

**SECOND GLOBAL LINKING AND LEARNING PROGRAMME ON ESC RIGHTS
DECEMBER 2-9 2003, ALCOCHETE, PORTUGAL**

- EXECUTIVE SUMMARY –

Session one: Welcome and introduction: Ton Waarts, Chairman of Dignity International welcomed all the twenty two participants from around the world to the second Linking and Learning Programme on Economic, Social and Cultural Rights. He thanked Johannes Ignacio from Forum Asia and Ann Blyberg, Executive Director of the International Human Rights Internship Program (IHRIP) for their partnership in this initiative as well as the donors NOVIB (Oxfam Netherlands) and the Ministry of Foreign Affairs of Finland for their financial support. He briefly explained the work of Dignity International and invited Ann and Johannes more affectionately known as Babes for their welcoming remarks.

Marcos Andrade and Liam Wegimont introduced participants to each other in a very innovative way with the aid of 'Zip-Zap' and the 'Spirit of Human Rights' games. The latter game involved passing a bottle to the neighbour on the left and repeating all the names of the persons from the originator of the bottle all the way to the person last holding the bottle. These games helped break the ice and the participants quickly learned each others' names and the country of origin. Using symbolic representations the participants then expressed their specific concerns vis-à-vis their work and commitment to the issues of human rights.

Ann then explained the programme schedule as well as the two exercises "Your ESC Rights Campaign" and the "ESC Rights Myths", to be completed towards the end of the programme. Participants added two more myths to the list of existing nine myths attached later in the report. The two additions were firstly, culture (particularly in the form of religion) as an obstacle to human rights, and secondly human rights being an obstacle to the enforcement of law. The group was then divided into pairs and was assigned a myth each to work on over the week for presentation on the final day of the workshop.

Session two: Programme and expectations - Expectations from the workshop were then articulated on post-its that were left posted on the wall for a reference check at the end of the

programme. These expectations were articulated at three levels. Firstly, what one would most like to know, secondly, what one would most like to understand, and thirdly what one would most like to feel? The exercise also included the completion of a statement that expressed a specific measurable result attributable to the workshop, and to be achieved by the end of six months after the workshop. All these were posted on the wall for all to see and cross check.

Session three: What are the rights and where do they come from? - In this session, participants explored their individual understanding of the origins of human rights. A distinction was made between needs, policies, moral and ethical principles, religious and cultural norms on the one hand, and entitlements, demands, obligations, and law on the other. A further distinction was made between 'rights' and 'human rights'. Human rights exist because human beings exist and human rights are inherent to all human beings. Law does not create human rights; it only recognises and articulates these as rights. It was also stated that law could be contrary to human rights. A buzz session between pairs wherein one of the pair represented an NGO attempting to convey the meaning of human rights to the partner representing a villager who is not aware of human rights, helped gain greater conceptual clarity.

Sources of Rights - Using a symbolic representation each individual tried to express his/her idea of the sources of human rights. The participants in smaller groups of four were then asked to come up with a mutually agreed upon picture that best represented their idea of the sources of rights. Each group then explained their symbolic representation to the plenary. Briefly, the sources mentioned included: the fact that we are human beings; the fact that we have a 'heart'; the fact that we are all born equal; the fact that we live in a community and a society – the social nature of humankind; that law has to be seen in the context of people and not in isolation; that rights are evolutionary – have a progressive growth; and that often people's struggles precede the declaration of a right.

History of human rights - On post-its participants gave a description of the key events in their country that preceded the articulation/granting of rights. These were posted on the human rights history. This section allowed the participants to develop their own human rights timeline, drawing from the experiences of the countries and cultures that participants came from thus reflecting the universality of human rights and some human rights milestones that often go unrecognized. Most of the human rights milestones dated from the 1800s, although there were a few that dated prior to that. Some of the social justice issues that were recurrent in several countries included struggles for the right to housing, labor rights, and women's rights. Revolutions or uprisings were

also common ways for achieving change as all recognized that codification of human rights into international law does not always translate into national enforced policy.

The discussion highlighted and confirmed the issues raised in the earlier session, that rights emerge through people's struggles, that they take shape through an evolutionary process of interpretation of existing law and provisions in the national Constitutions, and through human consensus.

Session four: The power of human rights - In the brainstorming session the word 'power' evoked associations such as authority, control, imposition, ability, hierarchy, domination, decision making, coercion, strength, corruption with both positive and negative associations. In a following exercise the participants explored their image of 'power' using one of four ways a picture, a narration, a haiku (a short poem), or a play - to choose from the method they feel most comfortable.

In the discussion that ensued, it became increasingly clear that power emanates from knowledge and information about one's human rights, and conversely that monopoly of knowledge/information leads to misuse of power; that community mobilisation can help empower the community; that power and authority flows from one's position; that corruption breeds and thrives in autocracies.

Community solutions to misuse of power can be found when power is analysed appropriately. A typology that would help in this is to see power as: Power over; Power with (between) – lies in togetherness; and power to.

A further aid to analysis of power is the three dimensional framework - visible power, hidden power and invisible power.

Power of human rights - Using the case of a chemical factory where three deaths occurred due to toxic poisoning, a case was made for using the human rights argument as a more powerful instrument than the arguments based on the issues of health and economics. The health argument would have difficulty establishing causal links between the deaths and the factory conditions. The economic argument would not hold either because new labour can always be hired in the event of any threat from a labour strike and attempts to close the factory. Actions taken on the basis of provisions of human rights in the national constitution and in international documents/covenants, to which the country is a signatory, definitely have a stronger legal base.

However, at times it may be possible to take recourse to these relevant articles in the national constitutions and international instruments, in which case appropriate precedents need to be used for advancing the case. The evolutionary process of interpretation of the provision is as important as the provision itself. It provides more teeth to the constitutional provision.

ESC rights also need to be leveraged through the processes of community conscientization and education. Building the community's capacity to use their constitutional provisions is a critical process in enhancing the power of rights.

Session five: Drawing on rights - This was the first exercise that made the participants study the actual human rights instruments at the national, regional and international levels. Participants became familiar with the different instruments. Participants examined their national constitutions and the ESC rights provisions within them. It became clear that not all constitutions are equal, especially on ESC rights. It also became clear that a right that is provided for in a national constitution, is not necessarily realized by the population, however, when ESC rights are in national constitutions, it is easier to push for their enforcement.

Participants also walked along the 'ESC Rights Boulevard' that highlighted various ESC rights provisions in the international human rights instruments to date.

Participants concluded that the human rights story is a story of people's struggles and sacrifices. It is a reflection of people's consensus. It comes in the form of international agreements, national constitutions and judicial precedents. It is a continuous and dynamic process in history, never-ending as our understanding of human dignity evolves over time and the embodiment of rights in laws and practices is always imperfect. It is therefore an incomplete story, demanding a certain degree of alertness on our part. Everyone has a role to play in this process, politicians, lawyers, philosophers, activists and the community.

The analysis of the *Kampong Reap* case highlighted the following issues: the rights to education, a clean environment and to work; often the application of an appropriate right/provision may not be obvious enough; if, however, it is felt that there is some relevance, it needs to be pushed to its limits; clear information, data and evidence are critical for making out a strong case; so it is important to collect the necessary data; environmental issues do not have any specific provisions. This is an underdeveloped area and there is need to push for these rights. On the other hand clean and healthy environment can be addressed through the use of the right to food and health provisions; similarly the right to work is explicitly recognised in article 6 of the ICESCR.

The difficulties faced in the analysis are: lack of familiarity with the provisions in the different treaties both national and international; lack of facts and data; inadequate provisioning in existing treaties; lack of specificity; ability to match provisions with facts and assessing their relevance.

“General Comments” are an elaboration of the articles in the treaties by the respective committees and while not being legally binding are considered authoritative. General comments provide basic guidelines for interpretation of the article.

Session six: Who is obliged to do what? A right creates a relationship between two parties. For example, with respect to labour rights, the relationship may be between the employer and the employee. Each party has its own obligations. This relationship breaks down if one party fails to abide by the obligation. In order to analyse this obligation it is first critical to identify the actors and then the different factors of the particular case. Participants were asked to study the case of Asni, as an example of how complex each case is vis-à-vis the actors and factors implied. It also shows how multi-layered a particular event is which needs to be broken down appropriately for in depth analysis. Clear distinction should be made between the state and non-state Actors to be able to pinpoint the obligations of the partners involved.

The handout distributed shows what approaches one can take to understand the obligations of the state.

As ‘obligations’ are the backbone of international law and an invaluable tool for activists, there are complexities to these obligations as there are to the actual content of rights. Key elements of ESC rights obligations arise from article 2 of the ICESCR: *progressive achievement; to the maximum available resources; and through the immediate adoptions of measure.*

Beyond these conditions in obligations, there are also several elements in the nature of each obligation. These include the obligation *to respect, protect and fulfill*, the obligation of conduct and that of result and what failure and compliance with these obligations look like.

As international human rights agreements are ratified by the state, these obligations do not apply in the same way to non-state actors. This leaves again the state as the main enforcer of human rights for non-state actors in their obligation to protect and national law and policy as the main instrument against the violations on non-state actors.

The World Bank falls outside the purview of the UN human rights obligations even though it is a special agency of the UN. So what does one do? One method is to approach the Inspection Panel of the World Bank with all the exact details and solid data. An example of this is the case of the "Garden Project in Argentina" that was taken up by an NGO called CELS.

Session seven: Monitoring, investigating and documenting ESC rights - Similarities with monitoring and investigating civil and political rights were drawn as given in the handout. However, a few differences and challenges were brought out too. These emerge from the very nature of most ESC rights the vagueness of standards, that is, they are not yet detailed enough, and the multifaceted nature of government obligations. Hence new tools may be required to accomplish this task. Specifically, the vagueness of terms such as "progressive achievement" requires the setting up of benchmarks and indicators that can be clearly quantified and measured. Budget analysis is an excellent tool for the measurement of both, viz., "progressive achievement" and the other very vague term, "maximum available resources."

This session of the programme focused on developing targets, indicators and benchmarks using the right to health, food and education as examples in developing benchmarks and indicators.

Benchmarks are set to ensure that certain goals can be measured and achieved within a certain timeframe. In the case of civil and political rights, benchmarking may not be as relevant as in the case of ESC rights, specially because of the "progressive" nature of these rights. It is important that each benchmark has a measurable and time-bound indicator. For instance, if universal free primary education is the goal/standard, one of the benchmarks could be abolition of requirement of expensive school uniform, and the indicator of this benchmark is a clear government regulation regarding the abolition of school uniform.

Some time was spent to discuss budgets and gain practice in doing budget analysis and understanding the role of budget analysis in ESCR work. Budgets reflect a government's priorities, so budget analysis is a great tool for development workers and activist.

A detailed analysis of the Budget was seen as another extremely useful approach to monitoring the government's commitment to ESC rights. The point was further made through an issue-based analysis in small groups of the budgetary allocations in the national budget over a period of 3 decades in the Moonlight case. Several issues were highlighted in the plenary session including: what is actually expended is more important than what is allocated in the budget; actual

allocations to local/provincial governments are often not what the budget says they are: often even the allocated amounts do not reach the local governments or the local area due to on-the-way leakages; Value Added Tax (VAT) for instance is a very unfair source of revenue as it extracts the same amount from the well-off and the not-so-well-off; and most often there is lack of information on the details of the allocations as well as the expenditure. Any disaggregated budgetary allocations would show that although the overall amount allocated to, for instance, education may be high, it may be relatively low for primary education and high for more professional and technical education, which in any case may not be accessible to the vast majority of the poor for whom primary education is more important and relevant; details of revenue too are equally important in a budget analysis.

Session eight: Strategies to protect and promote ESC rights - Development and the Rights-Based Approach - The key UN document on this issue is "Declaration on the Right to Development." This includes: (a) everyone's right to participate in the process of development; and (b) the right to benefit from the fruits of development.

From (a) above follows the right to information on any development project. The document essentially maintains that "people are the centre and focus of development." Hence, the people have the right to demand for their general welfare and development. This also entails that the rights-based approach to development is essentially an issue of accountability, the people have the right to hold the government responsible and accountable for what they are doing.

A deeper understanding of this issue was attempted through the study and analysis of the "Starvation in the State of 'O'" case. This case study allowed participants to identify issues and develop strategies with and without using a human rights framework. Although there were many differences in the two approaches, we also recognized that they were not always mutually exclusive. While using a human rights framework allowed us to do a more comprehensive analysis of the issues, there were similarities in the activities that the analysis lead to. For example, using a human rights approach did not eliminate the need for immediate intervention, which in many cases means service delivery. Some of the distinctions were that a human rights approach does not allow one to ONLY focus on service delivery, it also forces a multi level approach, it also identifies duty holders and develops strategies for holding duty holders accountable.

A summary of the discussion on using a human rights framework and not using a human rights framework is included in this report

Session nine: Developing an ESC rights campaign - At the beginning of the programme, each participant was asked to prepare a case study. Out of all the case studies prepared, ten were selected for further work on the basis of the issue, the rights concerned and the geography and the competences within the participants. Participants were then put in pairs and asked to work on a case study different from the one that they have put together. This allowed for increased communication between the author of the case study and the pair working on it. Each pair was asked to make a presentation to their board giving details of the case, the analysis of the rights involved and present their own ESC rights campaign. The session pulled together and put into practice the different elements that the participants have learned during the programme. Moreover, it allowed the authors of the case studies to see the cases they are working on from a fresh perspective pulling together a strong learning element. Some of the campaigns had a strong local focus, while others had a stronger international component. Some of the campaigns presented were on discrimination in Turkey, labor rights in China, child labor in Malaysia, right to education in pastoral communities in Angola, indigenous people’s rights in Canada, the right to work and to land in Tajikistan. A selection of these cases is included in this report.

Session ten: What we have learned ? At the beginning of this session, participants discussed the different myths surrounding ESC rights that were introduced in the first session of the programme. For the most part, participants were able to destroy the 11 common myths about ESCR established from the outset. However, the myth of culture being an obstacle to human rights was not completely dissolved and that culture and cultural rights needed a deeper analysis in future programmes. Many felt that more time was need to cover the issues and recommended a half day break in mid programme to digest the contents. Overall, participants evaluated the workshop highly with their expectations being met and feeling that it had been an intense but rich learning experience.

USING A HUMAN RIGHTS FRAMEWORK

NOT USING A HUMAN RIGHTS FRAMEWORK	USING A HUMAN RIGHTS FRAMEWORK

<p>ISSUES</p> <ul style="list-style-type: none"> - Starvation and deaths - environmental issues (drought leading to famine) - labour (lack of work, no trade union, unfair wage) - land issues, abuse of power by land owner and police - gender inequality, trafficking of women and children - child labour - poor infrastructure - corruption, beating 	<p>ISSUES</p> <ul style="list-style-type: none"> - right to food/health/housing (adequate standard of living) - right to education/life - right to land - right to development - right to work(fair working conditions and fair pay) - human rights of women (inc. non discrimination, non trafficking) - human rights of children - environmental rights - right to associate (form trade unions) - freedom from torture
<p>STRATEGIES</p> <ul style="list-style-type: none"> - emergency food delivery - provide medical assistance - start alternative income generation activities - set up micro credit programmes - capacity building for food production - reforestation - better infrastructure - land development (inc. irrigation) - education campaign on trafficking - advocacy and lobbying for provision of services 	<p>STRATEGIES</p> <ul style="list-style-type: none"> - demand the government to establish a food distribution plan - demand the special rapporteur for the right to food to intervene - review and ask for increased budget allocation for agriculture and food related activities - go through a process of legal evaluation and reform and enforcement of child labour and trafficking laws - demand the enforcement of non-discrimination laws - demand prosecution of the policy and fair trials for those arrested - land reform policy review

	<ul style="list-style-type: none">- human rights education to inform people of their human rights and to claim their human rights- demand the state to protect, respect and fulfil its obligations - and to hold non-state actors accountable for their actions- to examine the recognition of human rights in policies, programmes, laws and constitutions- demand ratification of various human rights treaties
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Using a human rights framework allows us to move from a position of a recipient of charity to a bearer of human rights, from a position of weakness to a position of strength, from a position of powerlessness to a position where people are empowered.