonance between individual and organisational approaches to rights based development and humanitarian interventions in conflict situations.</li> <li>• To provide comment to DFID to support its conceptual understanding and policy in this area.</li> <li>• To articulate ways in which the impact of rights based development and humanitarian interventions in conflict might be consolidated and/or increased.</li> </ul>
1700 - 1730	<b>Wrap up and Evaluation</b>	<ul style="list-style-type: none"> <li>• Peter Uvin, Tufts University</li> <li>• Maureen O'Flynn, Facilitator</li> <li>• Magdalene Lagu, CARE</li> </ul>	<ul style="list-style-type: none"> <li>• To close and evaluate the conference.</li> </ul>