



NEPAL:

LEARNING FROM UN HUMAN RIGHTS FIELDWORK

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Overview¹

“.....It has become apparent to all that the UN is as much in demand as in need of change....we are learning new ways to do what we do better....The fundamental objective of this reform effort is to narrow the gap between aspiration and accomplishment”

Kofi Annan, UN Secretary-General¹

The post-Cold War world has seen many states in, or on the verge of, human rights crisis. In response to such situations the 1990s has seen field-based international human rights work (expressly so labeled) at the heart of efforts to address such situations, (e.g. in Abkhazia, Bosnia and Herzegovina, Croatia and Kosovo) often during or in the immediate aftermath of conflict. Since then the trend has been towards increased use of field presence by the United Nations and regional actors such as Organisation for Security and Co-operation in Europe.

This paper analyses such human rights field presences through the voices of five societies afflicted by armed conflict: El Salvador, Guatemala, Rwanda, Burundi and Colombia. Section 2 outlines their perceptions of the UN human rights operations they have hosted. The discussions that formed part of the five case studies highlighted the need for circumspection as regards the impact of UN human rights operations. In the field of development, and more recently, humanitarian aid, the belief that *activity* is by definition necessarily positive is no longer commonly held. This is not yet fully recognised in the area of human rights. Section 3 notes that despite the explosion of UN human rights field activity since the early 1990s, none of its key components fielding human rights field operations has effective mechanisms to ensure they learn from experience. It argues that accountability for its human rights impact is a legal imperative for the UN, as well as being essential for the effectiveness and sustainability of the efforts involved. Section 4 highlights the crucial elements which must be in place if the UN is to ensure that it diligently learns from its human rights fieldwork. One such element is a system of meaningful participation of

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the host society in the design, implementation and evaluation of UN human rights fieldwork. This paper advances the concept of participation - not merely as part of effectiveness - but as a human right in itself. In this context, the authors propose a fresh approach to UN human rights fieldwork - a holistic process called Human Rights Support Programmes (section 5). The paper leaves it for readers to identify those lessons and imperatives most relevant to Nepal (many of which are outlined elsewhere in this collection). However, if the five country case studies served to identify one central lesson then it is that seemingly disparate conflict situations (and the human rights issues such conflicts raise) have more in common than divides them. The challenge is to identify, modify as appropriate, and act on such lessons.²

1. CONTEXT

From tentative beginnings in 1993 the UN Office of the High Commissioner for Human Rights (OHCHR) has become increasingly involved in placing staff in the field.³ It has continued to expand a rapidly multiplying matrix of 'field presences'. Some thirty of these are now in place. In addition, only a few years ago that Office's human rights technical co-operation involved one or two projects per year, without field presence. Now there is field work of a 'technical assistance kind' in over 40 countries - with a number of these accompanied by project offices in-country. Supply for such technical assistance cannot keep pace with invitations from states.

The nature and format of OHCHR's field presences has varied considerably, ranging from the deployment of two field officers in Zagreb (Croatia) with the mandate of providing support to the Special Rapporteur on Human Rights in the ex-Yugoslavia, to an office in Cambodia with technical co-operation combined with monitoring mandate, or the establishment of field presences linked only to the implementation of technical co-operation projects (Malawi, Mongolia, Gaza). The environments have

² Parallels that suggest themselves between the countries in the case study and Nepal include; the multiple underlying causes behind the conflicts, gross violations/abuses being committed by both sides to the conflict in a climate of impunity, the existence of a range of voices not directly involved in the conflict but who have a stake in any solutions that may be put in place to address it, the existence of a proposed human rights agreement pre-ceasefire, the dangers posed by the proposed militarisation of the wider population in the form of village defence committees, a civil society most active in the capital, widespread social-economic and political exclusion through discrimination (caste, social division, gender), low human rights demand combined with low expectations among the great majority of the population.

³ For the OHCHR, see <http://www.unhchr.ch/html> generally, and for field presences see <http://www.unhchr.ch/html/menu2/5/field.htm>; "The Future Directions of Human Rights Field Presences", Address by Bertrand Ramcharan, Acting High Commissioner at the Opening of the Annual Meeting of OHCHR Field Presences, Monday 17 November, 2003.

ranged from on-going armed conflicts to post-conflict settings, from violent internal tensions to peaceful democratic transitions.⁴ OHCHR field presence might have been perceived as “exceptional” only a few years ago, they are today a regular and substantial component of the Office’s work.

This is more than a mere expansion of previous activities - it is a watershed move in the implementation of human rights at field level. With this has slowly come a greater recognition in the UN and the international community that it must ensure that it learns from this experience. This is not least due to repeated recommendations of NGOs as well as by some donors such as the European Commission.⁵ However, for the most part those recommendations propose inadequate *ad hoc* reviews; or that relevant materials are held centrally as ‘institutional memory’. In reality, a more structural approach is needed - one which encourages questioning the current paradigm of human rights fieldwork (section 4 outlines the features of effective learning).

Over a decade after the first UN deployment of field-based human rights specialists in El Salvador (ONUSAL), there is no specific component of the UN with responsibility for human rights field operations. All indications are that responsibility and decision-making will remain *ad hoc* and fragmented among the Department of Peacekeeping Operations (DPKO), the Department of Political Affairs (DPA) and the UN Office of the High Commissioner for Human Rights (OHCHR).⁶ This fragmentation is a factor inhibiting organisational learning from experience.

⁴ See *Human Rights in Action* 1999, overview of field presences by OHCHR.

⁵ In particular in relation to its partnership with OHCHR in the post-genocide Rwanda field operation

⁶ European regional organisations (the Organisation for Security and Co-operation in Europe, the Council of Europe and the European Union) are also active, and expected to be increasingly so, in the field. This paper focuses on UN missions.

2. THE NEED FOR INFORMED DEBATE REGARDING IMPACT: FIVE CASE STUDIES

2.1 Stimulating debate - choosing case studies

From its inception in 1995 the *International Human Rights Trust* worked to stimulate and support discussion in societies which have hosted international human rights field presences.⁷ The different operations were not evaluated as such, but rather host society views of their human rights impact were identified through participatory methodology. The process also encouraged discussion with, and within, UN agencies and OHCHR on key issues. The aim was to stimulate on-going debate as to how such operations could be improved and what lessons should be learned for the future.⁸

During an eighteen month period between 1999-2001, the discussion covered the experience of El Salvador and Guatemala, Rwanda, Burundi and Colombia, each of which have hosted UN human rights operations or smaller offices.

The sample of countries chosen, and the methodology itself, evolved through engagement with key host society before and during the study. For example, voices in Central America made the case for Colombia to be included as a sample country so that civil society there could learn from the experience of their counterparts in Central America. This view was also held by the OHCHR Office in Colombia, which welcomed the initiative as a contribution to its own reflections concerning its role.⁹

In addition, the selected host societies were chosen for their variety in a number of respects. The case studies covered both Africa and the Americas. Two of the field

⁷ For details of the discussion methodology as well as the research and advocacy process, see *The Right to Participate in International Human Rights Fieldwork*, <http://www.ihrnetwork.org>.

⁸ The results were presented for discussion at the annual meeting of the OHCHR's Heads of Field Presences in September 1999. In April 2000, these results were also shared with relevant UN agencies, donor states and the High Commissioner for Human Rights in a forum which, apparently for the first time, brought together representatives of host societies and those who design or fund human rights interventions. The Partnership Forum brought focal points from the sample countries to pool their experience amongst themselves in the first instance and on the final day, had them directly relate that experience and recommendations to a number of UN agencies and donors such as the European Commission.

⁹ Subsequently, in 2002, the team was engaged to carry out what is thought to be the first independent, participatory evaluation of a human rights operation, at the request of six of that offices' donors. That report was presented to the donors who commissioned it: Canada, Norway, Spain, Sweden, Switzerland, USAID and OHCHR.

presences were fielded by the UN headquarters in New York as part of a multi-disciplinary peacekeeping operation working with UN military and civilian police as part of a UN-facilitated peace process. Three others were fielded by OHCHR Geneva during on-going armed conflict involving international crimes (including, in Rwanda and Burundi, acts of genocide). The case studies chose sample also ranged from the earliest UN human rights field presence (El Salvador 1991) to others that are on-going. The field presences ranged from a handful of human rights officers to several hundred. Individual case studies also varied greatly in terms of their perceived success.

The methodology used in the five case studies involved a two-year process of discussion with host societies. Visits were conducted to each of the five sample countries¹⁰:

- a) To meet as many relevant NGOs, umbrella bodies, and state bodies as feasible to introduce the issues and invite participation in the reflection process; and
- b) To encourage the process to continue afterwards: those met were invited to continue the reflection in an on-going process within their own organisation – as well as with other organisations. With the help of those met, a focal point was identified in each case to take the discussion further. The follow-up was designed by the focal points.

The issues for discussion were raised in the Trust's 1998 discussion paper "*Towards a Human Rights Partnership for Effective Fieldwork*"¹¹. The central issues included whether sustainable impact required meaningful host society participation in the design, setting priorities and evaluation of UN human rights fieldwork.

Despite their variety in terms of time, place, context etc. Major common themes emerged in the case studies of the five sample countries. These include:

- a) The primacy of participation in peace 'processes', human rights fieldwork and development
- b) Peace through human rights

¹⁰ In each case, the visit was facilitated by local counterparts among the community of human rights defenders: Laura Guzman, Immaculee Ingabire, Guillermo (Tato) Mezo, Veneranda Nzambazamariya, and John O'Mahony.

¹¹ Also available in French and Spanish, <http://www.ihrnetwork.org>

- c) Indivisibility of human rights and addressing root causes
- d) Accountability for impact
- e) Overall case studies' conclusions

Note: in the sections which follow, direct speech (*in italics*) of host societies voices highlight key illustrations.

2.2 UN Human Rights Fieldwork and the right to participate

Meaningful participation in decisions which affect one's life is a human rights issue. The right to participate in decisions which affect one's life is both an element of human dignity and the key to empowerment - the basis on which change can be achieved. Participation is the means to empowerment, to *become more powerful*. It concerns "the ability of local people to define local obstacles or problems, design and implement programs to address these problems and ultimately control local outcomes"¹²

Participation is both a *means* to the enjoyment of human rights, and a human right in itself.¹³ Participation is a composite, cross-cutting, concept inherent in international human rights law. It requires certain prerequisites (e.g. education, awareness of rights and state obligations, opportunity to organise etc) and in turn it contributes to healthy civil society, democratic decision-making etc and the vindication of human rights over time. The right to participate is under-pinned by the principle of non-discrimination.

The inverse of participation, exclusion, is itself one of the root causes of human rights

¹²Comment by Leo Smits, see also Ngone Diop Tine, Mark Meassick, Peter Koenig in an extraordinary process of on-line discussion regarding the World Bank's draft World Development Report with independent convenors, March 2000, see www.worldbank.org

¹³ Participation is also referred to specifically in international human rights instruments e.g. the Universal Declaration on Human Rights (article 21 the right to take part in the government, the will of the people as the basis of the authority of government, the right to vote); the International Covenant on Civil and Political Rights (article 25 the right to take part in the conduct of public affairs, to vote); the Convention on the Rights of the Child (article 12 one of its basic principles is respect for the views of the child and article 15 'safe spaces' in which they can be expressed); the Convention on the Elimination of Discrimination Against Women (participation of girls is a principle of 'paramount consideration' while article 14 refers to participation of rural women in the public and political life of their communities, and in particular in the design and implementation of development planning). On the regional level, the European Union, the Organisation for Security and Co-operation in Europe and the Council of Europe have been active in seeking to go beyond the universal minimum standards in relations to concepts of democracy and good governance. For example, the post Lome-IV negotiations concluded with the proposed new ACP-EU Convention recognising the participation of actors other than the central government as a matter of principle (article 4), "The Actors of the Partnership: On Stage or Off Stage?," Muthoni Mutiu, *Liaison News* No.5, January-February 2000.

crises and armed conflicts. A key proposition of this paper is that by failing to address exclusion and by applying a narrow concept of human rights, international interventions will fail to achieve their aims. The essential element is control: who makes decisions, where and how. The empowerment of those who have been historically excluded (through poverty and other causes) is at the heart of sustainable human rights change. Participation cannot be a “top-down” process, not least as existing power structures are unlikely to voluntarily give up sufficient power to bring about real change in the balance. Human rights change is only achieved by being effectively demanded across society as a whole. These fundamental principles apply no less to international interventions as nation states. This paper raises the issue of respect for the right to participate not by states, but in international interventions made in the name of improving the human rights situation.

In spite its clear basis in international human rights law, the common theme that emerged from the study was that meaningful participation is not conceived, or applied in practice, as a human right by the international actors involved, despite the variety of trends recognising its importance.

The need for participation is acknowledged and promoted in the closely linked fields of development and humanitarian action. Experience has seen it become accepted as a key means of improving the relevance and effectiveness of programming in these spheres. Since the 1980s, concepts of participatory monitoring and evaluation have entered the policy-making domain of larger donor agencies and development organisations. It is now seen as an essential element of good development practice.¹⁴ However, awareness of the priority of participation has evolved for development actors, less from a demand for empowerment (the basis for all human rights change) than from donor’s perspectives. Factors include the focus on ‘management by results’, growing scarcity of funds leading to a demand for demonstrated success, moves towards decentralisation and devolution etc.¹⁵

¹⁴ Most notably the Food and Agriculture Organisation (FAO), the United States Agency for International Development (USAID), the Danish International Development Agency (DANIDA), the UK Department of International Development (DFID), the Swedish International Development Authority (SIDA), the Norwegian Agency for International Development (NORAD), and the World Bank, see *Who Counts Reality: Participatory Monitoring and Evaluation: A Literature Review*, by Marisol Estrella and John Gaventa, Institute for Development Studies Working Paper 70. Particularly significant is the *Development Assistance Manual: Development Assistance Committee Principles for Effective Aid* of OECD published in 1992. It speaks of the need to ensure effectiveness through participation and through participatory evaluations.

¹⁵ Ibid., IDS Working Paper 70.

Even this minimal commitment to participation (premised on effectiveness) has not been fully implemented in practice. The language of *partnership* in the development and humanitarian contexts is rarely matched by the substantive reality. In 1998 the OECD acknowledged that “We have learned that because instilling a sense of local ownership, participation and a stake for all participants is extremely difficult, *true partnership is still relatively rare in the day-to-day practice of development co-operation.*”¹⁶

A human rights perspective, however, raises even more fundamental issues concerning participation. Going beyond the issue of effectiveness of interventions this perspective requires participation by host societies to be acknowledged and operationalised *as a right*. Unicef expressly acknowledges the right to participate as a human right, in part due to the express inclusion of the concept in the Convention on the Rights of the Child. In recent years it has sought to give effect to this.¹⁷ Yet, as with actors which see participation as solely an element of effectiveness, Unicef has acknowledged the difficulties of implementing participation in that there is “a predominant emphasis on involvement of young people in implementation (action), but only marginal involvement in analysis and assessment of the programme, identifying a clear need to shift from programming *for* to programming *with* young people.”¹⁸

UNDP and UNHCR have seen participation as a means of improving effectiveness for a decade or more.¹⁹ UNHCR acknowledges the human rights source of these policies (particularly the Convention on the rights of the child and the Convention on the elimination of discrimination against women). However, in practice participation is applied to only some aspects of its work. UNHCR’s people-oriented tools seek to improve the relevance of interventions, classically concerning the design and layout

¹⁶ *Efforts and Policies of the Members of the Development Assistance Committee: Development Co-operation, 1998 report*, OECD, Paris, 1999 Edition, p.14, emphasis added.

¹⁷ See for example *Youth Participation: Unicef’s Experience Working with Young People*, Programme Experience Series, Programme Division, New York, July 1999.

¹⁸ *Ibid.*, from the Preface by Sadig Rasheed, Director, Programme Division, emphasis in original.

¹⁹ Drawing on its own Executive Committee Conclusions and the fact that UNHCR “*as a UN agency*, is obliged to implement the Nairobi Forward Looking Strategies for the Advancement of Women,” see the *High Commissioner’s Programme: UNHCR Policy on Refugee Women*, submitted by the High Commissioner (undated publication), HCR Geneva; and Guidelines on the Protection of Refugee Women UNHCR, Geneva July 1991, paras 11 and 12. In the case of UNDP, see *Integrating Human Rights with Sustainable Human Development: A UNDP Policy Document*, January 1998; its watershed Policy document on Participation is said to have paved the way for this policy breakthrough on human rights. Significantly, the forthcoming human development report for 2000 has human rights as its theme, see www.undp.org.

of refugee camps.²⁰ However, in case of armed conflict, refugees tend not to be at the table negotiating with warring parties where the terms on which their enjoyment of the right to food or health care etc are agreed. These life or death issues of access and decisions about human rights priorities are commonly negotiated by international actors on their behalf (such as HCR²¹, Unicef or the Office for the Co-ordination of Humanitarian Affairs).

Participation, even when it is acknowledged to be rooted in human rights instruments, is frequently applied by the UN as if it were an optional aspect of effective programming. In addition, it has been restricted to certain types of UN interventions: The most common approach to participation is thus limited both conceptually and in terms of its implementation. It has evolved mainly in the area known as 'development' interventions without the benefit of input from, and in turn, without influencing, human rights specialists.

Frequently, UN political or human rights interventions are not seen as requiring participation – even as an element of effectiveness. Yet, the Convention on the Rights of the Child is as much law applicable for the UN's Department of Political Affairs and the Department of Peacekeeping Operations as it is for Unicef.²² However, participatory evaluation of the human rights impact of the work of DPA, DPKO – or of the fieldwork of the Office of the High Commissioner for Human Rights are as yet almost unheard of.²³

In September 2000, the Secretary-General called his report to the Millennium Summit and General Assembly, *We the Peoples: The United Nations for the Twenty-First Century*. The week-long NGO deliberations which were part of the preparatory process highlighted a vision of a:

²⁰ See for example, *A Framework for People-Oriented Planning in Refugee Situations Taking Account of Women, Men and Children: a Practical Planning Tool for Refugee Workers* by Mary B Anderson, Anne M. Howarth (Brazeau) and Catherine Overholt, UNHCR, Geneva December 1992.

²¹ See for example, Mark Cutts, *The Humanitarian Operation in Bosnia, 1992-95: the dilemmas of Negotiating Humanitarian Access*, Research Paper UNHCR, Geneva.

²² *When Needs are Rights: An Overview of UN Effects to Integrate Human Rights in Humanitarian Action*, Karen Kenny, a joint project of The Trust and the Humanitarianism and War Project, Occasional Paper No. 38, full text is available from: <http://hwproject.tufts.edu/publications/abstracts/op38.html>; or UN OCHA Reliefweb http://www.reliefweb.int/ocha_ol/civilians/resources/resources3.html.

²³ One exception is the participatory evaluation commissioned from the International Human Rights Trust by six of the donors funding the OHCHR Colombia office in 2002, see <http://www.ihrnetwork.org>.

“world that is human-centred and genuinely democratic, where all human beings are full participants and determine their own destinies”²⁴

One of the major themes which emerged from the five case studies was the perception that civil society was excluded from a range of human rights-related UN work: when it has facilitated peace ‘processes’, conducted human rights fieldwork or designed development processes (particularly the UN Development Assistance Framework which was piloted in Guatemala and Colombia). For example, UN work facilitating peace work is seen as having focused on those who are armed fighters - despite the common acknowledgment that military de-mobilisation alone does not create sustainable peace.

Illustration: Guatemala. The war in Guatemala was not one founded on a popular movement. When it came to negotiating peace, the majority of the population was excluded and power was brokered between power elites. On paper, MINUGUA emphasised the importance of participation through a sustainable improvement in the human right situation for peace to be durable:²⁵

“The State must create opportunities for participation and, as noted in the agreements, mobilise the capacities of all players in society, including indigenous organisations, local corporations, trade unions, women’s organisations, universities, non-governmental organisations and other representatives of society, to put forward constructive proposals”²⁶

Yet, the design of MINUGUA’s own interventions was seen as inhibiting this very participation. MINUGUA’s focus is centred on ‘both’ (the Government and URNG) parties to the peace agreements and equated this with a peace ‘process’. MINUGUA was seen as focusing its work almost entirely to the upper echelons of power groups. This approach is not only seen to be the case at national level in the capital, but also to have been replicated in its regional offices.

“For MINUGUA, the population does not exist”, “people see only the white

²⁴ *Millennium Forum Declaration and Agenda of Action Plans*, UN Press Release GA/9712, 26 May 2000, www.un.org. As an example of the civil society preparatory process, see www.wocsoc.org.

²⁵ Sixth report: “dialogue and participation, within the framework of mechanisms for the peaceful resolution of social conflicts, are essential for achieving lasting non-violent solutions”, para.156.

²⁶ *Ibid.*, para 145 and 159, Sixth report.

cars” and, as one MINUGUA official put it “people do not know what MINUGUA is”.

The study revealed widespread fear, anger and frustration deriving from the view that society at large was not seen as a key actor in MINUGUA’s work.

‘The population is being asked to endorse unknowingly agreements reached behind closed doors - but endorsed by UN’.

By agreeing to moderate such a peace ‘process’, the UN was seen as having reinforced the exclusion of civil society and the indigenous majority from the outset, with the resulting weakening of civil society.

2.3 Peace through human rights

As a matter of law and policy the UN is committed to the position that durable peace can only be achieved *through* human rights. In the five case studies, the UN was frequently perceived as acting as if there is a tension between human rights and peace, with continuing impunity seen as one result of such an approach.

Illustration: **Colombia**. Under the first Head of Office, the Colombia presence of the OHCHR was strongly criticized for appearing to accept the state’s argument that peace must first be achieved before human rights can be implemented.

Illustration: **Guatemala**. By MINUGUA’s own analysis: *‘impunity is the most serious obstacle for the enjoyment of human rights in Guatemala’*²⁷ Yet, the impression was widespread, after the Mincho and Gerardi Cases, that MINUGUA was prepared to offer impunity for maintaining a false ‘peace’. Such an impression caused wider damage to MINUGUA’s work.²⁸

²⁷“The majority of the violations noted by the Mission remain without response on the part of the State in terms of identification and due sanction of those responsible. The fight against impunity places a legal duty on the state to prevent violations of human rights, to seriously investigate, with the means at its disposal, the violations which have been committed within its jurisdiction. It is required to identify those responsible, to impose pertinent sanctions and to assure adequate reparation to victims. MINUGUA noted the link between impunity for La Violencia and the destruction of confidence in the justice system, faith in equality before the law - and the increasing wave of lynchings involving people ‘taking the law into their own hands’, 24 August 1998, “La Batalla Contra La Impunidad: recomendaciones del Director”, <http://www.un.org/Depts/minugua/verif7.htm>.

²⁸ For example, undermining its credibility in encouraging people to vote ‘yes’ in the popular consultation of 16 May 1999; making its verification reports seem less reliable; reducing its potential to contribute to the relations of confidence needed for dialogue.

Despite an internal UN investigation into this allegation and the Secretary-General's stated confidence in both MINUGUA and its Director – by 2000, MINUGUA had difficulty recovering its credibility. The two cases were seen to involve MINUGUA in “*a political decision to conceal human rights information in its own interest.*” It appears that the UN's institutional interest to have the operation seen to be a ‘success’ internationally mean that this was seen as the price to be paid to ensure the peace ‘process’ was seen to be on track.²⁹

In these examples, the UN was seen as acquiescing in human rights violations, allowing those responsible for ongoing killing impunity. This is seen as the opposite of what is needed if there is to be change in Guatemala, El Salvador or Colombia and many voices in the host societies saw this as a distortion of what the UN's role should be. Indeed, it is notable that the second OHCHR Head of Office in Colombia made a point of reversing his predecessors' perceived support for the military's ‘peace first’ approach.

Illustration: **El Salvador.** A key element of the peace accords agreed between the parties in El Salvador involved mechanisms to end impunity. The Truth Commission Report spoke of the right to truth, administration of justice and reparation to victims. Yet, as in Guatemala, impunity for political crimes is seen as intact in El Salvador. In both countries, amnesty laws were passed within days of the ‘Truth Commission’s reports.

The experience in both jurisdictions were seen as illustrating the dangers of relying on the ‘parties’ to the conflict as guarantors of human rights. The population's views and those of victims, or the requirements of international law, were not seen as being applied when the amnesty laws were adopted. While there has been some acknowledgement of those who died as combatants, there was no memorial to the civilian dead (such as the thousands killed in massacres or the human rights defenders tortured and killed by death squads). This led to the establishment of a committee by a broad coalition of civil society groups to demand a “Monument to Memory and to Truth’. One result of the UN-monitored peace process was said to be that thirty-year old Salvadorians do not know the truth of what happened during the twelve year civil war, while the Government and military continue to deny events and

²⁹At one stage, the confrontation between human rights NGOs and MINUGUA became a public one which some suggest was used by the extreme right wing to weaken MINUGUA. As there is no wish by NGOs that their concerns should aid any human rights violators, their relative silence since then, should not as such be read as approval of MINUGUA's work.

to cover-up the fate of disappeared and kidnapped children.

Another result in El Salvador identified was ongoing impunity, a '*privatised fear*' and endemic insecurity. El Salvador remains one of the most dangerous countries in the world, with more than 6,000 victims of violent crime per year – more than the total in the last three years of civil war to 1991.

These types of examples where the UN is perceived as seeing a tension between human rights and peace, have been criticized by international human rights NGOs. One of the common recommendations is that any human rights role of the UN should be strictly independent of any UN role in facilitating peace, including independent reporting lines, etc.

The case studies highlight the ultimate unsustainability of peace based on such an approach to short term political pressures. They also indicate the wider consequences for fieldwork in terms of loss of UN credibility.

2.4 Indivisibility of human rights and addressing root causes

Illustration: **Guatemala.** The appearance, but not the substance of 'democracy' was seen as having being emphasised in peace discussions. MINUGUA was said to approach elections "*as if they were a panacea*" despite Guatemala having an overwhelming rate of abstention.³⁰ The narrow focus on elections was widely seen as failing to stimulate "*the longer-term popular process of participation necessary*" to make such formal elements of democracy effective in practice. On the eve of the 'popular consultation' in which Constitutional reforms were presented to the people for approval (concerning the role of the army, the judicial and legislative organs and social rights), there was reported to be widespread ignorance of the content of the proposed reforms.³¹

Thus, despite improvements at the macro political level, life has changed little for the majority, Guatemala's indigenous population. As Judith Zur has observed, in words

³⁰ 90% and 78.9% for the August and October 1994 elections, respectively.

³¹ "Reformas: Si o No? se ignora contenido: one week from the popular consultation, lack of knowledge is evident", *Prensa Libre*, 10 May 1999. The changes proposed in the referendum were rejected by a slim majority of those voting on 16 May 1999, even though the changes had been encouraged by MINUGUA, national newspapers, the Government and the URNG.

with particular resonance for the future for Nepal in light of the introduction of 'Village Defence' forces:

"The conditions which gave rise to rural insurgency persist and the mechanisms of terror created to suppress it have been renamed rather than dismantled - and in many places, not even that: according to recent army figures, nearly 400,000 men are still participating in the civil defence patrols. Many communities have found that abolishing the post of military commissioner or patrol chief has not abolished the post-holder's power: after fifteen years of impunity, no alternative authority structures remain. To many Indians, "the truth is that the violence always continues."³²

The case studies also identified problems flowing from the failure to act on the indivisibility of human rights in practice. This has been an issue in UN fieldwork interpretation of its mandate.

Illustration: **Rwanda.** The UN human rights fieldwork in Rwanda was not seen as using a holistic approach respecting the universality, interdependence and indivisibility of the full spectrum of human rights. Economic, social and cultural rights were not monitored at all.³³ During the case study discussions, a number of these rights were emphasised as urgently requiring in-depth diagnosis in order to guide action in post- genocide Rwanda. For example,

- The right to shelter: A broad range of people were homeless such as survivors of genocide 'old caseload' returnees and internally displaced persons.

- The right to land: Both government and NGO officials expressed the view that land rights in Rwanda are of great importance. It is a potential source of conflict given its scarcity, overpopulation, and the mainly agricultural nature of the society.³⁴

³² *Violent Memories: Mayan War Widows in Guatemala*, Judith N. Zur, Westview Press, Boulder Colorado and Oxford, UK 1998, see Annex A.

³³ Despite the broad agreement with the Government that the HCHR would monitor the "human rights situation". Concerning the weak application of a holistic approach in the work of HRFOR, see Todd Howland, "Mirage, Magic or Mixed Bag? The United Nations High Commissioner for Human Rights' Field Operation in Rwanda", 21 *Human Rights Quarterly* 1 (1999).

³⁴ All the related issues to land have been regulated by customary law. A draft law is under its way aiming at defining land ownership and introducing "Proper Landing Rules"

- A particularly important aspect of the right to land concerned discrimination against women (above).

UN human rights monitoring in Rwanda lacked any gender analysis or perspectives. This was particularly criticised given that an estimated 75% of the population after the genocide were women and children raising a range of gender-specific human rights issues. The women also had the potential to lead the reconstruction and reconciliation, but their potential was not effectively engaged by the field operation.

In Rwanda, those met stressed that the UN's human rights work was simply not relevant to the lives of the great majority of Rwandans. Interlocutors highlighted the fact that only the enjoyment of the full spectrum of human rights could create the conditions for "*positive peace*" which they contrasted with "*negative peace*", meaning mere absence of war but without full enjoyment of human rights.

Illustration: **El Salvador:** What has been the legacy of ONUSAL in terms of the full spectrum human rights? There was said to be more space to exercise the freedoms of speech and association than previously. However, a more holistic approach was seen as needed if there was to be real improvements in the human rights situation in El Salvador. On the macroeconomic level, in late 1990s El Salvador experienced growth and manageable inflation. However, according to UNDP it *regressed* in the recent years in terms of its Human Development Index. Poverty affects 51% of the population and around one and a half million people survive in extreme poverty - a little more than a quarter of the population. Around 45% of people have no access to health services.

Many expressed the view that it is not tenable to identify El Salvador as a success in terms of human rights while it maintains a model of economic development that excludes the majority of the population.³⁵ Thus, while there is strong economic growth and the Bank of El Salvador influences other Central American banks – this is not seen as development. Concern has long been expressed that the sustainability of the peace process was not best served by the economic policies applied by the Government with the support of the international financial institutions.

Similarly, the situation concerning the human rights of women is also seen as having

³⁵ "The Big Challenge: Globalisation versus Human Rights", Walter Rene Palacios, Specialist in Co-operation and International Relations: CoLatino, 13 May 1999, <http://www.colatino.com>

regressed in the aftermath of the conflict – with the criminalisation and imprisonment of women for abortion, and reforms of the 1997 Penal Code which were seen as reducing the protection of women from domestic violence. In addition, former Government and FMLN combatants spoke of awaiting the land title promised under the accords, while hundreds rendered destitute by Hurricane Mitch saw central Government as ignoring their plight.

2.5 Accountability for impact.

It is significant that the UN human rights fieldwork in all five case studies were not seen as addressing human rights indivisibly, nor as addressing the human rights issues at the roots of the conflicts (previous sub-sections). UN human rights fieldwork in the five case studies were either established to verify compliance of parties with peace agreements³⁶ or involved a focus on fact-finding. The reality identified has involved an overwhelming focus on certain civil and political rights and reporting externally (e.g. to New York or Geneva) - with little emphasis on economic, social and cultural rights and a general failure to inform host society debate. This is no doubt linked to what the host societies identified as lack of accountability for impact - whether for UN activity in human rights monitoring or organisational development, as the illustrations in this sub-section demonstrate.

From the earliest human rights field presences, there is little indication of effective learning from one experience to the next. Such International discussion of field presences as has taken place has been characterised by an almost complete absence of three vital elements:

- a) meaningful input from the host society³⁷ in planning, designing, setting priorities for, and evaluating the impact of human rights operations
- b) systematic lessons learning through for example feedback from personnel serving with these operations; and
- c) Independent evaluation to determine strengths and weaknesses.

The absence of all three elements is illustrated in by the experience in **Rwanda**. This view was widely expressed in relation to the OHCHR human rights fieldwork in Rwanda. The aim of the limited monitoring it carried out, and the subsequent

³⁶ Those agreements have reflected to varying degree the requirements of international human rights and humanitarian law.

³⁷ *Host society* is used here to include not only host authorities at all levels, but also the range of civil society actors such as non-governmental groups of all kinds (farmers' co-operatives, church and women's groups, trades unionists, the media and so forth as well as human rights organisations as such).

reporting to the headquarters in Geneva was not clear to the host society: *"Monitoring seemed to be an obsession and an end in itself"*. Local human rights groups expressed frustration because the resulting reports were never shared with them.³⁸

In 1996, a multi-donor evaluation of emergency assistance was carried out in the immediate aftermath of the 1994 Rwanda genocide. Its terms of reference were not interpreted to cover the human rights response to the genocide, and it recommended that an independent evaluation of the human rights field presence in Rwanda be carried out:

*"The human rights operation in Rwanda is perceived among experts and informed people to have failed to accomplish its stated mission. Its impact on the prevention of human rights violations and promotion of human rights has been minimal."*³⁹

No such evaluation has to date been carried out by the UN, in spite of the widespread criticism of that fieldwork, including by staff seeking such an evaluation.⁴⁰

The same pattern of 'monitoring as if it were an end in itself' was found even where UN field presences had a clear holistic mandate to facilitate change. Any human rights development work carried out by the five UN presences tended to be *ad hoc*, dependent on individual UN official's personalities. It often met internal UN opposition from those who argued that influencing partners to promote their human rights based development work was not 'within the mandate'. UN recruits, and particularly senior managers, have been drawn from a narrow range of skills relative to the range required to facilitate sustainable change. Artificial, unhelpful distinctions between 'monitoring' and 'technical assistance' became common, while these terms are not clearly defined nor founded on principle.

Illustration: **El Salvador**. Generally, ONUSAL was seen as having interpreted its mandate passively and failing to maximise sustainability. Certain areas of ONUSAL's mandate with potential for engagement with the wider population (e.g. popular human rights education) are seen as having been ignored or marginalised within the mission.

³⁸ The methods of monitoring applied were not always considered credible and trustworthy (some reported allegations by villagers without on-site or any other verification).

³⁹ DAC Joint Evaluation of Emergency Assistance to Rwanda, March 1996, p.39

⁴⁰ The European Commission twice commissioned independent evaluations of its contribution to the HRFOR in 1995 by Roel von Meijenfeld, and in 1996 by Paul La-Rose Edwards and Ingrid Kircher, before deciding to end that contribution - copies on file with authors.

The operation was seen as having sidelined and replaced, instead of reinforcing, local human rights NGOs. When efforts were made to support local NGOs these were seen as being too little too late.

Several years had elapsed in the life of the UN mission before state 'institution-building' commenced, and when it did the approach concentrated on drafting laws and creating institutions.

The voices in El Salvador particularly raised the example of the Office of the Human Rights Procuraduria. That office had been highlighted as the centre-piece of human rights protection in El Salvador under the peace accords. This body has Constitutional status and wide powers, including the function of investigating legislative, executive and judicial arms of the state in matters of human rights. International donors, especially UNDP, funded the specialised training of staff in fact-finding, reporting, international jurisprudence, and so forth. There was confidence in the future of the office when a highly respected individual was first appointed to the post. When she chose not to seek a second term, the second incumbent was appointed. His appointment not only led to a lack of confidence, but his appointment by the Legislative Assembly is seen as a deliberate strategy to undermine the office. Some 80% of the staff whose training had been so invested in, were dismissed or left the office, in one year. Shortly thereafter, the second Procurer resigned in 2000 under pressure of allegations of corruption against him. The office is regarded as 'dead'. The experience of the Human Rights Procuraduria, illustrates meaningful participation as an element of sustainability. The 'parties' to the peace accords agreed to create this office. A few years later they in effect agreed to 'destroy it' by politicising the appointment of the Procurer. This is seen as raising questions as to the sustainability of approaches which amount to little more than deals between power elites to the exclusion of wider ownership and participation.

The Procuraduria also illustrates how important political support from donors is as part of a UN presence. As the lead agency responsible for capacity-building support to the Procuraduria, UNDP was criticised for not speaking out to protect the office whose creation it had supported, when the office came under threat.

2.6 Overall case study conclusions

The picture that emerges is that since 1991, human rights operations have taken place in an *ad hoc*, piecemeal fashion without a unifying concept regarding what they were established to achieve or the techniques to be applied towards that end.

Generally, disaffection, disappointment, frustration and fatalism were expressed by the voices of the five host societies – not the re-invigorated, strengthened hope for future one might expect. What does it mean for the El Salvador ‘model’ of human rights field work when it is said that:

‘The cycle of exclusion and violence has not been broken’

‘Human rights have not been placed on a solid foundation’

‘The mistake that both ONUSAL and some elements of civil society made was to ask “what can ONUSAL do” rather than what can host society do...’

The presumptions underlying the UN ‘model’ for human rights field presences have been subjected to similar questions by people in El Salvador, Guatemala, Rwanda, Burundi and Colombia. While the presence is seen as providing some immediate protection for the activities of human rights defenders, overall the Missions are not seen as maximising sustainability. The case studies identified a number of factors as seen as giving rise to this:

- Peace processes excluded the majority of people and the approach of the UN Mission did not counteract that exclusion.
- Exclusion was reinforced by the UN’s model of operation in peace processes, human rights fieldwork and in development. The appearance (e.g. elections), rather than the substance of sustainable democracy was pursued
- Structural causes of conflict were not addressed, in particular, discrimination in the enjoyment of economic and social rights and women’s human rights etc
- Impunity has not been effectively combated, but rather justice was compromised for short-term gains e.g. securing a ceasefire
- UN acted as if there was a tension between human rights and ‘peace’ allowing immediate political compromises to undermine the longer term sustainability of human rights

- Civil society was marginalised in the conceptualisation, implementation and in determining the priorities of UN human rights fieldwork and in evaluating the impact of these operations. The view was widespread that local human rights defenders had been weakened by the process with those actors left fearful of a time when the UN presence comes to an end.

One thing is clear. A comprehensive discussion of the human rights impact and sustainability of UN's human rights interventions, informed by voices of the host society, is long over due. In 1997 the UN Secretary-General's Programme for Reform had undertaken to integrate human rights in all the activities of the UN.⁴¹ Discussion of human rights approaches to development is now common within the UN's Development Assistance Framework.⁴² Similar efforts are on-going in the case of humanitarian action.⁴³ The Brahimi report's 'comprehensive review' of all the aspects of peacekeeping operations was a missed opportunity to address these issues in that latter context.⁴⁴

The great majority of operations have been reactive. Large human rights operations have only been established during or after a large-scale human rights crisis, involving armed conflict. The future requires more emphasis on a concept of early warning and preventive field human rights work. For these reasons, and whatever their merits in specific contexts, the human rights field operations of the past should not automatically be considered as offering readily transplantable models for Nepal.

3. THE LEGAL IMPERATIVE: LEARN FROM EXPERIENCE

The views expressed by the five host societies of the UN human rights field

⁴¹ *Renewing the United Nations: A Programme for Reform*, UN Doc. A/51/950, July 1997, paras. 78-79, hereafter the Programme for Reform.

⁴² The 2002 Nepal UNDAF is, on paper, seen as one of the more advanced examples of integrating human rights which the UN has to date achieved.

⁴³ See "When Needs are Rights: An Overview of UN Efforts to Integrate Human Rights", note 22 above.

⁴⁴ The General Assembly's Fourth Committee (Special Political and Decolonisation) endorsed proposals contained in the report of the Special Committee on Peacekeeping Operations for a comprehensive review of the whole question of peacekeeping operations (document A/54/839), resolution A/C.4/54/L.21, GA/SPD/179, 22 May 2000. Particularly relevant was the call for a comprehensive set of policies on UN civilian police activities, after a meeting of former police commissioners hosted by Spain on 4-5 May 2000 (Avila). See the Brahimi report and subsequent follow-up process: *Report of the panel commissioned to advise the Secretary-General on reform issues in UN peace and security*, known after the name of its Chair, as the 'Brahimi Report', S/2000/809; (2000) 39 ILM 1432. See also Nigel White, 'Commentary on the Report of the Panel on UN Peace Operations (The Brahimi Report)' (2001) 6 *JCSL* 127; Christine Gray, "Peacekeeping after the Brahimi Report: Is there a Crisis of Credibility for the UN?" 6 *JCSL*, 268.

presences concerned, strongly indicated the need for the UN to learn from that experience. In addition, there is a need to review progress in light of the impact of the establishment of OHCHR and the UN system's policy commitment to 'full integrate' human rights in all its work. This is not only a practical policy commitment, this section outlines why effective organisational learning in this context is also a *legal imperative*.

The need to learn how to 'fully' integrate human rights is not only a policy commitment, but a *legal imperative* for the United Nations. Some might suggest that to regard the UN as legally responsible for its impact on the enjoyment of human rights may be contrary to international public policy as it risks hampering work which is overall in the public interest.⁴⁵

In fact, the question is one of general application in human rights law: Should praiseworthy motivation or a lack of intent to negatively impact on human rights diminish or remove legal responsibility? The trend of human rights law suggests that good intentions are not the issue when it comes to human rights - the impact and actual effects of actions are what matter.⁴⁶ As it is, international legal responsibility of states can be activated even by inadvertent, unintended human rights violations or those resulting from incompetence of their state agents.

Elsewhere, one of the co-authors has outlined the main legal bases on which UN responsibility for compliance with international human rights law is founded, highlighting the importance of the UN Charter in this context.⁴⁷

⁴⁵ However, this suggestion becomes less compelling when it is recalled the UN actions cover a very broad spectrum of activities and interests. Indeed, it might be likened to confusing *jus in bellum* with *jus ad bello*.

⁴⁶ Simply put, the end does not justify the means. Assuming NATO's statement that it bombed Serbia "due to President Milosevic's fundamental challenge to the values of democracy, human rights and the rule of law" to be the case, and that this would be lawful grounds for use of force under international law - this is entirely separate from the question of whether war crimes were committed by NATO in bombing refugee convoys or TV stations, see statement from Javier Solana, NATO Secretary-General at the Washington Summit marking the 50th anniversary of the alliance, BBC Radio 4, 23/4/99. Similarly, for other non-state actors, the mere fact that trans-national corporations create employment (providing a public benefit, and helping vindicate the right to work) does not mean that the human rights framework is non-applicable to their activities. A human right approach looks also at the manner in which jobs were created (such as conditions of work, are trades unions allowed, are wages fair, is child labour exploited?)

⁴⁷ Karen Kenny, "UN Accountability for its Human Rights Impact: Implementation through Participation", in Nigel White and Dirk Klaasen (eds), *The UN, Human Rights and Post-Conflict Situations*, Manchester University Press 2004. The contrast between this law applicable and current practice is illustrated with practical examples the nature and extent of the vacuum of UN accountability. The vacuum extends to decisions made at the political level and encompasses bureaucratic decisions which, on their face, violate international human

In addition to the main legal bases, two landmark developments at the junction of law and policy are of importance here. These developments strongly reinforce the trend towards recognition of legal responsibility for human rights on the part of the UN.

Policy of UN member states: evidence underscoring member states view that the UN is accountable for human rights is found in the Vienna Declaration and Programme of Action agreed in 1993. The Declaration called on all agencies of the UN to (inter alia) engage in the formulation, promotion and *implementation* of human rights. In the manner familiar to states parties to human rights treaties, UN actors were asked to report back five years later on *their progress* in implementing the action programme.⁴⁸

Interested UN actors were invited by the Office of the High Commissioner for Human Rights (OHCHR) to submit their reports.⁴⁹ There is no indication that that Office invited those UN elements who ought to have been 'interested', and ultimately the actors who did provide human rights reports were self-selecting. Thus, five years later, reports were submitted by the following United Nations bodies and organizations: Department of Public Information of the Secretariat, United Nations Conference on Trade and Development, United Nations Development Programme, World Food Programme, Office of the United Nations High Commissioner for Refugees, United Nations Centre for Human Settlements (Habitat), UNAIDS, International Labour Organization, Food and Agriculture Organization of the United Nations, United Nations Educational, Scientific and Cultural Organization, World Health Organization and the United Nations Industrial Development Organization. Significantly, though other Departments of the Secretariat did so, no reports were received from the UN's Department of Political Affairs or the Department of Peacekeeping Operations even though on a daily basis their work has far-reaching human rights implications.

Policy of the Organisation: the Secretary-General's Programme for Reform

The second recent milestone is the Programme of Reform announced by the UN Secretary-General Kofi Annan on 14 July 1997.⁵⁰ Designed to streamline the UN's

rights law. More broadly, it also includes UN acts or omissions which have this *effect*.

⁴⁸ Follow-up to the world conference on human rights: five-year review of the implementation of the Vienna declaration and programme of action -Interim report of the United Nations High Commissioner for Human Rights, E/CN.4/1998/104*, 20 February 1998.

⁴⁹ For the mandate of that Office, see General Assembly Resolution 48/141 of 20 December 1993.

⁵⁰ Report of the Secretary-General on *Renewing the United Nations: a Programme for Reform*, to the General Assembly, A/51/950, 14 July 1997. See also the Report of the Secretary General. *Strengthening of the United Nations: an agenda for further change*. A/51/387, 9

work while improving its co-ordination and management structures, it acknowledges human rights both as a principal goal of the Organisation and a means by which its other goals could be advanced: *“Human rights are integral to the promotion of peace and security, economic prosperity and social equity....Accordingly, the issue of human rights has been designated as cutting across each of the substantive fields of the secretariat’s work programme (peace and security; economic and social affairs; development co-operation and humanitarian affairs).”*⁵¹ As a potentially important mechanism for ensuring UN accountability, four Executive Committees were established, at heads of agency level, to bring greater coherence to activities across the UN system. Reflecting the perceived need to integrate human rights fully into each of the major functional areas, the UN High Commissioner for Human Rights became a member of each of the four Committees.⁵²The functioning of these ExComms (as they are inevitably called) is not generally transparent and in need of research and analysis. Crucially, consideration is needed as to the concept of human rights applied.⁵³

As an example of such a process, in January 1998, UNDP published its strategy for supporting the mainstreaming of human rights throughout all the UN’s activities:

*“Whether we are working for peace and security, for humanitarian relief, or for a common development approach and common development operations, we are all concerned with ensuring the inherent dignity of the human person, with the enjoyment of human rights.”*⁵⁴

In effect, in his Programme for Reform, the Secretary-General was in reality acknowledging Article 1 of the UN Charter as underscoring the policy of the Organisation - fifty years on.

September 2002.

⁵¹ Ibid.

⁵² For examples of progress in one functional area of UN activity, see *When Needs are Rights: An Overview of UN Efforts to Integrate Human Rights in Humanitarian Action*, note 22 above, See also William G. O’Neill, *The Current Status of Human Rights Mainstreaming, Review of Selected CCA/UNDAFs and RC Annual Reports*, 11 April 2003, paper prepared for the Second Inter-Agency Workshop on Human Rights Based Approaches in the Context of UN reform; See also *Growing the Sheltering Tree: Protecting Rights Through Humanitarian Action*, published by UNICEF on behalf of the Inter-Agency Standing Committee 2002.

⁵³ It was suggested in conference discussion that these Committees, far from being the high-level fora for advancing the full integration of human rights have been used merely for information exchange. Decisions are said to rather be made at the Senior Management Group. See previous note for the varying approaches to ‘integrating’ human rights applied by eight UN agencies in humanitarian action.

⁵⁴ *Integrating Human Rights with Sustainable Human Development: A UNDP Policy Document*, January 1998, Foreword by James Gustave Speth, Administrator, UNDP, p.iv.

The above-mentioned law and policy bases require that international human rights law be applied in practice in all the UN's work. The Charter provides the legal basis through which the UN can be held accountable to international human rights law, reaffirmed by the two important developments of the *Vienna Declaration* and the *Secretary-General's Programme for Reform*. One of the practical effects of this legal base is that UN mission mandates such as Security Council resolutions, Status of Forces Agreements (SOFAs), terms of engagement, terms for the negotiation of humanitarian access etc. must all be interpreted so as to ensure compliance by the Organisation with international human rights law. Furthermore, it necessarily means that UN peacekeepers have an inherent human rights mandate and obligations directly sourced in the Charter. These cannot be over-ridden by a Security Council resolution, such as those that are traditionally regarded as providing a mission's 'mandate'.⁵⁵

Most of the large human rights operations considered during the study occurred prior to the foundation of the Office of the High Commissioner for Human Rights. Others were undertaken without meaningful input from the Office. The advent of that Office ten years ago presented opportunities for creative leadership based on law and principle. That Office is also the focal point for the full integration of human rights. It is time to review progress.

Thus, field human rights tasks are no longer seen as the preserve of specialist "human rights operations". The UN Secretary-General's reform package aims to integrate human rights in all the UN's activities as a shared responsibility. Past human rights field operations generally did not have the benefit of working with UN agencies whose human rights responsibilities were so expressly, and clearly, acknowledged. The new landscape raises a number of questions. Specifically how are field partners such as UN Development Programme, UN High Commissioner for Refugees, Unicef, the departments of Peacekeeping Operations (military and police personnel), Political Affairs and others adapting to meet their field human rights responsibilities? And linked to this how do they relate their work to that of the High Commissioner for Human Rights in the field (and vice versa)?

The "violations" approach to legal responsibility has limited practical effect. However,

⁵⁵ This contradicts the suggestion that the lack of 'clear' mandates have prevented UN forces from evolving with the context, contributing to passivity faced with massacres. See, for example, the Brahimi Report, note 43 above.

it is argued that the UN must, as a minimum, show due diligence in its efforts. To do so, the essential minimum is that the UN and its components must have effective learning systems which seek to prevent negative human rights effects flowing from their work, and to identify and correct these effects where they emerge. This “Management System” approach requires assessing actual human rights impacts with meaningful participation of the society affected. One means to achieve this is a proposed OHCHR Learning Resource Centre.

In conclusion, it is a legal imperative that the UN show due diligence and learn from its human rights experience. Section 2 highlighted, from voices of five host societies, the extent to which practical experience reinforces this case. Both law and practice provide persuasive reasons for human rights fieldwork to learn from the UN experience. The next question is: how should the UN go about learning effectively?

4. EFFECTIVE LEARNING

4.1 UN Context

In the light of the challenges outlined above, it is no surprise that in recent years there has been a dramatic increase of pressure towards ‘lessons learning’ for the UN. A range of units, office and inspectors have been established or appointed for the in-house evaluation in a number of agencies, from UN High Commissioner for Refugees to the Department of Peacekeeping Operations.

These mechanisms, across a number of agencies, are fragmented with various strengths and weaknesses. While OHCHR has yet no effective learning process regarding human rights fieldwork, the need remains for an appropriate means of challenging current thinking and practice – both for its own activities, and to allow it to contribute to the coherent and consistent integration of human rights throughout the UN system as a whole.

4.2 What is effective learning?

The very word ‘learning’ has lost clarity of meaning in contemporary speech. It is sometimes equated with taking in information classroom-style, or the mere compilation of experiences - this is not of itself learning. Learning is not a product suddenly unveiled for all the world to see, but rather is a process.

- Learning requires a cyclical process of inputs, analysis, outputs, dissemination and auditing.
- Managers need to promote learning so that it gradually emerges as part of an organisation’s culture - with learning understood, not as an occasional

indulgence, but as a continuous necessity.

- The process should encourage thinking 'outside the box' which questions assumptions and beliefs of an organisation, rewards enquiry, challenges assumptions while reinforcing first principles.
- Generally, internal opposition to learning processes *per se* is common because learning involves change. This may include managers' fear of being undermined, fear of failure, and so forth.

Systematic de-briefing of UN field staff is often seen as the goal - sufficient for learning from experience. Yet, even if it were in place, this would not ensure learning. This becomes clear after examining the ways in which many UN agencies and other field operators manage their efforts to learn from field experience, such as Unicef, the High Commissioner for Refugees, Department of Peacekeeping Operations, UN Volunteer Programme as well as the Organisation for Security and Co-operation in Europe, International Committee of the Red Cross and a cross-section of NGOs.

- Broader inputs are needed. Section 2 illustrated the need to listen to the voices from the host society. A range of voices must be actively sought out and in the process strengthened, beyond routine feedback from staff, at headquarters and the field:
 - a) Society's input of priorities, views, suggestions, proposals and evaluations
 - b) partner UN and other international agencies
 - c) non-governmental organisations
 - d) academic research networks.⁵⁶
- These inputs will change nothing without clear responsibility for ensuring learning. While internal reviews or evaluations are now more common, alone they are not adequate. To be effective they need to be marked by independence, distance from the work evaluated, to be linked to individual or organisational accountability for performance and have a responsible proponent to ensure implementation of needed changes in a defined time period.
- Learning culture: The constraints on UN human rights fieldwork are not merely financial. Such limits also flow from what has been called a UN culture

⁵⁶ Indeed, in the absence of internal channels nurturing feedback from the experience of staff, several of former human rights officers have written in the academic literature - yet through this channel there is still is no focal point responsible for considering the practical application of their recommendations.

of impunity, a tendency towards defensiveness in response to criticism, an atmosphere which does not encourage creativity or initiative, and lack of effective auditing of implementation of improvements. Thus, beyond clear responsibility for learning, the pro-active learning, questioning culture within the organisation is needed.

4.3 The Need for OHCHR to Provide Leadership in Learning

In the above context, it is clear that inputs from various human rights field presences need to be pooled - regardless of whether the operation was managed by UN New York or UN Geneva. Yet, the UN learning units established in the 1990s have mainly developed in isolation from each other, with little cross-fertilisation among them as regards harmonisation of policy, methodology, procedures, doctrine and principle etc. Each time the wheel is re-invented - with the risk of repeating earlier errors - or failing to try to replicate earlier successes.

Thus, beyond the individual learning needs of field staff, in the UN system as a whole, there is a need for effective guidance and leadership in the development of policy, doctrine and field methods. The human rights actor with the mandate to provide leadership as a focal point for all UN human rights activities is the OHCHR in Geneva. Like his predecessors, the acting High Commissioner intends to ensure leadership on the integration of human rights across the UN system fully in keeping with the mandate received from the General Assembly and the Vienna Declaration and Programme of Action in 1993. In addition, the UN Secretary-General is committed, in his Programme for Reform of the United Nations to the integration of human rights in all UN activities.

A former High Commissioner has stated that:

“While I realis[e] that not all UN agencies and programmes [speak] the technical language of human rights, they all [do] work on human rights...the United Nations, in many ways and under many names, is undertaking the difficult work to strengthen human rights and reach people in practical ways daily so as to better own their own lives”⁵⁷

⁵⁷Statement by Mary Robinson, (then) UN High Commissioner for Human Rights, made to the Third Committee of the General Assembly, New York, 14 November 1997. On the Programme for Reform, see generally UN Doc. A/RES/52/12, 12 November 1997; UN Doc. A/52/L.72/Rev.1, 19 December 1997.

Following a two year research process, detailed recommendations for the establishment of a Learning Resource Centre have been proposed to address the challenge of UN organisational learning, in light of the opportunities presented to it in the UN system by the Secretary-General's Programme for Reform.⁵⁸

⁵⁸ See *Learning - to Integrate Human Rights*, by Karen Kenny, <http://www.ihrnetwork.org>.

5. A FRESH APPROACH: HUMAN RIGHTS SUPPORT PROGRAMMES

"It is about time to consider beneficiaries of human rights missions as partners"

- Burundi participant

"Human rights belong to the people they are not the property of governments"

- Unicef El Salvador ⁵⁹

5.1 A fundamental re-think is needed as regards the aim, attitude and methods of international human rights field activities,⁶⁰ which recognises the priority of a preventive approach of long-term engagement and active learning from the decades of trial and error concerning participation in development.

5.2 Society should be understood as comprised of many varied agents of change including women and other actors whose very disempowerment may have given rise to the crisis in the first place and meaningful on-going participation designed accordingly. That such participation takes time and resources needs to be acknowledged at the outset. Meaningful participation must not be limited to voting in elections. It is an on-going process of inclusion involving:

⁵⁹"Los derechos humanos pertenecen a los pueblos - no son la propiedad de los gobiernos"
Unicef Advert, CNN español, San Salvador TV, May 1999.

⁶⁰ Based on work of International Human Rights Network in Nepal for DFID-British Embassy in 2002 and for National Human Rights Commission- UNDP in 2003.

- Actively seeking out the voices of those who carry moral weight in society and who are truly representative (not just those with past political power, high profile NGOs in the capital etc) and ensuring that those voices are heard and have real influence.

There are various moments and levels where participation is needed, including:

- Diagnosis of the problems to be addressed
- Design of international interventions
- Interpretation of their mandate
- Setting of priorities and their implementation during the life of the intervention
- In its follow-up, and
- Evaluation of its human rights impact.

5.5 Guiding principles of meaningful participation include that it be:

- Community-based as well as national in focus
- On-going
- Founded on equal partnership
- Non-discriminatory and
- Informed through effective access to information.

This meaningful participation will not simply 'happen'. It must be actively planned and ensured as part of these international interventions even when it is not expected or demanded. It is the essence of partnership that participation in itself be respected as a human rights issue.

5.6 Those mandating, funding or fielding international interventions, including all the actors of the UN system, should aim to premise their work (regardless of whether the work is called development, facilitating political negotiations or human rights work) on a principle of participation.

5.7 The right to participate is an essential element of the commitment of the Secretary-General to integrate human rights in all the work of the UN. As focal point for human rights in the UN system, the role of ensuring meaningful participation is inherent in the mandate of the Office of the High Commissioner for Human Rights (OHCHR). It should seek a comprehensive approach to conflict and ensure participation in all the UN's interventions within a particular country, from political peace negotiations to the establishment of development priorities - as well as its human rights presences. This role is in addition to the direct roles of other UN actors such as the Department of Political Affairs or the UN Development Group.

The UN should act as a model of participation to demonstrate how governments themselves should relate to their populations. In turn, the OHCHR should act as a model of participation for the rest of the UN system. This includes being an effective advocate *vis-a-vis* other international organisations on the priority human rights concerns of the host country.

5.8 By demanding meaningful participation, the host society also seeks accountability and the human rights impacts of international interventions need to be assessed through such participation. The OHCHR should lead the UN system by ensuring that such an on-going process of learning from experience is developed. A first step would be to require all actors report on the ways in which the right to participate has been enhanced in and through their work.

5.8 Donors too have the responsibility to ensure that international interventions, whether by the UN or other international organisations, learn the necessity of respecting the right to meaningful participation.

5.9 These recommendations have practical implications for selection, training and working methods. They also illustrate that cross-fertilisation of 'human rights' and 'development' experience is essential. The wheel does not have to be reinvented. Rather the international actors need to pool efforts through cross-disciplinary learning.⁶¹

5.10 A new approach, a new name: The terminology proposed to encapsulate such

⁶¹ Signposts for such learning from the broad experience and resources available are included in Part IV of the report, *The Right to Participation Human Rights Fieldwork*. The issue of organisational learning from human rights fieldwork and the potentially pivotal role of the OHCHR were considered in detail by the IHRT in 1998-99, *Learning - To Integrate Human Rights*, available from www.ihrt.org.

future fieldwork is Human Rights Support Programmes. This is because 'support' conveys the fundamental shift in attitude towards a constructive partnership based on the primacy of the host society. It conveys the notion of assisting and reinforcing rather than replacing local efforts. Programme emphasises process, long-term vision, with sustainability at the core.

5.11 Prevention: The Support Programme should facilitate the early involvement of the High Commissioner for Human Rights in situations which have not yet reached emergency-level, thus enhancing local legitimacy. In view of the widespread need for Support Programmes, such preventive programmes should be the norm, rather than exceptional.

5.12 All Human Rights Support Programmes should necessarily conduct *diagnostic monitoring*, to analyse, on an on-going basis, the precise source of weaknesses in the protection of human rights. Reflecting the principles of international human rights law, additional methods and indicators should be developed and applied for diagnosis of the economic, social and cultural rights situation, respecting the indivisibility and inter-dependence of rights in practice. Such diagnosis should aid in the identification of root causes of human rights problems and based on this identify priority areas for intervention: namely those areas which will redress root causes and provide potential multiplier or knock-on effects towards improvement of the overall human rights situation.

Based on such analysis, the Programme would follow-up its own recommendations concerning action by the state at all levels, non-state actors, private sector, other UN agencies, local non-governmental organisations and so forth and facilitate the fulfillment of the Programme's recommendations. The elaboration of recommendations is meant to address those actors competent to adjust their attitudes and policies (or laws) to improve the effective enjoyment of human rights. At the same time, work with non-state actors can lead to a diagnosis of their role in improving the overall human rights situation and recommendations and/or concrete implementing activities with non-state actors to increase their capacity to play a constructive role.

UN human rights fieldwork is not necessarily about fixing problems directly, it is about supporting and developing local mechanisms and structures which will be able to prevent and where necessary fix such problems in the future. Linked to this, as part of its capacity building, a Support Programme would apply a presumption in favour of employing elements of the host society.

5.13 Evolve by learning from experience: Support Programmes should be built upon systematic debriefing of all staff and upon the independent evaluation of past human rights operations with meaningful input from the host societies concerned.⁶² In addition, the techniques should be premised on cross-fertilisation of human rights and development thinking.

5.14 Measure success by sustainability: success would be measured by the degree to which field presence contributes to a sustainable improvement in the human rights situation. That end is not achieved by seeking external solutions - but rather by engaging with, and facilitating, the host society's efforts.

Often the urgency and scale of the challenge presented by human rights in the field seem daunting. It has been suggested that the human rights actors in Nepal are like a forester, so overwhelmed by the number of trees which need to be cut down that it is difficult to take time to stop and sharpen the axe. Faced with a human rights emergency it is always difficult to make time to reflect on whether it really the right tree is the one being cut down or indeed that the most effective actor is doing so. While recognising the difficulties of learning in the context of a conflict that is ongoing - one thing is clear; learning is not merely an option, but an imperative. For those actors seeking human rights solutions for Nepal, whether through human rights monitoring, conflict mediation, development planning etc the task is to adapt, heed build on what has gone before.

⁶²What is meant by 'effective learning' is explored in detail in *Learning -To Integrate Human Rights*, <http://www.ihrnetwork.org>