



OFFICE OF THE UNITED  
NATIONS HIGH COMMISSIONER  
FOR HUMAN RIGHTS

# GOOD GOVERNANCE PRACTICES FOR THE PROTECTION OF HUMAN RIGHTS



UNITED NATIONS

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## INTRODUCTION

The former United Nations Commission on Human Rights emphasized, in a number of resolutions, the importance of an environment conducive to the full enjoyment of all human rights. It also underlined that good governance and human rights were mutually reinforcing and that the former was a precondition for the realization of the latter. Building on these resolutions, the Commission asked the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide practical examples of activities that strengthened good governance and promoted human rights.

In response to this request, OHCHR is publishing *Good Governance Practices for the Protection of Human Rights*. This publication presents 21 case studies of governance reforms that have helped to better protect human rights. It builds on the Seminar on good governance practices for the promotion of human rights, which OHCHR organized in cooperation with the Government of the Republic of Korea and the United Nations Development Programme (UNDP) in Seoul in September 2004.

### Purpose

This publication aims to help fill the gap between human rights standards and principles, on the one hand, and their implementation through governance interventions, on the other. Those engaged in governance reforms frequently wonder about the relevance of human rights to their efforts. How can human rights principles be meaningfully brought into governance reforms? What types of policies and initiatives do these principles translate into? Once States have adopted appropriate legal frameworks, how can they and other social actors improve implementation through governance reforms?

By presenting innovative efforts from around the world to design and carry out governance reforms and protect human rights, this publication attempts to show how governance can be reformed to contribute to the protection of human rights. The hope is also that, in so doing, this publication will inspire reformers, including Governments, human rights activists, development practitioners, national human rights commissions and national civil society organizations.

### How are good governance and human rights linked?

Good governance and human rights are mutually reinforcing. Human rights principles provide a set of values to guide the work of Governments and other political and social actors. They also provide a set of performance standards against which these actors can be held accountable. Moreover, human rights principles inform the content of good governance efforts: they may inform the development of legislative frameworks, policies, programmes, budgetary allocations and other measures. However, without good governance, human rights cannot be respected and protected in a sustainable manner. The implementation of human rights

relies on a conducive and enabling environment. This includes appropriate legal frameworks and institutions as well as political, managerial and administrative processes responsible for responding to the rights and needs of the population.

This publication defines good governance as the exercise of authority through political and institutional processes that are transparent and accountable, and encourage public participation. When it talks about human rights, it refers to the standards set out in the Universal Declaration of Human Rights and elaborated in a number of international conventions that define the minimum standards to ensure human dignity (see box).

It explores the links between good governance and human rights in four areas, namely *democratic institutions*, *the delivery of State services*, *the rule of law* and *anti-corruption measures*. It shows how a variety of social and institutional actors, ranging from women's and minority groups to the media, civil society and State agencies, have carried out reforms in these four areas.

When led by human rights values, *good governance reforms of democratic institutions* create avenues for the public to participate in policymaking either through formal institutions or informal consultations. They also establish mechanisms for the inclusion of multiple social groups in decision-making processes, especially locally. Finally, they may encourage civil society and local communities to formulate and express their positions on issues of importance to them.

In the realm of *delivering State services to the public*, good governance reforms advance human rights when they improve the State's capacity to fulfil its responsibility to provide public goods which are essential for the protection of a number of human rights, such as the right to education, health and food. Reform initiatives may include mechanisms of accountability and transparency, culturally sensitive policy tools to ensure that services are accessible and acceptable to all, and paths for public participation in decision-making.

When it comes to *the rule of law*, human rights-sensitive good governance initiatives reform legislation and assist institutions ranging from penal systems to courts and parliaments to better implement that legislation. Good governance initiatives may include advocacy for legal reform, public awareness-raising on the national and international legal framework, and capacity-building or reform of institutions.

Finally, *anti-corruption measures* are also part of the good governance framework. Although the links between corruption, anti-corruption measures and human rights are not yet greatly explored, the anti-corruption movement is looking to human rights to bolster its efforts. In fighting corruption, good governance efforts rely on principles such as accountability, transparency and participation to shape anti-corruption measures. Initiatives may include establishing institutions such as anti-corruption commissions, creating mechanisms of information-sharing, and monitoring Governments' use of public funds and implementation of policies.

## Methodology

The publication is organized around the above-mentioned governance themes:

- Strengthening democratic institutions
- Improving service delivery
- The rule of law
- Combating corruption

Each chapter comprises geographically diverse case studies. Given the goal of illustrating the conditions under which specific initiatives came about and the strategies through which they were implemented, each case study presents the background to the initiative, its achievements and the main challenges it faces.

In preparing the publication, OHCHR relied on several submissions from Governments on their experiences with governance reforms to improve human rights protection. A desk study of secondary resources was subsequently carried out to cover the gaps emerging from the submissions. In this process, a number of organizations shared their expertise and were consulted on the practices included in this publication. OHCHR did not undertake any direct research in the countries or the projects included here.

The case studies are indicative of the efforts that took place in specific settings. They are innovative initiatives in terms of the social partnerships they created, the legal and principled arguments they relied on or the institutions and processes they devised. However, initiatives that have made a positive contribution in one setting cannot simply be transferred to another. A one-size-fits-all approach is not appropriate for addressing the complex obstacles to legal, social and institutional reform which improves the protection of human rights. It is therefore hoped that the case studies will offer ideas and inspire practitioners and reformers, who can then adapt them to their particular conditions. It is also hoped that, through the sharing of experiences, the publication will generate further discussion and research.

### *Human rights standards*

Human rights are set out in the Universal Declaration of Human Rights of 1948 and codified and further spelled out in a series of international conventions. These lay down the minimum standards to ensure human dignity, drawing on the values found in different religions and philosophies. Moreover, Governments worldwide have agreed that these conventions constitute an objective set of standards by which they can be judged. These instruments are applicable in the countries that have ratified them.

The core conventions are:

- The International Convention on the Elimination of All Forms of Racial Discrimination (1965)



- The International Covenant on Civil and Political Rights (1966)
- The International Covenant on Economic, Social and Cultural Rights (1966)
- The Convention on the Elimination of All Forms of Discrimination against Women (1979)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- The Convention on the Rights of the Child (1989)
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)

Each of these core conventions is monitored by a committee, to which countries report on their progress. Development practitioners working on good governance will find these committees' concluding observations on country reports of specific interest and practical application, since they provide an objective assessment of how far a country has come in realizing human rights as well as the remaining gaps, some of which can be addressed through and by development programmes.

Also of practical application are the general comments that these committees make about what fulfilling a specific right actually means. These are particularly helpful in setting *process* and *outcome* indicators for development programmes, although such indicators must, of course, be tailored to the local and the project context.

More information on the above conventions and their monitoring mechanisms is available at: <http://www.ohchr.org>.

In the future, two recently adopted treaties will also begin to have an impact on the protection of human rights around the world. They are:

- The Convention on the Rights of Persons with Disabilities (2006)
- The International Convention for the Protection of All Persons from Enforced Disappearance (2006)

## Lessons

The recurrent lessons emerging from the case studies are:

### **1. *National legal frameworks compatible with human rights principles are essential for the protection of human rights***

Legislation based on human rights principles can strengthen a culture of human rights and lead to human rights-sensitive policies by State and civil society organizations.

In this publication, the cases from Australia and the Republic of Korea discuss the role of civil society, of the judiciary and of political leaders in reforming laws. The Bill of Rights adopted in the Australian Capital Territory strengthened the Government's awareness of human rights when designing and implementing public policies. The case from the Republic of Korea, on the other hand, points out the tangible benefits of legal reform to thousands of illegal immigrants residing in the country. The cases also demonstrate that capacity-building may improve governance in institutions such as the police, courts and prisons. In Malawi, reformed prison procedures expedited the processing of cases, while human rights training of prison personnel and of the prisoners themselves improved their awareness of rights.

## ***2. Public participation and diverse social partnerships are vital for the protection of human rights***

The protection of human rights is not an exclusively government affair. This publication finds that public participation contributes to policies which respect civil and political as well as economic, social and cultural rights. Also, policies resulting from participatory processes are likely to be perceived as legitimate by the population. There are many ways of creating avenues for public participation, including ad hoc public hearings, advisory boards or formal consultative bodies.

The case studies present several examples of partnerships among national and provincial governments, local authorities, the media, non-State actors, and civil society. In the Philippines, media organizations worked with civil society, local governments and local communities to provide sustained input in local affairs. In Brazil, national parliamentarians worked with civil society and networks of experts from States and municipalities to fight against HIV/AIDS.

## ***3. Negotiation and consensus-building assist the transformation of social and legal practices for the protection of human rights***

Societal reform is a conflict-ridden process, which may be improved by a number of good governance practices. These include: the provision of credible and objective information about specific social problems; the use of research evidence to foster informed debate and discussion on social problems; the framing of debates in language and principles familiar to the specific country context, but also compatible with human rights principles; and transparency in decision-making. Without wide consensus, social reform may not be sustainable. In Australia, for example, extensive public debate took place before the Bill of Rights was adopted in the Capital Territory.

## ***4. Access to information and transparency contribute to the protection of human rights***

Transparency in the formulation and implementation of public policies empowers the public to access social services and demand protection of their rights. The cases demonstrate, for example, that facilitating the public's access to information can be a powerful strategy in improving public spending and protecting economic and social rights.

In Ecuador, transparency in the budget process enabled an informed public debate about expenditures and ultimately contributed to more funds going to education, health, welfare, employment and housing. In Lebanon, the publication by a non-governmental organization of the procedures involved in issuing construction permits empowered the public by clearly stating citizens' rights vis-à-vis government agencies. In India, grass-roots mobilization demanded and gained greater access to government documents leading to greater accountability on the part of public officials.

**5. *Public education and awareness-raising on human rights strengthen efforts to reform social and legal practices***

Public education efforts raise awareness of human rights and social issues, spark debate and enable informed social dialogue. Rights awareness is especially important among vulnerable and disadvantaged groups as well as the State and civil organizations working with them.

In an effort to combat corruption, activists in India educated the public about the right to access government documents and information and its close link to their livelihood. This public education effort facilitated the subsequent mobilization in favour of right-to-information legislation and the public gatherings "auditing" the work of local governments. In the Republic of Korea, activism by civil society brought to national attention the plight of migrant workers. Building on this work, the National Human Rights Commission presented its recommendations to strengthen the protection of migrants' rights, which led to the adoption of new legislation. In Poland, public awareness campaigns on corruption in the health-care sector contributed to an informed public discussion and more transparent procedures in managing hospital waiting lists.

**6. *Strengthening accountability of public officials is an important contributor to human rights protection***

The accountability of public officials may be strengthened through the adoption of sound legislation, the establishment of institutional checks and balances, the establishment of systems providing redress to victims of violations, and the training of State officials on human rights and good governance principles. For example, in Botswana, the Directorate of Corruption and Economic Crime strengthened the accountability of officials by investigating complaints of alleged offences from the public and recommending the adoption of anti-corruption procedures by State institutions.

**7. *Addressing inequalities requires a focus on the marginalized and vulnerable***

Good governance practices for human rights can empower members of disadvantaged and minority groups to defend their rights by ensuring their inclusion and representation in politics and policymaking.

In Norway, the Sami Parliament has ensured that Sami views are heard by the Norwegian Government and has allowed the Sami people to govern themselves on a number of issues important to the survival of their culture and lifestyle. The cases from Uganda and Romania demonstrate that, through participatory policymaking, social policies can be sensitive to local cultures and protect human rights. In Uganda, the right to education was protected through culturally sensitive policies, which allowed the participation of local communities in policy design and implementation. In Romania, governance reforms facilitated the communication on health between the Roma population and public authorities. These reforms empowered the members of the Roma community to improve their right to health by providing them with culturally accessible information about health issues and the public health system itself.

**8. *Efforts to protect and promote human rights are essential components of the transition from conflict to peace***

Governance reforms promoting human rights may be implemented in the midst of insecurity and conflict as well as in transitions following political oppression and conflict. In Albania, a transparent and participatory constitution-making process took place in the midst of conflict. The process led to a new constitution with strong human rights guarantees. In Chile, efforts were made early on in the country's transition to democracy to assist the victims of State repression by offering them special health services.



# STRENGTHENING DEMOCRATIC INSTITUTIONS



# I. STRENGTHENING DEMOCRATIC INSTITUTIONS

Good governance promotes human rights in a number of ways. It encourages public participation in government, inclusion in law-making and policymaking, and accountability of elected and appointed officials. It enables civil society to become actively involved in policymaking and leads to the wide representation of societal interests in decision-making. In this manner, disadvantaged groups, including women and minorities, are empowered to defend their rights. The result may be laws and policies that better respect cultural diversity, contribute to the resolution of social conflicts and tensions, and address the challenges of inequality and poverty.

The cases included in this chapter point to a number of ways in which democratic institutions and processes can be reformed so as to better protect human rights. In this manner the cases demonstrate that democracy is not synonymous with elections. In addition to elections, democracy relies on transparency, accountability, inclusion and participation in order to protect human rights.

The cases present governance reforms that have contributed to the protection of several rights, including:

- The right to participate in public affairs directly or through freely chosen representatives (International Covenant on Civil and Political Rights, art. 25), as in the cases from South Africa, Philippines, Albania and Norway.
- The right of women to stand for election and to participate in the formulation of government policy (Convention on the Elimination of All Forms of Discrimination against Women, art. 7), as in the case from Palestine.
- Social and economic rights, including the right to enjoy the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights, art. 12), as in the case from Brazil.

The case studies discuss the following governance strategies:

- Establishing institutions and decision-making processes that facilitate the participation of citizens and civil society in policymaking (South Africa, Palestine, Brazil and Norway).
- Strengthening transparency and the accountability of public officials in order to better protect economic and social rights through improved delivery of State services (South Africa and Philippines).
- Encouraging participation and ensuring wide inclusion of societal interests in local government policymaking (South Africa and Philippines).
- Strengthening partnerships among multiple institutions, formal and informal, to improve the delivery of State services and encourage public participation (Palestine, Philippines and Brazil).
- Creating spaces for public dialogue (South Africa, Philippines, Albania and Brazil).
- Addressing cultural diversity through peaceful means and pluralistic dialogue (Albania and Norway).



## **A. Institutionalizing public participation in local development – South Africa**

### ***Issue***

The South African legal framework, including the Constitution, mandates civil society participation in local government. However, throughout the 1990s, civil society engagement with local government was ineffective; any public participation that did take place was sporadic and inconsistent. By the late 1990s, many civil society organizations remained unaware of how local government functioned and of how they could influence local governance to benefit their communities. At the same time the local authorities demonstrated limited capacity to put participatory governance into practice. Familiar with their role as service providers, they found it difficult to move to a concept of developmental local government working with local communities to identify solutions to their needs. The right to participate in public affairs directly, in addition to through elected representatives, was not advanced.

### ***Response***

The Local Government: Municipal Systems Act of 2000 was introduced to remove the obstacles to integrating civil society and community participation in municipal affairs. It recognized the central role of participatory local government in designing and implementing effective development policies, and the inadequacy of ad hoc paths of public participation. It therefore proposed that public participation and stakeholder representation should be integral parts of policymaking and dedicated specific administrative structures to supporting participation. The Act requires municipal governments to create formal structures through which the public can participate in local affairs. It also requires local governments to initiate and design development projects in consultation with local communities through integrated development planning, a mandatory planning framework for municipal development policy.

### ***Design***

The South African Constitution of 1996 requires municipalities to encourage the involvement of communities in local government. In 1998, the Government consequently issued a White Paper on local government to urge municipalities to ensure citizen participation in policy formulation and in monitoring and evaluating implementation. The White Paper also recommended that municipalities should build the capacity of the community, especially women and disadvantaged groups, to enable it to participate in the affairs of the municipality.

The Municipal Systems Act built on the White Paper to legally formalize public participation in municipal government. According to the Act, municipalities are legally responsible for facilitating public participation, informing the public about their activities and simplifying the way they do business.

Regarding development policy, the Act requires municipalities to consult local communities when they prepare and implement their integrated development plans. The Local Government: Municipal Systems Act provides for a representative forum on integrated development planning in each municipality. Each forum brings together civil society organizations as well as individuals acting as advocates for non-organized, disadvantaged or marginalized groups. The representative forum is a consultative body in the integrated development planning process where debate and workshop-style decision-making can take place. Its members are responsible for consulting with their communities or organizations and for initiating wider community discussions on development issues. In this manner, the forum ensures that development programmes and projects respond to the needs and priorities of local communities.

### ***Implementation***

In the implementation of the Municipal Systems Act and integrated development plans, most representative forums became functioning bodies of community and stakeholder involvement. In many municipalities, attendance at and engagement with the forums were consistent throughout the process. Also, in most municipalities, the representation of civil society organizations and socio-economic groups was reasonably wide. Disadvantaged groups were represented to the extent that they were organized in groups or associations, for example through groups for women, youth or the disabled. Traditional leaders have also been active members of the representative forums.

In many municipalities, a continuous information link and feedback mechanism between community representatives in the forum and the communities themselves was established. Public forums were led by the technicians responsible for developing project proposals, workshops and information sessions.

The forums were to a large extent an opportunity for representatives to be informed about and to comment on drafts and proposals presented by technical teams. In this manner, the forums served as a link between residents and members of the community and persons with technical expertise. They bridged the articulation of the needs identified by a wide consultative group and the drafting of actual projects and plans.

### ***Impact on human rights and challenges***

South Africa's experience with the Municipal Systems Act and integrated development planning illustrates the contributions and challenges of consultative and participatory local government. Integrated development planning has become an important development tool for local governments, and the representative forum has served as a mechanism for consultation and participation. Civil society has become more actively and regularly involved in local affairs. In that sense, a wider representation of societal interests has been achieved through integrated development planning rather than with the traditional policymaking process led exclusively by municipal authorities. It can therefore be said that integrated

development planning has contributed to the right to participate in public affairs beyond elections.

However, the experience also demonstrates that special efforts are necessary to ensure the representation of non-organized groups by competent advocates. For example, the representation of disadvantaged groups remains problematic. Also, the business sector considers the process to be time-consuming and costly.

An additional challenge facing integrated development planning is the need for two-way communication. In the municipalities where civil society organizations had adequate capacity, feedback was offered back to the communities on progress. However, this required an already developed municipality-community link. Where there was no such link, the communities were not adequately informed about progress.

## **B. Strengthening women's political representation through networking and lobbying – Palestine**

### *Issue*

Following the formation of the Palestinian Authority in 1994, a process of drafting legislation and building State institutions was started. Women, however, had few opportunities for participating in these deliberations and wielded little direct political influence. In the first elections in 1996, only five women representatives were elected to the Palestinian Legislative Council. In addition to low political representation and participation, Palestinian women were confronted with a mixture of laws, including Ottoman, Jordanian, Palestinian, Israeli and British Mandate laws, which were applied inconsistently and did not always guarantee the protection of their rights.

The low level of political representation and participation exacerbated the difficulties women faced in defending their rights and arguing for gender-sensitive legislation and public policy. It also violated the women's right to participate, on equal terms with men, in the formulation of government policy and in its implementation, as well as their right to hold public office and perform public functions.

### *Response*

The Palestinian Women's Affairs Technical Committee (WATC) bases its work on the principle that, irrespective of women's political affiliation, their representation and participation in political institutions and processes are essential for the protection of their rights. Adequate representation empowers women to argue for specific pieces of legislation and policy initiatives. WATC also recognizes the importance of developing women's networks, which can strengthen their member organizations by sharing skills and information. Furthermore, well-established networks may lead sustained advocacy campaigns by relying on the diverse resources of their members.

## *Design*

WATC was established in 1992 as a non-governmental umbrella organization in response to large demonstrations demanding greater women's representation and more gender-sensitive laws and policies. It consists of a coalition of the women's committees of six different political parties, which have local organizations and serve as a grass-roots network. Six women's centres are also members of the WATC coalition. These centres focus on applied gender research, legal counselling, legal literacy and projects to document the current situation of Palestinian women.

WATC coordinates and cooperates with a large number of governmental and non-governmental organizations, including Palestinian human rights organizations, political parties and political leaders. In this manner, it forms different lobby and pressure groups to achieve legislation that promotes equality for women.

The network's central mission is to raise awareness about women's rights and to strengthen gender-sensitive legislation. It aims to empower women to advocate their rights throughout the Palestinian territories. WATC work focuses on three main areas. First, it lobbies on the issue of elections, national and local, with the aim of increasing women's representation. Second, it prepares draft legislation to strengthen democratic practices and ensure women's rights, including the right to political representation and participation. Third, and related to the other two, it emphasizes women's participation at all decision-making levels.

The premise of the work of WATC is that the ongoing lack of public security and the Israeli-Palestinian conflict should not prevent the development of democratic institutions and processes within Palestinian society.

## *Implementation*

WATC uses different strategies and tools to pursue its aims: working with the media to present its demands and positions; undertaking community campaigns; building coalitions across civil society and not just within the women's movement; training potential women candidates; and preparing manuals and guidelines, for example, on gender-sensitive public policy decisions and legislation. For instance, WATC recruits lawyers and gender advisers to lead workshops on women's issues for its own members as well as for other organizations. WATC also strives to establish and strengthen cooperation with Israeli women in order to ensure women's representation in peace negotiations.

In its advocacy for reform of the Electoral Law, WATC formed a committee consisting of women's groups, representatives of political parties, the Palestinian Network of NGOs and human rights organizations. Initially, it argued for a women's quota of at least 30 per cent. However, other partners estimated that some

political actors would perceive a 30 per cent quota as threatening. The final proposal was for a minimum of 20 per cent women in the Legislative Council and a minimum of 30 per cent women on the lists of political parties. The proposal was published in the newspapers and laid the ground for its advocacy and lobbying. Ultimately, a new electoral law was adopted in 2005 and formed the basis for the 2006 legislative elections, the first since 1996. It required each party list to include at least one woman in the top three names, another in the next four and one in each subsequent five. Seventeen women were elected to the 132-member Legislative Council.

Advocacy campaigns by the WATC network of civil society and women's groups also contributed to the appointment of 56 women to West Bank local councils, which until 2004 had not been elected. The Gaza local councils refused the appointment of any women. However, as a result of the lobbying and advocacy efforts of the network, in 2004, the Legislative Council approved a 20 per cent quota for women on local councils. In the 2004 municipal and local council elections, women's representation, which had never exceeded 1 per cent, rose to 17 per cent.

In addition to its advocacy on the Electoral Law, WATC drafted and presented to the Legislative Council a proposal for a unified family law based on a number of studies. This was a particularly challenging task given the coexistence in Palestine of many legal systems. It also submitted a proposal to the Legislative Council for a gender-sensitive penal law.

Progress as a result of WATC advocacy also included the creation of the new Ministry for Women's Affairs, in addition to women's units in other ministries.

### ***Impact on human rights and challenges***

The increased level of participation and representation of women in State institutions is a step forward in the protection of their political rights. Also, the legal guarantee through the 20 per cent quota for women on local councils protects their right to participation at that level of government. Importantly, the advocacy efforts of the WATC network have raised awareness in Palestinian society of the importance of democratic processes and human rights even in the context of conflict.

However, the gender gap in the representation of women in politics persists and requires additional and continual work. Palestinian women continue to face many challenges in their efforts to participate in public life. The experience of women representatives in the local councils has often been difficult and their participation resisted. Also, the women elected in the 2006 elections came from political party lists, as opposed to being independently elected, and do not necessarily share the aspirations of organizations such as WATC. Furthermore, the continuation of public insecurity and conflict combined with the election of a socially conservative party pose challenges to the agenda of women's rights activists.

## **C. The role of the media in building the capacity of rights-holders to participate in local decision-making – Philippines**

### ***Issue***

In 1991, the Philippines adopted the Local Government Code to strengthen the accountability of local governments and enable civil society and local communities to actively participate in the management of local affairs. The Code was an effort to address a number of local governance challenges that had a negative impact on economic development and the protection of human rights. However, the Code's implementation faced numerous obstacles, including the lack of local societal capacity to effectively participate in public affairs. These obstacles meant that the right to participate and influence public affairs did not take hold at the local level. Also, due to the continuing lack of accountability and transparency, the protection of social and economic rights, including the right to an adequate standard of living, the right to the enjoyment of physical and mental health, and the right to education, was compromised.

### ***Response***

Civil society organizations and the media initiated a collaborative project to strengthen, first, their ability to work together and, second, the ability of local communities to participate effectively in local government. The effort was designed to raise awareness within communities about their right to participate in local government and to empower them to demand good governance practices. The media contributed by sparking debate on local issues as well as by facilitating advocacy networks between communities, local governments and civil society organizations, particularly on issues important to the poor, the marginalized and the disadvantaged. The motivation behind this endeavour was the understanding that the media are not simply communicators of facts, but that they also influence public policy agendas and can act as catalysts for community efforts to demand good governance.

### ***Design***

Philippine civil society organizations operating nationwide have experience and skills in working with diverse stakeholders to advocate public policies respectful of human rights. In collaboration with the United Nations Development Programme (UNDP) in the Philippines, civil society organizations and the Government established partnerships to develop similar capacity locally.

In this context, the Center for Community Journalism and Development (CCJD), a national NGO which works with local media partners, would train regional and local media to work with communities on how to engage with local governments on issues such as accountability, transparency and human rights. Training and public forums would be used to improve the skills of local media and to help them identify public policy issues important to local communities. Subsequently,

the media would work with civil society organizations and government agencies to incorporate good governance and human rights into local public policies.

The Philippines Commission on Human Rights, the Government-mandated agency to protect and promote human rights in the country, was also enlisted in the initiative. It held a series of training courses on the relationship between human rights and development both for its own officers throughout the country and for CCJD.

### ***Implementation***

The initiative emphasized the importance of respecting community needs and concerns when reporting local news. In their interaction with the public, journalists were encouraged to respect the right of their interlocutors to express their opinions freely. The training courses, for example, discussed how to manage public forums and other interactions with the public in ways which allow all participants to contribute to the discussions on an equal footing.

After receiving training from the Philippines Commission on Human Rights, CCJD organized training courses for national media groups and civil society partners on how to work together when advocating policies and building constituencies at the local level. In turn, these partners worked with local communities and civil society to develop advocacy strategies on issues that affected the lives of poor and marginalized groups of people. The objective was to build a core group of trained media practitioners who would work with local civil society organizations to improve the opportunities for all citizens to participate in local affairs.

CCJD discussed with local civil society organizations and communities how journalism could provide forums for debates and how communities could actively influence the news agenda. The project included lengthy stays by journalists in communities throughout the country to enable them to report on local issues from the citizens' perspective. Journalists held discussions with members of communities and participated in focus groups to understand the issues of particular interest to these communities. The insights they gained were then used to initiate advocacy campaigns on these issues.

Using the skills developed through the training courses, CCJD and its media partners in collaboration with local civil society organizations developed advocacy strategies targeting specific issues affecting poor, marginalized and vulnerable groups. For example, in Palawan province, local civil society organizations and the media examined the effectiveness of local policies on education, health and food security. They then held public forums in which participants evaluated the findings and made plans to monitor government responses to unmet needs. Furthermore, a weekly newspaper published the results of the research as well as the inaugural speeches of local officials in order to facilitate accountability during their tenure. Several similar initiatives have helped to build coalitions to lobby and advocate on public policies as well as to act as watchdog over local authorities.



In other cases, the media responded to the initiatives of the communities themselves. For example, when the paper *Visayas Examiner* in Iloilo found out about a community project attempting to address environmental problems, it worked with a local NGO and two radio stations in the region to devote part of their air time and sections of the paper to this effort. The media created a space for the community to express its opinions on environmental issues, to inform the wider public and to raise awareness. In other cases too, newspapers and radio stations devoted part of their work to discussions, open to the public, on local issues such as public works and the delivery of services.

### ***Impact on human rights and challenges***

This capacity-building initiative has led to greater cooperation between the media and communities. Using radio programmes, local newspapers and public meetings, the media, civil society and citizens have mobilized around a number of issues, including environmental concerns and corruption, to demand transparency and accountability. Several of these initiatives have contributed to the reform of public policies or the design of policies which better protect human rights. Also, the public debate has tended to become more rigorous and inclusive of the local communities.

There are several instances of such increased activism and media-community cooperation. For example, in Iloilo City, residents worked with a local newspaper to forge an alliance with Greenpeace Philippines to raise awareness of the hazards related to the noxious fumes from a hospital incinerator. Various local groups, including doctors' associations and local churches, launched an information drive on solid waste management. Concerted advocacy and consistent reporting on the issue resulted in the closing-down of the incinerator.

The capacity-building initiative benefited from the participation of the Philippines Commission on Human Rights and its field presences throughout the country, which made it more effective and sustainable. However, civil society organizations and journalists continue to face the challenge of winning the confidence of local people and overcoming their fear of challenging the local authorities. Furthermore, the invigorated media-community cooperation can be effective only in the context of an enabling legal framework.

## **D. Strengthening human rights and managing conflict through a participatory and transparent constitution-making process – Albania**

### ***Issue***

Following the collapse of the 40-year communist regime, the Albanian Constitution of 1976 was repealed. For several years, the question of a permanent constitution remained unresolved as the country was run under the interim constitutional provisions adopted after the 1991 elections. In 1997, civil unrest broke out following allegations of electoral fraud in the 1996 parliamentary elections as



well as the Government's inadequate response to the collapse of the "pyramid schemes", in which about two thirds of Albanians had invested. These events weakened public trust in the constitutional order. As unrest continued and disorder prevailed, the Government fell and fresh elections were called.

A major concern ahead of the 1997 elections was the need to re-establish public order and restore confidence in State institutions and laws. Political leaders saw the adoption of a new constitution, which would enshrine a democratic system of government and respect for human rights, as a priority to instil public trust in the country's future.

### ***Response***

The Albanian Parliament, political leaders and civil society realized that reaching agreement on a new legal system in Albania's highly charged political environment would be challenging. They agreed that, to build public confidence in the new constitution, the debating and drafting process should allow for substantial public participation and ensure transparency. Political leaders acknowledged that allowing ordinary citizens to express their opinions on constitutional issues would contribute to a legitimate document owned by the Albanian public. Also, public information on the constitutional process and public education were planned in an effort to diffuse possible disagreements on the process and the constitution.

A transparent, inclusive and participatory constitution-making process attempted to facilitate agreement on the country's future and to enshrine guarantees on the protection of human rights as methods of stabilization and democratization.

### ***Design***

The Parliament elected in 1997 set up a constitutional commission to lead the constitution-making process in coordination with the Ministry of Legislative Reform. Both worked with the Organization for Security and Co-operation in Europe (OSCE), the Council of Europe, international NGOs and national civil society organizations to design a participatory and transparent process. A central aspect of the effort was the establishment in Tirana of the Administrative Center for the Coordination of Assistance and Public Participation (ACCAPP), which was staffed by international and Albanian experts. ACCAPP collected and distributed information, provided training and organized civic education initiatives. The public participation consisted of two phases: collecting input into the drafting of the constitution and submitting draft provisions to the public for comment.

Discussion on the design of the constitutional process took place amid intense disagreement among political leaders. In late 1997, some political leaders withdrew their commitment to a constitutional process led by the Parliament. The legitimacy of the process was jeopardized when an opposition party representing 25 per cent of the electorate boycotted it.

## ***Implementation***

A national programme for public participation and civic education was implemented: more than a dozen forums and symposia discussed constitutional issues and gathered public input. The results of the forums helped the Constitutional Commission and its staff to understand which issues were important to the public. Several NGO forums also discussed constitutional issues and produced recommendations, which they shared with the Commission. Finally, regional discussion groups met throughout the country.

At the same time, ACCAPP worked with national NGOs, the Constitutional Commission and citizens to develop civic education activities, including TV broadcasts, radio programmes and newspaper serials on constitutional issues. A newsletter was published to ensure the public's informed participation in constitutional discussions. Also, brief concept papers presented key constitutional issues in a reader-friendly way.

Meanwhile the Constitutional Commission drafted and approved a revised text in its entirety. Throughout the process the Commission benefited from the expertise of Albanian and foreign constitutional experts, including representatives of the Council of Europe's Venice Commission. ACCAPP and the Constitutional Commission also organized a series of public hearings throughout the country to solicit public comments on the draft. ACCAPP collected suggestions and comments, and submitted them to the Commission.

The constitutional discussions faced a serious political crisis in September 1998, when generalized protests led to a rapid deterioration of the situation and a coup attempt. The international community exerted diplomatic pressure to stabilize the situation.

At this point, disinformation on the contents of the constitution and the constitutional process was spread throughout the country by its opponents. However, the civic and public information network built through the process served as a source of reliable and credible information, which counterbalanced these attempts to mislead. The transparent and participatory nature of the process gave it legitimacy in the eyes of the public, which was not easily swayed by the disinformation efforts. Throughout the crisis, ACCAPP continued to provide information to the public and to all political forces. Once calm was restored following diplomatic interventions by the international community, the Constitution was approved in a referendum in which 50.57 per cent of the voters cast their ballots (93.5 per cent in favour) and which, according to international observers, was relatively free and fair. The relatively low voter turnout was largely the result of the boycott by a key opposition party.

## ***Impact on human rights and challenges***

The availability of information, the effort to raise awareness on constitutional issues and the creation of opportunities for public participation brought diverse

and conflict-weary citizens as well as NGOs into the process. The process therefore contributed to the Constitution's legitimacy in the eyes of Albanian citizens. Importantly, through its emphasis on transparency, inclusion and participation, the constitutional process weakened the attempts of would-be spoilers to ignite political violence.

The process also gave a voice to the public's demand for strong constitutional provisions regarding respect for human rights. Public information and public discussions held political leaders accountable for their positions on constitutional principles, including democratic principles and human rights protection. The Constitution includes a separate section—"Fundamental human rights and freedoms"—which enumerates in detail the rights and guarantees than any Albanian or foreign citizen enjoys. The protection of human rights is extensive and in line with international standards. The Council of Europe's Venice Commission stated that the draft constitution, in particular its human rights chapter, was in conformity with European and international standards, and praised the constitution-making process.

Since its adoption, the Constitution has been observed and political power has changed hands through regular elections. However, Albania still faces the challenge of strengthening its State institutions to ensure the proper implementation of the human rights guarantees included in the Constitution.

## **E. A governance system responsive to the needs of the HIV/AIDS-affected population – Brazil**

### ***Issue***

In 2004, about 600,000 people were living with HIV in Brazil, *i.e.*, approximately 0.7 per cent of the population. HIV/AIDS has spread to municipalities with fewer than 50,000 inhabitants and to the poor, less educated and most vulnerable Brazilians. The spread of HIV/AIDS could undermine the country's development prospects and requires a complex response from the State as well as from civil society. However, the State has faced difficulties in responding effectively and in ensuring that all three levels of government—federal, State and municipal—as well as the legislature have appropriate skills and coordination mechanisms to respond.

### ***Response***

The Parliamentary Group on HIV/AIDS was established in 2000 to put the legislature at the heart of efforts to respond to HIV/AIDS and to coordinate actions by the executive and legislative branches of all levels of government as well as civil society in order to strengthen the national response to the epidemic. First, the legislature has a responsibility to adopt the necessary legislation both to support government policy and to guarantee the human rights of those affected by HIV/AIDS. Second, the legislature can harness the political will to fight HIV/AIDS at all levels of government by keeping it high on its agenda and by disseminating

relevant information to the Chamber of Deputies and the Federal Senate. Third, the Parliamentary Group aims to strengthen coordination among State institutions in designing and implementing effective policies on HIV/AIDS. Fourth, parliamentarians recognized that the participation of civil society and the public in the design and implementation of HIV/AIDS-related policies was essential both in informing the legislature and the Government of the needs of various social groups and in disseminating information throughout the country.

### *Design*

The creation of the Parliamentary Group resulted from a joint initiative of the UNAIDS Theme Group in Brazil, the Brazilian National Programme on STD/AIDS and the Commission on Human Rights of the Chamber of Deputies. The major political parties were involved in the Group from the very beginning. Civil society representatives were also invited to take part in its activities. By 2003, the Group comprised 80 parliamentarians from different parties from the Chamber of Deputies and the Federal Senate.

The Group was designed to take on several roles. It was intended to serve as a permanent public space for debate about policies and laws related to HIV/AIDS. It was considered important for such discussions to take place within the legislature to ensure that the appropriate legal protections of the rights of persons affected by HIV/AIDS were adopted and to guarantee the greater social inclusion of those persons. The Group also aimed to encourage discussion on technical and legal measures to combat the epidemic. Furthermore, the Group would disseminate HIV/AIDS-related information within the Chamber of Deputies and the Senate, and promote a discussion between the legislature, the executive and civil society organizations.

One of the Group's main purposes was to strengthen the capacity of State and municipal levels of government to respond to the HIV/AIDS crisis through decentralizing its work to States and municipalities. Brazil is a federal State with three tiers: the federal level, 27 States and 5560 municipalities. Public policies are implemented through decentralized management systems from the federal to the municipal levels of government. Decentralization in public policies addressing HIV/AIDS is especially important given the epidemic's expansion to municipalities with fewer than 50,000 inhabitants.

### *Implementation*

The Parliamentary Group has focused on four areas. First, it contributed to the adoption of laws guaranteeing the protection of the rights of people living with HIV/AIDS. For example, the Group worked for the adoption of laws regulating the safety of blood banks. It also addressed the question of pharmaceutical patents. Furthermore, it drafted and contributed to the adoption of legislation on the labour rights of persons with HIV/AIDS in an effort to fight discrimination against them.

Second, the Parliamentary Group has participated in initiatives to raise awareness about the spread of HIV/AIDS, prevention methods and government policies on HIV/AIDS. For example, the Group was represented in large-scale campaigns, including a campaign against homophobia. It also contributed to the training of State employees in the public health and security sectors on the profound social impact of the spread of HIV/AIDS and the complexity of public policies to respond to HIV/AIDS. Such efforts have taken place at the federal and State levels of government.

Third, the Parliamentary Group has attempted to create opportunities for public participation in the formulation and implementation of HIV/AIDS-related policies by organizing public hearings in the capital, Brasilia. In these public meetings, participants debated issues such as the regularization of the supply of antiretroviral treatment in the country, pharmaceutical patents and licensing, mainstreaming the subject of HIV/AIDS into several public sectors, such as education and social assistance, and measures guaranteeing the labour rights of people living with HIV/AIDS. In addition, the members of the Group attend meetings organized by civil society. In 2005, for example, the members liaised with civil society movements working on HIV/AIDS-related issues.

Fourth, the Parliamentary Group has worked to strengthen the capacity of State and municipal levels of government to respond to the epidemic. It has liaised with a network of experts from States and municipalities with the goal of decentralizing activities in the fight against HIV/AIDS. It has also encouraged the establishment of parliamentary groups on HIV/AIDS at the State and municipal levels of government. State parliamentary groups on HIV/AIDS have been established in Espirito Santo, Santa Catarina and Parana, and one is planned in Rio de Janeiro.

One example of a regional coordination effort is Baixada Santista, a metropolitan region which comprises nine municipalities in Sao Paulo State and which established its regional parliamentary group with municipal, State and federal parliamentarians from different parties, civil society representatives, municipal health secretaries and representatives of programmes on sexually transmitted diseases and AIDS. This group organized ten public hearings in various municipal assemblies within the region over a two-year period. It is currently discussing financial assistance for people affected by chronic or degenerative diseases, including people living with HIV/AIDS, who need public transport to access public health services.

### ***Impact on human rights and challenges***

The work of the Parliamentary Group has raised awareness among public officials and the public, and has improved coordination among the various levels of government. The discussions leading to the adoption of HIV/AIDS-related legislation also generated a public debate on ethics, human rights and HIV, and strengthened a culture respecting and demanding human rights protection.

One example of the significant progress in Brazil's legislation and policy is the distribution of antiretroviral medicines. The practice began in the 1990s and today over 140,000 patients receive the cocktail through the public health system. The Government also started to invest in the production of antiretroviral drugs. Currently, of the 15 medicines that form the treatment, 8 are produced in Brazil.

A shortcoming of the work of the Parliamentary Group is that it is affected by the election calendar and the re-election of its members. It may therefore be important to strengthen the parliamentary civil service supporting the Group's work in order to ensure continuity.

## **F. Promoting the political participation of indigenous groups and managing conflict – Norway**

### ***Issue***

The Sami are an indigenous people who live in the polar regions of northern Norway, Sweden, Finland and the Kola Peninsula in the Russian Federation. The size of the Sami population has been estimated at 75,000–100,000, of whom about 40,000–45,000 live in Norway. The Norwegian Government's policy toward the Sami in the 1970s focused on socio-economic policies and regional development. However, it did not address Sami political representation or the preservation of the Sami language and culture. In the 1970s, civil disobedience by Sami activists in response to the Government's policy decisions and a confrontational atmosphere in the relations between the Sami community and the Norwegian Government pointed to the need for collaborative strategies to design policies which satisfied the rights and needs of the Sami.

### ***Response***

Through the establishment of the Sami Parliament (*Sámediggi*) in 1989, the representatives of the Sami and the Norwegian Government attempted to balance two often competing demands related to the self-determination of indigenous people. The first is that indigenous people should have the right to define and formulate their own public policy agenda. The second relates to the need to respect the democratic process and State institutions, and the principle of equality of all citizens. As a result, the *Sámediggi* relies on dialogue and cooperation with the Norwegian State in order to protect the culture and lifestyle of the Sami within the framework of the Norwegian political system. Its success stems from the willingness of both the representatives of the Sami people and those of the Norwegian Government to debate and discuss before designing public policies.

The *Sámediggi* was established as an independent institution elected by and among the Sami. It was designed to advise the central authorities on issues pertaining to the Sami people, and to carry out a number of policies, including education, culture, language, environment and economic development policies.

## ***Design***

Sami activism in the 1970s sparked a debate within the country about the rights of indigenous groups to protect their culture and to be politically represented. It also motivated the Government to formally address the question of protecting Sami rights.

Starting in 1980, a public discussion on the representation of the Sami in the Norwegian political system addressed a number of issues including land rights, the rights of the Sami people to exploit the natural resources on their traditional lands and the need for a constitutional provision safeguarding the rights of the Sami people. There was agreement among representatives of the Norwegian Government and the Sami community that a Sami parliament should allow Norwegian citizens of Sami background to act as a group in society, while having the same rights and duties as other Norwegian citizens. It was envisioned that a popularly elected Sami parliament would function as a spokesman for the Sami people and make it easier for the central authorities to take legitimate decisions concerning Sami issues.

The Sami Act was adopted in 1987. In 1988, the Norwegian Parliament passed an amendment to the Constitution, article 110a, which stipulated that “it is the responsibility of the authorities of the State to create conditions enabling the Sami people to preserve and develop their language, culture and way of life.”

## ***Implementation***

In 1989 the first elections for the *Sámediggí's* 39 representatives took place in 13 electoral districts. Elections are by direct ballot on the basis of the Sami electoral roll. To register, a person has to declare that he or she (i) considers him/herself a Sami, or (ii) has Sami as his/her first language or has a parent or grandparent who has Sami as his/her first language, or (iii) has a parent who satisfies one of the previous two conditions for being a Sami. First language is defined as the language or one of the languages used at home when growing up.

The *Sámediggí* has served two central functions. First, it has been a vehicle for the creation and development of public opinion and discussion on policy issues within Sami society. Second, it has few formal political powers, but has served as an advisory body to the Norwegian Government, facilitating dialogue between the Sami community and the Government.

The *Sámediggí* does enjoy implementation powers in two policy areas. First, it has the right to apply the provisions of Norway's Education Act to education in the Sami language, Sami handicraft and reindeer herding education. Second, under the Cultural Heritage Act, the *Sámediggí* has the authority to safeguard and manage the Sami cultural heritage. Specifically, it is responsible for a number of subsidized programmes such as the Sami Cultural Fund and the Sami Development Fund. Early in the budgetary process, the Ministry of Local Government and Regional Development discusses with the *Sámediggí's* leadership budgetary needs and terms.



The question of land rights was not originally included in the competencies of the *Sámediggi*. The Government's 2003 new land rights bill, which was intended to clarify and regulate Sami land rights, was criticized and ultimately rejected by the *Sámediggi*, which argued that the bill did not conform to national or international law. Importantly, the bill did not result from a consultative process between the Government and the *Sámediggi*. However, following the rejection of the Government's proposal, a concrete process was established to coordinate cooperation between the *Sámediggi* and the Norwegian Parliament, replacing the previously loosely structured cooperation. The intention is to ensure that future policy initiatives with an impact on the Sami community result from dialogue with its leaders. Thus, the *Sámediggi* is a dynamic institution whose relationship to the Norwegian Government and Parliament is evolving.

The *Sámediggi* has also strengthened the public sphere of the Sami community. It has encouraged the exchange of opinions within the community, invigorated political debate, informed the public about key economic and political questions facing the community, and enabled collective internal decision-making.

### ***Impact on human rights and challenges***

The *Sámediggi* has promoted the right of the Sami people to political participation and representation, and has ensured that Sami views are heard by the Norwegian Government. It has also allowed the Sami people to govern themselves on a number of issues important to the survival of their culture and lifestyle.

The *Sámediggi's* implementing powers in the fields of education, language and culture have allowed it to influence policies related to the protection of the Sami language and culture. For example, the *Sámediggi* has successfully negotiated bilateral contracts with two Norwegian counties within the Sami traditional territory on issues concerning the Sami language and culture, and the formulation of education and health policies in Sami communities.

Importantly, through the establishment of the *Sámediggi*, a collaborative approach has been developed through which the Government and the Sami community draw up public policies influencing the community. The willingness of all parties to rely on inclusive dialogue in reaching decisions has made the *Sámediggi* more effective.

One of the key challenges faced by the *Sámediggi* until recently was the low representation of women in its ranks. Female representation fell steadily and the 2001 election yielded only 7 women out of the 39 elected members. The *Sámediggi's* efforts to achieve a more balanced gender representation through awareness-raising campaigns ran up against traditional values. Also, low female representation is connected to the fact that the community views cultural survival as the key issue, with gender issues being viewed as being of secondary importance. However, the efforts paid off in the 2005 elections, when 22 of the now 43 members elected to the *Sámediggi* were women.



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# IMPROVING SERVICE DELIVERY



## II. IMPROVING SERVICE DELIVERY

States are responsible for delivering a variety of services to their populations, including education, health and social welfare services. The provision of these services is essential to the protection of human rights such as the right to housing, health, education and food. Human rights principles dictate that public services should be available, accessible and culturally acceptable in order to secure the rights of the poorest and most marginalized. Good governance contributes to this goal by approaching individuals as actors in and not just beneficiaries of economic and social development.

The cases presented in this chapter point to strategies and mechanisms that strengthen accountability, participation and inclusion in policymaking in order to lead to policies that reflect the needs of communities. These mechanisms also tend to lead to policies that are sensitive to local cultures and therefore more accessible and acceptable to various communities.

The cases discuss governance reforms that have contributed to the protection of a number of rights, including:

- The right to education (International Covenant on Economic, Social and Cultural Rights, art. 13), as in the case from Uganda.
- The right to security of person (International Covenant on Civil and Political Rights, art. 9), as in the case from Jordan.
- The right to equal protection of the law without any discrimination (International Covenant on Civil and Political Rights, art. 26), as in the case from Jordan.
- The right to social security (International Covenant on Economic, Social and Cultural Rights, art. 9), as in the case from France.
- The right to an adequate standard of living, including adequate food, clothing and housing (International Covenant on Economic, Social and Cultural Rights, art. 11), as in the case from Ecuador.
- The right to the enjoyment of the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights, art. 12), as in the case from Romania.

The cases discuss the following governance strategies which have strengthened the above-mentioned human rights:

- Adapting health and education services to the needs and cultural practices of minorities (Uganda and Romania).
- Strengthening accountability in public finances through transparency and public access to information (Ecuador).
- Establishing social entitlements adapted to local needs (Romania and France).
- Ensuring transparency, accountability and social inclusion in the formulation and implementation of public policies (Ecuador).

- Creating multi-agency partnerships and facilitating discussion among stakeholders in order to promote social change (Uganda, Jordan and Ecuador).
- Raising public awareness and sharing information with the public on public policies and human rights principles (Uganda and Ecuador).

## **A. Education services adapted to the needs of the rural poor – Uganda**

### *Issue*

The Karimojong are a semi-nomadic, pastoral people living in north-east Uganda. There are about 640,000 Karimojong living in the region. The region is the poorest in Uganda and is plagued by conflict and poor social indicators, including low school attendance and very low literacy rates of 12 per cent for men and 6 per cent for women. The Ugandan Government's 1997 Universal Primary Education Programme led to an increase in primary school enrolment in many regions, but not in Karamoja.

The Karimojong children's right to education, including access to primary education, was not guaranteed as parents routinely discouraged school attendance. Furthermore, girls faced discrimination in accessing basic education as fewer girls attended school than boys.

### *Response*

The Alternative Basic Education for Karamoja (ABEK) programme, launched in 1998, recognized that the formal education system was incompatible with the Karimojong nomadic lifestyle and the community's reliance on children's participation in household work. An education programme which was culturally adaptable and would bridge the gap between the delivery of formal education and the Karimojong lifestyle was needed.

### *Design*

The preparation for an alternative education programme for the Karimojong began in 1995 as a result of a partnership between the Ministry for Karamoja Affairs, Save the Children Norway and the district education offices of Moroto and Kotido. As a first step, Save the Children and the district offices held consultations in the local communities in order to identify local attitudes towards education in general and the education system in particular. The consultations confirmed that the Karimojong associate education with State-sponsored harassment. They also regard the education system as irrelevant to their survival needs both because it withdraws children from the sphere of economic activity and because it fails to provide children with skills they consider useful to life in Karamoja.

The consultations also revealed that, despite their scepticism towards outsiders and formal education, the Karimojong valued both traditional and modern

knowledge, and expressed interest in expanding communication with the world outside Karamoja. Thus, the challenge was to design an education system that satisfied the cultural and economic needs of the community, while ensuring that Karimojong children acquired skills such as literacy and arithmetic.

The Alternative Basic Education for Karamoja (ABEK) was formulated in close consultation with local communities and the district government of Kotido and Moroto. Based on the consultations, ABEK attempted to offer teaching that was relevant to and compatible with life in the Karimojong's culture and tradition, but would also enable pupils to access life and schools outside of the community. First, ABEK was designed to provide relevant teaching for Karimojong children who would continue the Karimojong lifestyle as adults. Second, ABEK would offer interested pupils the option of moving to a formal school.

The curriculum was developed by local teachers employed in the formal education system, representatives of the local communities, Save the Children Norway and the National Curriculum Development Center. In addition to formal school requirements, such as reading, writing and numeracy, the curriculum focuses on life and occupational skills useful to the pupils, including classes on livestock and crops, rural technology, home management and the environment.

### ***Implementation***

ABEK implementation started in 1998. Its implementation and management allow for the participation of local communities, which elect the ABEK management committees responsible for overseeing the programme's activities.

Furthermore, the Karimojong select the facilitators-teachers from within their local communities. In order to ensure teaching standards, the facilitators receive training before starting their assignments and attend regular workshops. They also receive on-the-job training from trained teachers specifically assigned to monitor and give assistance on a regular basis.

With the goal of accommodating local culture and needs in mind, ABEK facilitators-teachers meet children in the villages where they live. The lessons take place in the early morning and late afternoon, adjusted to the daily rhythm of the villages. Between the morning and evening lessons, the children have time to fulfil their responsibilities at home. The facilitators-teachers and the communities can agree on a different class schedule when needed. ABEK targets 6–18-year-old children who are not attending the formal school system. However, it has also attracted adults above 18 years of age as well as children younger than 6, who accompany their older siblings to the learning centres.

A key challenge of the programme has been to create a path to formal schools in addition to meeting the cultural and economic needs of the local communities. To strengthen the link between ABEK and the formal schools, all headmasters and teachers of primary schools have been introduced to the ABEK methodology and curriculum.



The programme has run without interruption since 1998. Some steps have been taken towards integrating ABEK into the formal school system. For example, plans have been drawn up to include ABEK activities in the district plan of action in order for the district to budget for ABEK. Importantly, as a result of their involvement in ABEK from the initial planning phase through the implementation process, the Karimojong feel ownership of the programme and lobby for it as a valid alternative to the formal education system.

### ***Impact on human rights and challenges***

ABEK has made basic education more easily available and accessible to the children living in Karamoja. It has also contributed to greater equality in access to basic education between boys and girls. Overall, ABEK enrolment rose from 5,500 in 1998 to 32,855 in 2004. In 2004, enrolment of girls (19,126) was higher than of boys (13,729). More than 50 per cent of the children benefiting from ABEK have learned to read and write, and to solve simple mathematical problems. Children are also increasingly moving from ABEK to the formal school system. Approximately 1,000 children had joined a formal school by 2004.

Furthermore, the programme has helped to improve the management and administrative skills of local communities that have participated in the formulation and implementation of ABEK. Also, the choice of facilitators from within local communities has provided an opportunity for young people to serve the community.

A challenge to ABEK sustainability, in addition to the shortage of funds, is the security situation in northern Uganda. There is also a need to constantly improve the quality of the teaching and the curriculum and to do so with the continuous involvement of the community. A further challenge is to continue attracting increasing numbers of children to ABEK, while ensuring the solid quality of the education.

## **B. Strengthening institutional capacities to improve family protection services – Jordan**

### ***Issue***

In Jordan, most incidents of domestic violence are not reported. State institutions have little capacity to deliver family protection services and little expertise in protecting victims of domestic violence. Key ministries lack developed procedures on questions of family protection. Furthermore, although Jordan ratified the Convention on the Rights of the Child in 1991 and the Convention on the Elimination of All Forms of Discrimination against Women in 1992, its legislation has not yet been brought into line with both Conventions.

The rights of victims of domestic violence to life, to security of the person and to equal protection by the State against violence and bodily harm are being violated. Additionally, the right to just and effective remedies for the harm victims suf-

fer is compromised. Moreover, the family is not offered the necessary protection and assistance, especially when it comes to the care of dependent children.

### ***Response***

The family protection initiative aims to strengthen the capacity of Jordan's State institutions and civil society to design and implement a comprehensive strategy to prevent domestic violence and protect victims of violence. The initiative recognized that capacity-building required the development of professional networks across State agencies and civil society. Such collaboration is necessary for the existing expertise in family protection to be mobilized optimally. The initiative also promoted public awareness of domestic violence and human rights as the key to policy change and better service delivery.

### ***Design***

The family protection initiative was launched in March 2000 by the Government of Jordan in collaboration with the Department for International Development (DFID) of the United Kingdom of Great Britain and Northern Ireland. From the beginning, the aim was to put in place a "multi-agency" approach to developing a policy and strategy on family protection. The National Council for Family Affairs (NCFA), which is chaired by the Queen, established the Project Management Team (PMT) as its task force for family protection.

PMT is an inter-agency body with responsibility for project planning, monitoring and evaluation. Its 12 members, seven men and five women, represent both governmental and non-governmental organizations, including government departments responsible for public security, family protection and family affairs, religious affairs, social development, justice, education, information, forensic medicine, and health, as well as civil organizations working on family issues.

In its early stages, PMT established working groups to assess existing services and capacities for family protection, and develop policy proposals and training materials. The working groups worked on: legal services, children's services, women's services, research, a model family protection department, raising awareness and multi-agency collaboration. The legal services group, for example, assessed current laws relating to family protection and developed a training programme for judges and prosecutors.

### ***Implementation***

To promote a multi-agency approach to family protection, PMT has partnered with 11 governmental and non-governmental organizations over the past five years to develop institutional capacity to combat family violence, child abuse and sexual assault. The project has worked within the existing legal and cultural framework to place family protection on the policy agenda, to develop mechanisms and skills for policy development and implementation, and to raise public awareness about family protection.

First, NCFA and PMT helped to develop networks of professionals working in governmental and non-governmental agencies. This networking has led to a better understanding of each agency's roles and to closer collaboration among them.

Second, NCFA finalized a five-year strategic plan and a national framework for family protection, whose central policy statement is that "violence is unacceptable". The strategy emphasizes both the protection of victims and the prevention of violence. It also focuses on human rights education and raising awareness about women's and children's rights. Both documents aim to clarify the mandates of various family protection agencies and their plans to improve service delivery to victims. These documents contribute to the institutionalization of a family protection system: they establish operating procedures and protocols that incorporate family protection in the work of the various agencies. They also systematize the informal working relations forged among PMT members.

Third, the family protection initiative has contributed to the establishment of new services, including a specialized health centre for women and children victims of violence and abuse at al-Bashir Hospital. The Department for Forensic Medicine of the Ministry of Health also worked with other agencies and NGOs to set up primary child and maternal health services to help with the early detection of domestic violence.

Fourth, the initiative has had an educational component. A short course on family protection has been piloted in two State universities and work has begun to introduce safety issues into the school curriculum, for children aged 8 to 12. The curriculum will use visual art, poetry, photography and music to raise children's awareness of the issues.

Fifth, in its multi-agency approach, PMT included representatives of the Ministry of Awqaf and Islamic Affairs, which has supported the efforts to put family protection on the policy agenda. A training course on family protection concepts in Islam was designed. The Ministry has promoted the "social" role of preachers in the counselling and referral of victims of domestic violence. About a third of female preachers received training on family protection issues.

Sixth, the initiative contributed to the development of training materials and procedures manuals to guide professionals on issues of family protection within different agencies, including the Ministries of Justice, Social Development, Awqaf and Health, as well as the Family Protection Department within the police service.

Finally, PMT advocated and succeeded in introducing video recording of interviews in child abuse cases, which considerably reduces the trauma and stress for children going through the legal proceedings.

### ***Impact on human rights and challenges***

The capacity-building efforts in the context of the initiative have led to institutional changes. There is also increased collaboration between different agencies

working on family protection as well as awareness of how family protection relates to the work of each agency. The quality of some social services provided to victims of domestic violence has improved. For example, the Head of the Public Security Department of the Amman Police has issued instructions to all police centres that incidents involving sexual offences against women and children should immediately be referred to the Family Protection Department.

Furthermore, the initiative succeeded in initiating a policy and social debate on human rights and the family in the context of a conservative social environment. NCFA has adopted a vision of “family peace” and has broken the silence around domestic violence. Awqaf counsellors are prepared to address family peace and domestic violence in Friday prayer sermons.

However, important gaps in the delivery of services remain, including in referral and counselling services for women and children. A long-term strategy for dealing with perpetrators still needs to be developed. Importantly, the shelter for victims of domestic violence or “family reconciliation centre”, which has been planned by the Ministry for Social Development for several years, has still not been opened.

The family protection initiative shows that social policy change favouring human rights protection is a long-term process, which requires deliberate discussion among stakeholders and awareness-raising among the public. In Jordan, building the capacity of State institutions was a useful tool in engaging policymakers and stakeholders in discussions about the content of policy, institutional mandates and the need for policy reform.

## **C. Equitable access to social services through a transparent budget process – Ecuador**

### ***Issue***

During the late 1990s Ecuador experienced a serious macroeconomic crisis, which resulted in sharply decreased spending on social programmes and high levels of poverty, inequality and exclusion, especially among Afro-descendants and indigenous people. By 1999, poverty rates had doubled and three out of four Ecuadorian families lived in poverty. By 2000, 60 per cent of the population was underemployed and 16 per cent unemployed. At the same time, there was little investment in priority social programmes and existing resources were poorly administered. Spending on health and education dropped drastically.

The decline in spending on social programmes had a significant impact on a wide array of economic and social rights, such as the rights to social security and to an adequate standard of living, including adequate food, clothing and housing. Furthermore, the rights to the enjoyment of health and to access to education were seriously undermined, especially for poor and vulnerable groups.

## ***Response***

An Ecuadorian multi-agency effort, launched in 1998, attempted to inject transparency in the budget process and create avenues for public participation. The effort was motivated by the conviction that transparency, civil advocacy and public participation could lead to an increase in and a more equitable distribution of social spending. Transparency and inclusion at every stage of the budget process might also ensure that social expenditures were more efficient and accountable. Furthermore, the programme was motivated by the understanding that the publication of credible information on economic and financial indicators could foster a debate on appropriate levels of social spending by the Government.

## ***Design***

In 1998, a team of national economists working on a project funded by the United Nations Children's Fund (UNICEF) analysed Ecuador's budget and spending patterns and found that spending on social programmes was plummeting. Specifically, investment in education dropped from US\$ 611 million in 1996 to US\$ 331 million in 1999, while spending on health fell from US\$ 198 million to US\$ 96 million. Spending on social sectors was disproportionately low compared to allocations for debt repayment and other non-social sectors. In addition, certain regions, particularly those with a majority indigenous population, were not getting a fair share of social benefits.

Following this research and analysis, a discussion with government officials led to an agreement by the President to track social expenditures and the key indicators of the economic crisis using the database of the Ministry of Economy and Finance. The Government would collect the necessary information in order to effectively link its public finance and social policy. The Government also agreed that it would share the information with the public so as to increase transparency and public awareness. Finally, the Government asked UNICEF to create a system for monitoring trends in social spending.

## ***Implementation***

The collaborative initiative between the Social Front, which is a government department coordinating the work of 11 State institutions dealing with social issues, the Ministry of Economy and Finance, and UNICEF aimed to inject transparency into every stage of the budgeting process. The programme focused on monitoring budget formulation and implementation. It also encouraged the active participation of civil society organizations, such as the Fiscal Policy Observatory and the Observatory for the Rights of Children and Adolescents.

A series of dialogues on the budget including the Congress, the Social Front, the Ministry of Economy and Finance, civil society, the mass media, UNICEF and the Fiscal Policy Observatory took place between 2000 and 2004. Discussions on the budget took place around the country. Among other issues, the dialogues concluded that, first, foreign debt payments demanded a large share

of the country's income and, second, the country's tax structure was regressive, because it did not require wealthy citizens to pay a fair share.

Visual tools were created to make budget data accessible and comprehensible to the public. An outreach effort shared the information with a wide variety of partners, including legislators, academics, indigenous, religious and trade union groups, business leaders, and the media. The central issue of several discussions and meetings was how to make public spending more equitable. Also, the taxation system received press coverage and was the topic of a national conference sponsored by Congress.

In addition, a process was put in place to monitor quarterly expenditures on priority social programmes. The Government worked with UNICEF to strengthen the Integrated System of Social Indicators of Ecuador to track social investment both nationally and by region. This information was translated into maps, charts and graphs so that social actors could monitor progress and equity in public spending. These disaggregated data made the information clearer and more accessible to the public. The information was also disseminated through periodicals.

Following the above activities, the Government adopted an emergency social plan in 2000 to reduce poverty and increase access to education and health. It had four components: provision of conditional cash transfers and food subsidies; programmes targeting vulnerable groups, including children; provision of universal services such as education and health; and job creation and microfinancing.

### ***Impact on human rights and challenges***

The availability and accessibility of services improved as expenditures in education, health, welfare, employment and housing increased. Between 2001 and 2004, overall social spending in Ecuador rose substantially. Conditional cash transfers increased from US\$ 146.28 million in 2002 to US\$ 200 million in 2004; spending on immunization more than doubled from US\$ 5.6 million in 2002 to US\$ 12 million in 2004; spending on the childcare programme rose from US\$ 17 million in 2001 to US\$ 29.47 million in 2004; spending on a food and nutrition programme increased from US\$ 10 million in 2001 to US\$ 16 million in 2003. As a result, vulnerable social groups were able to access and afford basic welfare services more easily.

Also, the methods of accountability and participation in policymaking, including dialogue and transparency, have remained in place. Transparency in the budget process and the sharing of information with social actors contribute to social mobilization and policy reform. Information-sharing facilitates the informed dialogue between Government and citizens.

Ecuador still faces challenges in achieving a common understanding of budgets as a shared responsibility between the Government and citizens. Also, more progress may be achieved in conceiving public expenditure as a way of reducing

poverty and inequality and guaranteeing human rights. There is room for continued improvement in the amount and quality of social expenditure, which a more transparent budgeting system is helping to achieve.

#### **D. Improving access to health services through intercultural mediation – Romania**

##### ***Issue***

About 2.5 million Roma live in Romania, where they make up 11 per cent of the population. The Roma have significantly worse health indicators, including higher rates of infant mortality and communicable diseases and shorter life expectancy, than the rest of the Romanian population. Unhealthy living conditions are one of the major causes of poorer health among the Roma, particularly those living in the many ghettoized settlements. However, the discrepancies between the health indicators of the Roma and the majority community also result from structural inequalities, including unequal access to education and employment, discrimination and poverty.

The social and economic conditions in which the Roma live undermine their right to the enjoyment of health and their right to equitable and non-discriminatory access to public health and medical services.

##### ***Response***

The Roma health mediator (RHM) programme, launched in 1997, recognized that social and cultural conditions played a key role in determining the availability, accessibility and quality of health services. A founding concept of the programme is that cultural and linguistic barriers often prevent communities from accessing public health services. The RHM programme attempts, through intercultural mediation, to facilitate the communication between the minority population and the public authorities on health issues. It also seeks to empower the Roma population to access the health system by providing information and raising awareness both about the public health system and about health issues.

##### ***Design***

In Romania, health mediation was initiated by the Roma Center for Social Intervention and Studies (Romani CRISS). Following a 1997 report by Doctors Without Borders that Roma in Romania were refusing vaccination, Romani CRISS discovered that doctors often refused to enter Roma communities, while Roma feared the effects of vaccination and failed to understand its importance.

In response, Romani CRISS trained Roma health mediators to serve as a bridge between the Roma community and the public health system. The RHM programme aimed to improve community health by: mediating between Roma patients and doctors during medical consultations; communicating with Roma



communities on behalf of the public health system; providing basic health education; and assisting Roma in obtaining health insurance or identity documents.

Romani CRISS launched a pilot project pairing willing general practitioners (GPs) with RHMs, which produced good results. It subsequently used these positive experiences of cooperation to lobby the Ministry of Health to institutionalize the role of RHMs. In a subsequent Ministry of Health survey, county directorates of public health confirmed that communication was a significant obstacle to providing public health services to the Roma community. A number of Ministry of Health staff worked with Romani CRISS to advocate in favour of the programme. In 2002, the Ministry of Health passed an ordinance making RHM an official profession within Romania's public health sector.

RHMs must be Roma women, graduates of compulsory education, able to communicate with local authorities as well as the Roma communities, and able to maintain confidentiality. Romany culture accepts women better in the role of RHM, which may often require intrusion in the personal and family lives of the beneficiaries. RHMs are trained and certified by Romani CRISS. The training covers communication techniques, access to prevention and treatment services, the public health insurance system, and first aid. RHMs are not allowed to provide any medical services. A small number have also been trained to address issues of discrimination. Finally, successful candidates must complete a three-month on-the-job apprenticeship with a qualified medical professional.

There are currently about 200 RHMs working throughout Romania. Geographic distribution is based on local needs as well as local willingness to participate. RHMs are supervised by the local and national authorities as well as informally by Romani CRISS. GPs meet weekly with the RHMs assigned to them to discuss tasks completed and any problems encountered. A representative of the county public health department meets each mediator every month to provide additional supervision and assistance.

### ***Implementation***

In their role as communication facilitators between doctors and patients, RHMs have addressed cases where patients did not follow prescribed treatments, incorrectly expected treatment to work in a short time, and did not speak the local language well enough to understand the doctor, as well as cases where the health professional did not understand the patient's behaviour. Their contribution has been to explain to the doctor or the patient the rationale behind certain behaviours, the way prescribed medication needs to be taken or the way medical treatments work. RHMs help the patient to better understand the steps that need to be taken for his or her own health and the doctor to better understand the patient's illness. The contribution of RHMs is especially helpful if the patient is illiterate.

RHMs have also played an important role in assisting clients to obtain the necessary documentation for accessing health services and social assistance, and for



enrolling on GP patient lists. According to the Ministry of Health, by July 2004, RHMs had helped 3,521 women and 108,632 children register with GPs, assisted 40,015 people in obtaining health insurance and helped 1,180 people get identity documents.

Importantly, RHMs also carry out community outreach on behalf of local GPs or the local public health office. Outreach consists of visiting ill people and advising them to visit the doctor, encouraging pregnant women to get prenatal care, informing community members about family planning, promoting awareness about hygiene, encouraging paediatric check-ups and child vaccination. According to the Ministry of Health, by July 2004, 12,836 children had been vaccinated following RHM intervention and RHMs had provided 4,259 health education activities.

### ***Impact on human rights and challenges***

The health mediators have helped Romania's Roma community to realize its right to health. They have empowered individuals to overcome the obstacles to better health by providing them with information and knowledge about nutrition, exercise, immunization and family planning among other issues. They have also empowered individuals to access the public health system by educating them about relevant administrative procedures. In this manner, mediator programmes may reduce discrimination and improve equality in access to health.

However, improving access to public health by marginalized and minority groups also requires reforms to address the structural obstacles, such as social inequalities and discrimination. Therefore, a mediator programme should be accompanied by the necessary legislation and by the institutionalization of Roma participation in the making of policies that affect them.

There is also a risk that the RHM programmes create a relationship of dependency between the mediators and the Roma communities, which may become accustomed to their services. Bearing this in mind, mediator programmes should focus on empowering disadvantaged and marginalized groups through health literacy to strengthen individuals' autonomy in protecting their health, as was the case with the Romanian programme.

## **E. Social entitlements to promote social inclusion – France**

### ***Issue***

During the 1980s, France experienced a massive rise in unemployment. The number of jobseekers increased from 300,000 in 1970 to 3 million in 1992. Not only was the scale of unemployment considerable, it was also affecting new categories of people, giving rise to widespread feelings of vulnerability, especially among the young. Many feared losing their jobs, descending into extreme poverty and becoming marginalized. The situation was exacerbated by a social welfare system that had not been designed to help those who had not worked long

enough to qualify for contribution-based benefits. The system therefore failed to protect the right to social security of vulnerable groups, particularly young people, women and the long-term unemployed.

## **Response**

The *revenu minimum d'insertion* (RMI) was established in 1988 and is based on two premises. First, it saw the marginalization and social exclusion of the poor as a result of the malfunction of three social institutions: employment, family and social security. It was intended as a response to the isolation of the poor, which had resulted from society's failure to integrate them. RMI regarded social assistance as a collective responsibility to facilitate inclusion. Second, RMI was a response to the acknowledgement across the political spectrum that the existing welfare system, including the unemployment insurance system, was unable to respond to the needs of the rapidly growing unemployed population.

RMI was adopted to provide a "minimum income for inclusion into society" to persons over 25 or under 25 with children. It has three components: an income supplement; a guarantee of social rights and specifically access to housing and health care; and a social or occupational "integration contract," which obliges the claimants to take action to help their insertion into society, including looking for work, taking up training or volunteering.

## **Design**

During the 1980s, there were various discussions on the need for a minimum income. Voluntary associations pressured the Government to protect social rights and introduce an RMI. Many of these associations conducted research or provided services such as job counselling and placement, housing development, and a variety of education and training programmes. In the 1980s, these organizations contributed to a series of studies and policy reports produced by a group of policy analysts that advocated the creation of a minimum income in the form of a means-tested benefit in order to adapt the social protection system to the new social and economic conditions. These reports argued that the welfare state was failing to meet the evolving needs of the population given that there were pockets of poverty which the social insurance programmes could not reach.

Associations, such as ATD Quart Monde, and national federations, such as the Fédération nationale des associations d'accueil et de réinsertion sociale (FNARS) and the Union nationale interfédérale des œuvres et organismes privés sanitaires et sociaux (UNIOPSS), took a clear stance advocating social insertion as a right. The discourse developed through lengthy debate and research on the issues was so compelling that, by the 1988 presidential campaign, the electoral platforms of both the right and the left included proposals for a minimum income to promote "insertion". On 1 December 1988, parliament unanimously accepted the proposal to introduce RMI.

## ***Implementation***

RMI combines the right to minimum income support, including access to health care and housing, and the right to insertion into society. The income benefit is means-tested. It also provides a right to health insurance (*assurance maladie*) and family housing benefit (*allocation de logement familial*).

The RMI legislation provides for two types of insertion: professional and social. This takes the form of a contract signed by the recipient and a social worker agreeing to pursue either a “social” or an “employment” activity. While the general focus remains on professional insertion, *i.e.*, employment or training leading to a job, RMI extends insertion activities to include “measures enabling recipients to regain or develop their social autonomy through appropriate ongoing social support, participation in civil and family life, as well as in the life of the neighbourhood or town.” This latter type of activity may include community work or any type of community activity or personal project that improves a person’s ability to form social relationships and to function in society.

The minimum allowance is payable beyond the first three months only if a contract of “insertion” into the labour market has been negotiated with the recipient and that the terms of this contract are respected. All recipients are bound by the insertion agreement, which is a compulsory complement to the allowance.

Thus, on the one hand, the individual is responsible for participating in insertion initiatives in order to continue enjoying the benefit, while, on the other, society takes responsibility for the exclusion of the individual and his or her right to insertion.

The professional insertion of RMI recipients relies heavily on employment policy measures administered by public employment authorities under the aegis of the National Employment Agency (Agence nationale pour l’emploi). Recipients acquire a new status, since the measures usually come within the framework of actual employment contracts, giving recipients the same rights and duties as wage earners. The difficulty is that these employment contracts have been mostly for part-time jobs.

## ***Impact on human rights and challenges***

Since its adoption in 1988, RMI has assisted millions of people facing extreme poverty and social exclusion, and has improved access to social and economic rights, including access to health services and adequate housing. Within the first two years, over 2 million people benefited from it. The number of beneficiaries grew steadily: +14.2 per cent in 1991, +15.3 per cent in 1992 and +21.2 per cent in 1993. After 1996, it stabilized and then it dropped for the first time in 2000 (-5.2 per cent) and again in 2001 (-2.1 per cent). In 2000, there were 965,180 recipients, representing 2 million people including family members (3.2 per cent). On average, 30 per cent of the beneficiaries stop receiving the benefit after one

year. The average recipient is becoming younger and is increasingly likely to be a woman. Since 1995, one beneficiary in four has been under 30 years old.

The main constraint facing RMI recipients is the continuing shortage of jobs in France. RMI has met with limited success in ensuring its recipients' integration into the workforce. While 700,000 jobs were created between 1988 and 1991, for example, only 60,000 of those went to unemployed persons.

## Further reading

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# THE RULE OF LAW



### III. THE RULE OF LAW

The rule of law consists of a set of institutions, laws and practices that are established to prevent the arbitrary exercise of power. However, these institutions and processes do not always contribute to the protection of human rights. They may be plagued by corruption and lack independence from politicians, thus failing to prevent the arbitrary exercise of power. They may also lack the necessary capacity, including skills and awareness of human rights principles, to perform their duties appropriately.

The cases in this chapter present governance reforms that have helped to protect a number of human rights, including:

- The right to free legal assistance for those who otherwise cannot afford it (International Covenant on Civil and Political Rights, art. 14.3 (d)), as in the case from Malawi.
- The right of a person arrested or detained to have a court decide without delay on the lawfulness of the detention (International Covenant on Civil and Political Rights, art. 9.4), as in the case from Malawi.
- Social and economic rights, including the right to just and favourable conditions of work which ensure fair wages and equal remuneration for work of equal value (International Covenant on Economic, Social and Cultural Rights, art. 7), as in the case from the Republic of Korea.
- A number of civil and political rights, including the right not be subjected to arbitrary arrest or detention (International Covenant on Civil and Political Rights, art. 9.1), as in the case from the Republic of Korea.
- The right to the enjoyment of the highest attainable standard of physical and mental health (International Covenant on Economic, Social and Cultural Rights, art. 12), as in the case from Chile.

The case studies present a number of governance reforms that have contributed to human rights protection:

- Legal reforms and policies to adapt existing legislation to universal human rights principles and to better protect specific groups, such as migrant workers (Republic of Korea).
- Provision of effective remedies to victims of abuse (Chile).
- Strengthening and reforming State institutions, including justice systems, courts and penal systems, to better protect human rights (Malawi).
- Raising awareness about human rights protection and facilitating public dialogue on legal reforms aiming at better protection (Malawi, Republic of Korea and Australia).

#### A. Implementing civil rights in the prison system through capacity development and empowerment – Malawi

##### *Issue*

The justice and prison system in Malawi faces a number of challenges. Police stations lack the capacity to efficiently process arrested persons and, similarly,



prison authorities are ineffective in ensuring that prisoners are tried promptly. As a result, Malawi's prisons are overcrowded with remand prisoners and the right not to be held without charge is routinely violated. For example, according to a survey conducted in the late 1990s by four national NGOs and Penal Reform International, 197 juveniles were detained in the Zomba Maximum Prison although most of their remand warrants had expired.

The right to legal representation is also routinely violated. Due to the shortage of trained lawyers, there is little legal assistance available and most people are only to a limited extent aware of their rights and of how to access them. In Malawi the shortage of lawyers particularly affects poor people, who live mostly in the countryside, since lawyers tend to be based in cities.

### ***Response***

The paralegal advisory service (PAS), launched in 2000, is based on the understanding that the implementation of civil rights is hampered both by the low capacity of the justice system to process cases quickly and by the prisoners' lack of awareness of their rights and of the law. PAS was designed to better protect civil rights through a two-pronged approach. First, paralegals assist the police and prison authorities to process cases faster and, in this manner, to fulfil their responsibilities under the laws of Malawi. Second, paralegals offer legal assistance to prisoners and educate them about their rights and about the justice system.

This is how PAS aimed to create a legal assistance system accessible to rural areas, to strengthen the capacity of the justice system to fulfil its responsibilities, to reduce the large number of persons detained without being charged, and thus to strengthen the protection of civil rights.

### ***Design***

In 2000, a pilot scheme was launched to allow 12 paralegals to educate prisoners on criminal law and to assist in processing cases through the criminal justice system more speedily. The discussions with the Malawi Prison Service regarding this pilot effort included four local NGOs—Centre for Advice, Research and Education on Rights (Malawi CARER), Eye of the Child, Youth Watch Society, and Centre for Human Rights and Rehabilitation—as well as an international NGO—Penal Reform International. In 2003, the pilot project was extended to the courts and the police.

While inside the prisons, the paralegals work under the authority of the Prison Service and are subject to a code of conduct. In the course of their work, they report any problems they identify to the appropriate authorities. Serious and repeated breaches of the law are referred to the watchdogs charged with investigating such incidents.

To ensure a level of competence, the paralegals complete a series of training courses over 12 months. The training includes one month's training on elements

of law conducted by representatives of the criminal justice system and the NGOs sponsoring the programme. The paralegals must have completed secondary education and be aged 20 to 40. Nearly half of them are women. The four NGOs sponsoring the programme coordinate their work. There is also an advisory council, which receives regular progress reports and advises the paralegals.

### ***Implementation***

In its efforts to strengthen the capacity of the justice system and empower rights-holders, PAS engages in a number of activities. First, paralegals assist in the processing of suspects in police stations. For young offenders they suggest alternatives to prosecutors in cases of first or minor offences or if the person admits fault. In addition to speeding up the processing of cases, the presence of PAS paralegals in the police stations while juvenile suspects are interviewed is intended to deter torture and cruel, inhuman and degrading treatment of suspects in police cells.

PAS paralegals also screen prisoners to ensure that those held unlawfully or inappropriately are brought to the attention of the authorities. The paralegals compile case lists and refer the individual cases to the courts or the police. They follow up each individual case until the person is released, convicted or sentenced. Through this work, PAS improves the links among the various components of the criminal justice system, and facilitates communication and coordination among the prisons, the courts and the police.

Second, PAS works to improve the legal literacy of prisoners through its daily paralegal aid clinics for remand prisoners. The clinics emphasize self-help so that prisoners learn how to apply for bail, make a plea in mitigation, conduct their own defence and cross-examine witnesses.

Third, PAS offers legal advice and assistance to remand prisoners who have overstayed or are being held unlawfully or inappropriately. Priority is given to vulnerable groups, such as women, mothers with babies, juveniles, foreign nationals, the mentally and terminally ill, and the elderly. Paralegals assist prisoners to fill in standardized bail forms agreed with the judiciary, which paralegals then lodge with the appropriate court. Convicted prisoners are assisted in their appeals against sentences and in ensuring that sentences passed by the lower court are confirmed by the High Court.

Paralegals have also assisted the work of the criminal justice system in other ways. They have observed 91 homicide cases and published a report to inform debate on the quality of justice delivered. They also called attention to the plight of homicide suspects, some of whom have been waiting for trial for 10 years.

By 2005, the number of paralegals had increased from the initial 12 to 37. PAS had developed a programme in 13 prisons, holding 84 per cent of the total prison population, which numbers 8,500 persons.

## ***Impact on human rights and challenges***

PAS has strengthened the capacity of the justice system to implement national and international standards on civil rights by improving inter-agency collaboration and coordination among the prisons, the prosecutors, the police and the courts. PAS has also increased awareness of human rights standards within the justice system, and developed procedures to expedite the processing of cases. Importantly, PAS has also strengthened awareness of rights among prisoners as well as their capacity to protect their rights. Over five years, the paralegals have helped over 45,000 prisoners to represent themselves in bail applications, pleas in mitigation and conducting their own defence.

This work has had tangible consequences for the protection of civil rights, including the right of arrested or detained persons to be informed promptly of any charges against them (International Covenant on Civil and Political Rights, art. 9.2) as well as the right of such persons to have a court decide without delay on the lawfulness of their detention and order their release if the detention is not lawful (International Covenant on Civil and Political Rights, art. 9.4). PAS has also improved the protection of the right to legal assistance without payment for persons who do not have sufficient means to pay for it (International Covenant on Civil and Political Rights, art. 14.3 (d)). Between May 2000 and mid-2005, PAS facilitated the release of over 2,000 prisoners who were unlawfully or unnecessarily detained through bail, discharge or release on compassionate grounds. The screening of suspects at police stations has helped reduce the pretrial population of prisons from an average of 50 per cent of the total prison population to an average of 22 per cent in 2005.

## **B. Legal and policy reform for the protection of the rights of migrant workers – Republic of Korea**

### ***Issue***

The protection of the rights of migrant workers in the Republic of Korea faced several obstacles through the 1990s as the numbers of illegal migrants surged. In 2002, over 80 per cent of the approximately 340,000 migrant workers in the country were estimated to be illegal. The industrial trainee programme, which was introduced in 1993 as a two-year training programme, exacerbated the problem by creating incentives for many trainees to become illegal residents owing to their low fixed wages, their inability to change employers and the fact that Korean labour laws did not apply to them. In general, migrant workers did not benefit from the same types of legal protections as national workers and, as a result, were frequently victims of systematic abuse by their employers.

The workers' social and economic rights were violated as a result of their exploitation by employers who paid low wages and did not provide sufficient insurance cover. Their civil and political rights were also violated as they were the victims of insults, beatings, unlawful detention, racial discrimination, sexual harassment and sexual violence.

## *Response*

The National Human Rights Commission of the Republic of Korea identified two central factors leading to the violation of the rights of migrant workers. First, their illegal status put many in a vulnerable situation as they did not have recourse to the courts to protect their rights. Second, the lower legal protection offered to foreign workers compared to national workers created incentives for them to become illegal residents, while also exposing them to systematic abuse by their employers.

The Commission therefore focused on two goals in its effort to better protect migrant rights: reducing the numbers of illegal workers and offering equal legal protection to foreign workers legally residing in the country. The Commission argued that migrant workers should have the same rights as national workers, including the same level of wages and insurance cover. It also advocated reform of the industrial trainee programme and an amnesty programme for illegal residents.

## *Design*

The National Human Rights Commission was established in November 2001 as an independent governmental body with an annual budget of US\$ 17 million and a staff of 200. The Commission investigates human rights violations committed by governmental agencies as well as discriminatory practices of the Government and private entities. Furthermore, it regularly reviews government policies, scrutinizes new bills introduced to the legislature and makes policy recommendations to the Government. Finally, the Commission provides human rights education.

The Commission's initiative built on several years of advocacy for the protection of migrant rights by civil and religious organizations. Since the late 1980s, activism by civil and religious organizations as well as mobilization on the part of the migrants themselves had brought their plight to the country's attention. A number of civil organizations assisted migrants in collecting unpaid wages, obtaining medical and legal assistance, or seeking financial compensation for work-related accidents. Civil organizations also advocated legislation to protect the rights of migrant workers.

Building on the national awareness raised through the work of civil society, the Commission presented its first recommendation on migrant workers to the Government in August 2002. The recommendation included abolishing the industrial trainee programme and reforming the foreign worker employment system. The Government rejected the recommendation, which it felt was based on unsubstantiated claims and insufficient data. In February 2003, the Commission made a second recommendation, which reinforced and elaborated on the first one.

This second recommendation was based on a nationwide survey and research which was conducted by an independent research institute and which collected information on the labour conditions of migrant workers and on a list of human rights violations. For the nationwide survey 1,078 migrant workers were

interviewed in 14 languages. Korean employers and co-workers of migrant workers were also interviewed. The research found irregularities in the entry to the Republic of Korea of foreign workers and evidence of excessive entry fees; an increase in the number of undocumented migrant workers; long working hours, averaging 68.3 hours a week; low wages, overdue payment of wages; and infringements of human rights including abusive treatment of workers, use of offensive language and violence, seizing of passports; and sexual violence against female foreign workers.

The Commission recommended a package of measures to the Government, including the introduction of an employment permit programme to replace the controversial industrial trainee programme; the application of the same level of wages, labour standards and insurance schemes for migrant as for national workers; granting the same legal rights as nationals; a complete overhaul of the arts and entertainment visa programme; and the provision and wide distribution of basic human rights information in 10 languages.

### ***Implementation***

The Act on Foreign Workers' Employment was passed in August 2003. It reformed the industrial trainee programme to allow for a five-year residence limit, including a three-year work permit during which foreign workers are allowed to change employers in certain circumstances.

The new employment permit programme grants foreign workers legal rights equal to those of national workers. Migrant workers are protected by Korean labour laws and are guaranteed the same wages and insurance cover, including health insurance and industrial accident insurance. Furthermore, the same rights are guaranteed to illegal foreign labourers as Korean nationals during police inspections. Importantly, in the event of inspections, the identity of the official as well as the objective of the crackdown are to be disclosed and the person is to be at all times given the opportunity to inform his/her acquaintances of where he/she is being taken. All foreign workers, including undocumented workers, are legally protected from being forcefully deported while going through legal procedures. In addition, all documents related to exit and entry control as well as basic immigration and labour-related guidelines are translated into 10 languages for distribution.

Under the Act on Foreign Workers' Employment, the Government is the exclusive administrative channel for the management of foreign workers in an effort to combat corruption in the process of entry into the Republic of Korea by foreign workers. Moreover, the Government is obliged to monitor employers to prevent discrimination and unfair management practices.

### ***Impact on human rights and challenges***

The Act on Foreign Workers' Employment and the employment permit programme offer legal guarantees to foreign workers residing in the Republic of

Korea, in accordance with the relevant international standards. As a result, many workers gained legal status and can resort to the legal system to protect their rights. About 200,000 illegal migrant workers earned legitimate visa status as a result of an amnesty programme which granted illegal residents living in the Republic of Korea for less than three years a two-year work permit.

Also, the National Human Rights Commission's work, including its survey and the submission of its proposals to the Government, helped to raise awareness of migrants' rights among the general public as well as among migrants themselves.

Potential problems and limitations to the programme concern the procedures applied to deportation once the legal residency period has expired. The total period of time foreign workers may stay in the Republic of Korea is limited to five years. The relevant authorities have stated that illegal foreign workers will be forcefully deported. However, the deportation of foreign workers is problematic, especially given the limited detention facilities as well as the particular circumstances of some illegal workers, for example those who may be jailed as political prisoners upon their return to their home countries.

### **C. Implementing the right to effective remedy and redress for victims of torture – Chile**

#### ***Issue***

During the 1973–90 military dictatorship, thousands of Chileans were arbitrarily arrested, kidnapped or executed for political reasons. Many others lost their jobs in government agencies and public companies or went into exile. It is estimated that about 800,000 people were directly affected by the State repression during the dictatorship. Many suffered from extreme trauma with serious effects on their physical and mental health. With the return to democracy, a succession of Governments developed policies to address the injustices of the past. Starting in 1991, reparations were offered to the relatives of victims of enforced disappearance, executions and State violence, and to former employees who had been dismissed from the public administration for political reasons. However, reparations were not specifically designed for victims of torture until 2003, despite the abundant evidence of the damage inflicted.

While the system of reparations was debated within the country, the physical, mental and psychological damage inflicted on victims of State repression demanded immediate treatment. Owing to a lack of relevant policies, the rights of victims to an effective remedy as well as to the enjoyment of physical and mental health, to health care and to the necessary social services were not adequately protected.

#### ***Response***

The Ministry of Health's Programme of Reparation and Comprehensive Care in the Field of Health and Human Rights (PRAIS), set up in 1991, responded to two concerns. First, the ill-treatment suffered by the victims of State repression fre-

quently led to physical and psychological injury which either proved irreversible or required long-term treatment. Second, the injury had often been aggravated by discrimination in employment and in society, which deprived victims of their livelihoods so they could not afford health care for themselves and their families. This situation continued even after the return to civilian rule.

### ***Design***

The first impetus for the creation of PRAIS was given by the discovery in 1990 of a mass grave near the town of Iquique, which was used as a detention centre during the dictatorship. In response, the Ministry of Health implemented a programme providing health care to the relatives of victims in several neighbouring cities. Subsequently and following a recommendation of the National Commission on Truth and Reconciliation, PRAIS was officially created in 1991, and operated until 1993 with international financing. The Ministry of Health took over its financing in 1993.

PRAIS has two main aims. First, it offers free access to the public health-care system to directly affected persons, including those who have gone through a traumatic experience, and the members of their immediate family. Second, it offers free specialized mental health care by teams of psychologists, psychiatrists, nurses and social workers with experience in treating victims of repression and violence.

The beneficiaries of PRAIS include close blood relations (parents and siblings) and people with whom the victim lived (spouse, partner and other dependants). Human rights activists who provided assistance to persons directly affected by the repression also qualify. The definition of a repressive or traumatic experience covers abduction with disappearance, execution for political reasons, physical and/or psychological torture, detention on political grounds, exile and return, banishment, dismissal on political grounds, and going into hiding owing to political persecution. These events must have occurred between September 1973 and March 1990.

### ***Implementation***

Since the early 1990s, 15 PRAIS teams have been established throughout the country. Mental health care has been provided through specialized teams with experience in treating victims of human rights abuses. The PRAIS teams working within the national health-care system have created facilities for the reception and care of the victims to evaluate the degree of injury and develop psychotherapeutic treatment, and refer these patients to other health-care services. As part of the treatment, patients play an active role in their rehabilitation by participating in self-help and social reintegration activities. PRAIS has maintained close relationships with human rights organizations and victims' organizations working to obtain reparations for the victims and their social reintegration. Collaboration has included technical exchanges and referrals.

By 2003, the number of beneficiaries had risen to over 180,000. In addition, there was a substantial increase in the number of applications for the treatment of mental health problems. This increase is closely linked to the greater aware-



ness of the human rights violations under the dictatorship. A number of events contributed to this progress, including the increase in the number of court cases relating to human rights, the search for disappeared detainees and the discovery of remains, the organization and mobilization of persons who were detained, tortured or exiled, and the promulgation of legislation concerning officials who had been removed from office.

In addition to offering medical care, PRAIS has provided a forum for people to gather and to acknowledge their common condition as victims of State repression. It has helped beneficiaries to acknowledge their suffering and enabled them to face the demands of their present lives.

### ***Impact on human rights and challenges***

PRAIS enabled Chile's medical system to implement the right of victims of repression to redress, by injecting medical expertise relevant to the needs of victims in the health-care system and funds allowing for free access to health care for many impoverished and underprivileged victims.

The Programme's impact has been manifold. First, it has delivered valuable mental as well as physical health services to thousands of victims. Second, it has helped its beneficiaries to create a collective memory and made possible the recovery of a part of history. Third, by specifically addressing the needs of victims of State repression and violence, it has contributed to the recognition of the victims' status. This was extremely significant given that this recognition was delayed owing to the lengthy national debate on the repression and violence under the previous regime which occurred in the context of the transition to democracy. Fourth, PRAIS and the Ministry of Health have accumulated extensive expertise and developed technical standards regarding the care of persons affected by political repression, which may be referred to by future providers.

Owing to poor funding, the Programme's key challenge is sustainability. As a result of the large increase in the number of beneficiaries, the health-care sector has come under strain. Furthermore, the Programme faces the continuous challenge of providing specialized assistance tailored to the needs of different victims in a national health-care system that suffers several shortcomings.

Finally, and importantly, PRAIS was challenged for several years by the lack of official and public recognition of the victims by the State. This was finally addressed by the publication of the report of the National Commission on Political Imprisonment and Torture in 2004.

## **D. A bill of rights to strengthen human rights in legislation and policy – Australia**

### ***Issue***

Several Australian federal, territory and State governments have, over the years, debated the question of a bill of rights. Supporters of such a bill pointed out the



inadequacy of existing constitutional provisions and the potential for the erosion of rights upheld under Australia's common law, since rights and freedoms can be overridden by Commonwealth, State and local government legislation. Supporters also pointed out that, in common law, it is difficult to develop general statements on human rights derived from individual cases, since the courts are restricted to declarations of rights regarding the parties before them and need to be consistent with previous decisions. As a result, the rights that are recognized under the common law are those left after all the exceptions and limitations to them have been dealt with. The opposition to the adoption of a bill of rights, which was considerable at both the federal and State levels, centred on concerns about the potential for increased litigation and the inappropriate strengthening of the power of judges. Opponents also feared that a bill of rights would favour the rights of criminals over those of victims.

### ***Response***

In 2002, the government of the Australian Capital Territory initiated discussion on a bill of rights bearing several considerations in mind. First, given that the Australian federal and State levels of government have different responsibilities, it was deemed useful to consider a Capital Territory bill of rights, despite the absence of a federal one. Second, it was considered important to include in a bill of rights a set of unconditional human rights in order to ensure that the Capital Territory would implement these rights in its laws and policies. Also, such a bill would strengthen awareness of human rights in society at large, in the legislature and in policymaking bodies. Third, given the strong opposition to such a bill within the Capital Territory, its government initiated an extensive discussion and consultation on the issue.

The Human Rights Act 2004 of the Australian Capital Territory protects civil and political rights, and is based on the relevant standards set out in the International Covenant on Civil and Political Rights.

### ***Design***

The government's strategy leading to the adoption of the Act included a lengthy period of public consultation that allowed for community engagement in and education on the necessity and content of a bill of rights for the Capital Territory. The government did not present its preferred model of addressing the question, but rather initiated a public discussion on it. An appointed Committee held town meetings and several consultations with community and expert groups. There were 49 public forums on the issue. The Committee also sought submissions from the public and commissioned a poll of selected Capital Territory residents. Such a consultative process was deemed necessary because the proposal to adopt a human rights act was subject to significant controversy when it was introduced to the Capital Territory Legislative Assembly.

The distinguishing characteristic of the bill of rights is that it establishes a human rights protection process in the Legislative Assembly. Before the Assembly

adopts a law, one of its committees examines the human rights implications. The Assembly reserves the power to enact laws that are not consistent with the Human Rights Act, but only after informed debate. Once a law is enacted, it cannot be struck down by courts. However, the Human Rights Act directs the Capital Territory's Supreme Court to interpret Territory laws to be consistent with the protected rights "as far as possible." If a rights-consistent interpretation of legislation is not possible, the Supreme Court may make "declarations of incompatibility" and notify the Human Rights Commissioner and Attorney General. The latter must respond within six months. The role of the Court is limited to interpreting laws, including "reading them down" to make them human rights-compatible and identifying areas of incompatibility. However, the last word on the content of laws is left to the elected Legislative Assembly.

Through the above process, the Human Rights Act engages the courts, the Assembly and the public in a dialogue about human rights. The idea of ongoing debate is built into the Act, whose operation must be reviewed after one and five years. The first review was to focus on whether economic, social and cultural rights should be included in the Human Rights Act in addition to civil and political rights.

The Human Rights Act also provides for the establishment of a Capital Territory Human Rights Commissioner, whose key role is to review legislation and its implementation for compliance with the Human Rights Act and advise the Australian Capital Territory's Attorney General. However, the Human Rights Act is not entrenched in the constitution and does not give judges the power to invalidate legislation, nor citizens a platform for asserting rights against the government. A party cannot sue under the Human Rights Act.

### ***Implementation***

According to the Human Rights Act, all government bills must be accompanied with a compatibility statement prepared by the Attorney General. The Legislative Assembly's Standing Committee on Legal Affairs also comments on the impact of all bills on human rights. In the first year of operation of the Human Rights Act, the government presented 64 bills to the Assembly along with 63 statements of compatibility (the one omission being due to an administrative oversight). The Department of Justice and Community Safety also established a Bill of Rights Unit to oversee the implementation of the Human Rights Act within the government. The Unit has published a number of documents to help government departments apply the Human Rights Act, including a manual of guidelines on using it in developing legislation and policy.

Since the adoption of the Human Rights Act, the Human Rights Commissioner has been asked to advise the Attorney General on a number of issues, including the right to freedom of expression of detainees and the delays of trials of detainees. She has also commented on legislative proposals and a number of bills, including bills concerning the new prison of the Capital Territory and amendments to the Mental Health (Treatment and Care) Act 1994 to enable involuntary emergency electro-convulsive therapy. Furthermore, the Attorney General

has requested advice in relation to national matters, including the Anti-Terrorism Bills 2004 and 2005, and the complementary Terrorism (Extraordinary Temporary Powers) Bill 2005.

The Territory's government agencies dealing with some of the most vulnerable individuals have engaged with the Human Rights Act. Corrective Services held a forum in July 2004 to increase awareness of human rights within the prison context. The Human Rights Commissioner and her Office have conducted an audit of a juvenile detention centre, and identified a number of practices which need to be reconsidered in the light of the Human Rights Act. The Health Department in partnership with the Human Rights Office also held a forum in June 2005 to explore the impact of the Human Rights Act on mental health service provision. A review of the Mental Health (Treatment and Care) Act 1994 is under way to address potential inconsistencies with human rights.

Community education has been a priority of the Human Rights Office, which has provided training to members of the general public as well as to people with a legal background. The Office also publishes an electronic quarterly newsletter, which describes the initiatives of the Office and summarizes recent case law.

There has not been a flood of litigation since the adoption of the Human Rights Act. By July 2005, it had been cited in ten reported judgements of the Capital Territory's Supreme Court, one judgement of the Court of Appeal and one decision of the Administrative Appeals Tribunal. These cases deal with a variety of subjects, ranging from criminal law and protection orders, to child protection, mental health proceedings, public housing and defamation. The Human Rights Act is also regularly mentioned in bail applications before the Supreme Court as the rights to liberty and security of person are relevant to the interpretation of the Bail Act 1992. Finally, the Supreme Court did not issue any declarations of incompatibility in 2004 or 2005.

### ***Impact on human rights and challenges***

The biggest impact of the Human Rights Act has been its influence on the way government policy and legislation are formulated and adopted. The government is conscious of the Human Rights Act when developing new bills and the courts are aware of it when interpreting legislation. The Capital Territory administration also needs to take it into consideration when developing policy.

There is a general limitation to the implementation of the Human Rights Act owing to the inability to use it in relation to powers under federal laws, such as the treatment of asylum-seekers under migration legislation. In some cases this inability results from the fact that there is no Capital Territory evidence act, while there is, for example, the Federal Evidence Act 1995. Also, the Australian Federal Police provides both national and local services, and can use federal rather than Capital Territory powers when arresting and charging defendants.

Critics of the Human Rights Act point out that it does not provide for the justiciability of human rights and does not protect economic, social and cultural rights.

This is a limitation to the ability of the Act to protect the rights of some of the most vulnerable members of society. The Act does not provide for direct claims against government agencies and other public authorities for breach of the protected rights either.

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# COMBATING CORRUPTION



## IV. COMBATING CORRUPTION

Corruption may be defined as the abuse of entrusted public power for private benefit. While good governance refers to the exercise of authority through political and institutional processes that are transparent and accountable and encourage public participation, corrupt governance fails to offer citizens adequate and accurate information about government and policies, curtails the public's opportunities for participation, violates the public's right to be informed about government activities and procedures, and compromises the right to political participation. Thus, corruption weakens the accountability of State officials, reduces transparency in the work of State institutions and allows human rights violations to go unpunished.

Corruption has a negative impact on the realization of basic rights. Corrupt practices divert funding aimed at social services. In this manner, corruption undermines the Government's ability to deliver an array of services, including health, education and welfare services, which are essential for the realization of economic, social and cultural rights. Corruption particularly affects the poorest and most marginalized, who greatly depend on public services. Corruption also discriminates in the access to public services in favour of those able and willing to offer bribes.

Corruption can weaken democratic institutions both in new and in long-established democracies. Corrupt public officials fail to keep the interests of society in mind when taking decision, leading to a loss of public support for democratic institutions. In such situations, people become discouraged from exercising their civil and political rights and from demanding that these rights be respected.

In countries where corruption is pervasive in the administration of justice, the implementation of a country's laws as well as efforts to reform them are impeded by corrupt judges, lawyers, prosecutors, police officers, investigators and auditors. Such practices compromise the right to equality before the law and the right to a fair trial. They especially undermine the poor's access to justice, because they cannot afford to offer or promise bribes. Importantly, corruption contributes to a culture of impunity, since illegal actions are not consistently punished and laws are not consistently upheld.

Strategies to combat corruption share a great deal with human rights principles. In particular, anti-corruption initiatives stress the importance of transparency and accountability, putting emphasis on the right to request and obtain information from State officials, as well as on the importance of providing information in an easily accessible and understandable manner.

The cases presented in this chapter illustrate anti-corruption efforts that have relied on human rights and good governance principles, such as accountability, transparency and inclusion, and have had a positive impact on the protection of human rights. They present a variety of strategies and tools:



- Setting up anti-corruption commissions (Botswana).
- Adopting appropriate legal frameworks (Botswana, OECD).
- Adopting measures to improve transparency and access to information (Lebanon and India).
- Building alliances across social and interest groups in support of anti-corruption efforts (India and Poland).
- Harnessing the necessary political will to engage in comprehensive anti-corruption efforts (Botswana and Bolivia).

## **A. Government response to corruption: institutional development and political leadership – Botswana**

### *Issue*

Since its independence in 1966, Botswana has experienced high rates of economic growth, a multiparty political system and regular elections. However, in the early 1990s, the country was hit by a series of corruption scandals involving cabinet ministers and top civil servants and relating to the Government's purchase of school textbooks, land distribution and housing management, etc. The scandals demonstrated that, despite the long tradition and deep roots of the country's democratic institutions, high-level corruption persisted. The seriousness of the problem became evident when the political elite failed to take proper action in response to the scandals until pushed to do so by the media and the public.

The extent of the corruption by high-level officials not only threatened to become an obstacle to continuing economic growth, but also undermined public faith in democratic institutions and processes.

### *Response*

Following the scandals, extensive public debate took place on the issue of corruption. It was recognized that adding anti-corruption tasks to existing government bodies would not be effective. A multi-pronged anti-corruption effort that would establish a national system promoting integrity and encompass a wide range of public institutions, government agencies and the public was necessary. Such an effort should include both preventive and punitive measures, and be supported by the country's political leadership. With this goal in mind, in 1994, the Corruption and Economic Crime Act was adopted and the Directorate of Corruption and Economic Crime was established. The Directorate's mandate includes investigating complaints and alleged offences, public education, and improving anti-corruption procedures within public bodies.

### *Design*

The scandals of the early 1990s were uncovered by the vigorous efforts of the media and led to official inquiries. The findings of the inquiries were made public

and were followed by heated public debate. Through these discussions, the rationale emerged for a permanent agency with wide powers to tackle corruption and economic crime. The Corruption and Economic Crime Act 1994 established the Directorate of Corruption and Economic Crime as an autonomous institution. Its Director reports directly to the President. The decision to prosecute remains with the Attorney General.

The Directorate's objective was to address corruption as a systemic problem requiring a multifaceted response. Its tasks included: investigating any complaints alleging corruption in a public body; investigating any alleged or suspected offences under the Act or the laws of the country; examining the practices and procedures of public bodies and securing the revision of methods of work or procedures which, in the opinion of the Director, may be conducive to corruption; advising heads of public bodies of changes in practices or procedures in order to reduce corruption; educating the public about the evils of corruption; enlisting and fostering public support in stamping it out.

The Directorate's investigators and intelligence analysts gather information and receive reports from the public by phone, fax, letter or in person. By 2000, the Directorate had 120 employees in two offices, one in the capital, Gaborone, and the other in the second largest city, Francistown.

### ***Implementation***

The Directorate developed a three-pronged approach, focusing on investigation and prosecution, public education, and prevention. Investigations are based on reports made to the Directorate by members of the public, the media and government departments or on information that the Directorate itself gathers. By 1996, the Directorate had dealt with 536 cases, leading to 141 prosecutions and 59 convictions. By 1997, 173 cases had been prosecuted and the conviction rate was 85 per cent. There have been convictions in the public and private sectors, and even staff members of the Directorate itself have been convicted.

The Directorate's powers to obtain information are extensive. Its Director may ask any person to produce documents relating to the functions of any public or private body, or to provide information. The failure to respond or the wilful provision of false information is a punishable offence. These provisions may go against certain legal principles, such as the right of the accused to remain silent and the right not to incriminate oneself. To limit the powers of the Directorate, cases can be prosecuted only with the consent of the Attorney General.

As part of its prevention work, the Directorate examines the procedures of public bodies with a view to uncovering corrupt practices and revising methods of work which may be conducive to corruption. The Directorate created a Corruption Prevention Group to investigate the internal procedures of government departments and public bodies. It works in close collaboration with the department concerned. Once opportunities for corruption are identified, the Group revises work practices. Some of the weak links it has identified are purchasing and ten-

dering in the construction industry, purchase and maintenance of vehicles, allocation of government housing and of land, the issuance of licences and the administration of welfare funds.

For example, in 1996, the Group was invited to investigate the procedures for receiving, processing and settling claims by the Botswana Motor Vehicle Insurance Fund. It also undertook a study of the procedure for the receipt and evaluation of tenders and the award of contracts by the Tawana and Chobe Land Boards. In 1996, it gave advice on the award and administration of major construction contracts and the tendering procedures for supplies contracts.

The Directorate has also put through parliament a new code of ethics that requires all parliamentarians to disclose their financial assets and to make this information available for public scrutiny. Furthermore, the Directorate has helped organizations like the Botswana Confederation of Commerce, Industry and Manpower to draw up draft codes of ethics.

Finally, an extensive public awareness campaign has been carried out both by the Directorate and by the media. The Directorate's public education programme emphasized the harm done by corruption, the fact that corruption involves stealing the public's money and the public's duty to report corrupt behaviour by officials. The Directorate has taken the anti-corruption battle to schools, the University, ministries, cooperatives and other voluntary organizations such as trade unions and churches. Radio programmes, posters, pamphlets and other promotional items and magazines have been used. As a result, by 2000, more than half the population was aware of the Directorate's existence.

### ***Impact on human rights and challenges***

The Directorate focused public attention on corruption as a serious economic and social problem in Botswana. Its work has also helped to reduce the high-level corruption involving top State personnel that confronted the country in the early 1990s. However, petty corruption has emerged involving junior civil servants. This is especially the case where authority has been delegated without proper supervision and accountability, for example at the local government and district council levels.

The fact that the Directorate is placed under and reports to the office of the President presents opportunities and challenges for its work. On the one hand, critics argue that this status compromises its independence and that it would be more appropriate for such an agency to report directly to parliament. On the other, this arrangement allows the political leadership to support the Directorate's work and to put the drive against corruption high on the country's political agenda.

The Directorate relies on the Attorney General's department's ability to prosecute the cases referred to it. However, that department's capacities have not been adequately strengthened to take on the additional case load, thus leading to delays and inefficiencies in the anti-corruption effort. Also, the courts are not able

to respond promptly to cases brought before them and cases often last for more than seven months. Furthermore, the Directorate's work faces the challenge of working with inadequately trained personnel in local governments.

## **B. Empowering the public to resist corruption by publishing administrative procedures and fees – Lebanon**

### ***Issue***

In the late 1990s, the Lebanese media widely discussed the impact of corruption on the country's economic and political development. According to a newspaper poll in 1998, corruption was one of the country's most urgent problems. One area of economic activity particularly affected by corruption was the booming property and building sector. Applying for a construction permit involves five State institutions and several departments, and in many of these the bribing of officials is commonplace. If bribes are not paid, it can take up to a year to obtain a permit.

The lack of transparency in the different stages and fees violates the public's right to information, including the right to be informed about government activities and procedures. Corruption in the permit process also violates the right to pursue economic activity without discrimination by favouring those able and willing to pay bribes.

### ***Response***

In 2002 the Lebanese Transparency Association (LTA) published the *Construction Permit Booklet* because corruption had turned a simple administrative procedure into a major challenge. State bodies were giving misleading instructions, making it difficult for citizens to distinguish between official fees and bribes. Citizens also lacked accurate information about the various procedural stages, the institutions involved, the responsibilities of each department and institution, and the official fees for each stage of the process. This lack of information and transparency disempowered the public vis-à-vis the State and reduced the accountability of the State. It also reduced citizens' trust in the State.

The LTA *Booklet* describes the application procedures for a construction permit and the documents, fees and average time required for each stage. Its goal is to inject transparency into the application procedure and to empower citizens by informing them about their rights vis-à-vis the public administration.

### ***Design***

LTA work to improve transparency in construction permit applications and access to information was part of a response to society's discontent with the growing phenomenon of corruption. The extent of the problem with construction permits was well known. Research by the Lebanese Center for Policy Studies had found that the corruption involved in the application for a construction permit was

unique in its scope and in the amount of bribes paid throughout the transaction, which could double the official cost of the permit. Lebanese media and research institutes had unofficially estimated that the *baksheesh* (bribe) for a building permit for a residential house could cost more than US\$ 2,000. This is a substantial amount given that the annual GDP per capita in 2002 was US\$ 4,360. Furthermore, without bribes to speed up the process, the paperwork can be held up for years.

The idea of addressing corruption in construction permits was also inspired by the Government's decision to enable foreign investors to process all paperwork at one desk at one rate. The *LTA Booklet* was similarly conceived as a one-stop shop for all citizens interested in applying for a construction permit. LTA intended to inform citizens about their rights and obligations, and to demystify complicated administrative transactions.

### ***Implementation***

The entire process of publishing the *Booklet* took about a year. Research for the *Booklet* entailed visits to the relevant agencies and interviews with professionals as well as citizens. The first draft was discussed with a focus group of experts and practitioners from the agencies. In the preparation and research for the *Booklet*, LTA worked closely with architects and engineers as well as with the Office of the Minister for Administrative Reform. An effort was made to design a simple and user-friendly publication to reach a wide audience.

Research for the *Booklet* identified the root causes of corruption in construction permit applications. These included applicants' ignorance of their rights, the indifference of civil servants who consider bribes a bonus for efficient work, a lack of monitoring and control, weakness of public complaint procedures, and the dissipation of responsibility owing to the high number of public institutions involved in processing permit applications. These factors all complicate the transaction and allow for a high level of corruption. The *Booklet* seeks to equip citizens with the tools and knowledge to bypass corrupt practices. Applicants can use any departure from the official description of the transaction detailed in the *Booklet* to hold officials accountable.

The *Booklet* was published in February 2002, and 15,000 copies were distributed free of charge to citizens, NGOs, municipalities, architects, engineers and lawyers. It has served as a one-stop shop for citizens by clarifying the different documents, steps and fees required for completing the transaction. It also provides tips to help citizens prevent corruption.

The *Booklet* received wide media coverage. The Lebanese media have been quite active throughout the post-war period in uncovering corrupt practices. They have also been helpful in promoting and distributing the *Booklet*. All the main newspapers reported on it and this led to high demand from Lebanon's various regions. Local TV stations and newsletters from research centres distributed to NGOs and municipalities have featured the *Booklet*.

The conclusions of the research about the causes of corruption in the permit process were presented in a report to several government offices, including the Office of the Minister of State for Administrative Reform, the Urban Planning Directorate, the Association of Architects and Engineers, and parliament.

### ***Impact on human rights and challenges***

Corruption remains a considerable problem in Lebanon. The LTA initiative attempted to tackle a part of it by focusing on applications for construction permits. The *Booklet* has empowered the public by clearly stating citizens' rights vis-à-vis State institutions. It has also strengthened citizens' right to information by making transactions more transparent. Ultimately, the *Booklet* raised awareness among citizens about the transaction and enabled them to resist corruption.

Since the *Construction Permit Booklet's* publication, LTA has made access to information one of its priorities. This has led to workshops and publications on access to information and country reports on access to information in the Arab region. LTA has also prepared a draft access-to-information law. Among other activities, it is hosting a website for the Middle East and North Africa that provides background material on access to information and helps activists in the region to network and to lobby for such legislation. In 2004, LTA also published *The Right to Know*, which is the first comparative study of access to information in the region and covers Palestine, Egypt, Lebanon, Yemen, Bahrain, Algeria and Morocco.

The impact of the *Booklet* could be increased through a partnership between LTA and a State agency, which would disseminate the publication further and create more guides and manuals on other administrative transactions.

## **C. Transparency in public expenditures through participatory social auditing – India**

### ***Issue***

Corruption and lack of transparency are common in India's local governments and have a negative impact on rural workers and farmers. Corrupt local officials threaten the livelihoods of the poor by embezzling resources intended for development projects, public works or the wages of labourers. In such cases, public funds tend to be managed in a non-transparent and unaccountable manner with little, if any, effort to include the public in the design and implementation of development projects. Until recently, Indian States did not readily disclose official documents on public budgets and projects and often actively resisted the efforts of the public and civil society to access such information.

Corrupt practices and abuse of power, office or privilege undermine the right of every person to participate in, contribute to and enjoy economic, social, cultural and political development. Corrupt practices also undermine the right to an adequate standard of living for every person and his or her family, including

adequate food, clothing and housing, and to the continuous improvement of living conditions.

### ***Response***

The practice of social audits is motivated by the conviction that corruption undermines the protection of human rights and disempowers the poor. Specifically, the lack of transparency and accountability in the spending of public funds thwarts efforts to protect the rights of the poor. To address the lack of transparency and accountability in local government, Mazdoor Kisan Shakti Sangathan (MKSS) and its partners promoted the right to information, including the right to access and copy government documents, as one of their key tools to combat abuse of power and corruption. Furthermore, social activists recognized the importance of explaining to the poor that the right to information was not an abstract notion, but had practical implications and was intimately connected to their livelihoods and survival. Public hearings were introduced as a participatory tool of social auditing to scrutinize government projects and expenditures.

### ***Design***

MKSS is a workers' and farmers' organization dedicated to ensuring fair working conditions and daily wages for wage earners and farmers. Its strategy of social auditing took shape in 1994–95, when social activists examined local government records on behalf of workers of public works projects who were denied payment of the statutory minimum wage set for such projects. The workers were told that, according to government records, they had not completed the required work and could therefore not be paid the minimum wage. Although the activists were denied access to these records, they conducted their own independent research and presented the data to the villagers in a series of public hearings. They also presented compelling evidence of the corruption of local officials, including payments for clinics, schools and public toilets that were never built, for workers who were long dead, and for disaster relief that never arrived.

Following this experience, social activists initiated the practice of public hearings as social auditing tools for government expenditures. First, information is gathered and then public hearings are held to verify the information provided in official documents. Anyone can attend the meetings, which are presided over by a panel of respected persons from within and outside the area. The information discussed at the meetings is shared in advance and the purpose of the meetings is to verify the "truth" publicly. Detailed accounts about development projects, their timelines, implementation methods, budgets and outputs derived from official expenditure records and other supporting documentation are read out to assembled villagers. Officials are invited to attend and local people are asked to give testimony, highlighting discrepancies between official records and their own experiences as labourers on public works projects, applicants for means-tested anti-poverty schemes and consumers in ration stores. Over the years, villagers have pointed out discrepancies such as dead people listed on payrolls, forged payment receipts and public projects like roadworks that never took place.



## ***Implementation***

Social activists have relied on mobilization tactics and public action in their fight against corruption in public expenditures. Through the slogan “our money – our accounts,” social activists and villagers have demanded that local administrators provide them with an account of expenditures in development projects in their region. The activists have demanded access to bills, vouchers, receipts, approvals, evaluations and audited accounts from local governments to see how public money has been spent. The public hearings have attempted to turn “subjects into citizens and recipients into actors.” Although many villagers are illiterate, through face-to-face public hearings, they are able to question their representatives and make them answerable on the basis of evidence.

The practice of social auditing met with resistance from local governments. Social activists were often denied access to documents, such as bills and vouchers, by the local administration, but they held public hearings regardless. At one such public hearing, a few people testified that local village officials had extracted money as commission for a government housing grant to local families. Within 48 hours of this revelation, the money was returned to the families.

Recognizing the importance of legislation to secure the right to information, social activists also initiated a campaign pushing for right-to-information legislation. In April 1995, the Government of Rajasthan announced to the Legislative Assembly that it would provide access to information to citizens on all local developmental works, but took no action. A year later, in April 1996, an indefinite sit-in or *dharna* was organized to demand that the State Government pass executive orders to provide a limited right to information on local development expenditure. The Government’s issuance of an order to inspect relevant documents on the payment of fees was rejected by the activists as it did not permit photocopies to be made of these documents. In 1996, the National Campaign for the People’s Right to Information was formed and another series of *dharnas* took place, expanded to the State capital, and continued for 52 days. At the end of this period, the State Government confirmed the right to photocopy the relevant State documents.

Following extensive consultation between MKSS and other civil society actors and the Government, the Rajasthan Right to Information Act was passed in 2000 and came into force in January 2001.

## ***Impact on human rights and challenges***

Social audits exposed the misdeeds of local politicians, private engineers and government contractors, leading in a number of cases to voluntary restitution. These efforts yielded concrete results and benefited the poor: embezzled money was returned, projects were completed, the delivery of services improved and administrative or legal sanctions were imposed on corrupt officials.



Importantly, the practice of social audits raised awareness among civil society, politicians and the public of the link between corruption, the right to know and the right to a livelihood. A national grass-roots movement triggered broad debate and a nationwide demand for the public's right to scrutinize official records, which contributed to the adoption of right-to-information legislation in nine States and of the 2005 Right to Information Act, which applies to all Indian States. This bill governs the public's access to information and prescribes penalties for State officials failing to provide it.

However, activists recognize that transparency is only one step towards ensuring that the poor can have a meaningful influence on decision-making processes and development policies. In addition to guaranteeing the right to information, it is crucial that people are consulted on how they should be governed. This requires continued engagement and winning the right to participation in policy formulation as well as implementation.

## **D. Combating bribery in the public health sector – Poland**

### ***Issue***

Corruption in the health-care sector results from a number of factors, including the lack of clear standards for evaluating the performance of providers, the lack of effective oversight and the absence of monitoring. In Poland, bribery is common in the medical and health-care system. In the late 1990s, a number of high-profile reports by Poland's highest auditing body—the Supreme Chamber of Control—and the World Bank discussed the prevalence of corruption in the health-care sector. Surveys conducted by the Batory Foundation also indicated the extent of the problem. According to a 2001 survey, medical doctors were perceived to be the most corrupt professional group and, in 2003, the health sector was perceived to be the second most corrupt sector and 61 per cent of patients admitted offering bribes to doctors. The low salaries of health professionals combined with a lack of ethics training, a non-transparent system of financing by the National Health Services and underfunded clinics create a fertile ground for bribery.

The prevalence of bribery in the public health sector results in practices that violate the right of every person to the enjoyment of the highest attainable standard of physical and mental health. Bribery creates discrimination in the access to medical care in favour of those patients able to pay bribes.

### ***Response***

The prevalence of corruption in the public health sector needed to be addressed through a number of methods. In addition to appropriate legislation forbidding bribery in the health sector, society's recognition of the problem was essential as was the formation of alliances among civil activists, the media and the medical profession. Furthermore, appropriate governance mechanisms were required to inject accountability and transparency into the management of health services. In 2001, the establishment of the Medical Task Force, consisting of civil and human rights

activists, doctors, journalists and government representatives, initiated public debate on bribery in the health sector. The Task Force led public awareness campaigns and developed governance standards for the management of health services, including the management of waiting lists for specialized health services.

### ***Design***

The establishment of the Medical Task Force in 2001 followed a number of high-profile reports which generated wide debate on corruption in the health-care sector. A 1996 audit of clinics by the Supreme Chamber of Control found that patients' legal right to free health care was violated in 37 out of 50 clinics, and patients' financial participation was so pervasive that there was no attempt to conceal it. Participation included contributions to public collections or resulted from decisions by clinics to charge for certain services. Moreover, the voluntary nature of payments was frequently in doubt. In 1999, the World Bank also reported that informal payments pervaded the Polish medical and health-care system. These ranged from small gifts *ex post* or "speed money" for faster treatment, to large bribes for surgery and other treatments.

In January 2000, the Batory Foundation and the Helsinki Foundation for Human Rights, a Polish human rights organization, set up a joint anti-corruption programme. It attempted to shift attitudes among citizens towards corruption by publishing reports and sponsoring public awareness campaigns. In 2001, the Anti-Corruption Programme established a Task Force of Physicians to address ethical problems in the public health-care system and to improve access to medical services.

The Task Force is composed of journalists, representatives of the National Health Fund, the Helsinki Foundation for Human Rights, the Polish Chamber of Doctors, the World Bank and the Batory Foundation. In 2001, the Task Force prepared two seminars, which were followed by the publication of two reports: *Patients and Physicians on Corruption in Public Health Care* and *Institutional Aspects of Informal Gratuities in Polish Health Care*. These reports were accompanied by a series of press articles on unethical conduct of medical staff throughout the country. They sparked debate and placed the issue on the agenda of conferences organized by medical associations. The reports received a negative response from parts of the health-care community, which questioned the reliability of the information contained in them. In an effort to facilitate discussion with the health-care sector, the Batory Foundation organized a workshop in 2002 for 11 medical doctors, 15 representatives of health funds and 13 journalists specializing in health care.

### ***Implementation***

Since its establishment, the Task Force has initiated public discussion on corruption in the health sector, identified areas within the sector affected by it and made proposals. A central focus of its work was the "Waiting in a Humane Way" project, which aimed to improve access to specialized medical services. Bribery around waiting lists for specialized medical services is particularly prevalent be-

cause of the shortage of such services and the urgency of the patients' needs. For example, the Foundation's 2003 survey showed that the most frequent reason cited by patients for bribing was to avoid long waiting lists for surgery and to obtain a sickness certificate.

The first government regulation on the management of waiting lists was adopted in 1998. It obliged hospitals to keep "waiting lists" and to register patients who qualified for therapy, but could not be admitted immediately. However, the regulation did not establish rules for the management of lists. Responding to the need for greater transparency, the Task Force launched the pilot project "waiting lists for surgery," which attempted to establish official lists in cardiology departments. In 2002, the Task Force conducted and published a review of international practice in the management of specialized medical services and waiting lists. It also sent a questionnaire to 120 cardiology wards asking about their current practices regarding waiting lists. About 40 per cent of clinics responded and 70 per cent of those stated that they maintained official waiting lists. A majority, 68 per cent, stated that lists were based on clear medical criteria, but only 23 per cent said that these criteria were public and available to patients.

The Task Force also increased dialogue with the Ministry of Health to contribute to the Government's discussions on the amendment of the Health Management Organizations Act. Specifically, the Task Force proposed that the Act should lay down clear criteria for waiting lists, ensure the public's right to access information, and provide for citizen supervision of waiting times.

In 2003, the Ministry established an advisory unit of experts, including members of the Task Force, to work on a system to administer the lists of patients waiting for specialized medical services. In 2004, the Task Force developed draft regulations regarding publicly available waiting lists for the rationed medical services, which were included in the Act on Health Care Institutions adopted by parliament. As a result of the legislative changes, providers funded by the National Health Fund are required to set up a register of waiting patients and to adopt transparent criteria for their management.

### ***Impact on human rights and challenges***

The work of the Task Force has raised public awareness about the detrimental consequences of bribery in the delivery of health services. It has also sparked debate within the medical community and is largely responsible for the Government adopting clear criteria for the management of waiting lists.

The Task Force has continued its work and has developed a checklist to assess draft legislative changes in health-care laws in terms of their implications for corrupt practices. It also identified the areas in the government draft bill on publicly financed health care which might lead to corrupt practices. In 2005, the Task Force developed best procedures for filling managerial positions in the health service, especially the positions of heads of wards in clinics and hospitals. It is also developing criteria for fairly evaluating candidates for such posts.

## **E. Municipal reform to combat corruption and improve the delivery of services – Bolivia**

### ***Issue***

In the mid-1980s, corruption was rampant in all areas of municipal government in Bolivia's capital city, La Paz, from delivering services to carrying out public works, policing the public markets, and issuing permits and licences. The widespread corruption resulted in such institutional decay that municipal authority had virtually collapsed. The prevalence of corruption was exacerbated by the fact that Bolivia was going through a severe economic crisis and that the finances of cities deteriorated as economic assistance from the national Government was cut and city revenues dried up. In the midst of the economic crisis, the salaries of La Paz city employees eroded significantly owing to hyperinflation of 26,000 per cent. The city was on the verge of financial ruin as its monthly payroll exceeded monthly revenues by 20 per cent.

The decline of municipal institutions and the corrupt management of public resources compromised the municipality's ability to guarantee human rights, including the right to health, adequate housing, access to food and quality education.

### ***Response***

The comprehensive effort to combat corruption in La Paz was launched with the goal of improving the delivery of municipal services. The deficiencies in service delivery, in the completion of public works and in the collection of revenues were almost always associated with corruption. Corruption was a systemic problem rather than one of corrupt individuals. Corruption was deeply ingrained in the political culture of the city. It was therefore important to carry out a comprehensive reform and to enlist municipal employees in this effort. Furthermore, following decades of authoritarian government, a weak civil society and low public demand for anti-corruption efforts posed challenges to the reform movement.

The municipal leadership elected in 1985 embarked on a comprehensive reform process, which addressed several aspects of municipal affairs: corruption in the police force, in the public works and construction service of the municipality, in procurement, in taxation, and in the issuing of licences and permits.

### ***Design***

In 1985, the inhabitants of La Paz elected for the first time in 40 years their municipal government. Mayor Ronald MacLean-Abaroa was elected on the promise to improve the delivery of municipal services. One of the first steps of the municipal government's anti-corruption policy was to involve municipal employees. Municipal officials participated in workshops and discussions in an effort to diagnose the nature and extent of corruption. First, a case study of a successful anti-corruption campaign in another country was presented in workshops. Then the par-

ticipants discussed an abstract framework regarding the causes and manifestation of corruption. These two steps were designed to encourage the participants to analyse the problem of corruption dispassionately. Finally, participants engaged in self-diagnosis and self-prescription. The workshops drew on the knowledge and expertise of the employees to identify systemic problems. Employees often shared information about corrupt practices even in cases where their intimate knowledge of the facts was incriminating.

An effort was also made to rely on public input to determine the extent of corruption. For example, polls were conducted to identify citizens' priorities for public works. The polls found significant differences between the public's priorities and the recommendations of municipal staff. Often, the staff suggested public works in sparsely populated areas, which would facilitate the construction of new buildings rather than provide services to existing neighbourhoods. Thus, it became evident that municipal personnel had their own agenda motivated by the interests of private construction and development companies. Similar polls were conducted on a number of other municipal policies.

Following the above diagnostic work and public input, the municipality also sought to secure international funding to be able to raise the salaries of employees and to invest in development projects.

### ***Implementation***

The anti-corruption efforts of La Paz's municipal leadership included several areas of municipal government. First, the process of issuing construction permits and licences was deregulated. Also, the system through which citizens applied for permits was reformed. A single registry was set up for all applications for permits and licences. It was staffed by employees who were not involved in granting permits and licences. Furthermore, to increase transparency, a manual was printed and widely distributed to inform the public about how much building permits cost, how to request services, which agency was responsible for what service and how long it would take to deliver the service.

Second, an effort was made to reduce corruption in the municipality's office of public works, which employed 4,000 workers and from which machinery, spare parts and petrol were routinely stolen. The responsibility of this office was changed to carrying out emergency repairs, but not major construction projects. Major public works were contracted out under an incentive-based process that linked payments to targets and the satisfactory completion of projects. The office of public works was reformed into a regulator which operated under this incentive-based process.

Third, a number of anti-corruption initiatives helped to simplify the tax code, cutting the number of taxes from 126 to 7, to restrict opportunities for collusion between tax collectors and property owners, to hire young Bolivians in municipal service and to raise salaries through international assistance. Also, throughout this effort, the municipal leadership reported to the public on progress made in reducing corruption.

However, the effort to reduce police corruption met with significant obstacles and ultimately failed. One of the primary responsibilities of the La Paz police was patrolling the public market: collecting rents, maintaining health standards, and monitoring the accuracy of weights and measures. Over time, a culture developed in which police officers boosted their salaries through kickbacks from the stallholders. Corruption in the police force resulted in lower city revenues, the violation of health norms and the cheating of consumers through false weights and measures.

However, the plan to fire corrupt police officers and their supervisors was sabotaged. Police families resisted the new policy. Also, the stallholders did not welcome a change in the status quo, fearing even worse practices in the future. Neither stallholders nor residents perceived corruption as affecting their daily lives. The mayor and his team had failed to communicate to the public the tangible benefits of reduced police corruption: lower taxes, fair weights and measures for consumers, and safe food for families and children. They had not conducted adequate research to understand which facets of the public market were important to citizens and to then communicate the value of the anti-corruption drive as a means of achieving these goals. As a result, the plan was not implemented as the mayor was voted out of office in the next elections.

### *Impact on human rights and challenges*

The mayor of La Paz and his team made great strides. During their five years in office, corruption was greatly reduced and foreign donors contributed funds to increase the salaries of employees. Importantly, city revenues and investment in public works increased tenfold. As a result of higher city revenues, the delivery of municipal services improved.

However, questions regarding the sustainability of these achievements emerged when Ronald MacLean-Abaroa was not re-elected and his successors dismantled some of his anti-corruption initiatives and undermined effective administration via nepotism and political appointments. By 1995, corruption had almost returned to pre-1985 levels. It became evident that the anti-corruption efforts of the late 1980s were not supported by a system of checks and balances backed by society at large. There was inadequate civic education on the consequences of corruption, which contributed to the low public demand for accountability. Greater input from the public might have created the checks and balances required for sustainable reforms. For example, professional groups, the media and neighbourhood associations might have been possible supporters.

However, it is important to emphasize that the battle against corruption is a long-term process and that it takes many years to build a civic culture which values accountability and transparency. Ronald MacLean-Abaroa was the first democratically elected mayor of the city for 40 years and, although voted out of office in 1991, he was re-elected in 1996 on a reform platform. By that time, neighbourhood associations and civil actors were stronger and better able to bolster anti-corruption efforts through their work as monitors.

## **F. Addressing the supply side of corruption: curbing bribery by companies supported by export credit agencies – OECD**

### *Issue*

Governments often provide credit and insurance support to domestic businesses for their exports to and investments in developing countries, which are considered risky for conventional corporate financing. This support is managed by export credit agencies (ECAs), which are primarily public or publicly mandated institutions. Their main activity is to provide export credits to corporations conducting business in poor and developing countries, whenever a foreign buyer of exported goods or services is allowed to defer payment. As a result of such arrangements, in 1999, officially supported export credits represented 19 per cent of the total indebtedness of developing countries and countries with economies in transition and almost half the indebtedness of these countries to official creditors. However, the contracts supported by ECAs have often been secured by bribing foreign officials. As a result, poor and developing countries' debt includes the cost of bribery.

Bribery of foreign officials in international business transactions has a severely negative impact on the protection of human rights. It compromises the right to development by compounding the debt burden of poor countries. It also fosters a culture of impunity on both sides of the transaction.

### *Response*

In 1999, the Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions of the Organisation for Economic Co-operation and Development (OECD) entered into force. However, the Convention did not contain provisions on the specific responsibilities of ECAs and the companies they support for preventing bribery. In 2000, OECD began developing governance standards specifically for ECAs. This effort recognized the enormous impact ECA practices have on poor and developing countries' development chances, given that few overseas companies are willing to operate in poor and developing countries without this support. In 2000, for example, ECA support for exports to and investment in poor countries accounted for 80 per cent of private finance to those countries.

OECD also acknowledged that the bribes paid by ECA clients created a significant obstacle to development. First, investment projects secured through bribery are unlikely to be based on objective needs, but rather on the interests of corrupt officials. Second, the bribes often end up being incorporated in the country's official debt. If the importing country cannot pay compensation to ECA, the amount owed is usually added to that country's official bilateral debt. As a result, the taxpayers of the importing country may need to pay for bad investment projects and for the bribes made by the ECA-supported exporting company.

The OECD Working Party on Export Credits and Credit Guarantees recognized the severe economic, social and political damage to the countries receiving cor-



ruption-tainted exports. It therefore initiated a process of proposing standards and engaging the ECAs of its member States in discussion in order to develop an OECD-wide response.

### ***Design***

The Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions has been ratified by all 30 OECD member States and seven non-member signatories. According to the Convention, bribing foreign public officials to obtain export or investment contracts is a crime. Contracts obtained through bribery are invalid or subject to invalidation. Before the entry into force of the Convention in February 1999, bribing foreign officials was not illegal in many exporting countries. In fact, it was often tax-deductible.

Under the Convention, the States parties have committed to taking effective measures to deter, prevent and combat such bribery and to deny any subsidies or other public advantages to those who commit it. The Convention established the Working Group on Bribery, which examines the conformity of each party's anti-bribery laws with the Convention and their effectiveness in practice. The Working Group also issues recommendations and country reports on each State party. Furthermore, in 1997, the Council of OECD issued the Revised Recommendation on Combating Bribery in International Business Transactions with a view to denying public subsidies and other advantages to companies that engage in bribery and disqualifying them from participating in public procurement.

In 2000, in an effort to address the concrete challenge of implementing the Anti-Bribery Convention in business transactions benefiting from official export credit and insurance support, the OECD Working Party on Export Credits and Credit Guarantees issued an Action Statement on Bribery and Officially Supported Export Credits. The Action Statement urged ECAs to: (i) inform exporters of the legal consequences of bribery in international transactions; (ii) invite a declaration from the exporter stating that the contract to be guaranteed or insured has not been obtained through bribery or corruption; (iii) refuse to approve credit or other support where there is credible evidence of bribery; and (iv) take appropriate action against a company whose bribery has been proved after credit has been provided, such as denying further payments, demanding a refund of sums provided, and referring relevant evidence to national law enforcement authorities.

### ***Implementation***

In 2002, the Working Party carried out a survey of measures taken to combat bribery in officially supported export credits. Transparency International also canvassed its national chapters in OECD member States and received similar feedback, which it reported to the Working Party.

The survey covers the measures that ECAs have put in place to fulfil their requirements under the Action Statement, the procedures that they have established to deal with suspected bribery and details of what their actual experiences with



bribery have been. Thirty ECAs from 28 OECD member States responded. The survey showed that ECAs began adopting some anti-corruption procedures, but that this effort was inconsistent across countries and not always comprehensive within the same country. For example, all but four ECAs now inform applicants of the legal consequences of bribery in international business transactions. All but two have also taken the additional step, as recommended in the 2000 OECD Action Statement, of introducing a warranty procedure that invites companies to state that neither they nor anyone acting on their behalf has or will engage in bribery in the ECA-supported transaction.

However, one in three respondents had not implemented the third step of the Action Statement, namely making it an institutional practice to withhold support for transactions if there is sufficient evidence of bribery. Also, nine ECAs did not deny compensation to companies in instances where bribery had been proved in a legal case. Furthermore, 16 of the respondents had not committed themselves to seeking to recover sums provided to companies convicted of bribery. Twelve had not institutionalized the requirement to inform the appropriate national legal authorities if they had sufficient evidence of bribery after they had given support. Furthermore, many ECAs had not adopted the practice of disclosing the names of applicants, the amounts applied for, and the countries to which the goods and services would be provided.

In November 2003, the OECD Working Party issued 11 best practice proposals to deter and combat bribery in officially supported export credits and recommended that they should be adopted as official practice by all ECAs. These recommendations built upon what was already practised in some ECAs, demonstrating that, if willing, ECAs are able to fight against corruption through innovative and constructive practices. Some of these best practices build upon the measures included in the 2000 Action Statement, for example requiring companies to sign a “no bribery declaration” to obtain ECA support. Others include: imposing a 5-per-cent ceiling on a project’s cost for the commissions of agents employed by ECA-supported companies; applying enhanced due diligence for agent commissions over the 5-per-cent ceiling; requiring companies to provide the agent’s details on all applications to ECA if the commission exceeds that threshold; requiring companies to state on their applications whether they have been debarred by any multilateral or bilateral financial institution from contracts with that institution or whether they have been found guilty of bribery in a national court; suspending support where there is “sufficient evidence” of bribery.

### ***Impact on human rights and challenges***

The OECD Action Statement on Combating Bribery and the best practice proposals constitute significant progress in acknowledging the importance of ECAs in the fight against bribery and in developing governance mechanisms through which ECAs may contribute to this effort. However, further progress is desirable.

For example, the OECD Working Party has not yet decided whether there should be a new action statement incorporating the best practices. Such a development would be yet another step forward, especially if a stronger action statement

included detailed guidelines regarding, among other things, the standard due diligence expected of ECAs, the circumstances under which enhanced due diligence would be expected of ECAs, and the concrete circumstances and evidence needed for ECAs to refuse assistance. Furthermore, guidelines could be included about the implementation of a transparent system for debaring companies convicted of bribery. A stronger statement could address the issue of disclosure of information by ECAs about the projects they support at the time of application for assistance and after the support has been approved.

Finally, in addition to the need for further progress on developing these important standards, the challenge of implementing them and monitoring compliance is significant.

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