

Global Evaluation of the Application of a Human Rights Based Approach to UNICEF Programming

Executive Summary

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Executive Summary

As part of its commitment under the Medium Term Strategic Plan, UNICEF commissioned a Global Evaluation of the Application of a Human Rights Based Approach to UNICEF Programming in 2011. The goal of the assignment was to evaluate UNICEF's experience in understanding and implementing a Human Rights Based Approach to Programming, with a particular emphasis on the period from 2007 to the present. It was to do so by examining whether there is adequate understanding of, and commitment to, HRBAP throughout the organization, by elucidating strengths and weaknesses related to the approach, and by identifying good practices and lessons learned in HRBAP to help UNICEF to improve future programming.

The evaluation was overseen by a reference group and was managed by UNICEF's evaluation office. Under their guidance, the evaluation team developed its independent conceptual framework to assess HRBAP application by focusing on the programme level and the corporate/institutional level, and by using a cross-cutting lens aimed at understanding the effects of country context (with particular attention given to humanitarian environments), Focus Area, and programming phase. It also articulated, in concert with UNICEF and an HRBAP expert, the five core principles that subsequently guided the evaluation: normativity, participation, non-discrimination, accountability and transparency.

The evaluation drew upon both qualitative data (collected from interviews, focus groups and existing survey data) as well as quantitative data gleaned from extensive document reviews and field observations by evaluation team members. More particularly, the data gathering phase consisted of six Country Office missions to countries deemed representative in terms of their contexts: Senegal, Kenya, Haiti, Serbia, Cambodia and Chile, as well as four Regional Office missions. Information was also gathered on the situation in 38 Country Offices, including the six offices in which missions were carried out, through document reviews and telephone interviews. The enabling environment was evaluated through key informant interviews with stakeholders inside and outside of UNICEF, and with review and analysis of relevant documents. Finally, data from the Harding Survey that focused on capacity development and leadership on HRBAP for UNICEF staff (see section 2.1.5 for more details on the survey) was used as a basis for data on knowledge and understanding of HRBAP.

Conceptual Understanding of HRBAP

The evaluation found that UNICEF staff's understanding of HRBAP varies considerably. It also found that there is coherence across UNICEF and UN policies and strategies regarding HRBAP, including good integration within sectoral strategies. The emergence of the aid effectiveness agenda, coherence across the UN system and new ways of engaging in humanitarian situations have created new opportunities and challenges for the integration of HRBAP, and UNICEF has taken some positive steps to lead in the thinking around these issues. Also of critical importance is the lack of clear harmonization between UNICEF's focus on equity and HRBAP, leading to some confusion amongst staff and human rights experts alike. The evaluation found that HRBAP and equity are reconcilable but that additional efforts need to be made to clarify remaining issues. And while HRBAP and results-based management are compatible, there are obstacles to their being concurrently applied.

Application of HRBAP

The component of the evaluation that focused on the application of HRBAP at the global level found that UNICEF is a leader on the approach, based on its underlying programming and reporting related to the Convention on the Rights of the Child. UNICEF's global leadership role on HRBAP is echoed by its playing a similar role within the UN system, though it bears underlining that its engagement with certain human rights actors such as the CEDAW Committee and the UN Permanent Forum on Indigenous Issues could be more structured. It was noted that UNICEF has played a key role in

integrating HRBAP into various humanitarian and emergency frameworks, and has also played a proactive role related to HRBAP in its work arising from UN Security Council resolutions related to women, peace and security and children affected by armed conflict.

At the country level, there was variation in terms of the application of the various HRBAP principles by UNICEF. More particularly, normativity was the best applied principle, while the application of the principle of participation was more mixed due to a lack of explicit references to how programmes are affected by the participation of rights holders, the lack of a common understanding of the principle within UNICEF, and external political and cultural constraints. The application of non-discrimination was found to be satisfactory to weak, with a lack of strong, disaggregated data making it difficult to identify and thus target the most vulnerable. The application of transparency was similarly satisfactory to weak, reflecting positive efforts by UNICEF COs to promote the transparency of duty bearers and their lower level of success at ensuring the transparency of rights holders. The application of the principle of accountability was largely satisfactory, as a result of a lack of documentation on accountability mechanisms and of systems of complaint or redress within government or UNICEF programmes.

The evaluation also looked at the application of HRBAP in the three phases of the UNICEF programme cycle at the country level. At the programme preparation stage, it found that the approach is well applied and well integrated, but that insufficient data hampers identification of – and thus programming targeting – vulnerable groups. The programme implementation stage was found to be weaker due to vulnerable groups being excluded for a wide variety of generally external reasons, though there were some commendable efforts by various COs to reach such groups. The complexity and diversity of the various reasons for exclusion in turn make them difficult to overcome in a systematic manner. And at the monitoring and evaluation stage, insufficient attention is being given to HRBAP, especially in terms of its evaluation, despite some good practices.

Still another lens of analysis in the evaluation's consideration of the application of HRBAP at the country level was by UNICEF Focus Area. In Focus Area 1, it found that an effort has been made to incorporate HRBAP principles but that only normativity, and to a lesser extent non-discrimination and accountability, were well integrated. Of note is that many staff seem to erroneously conflate human rights in general with HRBAP in particular, and many FA1 specialists do not see the link between HRBAP principles and their own decision-making. Focus Area 2 demonstrated a strong HRBAP focus, especially for normativity (due to strong linkages to key global policies and conventions in UNICEF documentation) and participation (as a result of strong participatory structures being in place). Non-discrimination was the weakest principle, as a result of inequalities related to such characteristics as gender, disability and geography, as well as a lack of strong data that could undergird better FA2 programming. The evaluation found that more work needs to be done to integrate the principles of HRBAP into programming under Focus Area 3, though the principles of normativity, participation and accountability are relatively better integrated than the other two. It also found that FA4 programming was the strongest amongst the four Focus Areas reviewed in depth, at least partly because the FA itself is more strongly rooted in HRBAP norms, and as a result of the efforts by UNICEF's Child Protection Section. Regarding Focus Area 5, UNICEF has a good track record in advocating and forming partnerships aimed at advancing children's rights, yet could still do better through stronger and more systematic engagement on sensitive child rights issues and broader human rights issues as well as by making better use of Regional Offices in advocacy.

A final lens for looking at the country level application of HRBAP was the country context, with a particular focus on humanitarian settings. In general, country context issues were found to both enable and constrain the application of HRBAP, in diverse ways. Regarding normativity, the existence of a strong rule-of-law system was found to be a key determining factor since it gives rights holders a formal means for claiming their rights. Linked to this, participation was found to be negatively impacted in weak, undemocratic and fragile states because it becomes difficult to identify

appropriate government partners. The principle of non-discrimination is affected by weak capacity and infrastructure – particularly in terms of communication – that hampers the ability to collect data crucial to identifying and thus orienting programming toward most vulnerable groups, and is more generally affected by socio-cultural barriers. And the principles of accountability and transparency are especially challenging in contexts of weak rule of law, weak state and civil society institutions, and in the face of political opposition.

The evaluation's consideration of HRBAP in humanitarian settings found that the approach is fully compatible with such settings and with International Humanitarian Law. More particularly, it found that the principles of HRBAP are best applied during the preparedness and the early recovery phases, with the greatest challenges existing during the response phase, where it is often applied in an ad hoc manner. Reasons for this included the need to respond quickly during emergencies and the lack of clear guidance on applying the approach in such situations. In conflict situations, it was found that there is conceptual clarity regarding the application of HRBAP in most though not all documents, but that there is less clarity in the guidance provided. A particular challenge is that HRBAP is just one of several frameworks at play in humanitarian situations, and these multiple frameworks can be challenging to apply in practice; as a result, HRBAP can sometimes get lost in the shuffle.

Enabling Environment

A major area of focus for the evaluation was UNICEF's success at establishing an enabling environment for the implementation of HRBAP in programming. Both the external and the internal environment are important in this regard. Regarding the former, key issues include whether a country's legal framework includes policies and laws on human rights, whether the national government is stable, legitimate, accountable and transparent, and whether the socio-cultural context supports human rights. In terms of the internal environment, UNICEF's Mission Statement and the 1998 Executive Directive provide a solid foundation for implementing HRBAP in programming, though the support documents for the Executive Directive could give better guidance on the approach. Organizationally, the fact that UNICEF's focal point for gender and human rights – the Gender and Rights Unit – is located within the Division for Policy and Practice creates some challenges to integrate the approach into programming.

Another key element in the evaluation of the internal environment was the degree to which human resource-management practices support the integration of HRBAP. It found that competency in the approach was to some degree considered at the time of recruitment, though is given much less emphasis – and is relatively little supported by training – once people are hired. This has greatly contributed to a situation in which UNICEF staff are by and large applying the approach based on their own understandings rather than standardized and formalized understandings. In light of this situation, it is perhaps unsurprising that many staff have been asking for more training on HRBAP. UNICEF has responded positively to these requests, though only in a relatively modest way – thus many staff are still not receiving sufficient or timely training in the approach, and moreover such training is no longer mandatory. This could partly explain why many staff feel that existing HRBAP tools are inadequate for sector-specific application, while at the same time being unaware of many existing tools within UNICEF and within the UN more generally.

At the organizational level, accountability for HRBAP was found to be minimal, despite the fact that the approach is considered a pillar of UNICEF's programming. Moreover, reporting on the approach's implementation is not done systematically nor is it done according to the Medium-Term Strategic Plan indicators. At the country and individual level, accountability for implementing HRBAP is stronger but remains informal. At the same time, effectively implementation of the approach is not a significant factor in UNICEF's staff performance reviews, which neutralizes a potential incentive for staff to prioritize its implementation. The evaluation also found that effective implementation of HRBAP depends upon strong support for the approach at a corporate level – particularly the Country

Representative and the Deputy Country Representative – yet such support has declined since the high water mark of the late 1990s.

Recommendations

Flowing from the findings detailed above, a series of recommendations were developed that aimed to address the various challenges and opportunities facing UNICEF in terms of better applying a HRBAP.

It was recommended that UNICEF develop a HRBAP policy to replace the 1998 Executive Directive, one that reflects the evolving context and that expresses a clear conceptualization of the approach for the whole organization. UNICEF should also develop a strategy for coordinating the mainstreaming of foundational strategies, of which HRBAP is one. Another recommendation was that staff be given guidance on linking HRBAP with results-based management, particularly in terms of a greater use of indicators to measure the extent of the application of the approach's principles. The linkages between HRBAP and the equity approach should also be clarified, particularly regarding the term "equity", and how "rights holders" and "duty bearers" fit into the equity focus.

Regarding the global application of HRBAP, UNICEF should continue to lead and engage both internally and externally so as to promote, clarify and bring coherence to HRBAP. Importantly, UNICEF GRU Geneva should take a more systematic approach in applying the approach globally.

At the country level, UNICEF should ensure that HRBAP principles are applied equally strongly throughout its programming and at all programme stages. It should also ensure that staff have access to and are aware of appropriate tools and guidelines for interpreting and operationalising HRBAP in each Focus Area. Relatedly, staff should be given guidance in applying HRBAP in difficult country contexts. Another recommendation was that UNICEF EMOPS and GRU take the lead in preparing guidelines for applying HRBAP in humanitarian situations.

In terms of the enabling environment, UNICEF should strengthen the ability of its staff to implement HRBAP by considering different organisational staffing options – such as having dedicated staff for coaching and oversight on HRBAP, and developing a roster of HRBAP advisors – as well as including HRBAP in job responsibilities. The organization should also make an effort to build up CO Representatives and Regional Directors as champions of HRBAP, since individuals in these positions can play a key role in promoting and guiding the implementation of the approach. Such an effort should be complemented with an improvement in the quality of UNICEF's HRBAP training. Finally, UNICEF should increase accountability for HRBAP throughout the organization, and should track the resources that it dedicates to the approach.

1.1 Evaluation Conceptual Framework

After a period of consensus building and consultations with UNICEF we prioritised five core guiding principles¹ that underlie the approach: participation, non-discrimination, transparency and accountability. The fifth principle, “normativity”, helps to more explicitly capture the fundamental relationship between HRBAP and the international human rights legal system, particularly as UNICEF is guided by the Convention on the Rights of the Child as stated in its Mission Statement. The evaluation considered that all these principles should inform the way UNICEF undertakes programming in both contexts of its own internal accountabilities as well as measures taken in support of building capacities of duty bearers and rights holders.

Given the different understandings of HRBAP that the team encountered, this process proved useful as it sought to bring clarity to the meaning of HRBAP for the purposes of this evaluation, and provided a solid basis for the assessment. Each guiding principle is informed by a set of corresponding indicators that served as benchmarks for the evaluation process. This framework was used throughout the analysis to assess HRBAP application in programming.

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Evaluation Guiding Principles

Human Rights Normativity	<ul style="list-style-type: none"> • Programming is developed on the basis of the promotion and protection of human rights as set out in the CRC and its two Optional Protocols on the involvement of children in armed conflict and on sale of children, child prostitution, and child pornography, CEDAW and other key international and regional human rights instruments. • Programming takes due account of the findings and recommendations of the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, as well as those of Human Rights Council Special Procedures and those adopted in the Universal Periodic Review Procedure. • Human rights-related lessons learned, analysis and findings are transmitted by programmers, as relevant, through the various human rights mechanisms and procedures of the United Nations system. • As well as other necessary partnerships, partnership is established, as appropriate, with country-level human rights actors, including national human rights institutions, relevant government ministries and with human rights related civil society groups. • As well as other necessary partnerships, partnerships are established, as appropriate and relevant, with field presences of the Office of the High Commissioner for Human Rights and with other international and regional human rights actors.
Non-Discrimination	<ul style="list-style-type: none"> • Considerations of non-discrimination and equality of rights holders are integrated into programmes and are taken account of in all programme phases. • Programmes prioritise the situation of the most marginalised and vulnerable rights holders. • Programmes have systems in place to ensure that they are accessible (based on the principles of participation, openness and accountability) to the most marginalised and vulnerable of rights holders. • Assessments of marginalisation and vulnerability take account of the analysis, inter-alia, of data disaggregated by, as relevant, race, color, ethnicity, gender, religion, language, political, disability, nationality, birth, or other status, and other bases of discrimination.

¹ What might be termed a sixth principle, indivisibility/interdependence, is considered to inhere in the principle of normativity.

Participation	<ul style="list-style-type: none"> • Rights holders and duty bearers are clearly identified in the situation analysis. • Relevant rights holders and duty bearers participate and/or are consulted in all programme phases. • Mechanisms for participation and the documentation of participation are in place. • Space is also established for informal participation, particularly so as to engage children, adolescents and women, as well as persons belonging to excluded groups. • Frameworks for participation are context-specific and take account of relative degrees of dependency and empowerment of the relevant rights holders and duty bearers. • Rights holders and duty bearers are provided with capacity building support, as necessary, to enhance their participation. • There is demonstrated impact of participation of children and adolescents (boys and girls) on programme decision-making.
Transparency	<ul style="list-style-type: none"> • CRC and other relevant treaties disseminated in different languages and made widely known among children and adults alike • Duty bearers are clearly aware of and act upon their responsibilities to make information available in all programming phases. • Rights holders are aware of the availability of information and are facilitated to access it. • The information is readily accessible by means that take account of the particular circumstances of the rights holders and duty bearers, with particular attention paid to the situation of the most vulnerable and marginalised. • Concluding Observations and Recommendations of the CRC and other Treaty Bodies disseminated and made widely known
Accountability	<ul style="list-style-type: none"> • All duty bearers are held accountable on the basis of their duties and in all programme phases. • Impediments to accountability are identified and addressed in the situation analysis and review processes. • Accountability is facilitated by an on-going monitoring process. • There are mechanisms in place to raise awareness among duty bearers and rights holders of the role and obligations of the duty bearers. Knowledge of and access to such mechanisms is facilitated for rights holders, including the most vulnerable and marginalised of them. • There are fair and effective mechanisms in place to receive and consider complaints about the behaviour of duty bearers in a timely manner. • Complaints that are upheld result in the delivery of redress and implementation of corrective measures.

In order for HRBAP to be properly applied, all of the principles should inform all stages of the programming process, including assessment and analysis, programme planning and design (which encompasses setting of goals, objectives and strategies), implementation, and monitoring and evaluation.

Normativity

By the principle of *normativity*, we mean the reliance of the HRBAP on the human rights system as framed in the Universal Declaration of Human Rights and the human rights treaties. This is the fundamental principle from which all others emerge. Indeed, it legitimises the categorisation of rights holders and duty bearers and generates the requirement for participation. Furthermore, the notion of non-discrimination inhere within it, while transparency and accountability derive from its general obligations. As such, the principle of normativity provides the goal for HRBAP: the empowerment of rights holders on the basis of the human rights standards to be found in international human rights law.²

² See for example Daniel Seymour, “New Models for Human Rights Capacity-Building in the Field: Human Rights Field Officers and Relief Development Professionals”, in M. O’Flaherty and G. Ulrich, eds., “The Professional Identity of the Human Rights Field Officer”, Ashgate, 2010.

All of the human rights treaties provide guidance for HRBAP, though as noted in the Programme Policy and Procedures (PPP) Manual, the Convention on the Rights of the Child and CEDAW are the instruments that are most directly relevant to the work of UNICEF. The Committee on the Rights of the Child has recognised that the CRC establishes four “general principles”: non-discrimination, best interests of the child, the right to life, survival and development, and the views of the child (the child’s right to be heard). All of these are incorporated within HRBAP.

HRBAP should take account of both the treaty provisions and their interpretation by the treaty monitoring bodies, with the findings and recommendations issued by the CRC and CEDAW being the most significant for UNICEF. Another important source of guidance for HRBAP is the proceedings of the UN Human Rights Council. It should be underlined that engagement by UNICEF with the various mechanisms and procedures should be a two-way process such that UNICEF’s work is enhanced and the organisation also contributes to the effectiveness of the international human rights system in protecting rights holders.

The obligations of dutybearers towards rights holders continue in situations of armed conflict and define an individual’s rights to services and protection. International Humanitarian Law (IHL) does not create individual rights, but like all law, it does create duty bearers: the parties to the conflict. And among the duties of the parties to the conflict is the duty to protect civilians. So we can link the concepts of duty bearers and rights holders in Human Rights Law with duty bearers (parties to the conflict) and protected persons under IHL.

Normativity, through its introduction of the human rights principles of universality, indivisibility and non-discrimination (all of which underlie the CRC), requires that UNICEF apply HRBAP for the benefit of rights holders across all of its areas of competence and engagement. Thus it is as significant for humanitarian as for developmental contexts. Normativity often compels the organisation to engage with difficult, challenging and sensitive human rights issues to meet its commitment to children and women. The way in which normativity introduces the principle of indivisibility is particularly important since it recalls the equal status of economic, social, cultural, civil and political rights and their inter-relatedness and inter-dependence. In other words, rights-based approaches emphasise the need for development to address both categories of human rights in an integrated manner and, as the PPP Manual observes, “the fulfilment of one right cannot be achieved by compromising or violating another right”.

While partnerships are critically important for all good programming, normativity throws light on particular partnerships that might otherwise be overlooked. For instance, it draws attention to the need to partner with such human rights actors as national human rights institutions and human rights civil society groups. At the national and international levels, normativity also points to the importance of fostering partnerships with key UN human rights actors. When appropriate, there should also be partnerships with relevant regional human rights bodies and mechanisms.

Non-Discrimination

The principle of **non-discrimination** is at the heart of international human rights law and is fundamental to HRBAP. As a reflection of the universality of human rights, HRBAP requires that all rights holders be treated equally. However, non-discrimination does not require that all programming should benefit all persons, or that everyone should be treated the same. According to the Stamford Statement, “All human beings are entitled to their human rights without discrimination of any kind, such as race, colour, sex, ethnicity, age, language, religion, political or other opinion, national or social origin, disability, property, birth or other status as explained by the human rights treaty bodies.”³ This definition allows for other grounds of discrimination to be added – for example,

³ “The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies”, p. 2. Accessed at: http://www.undg.org/archive_docs/6959-

the Committee on Economic, Social and Cultural Rights has identified sexual orientation as one such un-enumerated ground.⁴

Non-discrimination requires that the situation of the most marginalised and vulnerable – who are least able to demand and enjoy their own rights – be prioritised in HRBAP. As well, it is typical for them to experience discrimination and violation of their rights on several grounds – for instance, a displaced girl may be vulnerable in terms of her age, gender and displacement. The identification of the most vulnerable and marginalised rights holders is greatly facilitated by using data that is disaggregated according to the various grounds of discrimination that are prohibited in human rights law. A major challenge for HRBAP programming is the frequent absence or inadequacy of such data.

It is important to note that particular attention needs to be paid to the relative lack of capacity of vulnerable and marginalised groups when designing and implementing frameworks for participation, transparency and accountability, to ensure that these frameworks are genuinely accessible and effective.

Further to the principle of non-discrimination and the manner in which it draws attention to the most vulnerable and marginalised, it is legitimate to undertake targeted programming that addresses the situation of a particular at-risk group. On the other hand, the prioritisation of the situation of the most vulnerable and marginalised does not mean that all programming must directly address their situation, since there may well be perfectly legitimate reasons to address the situation of other rights holders. Furthermore, programmes can legitimately target the strengthening of systems, such as governance, that only indirectly address the situation of the most vulnerable. What matters in a HRBAP framework is to demonstrate that the situation of the most vulnerable is at the heart of programming strategy, and is given appropriate prominence.

Participation

Participation of rights holders in processes that impact upon their welfare is a human right that has been repeatedly reaffirmed in such documents as the Stamford Statement.⁵ As noted in the CRC, participation is both a goal in itself and a means to achieve other goals. Its central significance for HRBAP reinforces the perception of development as being about both process and outcomes.⁶

In practice, participation requires the identification of the relevant categories of rights holders and duty bearers. With regard to duty bearers, the primary responsibility, and according to international law the sole legal responsibility, rests with the State. The duties of the State are incumbent upon all of its agents at all levels. However, HRBAP recognises that the category of duty bearer should also extend to all those actors who have responsibilities, including social and ethical responsibilities, towards rights holders.

To be effective, participation has to be placed in the context of as precise as possible an elucidation of the claims/entitlements of rights holders and the responsibilities of the duty bearers. All of these will be context specific and their identification demands substantial time, research and analysis.

To satisfy the principle of participation, it is necessary that the appropriate implementation systems and structures be put in place. This involves first identifying which groups of rights holders and duty bearers should participate. To do so, programming must provide spaces and opportunities for

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⁴ Committee on Economic, Social and Cultural Rights, General Comment 20, paragraph 32, UN Doc E/C.12/GC/20 2 July 2009

⁵ See for instance: “Rule-Of-Law Tools for Post-Conflict States: National Consultations on Transitional Justice”, OHCHR (2009), available at: http://www.ohchr.org/Documents/Publications/NationalConsultationsTJ_EN.pdf

⁶ “Frequently Asked Questions on a Human-Rights Based Approach to Development Cooperation”, OHCHR (2006), p. 26, available at: <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

structured exchanges of views between rights holders (including children) and duty bearers. These should be adjusted to the various local environments, and take account of the capacities of the participants. Where necessary, participation should be encouraged and promoted by the delivery of capacity-building assistance to rights holders, and if needed, duty bearers.

If it is to be meaningful, participation should make a genuine impact on programming. And to ensure that HRBAP is considered “good”, it should be demonstrated how the views of rights holders and of duty bearers have contributed to shaping programme activities.

Transparency

International human rights law recognises a right of access to information. It is part of the right to freedom of expression, and is widely considered to be essential for the promotion and protection of human rights and for the maintenance of a democratic society. The right to information is reflected in HRBAP in the principle of **transparency**. UNDP observes that transparency involves “all means of facilitating the citizen’s access to information and also his/her understanding of decision-making mechanisms”.⁷ Transparency is the necessary condition whereby rights-based actors can be held accountable and whereby rights holders can participate meaningfully. Early literature commonly listed transparency as an element of the principle of accountability. More recently, it has become common for it to be listed separately.⁸ This separate presentation reinforces its importance – it does not, however, mean that a new principle is being introduced.⁹ The key point in this regard is that without attention to the issue of transparency, respect for other core principles is undermined.¹⁰

For programming purposes, transparency requires that all relevant information be made available in a timely and intelligible manner to both rights holders and duty bearers. The Human Rights Committee recently completed a new General Comment¹¹ on freedom of expression; the section on access to information¹² provides guidance that can also be applied in the HRBAP context (by extending the references to States parties to embrace all duty bearers):

To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may

⁷ Country Assessment in Accountability and Transparency, UNDP Page 2-2, http://www.internationalbudget.org/pdf/United_Nations_Development_Programs_Country_Assessment_in_Accountability_and_Transparency_CONTACT.pdf

⁸ “Integrating the Rights Perspective in Programming: Lessons learnt from Swedish-Kenyan Development Cooperation, Swedish Agency for Development Evaluation: 2008. http://www.humanrightsimpact.org/fileadmin/hria_resources/IntegratingTheRightsPerspective_SADEV_Report_2008_2.pdf), page 39 (original page 14); OXFAM: <http://policy-practice.oxfam.org.uk/our-work/methods-approaches>; Mac Darrow & Amparo Tomas, “Power, Capture, and Conflict: A Call for Human Rights Accountability in Development Cooperation” (2005) 27 HR Quarterly 471, at page 497; <http://www.odi.org.uk/resources/docs/1816.pdf>: pages 30-31 (original pages 18-19); Caroline Moser & Andy Norton, with Tim Conway, Clare Ferguson, Polly Vizard, “To Claim Our Rights: Livelihood Security, Human Rights and Sustainable Development” (Overseas Development Institute, 2001).

⁹ See for example, Piron, L.-H. and T. O’Neil (2005), “A Synthesis and Analysis of Donor Experiences with Human Rights Based Approaches to Development and Integrating Human Rights into Development Programming”, ODI, August 2005, p. 44. It states that “...mutual accountability principles are fully compatible with the human rights principles of accountability and transparency, which require access to information as well as participation in decision-making.”

¹⁰ http://www.ihrnetwork.org/what-are-hr-based-approaches_189.htm

<http://www.icrw.org/files/publications/A-Rights-Based-Approach-to-Realizing-the-Economic-and-Social-Rights-of-Poor-and-Marginalized-Women.pdf>

¹¹ General Comment No. 34.

¹² General Comment No. 34, paragraph 19.

gain access to information, such as by means of freedom of information legislation. The procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.¹³

Accountability

According to the Stamford Statement, states and other duty bearers must comply with the legal norms and standards enshrined in human rights instruments, and if they fail to do so, can be held accountable. Thus being a duty bearer involves certain responsibilities and obligations – be they legal, ethical or otherwise – which impose a burden of **accountability**. The principle of accountability applies to *all* duty bearers, including the State and other development actors. The State's responsibility is incumbent upon all its agents at all levels. Other actors who may be held accountable are all those who are engaged in HRBAP, including development organisations such as UNICEF and the private sector.

A starting point to ensure accountability is the identification of any impediments that make it difficult for the duty bearers to carry out or to be held responsible for their duties. Once identified, strategies to overcome them should be developed and implemented. This may require such things as changes to laws, regulations, policies and practices. To hold non-State actors responsible, there may also be a need for voluntary codes of conduct and for wide-ranging regulatory frameworks.

Effective accountability in HRBAP requires on-going monitoring of programme implementation that is participatory and that involves all stakeholders to the greatest extent possible, and that integrates both quantitative and qualitative dimensions. Monitoring should be tied to programme reporting processes and staff performance systems.¹⁴

Accountability further requires mechanisms of complaint and redress. These can range from all of the institutions of the rule of law sector – including judicial, quasi-judicial and administrative laws, as well as informal or traditional legal mechanisms – to specific complaint frameworks within a programming context. At a programming level, accountability should also be reflected in the establishment and the effective functioning of complaint and redress mechanisms. In a HRBAP framework, all the complaint and redress mechanisms should be brought to the attention of, and be readily accessible to, all rights holders. Significantly, the upholding of complaints should be shown to result in corrective measures and remedial action being taken, where relevant. Thus upheld complaints should result in the review and adjustment of programmes.

¹³ <http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

¹⁴ "Frequently Asked Questions on a Human-Rights Based Approach to Development Cooperation", OHCHR (2006), p. 24, available at: <http://www.ohchr.org/Documents/Publications/FAQen.pdf>

Appendix I List of Findings

- Finding 1: There is coherence across key UNICEF and UN policies and strategies with regards to HRBAP. Key UNICEF documents also demonstrate that the organization has responded to a changing external environment for HRBAP.
- Finding 2: There is a clear linkage across key UNICEF strategies and policies regarding HRBAP as defined in the MTSP and Gender policies, and articulated in the PPP and Equity manuals. This is highlighted by an increased focus on disparities, the marginalized and excluded groups within UNICEF's rights language and equity discourse. Yet the equity aspect of HRBAP omits the language of duty bearers and rights holders as a basis for analyzing capacities
- Finding 3: While a majority of UNICEF staff members perceive human rights as the foundation of their development work, there is considerable variation in their familiarity with, and understanding of, HRBAP.
- Finding 4: HRBAP does not appear to be applied according to particular regional models during the period examined. Instead, UNICEF Country Offices are adaptable and pragmatic in applying the principles of HRBAP in different country and regional contexts.
- Finding 5: UN Coherence and supporting systems and mechanisms present both opportunities and challenges for UNICEF's effective engagement in HRBAP on the ground.
- Finding 6: HRBAP and equity are potentially mutually reinforcing, interdependent and reconcilable. However, this evolving understanding remains to be fully realized amongst staff.
- Finding 7: While HRBAP and Results-Based Management (RBM) are compatible frameworks for programming and fully consistent with discussions about sustainability of results, UNICEF staff note practical obstacles to their mutual application.
- Finding 8: UNICEF has played and continues to play a leadership role with regard to HRBAP at the global level, particularly through its core role in promoting the understanding and supporting the implementation of the CRC and its two Optional Protocols.
- Finding 9: UNICEF global advocacy work for the CRC and its optional protocols shows the extent to which it supports these treaty body procedures as well as generates knowledge of and views on children's rights across various platforms.
- Finding 10: UNICEF has demonstrated effective leadership on HRBAP within the UN system
- Finding 11: While UNICEF's engagement with human rights mechanisms has been appreciable, it could benefit from more structured engagement with certain UN human rights Actors.
- Finding 12: UNICEF has played a notable role in integrating the HRBAP in key humanitarian and emergency frameworks.
- Finding 13: UNICEF has fulfilled its role in relation to a number of Security Council Resolutions, thus fulfilling key accountability roles to the wider UN.
- Finding 14: The CO assessment found that UNICEF's adherence to the principle of normativity in terms of the CRC, CEDAW and other human rights instruments is the best applied principle across the organization.
- Finding 15: The CO Assessment found mixed application with regards to participation, with poor standardization and lack of explicit references to how participation of rights holders affects programme strategies.
- Finding 16: The CO Assessment rated non-discrimination as satisfactory to weak, revealing some important constraints in meeting the evaluation standard for the principle. These are due in part to data collection and disaggregation challenges, leading to overly generic descriptions.
- Finding 17: The CO Assessment revealed a largely satisfactory score for accountability, with the principle hampered by lack of documentation on accountability mechanisms as well as systems of redress within government or UNICEF programmes.

- Finding 18: The CO Assessment ranked transparency as satisfactory to weak, with some commendable and often successful efforts to build capacity to support the transparency of government systems, as well as to provide information regarding UNICEF's own programmes.
- Finding 19: There are established, rights-based methodologies for the programme preparation stage in UNICEF, and these are well applied, with minor challenges
- Finding 20: Important challenges in disaggregated data collection tend to undermine the full identification of vulnerable groups in the SitAn/CCA, and therefore the planning of appropriate programmes.
- Finding 21: Where UNICEF, other UN agencies, government and other partners reach a consensus on priority issues for development cooperation, as well as on a broad distribution of roles and responsibilities, planning documents such as UNDAFs, CPAPs and CPDs have done a good job of integrating HRBAP.
- Finding 22: At the programme implementation stage, some exclusion of key vulnerable groups occurs across UNICEF regions, focus areas and contexts, in spite of commendable efforts to mitigate this; there does not appear to be a systematic way to ensure that UNICEF programming is fully inclusive.
- Finding 23: Some UNICEF COs have been unusually innovative in their efforts to reach excluded children.
- Finding 24: UNICEF has adopted some good practices to facilitate the monitoring and evaluation of programming with respect to HRBAP.
- Finding 25: While an effort has been made in recent years to integrate human rights principles and standards into programming related to Focus Area 1, Young Child Survival and Development, in most cases the application of such principles and standards is not evident.
- Finding 26: Focus Area 2, Basic Education and Gender Equality, demonstrates a strong HRBAP focus and has performed strongly in the application of normativity and participation, with some challenges remaining in terms of transparency, accountability and non-discrimination.
- Finding 27: Focus Area 3, HIV/AIDS and Children, demonstrates some effort at the integration of HRBAP, especially with respect to sensitive issues. However, more needs to be done to fully integrate HRBAP.
- Finding 28: Compared to other FAs, FA4 – Child Protection from violence, exploitation and abuse – is seen as more intrinsically HRBAP-oriented given its foundation in several of the approach's norms and standards. This has resulted in an overall perception within UNICEF of the Child Protection unit as de facto HRBAP leaders.
- Finding 29: UNICEF demonstrates a strong institutional commitment to HRBAP and children's rights through Focus Areas 5, Policy Advocacy and Partnerships for Children's Rights.
- Finding 30: Various dimensions of the country context frame and influence the application of HRBAP at the Country Office level, though do not dictate or determine its application. These include the levels of development, of income and of the institutionalisation of the state and civil society, as well as the leadership of the CO.
- Finding 31: Within the humanitarian sphere, HRBAP is applied more in the preparedness phase than in the response and early recovery phases.
- Finding 32: Within UNICEF's work in conflict states, there is coherence in the conceptual integration of HRBAP into humanitarian programming, but less clarity in the guidance provided.
- Finding 33: In humanitarian situations, the HRBAP framework is one of several frameworks being applied. Though the linkages between these frameworks are sound, at the operational level their joint application remains challenging.

- Finding 34: The external environment, particularly a country's receptivity to addressing human rights issues, affects the implementation of HRBAP at the country level.
- Finding 35: UNICEF'S Mission Statement and Executive Directive for mainstreaming human rights provide a solid foundation for the implementation of HRBA in programming services. UNICEF compares favourably with other members of the UNDG-HRM Mechanism, the majority of which do not have a specific policy or directive to that effect.
- Finding 36: The 1998 Executive Directive is supported by a policy and procedure manual and a strategic plan, but neither provides sufficient guidance for operationalising HRBAP.
- Finding 37: The Gender and Rights Unit (GRU) is the focal point at HQ for gender and human rights. The GRU is presently located in the Division of Policy and Practice (DPP). This organisational arrangement creates some distance between policy and programming.
- Finding 38: HRBA competencies are considered in fewer than half of recruitments, and there is even less attention given to HRBA in critical post-recruitment stages.
- Finding 39: By and large, UNICEF staff are integrating HRBAP concepts in their projects, but in many cases this is based on their own understanding rather than on knowledge of the organisational theory and principles of HRBAP and its application in different sectors.
- Finding 40: The need for HRBAP training and overall capacity building has been a longstanding demand in both UNICEF and the UN in general. Many of the recommendations of the 2003 evaluation of HRBAP highlighted the need for more training. UNICEF has addressed these recommendations to some extent, often through complementary actions.
- Finding 41: In principle, but most definitely not in practice, all UNICEF staff members participate in PPP training, which includes a module on HRBAP. A significant percentage of staff has not yet received any HRBAP training.
- Finding 42: Most UNICEF staff consulted feel that existing HRBAP training, tools and guidance are not adequate and not sufficiently adapted to sector-specific application. Yet most UNICEF staff are neither aware of nor accessing tools and guidance collected and managed by a UN-interagency HRBAP body.
- Finding 43: UNICEF staff raised some concerns about the quality of HRBAP training, as well as the lack of clear guidance on where to turn for support in understanding HRBAP.
- Finding 44: Accountability for HRBAP is not included in the MTSP and is reflected unevenly in the UNICEF Strategic Plan.
- Finding 45: Reporting on the implementation of HRBAP is not done systematically, nor according to the MTSP indicators.
- Finding 46: Accountability for implementing HRBAP is strong but remains informal at both country and individual levels.
- Finding 47: Effective implementation of HRBA ranks low in the present supervision and performance review system of UNICEF.
- Finding 48: The lack of accountability for HRBAP is aggravated by the difficulties in tracking what resources go into HRBAP. While programming with a rights-based approach involves more resources (time, human and financial) than programming without such an approach, it is difficult to identify UNICEF's overall investment in mainstreaming HRBAP.
- Finding 49: There are mixed views as to whether the leadership to drive HRBAP as a corporate foundational pillar was strong during the period examined. What appears to have been underestimated is the importance of Regional Directors and Country Representatives in championing the application of HRBAP at the country level.

Appendix II List of Recommendations

- Recommendation 1: UNICEF should develop a HRBAP policy to replace the 1998 Executive Directive. This policy should reflect important changes in the normative environment, the external environment, and the aid environment that affect HRBAP, thus providing a single and clearly expressed conceptualisation of HRBAP for the whole organisation.
- Recommendation 2: UNICEF should, at the highest level, take action to develop an overall strategy for applying a human rights-based approach (along with gender) as the “foundation strategy” for its work.
- Recommendation 3: UNICEF should provide staff with further practical guidance on how to link HRBAP and results-based management.
- Recommendation 4: UNICEF DPP and PD should clarify the linkages between HRBAP and the equity approach in terms of the use of the term “equity”, as well as of how the terms “rights holder” and “duty bearer” will be used within the focus on equity.
- Recommendation 5: UNICEF GRU should continue to lead and engage in both inter-agency and internal policy discussions to bring clarity and coherence with respect to HRBAP into the current programming environment.
- Recommendation 6: In its application of HRBAP at the global level, UNICEF GRU Geneva should take a more systematic approach to its engagement with special procedures and other human rights mechanisms.
- Recommendation 7: UNICEF should take appropriate steps to ensure that all HRBAP principles are implemented equally strongly throughout its programming, as well as at all stages of the project cycle.
- Recommendation 8: UNICEF should assist staff in interpreting and operationalising HRBAP in each Focus Area by ensuring that they have access to appropriate relevant guidelines and tools.
- Recommendation 9: UNICEF should provide specific guidance and assistance to staff in interpreting and applying HRBAP when dealing with difficult country contexts.
- Recommendation 10: UNICEF EMOPS and GRU should prepare guidelines for the application of HRBAP in humanitarian situations.
- Recommendation 11: UNICEF should examine the cost and benefits of different organisational staffing options to strengthen the ability of its staff to implement HRBAP. Integrating the Competency Framework on HRBAP is one way to identify potential trainers and future leaders in-house.
- Recommendation 12: UNICEF should make deliberate efforts to recruit, select, train and coach CO Representatives and Regional Directors as champions of the HRBAP.
- Recommendation 13: UNICEF should improve the quality of HRBAP training by identifying core competencies, developing a training curriculum, and ensuring that the facilitators of PPP have sufficient background in HRBAP to deliver quality training.
- Recommendation 14: UNICEF should increase accountability for HRBAP at all levels of the organisation (country level, regional level and global level), and track costs and resources allocated to HRBAP.