



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

Strategy for Ratification and Implementation of International Human Rights Instruments for Government Accountability and Access to Services by the People in Fiji

July 2003

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SUMMARY BOX

Categorization of lesson:

Promoting ratification and legal changes to comply with human rights instruments. Increased public awareness of countries' commitment to human rights treaties and norms.

Critical lessons for the sub-practice:

1. Advocacy for ratification, adoption and implementation of human rights instruments is a complex undertaking and should be based on sound understanding of key stakeholders' views on these instruments.
2. The call and strategies for ratification must have strong local ownership and support of key stakeholders, including politicians, policy makers at the highest level, representatives from civil society and disadvantaged or vulnerable groups, the judiciary, and lawmakers. Targeting a single category of stakeholders does not work.
3. Advocacy efforts must involve up-front preparatory work to identify the key obstacles to ratification. Concerns on conflict with traditional value systems need to be addressed.

Recommendations:

- ❖ Factors that constrain ratification and implementation should be identified jointly by both duty bearers and rights holders. A key aspect of any strategy to encourage ratification should be raising awareness at all levels to generate local support and advocacy for ratification.
- ❖ Workshops should be interactive, educative processes for improved mutual understanding of the obstacles and possible pathways to ratification and implementation. Facilitators should be well prepared with detailed status of the positions of key stakeholders on specific human rights instruments.
- ❖ Assistance for compliance and implementation of human rights instruments must include interventions at the country level with an appropriate legal reform agency for review and amendments of legislation

CATEGORISATION OF LESSON

Promoting ratification and legal changes to comply with human rights instruments. Increased public awareness of countries' commitment to human rights treaties and norms. Enactment of national human rights legislation and establishment of appropriate, adequately staffed human rights offices. Commencement of human rights educational programmes.

BACKGROUND

For a country to achieve its development potential, it needs to employ all national resources effectively. Every individual must be able to enjoy his or her civil, political, social, economic and cultural rights in order to participate fully in his or her society. Within Pacific Island countries, there are numerous situations where

people cannot exercise their fundamental human rights, either because they do not know about them or because their Government has not recognised them.

Pacific Island countries have ratified various human rights instruments and disregarded others, but the implications of these rights generally get too little public attention or legal recognition. Agencies that are actively promoting human rights in the Pacific include UNICEF, with the Convention on the Rights of the Child (CRC); ILO, with various labour rights conventions; UNIFEM and Pacific regional and national women's NGOs, with the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW); and the Regional Rights Resource Team, with its community education programmes on legal literacy.

In partnership with the Office of the High Commissioner on Human Rights (OHCHR) and its Global HURIST Programme, UNDP's GOLD project proposed to contribute to these efforts to bring human rights to the fore of Government and public attention in 15 Pacific Island countries.

The GOLD project included four complementary initiatives, namely: accountability and transparency; judicial training and reform; parliamentary support and capacity building; and human rights advocacy and institutional support. It was designed on the premise that human rights advocacy will help educate the general public, especially disadvantaged groups, about their basic rights and how to more effectively hold Governments to account. In order to demand responsible Government, people must know about their rights to timely and affordable justice and be able to fully benefit from the services and goods provided by Government.

The work on accountability and transparency advocated to parliaments and judicial services for the adoption of international standards (treaties and conventions) and national obligations in relation to human rights. In particular, the project chose to encourage Governments about ratification of two fundamental human rights instruments, namely, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The project convened sub-regional workshops to initiate the development of national strategies for ratification and implementation. IN addition, it also proposed to undertake baseline surveys of Pacific Island countries' status of ratification of major human rights treaties. The project further offered support for establishment of national human rights bodies, where adequate commitment existed. Its strategy also proposed providing assistance for inclusion of human rights concepts in school curricula.

In addition to the above, activities implemented under the other three components of the project, particularly parliamentary strengthening and judiciary training, were meant to complement awareness of treaty ratification.

Hyperlinks

GOLD Project Document <http://www.undp.org/fj/GOLD/>

FINDINGS AND CONCLUSIONS

Lessons on Output/Outcome

Many of the outputs under the human rights component of the project were not achieved, in large part because numerous activities were not implemented due to resource constraints. However, the main activity under this component, four sub-regional workshops in which nearly 100 mid-level officials and civil society

personnel have been trained, identified a number of issues and constraints faced in ratifying human rights instruments.

Advocacy for ratification, adoption and implementation of human rights instruments is a complex undertaking and should be based on sound understanding of key stakeholders' views on these instruments

Countries that have incorporated provisions of human rights instruments into their constitutions through accession question the need to ratify the relevant human rights instruments. Moreover, underlying principles of human rights treaties are often misunderstood. For example, some groups resist recognition of the rights of children for fear that this would diminish the rights of parents.

In particular, it was found that human rights issues are not a priority for Governments. There appear to be two causes for this: firstly, lack of political will and awareness amongst leaders and policy makers, and secondly, lack of mobilisation of the public behind the cause of human rights standards. A widespread, strongly held view is that international human rights instruments will undermine traditional values.

In addition, resource constraints and lack of capacity to undertake necessary legislative changes ensuring compliance with conventions represent serious obstacles to ratification. Reporting requirements can be onerous for small countries with resource constraints. Assistance should be made available to small countries to assist in complying with and reporting on human rights instruments. Specific assistance should include legal expertise for drafting of legislation. Given the low political support and lack of public awareness for human rights in the Pacific region, there also is a need for more visible and active presence of external agencies such as UNDP and OHCHR working with a multitude of national stakeholders, at all levels, to promote human rights issues in Pacific Island countries.

The call and strategies for ratification must have strong local ownership and support of key stakeholders, including politicians, policy makers at the highest level, representatives from civil society and disadvantaged or vulnerable groups, the judiciary, and lawmakers. Targeting a single category of stakeholders does not work

An external impetus for ratification and implementation of human rights instruments through training and awareness raising is not adequate. National/local ownership of the call for ratification, at all levels of the society, is needed. Activities implemented by the project, while called for in the design, did not achieve an integrated approach involving legislators, policy makers, judiciary and civic society, on collaboration toward ratification and implementation. The judiciary and lawyers have a distinct role to play to identify the positive implications of delivery of justice as a result of ratification and implementation.

Moreover, advocacy at a broad level targeting a large number of human rights instruments appears overwhelming to many small Pacific Island countries. Assistance, encouragement and advocacy should be on the basis of separate treaty/convention, rather than covering all major instruments. This approach will allow interventions to target appropriate stakeholders and deal with specific concerns. The project also did not provide country-level interventions to support legislative changes to comply with ratified treaties; test cases where new laws have been applied elsewhere should be made available as part of the awareness process.

In addition, in the workshops, while participants were required to prepare strategies for in-country follow-up, many were not in high enough positions to initiate discussions on policy changes. It therefore appears that training of officials on the nature and implications of ratification, while useful, is not the most effective methodology on its own to encourage Governments to ratify and implement human rights conventions. Instead, the workshops can be considered more as a promotional tool for compliance with human rights treaties than anything else.

Lessons on Process

Advocacy efforts must involve up-front preparatory work to identify the key obstacles to ratification. Strategies for advocating ratification should be based on these findings. Concerns on conflict with traditional value systems need to be addressed as part of this strategy

A major shortcoming during implementation of the project was the lack of strategic identification of key constraints that hinder adoption and ratification. While project design identified key strategies for promoting ratification and implementation of human rights instruments, based on experience from elsewhere, there appeared to be little ownership of these strategies by key stakeholders in the countries involved.

Pre-workshop preparation and workshops themselves stressed identifying legislative changes required to comply with ratified treaties. In addition, project staff have undertaken discussions on the establishment of human rights institutions in three countries (Papua New Guinea, Samoa and Tuvalu), but there has been little progress so far. One success, however, lies in joint activities under the parliamentary component of the project, which has resulted in the inclusion of references to international human rights instruments in the Guiding Principles of Best Practices for Forum Island Countries' Legislatures. These include the need to train legislators in the area of human rights, encourage legislators to implement human rights obligations, and require human rights institutions to report directly to legislatures.

At the same time, claims by stakeholders in many countries are ubiquitous regarding alleged conflicts with traditional systems and practices arising from ratification and implementation of human rights instruments. These are not readily substantiated and seem to arise out of lack of awareness of the instruments. Concerns about the potential conflict with traditional systems lies with both duty bearers and rights holders. Specific instances include the lack of clarity between individual rights (based on human rights principles) and collective rights (traditional values systems); land ownership; traditional social and decision making structures; and traditional gender roles. These issues were not systematically addressed by the project directly with the stakeholders, who hold this view ardently, but sound reasoning for challenging the traditional systems must be presented where they contradict human rights principles.

A key task set out in the component strategy, "a baseline survey on the status of countries' ratification of main human rights instruments and their possible reservations, traditional governance practices that could support human rights, and the work of other agencies and organisations in promoting human rights in the Pacific," is only being taken at a late stage in the project life. This is unfortunate, since the survey would have highlighted key constraints that could have been targeted by the project, particularly in light of resource constraints.

RECOMMENDATIONS

- ❖ Factors that constrain ratification and implementation should be identified jointly by both duty bearers and rights holders. A key aspect of any strategy to encourage ratification should be raising awareness at all levels to generate local support and advocacy for ratification, at the political level if there is inadequate buy-in by politicians, or at community level if concerns relate to customary values.
- ❖ Workshops should be interactive, educative processes for improved mutual understanding of the obstacles and possible pathways to ratification and implementation. Facilitators should be well prepared with detailed status of the positions of key stakeholders on specific human rights instruments.

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- ❖ Assistance for compliance and implementation of human rights instruments must include interventions at the country level with an appropriate legal reform agency for review and amendments of existing legislation.