Integrating the Rights Perspective in Programming

Lessons learnt from Swedish-Kenyan development cooperation

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Preface

The Swedish Agency for Development Evaluation (SADEV) is a government-funded institute that conducts and disseminates evaluations of international development cooperation activities. SADEV's overriding objective is to contribute to the achievement of the goals of Swedish development cooperation.

Evaluation activities at SADEV are conducted along two main branches. Firstly, SADEV evaluates the organisation of Swedish international development cooperation, focusing on issues such as the management and monitoring of executive organisation, the choice of modalities, donor coordination and the internal efficiency of donor organisations. Secondly, SADEV evaluates the short- and long-term impact of Swedish development cooperation. SADEV's evaluations are available electronically from SADEV's website, and in hard copy.

The Swedish Policy for Global Development states that Swedish development cooperation should encompass the rights perspective and the perspectives of the poor. Yet the policy contains little guidance about how the rights perspective should be integrated in development cooperation activities, and hence, in programming. Swedish-Kenyan development cooperation is one instance in which Sida has adopted a practical approach to integrating the rights perspective into all programming phases of development cooperation.

This evaluation identifies and assesses the capacities and capacity development for promoting the integration of the principles of the rights perspective into programming in Swedish-Kenyan development cooperation. It also assesses the extent to which the principles of the rights perspective are integrated into the programmes and sectors that have been targeted and supported under Swedish-Kenyan development cooperation. Based on the experience of Swedish-Kenyan development cooperation, the evaluation presents lessons learnt and specific recommendations for how the Swedish Embassy in Nairobi and its partners within the Government of Kenya may continue their efforts to promote and integrate the rights perspective. The report also offers general recommendations for enhancing the integration of the rights perspective in Swedish development cooperation. It is hoped that the results and recommendations from this evaluation will provide guidance to the Swedish Ministry of Foreign Affairs, the Swedish International Development Cooperation Agency (Sida) and other Swedish actors involved in development cooperation about how to further promote, operationalise and develop capacity to work with the rights perspective in Swedish development cooperation. The evaluation is also intended to feed into the international debate about how to strengthen human rights based approaches in international development cooperation.

Lennart Wolgemuth,

Director General

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Executive Summary

Over the last few decades the United Nations (UN) has increasingly emphasised that development, and democracy and human rights (D/HR) are both interdependent and mutually reinforcing. Poverty is increasingly understood as the non-fulfilment of human rights. The UN Declaration on the Right to Development emphasises that *each individual has rights to participate in and benefit from development processes.* This forms the starting point for human rights based approaches (HRBA) in international development cooperation. A HRBA requires that human rights standards and principles, as elaborated in a plethora of international human rights treaties and conventions, guide all programmes and all phases of development cooperation. Despite numerous differing interpretations of HRBA, there is wide international consensus about the need to use such approaches in development cooperation. Today most countries' development agencies have HRBA policies in place. Sweden's Policy for Global Development (PGD) emphasises that the rights perspective should be integrated in Swedish development cooperation (Government of Sweden, Govt. Bill 2002/03:122). The rights perspective should be interpreted in light of UN discourse on HRBA, but it is a broader concept than the more commonly accepted definition of HRBA, as it also includes democracy and gender equality, and places special emphasis on the rights of the child. A prerequisite for integrating the rights perspective in development cooperation is the integration of the principles of participation, non-discrimination, openness and transparency, and responsibility and accountability. These principles help reveal not only symptoms, but also causes, of poverty. Just as there are few guidelines concerning how to implement HRBA, there are also few practical examples that demonstrate how to work with the promotion and integration of the principles of the rights perspective in Swedish development cooperation.

EVALUATION OBJECTIVES AND MAIN FOCUS

The rights perspective, as a form of HRBA, is the starting point for this evaluation. The evaluation focuses on the process of integrating the rights perspective in Swedish-Kenyan development cooperation. The mainstreaming in action (MAINIAC) approach is taken as an example in which Sweden, within the framework of Swedish-Kenyan development cooperation, has been working with a practical approach to promoting the integration of the rights perspective/HRBA.

The overall aim of MAINIAC was to ensure that development cooperation programmes promote: development for poor people, D/HR including women's and children's rights (the rights perspective), sustainable development, peace and prevention of HIV/AIDS and of the consequences of HIV/AIDS. MAINIAC aimed to achieve these aims through a number of mechanisms, including (but not exclusively):

- To integrate the *principles of the rights perspective*, that is participation, non-discrimination, openness and transparency and responsibility and accountability in six sectors of cooperation: agriculture, health, water, urban development, governance and justice, and roads; and

- To develop capacity at the Embassy and within the Government of Kenya (GoK) to promote/integrate the rights perspective/HRBA.

The overall aim of this evaluation is, by investigating the MAINIAC approach, to increase the knowledge about how to promote and integrate the rights perspective in Swedish development cooperation, and to contribute to a deeper knowledge of HRBA. The specific objectives of this evaluation are:

- **To assess the capacities and the process of capacity development at the Swedish Embassy in Nairobi to promote the integration of the principles of the rights perspective in programming.**

- **To document and assess how and to what extent the principles of the rights perspective have been integrated in the targeted programmes and sectors receiving Swedish support.**

- **On the basis of lessons learnt from the MAINIAC approach, to provide recommendations about how the approach may be continued in Kenya, and about how the rights perspective may be further integrated within Swedish development cooperation.**

The evaluation also considers the implications of integrating the rights perspective in relation to the cross-cutting issues under the MAINIAC approach (sustainable development, peace and HIV/AIDS). Enabling and impeding factors for the approach are also outlined in the evaluation's analysis of the integration of the principles of the rights perspective in programming.

EVALUATION METHOD AND PROCESS

This evaluation has been initiated and conducted by a SADEV team. The team has collaborated with three consultants based in Nairobi, who were responsible for evaluating the integration of the principles of the rights perspective in programming within sectors receiving Swedish support. The evaluation builds upon various programming documentation and interviews with the initiators of MAINIAC, Embassy Programme Officers (POs), Kenyan resource institutions, and Government staff at various administrative levels. 80 interviews were conducted, some of which involved more than one interviewee. The ambition was to perform a comparative analysis of practices prior to and after the MAINIAC approach was initiated (in 2003).

The evaluation has been conducted in five steps, the first two of which form part of a background analysis:

- Provide the background and normative foundation of HRBA and the rights perspective, including clarifying the meaning of the principles of the rights perspective.

- Clarify the main objective(s) of and document the MAINIAC approach.

- Document and analyse the capacities and capacity development at the Embassy to promote the integration of the principles of the rights perspective in programming.

- Document and analyse the integration of the principles of the rights perspective/HRBA in programming within sectors receiving Swedish support.

- Draw conclusions and recommendations about how the MAINIAC approach may be continued in Kenya, and how the rights prespective may be further integrated within Swedish development cooperation.

The following definitions have guided this evaluation in clarifying the principles of the rights perspective (Sida, 2006):

Participation: to ensure that all people are enabled to participate in decision-making processes that concern them.

Non-discrimination: to guarantee all individuals equality in dignity and human rights.

Openness and transparency: to enhance people's right and access to information.

Responsibility and accountability: to enable people to make decision-makers responsible and accountable for their decisions and their work.

This evaluation has adopted a framework, based on international good practice in capacity development for HRBA in programming, to assess the capacities and capacity development at the Embassy. The framework is summarised as follows:
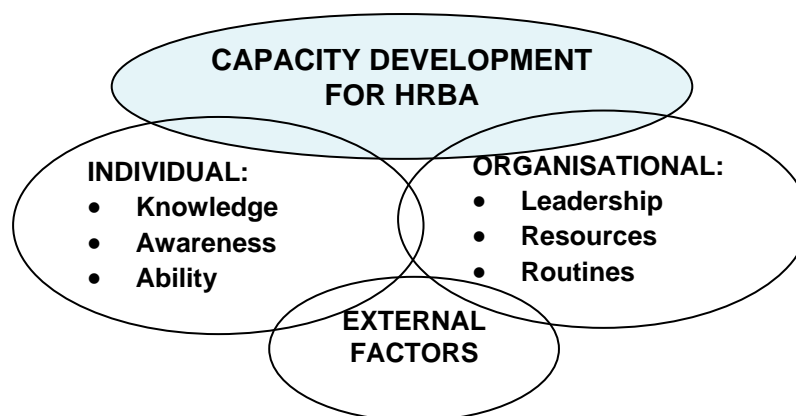
The following issues were of primary concern to the evaluation team, in assessing the integration of the principles of the rights perspective in the programmes and sectors targeted under the MAINIAC approach:[1]

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[1] The consultants followed the same evaluation guidelines. See Appendix I.

- Identifying the relevant duty-bearers[2] in the respective programmes and sectors;

- Identifying how and to what extent the principles of the rights perspective have been integrated in the programmes and sectors, including how capacity has been developed within the GoK and among rights-holders[3].

SUMMARY OF FINDINGS

1. Capacities and capacity development at the Swedish Embassy in Nairobi to promote the integration of the principles of the rights perspective in programming

The Swedish Embassy has made great strides in developing the capacity to promote the integration of the principles of the rights perspective in programming. However, there remain challenges in further institutionalising and sustaining capacity development over time. Below is a summary of this evaluation's main conclusions about capacities and capacity development at the Embassy:

- Knowledge and awareness of the rights perspective, and the ability to integrate the principles of the rights perspective in programming, have generally increased.

- The relationship between the rights perspective and the cross-cutting issues to be promoted under the MAINIAC approach is ambiguous, which has led to confusion among Embassy staff about the approach.

- Of the four principles of the rights perspective, participation and non-discrimination appear to have received most attention. In some instances, there might be legitimate reasons for this, for example a strategy of adopting a less controversial principle of the rights perspective as an "entry point" for further and more structural work. However, the principles are interrelated and mutually reinforcing, and the Embassy lacks an explicit strategy for ensuring an equal focus on *all* the principles of the rights perspective in the medium and long-term.

- The Embassy's main focus has been on the planning and design phase of programming. Again, this is understandable, given that: a) the approach is still in its early phases; and b) an essential task for Programme Officers (POs) is to assess the planning and design phase of a programme. However, POs are also responsible for the monitoring and follow-up of programmes and the Embassy lacks an explicit strategy for how to promote the integration of the principles of the rights perspective throughout all programming phases.

- There has been a strong and committed leadership emphasising the Embassy's priority of working with the principles of the rights perspective. This has been an important factor in contributing to the high levels of knowledge, awareness and commitment of POs to work with the rights perspective. Resources have also been made available, in terms of personnel, time and finances. However the

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[2] State and non-State actors responsible for ensuring that human rights are promoted, respected and fulfilled.

[3] Individuals and groups with valid claims towards duty-bearers.

leadership has been less successful in clarifying the relationship between the rights perspective and the cross-cutting issues.

- Institutionalisation has increased through training and regular feedback on programming work internally. Work procedures and routines for integrating the principles of the rights perspective in assessments and dialogue have been at least partially developed. However, there is a lack of continuous training opportunities for POs. Such training sessions were most frequent at the commencement of MAINIAC.

- There is little evidence of documentation procedures for the MAINIAC approach. This impedes institutionalisation, the exchange of experience and learning in general, and in particular, learning about how the MAINIAC approach could be improved.

- Links to Kenyan resource institutions have been created but these links are still weak. The resource organisations have played important roles in commenting on programme documents and in creating awareness, especially in relation to the initial phases of programming. However, the Embassy has not managed to establish and maintain these linkages over time and such collaboration has generally been ad-hoc.

- The organisational framework of Sida has been an enabling factor for capacity development efforts at the Embassy. This has been particularly manifested in the support and feedback that Sida has provided to the Embasssy.

- The Kenyan context of recent years, particularly with a government that has emphasised the priority to be given to HR, has constituted an important enabling factor for the Embassy in promoting the integration of the rights perspective in sectors and programmes.[4]

2. The extent to which the principles of the rights perspective are integrated in the targeted programmes and sectors receiving Swedish support (agriculture, health, water, urban development, governance and justice, and roads)

The sectors evaluated operate within different institutional frameworks, and therefore exhibit different administrative structures, reform processes (or the lack of them), and capacities and/or leadership (and varying degrees of motivation to work with the rights perspective). Thus, the extent to which the principles of the rights perspective have been integrated varies from one context to another. However, efforts to integrate the rights perspective have generally had a positive impact on programming in all sectors. Below follows a summary of the main conclusions and programming changes in each sector:

Agriculture sector:
- The integration of HRBA has been intensified in all programming phases.

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[4] However, the opportunities for pursuing HRBA in Kenya have been severely compromised by the political crisis and associated violence following the December 2007 elections.

- Through policy change in 2005, extension services are based on bottom-up decision-making that is empowering extension staff and enhancing the principles of participation and accountability.

- Mechanisms have been developed to ensure participation at the district level (also during the implementation phase), with a focus on groups who are poor.

- The number of Common Interest Groups (CIGs) has increased and there are more detailed procedures to consult these groups.

- Openness and accountability are enhanced by information-sharing through community meetings, local media and improved reach of stakeholder forums.

- The institutional memory of, and learning from, the work with the principles of the rights perspective is enhanced by documentation of all programming phases.

- Collaboration with human rights organisations and CIGs is enhancing the integration of the principles of the rights perspective and cross-cutting issues, such as the rights of women and children, the environment and combating the spread of HIV/AIDS.

- Monitoring mechanisms are in place for the various cross-cutting issues. This assists to clarify relations between these issues and the principles of the rights perspective.

Health sector:
- After 2004, activities promoting the principles of the rights perspective have reached national scope, and the human rights based approach is integrated into sector policies.

- Programming is increasingly pro-poor and increasingly emphasises non-discrimination and participation.

- Bottom-up planning is enabling district staff to take decisions and to respond to local claims.

- Information-sharing is enhanced through community meetings and local media and stakeholder forums with improved reach. This is enhancing the openness and accountability principles.

- Staff accountability is enhanced through annual performance contracting, based on targets.

- Cross-cutting issues, such as the rights of women, the rights of the child and HIV/AIDS, are targeted by staff performance contracts.

Water sector:
- Established planning tools, such as the Community Project Cycle (CPC), are enhancing participation and transparency.

- Members of marginalised groups are increasingly consulted in planning and design of programmes.

- Increasing participation and advances in non-discrimination are enhancing the utilisation of complaint mechanisms, thereby strengthening the accountability principle.

- Links to HR institutions exist, but they are weak.

- *Cross-cutting issues*: Skills have been developed for integrating conflict resolution, and peace is enhanced through participation and non-discrimination. Gender is well integrated. Discrimination against HIV infected and affected, and the disabled, is actively discouraged. There is increased recognition of the need to tackle the issue of physical access in the design of facilities with respect to children and people with disabilities.

Urban development sector:
- Participation has been integrated, which enhances bottom-up decision-making (for example, through Settlement Executive Committees, SECs).

- Members of marginalised groups are increasingly consulted in the planning and design of programmes.

- The principles of participation and non-discrimination are mutually reinforcing.

- *Cross-cutting issues*: Skills have been developed for integrating environment and conflict resolution. Gender is well integrated but confused with mainstreaming HRBA.

However:
- There is a general lack of awareness of HRBA.

- The principles of transparency and accountability are poorly integrated (for example, poor use of complaint mechanisms).

- The sector remains centralised, which undermines bottom-up decision-making.

- Links to HR institutions are weak.

Governance and Justice Sector (GJLOS):
- There is more focus on integrating D/HR as goals than on HRBA.

- Links to civil society organisations (CSOs) and the KNCHR have been improved (for example, through the HRBA network).

- Participation has increased through multi-stakeholder consultation, thematic groups and review meetings.

- There is increasing openness in duty-bearers' priority-setting and conduct (such as the police).

However:
- The key players are duty-bearers at high levels (entrenched centralisation).

- The degree of participation of non-state actors is weak: participation is limited mainly to Nairobi-based CSOs.

- Hence, there is a risk of weakening ownership and of impeding HRBA.

- It is unclear how cross-cutting issues are integrated in programming.

Roads Sector:
- HRBA is increasingly decentralised (for example, through monitoring), but there is a lack of documentation of the process.

- Participation and poverty reduction are emphasised, for example, through the use of local resources and labour, and priority-setting through district committees.

- Accountability is enhanced through decentralisation of responsibilities to district committees and engineers.

- CSO participation has improved, following increased HRBA training.

- Training of rights-holders (for example on monitoring) is being conducted.

- *Cross-cutting issues:* Gender, HIV/AIDS and the environment are being mainstreamed. Efforts are being made to involve women, children, people with HIV/AIDS, CBOs and others in developing "wish lists". However, gender is frequently conflated with non-discrimination.

RECOMMENDATIONS

1. Recommendations for how the MAINIAC approach may be continued

The MAINIAC approach has encompassed and involved a number of actors, including the Embassy of Sweden as initiator and promoter, the Swedish partners/duty-bearers in the Government of Kenya (GoK) as implementers within the targeted programmes, and the Kenya National Commission for Human Rights (KNCHR) as a key resource institution in its role of sustaining capacity development for HRBA. The recommendations below are divided into, firstly, overall recommendations for the MAINIAC approach (and hence, how the Embassy, its partners in GoK and/or the KNCHR may continue their efforts), and, secondly, context-specific recommendations for the sectors and programmes targeted under the approach.

1.1 Overall recommendations for the MAINIAC approach:

- Document the approach, what to do (programme theory) and how to do it (method), and improve documentation procedures throughout the process. A strong commitment to documenting the future approach will increase the opportunities for learning and the exchange of experiences, both internally and externally, and contribute to developing an institutional memory;

- Clarify the goals and means of integrating the rights perspective into programming. Clarify the differences (and relations) between the rights perspective and the cross-cutting issues encompassed by the approach. Be more explicit that the

main focus of the approach is on integrating the principles of the rights perspective in programming;

- Explicitly acknowledge the mutually reinforcing nature of the principles of the rights perspective, and develop a strategy to ensure the promotion and integration of *all* of the principles throughout *all* programming phases;

- Further define and elaborate upon the concepts of capacity (what *kinds* of capacities are required to promote the rights perspective) and capacity development (*how* should the desired capacities be enhanced). This would contribute to a common understanding amongst actors under the approach. The actual needs – both the kinds of capacities and how these are best developed – will vary depending on the situation, context and/or target group;

- At the Embassy: continue the institutionalisation of capacity development on the rights perspective through regular training and internal work procedures; that is, expand upon established practices and procedures. The training should focus on clarifying the difference between HRBA, the rights perspective and the cross-cutting issues, and on the practical use of the principles of the rights perspective in programming;

- Develop indicators to allow for monitoring and evaluation of the approach. By further elaborating on how activities should lead to both sub-objectives and overall objectives, the most relevant mechanisms, as well as indicators to measure the process, can be identified. By way of example, a possible indicator for capacity development could be that the integration of the principles of the rights perspective, and the obstacles to integration, are explicitly discussed in Embassy assessment memos;

- Further strengthen the capacity development for HRBA among duty-bearers within and between sectors and programmes (at all levels) by increasing support for training (including more regular training). This training should consist of general training on HRBA and the practical use of the principles of the rights perspective, and customised training clarifying and linking HRBA/the rights perspective to relevant sector-specific cross-cutting issues. The linkages between HRBA, the rights perspective and national policies and reforms could also be made more explicit. The Kenyan resource institutions (with the KNCHR playing a key role) are important actors in providing this training;

- At the Embassy, as a form of sustaining capacity development, establish long-term linkages between Kenyan resource organisations and the Embassy, and support the linkages between these organisations and the partners within GoK that are implementing the programmes in all of the targeted sectors;

- The Embassy should further promote a strengthened collaboration *between* the Kenyan resource organisations (for example through the HRBA network and/or by using the recently produced KNCHR concept paper on HRBA), with the ambition to develop a common understanding of HRBA. Support further capacity development at KNCHR, as this organisation is identified as a key resource institution;

- Promote and support the enhancement of capacities among rights-holders. Both the duty-bearers within GoK and the rights-holders encompassed by the programmes need capacities in order for the rights perspective to be integrated within programming.

1.2 Context-specific recommendations for the sectors and programmes targeted under the MAINIAC approach

Agriculture sector:

- Strengthen local ownership in order to enhance lower level decision-making.

- Further integrate HRBA through alignment with the national decentralisation process.

- Give equal weight to all four principles; ensure that transparency and accountability mechanisms are developed and used.

- Promote institutionalisation by conducting regular and more extensive HRBA training.

- Integrate the principles of the rights perspective further, for example, by translating into local languages and disseminating information to enhance awareness among rights claimants.

Health sector:

- Focus more on transparency issues – the lack of openness is impeding participation and accountability.

- Develop monitoring and evaluation (M&E) systems focusing on the HRBA process.

- Integrate the principles of the rights perspective further, for example, by translating into local languages and disseminating information to enhance awareness among rights claimants.

Water Sector:

- Customise training to the sector-specific context and relate HRBA to cross-cutting issues.

- Develop tools for integrating the principles of the rights perspective and cross-cutting issues.

- Develop capacity among HR institutions and organisations.

- Strengthen interaction between the GoK and HR institutions through structured exchanges.

- Institute mechanisms for community participation in *implementation.*

- Strengthen accountability, for example, by developing formal complaint mechanisms.

Urban Development Sector:

- Conduct more HRBA training at all levels to enhance awareness.

- Customise HRBA training for both HRBA and cross-cutting issues.

- Develop tools for integrating the principles of the rights perspective and cross-cutting issues.

- Develop capacity among HR institutions and organisations.

- Strengthen interaction between the GoK and HR institutions through structured exchanges.

- Link training for HRBA and cross-cutting issues, involving civil society organisations.

- Institute mechanisms for community participation in *implementation.*

- Strengthen accountability, for example, by developing formal complaint mechanisms.

- Introduce inter- and intra-sectoral reforms, for example, decentralisation, which facilitates HRBA.

Governance and Justice Sector (GJLOS):

- Focus more on ways of integrating and institutionalising HRBA within *all* participating ministries, departments and agencies (MDAs) – HR issues are not integrated *per se* because of HR objectives.

- Develop strategies to enhance the participation of rights-holders in planning and conceptualisation of the programme as well as in implementing work plans in the respective MDAs.

- Accelerate efforts to develop the capacity of rights-holders to claim and protect their rights at all programming stages.

- Develop and strengthen accountability mechanisms.

- Link programming to a wider range of CSOs in order to promote institutionalisation and sustainability.

Roads Sector:

- Improve the participation of rights-holders in all programming phases, including assessment and design.

- Involve and give equal attention to *all* vulnerable groups in *all* programming phases.

- Support training of the Ministry of Roads and Public Works to work more closely with the community.

2. General recommendations for enhancing integration of the rights perspective in Swedish development cooperation

The recommendations below identify essential issues to enhance the integration of the rights perspective in Swedish development cooperation. They are directed to the Swedish Ministry of Foreign Affairs (MoFA), Sida and other Swedish actors involved in development cooperation.

- Further elaborate upon the relation between the rights perspective and a HRBA (that is, the Swedish rights perspective is broader than most other HRBAs in that it includes not only human rights but also democracy, gender equality and a specific emphasis on the rights of the child).

- Clarify the differences between the rights perspective and cross-cutting issues. Cross-cutting issues are often identified and prioritised because they are conceived of as threats to development and poverty reduction (for example, HIV/AIDS, environmental sustainability, and non-fulfilment of democracy and human rights). On the other hand, the rights perspective's point of departure is in a number of standards (desirable outcomes) from which, through its principles, vital criteria for a *process* leading to sustainable results could be developed.

- Develop a policy that clarifies the goals of the rights perspective, elaborates upon the two bullet points above and emphasises the importance of the rights perspective being integrated within all development activities. Such a policy should stress the importance of integrating the rights perspective in accordance with the PGD. This policy should also further define the principles of the rights perspective and stress their interrelationships and mutually reinforcing character.

- There is a need to provide more support to policy implementation. Develop an action plan for working with the rights perspective, and develop internal rules that provide for this work to form part of the institutional structure. Various guidelines and strategies (for example, guidelines for cooperation strategies and operational planning) could more explicitly identify how to work with the integration of the rights perspective.

- Capacity and capacity development on the rights perspective is vital for promoting the integration of the perspective in development cooperation. Further elaborate on the concept of capacity (what *kinds* of capacities are required to promote/integrate the rights perspective) and capacity development (*how* should the desired capacities be enhanced) for working with the integration of the rights perspective. Analyse existing and possible capacity gaps, viable ways to support capacity development and direct support accordingly.

- Allocate resources to promote the integration of the rights perspective (personnel, time to devote to the issue, economic resources for capacity development). Leadership becomes essential. A committed leadership is vital in order to provide a mandate within the institutions to work and devote time to promote the rights perspective. Moreover, a committed leadership has the ability to institutionalise capacities through initiatives such as establishing regular routines and work procedures, and providing opportunities for staff capacity development.

List of acronyms

ACU	AIDS Control Units
AIDS	Acquired Immune Deficiency Syndrome
AMREF	Africa Medical and Research Foundation Kenya
APHR	African Population and Health Research
ARV	Anti Retroviral Drugs
ASAL	Arid and Semi-Arid Lands
BBS	Broad Based Survey
CAAC	Catchment Area Advisory Committee
CAPs	Community Action Plans
CBO	Community Based Organisation
CBS	Central Bureau of Statistics
CDF	Constituency Development Funds
CEO	Chief Executive Officer
Cida	Canadian International Development Agency
CIG	Common Interest Group
CONTACT	Country Assessment in Accountability and Transparency
CORPs	Community Own Resource Persons
CPC	Community Project Cycle
CRADLE	Child Rights Advisory Legal Center
CSF	Civil Society Forum
CSO	Civil Society Organisation
DAC	Development Assistance Committee
DANIDA	Danish International Development Agency
DESA	Department for Democratic Governance (Sida)
DfID	Department For International Development
D/HR	Democracy and Human Rights
DLB	District Land Board
DPGL	Development Partners Group on Land
DRB	District Roads Board
DRC	District Roads Committee
DRE	District Roads Engineer

DRH	Division of Reproductive Health
DRO	District Roads Officer
EA	Environmental Audit
EC	European Commission
EIA	Environmental Impact Assessment
EMCA (1999)	Environmental Management and Coordination Act (1999)
ERS	Economic Recovery Strategy
ERSWEC	Economic Recovery Strategy for Wealth and Employment Creation
FMA	Financial Management Agent
FADC	Focal Area Development Committee
FBO	Faith Based Organisation
FIDA	Federation of Women Lawyers – Kenya Chapter
FGD	Focus Group Discussion
FMA	Financial Management Agent
GJLOS	Governance, Justice, Law and Order Sector
GoK	Government of Kenya
GTZ	Gesellschaft für Technische Zusammenarbeit
HIV	Human Immunodeficiency Virus
HOM	Humanist Committee on Human Rights
HQ	Headquarters
HR	Human Rights
HRBA	Human Rights Based Approach/es
IACC	Inter-Agency Coordinating Committee
IASC	Inter-Agency Steering Committee
ICRAF	International Centre for Research on Agro Forestry
IEC	Information, Education and Communication
ILEG	Institute for Law and Environmental Governance
ILUSP	Integrated Land and Urban Sector Programme
INEC	Department for Infrastructure and Economic Cooperation (Sida)
ITT	Intermediate Technology Transport
IWRM	Integrated Water Resource Management
KACC	Kenya Anti-Corruption Commission
KDHS	Kenya Demographic and Health Survey
KENSUP	Kenya Slum Upgrading Programme

KEPH	Kenya Essential Package for Health
KEPSA	Kenya Private Sector Alliance
KHRC	Kenya Human Rights Commission
KLA	Kenya Land Alliance
KNCHR	Kenya National Commission on Human Rights
KPU	Kenya People's Union
KRB	Kenya Roads Board
KWS	Kenya Wildlife Service
KWSP	Kenya Water and Sanitation Programme
LATF	Local Authority Transfer Fund
LFA	Logical Framework Analysis
LIIS	Land Information for Informal Settlements
LIMS	Land Information Management Systems
LRF	Legal Resources Foundation
LRSP	Land Reform Support Programme
LRTU	Land Reform Transformation Unit
LSRCC	Legal Sector Reform Coordination Committee
MAINIAC	Mainstreaming In Action
M&E	Monitoring and Evaluation
MFA	Ministry of Foreign Affairs
MDAs	Ministries, departments and agencies
MDGs	Millennium Development Goals
MoA	Ministry of Agriculture
MoH	Ministry of Health
MoH	Ministry of Housing
MoJCA	Ministry of Justice and Constitutional Affairs
MoL	Ministry of Lands
MoLFD	Ministry of Livestock and Fisheries Development
MoLH	Ministry of Lands and Housing
MP	Member of Parliament
MRPW	Ministry of Roads and Public Works
MSSG	Multi-Stakeholders Support Group
MTEF	Medium Term Expenditure Framework
MTP	Medium Term Programme
MTS	Medium Term Strategy

MWI	Ministry of Water and Irrigation
MWRMD	Ministry of Water Resources Management and Development
NACADA	National Agency for the Campaign Against Drug Abuse
NACC	National Aids Control Council
NALEP	National Livestock Extension Programme
NARC	National Alliance Rainbow Coalition
NASCOP	National Aids Control Programme
NASEP	National Agricultural Sector Extension Policy
NEMA	National Environment Management Authority
NGO	Non Governmental Organisation
NLIS	National Land Information System
NLP	National Land Policy
NLPFP	National Land Policy Formulation Process
NWCPC	National Water Conservation and Pipeline Corporation
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
OGC	Oslo Governance Centre
OHCHR	UN Office of the High Commissioner for Human Rights
PCO	Programme Coordinating Office
PCU	Programme Coordinating Unit
PGD	Policy on Global Development
PIU	Programme Implementation Unit
PO	Programme Officer
POM	Department for Policy and Methodology (Sida)
PRSP	Poverty Reduction Strategy Paper
PS	Permanent Secretary
PSC	Programme Steering Committee
QAC	Quality Assurance Committee
QCAs	Quality Control Agents
RBA	Rights Based Approach
RBM	Results Based Management
RIHS	Rural Integrated Health Services
RMI	Road Maintenance Initiative
RMLF	Roads Maintenance Levy Fund

ROK	Republic of Kenya
RVWSP	Rift Valley Water Services Board
RWSS	Rural Water Supply and Sanitation
SADEV	Swedish Agency for Development Evaluation
SEC	Settlement Executive Committee
Sida	Swedish International Development Cooperation Agency
SO	Support Organisation
SPIU	Settlement Project Implementation Unit
SSATP	Sub-Saharan Africa Transport Programme
STPP	Short Term Priorities Programme
SWAP	Sector Wide Approach
TA	Technical Assistance
TB	Tuberculosis
TC	Technical Committee
TCC	Technical Coordination Committee
TGs	Thematic Groups
ToR	Terms of Reference
TOT	Training of Trainers
UN	United Nations
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UN-HABITAT	United Nations Human Settlements Programme
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
WAB	Water Appeals Board
WHO	World Health Organisation
WRM	Water Resource Management
WRMA	Water Resource Management Authority
WRUAs	Water Resource Users Associations
WSB	Waters Services Board
WSPs	Water Services Providers
WSR	Water Sector Reform
WSRB	Water Services Regulatory Board
WSTF	Water Services Trust Fund
WUAs	Water Users Associations

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[5] These reference persons bear no responsibility in respect of the information, content, conclusions and/or recommendations contained in this evaluation report.

Contents

1 Introduction

Over the last few decades the United Nations has increasingly emphasised the negative impacts of the non-fulfilment of human rights upon social and economic development. Poverty is increasingly understood as the non-fulfilment of human rights. In 1986, the United Nations General Assembly adopted the Declaration on the Right to Development. The declaration emphasised that each individual has rights to participate in and benefit from developmental processes (UN, 1989). This effort formed part of a gradual process to promote human rights based approaches (HRBA) in development cooperation.

A human rights based approach to development requires that human rights (HR) standards and principles, as set out in international HR treaties and conventions, guide all programmes and all phases of development cooperation. HR standards constitute desirable outcomes, and HR principles constitute the criteria for a viable process to reach those outcomes. Hence, HRBA emphasise that the processes by which the stated goals are realised are just as important as the outcomes. HRBA have reconceptualised the international community's understanding of *development*: from a concept focused on "needs" to one focused on the "rights" of the people it serves. In a human rights based approach to development it is human rights that determine the relationship between individuals and groups with valid claims ("rights-holders") and state and non-state actors with obligations ("duty-bearers"). A HRBA identifies rights-holders (and their entitlements) and corresponding duty-bearers (and their obligations), and works towards strengthening the capacities of rights-holders to make claims, and of duty-bearers to meet their obligations (Filmer-Wilson, 2008). Internationally, most development agencies have HRBA policies in place, but there are few practical guidelines for the development of capacity to implement HRBA.

Sweden's Policy for Global Development (PGD) emphasises both "a rights perspective" and "the perspectives of the poor". Sweden's rights perspective should be regarded in the context of the UN discourse on HRBA. However, it is broader than the common international definition of HRBA, as it also includes democracy, gender equality and places special emphasis on the rights of the child (Government of Sweden, Govt. Bill 2002/03:122; Swedish Parliament, Committee Report 2003/2004:UU3; Swedish Parliament, Parliamentary Communication 2003/2004:112). The perspectives of the poor requires that development processes and policy be shaped and driven to a greater extent by the circumstances, experiences and priorities of people who are poor themselves (Government of Sweden, Govt. Bill 2002/03:122). Both perspectives, which are closely associated and overlapping, should guide both the goals and the process of Swedish development cooperation. Specifically, the rights perspective accentuates the principles of participation, non-discrimination, openness and transparency, responsibility and accountability (Sida, 2005b). These principles help reveal not just the symptoms, but also the causes of poverty (Sida, 2003:12). A prerequisite for integrating the rights perspective in devel-

opment cooperation is therefore the integration of the principles of the rights perspective into all programming phases. However, there are few examples of practically working with the promotion and integration of these principles in Swedish development cooperation. There are few guidelines and implementation recommendations.

Nevertheless, in Swedish-Kenyan development cooperation, the Swedish Embassy in Nairobi has, since 2003, been working with a practical approach to promoting the integration of the rights perspective. Internally, the approach was called "Mainstreaming In Action" (MAINIAC), and can be seen as a "human rights based approach in practice".[6] The approach reflects the understanding of the non-fulfilment of democracy and human rights as the root cause of poverty in Kenya. The overall aim of MAINIAC was to ensure that programmes supported by Sweden (within the sectors of agriculture, health, legal sector reform, water, roads and urban development, and with agreements from 2004) promote poor people's development, D/HR including women's and children's rights, sustainable development, peace and the prevention of HIV/AIDS and of the consequences of HIV/AIDS (Emb/Nairobi, 2003). The promotion of D/HR, including gender equality and the rights of the child, was understood among the initiators of the approach as the promotion of the rights perspective as one form of HRBA. As an overarching and fundamental perspective, it was to permeate all policy and programming. The starting point was the principles of the rights perspective, that is participation, non-discrimination, transparency and accountability. The MAINIAC approach aimed to develop capacities amongst Embassy staff and Kenyan duty-bearers to promote and integrate these principles into programming. It also aimed to link Kenyan human rights organisations and institutions (often referred to as resource institutions) to programming.

Given the paucity of documentation or guidelines about how to integrate the rights perspective in practice, MAINIAC represented a considerably exploratory approach. It was a "pilot", focusing on how to integrate the principles of the rights perspective in programming. Prior to the MAINIAC initiative, there were few cases in which this integration had explicitly been put into practice and few assessments that had focused on the extent to which the rights perspective has been integrated into Swedish development cooperation work. Therefore, this initiative provides opportunities for exchange of experiences and learning.

This evaluation takes the rights perspective, as one form of a HRBA, as its starting point. It focuses on the *process* of integrating the rights perspective in Swedish development cooperation. In particular, it evaluates the process of integrating the principles of the rights perspective in programming that was used in the MAINIAC approach – one of the few cases in which Sweden has worked to explicitly integrate these principles. The MAINIAC approach is an example of an initiative that emphasises the *process* in order to reach desirable results. This evaluation assesses the development of capacity at the Swedish Embassy to promote the integration of the principles of the rights perspective in programming, and the extent to which these princi-

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[6] This evaluation uses the term "MAINIAC approach" throughout, when desribing and analysing the Embassy's efforts to promote the rights perspective and cross-cutting issues in Swedish-Kenyan development cooperation. However, the "MAINIAC approach" is an *internal* term, commonly used at the Embassy to refer to efforts to work with a human rights based approach/the rights perspective in practice (Jayawardena, 2008).

ples are integrated in programmes conducted by Swedish partners. The evaluation also considers the potential implications of integrating the rights perspective in relation to integrating a number of cross-cutting issues – that is, other prioritised areas or conceived threats to development.

1.1 Evaluation objectives

On the basis of lessons learnt from the MAINIAC approach, the overall aim of this evaluation is to increase knowledge about how to promote and integrate the rights perspective in Swedish development cooperation, and to develop recommendations for how this work can be enhanced. The evaluation also aims to contribute to a deepening of knowledge about HRBA and to promulgate understanding of the concept.

Promoting the integration of the rights perspective in programming requires certain capacities. A **first objective** is therefore to assess the capacities at the Swedish Embassy in Nairobi and the process of capacity development to promote the integration of the principles of the rights perspective in programming through the MAINIAC approach (Chapter 4).

A **second objective** is to document and assess how and to what extent the principles of the rights perspective have, through the MAINIAC approach, been integrated in the targeted programmes and sectors receiving Swedish support in Kenya, and to identify factors that both enhance and impede this approach (Chapters 5-7).

A **third objective** is to provide recommendations, on the basis of lessons learnt from the MAINIAC approach, about how this approach may be continued in Kenya, and about how the integration of the rights perspective in Swedish development cooperation may be enhanced (Chapter 8).

As stated above, in this evaluation the rights perspective is identified as one form of HRBA. Thus, the normative foundation of HRBA and the rights perspective is described by way of background, in order to establish the relationship between HRBA and the rights perspective. The principles of the rights perspective are also further elaborated in order to clarify how these principles are defined and used in the oncoming analysis.

Further, because MAINIAC was a "pilot" approach, it lacked a detailed and documented description of goals and means; it lacked a clear programme theory. Therefore, and by way of background to the analysis, this study has attempted to illuminate the MAINIAC logic so as to ascertain the extent to which a coherent programme theory exists, and how it was developed. This to clarify the aim of the MAINIAC approach.

1.2 Evaluation method, process and delimitations

This evaluation has been initiated and conducted by a SADEV team. The team has collaborated with three consultants based in Nairobi, who have been responsible for the assessments on the integration of the principles of the rights perspective into the programmes and sectors receiving Swedish support in Kenya (Chapters 5-7 of this evaluation). The evaluation methodology was drafted and developed at SADEV. However, discussions were held between the SADEV team, the Kenyan evaluators

and the Kenyan advisor tied to the evaluation during the development of the methodology, enabling the entire evaluation team to reach a common understanding of HRBA, the rights perspective and its principles. Further, all evaluators followed joint evaluation guidelines (found in Appendix I of this report), to facilitate comparison of results.

Few evaluations have considered the implementation of the rights perspective. Therefore, in developing the evaluation plan the SADEV team had to embark on an original analysis of the meaning of the rights perspective, particularly in relation to HRBA generally. The team also had to clarify the meaning of integration of the rights perspective in programming. The evaluation design was discussed at an international HRBA forum, the HOM Human Rights Impact Assessment Conference[7], in November 2006. The conference concluded that evaluations focusing on human rights must also focus on processes; on how things are done, rather than just on final goals. Further, in relation to the Paris Agenda there was fear that, in their haste to focus on target values, donors tend to forget about the causal mechanisms and processes leading up to results (see HOM, 2007). Thus, it was determined that evaluation questions should target the processes associated with integrating human rights principles (Theis, 2003; Sida, 2005b, 2005c).

After settling the evaluation plan, it was necessary to identify the content of the MAINIAC approach to promoting the rights perspective. This required interviews with the initiators of the approach at the Swedish Embassy and Sida Headquarters, and with Kenyan human rights resource organisations. The team analysed the MAINIAC design and how the approach developed.

Evaluating capacity development at the Swedish Embassy was the next step. The SADEV team initially had to elaborate upon the concept of capacity development and, based on an analysis of international good practice in capacity development for HRBA in programming, identify what these capacities may consist of. The team then collected and analysed data to determine to what extent capacities have been developed at the Embassy as a result of MAINIAC. The data collected consisted of programming documentation (mainly initial assessment memos[8] and notes from dialogue meetings from before and after 2004) and interviews with people involved in the process: the initiators of MAINIAC, Embassy Programme Officers (POs) and Kenyan resource institutions. 25 interviews were conducted, at Sida Headquarters, at the Embassy and with persons from Kenyan resource institutions. The analysis builds mostly upon these interviews, as the documentation was ultimately found to have limitations (see below under delimitations).

The ambition of this evaluation has been to compare practices and documentation prior to and after the approach was initiated (in 2003), in order to identify changes that can be attributed to the MAINIAC approach – both in relation to the individual

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[7] The Human Rights Impact Assessment in Practice Conference was organised by HOM (the Humanist Committee on Human Rights) and took place between 23-24 November 2006, in Zandvoort, the Netherlands. The conference focused on methods for measuring impacts of Human Rights policies. Among the participants were representatives of the European Commission/EuropeAid, the OECD Metagora Project, the OHCHR, the UNDP Oslo Governance Centre, Unicef and Save the Children.

[8] Assessment memos are prepared by the responsible PO at the Embassy, and sometimes in cooperation with Sida Headquarters, when determining a contribution to a proposed programme or project. Hereafter, in the analysis of capacity development at the Embassy, initial assessment memos are simply referred to as assessments.

knowledge and ability of POs to promote the rights perspective in programming, and the Embassy's organisational efforts to institutionalise capacity for promoting the rights perspective. This comparison of capacity proved difficult, as there was no comparative baseline. The MAINIAC documentation contained no situation analysis that would provide the background and identify capacity gaps among staff prior to the introduction of the approach. Further, aspects beyond the scope of MAINIAC, such as other contextual factors affecting capacities positively or negatively, needed to be further elaborated and understood, in order to better understand changes and to be more certain about the degree to which changes could be attributed to the MAINIAC approach. In the analysis, the enhancing and impeding factors are highlighted in an effort to identify this comparison. Notwithstanding these limitations, the evaluation was able to draw a number of conclusions about the results of the MAINIAC approach and its process. It is outside the scope of this evaluation to consider scenarios that would have existed had the MAINIAC approach not been initiated.

With respect to the integration of the principles of the rights perspective in programming, a Terms of Reference (ToR), including specific evaluation questions, was elaborated for the consultants (see Appendix II). The consultants' assessments involved collecting and analysing programming documentation from both before and after 2004, in the sectors of agriculture, health, urban development, water, governance and justice, and roads. The consultants also identified relevant duty-bearers at different levels within each sector and interviewed these duty-bearers in relation to programming practices and procedures both prior to and after 2004. 55 interviews were conducted, some of which involved more than one interviewee. Each consultant was responsible for two sectors, and used a comparative approach to analyse the extent of the integration of the principles of the rights perspective within the programmes. The criteria used in determining the division of sectors between the respective consultants included how long Sweden had been supporting the sector, the form of aid modality (project support, sector-wide approach, and so on) and financial allocation. The potential effects of MAINIAC were to be weighted against these aspects. Related to attribution, all consultants highlighted the difficulties in isolating the MAINIAC approach. The respective chapters of each of the consultants discuss the methods used, and methodological challenges faced.

Validating findings with stakeholders involved in working with the approach was an essential step in this evaluation. On 15 August 2007, preliminary conclusions and recommendations from the evaluation were presented at a validation seminar in Nairobi. Among the participants were the Swedish Embassy, Kenyan resource institutions (such as the Kenya National Commission on Human Rights) and representatives in the ministries and at district level from the sectors and programmes that were subject to evaluation. The two aims of the seminar were: a) to present, discuss and validate the findings of the SADEV evaluation, and b) on the basis of the conclusions and recommendations from the SADEV evaluation, to discuss the future process for the integration of the rights perspective in development cooperation in Kenya.

1.2.1 Scope and delimitations

Since this evaluation considers the process for integrating the rights perspective in programming, its focus is to assess the *process* by which to reach desired results, rather than to assess results themselves. The process for integrating the rights perspective in programming within MAINIAC included capacity development at the Embassy and the integration of the rights perspective in programming work. However, results are discussed, but in the context of identifying them as intermediate results of an ongoing process. Also, through gaining knowledge about how the rights perspective may be promoted or integrated, this evaluation identifies the tools that facilitate this process. This is an important prerequisite for possible further, broader, impact assessments. Moreover, the integration of the rights perspective is a long-term process and it might be too early to assess its wider impact against development goals.

The scope of this evaluation is to analyse capacity development and the integration of the principles of the rights perspective in programming within the six sectors targeted under MAINIAC in Swedish-Kenyan development cooperation after 2004. The MAINIAC approach was developed to ensure that programmes with agreements from 2004 integrate both the rights perspective and a number of cross-cutting issues, identified as threats to development (Swedish MFA, 2004; Emb/Nairobi, 2003). While this evaluation focuses on the integration of the *principles of the rights perspective*, it also briefly considers the relations between the rights perspective and cross-cutting issues.

An evaluation based on a rights perspective should allow for the canvassing of points of view of as many as possible of the stakeholders that were involved in the approach (Theis, 2003; HOM, 2004). This study has aimed to consult the views of the various actors involved in developing and implementing the MAINIAC approach. However, this evaluation is delimited in that is has not directly consulted the rights-holders, although it does recognise their importance.

A more direct goal of this evaluation has been to scrutinise the capacity development at the Swedish Embassy in Nairobi. A delimitation in relation to this aspect is that the documentation collected and analysed (especially in analysing individual capacity) consisted mainly of assessment memos and notes from dialogue meetings. This documentation reflects, to a degree, the extent to which the rights perspective is promoted at the Embassy. However, assessment memos reflect how a certain programme is assessed at the planning and design phase of programming, thereby revealing little about the PO's ability to follow up the programmes. Notes from dialogue meetings have been used as a source in analysing the ability to communicate the principles of the rights perspective, during both planning and follow-up phases of programming. Assessing this aspect was also problematic, as there are few dialogue notes, they are generally brief, and they are written as summaries of discussions rather than as detailed records of the dialogue (or the abilities of individual POs). Nevertheless, the notes do provide evidence of the Embassy's overall capacity to follow up on the rights perspective by means of dialogue.

In partly ameliorating these delimitations of the documentation collected, as mentioned above, the analysis also builds on interviews, since interviewing POs is an effective means of determining how individual capacity has been developed at the Em-

bassy. These interviews provide evidence about how POs view their own capacity, and reflect the internal level of knowledge, awareness and understanding of the rights perspective and its four principles.

Furthermore, and related to individual capacity, work within different sectors entails operating in specific contexts, each with unique challenges, and dealing with institutions, each with different structures and attitudes towards the rights perspective. This results not only in different working conditions for different POs (which might either promote or hinder their individual capacity development), but also provides for rather different opportunities for POs to assess, follow-up and engage in dialogue to promote the rights perspective.

1.3   Outline of the report

Following this introductory chapter, **Chapter 2** presents a background discussion of the various meanings of HRBA and the rights perspective, since it was in this context that the MAINIAC approach in Kenya was developed. The background builds upon international research and documentation on HRBA. Further, the background elaborates on the Swedish rights perspective in relation to HRBA, and clarifies how the principles of the rights perspective are to be understood.

Chapter 3 elaborates on the goals and means of the MAINIAC approach, with the aim of analysing to what extent a coherent programme theory exists, and if so, how it was developed. This analysis primarily builds upon interviews with the initiators.

Chapter 4 focuses on the first objective of this evaluation. It assesses the capacities and the process of capacity development for promoting the principles of the rights perspective at the Swedish Embassy in Nairobi. A review of good practice for capacity development for HRBA is provided at the outset, as the concepts of capacity and capacity development were found to be poorly defined in the MAINIAC document. The proceeding analysis builds upon programming documentation and interviews. Specific conclusions are drawn about capacity development at the Embassy.

Chapters 5 to 7 focus on the second objective. They assess how and to what extent the principles of the rights perspective have been integrated in the targeted programmes and sectors receiving Swedish support, and identify factors that both enhance and impede this approach. Capacity among the Swedish partners (officials within the Government of Kenya in the six targeted sectors), links between GoK and Kenyan resource institutions, and the implications of integrating the principles of the rights perspective in relation to cross-cutting issues are also briefly considered. Each of the three consultants based in Nairobi has written one of these chapters. The analysis builds upon programming documentation and interviews. Each chapter also suggests ways to further enhance the integration of the rights perspective in the various sectors and programmes. Chapter 5 focuses on the agriculture and health sectors, Chapter 6 on the water and urban development sectors and Chapter 7 on the governance and justice and roads sectors.

C**hapter 8** outlines the conclusions and recommendations of this evaluation. Firstly, lessons learnt from the MAINIAC approach in Kenya are discussed and recommendations given for how this approach may be continued. Thereafter follow more general recommendations about how the integration of the rights perspective in Swedish development cooperation may be enhanced.

2 Background: Human Rights Based Approaches and the Rights Perspective

The MAINIAC approach was developed at the same time as Swedish development cooperation became increasingly based on the rights perspective. The rights perspective should be regarded in the context of UN discourse of human rights based approaches (HRBA) to development. This chapter provides a background to HRBA in the international context. The rights perspective and its four principles, which guide this evaluation, are then discussed.

2.1 International Human Rights mainstreaming initiatives: Background and normative foundation

Initial international mainstreaming efforts reflected a number of initiatives to strengthen democracy and human rights (D/HR) through development cooperation. In 1986 the UN General Assembly adopted the Declaration on the Right to Development, which recognised development as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized." (UN, 1989). It also described the human person as the central subject of development and as an active participant and beneficiary of the right to development. Some years later, the 1993 Vienna World Conference on Human Rights emphasised that development and D/HR are interdependent and mutually reinforcing. There was a call for increased efforts to integrate human rights into various sectors (OECD, 2006). Thereafter, in reform proposals in 1997 and 2002, the UN Secretary-General argued that HR are cross-cutting issues to be mainstreamed in all UN activities (UNDP, 2003a).

Following the first UN reform proposal, the United Nations Development Programme (UNDP) adopted a policy on HR: "Integrating Human Rights with Sustainable Human Development" (1998), which suggested strategies for mainstreaming and means for implementation. One of these means was the joint UNDP/OHCHR (UN Office for the High Commissioner for Human Rights) Human Rights Strengthening Programme (HURIST), which was launched in 1999, with the aim of identifying best practices and learning opportunities in the application of a HR approach to development programming (UNDP/OHCHR, 1999, Programme Document GLO/99/615). The "UNDP Human Development Report 2000", devoted entirely to HR, was also a breakthrough in the discussion about mainstreaming human rights. It recognised that HR and human development share a common vision and a common purpose: to secure the freedom, wellbeing and dignity of all people everywhere. The concepts of HR and human development are mutually reinforcing, expanding people's capabilities and protecting their human rights and fundamental freedoms. Further, the report stressed that a human rights perspective can add potential value to the development agenda, drawing attention to issues such as accountability, non-discrimination, social

justice, the need for information (transparency) and political voice for all people (participation). A human rights perspective advocates legal tools and institutions as means to secure freedoms and human development. It also shifts the priority to the most deprived and excluded. Human development, in turn, contributes to building a long-term strategy for the realisation of HR (sustainability) and directs attention to the socio-economic context in which human rights can be realised (UNDP, 2000). The year 2000 also saw the adoption of the Millennium Declaration and the subsequent identification of a set of Millennium Development Goals (MDGs). This was followed by a UN Secretary-General report – "Road Map Towards the Implementation of the United Nations Millennium Declaration" – outlining strategies for action to meet the goals of the Declaration. This document emphasised that human rights are a vital principle of UN Reform and central to all activities of the UN system (Jonsson, 2006).

The launch in 1997 of the first UN Reform triggered debate within UN agencies about the "operationalisation" of a human rights based approach to development and the practical implications of adopting such an approach. An informal UN inter-agency working group was established in 2000 to review this matter. In 2003 UN Agencies reached agreement about a "Common Understanding" of a human rights based approach to development cooperation (Jonsson, 2006) (see below). This Common Understanding stated that HR standards and principles should guide all programmes and all phases of development cooperation (OECD, 2006). This referred to both goals and the processes for reaching them. Accordingly, some donors now use checklists based on international HR treaties and conventions to ensure that HR are respected throughout context analyses, planning, programming, implementation and evaluation (Filmer-Wilson, 2005). Donors integrate HR through *mainstreaming* (into different sectors), *dialogue* (foreign policy and aid dialogues, sometimes linked to conditionalities), *HR projects* (for example, CSO projects) and *implicit HR work* (support to HR goals and objectives of multilateral organisations) (Piron and O'Neil, 2005). Mainstreaming implies that a policy is integrated into all activities of an organisation. All staff are responsible for mainstreaming such policies (Uggla, 2007).

2.2 General definitions and guiding principles of a Human Rights Based Approach (HRBA) to development

The now widely-accepted definition (common understanding) of a human rights based approach to development cooperation – agreed at the UN Inter-Agency meeting on HRBA at Stamford, in 2003 – states that (UN, 2003):

> All programmes of development co-operation, policies and technical assistance should further the realisation of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.

> Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.

Development cooperation contributes to the development of the capacities of "duty-bearers" to meet their obligations and/or of "rights-holders" to claim their rights.

(UN, 2003)

Most UN development agencies have traditionally pursued a "basic needs approach", that is, an approach based on identifying the basic requirements of human development and advocating in favour of their fulfilment. A "human rights based approach" contrasts sharply with the basic needs approach in that it implies the existence of a "duty-bearer" with duties and obligations towards the "rights-holder" (also called the "claim-holder" or "subject of rights"). It focuses primarily on accountability and process (Jonsson, 2003). Another key difference is that all actions taken within a HRBA are based on legal and moral obligations to carry out a duty (to protect and assist), and the approach promotes the empowerment of rights-holders to claim their rights. A human being is a *subject* of HR, not an *object* of charity and benevolence, as in the basic needs approach (Jonsson, 2003; Save the Children**,** 2002).

Notwithstanding the "common vision and purpose" of a "HRBA" and a "human development approach", a significant difference between them relates to outcome and process. HRBA go beyond traditional human development approaches by also focusing on the quality of the *process* by which outcomes are achieved. Human development approaches, on the other hand, are more concerned with social and economic development as an *outcome* of development efforts. This is not to say that the outcome is not equally important in HRBA. Human rights *standards* define benchmarks for desirable outcomes (for example, the MDGs), while HR *principles* represent conditions for the process (Jonsson, 2006).

It is crucial to HRBA to development programming to identify rights-holders (and their claims: "claim to something" or "claim against somebody") and duty-bearers (and their duties or obligations), in order to raise the level of accountability (Jonsson, 2003). This means looking both at the positive obligations of duty-bearers and at their negative obligations (abstain from violations). In order for the duty-bearers (the ultimate duty-bearer being the state) to deliver on entitlements and claims, to respond to denial and violations, and to ensure accountability, adequate laws, policies, institutions, administrative procedures and practices, and mechanisms of redress and accountability must be developed. It also requires "the translation of universal standards into locally determined benchmarks for measuring progress and enhancing accountability" (UN, OHCHR). HRBA do not imply strengthening of HR *per se.* Rather, such approaches demand substantial time and research in order to become rooted in local contexts (Braithwaite *et al.*, 2003).

It is also necessary under HRBA approaches to identify the obligations of duty-bearers and the extent of their accountability. All signatories (states) to a UN convention have four types of obligations: to *respect, protect, promote* (facilitate) and *fulfil* (provide). These obligations should be equally applied to all duty-bearers in a HRBA. The obligation to *respect* requires the duty-bearer to refrain from interfering directly or indirectly with the enjoyment of rights; the obligation to *protect* requires the duty-bearer to take measures that prevent third parties from interfering with the enjoyment of rights; the obligation to *promote* requires duty-bearers to adopt appropriate legislative, admin-

istrative, budgetary, judicial, promotional and other measures towards the full realisation of rights; the obligation to *fulfil* requires duty-bearers to directly provide assistance or services for the realisation of rights. The extent to which, and how effectively, rights are claimed and duties are fulfilled depend on the capacity of both duty-bearers and rights-holders: "a person cannot be held accountable for fulfilling a duty if he or she lacks the conditions necessary to do so" (Jonsson, 2003). Accountability of duty-bearers rests upon three conditions: 1) the person must accept *responsibility* for carrying out the duty; 2) the person must have the *authority* to carry out the duty; and 3) the person must have access to and control of the *resources* required to meet the obligation – "a person can only be held accountable if that person feels that he/she *should* act; that he/she *may* act; and that he/she *can* act" (Jonsson, 2003).

There are substantial similarities between the concepts of "good programming" and "human rights programming". Although good programming cannot be equated with a HRBA to programming, most of the elements of the former are necessary for the latter (Jonsson, 2003). This is particularly evident in the following elements of human rights programming: (i) empowerment, especially of the poor, to claim their rights; (ii) facilitating participation in societal decision-making; (iii) a people-centred approach based on dignity and respect for the individual; (iv) accountability, which "requires monitoring at all levels of society"; (v) identification of the relationship "between all right-holders and all duty-bearers"; (vi) "disparity reduction" with a view to poverty eradication; (vii) "respect for local knowledge", but leaving room for promotion of external HR values; (viii) the need to understand all structural causes and to pay "simultaneous attention" to all of them; (ix) committing equal attention to both outcomes and processes to ensure that both are framed in accordance with human rights considerations; (x) a "country's human rights realisation must come from within and be supported from outside" (the UN Development Assistance Framework is of particular importance here); and (xi) the comparative advantage of each international agency should determine the actions (Alston: 41-2, citing Jonsson, 2003).

HRBA imply that both the goals and the processes through which the goals are achieved are based on norms and values embedded in international HR laws and conventions. The key principles of HRBA are accountability of duty-bearers, participation of rights-holders and the principles of equality, equity and non-discrimination (Theis, 2003). Accordingly, evaluating the integration of HRBA in programming implies analysing both the processes of implementation and the outcomes of that process. (This evaluation of MAINIAC will predominantly analyse the process of implementation.)

There is no consistent international definition that draws together the numerous human rights approaches (for example, RBA, HRBA and HRBAP). The precise understanding of these concepts, and the approaches used, vary between donors (for further elaboration refer to Piron and O'Neil, 2005). However, a common feature of "human rights approaches" is that international HR treaties and conventions form their normative base, both for their objectives and for how development assistance is carried out. In this evaluation, the term HRBA refers to this general understanding.

2.3 The Swedish integration of "the rights perspective" and "the perspectives of the poor" – policy and programming implications

In 1998 the Swedish Parliament approved a development policy that promoted a HRBA (Government of Sweden, Skr. 1997/98:76). Consequently, Swedish partnerships with developing countries are based on those international HR conventions to which all parts adhere. To enhance mainstreaming, Sida operationalised HR conventions into questions to be considered in country analyses and cooperation strategies (see Swedish MFA and Sida, 2001). From this perspective it was important to form an understanding of poverty in terms of the non-fulfilment of human rights, in order to attack the root causes of poverty. Sida produced the publication "*Perspectives on Poverty*" as a means of enhancing mainstreaming and tackling context-specific poverty situations, and to ensure that all strategies, plans and programmes were based on multi-dimensional poverty analyses (Sida, 2002). This publication identifies the pursuit of D/HR as an important means (see below):

> Human rights frameworks provide a normative base for poverty reduction, while democracy organises political and social life to this end.
>
> A democracy and human rights approach translates poor people's needs into rights, and recognises individuals as active subjects and stakeholders. It further identifies the obligations of states that are required to take steps – for example through legislation, policies and programmes – whose purpose is to respect, promote and fulfil the human rights of all people within their jurisdiction.
>
> (Sida, 2002)

The concept of democratic governance encompasses popular participation, division and balance of state power, good governance and the development of a democratic culture (Sida, 2001). In 1989, the UN adopted the Convention on the Rights of the Child (CRC). The CRC pushed for further integration of the rights of the child as a perspective in various areas receiving support (Government of Sweden, Govt. Comm. 2001/02:186). The Swedish Parliament decided in 1996 to establish gender equality as an overarching development goal (reflecting the 1995 UN Conference in Beijing). Accordingly, development programmes in various sectors should address inequalities in the access to resources and opportunities arising from differences between men's and women's activities and responsibilities (Sida, 1997).

The principal goals and policies of Swedish development cooperation in the area of democratic governance are outlined in the two Government communications: "*Democracy and Human Rights in Sweden's Development Co-operation*" *(1997/98)*, and "*Human Rights in Swedish Foreign Policy*" *(1997/98)*, and in "*Sida's Programme of Action for Peace, Democracy and Human Rights*" *(1998)* (Sida, 2003). Both government communications maintain that the rights perspective shall be viewed as a starting point for development cooperation, and be used both as a goal and as a means in dialogue and direct assistance. A "rights dimension" should be guaranteed in all major development programmes (Government of Sweden, Skr. 1997/98:76), Government of Sweden, Skr. 1997/98:89).

HR was further integrated in Swedish development cooperation with the announcement in 2003 of the new "Policy for Global Development" (PGD). The PGD states that all Swedish foreign policy should be based on *a rights perspective* and *the perspectives of the poor*. The *rights perspective* encompasses democracy, respect for HR, gender equality and the rights of the child. The rights perspective implies a focus on the power, capacity and will of individuals to create development. It emphasises individuals denied the opportunity to use that power, capacity and will (that is, discriminated against, excluded and marginalised individuals) (Government of Sweden, Govt. Bill 2002/03:122). A rights perspective is about sharing existing resources more equally and strengthening of processes by which marginalised people assert their human rights (Nyamu-Musembi and Cornwall, 2004). The *perspectives of the poor* implies that individuals should not only drive their own development but also shape the substance of that development (Government of Sweden, Govt. Bill 2002/03:122).

It can be seen that the Swedish "rights perspective" is broader than international understandings of HRBA, as the former includes the additional core values of democracy, gender equality and the rights of the child. The rights perspective's close association, and overlapping, with the perspectives of the poor accentuates its encompassing nature. However, there is an important difference between the rights perspective and the perspectives of the poor. While parts of the rights perspective are based on an internationally recognised framework, the perspectives of the poor lies outside any explicit framework. The latter is based on the individual's *personal experience* of poverty and individuals' varying requirements for improving their quality of life. Yet some claim that the Millennium Declaration and the MDGs form a framework encompassing the perspectives of the poor. Certainly, the two perspectives *are* overlapping and mutually reinforcing. Together they form a framework for assessment and analysis, and a basis for improving conditions in partner countries (Sida, 2006a).

The rights perspective needs to be integrated into all Swedish development cooperation activities. Sida's mainstreaming tools are situation-analyses, cooperation strategies, dialogue, cooperation across agencies and sectors, collaboration with various stakeholders (government and civil society), networking between HQ and field offices and regular training programmes (Braithwaite *et al.*, 2003). Sida has developed recommendations that emphasise the need to form an understanding of the rights perspective within the organisation (Sida, 2005a; Braithwaite *et al.*, 2003). For example, it emphasises that all staff must be aware of and understand the concept, and that the rights perspective should guide planning and assessment. Many organisations and parties involved in this area stress the importance of relevant situation analyses for the development of programmes that effectively strengthen the rights perspective in various contexts (see, for example, Save the Children, 2002). Situation analyses are important prerequisites for all assessments of changes in HR relations.

For a HRBA, such as the rights perspective of Swedish development cooperation policy, to be implemented, it must be well integrated with development agencies' operational practices. Additionally, development partners, as implementers and owners of the programmes and initiatives, must be aware of, and embrace, the importance of the integration of the rights perspective. This is where the programming level plays a vital role.

2.4   The operationalisation of the rights perspective - the principles of the rights perspective

The rights perspective encompasses the principles of non-discrimination, participation, openness and transparency, responsibility and accountability (Sida, 2005b). These principles are overlapping and mutually reinforcing. The definitions of the principles of the rights perspective that guide their implementation are (Sida, 2006):

• *Participation*: to make sure that all people are enabled to participate in decision-making processes that concern them;

• *Non-discrimination*: guaranteeing all individuals equality in dignity and human rights;

• *Openness and transparency*: to enhance peoples right and access to information; and

• *Responsibility and accountability*: to enable people to hold decision-makers responsible and accountable for their decisions and their work.

Participation

The principle of participation is identified as a cornerstone of democracy and a prerequisite for the increased empowerment of poor people to improve their lives. Participation is therefore fundamental to the implementation of Sweden's Policy for Global Development (Sida, 2006a). As the roots of poverty can often be traced to unequal power relations, it is important to enhance participation of the poor in political, economic and social life (Sida 2002). To do this often implies a change of current power relations, between government and people as well as among people, which should ultimately lead to a more inclusive and equal society.

The UN Declaration on the Right to Development states that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development …" (OHCHR, 1986, resolution 41/128). It further asserts: "States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights." (OHCHR, 1986, resolution 41/128). Development strategies should therefore be formulated such that they *empower* citizens – especially the most marginalised – to articulate their expectations towards the State and other duty-bearers, and take charge of their own development (OHCHR, 2006).

Participation should be viewed as a goal in itself as well as an important means to achieve other development goals (Sida, 2002; Sida, 2006a). Participation is therefore both a result and a process. Participation is only constructive if it occurs within structures that enable some impact on events and decisions (Sida 2002a). To the extent that people feel empowered to influence the development of their society, they are correspondingly motivated to participate. The capacity and the will to participate, and to create favourable conditions and structures for participation, are thus essential components of the principle of participation (Sida 2002a).

Sida (2002a) has raised some key issues for consideration for those working to enhance participation:

- Participation should be viewed as a continuous process (that is, outcomes should be seen from a long-term perspective);

- Participation is context specific (that is, its precise form depends on the economic, political, social and cultural context, the degree of empowerment of people, their interest, and the power structures in society);

- Participation at different levels in society is essential (for example, state and civil society organisations);

- Participation can be defined in different degrees (the first being to be informed, the second to be consulted regarding limited issues and the third to influence major decisions);

- Participation is difficult in an unequal, intolerant and/or conflict-ridden society (and therefore, it is important to prevent exclusion of groups from mechanisms that promote active participation).

Non-discrimination

At the core of the rights perspective is the idea that all individuals have the same value and human rights. Hence, the principle of non-discrimination is fundamental and is closely related to the protection of human rights (Sida, 2006). Non-discrimination is a multifaceted term, addressed in numerous international conventions.[9] Although many of these conventions deal only with discrimination on specific grounds, the term "discrimination" can be broadly defined as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms." (OHCHR, 1989, CCPR General Comment No. 18).

The human rights imperative of a human rights based approach to development requires that particular attention be given to the principles of discrimination, equality, equity and vulnerable groups. This means that development programmes should give priority to the most marginalised and vulnerable people, and must be accessible to all. The identification of the most vulnerable in any given context must be determined locally, and requires development data to be disaggregated as far as possible by race, religion, ethnicity, language, sex and so on (UN, OHCHR). *Qualitative* analysis of the data is also necessary in order to illuminate the individual behind the quantitative analysis and to understand social relations, processes and values in a given society (Sida, 2006a). All development decisions, polices and initiatives must also guard against simply reinforcing existing power imbalances between different groups (UN, OHCHR).

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[9] Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

Openness and transparency

The right and access to information are prerequisites for participation and, therefore, for deepening democracy and equality in society. If people have access to relevant information, and are enabled to participate actively in decision-making, this will increase transparency and build a culture of democracy at all levels of society (Sida 2002a). Openness and transparency are also important complementary and prerequisite principles for accountability (Sida 2006).

The UNDP's guidelines on accountability and transparency (CONTACT) state that "transparency comprises all means of facilitating the citizen's access to information and also his/her understanding of decision-making mechanisms." (UNDP, 2001a). Hence, making information available is a direct example of transparency. Access to information encompasses both promoting and protecting the human right to information on the one hand, and promoting communication (use of information) to voice one's views, to participate in democratic processes at community, national, regional and global level, and to set priorities for action on the other. However, information availability means little if people are not aware it exists, or of how they might access it, if the costs of accessing it are unreasonable (time and money), or if the information is not user-friendly (for example, it is written in an unfamiliar language). In order for transparency to be meaningful it is therefore crucial to address the information needs and to consider the relevance and appropriateness of mechanisms to access information (UNDP, Oslo Governance Centre, 2003).

Transparency is a broad concept, which has received attention in the ongoing "good governance" debate. It involves a number of sub-issues, including openness and transparency in government policies and budgets (measures to increase citizens' right to transparency in public finances), parliament's opportunity to debate budgets, hold open meetings with the public and publicly disseminate legal decisions, and transparency of policies and systems of taxation (increased openness within the administration of taxation). These issues, together with the right to information, are critical in the fight against corruption.

Responsibility and accountability

In order to promote a rights perspective it is not only important to create mechanisms for participation, inclusivity and open access, but it is also crucial that decision-makers take responsibility and are held accountable for their decisions (Sida 2006a). This includes parliaments and local councils holding national and local governments to account, and the political leadership holding civil servants to account.

As mentioned above, HRBA are about duties and obligations, and they emphasise the principle of accountability. Accountability is essential as it helps secure an enabling environment for development (UNDP, 2001b). It is sometimes described as "the obligation of political leaders to answer to the public for their actions and decisions." (Afrobarometer, 2006). This description defines the issue of political accountability, which entails both checking the power of political leaders to prevent arbitrary or abusive rule, and helping to ensure that governments operate effectively and efficiently. In a proper-functioning democratic system, all public officials, including politicians, bureaucrats, civil servants, the judiciary, the police and the military, should be held

accountable for their actions and decisions. Thus, the state has the primary responsibility and obligation to ensure respect for human rights norms and principles (Afrobarometer, 2006).[10] Holding governments accountable requires, amongst other things, that citizens be informed and able to claim political space, and transparency in the use of public funds (UNDP, 2000).

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[10] However, some argue that accountability encompass not only the state but all relevant subjects and objects at sub-national, community and household level, such as individuals, local organisations and authorities, private companies, aid donors and international institutions (which are duty-bound to provide effective international cooperation) (Jonsson, 2003).

3 Design and Programme Theory of the MAINIAC Approach

Before examining the process of promoting and integrating the rights perspective in Swedish-Kenyan development cooperation, and by way of background to the analysis, it is necessary to clarify the means and objectives of the MAINIAC endeavour, that is, to identify MAINIAC's "programme theory". A programme theory consists of assumptions about "*how* a programme causes the intended or observed outcomes" (Leeuw, 2003). It builds upon logical reasoning about what the main problems are and how these problems should be tackled. Essentially, programme theories explain the logic behind programme objectives. It is clear that, before evaluating a programme, we need to understand how the activities carried out within the programme were supposed, or believed, to contribute to programme objectives (Rossi *et al.*, 2004). Also, different stakeholders (internal and external) will have different views about goal priorities, and what means are the most efficient. Goal formulation and actual inputs will be guided by the dominant understanding of the programme theory. It is essential to identify both the formulators of the theory and the way the theory was developed.

Programme theories include assumptions about mechanisms that link inputs to outcomes, outcomes to sub-level objectives, and sub-level objectives to overall goals. Such theories should also comprise notions about external factors that may influence programmes (Sida, 2004). Figure 1 illustrates the main components of programme theories.

Figure 1 Basic components of a programme theory.
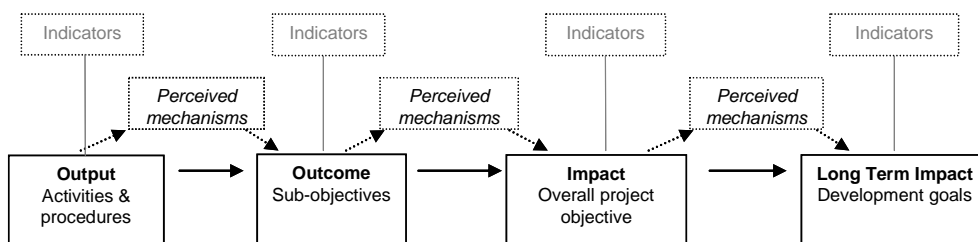
In Figure 1, "perceived mechanisms" constitute links between contributions (which are inputs) and results (output, outcome and impact). For example, we might assume that HRBA training increases knowledge and awareness of this approach among staff. Hence, HRBA training constitutes an output (activity) and the expected outcomes are knowledge and awareness of HRBA. We might further assume that this knowledge leads to implementing HRBA in programming (which could be an impact), which in turn leads to reaching the overall development goals (as a long-term impact). Another example in Swedish-Kenyan development cooperation is that of weak democracy and human rights. These are understood as root causes of poverty in Kenya (Swedish MFA, 2004). Hence, it is assumed that strengthening D/HR (as overall mechanisms) will contribute to a long-term impact, that is, poverty reduction.

This evaluation does not study the entire chain of development events, from inputs to long-term impacts. However, it is necessary to consider links between inputs and outcomes, as they are an important link both in the overall development cycle, and at the programming level. It is possible, prior to implementation, to assess whether it is probable that planned activities will lead to the expected results. In such cases, rather than using empirical data and evaluating impact, programme theory assessments consider how reasonable assumptions about expected results are, by relating them to "theoretical benchmarks", such as needs assessments, research and expertise (Rossi *et al.*, 2004). However programme theory analyses are often conducted after the implementation of programmes. Such analyses serve to identify links and eventual gaps in assumptions about relations between inputs, outcomes, and impacts.

The existence of a discernable programme theory (or several such theories) is vital for learning from a programme. If evaluations are to provide advice to policy makers and programme designers, it is important to understand both whether desired outcomes have been reached and how they have been reached. An understanding of the presumed causal mechanisms that link, through several steps, input to long-term impact, is necessary in order to allow for the replication of successful programmes. This understanding is also necessary to adjust unsuccessful programmes. Similarly, a clear notion of how programme results relate to the problems to be addressed is essential. Otherwise even the most rigorous programme implementation will fail to achieve development (van der Knaap, 2004).

The aim of this chapter, is to clarify: a) if there is an explicit and coherent programme theory; and b) if there are any marked differences in the programme theory according to the source (that is, project documentation, different stakeholders, and so on); c) which stakeholders were involved in elaborating the programme theory (especially in relation to Kenyan partners); and d) how links to Kenyan HR resource organisations and institutions were to be created to enhance the sustainability of the MAINIAC approach. The programme theory analysis will assist in identifying how activities carried out within the approach were expected to contribute to capacities to promote and/or integrate a rights perspective in programming.

The MAINIAC document contains a limited description of goals and means, and lacks a detailed, documented programme theory. The original MAINIAC Coordinator confirmed that "there was no elaborated log frame". The main focus was "on what to do", that is "learning by doing" (Jayawardena, 2006a).[11] That there is no documented theory does not mean that one does not exist. Programme logics exist at least in the minds of their creators. Hence, the evaluation devoted considerable attention to unearthing the MAINIAC initiators' and stakeholders' perceptions about goals, mechanisms and indicators of the approach. Therefore, a brief outline of the context in which MAINIAC was developed follows.

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[11] The initiators were inspired by many of the documents referred to in Chapter 2 of this evaluation in the development of the MAINIAC approach (Jayawardena, 2008).

3.1 The context: Internal and external factors at the time of design of the approach

At the time that the MAINIAC approach was developed (2003) the rights perspective was receiving increasing emphasis at Sida headquarters, predominantly as a result of the then new Policy for Global Development. At the same time, the Embassy was elaborating on a new cooperation strategy for Kenya (for the period 2004-2008). This strategy contained poverty reduction through democratic governance as an overall aim (Swedish MFA, 2004). In the previous cooperation strategy (1999-2003), D/HR was an essential element, but the focus was on direct support to the sector of democratic governance. Support went to "core democracy issues", such as civil society and HR organisations, and the constitution process. Hence, the 2004-2008 strategy provided the Embassy with a clear mandate to work with the rights perspective (encompassing D/HR, gender equality and the rights of the child). The mandate to integrate the rights perspective in programmes meant that the principles of the rights perspective could be used more systematically than previously (Wiking, 2006).

The MAINIAC approach was developed with scant documentation or guidelines about how to mainstream D/HR in sectors other than democratic governance (Wiking, 2006). The Swedish Government communication of 1997/98 on D/HR in Sweden's development cooperation had resulted in a joint MFA/Sida document, but this never obtained official status. Nonetheless, the document formed a crucial starting point for the work at the Swedish Embassy in Nairobi to promote the integration of the rights perspective and cross-cutting issues in programming. The question for the Embassy was *how* to do this. The MFA/Sida D/HR document was too general to provide the necessary guidance. There was a need to establish what a rights perspective meant in practice, and to develop guidelines for operationalising it (Wiking, 2006).

A new policy environment characterised the Kenyan context of 2003. Human rights issues, previously very difficult (if not impossible) to talk openly about, received increasingly more attention. Within this new policy environment, the Kenya National Commission for Human Rights (KNCHR) was established in 2002, which indicated the Government's increased emphasis on human rights issues. Government and civil society also pursued closer collaboration. This opened up the opportunity for the Embassy to pursue the MAINIAC approach, with optimism that it would have a positive effect (Jayawardena, 2006b). Nevertheless, throughout much of Kenya's political history charges of HR violations have been raised by civil society against governments. Human rights thus remain a highly politicised matter (Jayawardena, 2006a, 2006b).[12]

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[12] Human rights and political instability has again raised its head with the political crisis and associated violence following the December 2007 elections (including alleged massive and systematic electoral process fraud, establishment of an illegitimate government, and violent attacks on and displacement of communities).

3.2　　Goals and objectives of MAINIAC

The overall objective of the MAINIAC approach (as stated in the MAINIAC document) is:

> [t]o ensure that the programmes in the areas of agriculture, health, legal sector reform, water, roads, urban development to be supported in Kenya by Sweden, with agreements from 2004, will promote poor people's development, democracy, human rights including women's and children's rights, sustainable development, peace as well as prevention of HIV/AIDS and the consequences of HIV/AIDS.

> (Embassy of Sweden 2003)

This implies that there are four principal issues to be integrated (mainstreamed) into all Sida-supported programmes in Kenya: 1) democracy and human rights, including women's and children's rights (the rights perspective); 2) sustainable development; 3) peace and the prevention of conflict; and 4) prevention of HIV/AIDS and the consequences of HIV/AIDS. These issues are consistent with the overall goal of Swedish development cooperation (to create conditions that will enable poor people to improve their quality of life), Sida policy (including a multi-dimensional view of poverty), and the aims and objectives, and identified threats to development, in the Swedish-Kenyan cooperation strategy (Gov. of Sweden, 2003; Sida, 2002; Swedish MFA, 2004). Thus, MAINIAC's goals were clearly consistent with both the rights perspective and the perspectives of the poor, as articulated in Sweden's PGD. Similarly, the other issues to be promoted under the approach (referred to in this evaluation as the "cross-cutting issues") are clearly consistent with the identified impediments to development, as stressed in the relevant Kenyan policy documents (see for example Gov. of Kenya, 2003; Government of the Republic of Kenya, 2003a). Hence, it is clear that MAINIAC's overall objective is based on policy frameworks guiding Swedish-Kenya development cooperation. When the MAINIAC approach was launched, the Counsellor for Development Cooperation at the Swedish Embassy identified the shared normative foundation underpinning the endeavour to integrate D/HR in programming, as manifested in the HR conventions ratified by Sweden and Kenya (Stridsman, 2006).

The overall objective of the approach, as elaborated in the MAINIAC document, appears to encompass the mainstreaming of four equivalent issues: D/HR, sustainable development, peace and HIV/AIDS. However, the perceptions of various stakeholders reflect ambiguity about the perceived relationship and priority between the four issues. Most informants perceived that, at the outset of MAINIAC, the rights perspective was given precedence over the cross-cutting issues: "The four cross-cutting issues may have been regarded as similarly important and mutually reinforcing, but, in consistency with the country strategy, the focus was on democracy and human rights." (Wiking, 2006). Also, Embassy staff typically expressed the overall objective along the lines of: "to integrate the rights perspective in all new agreements that Sida was preparing from 2004." However, other informants question the assumption that a stronger focus on the rights perspective than on the cross-cutting issues would be the most efficient means to realise MAINIAC's objectives.

This lack of clarity about the relationship between, and priorities given to, the different issues reflects how the integration of the rights perspective came to be understood within the Embassy. Prior to MAINIAC the Swedish Embassy had begun to work with human rights principles to mainstream D/HR.[13] As the terminology gradually changed with the articulation of the Swedish PGD, four principles became synonymous with working with the rights perspective – participation, non-discrimination, openness and transparency, and accountability. The principles of the rights perspective came to encompass not only the integration of D/HR but also gender equality and the rights of the child (Wiking, 2006). How, then, was the mainstreaming of the cross-cutting issues thought to relate to the integration of the rights perspective? The distinction is important, as the integration of the rights perspective is not achieved by simply adding one issue after another to be mainstreamed. Mainstreaming commonly focuses on pre-determined issues or groups. The rights perspective, however, finds its point of departure in a number of principles, which are used to analyse, for example, which are the different vulnerable groups in a particular context. Other organisations working with HRBA have found that the distinction between HRBA and different mainstreaming issues is a difficult but important task (Filmer-Wilson, 2007). There appears to be a risk that working with predetermined issues or groups may lead to a method of "rounding up the usual suspects", rather than assessing vulnerability in the specific context: *who are the vulnerable groups here?*[14] Giving equal weight to a (large) number of mainstreaming issues risks creating both confusion and "mainstreaming fatigue" (Moser & Moser, 2005).

The perceived ambiguity in the relation between the different issues to be integrated under MAINIAC builds upon different perceptions amongst initiators who were emphasising a holistic rights perspective, and the MAINIAC document's more "atomised" portrayal of the issues. The document asserts that a multidimensional approach to poverty requires the integration of all the issues mentioned. Overall objectives, sub-objectives and outputs all refer to "the identified mainstreaming issues" (Emb/Nairobi, 2003). However the document contains no reasoning about the relationships between the rights perspective and the more specific cross-cutting issues. Of all the staff informants, only the initial MAINIAC Coordinator explicated her understanding of this relationship coherently: "[W]e worked both with the principles and the threats to human rights: environment, conflict and HIV/AIDS." (Jayawardena, 2006a). Interpreting this statement as a goal formulation, the overall objective entails not only integrating the rights perspective, but also analysing potential threats to the realisation of human rights. Such a stringent articulation of the relationship was the exception. Descriptions of the relationship between the rights perspective and the cross-cutting issues vary substantially between the various informants, and these testimonies reflected only vague understandings of the relationship.

Perceptions within the Embassy about other aspects of the overall objective achieved almost complete consensus. The most significant of these aspects is the view that the objective was to *develop* a new approach. The common belief also prevailed that there

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[13] The articulation of four principles arose out of an ambitious methodology project at Sida's Department for Democracy and Social Development between 1999 and 2001. The project resulted in a synthesis report in which the principles were cited as a means for mainstreaming D/HR (Sida, 2002b:8).

[14] An illustration of such rigidity in analyses is the competition between different resource institutions over whether children's or women's rights are the most important to mainstream (Jayawardena, 2006a).

was such a scarcity of tools with which to integrate the rights perspective and the cross-cutting issues that an important *objective* of the MAINIAC approach was to develop a methodology. One of the initiators explained: "[I]t was clear that we needed to work with what the rights perspective and a rights based approach actually entailed." (Wiking, 2006). The initial Coordinator added that "[t]he idea was to make RBA visible, and focus was placed on how to do this in practice. The focus was on what to do and on learning by doing." (Jaywardena, 2006b, 2008). The Embassy therefore devoted much thought to elaborating (sub-level) objectives about *how* to work with the rights perspective. The focus on the methodological aspects appeared to be a direct consequence of the pioneering character of the approach, along with the need to make the approach applicable in programming. However, this appears to have resulted in an absence of mechanisms linking sub-level objectives to overall development goals.[15]

MAINIAC constituted a "pilot approach", which focused on how to integrate the rights perspective in practice. The aim for the first year was to work according to the MAINIAC document, and thereafter to assess the approach – possibly adjusting it – for the continuing endeavour. However, this assessment was delayed, and as a result there was little documentation produced that revealed the process during the first years of the approach. Nonetheless, it appears that, over time, the overall objective was modified from the original MAINIAC document. The main objective, as expressed by the initiators and the current leadership at the Embassy, became to integrate *the rights perspective* in programming by using the principles of the rights perspective as a tool. Thus, among the issues to be mainstreamed, the rights perspective is of highest priority, and should form the point of departure.

MAINIAC's sub-objectives

Sub-level objectives reflect assumptions about necessary steps to reach overall objectives. The MAINIAC approach has six sub-objectives. These pertain to a number of actors: Embassy staff, Kenyan duty-bearers (GoK), resource institutions and other donors (Emb/Nairobi 2003):

A. To increase the capacity of the programme officers to develop indicators, participate in dialogue with partners on the identified mainstreaming issues in the assessment phase and the implementation phase.

B. To develop the capacity of partners to identify if the policies and programmes are harmful or promote the identified mainstreaming issues.

C. To develop the capacity of partners to analyse and develop outputs and indicators as well as processes from implementation that promote the mainstreaming issues.

D. To learn from and develop local resource persons and link local resource persons and/or NGOs with good knowledge in the identified mainstreaming issues with the partners in the programmes to be supported both in the assessment phase and in the implementation phase.

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[15] The overall development goal is poverty reduction. The overall objective in the MAINIAC document is: "Enhanced development, democracy, human rights, including women's and children's rights, sustainable development and peace for poor people, and prevention of HIV/AIDS and a mitigation of its consequences for poor people." (Emb/Nairobi, 2003).

E.   To influence Swedish donor partners about the importance of focus on poverty reduction and the mainstreaming areas.

F.   To develop a system for monitoring and evaluation of problems and success of integrating the mainstreaming issues in the assessment of and the implementation of the programmes.

The last two sub-objectives above are outside the scope of this evaluation, and so are not dealt with here, except that the evaluation briefly considers sub-objective E. in providing the wider context of the MAINIAC approach, and in making recommendations.

The sub-objectives (as outlined in the MAINIAC document) reveal an "atomised" portrayal of all the issues to be integrated, encompassing all as equally important. The stakeholders exhibited a number of different interpretations about the relationship between the sub-objectives. Elaborating on the first sub-objective (A), one of the initiators explained that the rights perspective was to be integrated consistently and made visible throughout all work at the Embassy (Stridsman, 2006). Enhancing the capacity at the Embassy was seen as a very important sub-objective among some stakeholders. One programme officer suggested: "The problem prior to MAINIAC was that there was not sufficient capacity at the Embassy to make assessments based on the four cross-cutting issues and the perspectives of the poor … Instead of using consultants it was decided that Embassy capacity was to be enhanced. … Capacity at the ministries had to be enhanced as well." Other informants put less emphasis on the Embassy and viewed the relationship between the objectives of capacity development at the Embassy, on the one hand, and in the ministries, on the other, as sequential. The initial priority was to enhance capacity at the Embassy, but as that was achieved, the focus shifted towards capacity in the ministries (Stridsman, 2006). However, the regional D/HR advisor (when MAINIAC commenced) insisted that "the most important thing was to enhance capacity at the ministries" (Wiking, 2006). This view, which was echoed by other informants, reveals a different perception about the relative importance of the sub-objectives.

Another important issue is the relationship between the assessment/planning and implementation phases. The sub-objectives appear to give equal weight to the assessment and implementation stages. Yet the initiators emphasised the objectives of promoting and integrating the issues in programme plans and policies (Wiking, 2006; Stridsman, 2006; Jayawardena, 2006a, 2006b). Hence it appears that a lesser weight was intended to be given to the implementation and follow-up phases. Some programme officers who were deeply involved in the development of the MAINIAC approach similarly stressed the importance of *programme documents* integrating all mainstreaming issues. Similarly, it appears that the implementation phase was not prioritised for sub-objective D. – to link resource persons and NGOs to assessment and implementation. A representative of an NGO linked to MAINIAC explained that the main role that NGOs were to have was to comment on governmental policies and programmes, and to conduct training.

Overall, a picture emerges of a disparity in priority accorded to the sub-objectives by various stakeholders. Different priorities may also reflect vagueness about the importance of enhancing capacity at the Embassy. This disparity may also be explained

by different time frames. Enhanced Embassy capacity might be a short-term objective, while partners' capacities and linkages among partners and resource institutions may be long-term objectives. This reflects the Embassy's ambition to anchor the rights perspective with the KNCHR. It is also clear that, in practice, the integration of the principles of the rights perspective in programme design was a primary objective. Since the integration of the rights perspective in programme design is a first step to its implementation, the priority given to initial assessments and programme design is unsurprising. However there is a lack of reasoning about precisely how the implementation of the principles of the rights perspective would be enhanced. Indeed, the lack of concrete plans for the implementation phase is likely to compromise implementation.

3.3   The development of the programme theory

A fundamental aspect of all programme theories concerns *who* influences goals and means. Sida's programming policy emphasises the importance of involving all appropriate stakeholders in the formulation of problems to be solved and strategies to tackle these problems. Involving partners and other relevant stakeholders in planning processes enhances the relevance and feasibility of the means chosen. It also strengthens development cooperation partners' ownership of programmes (Sida, 2004; Carothers, 1999).

At a general level, the Embassy had long discussed the rights perspective endeavour, and the desire to increase the visibility of human rights, with Kenyan CSOs (not least within the framework of previous and current support to CSOs in the democratic governance area of intervention), and, with the initiation of MAINIAC, with the Kenya National Commission on Human Rights (KNCHR). The effort to integrate the rights perspective within its wider connotation also coincides with the Kenyan policy framework on development, mentioned above (see Chapter 3.1). Statements by government representatives envisioning Kenya as a HR state support the perception of Kenyan ownership of HRBA applied by various donors.[16]

The Kenyan participation in the formulation of MAINIAC is illustrated in the description of Sida's "search for partners", where a key partner was found in the KNCHR (Wiking, 2006). The Embassy required a local partner to facilitate the integration of the rights perspective into programming, and the KNCHR had a clear mandate for this role. It was agreed that the KNCHR would be a facilitator, creating links between the GoK and civil society.[17] Once the MAINIAC approach was under way, the Embassy also had extensive discussions with partners in GoK and among Kenyan resource institutions (CSOs). A representative of one of the CSOs that participated in these discussions explains that the CSOs were invited to suggest not only *what* to do, but also *how* the actions should be undertaken. The focus was on how the Government could do things better. There was agreement about the need to conduct considerable HRBA training. A MAINIAC initiator indicated that, "prior to jointly arranged seminars and workshops there were pre-meetings with GoK and resource

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[16] Such statements have been recorded from the KNCHR Chairman, Maina Kiai, and, have even been attributed to President Kibaki (Jayawardena, 2006b).

[17] The recollections of various stakeholders differ. While the informants from KNCHR state that discussions on HRBA were initiated at a later stage when KNCHR was asked to facilitate workshops on HRBA, Embassy informants recall meetings with the KNCHR during the planning process of MAINIAC.

institutions where we focused on what does it mean that Kenyans have human rights." (Jayawardena, 2006a). However, in the formulation of the more specific objectives of the MAINIAC approach, non-Embassy stakeholders had limited involvement. How to prioritise between different sub-objectives were neither clarified internally nor discussed with partners in GoK, or among resource institutions. Nonetheless, the general means and objectives of MAINIAC's programme theory, and the importance of recognising that Kenyans have human rights, appear to be entrenched among the Kenyan partners (GoK, KNCHR and CSOs as resource organisations).

3.4 Mechanisms – Assumptions about how to reach goals and objectives

There is no explicit discussion on mechanisms (linking activities to outputs, and outputs to outcomes) in the MAINIAC document. Interviews with initiators revealed that some thought was given to mechanisms, in particular at the lower levels of the approach's chain of effects. By way of illustration, there was a view that changing procedures at the Embassy would lead to a change in incentives, that would in turn enhance staff commitment to working with the rights perspective (Stridsman, 2006). Another mechanism (although not discussed in those terms) was the notion that working with the principles of the rights perspective directly in connection with the different sectors (taking the reality of each programme as a starting point for discussion), would facilitate the translation of Embassy training into enlightened and committed integration of these principles into the ongoing assessments (Stridsman, 2006; Wiking, 2006; Jayawardena, 2006). Similarly, explicit or implicit incentive structures were also seen as vital for enhancing capacities and the commitment among partners in GoK to integrate the principles of the rights perspective in programming.

Another potential mechanism is the relation to the KNCHR. There appears to have been an understanding amongst initiators that the development of capacity at the KNCHR, and linking the KNCHR to partners in GoK, would enhance capacity and the integration of the principles of the rights perspective into the different sectors. As a government institution, the KNCHR's mandate includes promoting HRBA in government programmes (Jayawardena, 2006b). Further, an informant involved in the development of MAINIAC emphasised that an important ambition was to anchor the rights perspective within the KNCHR. It is possible that the important role given to the KNCHR led to the rights perspective being further prioritised in the approach, ahead of the cross-cutting issues.

Other mechanisms that remain unclear relate to *how* to develop capacity. The MAINIAC document outlines several objectives that encompass the concept of "capacity". The main objectives refer to capacities to identify and promote all mainstreaming issues in the assessment and implementation of programmes. Another kind of capacity mentioned relates to the ability to promote the issues in dialogue. However, the means by which to develop these capacities are not discussed. Informants mentioned few mechanisms other than training. Mechanisms found in the list of planned outputs include training seminars and linking resource institutions to the programmes. A representative of the KNCHR explained that they agreed that much training was needed, on several levels. KNCHR planned to hold HRBA seminars with both implementers and decision-makers, including ministries and trainers. The

trainers were then to disseminate HRBA. Hence, it appears that great faith was placed in the role of training. However, even the concept of training as a mechanism remains poorly defined, and there does not appear to have been discussions about how capacities achieved through training were to take root. The same conclusions apply to the role of the resource institutions. These institutions were to comment upon, and were thereby able to influence, government plans for the different sectors. They were also to conduct training, although this role referred mainly to the planning phase. It is not evident what the role of such resource institutions should be throughout the implementation phase. It is therefore clear that there was a lack of reasoning about mechanisms between activities and objectives of the MAINIAC approach.

3.5   Indicators of change

Indicators are measures of goals, objectives, outcomes and outputs. Indicators are necessary to enable the follow-up of results of programmes and projects (Dawidson and Hulterström, 2006). Similarly, the absence of clear goal definitions necessarily implies an absence of good indicators. With regard to MAINIAC's overall objective, no indicators appear in the documentation. However, as discussed above, the objective was operationalised through the principles of the rights perspective. A participatory approach was used to make the approach relevant in each of the six sectors. Workshops and seminars devoted much effort to stakeholder discussions about how the four principles could or should be manifested in a particular sector or programme. Breaking down objectives into less abstract manifestations is the first step to facilitate enhancing measurability. Such efforts are nonetheless insufficient tools for evaluating change in, say, participation or accountability. For example, in order to assess whether accountability has been integrated we need more precise criteria for assessment. A potential indicator of enhanced accountability might be "the existence of complaint mechanisms" which would allow for comparison before and after MAINIAC. Or a more appropriate indicator of accountability might be to measure "the number of complaints forwarded through existing complaint mechanisms", or "the number of complaints forwarded by individuals from a particular vulnerable group". The choice of indicator will, amongst other things, depend upon the expected time lag of results. Therefore, several indicators will be necessary for each sub-objective (Dawidson and Hulterström, 2006). The absence of criteria for assessment/indicators makes it difficult to assess the extent to which MAINIAC has reached its overall objective.

There are, once again, no indicators specified in the MAINIAC document for the sub-level objectives that focus on capacity development and the linking of stakeholders. This is surprising, since "to enhance capacity" and "to develop links" are both broad and value-laden objectives, for which explicit criteria for assessment should be important. It is highly problematic to assess the objective of capacity development, without a clearer definition of possible manifestations. To monitor and evaluate the attainment of MAINIAC sub-level objectives therefore entails a significant effort to operationalise difficult concepts. Those indicators that have been developed refer to activities (outputs in many cases). These indicators consist mainly in tools for promoting and integrating the mainstreaming issues, such as lists of questions for initial assessments and dialogue, and activities pertaining to capacity development, such as seminars and meetings (Emb/Nairobi, 2003). Such output indicators

may be useful for internal clarity and planning, but indicators relating to outcome and impact remain necessary to conduct monitoring and evaluation.

3.6   Activities assumed to lead to goal achievement

The activities that were assumed to contribute to the MAINIAC objectives contain a strong learning component. The main activities were in-service training of Embassy staff and Kenyan ministries, development of HRBA methods (including the principles of the rights perspective), and the mapping of civil society (Stridsman, 2006). The KNCHR was to take a lead role in training activities. But also, since the KNCHR was a new institution, many resources were set aside for training of the commissioners (Jayawardena, 2006b). Civil society resource institutions would also influence programming by commenting upon programme and project drafts. The following activities[18] are outlined in the MAINIAC document (Emb/Nairobi, 2003):

- Develop lists summarising the main general questions and specific questions to be asked to partners when reviewing project documents in the eyes of the mainstreaming issues.

- Develop examples of process, output- and impact indicators that reflect the mainstreaming issues for each of the areas of support.

- Organise a one-day seminar for each of the six mainstreaming areas for all POs involved in assessment in 2004.

- Develop one page on important dialogue issues in Kenya for each of the six mainstreaming areas.

- Organise two prepared dialogue opportunities on each of the mainstreaming issues and how they are connected and relate to the area of responsibility of the partners.

- Obtain comments by resource persons from Stockholm, local experts and/or NGOs on the proposed policies on their ability to promote or counteract the mainstreaming issues as well as suggestions on how to improve the policies.

- Identify resource persons/resource NGOs that can participate in seminars, develop lists of indicators, comment on project documents and give support in implementation.

- Preparation of 2-year contracts for the resource persons and resource NGOs as start (which can be extended).

- Discuss with Sida Sthlm, regional advisors and the resource NGOs when we can set up meetings for these groups to meet.

- Discuss Sida policies and with the resource persons and planning of a 1-day seminar, one ½ day or one day for each of the mainstreaming issues for partners and Embassy staff during the assessment period (and another set of seminars during the implementation phase).

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[18] This overview has not included activities that relate to the goals of influencing other donors and developing monitoring and evaluation systems (sub-objectives E. and F.), as these aspects are outside the scope of this evaluation.

- Set aside funds for increased links between the resource persons and the implementation partners on demand from the implementation partners.

- Support links with partners at local level by suggesting partners and if needed provide funds for co-operation at national and local levels.

- Develop a plan for dialogue on mainstreaming issues in the review meetings.

The activities tend to focus on integration of mainstreaming issues in plans and policies, with fewer activities relating to implementation. This may be because the approach focused on how to work with the rights perspective in practice. Further, due to the ambiguity regarding the interpretation and priority between the different issues to be integrated, it is also unclear how much attention should be given to the mainstreaming issues in relation to each another. This vague plan of activities leaves room for individual perceptions about both prioritisations between activities, and the role of the activities mentioned.

3.7 Risks – internal and external factors assumed to affect outcomes

There is no discussions on risks, or strategies to meet these, in the MAINIAC document. However interviews evinced that substantial thought was given to risks. Possible reasons for potential failures, with regard to both the Embassy's promotion of the integration of the rights perspective and the promotion of HRBA in Kenya, were apparently discussed among the initiators. The initiators elaborated deliberate strategies to meet the potential failures. There was apparently some fear within the Embassy that the rights perspective would be perceived as too abstract to offer a useful tool in the everyday work of Embassy POs. Consequently, the initiators consistently talked about a rights perspective in the context of the supported programmes. The focus was on how to integrate the principles of the rights perspective within the specific programme design, rather than what it meant generally to work with the rights perspective or HRBA. This strategy of trying to demystify HRBA and the rights perspective was also used when introducing it to partners in the GoK. The focus was therefore on how to integrate the principles of the rights perspective in the specific programmes (Jayawardena, 2006b).

It is apparent that the initiators were concerned that attempts to integrate the rights perspective would drown in altering development cooperation trends and heavy workloads at the Embassy. Two approaches were taken to counter this concern. A holistic approach to working with the rights perspective was chosen to stress its priority. The principles of the rights perspective were to be emphasised not only in all programme documents but also in all dialogue. That the Embassy worked with programme assessments within all six sectors targeted under MAINIAC facilitated this holistic approach (Jayawardena, 2006b). The initiators felt that pressure had to be applied continuously in order to emphasise the seriousness of the MAINIAC endeavour. Work with the rights perspective was to be built into incentive structures at the Embassy (follow-up discussions, personal career development, and so on) to try to avoid the risk of "relaxation with time" (Stridsman, 2006).

There was an awareness of the negative connotation associated with HR in Kenya. The initiators of the MAINIAC approach considered it imperative to avoid such connotations in order not to jeopardise the commitment of the GoK. Hence the Embassy endeavoured to avoid general discussions on HR (violations in particular), by focusing on economic and social rights rather than political rights. Thus, it seems clear that the Embassy made use of both its organisational skills and contextual knowledge in the identification and counteracting of potential risks to the MAINIAC approach. In terms of sustainability, there was a clear strategy to link the approach with the KNCHR and other Kenyan resource institutions (Jayawardena, 2006a, 2006b).

3.8 Conclusions about the MAINIAC programme theory

MAINIAC clearly constituted a highly exploratory approach. This approach has been *ongoing* since 2003. It was a "pilot", in which the key aim has been to develop a methodology for working with the rights perspective in practice. The focus was therefore on "what to do" and "how to do it" (that is, "learning by doing"), with less attention on elaborating and documenting a programme theory. Ongoing documentation of the ideas and the logic that the approach has built upon, and the results it has achieved (with regard to objectives, mechanisms and indicators) would have allowed for better learning from the approach experience.

The following conclusions can be drawn about the programme theory of the MAINIAC approach:

- There are differences in perceptions of the MAINIAC approach depending on the source. There is ambiguity with regard to the interpretation and relation between mainstreaming issues (rights perspective/cross-cutting issues).

- MAINIAC's goal formulation gives equal weight to the assessment/planning and implementation phases, but sub-objectives and activities focus on assessment/planning.

- Essential concepts have not been clarified and defined. For example, capacity has received no elaboration and the concept of training as a mechanism remains poorly defined.

- The lack of an explicit, documented and coherent programme theory makes it difficult to monitor and evaluate the approach. Consequently, exchange of experiences, learning and replication are hampered.

- The (re-constructed) programme theory comprises reasonably elaborated efforts to identify risks impacting upon goal achievement, and strategies to counter such risks.

- The absence of indicators is problematic since it impedes the ability to measure sub-level and overall objectives (output, outcome and impact).

- Various stakeholders were involved in elaborating the approach. The overall means and the objectives of the approach are largely a result of problem analysis and work at the Embassy, although they are anchored in discussions with Ken-

yan stakeholders (in particular the KNCHR, but also CSOs, as resource organisations).

- A strategy for linking Kenyan resource institutions and organisations to the MAINIAC approach *over time* is absent. It is not evident what the role of these organisations should be throughout programming, and how these linkages should be structured and institutionalised. This may jeopardise the sustainability of the approach.

4 Promoting the integration of the Rights Perspective in Programming - Capacity Development at the Embassy

This chapter assesses the capacity development at the Swedish Embassy in Nairobi achieved under MAINIAC's sub-objective A.; "To increase the capacity of the programme officers…" (Emb/Nairobi 2003). The chapter aims to identify the *kinds of capacities developed* at the Embassy as a result of the MAINIAC approach, and *how* these capacities were developed. Capacity development at the Embassy should be viewed as one of the necessary components for strengthening the rights perspective in programming in Kenya. The first section of this chapter provides a background to international experience in capacity development for HRBA in programming. The second section relates the capacities identified by key international organisations to the MAINIAC approach and the capacity development at the Embassy.

4.1 Background: Good practice in capacity development for HRBA in programming

Since the MAINIAC programme theory does not clearly conceptualise capacity and the means by which to develop these capacities, this section attempts to further operationalise the concept of capacity development and to identify good practice in terms of capacities needed for HRBA in programming.

4.1.1 Capacity and capacity development

Capacity is a multi-facetted concept. It is defined by Sida (2005d) as: "the conditions that must be in place, for example knowledge, competence, and effective and development-oriented organisations and institutional frameworks, in order to make development possible." The UNDP defines capacity more broadly as the ability of individuals, organisations and society to perform functions, solve problems, and set and achieve goals (Sida, 2005d; UNDP, 2006a). The concept "capacity development" is also defined and applied in different ways. Sida uses this concept to describe a process with the aim of enhancing skills of individuals and organisations, and of changing standards and regulations within institutional frameworks (Sida, 2005d). In relation to HRBA, capacity development also means "enhancing the knowledge and skills of a particular group to enable them to fulfil their obligations and/or assert their rights." (UNDP, 2006). The Sida manual on capacity development takes the rights perspective as its starting point in elaborating developing capacity. The manual highlights a general need for capacity development amongst a number of actors and stakeholders within development cooperation. The focus is not only on results but also on the process that should lead to the results (Sida, 2005d). Capacity development is thus closely connected with sustainability (OECD; 2006a) and should be viewed as a continuous and long-term process (Sida, 2005d).

Further, donors suggest that capacity grows from within, with influences from outside (UNICEF, 2003; Sida, 2005d; OECD, 2006a). That is, capacity development is a process that is influenced by the context in which it occurs. To promote it thereby requires attention not only to skills and organisational procedures but also to external factors impacting on the capacity development processes (OECD, 2006a). The OECD (2006a) uses three levels of analysis in working with capacity development: 1) individual; 2) organisational; and 3) the enabling environment. To identify the interactions between these levels in the process means recognising how these might affect each another positively or negatively, thereby providing a more complete picture about the sustainability of the approach. Sida (2005d, 2000) uses a similar framework for its analysis. It emphasises that capacity development should be seen in a holistic perspective and that it can be analysed at five levels: 1) individual; 2) organisational; 3) organisational units; 4) formal/informal institutional frameworks; and 5) environment/contextual factors. This approach offers a tool for identifying various internal and contextual factors impacting on capacity development. It also highlights the importance of contextual factors in considerations about how to further promote and sustain the approach (Sida, 2005d).

4.1.2 Capacities needed at different levels for HRBA in programming

This section elaborates upon the kinds of capacities needed at the different levels (individual and organisational) to work with HRBA in programming.

Capacity at the individual level

The human rights situation is the starting point for HRBA in programming (OHCHR, 2006). Therefore, programme officers must have a good knowledge of international human rights standards and principles (UNDP, 2006). It is essential to understand the immediate, underlying and basic causes of obstacles to strengthening human rights, and the complexity of the relationships between rights-holders and duty-bearers (UNICEF, 2003). Staff must be aware of the capacities of rights-holders to claim rights, and of duty-bearers to respond to these claims (UNDP, 2006). Further, staff need to be aware of how human rights relate to their work in specific sectors, and the linkages between HRBA and other approaches that are mainstreamed, for example gender-sensitive approaches (Filmer-Wilson, 2007). Thus, to work on promoting or integrating HRBA in programming requires a high level of *knowledge and awareness of the rights to be promoted.*

Programme officers must also have certain skills in terms of their *ability to promote rights*. One such ability is the capability to promote rights in dialogue (Save the Children Sweden, 2003). Other capacities relate to the ability to consult rights-holders, duty-bearers and other relevant actors such as human rights institutions (OHCHR, 2006). These activities require good communication skills. To understand the complexity of situations and the ability to use varied data sources to single out human rights needs are also important capacities. In monitoring, programme officers must be able to identify the commitment of partners to work with human rights principles. They must also be able to use indicators that monitor both progress and weaknesses (UNDP, 2006). Further, programme officers must be able to reassess results and problems, and suggest actions to promote enhanced HRBA in programming.

Capacity at the organisational level

Capacity at the individual level forms part of capacity at the organisational level, but the latter focuses on the institutional environment and its enabling factors. One such factor is the *commitment and leadership* of senior staff who clearly state goals and priorities, and who provide a mandate within the organisation to work with HRBA. This also involves the communication of responsibilities from senior to junior staff (OECD, 2006). Another factor is *resource allocation*, such as economic resources for training on HRBA and time allowed for developing and carrying out HRBA work. *Regular work procedures and routines* committed to HRBA must be institutionalised (UNDP, 2006). Examples of such procedures are regular training activities and their follow-up, the documentation of HRBA processes, the provision of guidance documents, checklists and other tools for staff, expertise at decentralised levels (such as HR advisors) and established routines for internal communication on HRBA responsibilities. Establishing links and sustained networking with HRBA resource institutions at the national and local level is also a way of enhancing and sustaining capacity at the organisational level.

Contextual underlying factors

Again, sustainability of capacity development is not only dependent on individual and organisational knowledge and practices, but also on contextual factors over which the organisation often has little or no control. The contextual factors are inherently dependent upon the specific environment in which the capacity development occurs. These factors could include overall policy contexts, rules and norms, priorities and civic engagement, which in turn determine the "rules of the game" (UNDP, 2006). Experience shows that contextual acceptance of human rights dialogue also is vital for HRBA capacity development (OECD, 2006).

Figure 4.1 illustrates the concept of capacity development and the capacities needed at individual and organisational levels to promote HRBA in programming. External factors also affect capacity development. The figure illustrates that there is no distinct division between the levels.

Figure 4.1
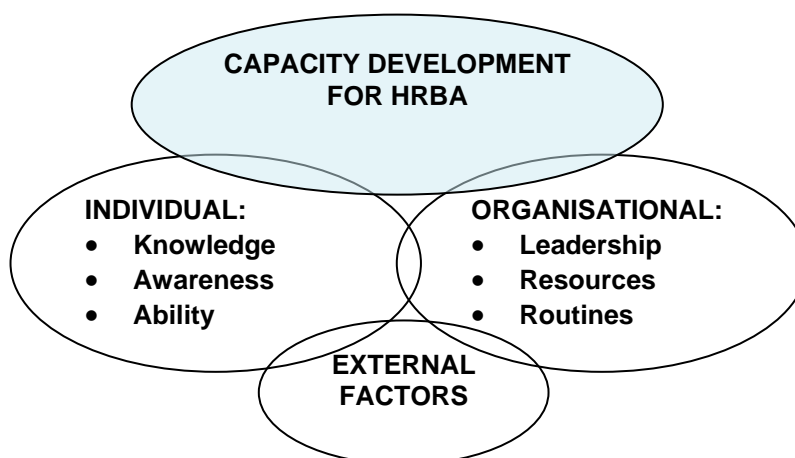
4.2 Capacity development at the Swedish Embassy

This section draws on the above discussions about good practice in capacity development for HRBA in programming and the MAINIAC programme theory to investigate what kinds of capacities have been developed at the Embassy, and how these capacities have been institutionalised and sustained. The analysis refers to capacities that are important for the MAINIAC approach, such as staff knowledge of the concept of the rights perspective and its principles and their understanding of the relationship between the rights perspective and the cross-cutting issues to be mainstreamed. The analysis addresses the following specific questions about the various analytical levels of capacity:

Capacity at the individual level and amongst Embassy staff:

1   What is the level of knowledge and awareness of the rights perspective, and has such knowledge and awareness been enhanced?

2   What ability is there to promote the principles of the rights perspective in programming, and have these abilities been enhanced?

Capacity at the organisational level and the conditions and practices affecting capacity development:

3   Has the leadership influenced capacity development at the Embassy, and if so, in what way?

4   What resources were allocated to capacity development at the Embassy?

5   Have work procedures and routines been institutionalised at the Embassy, and if so, in what way and to what extent?

Contextual factors in which capacity development occurs:

6   What factors have been identified as affecting capacity development at the Embassy?

4.2.1 Capacity at the individual level amongst Embassy staff

Knowledge and awareness

Individual knowledge and awareness of human rights standards and principles (in this context the rights perspective and its principles of participation, non-discrimination, transparency and accountability) depend upon Embassy POs' previous experiences in working with the rights perspective or HRBA in Kenyan or other contexts, and within various organisations and institutions. This was evident in interviews, as informants related their knowledge not only to the MAINIAC approach, but also to their previous experiences.

This evaluation found that the knowledge and awareness of the rights perspective and its principles have increased amongst Embassy POs. This is unsurprising, given MAINIAC's focus on training about knowledge and awareness of the rights perspective. Informants indicated increased awareness not only of the principles of the rights perspective but also of the broader context within which the programme operates. However interviews also revealed that some POs still lacked thorough knowledge of

the principles of the rights perspective or demonstrated an understanding of certain principles only.

POs' increased awareness of the rights perspective is also evident in programme assessments prepared after 2004. These assessments generally make reference to the rights perspective, which is claimed, in a number of cases, to have influenced the design of the programme. The objectives and expected outputs of many programmes also indicate an increased focus on the involvement of local communities and the deliberate targeting of the resource-poor and vulnerable populations. Further, there is increased awareness amongst POs of the long-term advantages of the rights perspective in relation to other approaches, particularly regarding its focus on addressing the root causes of poverty. By way of illustration, the assessment of the Nyanza Roads 2000 programme notes that "an alternative approach could have been more top-down with most activities planned and developed centrally, special channels for payments etc; maybe quicker and more effective in the short perspective, but with fewer prospects for long-term success. Such an approach would also not address the root causes of poverty and would not enable the incorporation of the principles of democracy and HR in the rural infrastructure delivery with strong emphasis on people's participation." (Sida INEC, 2004).

Aspects of the rights perspective are visible also in programme assessments prior to 2004, but these aspects do not appear to be part of a coherent approach to integrating the rights perspective. Moreover, while the principle of participation is often in focus, it is not directly linked to the fulfilment of the rights perspective, and is not presented in relation to the other principles of the rights perspective.

As mentioned above, standards and principles are the starting point for all HRBA, including the rights perspective. Nonetheless, despite the increased awareness and understanding that POs have gained about the rights perspective and its principles, programme assessments contain few references to HR conventions and standards. The programme assessments for the governance, justice, and law and order sector (GJLOS) and the urban development sector are the only two that display a strong understanding of HR standards by making clear reference to HR treaties and conventions. This may be explained by the fact that these programmes are strongly geared towards the fulfilment of democracy and HR. To illustrate, throughout the 2005 assessment of the urban development programme, reference is made to the human rights enshrined in the Kenyan draft Constitution and the international HR treaties and conventions that Kenya has ratified. The programme approach is claimed to be human rights based and thus directly and indirectly also targets international HR conventions (Sida/Emb/Nairobi, 2005). The fulfilment of the right to housing is given as an example. The assessment also states that even though Kenya is a signatory to most international treaties that guarantee human rights, such as housing, much remains to be done to "domesticate" those treaties (Sida/Emb/Nairobi, 2005).

As mentioned above, HRBA demand the identification of duty-bearers and their respective obligations. The MAINIAC training included exercises in which the participants had to identify duty-bearers and rights-holders within their respective sectors. However, few informants reflected on this aspect in interviews when describing their

understanding of the rights perspective or HRBA. There is also little focus in programme assessments about the roles and responsibilities of duty-bearers.

As the MAINIAC approach initially lacked an explicit programme theory, PO's perceptions of the approach vary (see Chapter 3). The degree of knowledge about the rights perspective appears to be closely linked to the unclear relationship between the rights perspective and the cross-cutting issues to be mainstreamed under the approach. This has left room for personal interpretation, which inevitably affects the way that POs approach the issues in dialogue and in programming. Some informants identified all of the issues outlined in the MAINIAC document (including D/HR, or what should be interpreted as the rights perspective) as equally important. Others recognised the rights perspective as important but perceived a priority for the cross-cutting issues to be mainstreamed. For example, in response to a question about the relationship between the mainstreaming issues in MAINIAC, one PO focused on the main challenges of the sector the PO was working in (and hence, focused on threats to HR rather than rights) – HIV/AIDS and gender inequality. Some informants identified the rights perspective as having priority over the cross-cutting issues.[19] Hence, it is clear that although general awareness on the rights perspective has increased at the Embassy, there are different levels and contents of awareness, and there remains confusion about what issues should be prioritised.

Ability to promote the principles of the rights perspective in practice

In addition to knowledge and awareness, staff must have certain abilities to promote the principles of the rights perspective in programming in practice. For example, staff must be able to assess the HR situation. Information about the HR situation and context is scant in assessments. When HR analyses do appear, it remains unclear how they have been carried out. Nonetheless, many assessments do in fact draw strong links between poverty and the lack of respect for HR, although explicit examples are often lacking.

The relevance of the various principles, in terms of ability to promote the principles of the rights perspective, may vary depending on the sector. This is not to say that they should not be considered as equally important. However in some circumstances it might be more difficult to target one principle than another. For example, as one PO discussed, accountability and transparency may be difficult to work with in an environment of corruption. The analysis of a number of assessments also reveals that, among the four principles, the focus appears most often to be placed on the principle of participation. The principle of non-discrimination is also often in focus, but to a lesser extent. Exceptions to this include the agriculture and water programme assessments, which placed a similar focus on participation and non-discrimination, and stressed the interrelationship between these two principles. Less attention is generally paid to the principles of accountability and transparency. Increased transparency and accountability is sometimes mentioned as a programme aim, but the assessments lack a thorough discussion about how this is to be achieved. However, there are some exceptions. Programmes which already deal with democracy and HR issues in their

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[19] The rights perspective, as elaborated in the PGD, is normatively *above* cross-cutting issues (Bjuremalm, 2008).

"normal" sector work, such as GJLOS[20] and to some extent the urban development programme[21] focus more than other programmes on the principles of transparency and accountability. However, despite the strong emphasis on transparency and accountability in the urban development programme, the dialogue issues focus primarily on the participation and non-discrimination of groups and communities (Sida/Emb/Nairobi, 2005). This indicates that although there has been a focus on transparency and accountability in the assessment phase, this is not necessarily followed up within the dialogue.

Several informants raised the importance in MAINIAC of promoting the principles of the rights perspective in dialogue. Many POs view dialogue as the main tool for mainstreaming. The MAINIAC approach has helped focus on priority issues, which the POs are expected to bring up at workshops and meetings. MAINIAC has also provided the arguments for discussion with the relevant ministries. To use existing processes at the ministries to promote the principles of the rights perspective in dialogue has also been the Embassy's overarching key strategy. For example, regarding the urban development programme, the definition and design of the programme took place over a three-year preparatory phase that included dialogue with the Government and consultations with civil society. This process enabled the Embassy to pursue and push for integrating the principles of the rights perspective, such as enhanced participation (Sida/Emb/Nairobi, 2005). Nonetheless, some POs still acknowledged that the dialogue with the GoK *is* a challenge, especially in terms of discussing the principle of transparency, which is often considered a sensitive area.

Specific dialogue issues and strategies for dialogue within sectors are often explicated in programme assessments. For example, the 2005 assessment of the GJLOS programme outlined a number of strategic issues for coordinated dialogue, including the promotion of democratic space and participation of various stakeholders in the policy and planning of GJLOS, promotion of a HRBA, equal access to services, including promoting the rights of women and children that are poor (Sida DESA/Emb/Nairobi, 2005). The proclaimed prioritisation of the rights perspective, especially the rights of women and children, among the dialogue issues (Sida POM, 2005), demonstrates a strong commitment to strengthening the follow-up of the integration of the rights perspective. However, notes from review meetings within the agriculture sector show that attempts were being made as early as 2003 to promote the rights perspective in the dialogue with the Ministry by raising issues of D/HR and poverty alleviation, gender and other mainstreaming issues (Sida/Emb/Nairobi, 2003; Emb/Nairobi, 2003g).

The MAINIAC document outlines some activities related to dialogue that were to be undertaken. One of these was to develop dialogue papers on important dialogue issues for each of the mainstreaming areas. At the date of this report, only three such dialogue papers had been developed; one for the health sector and two for the water sector. Only one of these – the dialogue paper on water – identifies specific dialogue issues. These issues include democracy and human rights, gender, HIV/AIDS, social, economic and cultural equality and environmental impact. The paper elaborates

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[20] The GJLOS programme is aimed at improving access to justice, strengthening the rule of law, developing and strengthening institutions, fighting corruption, and similar activities. (Sida DESA/Emb/Nairobi, 2005).

[21] which falls under the programmatic goal "Democratisation and Human Rights" in the country strategy.

MAINIAC's overall approach to these issues and general measures that need to be taken in these areas.

Only one of the trainings held under MAINIAC appears to have raised the issue of dialogue. The training on HIV/AIDS mainstreaming resulted in a document outlining probing questions to use in the mainstreaming of HIV/AIDS in sector-specific programmes (health, water, agriculture, urban, legal sector reform and roads), and a list of suggested high-level dialogue issues on HIV/AIDS. A similar document outlining how to promote the rights perspective in dialogue would have been a useful tool.

Turning to the POs ability to identify and recognise indicators (or operationalisations) of the principles of the rights perspective, the assessments analysed were generally clear about *what* needed to be done within the sector but lacked clear strategies for *how* this should be done, that is, how to further operationalise the rights perspective. A number of activities focused on enhancing capacity of different programmes at the planning stage but there was no discussion about their expected effects and impacts. Such a discussion would help establish the long-term advantages of the rights perspective/HRBA compared to other approaches. Further, few assessments contained explicit indicators for how to measure results, with exceptions, including the Nyanza Roads 2000 programme.[22] Targets for the programme included "a minimum of 50% of the trained contractors selected from vulnerable and/or underprivileged groups such as women, the young and the disabled" (Sida INEC, 2004), which signifies an attempt to integrate the non-discrimination principle. Another example is the 2005 assessment of the GJLOS programme, which included indicators measuring the extent of informed public participation.

In terms of the ability to assess and re-assess obstacles and suggest actions for enhanced integration of the rights perspective, interviews indicated that POs were aware of possible obstacles within their respective sectors. For example, one informant explained that the possibility to integrate the rights perspective largely depends upon prior knowledge and experience within the sectors of working with HRBA. The informant suggested that a lack of awareness of the concepts might create resistance within the sectors, and that the degree of success therefore depends on how well the PO "sells" the concepts. In the programme assessments, there was little evidence of explicit obstacles to, and proposed actions for, the enhanced integration of the rights perspective. However, in some cases this question is visibly linked to the question of sustainability of programmes. For example, the 2005 assessment of the urban development programme acknowledges that the sustainability of programmes is dependent upon whether changes in perception will occur. For the programme to be sustainable, it is recognised that the Government must be "prepared to continue the endeavour to be inclusive in the development of policies and strategies, to further enhance the participation of people in the exercise of the powers of the state and to recognise the rights of local communities to manage their own local affairs." (Sida/Emb/Nairobi, 2005). Thus, the challenge is to build the capacity of government to implement the Constitution and domesticate international conventions.

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[22] The assessment memo for the Nyanza Roads 2000 programme does not indicate Embassy involvement. However, Embassy staff indicated that the final assessment memo was printed in draft form at the Embassy, with significant input from the local resource persons, and was only finalised later by Sida INEC in Stockholm (Embassy of Sweden in Nairobi, comments by e-mail, 7 January 2008).

In terms of the ability to promote the cross-cutting issues under the MAINIAC approach, gender and HIV/AIDS seem to be the issues most in focus. Examples are the assessments of the health and water programmes and, to some extent, the agriculture programme. Few assessments explicitly recognise the rights of the child in programmes, although the assessments of the current water support and the GJLOS programme are two exceptions. Further, there appears to be a lack of both knowledge and ability to address the issue of peace and conflict. This may be explained by the fact that this issue is not always relevant in all sectors. However, in relevant sectors, such as in the agriculture or urban development sectors, there is an awareness of the issue, but strategies for how to mainstream it are generally lacking. An exception is the water programme, which has developed a strategy to create opportunities for conflict resolution and prevention between "upstream/downstream" users in the utilisation of water resources (Emb/Nairobi, 2004b). The water programme is also an example of a programme focused on the issue of sustainable environment, involving the incorporation of environmental guidelines into the statutes of regulatory bodies, and carrying out impact analyses and audits on proposed interventions (Emb/Nairobi, 2004b).

The evaluation observed that, in developing the ability of POs to promote the rights perspective throughout programming, the focus has generally been on planning and awareness activities. Less emphasis appears to have been given to the practical ability of POs to promote the perspective and to monitor the programmes during implementation. Even allowing for the limitations of this evaluation regarding documentation and the chosen focus (see Chapter 1), and acknowledging that dialogue is also a tool for the monitoring of programmes, these observations appear to be valid. One explanation for this may be that the MAINIAC approach's initial focus was geared towards planning, assessment and dialogue. Many of the POs stressed that the MAINIAC approach had affected the way that they carry out assessments and dialogue and that one has come quite far in developing guidelines and routines to integrate the rights perspective both at the Embassy and within the ministries (during implementation). However, POs emphasised the need to understand the role of the principles of the rights perspective in other circumstances, such as in follow-up.

The evaluation found that the general awareness, knowledge and motivation to promote the rights perspective have increased. This can be traced in assessments, interviews and to some extent in dialogue notes. However, varying perceptions of the MAINIAC approach and confusion about what issue(s) to prioritise appear to have negatively affected the level of awareness and knowledge of the rights perspective among POs. This poses a challenge for the future. The ability among POs to promote the rights perspective in practice has increased, in particular at the planning and assessment phases, where most effort has been invested. There is a risk that, by placing too much emphasis on the preparation of programmes, the Embassy loses important aspects in the implementation phase. It is therefore desirable that the Embassy focuses more on the implementation stage in a possible phase II of the MAINIAC approach.

4.2.2 Conditions, practices and routines affecting capacity development at the Embassy – the organisational level

This section examines efforts at the Embassy to institutionalise capacity for promoting the rights perspective.

Commitment and Leadership

At the commencement of MAINIAC, the leadership established a working group, and the PO responsible for the democratic governance sector was selected to be the Coordinator for the approach. The Coordinator was to report to the Counsellor. The Counsellor, in turn, was to take advice from a Steering Committee, consisting of the regional advisors in Nairobi and Lusaka, as well as the Ambassador (Emb/Nairobi 2003). A Quality Assurance Committee (QAC) was established as a peer review mechanism to ensure that all assessments were guided by the rights perspective, and to recommend further dialogue with the relevant ministry if necessary. The Embassy also established bi-monthly meetings of a "Monthly Development Group" (MDG), which, like the QAC, constituted an oversight mechanism for the work of integrating a rights perspective. Additionally, weekly meetings were held about MAINIAC. At these meetings, POs used the assessment memos and programme documents being drafted at the time to initiate discussions and to exchange experiences.

Both the Counsellor and Coordinator worked hard to build trust and confidence in relations with the different ministries. There was a clear strategy of subtlety in relations with the ministries. So-called "dialogue dinners" were planned as part of this strategy. However, due to time constraints, only one such dinner was eventually held (in the water sector). Further, both the Counsellor and Coordinator would participate in sector meetings to lead, promote, and at times to assist, the responsible POs in promoting the rights perspective in the dialogue.

According to several Embassy officers, there was initially much scepticism among POs about the weekly internal meetings that were part of the MAINIAC training. Nonetheless, all POs attended these activities, as the Counsellor at the time stressed that attendance was compulsory for all staff. The initial scepticism emerged largely in response to what was perceived by many POs as an increased workload. In addition to the "compulsory" in-service training, MAINIAC demanded elaboration of new working methods within each sector. That there was no "evidence" for how this approach could be implemented also left many POs sceptical. Further, in some cases, scepticism was based on a lack of awareness. Many POs had difficulties integrating the rights perspective and in understanding how to deal with the cross-cutting issues in their sectors. This was particularly true for the officers working with more technical issues. In contrast, the positive views of other POs can be explained by their previous experience in working with the rights perspective or mainstreaming issues. These POs were more sensitive to the need to promote these issues in their respective sectors.

The initiators of MAINIAC worked hard to overcome this scepticism and to convince all staff of the benefits of the approach. Awareness-raising seminars on D/HR were held at the Embassy to gain support for MAINIAC. Further, a "Code of Ethics for MAINIAC" was developed. The Code involved showing commitment to MAINIAC by, for example, attending and preparing for MAINIAC meetings, keep-

ing the deadlines set up for the approach, keeping the working groups serious but informal, and settling conflicts within the groups first before going to the Counsellor for arbitration (Emb/Nairobi, 2003b). Finally, there was a conscious strategy to use real assessments when working with the rights perspective. Thus, the rights perspective was not introduced as a training activity but rather as a tool in real programming. This made the otherwise complex principles of the rights perspective easier to grasp for POs. As a result of these efforts, and through persistent leadership, most of the POs are now much more supportive of the approach and are more committed to implementing it. As one PO pointed out, today the Embassy is grappling more with *how* to work with the rights perspective than *whether* to work with it.

The above demonstrates the strong commitment and active leadership of the Counsellor and Coordinator in the promotion of the MAINIAC approach – a factor that also has been confirmed by many informants. Owing to their determination, the work with the principles was integrated into the internal structure of the Embassy and became an integral part of follow-up discussions and personal career development. Thus, the leadership and its role in the setting of goals, priorities and work procedures, has been an enhancing factor in developing capacity at the organisational level. That the present Counsellor previously served as the Coordinator for MAINIAC, and was one of the initiators of the approach, further facilitates the Embassy's work on the rights perspective, at least in the medium term.

Resource Allocation

An inventory of resources available was prepared at the time of MAINIAC's commencement. Around one third of the Coordinator's time was designated for working with the approach. Further, an assistant PO and a consultant were designated to manage all contacts with Kenyan resource institutions. MAINIAC also made use of Sida's regional D/HR advisor (posted at the Embassy in Nairobi). The leadership required that POs devoted time for this work. In reflecting about the quantity of time set aside to work with the rights perspective, one PO explained: "[T]he thing with MAINIAC was that one *made* time for it!" Most informants shared this view.

Turning to financial resources, the bulk of the budget for the MAINIAC approach[23] was allocated for financing various types of support from Kenyan resource institutions, both to the Embassy and to partners (that is, GoK), and to finance an evaluation of the approach after the first phase (Emb/Nairobi, 2003; Emb/Nairobi, 2004a; Emb/Nairobi, 2006b). The financial resources available to develop capacities at the Embassy were focused on training and providing support for POs in assessment work.

In terms of training activities for POs, the main aim was to develop a profound understanding of what the principles of the rights perspective meant in relation to different issues and contexts, and to develop abilities to communicate these principles in dialogue. An important part of the training was MAINIAC's weekly meetings, and these were complemented by general training sessions about the rights perspective. These sessions were held six times during 2003 and only once in 2004 and in 2005,

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[23] The proposed budget for MAINIAC was SEK 1,000,000, the bulk of which was to be allocated to local resource persons/NGOs (SEK 350,000) and seminars for partners (SEK 300,000) (Emb/Nairobi, 2003: 8). In 2004 MAINIAC was granted SEK 1.5 million for 2004-2006, that is, SEK 500,000 each year (Emb/Nairobi, 2004a).

respectively.[24] Most POs normally attended. The Regional Advisor on D/HR also participated in several meetings, and specific advisors were sometimes invited when training focused on a particular cross-cutting issue, for example HIV/AIDS. The training sessions performed for POs are summarised as follows:

- Two introductory meetings (2003): introduction to the four principles of the rights perspective and threats to them, such as conflict, unsustainable environment, lack of resources, and HIV/AIDS; exercises for POs to identify indicators of the rights perspective in their respective sector programmes (Emb/Nairobi, 2003a,b).

- Training on HIV/AIDS mainstreaming (2003) by using the Roads 2000 Programme as a case study to demonstrate how HIV/AIDS may be mainstreamed in different sector programmes (Emb/Nairobi, 2003c). HIV/AIDS as a cross-cutting issue *was not related to the principles of the rights perspective* in this training, with the exception of some linkages being made when discussing high level dialogue on HIV/AIDS.

- In-depth training on the four principles of the rights perspective (2003): exercises for POs to relate the four principles to their programmes, including identifying duty-bearers and claim-holders within the sectors, and discussing indicators and obstacles to the integration of the principles (Emb/Nairobi, 2003d).

- Discussions (2003) about support to children from a variety of perspectives; discussions about the need to consider democracy from the perspectives of different cultures/traditions; discussions about the principles of participation, accountability and non-discrimination in the programmes of water, health and urban development (obstacles, examples of indicators) (Emb/Nairobi, 2003e, f).

- Follow-up of the meeting described above (Emb/Nairobi, 2003f).

- Introduction (2004) and/or update of the mainstreaming efforts in the programmes of urban development, agriculture, education, water and roads (Emb/Nairobi, 2004e).

- Seminar (2005) about conflict causes and resolution: identification of conflict areas in Kenya and their underlying causes; listing of actions to be taken within the sectors in the next month regarding conflict prevention and resolution. Most actions involved strategic conflict analysis and *were not related to the principles of the rights perspective* (Emb/Nairobi, 2005).

In addition to these sessions, a number of workshops were held with partners and resource institutions. To the extent that POs attended such workshops (which is unclear), they definitely benefited and developed their capacity (Bjuremalm, 2008).

Institutionalisation of capacity development
As mentioned above (see Chapter 4.1), institutionalisation of capacity development is achieved through the establishment of regular routines and work procedures, such as

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[24] A further two training sessions were held in August and December 2007, and one event is planned for 2008 (Embassy of Sweden in Nairobi, comments by e-mail 7 January 2008).

training and establishment of internal communication of HRBA responsibilities, documentation of processes, tools and guidelines, and establishing links to resource institutions.

Interviews with Embassy staff indicate that there is a certain level of regularity of work procedures for POs. In addition to the above-mentioned internal procedures, the Counsellor holds bi-annual discussions with POs about how they are dealing with the rights perspective, while the MAINIAC Coordinator provides more continuous support to POs. The rights perspective is also integrated into planning processes and discussions. Consistent analysis is performed through the lens of the principles of the rights perspective in all strategic programming procedures, such as the land process and various assessments. New POs receive documentation, including relevant policy documents, about the rights perspective. The rights perspective is also included in their work plans. However, the evaluation found that at least one PO had received no introduction to MAINIAC and had had to acquire this knowledge informally. Thus, it appears that more could be done in terms of early introduction to new staff working with the rights perspective. The training sessions for POs were most frequent at the start of MAINIAC and have become far less regular. This indicates a lack of continuous training opportunities for POs.

Turning to the documentation of tools and guidelines, dialogue is regarded as an important, and sometimes *the* main, tool for mainstreaming. It is performed on a regular basis within the various sectors. Other tools include regional advisory teams at the Embassy, short- and long-term consultants (both local and national) and support from various divisions at Sida HQ. As discussed in Chapter 3, the MAINIAC document contains several activities that relate to the provision of tools and guidelines for working with the approach. Examples include developing dialogue papers covering each of the mainstreaming areas for each sector, developing lists summarising questions to be used in dialogue with partners when reviewing project documents, and developing examples of process, output and impact indicators for each area of support (Emb/Nairobi, 2003). Little documentation was found to verify whether these activities and tools have in fact been developed. As mentioned above, only three dialogue papers were found and neither indicates if or how the rights perspective was to be taken up in dialogue. Thus, there is a general lack of documentation about both the MAINIAC process and of tools and guidelines under the approach.

he institutionalisation of capacity in an organisation is dependent upon both staff and external resources. Having well-established links to resource institutions is thus essential. The Embassy had four key partners within the MAINIAC approach: Kenya National Commission on Human Rights (KNCHR), Federation for Women Lawyers (FIDA), Child Rights Advisory Documentation and Legal Centre (CRADLE) and Legal Resources Foundation (LRF). In addition, through separate grant agreements, the Embassy had links with five other partners, which fall *outside* of the approach: Diakonia, Save the Children, Unicef, UNDP and UNIFEM.[25] Many of these organisations have received core support from the Embassy for working with specific HR issues for a number of years. The involvement of the four key partners in

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[25] Although support currently falls outside of the MAINIAC approach, it takes the same practical approach to programming as the support under MAINIAC. Thus, all programme documents under this support are also expected to address all mainstreaming issues.

MAINIAC commenced with the first training sessions under the approach. These sessions, coordinated by KNCHR, focused on "training for trainers". At this stage, many resource institutions were also invited to seminars to discuss how to mainstream different rights, for example the rights of the child. Thereafter, some of the resource institutions developed their role within MAINIAC to become trainers on HRBA themselves, some to a significant degree. This training has been directed mainly towards the Embassy's partners (GoK).

Reviewing and commenting on GoK documents, and finding ways to strategically engage in GoK policy, are two primary areas in which the resource institutions have become an important resource for the Embassy. In addition, the resource institutions have offered their expertise and support to the Embassy on particular mainstreaming issues, such as the rights of women and children's rights. The views of Embassy POs regarding the links to and support from resource institutions vary. Many describe the collaboration as constructive, pointing to the resource people's skilfulness and professionalism. Other POs describe the relationship as rather complicated and lacking in interaction. One informant expressed a desire for resource institutions to improve their understanding of the sectors and to give more practical and concrete advice.

Related to the regularity of the above-mentioned support from resource institutions, is whether, as suggested in the MAINIAC document, framework agreements with resource institutions were prepared. No documentation was found to verify whether this ambition had been realised. An observation made during the evaluation was that the "Consultant Contact List" in the MAINIAC file (which was to include the resource institutions used in the approach) had not been updated for a considerable period of time. This indicates that long-term links may still not be established.

KNCHR has played a key role in the Embassy's efforts to promote the integration of the rights perspective. The initial vision was that KNCHR would gradually take over and lead the approach. The institution has acted as facilitator, creating links and channels between civil society and GoK. It has helped in gaining access to, and involving representatives from, the ministries. Moreover, the institution has played an active role in training seminars and has at times acted as training coordinator. Within KNCHR, many regard the relationship with the Embassy positively, describing Sida as "the mother of RBA in Kenya" and as "a door opener", which has helped improve relations between GoK and KNCHR, and enabled the building of capacity both within KNCHR and within the ministries. This view is shared by most other resource institutions, which believe that MAINIAC has contributed to establishing better contacts and links between NGOs and GoK as well as between resource institutions.[26] However, one KNCHR informant maintained that Sida should have involved KNCHR more in the design of the MAINIAC approach and allowed KNCHR to play a greater role in the Embassy's training activities.

The Swedish Embassy in Nairobi has made serious efforts to institutionalise the capacity for promoting the rights perspective. Resources have been made available for capacity development. For example, staff were designated to coordinate and support the work, time was made available and financial resources were budgeted for training

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[26] The history of civil society contact with GoK was conflictual, according to one informant: "NGOs used to point out bad things".

activities. In addition, a number of tools and guidelines for working with the rights perspective have been developed. A further vital factor for the institutionalisation of capacity has been the strong commitment and leadership of senior management. However, some HRBA procedures, paramount to the institutionalisation of capacity, are not carried out *regularly*. The training that has been conducted was most comprehensive at the start of MAINIAC (in 2003) and only a few sessions have been conducted since 2004. In addition, the training appears not always to have been enabling in terms of relating the rights perspective to the cross-cutting issues, and in clarifying the relationship between them. Similarly, the links between the Embassy and resource institutions were strongest during the planning phase of MAINIAC, but have not been properly established and sustained during implementation.

4.2.3   Recognised contextual factors impacting on capacity development at the Embassy

In assessing capacity development, factors that need to be identified and analysed relate not only to individual and organisational capacity, but also to contextual factors. As the focus of the MAINIAC approach, and hence in this analysis, is individual and organisational capacity development and the institutionalisation of that capacity, this section is limited to an analysis of certain specific factors identified as having explicitly influenced capacity development. These factors are *Sida's organisational framework* and the *Kenyan national context and policy environment*. These factors are discussed below, to facilitate a more comprehensive and forward-looking assessment.

Sida's organisational framework

Capacity development at the Swedish Embassy in Nairobi is influenced by the wider organisation (Sida). Identifying individual and organisational linkages in the form of *backup and support*, in particular from headquarters, is therefore essential in understanding the effect the organisational framework has had on the Embassy's capacity.

Integrating the rights perspective is a high priority for Sida, and there is broad internal consensus about the importance of this concept in programming. The MAINIAC approach was a reflection of several years of discussions at headquarters and represented a concrete step in putting mainstreaming into practice. Thus, the Embassy received solid support from headquarters in relation to MAINIAC, including the allocation of necessary resources. The regional HR advisor was made available at the Embassy, both before and after the initialisation of the approach, and contributed advice about dealing with the principles of the rights perspective. The PO responsible for MAINIAC could also devote time to working with the approach.

As mentioned above, individually-based support from headquarters to the Embassy was also provided by sector departments in assessing support to sectors. It is likely that this exchange has contributed to capacity development at the Embassy and has constituted an enabling factor. As most Embassies are characterised by high levels of turnover of sent-out staff, this type of support from headquarters is a constructive way of using the organisation's capacity in the Embassy's work.

The Kenyan environment and policy context

As discussed in Chapter 3, the Kenyan political context of recent years has generally been enabling for the pursuit of HRBA. With a new government and policy environment following elections in 2002, there was an increased emphasis on human rights issues. An example is the establishment in 2002 of the public institution: Kenya National Commission for Human Rights (KNCHR). KNCHR has recently produced a concept paper on human rights based programming for Kenya, developed principles for a human rights based approach to development (non-discrimination, accountability, transparency, the best interest of the child and participation), and identified mechanisms to put these principles into practice (Miruka, 2005).[27] Nonetheless, Kenya has a long political legacy of HR violations, and human rights remain a highly politicised matter.[28]

The MAINIAC approach targets different ministries and levels within government. The Kenyan partners have reacted in different ways to working with the principles of the rights perspective. In addition, structures, hierarchies and division of responsibilities differ between various ministries, which has led to different degrees of integrating HRBA to programming. Some ministries, such as Roads and Public Works, have adapted more easily to the MAINIAC approach due to their earlier experiences of working with some of the principles, such as participation. Others have undergone reform processes, which has affected their abilities to embark on new approaches to programming. Further, some ministries have so far shown a low degree of political will and commitment to working with HRBA. Thus, different programmes targeted by MAINIAC have different sector-specific enabling environments.

In the context of donor harmonisation and alignment, HRBA of one donor cannot be viewed in isolation from those of others. Some donors share similar views as Sweden's about HRBA (such as the German GTZ and the Canadian Cida) and this has enhanced the possibilities of working jointly on HRBA. MAINIAC commenced prior to the elaboration of the Paris agenda. In the present, it would have been much more problematic for Sweden to push for the integration of the rights perspective without closer coordination with other donors. This new context poses a challenge with regard to a possible second phase of MAINIAC, where issues such as donor harmonisation would have to be more thoroughly addressed. However, most actors within the international donor community appear to agree on the need for HRBA to programming, even if interpretations of the concept vary.

4.3 Conclusions regarding capacities and capacity development at the Embassy

This evaluation has drawn a number of conclusions about what kinds of capacities have been developed at the Embassy, and whether this capacity development has been institutionalised and sustained. While not all of these capacities can be solely attributed to the MAINIAC approach, it is nevertheless clear that this approach has

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[27] The KNCHR concept paper was developed in collaboration with the Swedish Embassy and within the framework of the MAINIAC approach (anchored in the conceptual discussions held and experiences gained during the seminars) (Jayawardena, 2008).

[28] Human rights and political instability has again raised its head with the political crisis and associated violence following the December 2007 elections (including alleged massive and systematic electoral process fraud, establishment of an illegitimate government, and violent attacks on and displacement of communities).

laid the foundation for much of the Embassy's work on integrating a rights perspective in programming. It is evident that achievements have been made, but challenges remain to make capacity development at the Embassy sustainable in the long term. The following is a summary of conclusions:

- Generally, knowledge and awareness of the rights perspective, and the ability to integrate the principles of the rights perspective in programming, have increased.

- There is variance in perceptions of the MAINIAC approach and the relationship between the rights perspective and the cross-cutting issues to be promoted under the approach.

- Of the four principles of the rights perspective, participation and non-discrimination appear to have received the most attention. There might be legitimate explanations for this; for example a strategy of using a less controversial principle of the rights perspective (such as participation and/or non-discrimination) as an "entry point" for further and more structural work, for example on accountability. However, the principles are interrelated and mutually reinforcing, and there lacks an explicit strategy for ensuring an equal focus on *all* of the principles of the rights perspective in the medium- to long-term perspective.

- The main focus has been on the planning and design phases. Again, this might be explainable, since: a) the approach is still in its early phases, and b) one essential task for Programme Officers (POs) is to assess the planning and design phase of a programme. However, POs are also responsible for the monitoring and follow-up of programmes, and there lacks an explicit strategy for promoting the integration of the principles of the rights perspective throughout all programming phases.

- Leadership has been strong and committed, emphasising the priority given to work with the principles of the rights perspective. This has been an important factor leading to commitment and a high level of knowledge and awareness among POs. Resources have also been made available, in terms of personnel, time and finances. The leadership has however been less successful in clarifying the relationship between the rights perspective and the cross-cutting issues.

- Institutionalisation has increased through training and regular internal feedback on programming work. Work procedures and routines for integrating the principles of the rights perspective in assessments and dialogue have been at least partially developed. However, there is a lack of ongoing training opportunities for POs. These training sessions were most frequent at the commencement of MAINIAC.

- There is little evidence of documentation routines for the MAINIAC process. This impedes institutionalisation, exchange of experience and learning in general and, in particular, learning about how the MAINIAC approach could be improved.

- Links to Kenyan resource institutions have been created but are still weak. The resource organisations have played important roles in commenting on programme documents and in creating awareness, particularly in relation to the ini-

tial phases of programming. However, the linkages have not been entrenched over time (institutionalised) and collaboration has been ad-hoc.

• The organisational framework of Sida has been an enabling factor, manifested in the support and feedback provided to the Embassy.

• The Kenyan political context of recent years, with a government emphasising the priority given to HR, has constituted an important enabling factor for the Embassy in promoting the integration of the rights perspective in sectors and programmes.[29]

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[29] However, as mentioned above, the possibilities for pursuing HRBA in Kenya have been compromised with the political crisis and associated violence following the December 2007 elections.

5 Integrating the Rights Perspective in Programming – An Assessment of the Agriculture and Health Sectors

Author: Shanyisa Khasiani

5.1 Introduction

This chapter assesses and compares the extent to which the Kenyan duty-bearers, at decision-making and implementation levels, integrate HRBA and the principles of the rights perspective (through the MAINIAC approach) into Sida-supported programmes in the sectors of agriculture and health.

The Ministries of Agriculture (MoA) and Livestock and Fisheries Development (MoLFD) are responsible for providing extension services to farmers in Kenya. Starting in 2000 and 2006, reforms[30] to improve agricultural service delivery were implemented with Sida support (NALEP) (ROK/NALEP, 2000, 2006). Similar reforms were conducted over the same period in the health sector.[31] A rationalisation programme was initiated during 2000-2003 (ROK/MoH, 2000) to reverse sustained declines in the health of Kenyans, initially with Sida support and with focus on rural health services, in six pilot districts, and subsequently within the Sector Wide Approach to Programming in the Ministry of Health (ROK/MoH, 2006).

Prior to 2004 (when the MAINIAC approach was launched) the agriculture sector had been more affected by HRBA than had the health sector. After 2000 central reforms in both sectors have aimed to improve service delivery by addressing problems such as centralised planning, inefficient use of resources, staff capacity gaps, lack of involvement of key actors and weak monitoring and evaluation systems, which were the root causes of increasing poverty, marginalisation and undermined democracy and human rights (ROK/NALEP, 2000; ROK/MoH, 2000).

5.1.1 Objective

The primary objective of the MAINIAC approach has been to strengthen the integration of the principles of the rights perspective in programming (with agreements from 2004) within six sectors supported by Sida. This was to be achieved through developing capacities at the Embassy and amongst its partners, and through linking the KNCHR and other Kenyan resource institutions to the approach. The aim of this part of the evaluation is to document how the rights perspective has been integrated within the different sectors and in programming, including a discussion on the ca-

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[30] This entailed the development of the policy framework encompassing the National Agricultural Sector Extension Policy (RoK, 2005), along with the Strategy for Revitalizing Agriculture 2004-2014 (RoK, 2004) and the Ministry of Agriculture Strategic Plan 2006-2010 (RoK, 2006).

[31] As part of the reforms, the Ministry of Health (MoH) developed the Kenya Health Policy Framework (RoK/MoH, 1994) in 1994 and the accompanying National Health Sector Strategic Plan 1999-2004 (RoK/MoH, 1994), followed by the Second National Health Sector Strategic Plan 2005-2010 (RoK/MoH, 2005).

pacities of the partner, Government of Kenya (GoK), and its ministries. The aim is to answer four key questions pertaining to the MAINIAC approach: firstly, to identify the relevant duty-bearers within the respective ministries; secondly, to document how and to what extent the principles of the rights perspective have been integrated in all programming phases, in order to analyse the capacities within the respective ministries at different levels, and to identify factors enhancing or impeding the work to integrate a rights perspective; thirdly, to identify links developed between the ministries and Kenyan resource institutions and to discuss sustainability as well as the relation between the rights perspective and the cross-cutting issues targeted by the MAINIAC approach; and finally, to make conclusions and recommendations for how to integrate this approach further.

5.1.2 Method and delimitations

The assessment presented in this chapter follows the evaluation plan developed by SADEV (see Appendix I of this evaluation). The plan provided an overarching framework and broad guidelines that engendered participatory and interactive methodologies. It identified the sectors for evaluation and the duty-bearers to be targeted, and recommended inclusion of field visits to districts. It included a checklist of evaluation questions that focused and harmonised the evaluation data and this was further enhanced through comprehensive definitions of the principles of the rights perspective. Thus, the evaluation plan provided a solid basis for comparative analysis between sectors, for determining the extent to which the sectors have integrated HRBA in their programmes and for identifying facilitative and constraining factors.

There was regular communication and interaction between the SADEV team and the evaluators based in Kenya and among the latter. Prior to data collection, the Kenyan evaluators held several meetings for consultations, debate, discussions and the exchange of views to focus and harmonise the evaluation methodology and in particular the criteria for selection of the evaluation units and field sites. These discussions built on initial contacts that had been made with duty-bearers in the target sectors and preliminary suggestions for the appropriate districts to be sampled for field visits. It was decided that the selection of districts for field visits should be determined, amongst other things, by the presence of activities of the relevant sectors as well as activities reflecting the MAINIAC approach. Thus, through participation of all evaluation team members during the evaluation design phase, interaction, influence and joint ownership were enhanced. The participatory approach further guided the field data collection and the drafting of the report.

Both secondary and primary data were used in this evaluation. The secondary sources included policy and programme documents, monitoring and evaluation manuals and reports, and operation manuals and guidelines from both sectors. Substantial documentation was provided about the agriculture sector, through the Swedish Embassy in Nairobi and the MoA. Some documentation concerning the health sector was supplied by the MoH, some was found on the Internet, and critical documents were provided by the public health consulting group ETC CRYSTAL East Africa, which is contracted by Sida and provides technical support to the MoH. Additional documents were secured from the Kenya National Commission on Human Rights (KNCHR).

Primary sources included observations, in-depth interviews and focus group discussions (FGDs). Observation methods were used to assess the status, quality and operations of the selected coordinating and implementing structures of the two sectors, including management styles and group dynamics at the headquarters, provincial levels, and district levels and within divisions. The informants identified for interviews were key duty-bearers at policy making, programme coordination, design and implementation levels in the ministries of agriculture and health at headquarters and at provincial, district and divisional levels.[32] A full list of persons interviewed is found in the reference list. Focus group discussions (FGDs) were conducted with coordinators of extension and health services at the provincial levels and in districts, and with the respective extension and health services providers within the divisions and health centres and dispensaries.

Collection of information and data from primary sources used participatory techniques. Opportunities were created both through formal channels (mainly scheduled meetings) and through informal channels, to discuss and consult on the key findings and emerging issues in order to deepen understanding and secure opinions and comments, in order to contextualise and verify them and make recommendations.

Case studies

The regions that were selected for this evaluation are those covered by the agriculture and health programmes in which Sida has been promoting the MAINIAC approach to programming since 2004. Human rights activities had already been introduced in the agriculture sector through a Sida funded extension service programme by July 2000 (NALEP Phase 1) in 43 districts covering five provinces. These activities were expanded during a second phase, first covering 53 districts in seven provinces, and intended to attain national coverage during 2007. Within the health sector, human rights activities were introduced through the Sida funded Rural Integrated Health Services (RIHS) Programme 2000-2003, covering six pilot districts. The promotion of the principles of the rights perspective in programming is more recent, and was introduced through the ongoing Health Sector Reform, which is coordinated at the headquarters and has national scope.

An attempt was made to maintain a national outlook in selecting the case study regions. Nairobi was included in the sample because the headquarters of both sectors are located there. Thika and Siaya districts were sampled to represent the remainder of the country. These districts were selected due to their key similarities and differences, facilitating comparisons. As for the similarities, Thika and Siaya each host the Sida-supported agriculture programme and health sector reform activities. With regard to their differences, they are located in different agricultural zones and eco-systems; Thika District is in the Central/Mountain Region and Siaya District is in the Nyanza/Lake Victoria Basin Region. Thirdly, consultations with the NALEP pro-

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[32] Within the agricultural sector, interviews were conducted with the Permanent Secretary and the Agricultural Secretary in the MoA, the Director of Livestock and Fisheries Development, members of the Program Coordination Unit and representatives of gender units and AIDS Coordinating Units. At the provincial levels the evaluator targeted NALEP Provincial Coordinating Committees. At district levels, the evaluation targeted NALEP District Coordinating teams and at the divisional level the evaluation targeted the NALEP Divisional Implementation Teams. At the MoH headquarters, the targets were the Permanent Secretary, the Director of Medical Services and the Head of the Health Sector Reform Secretariat. Within the province, interviews were conducted with the Provincial Health Management teams. At the district levels, the District Health Management teams were consulted. Interviews were also conducted with the District Hospital Boards and at the Health Centre and the dispensary levels, with the respective facility management committees.

gramme confirmed that Thika is among the districts within the programme that are performing well, while Siaya District is not performing very well: Thika District has life expectancy rates of 67.3 years for women and 53 years for men and a Gender Index of 0.619, whereas Siaya District has life expectancy rates of 43 years for women and of 36.9 years for men and a Gender Index of 0.442 (ROK/UNDP: 2006: 60). Fourthly, according to the 1999 Kenya Population Census, Thika District has a higher level of urbanisation (26 per cent), compared to Siaya District with an urbanisation level of 4.1 per cent (ROK/CBS, 2004: 32). Finally, the two districts portray markedly different cultural traits, with communities in Siaya steeped in customs and rites that undermine HR. These customs include taboos against women planting trees and bananas, and against men growing vegetables and sweet potatoes, which undermine food security (ROK/NALEP, 2003:16), and wife inheritance, polygamy, widow cleansing and early marriage, which undermine health (KDHS, 2003: 225). Communities in Thika do not engage in such practices.

Siaya and Thika districts have populations[33] of 266,015 and 335,298 (CBS, 2004: 102, 101) respectively, hence the sites visited during field work and the sampled sizes were designed to be more purposive. Confining the sample of this evaluation to the two districts of Thika and Siaya did not capture the full variations in eco-systems and development indicators in Kenya. For example, neither of them is from the arid and semi arid lands (ASAL) and therefore they fail to capture competition and conflict over scarce resources (such as water and grazing land) and peace building activities characteristic of these other regions. Consequently, the study does not fully capture the HR issues related to this cross-cutting dimension. While Siaya portrays high poverty indicators, some of the highest poverty levels are recorded in districts in Coast Province (ROK/UNDP, 2006), which are not included in the sample. Further, districts in Coast Province portray some of the worst human rights violations through cultural practices such as early marriage and indentured child labour, which could not be explored in this evaluation.

Testing of approaches and methodologies and piloting in a few selected districts and sites prior to up-scaling are core strategies in the different phases of programming in the two sectors. Implementation of the Sida-funded health programme prior to 2004 was, for example, confined to six pilot districts, none of which were included in the evaluation sample. Similarly, the participatory monitoring and evaluation system of NALEP (ROK/NALEP, 2006: 9) is currently being piloted in several districts that may not have been covered by the evaluation. It can therefore be concluded that the evaluation sampling design and size may not have captured the full range of factors and dimensions at each of the programming phases that have impacted on the work with the principles of the rights perspective in the agriculture and health sectors.

Cross-cutting issues

Sida promotes the mainstreaming of a number of cross-cutting issues: environment, gender, the rights of women, the rights of the child, peace, and combating the spread and the negative consequences of HIV/AIDS in the programmes it supports. In this chapter, the issue of peace and conflict has been omitted because the relevant activi-

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[33] These are projections of the populations of these two districts based on the Kenya Population Census conducted in 1999.

ties are not yet effectively implemented within the agriculture and health sectors. Peace and conflict in Kenya are primarily associated, ecologically and geographically, with arid and semi-arid lands, with North Eastern Province perceived to be the epicentre, primarily associated with competition over water and grazing land. Within the agriculture sector, the northeast region was among the last five provinces brought on board NALEP in 2007 (ROK/NALEP, 2006: 67). Most activities are therefore still in the formative stages; extension officers have just been deployed to the region and according to NALEP 2006-2007 annual work plan, they are participating in the induction training programme (ROK/NALEP, 2006: 12). Consequently, the annual work plans prior to (ROK/NALEP, 2000: 18) and after 2004 (ROK/NALEP, 2005: 30; ROK/NALEP, 2006:27) do not include peace and conflict. Nor is this issue included in the subsequent annual reports (ROK/NALEP, 2003: 15; ROK/NALEP, 2005: 28; ROK/NALEP, 2006: 51). Within the health sector, both prior to and after 2004, peace and conflict issues have not yet found their place within programming (ROK/MoH, 2006).

Challenges during the evaluation process

This evaluation has posed a number of challenges. First, it was both time consuming and difficult (in parallel with conducting field studies) to capture the complete administrative structures for policy formulation, coordination and management, planning, design and implementation (which was necessary for understanding programming procedures in each sector). While headquarters of the two sectors are located in Nairobi, where coordination and management roles are undertaken, the provinces are responsible for supervisory and training roles, the districts undertake planning and budgeting, and the divisions (the lowest units) focus on design and implementation. Therefore, for each of the sectors, it was necessary to visit and conduct evaluations in at least three districts in order to capture the structures, roles and responsibilities at each administrative level. The terms of reference for the assignment, especially the duration, did not provide adequate time to contact all key respondents in the departments and branches/divisions in the two sectors at headquarters, provinces, districts and divisions. Comprehensive information and data may, therefore, not have been collected on each of the principles of the rights perspective at each programming phase.

A second problem related to difficulties in getting appointments for interviews, which caused serious delays. Securing appointments with senior officials was particularly difficult. Whereas in the MoA, efforts were made to assist through providing people for interviews, in the MoH a long history of bureaucracy, and resistance to what is perceived to be "agitative interference" from outsiders, constitute serious obstacles to access. Further, it emerged that while the MoA and the MoFLD view evaluations and studies as part of the regular work of the sector, the attitude of staff in the health sector was that studies are a distraction from "real" work. The difference in access between these sectors also appeared to relate to sector cultural differences; the former reaches out to farmers through extension services while the latter waits to be approached by clientele. Finally, the checklist of evaluation questions as outlined in the assessment plan was very long. When used thoroughly, to capture information on the principles of the rights perspective for each sector before and after 2004, at each programming phase, the interviews averaged three hours each.

5.1.3   Background to the agriculture and health sectors

Over the period 2001 to 2003, the agriculture sector delivered extension services through the National Agricultural and Livestock Extension Programme (NALEP) Phase 1 (ROK/NALEP, 2000) based in the Ministry of Agriculture and Rural Development. The programme was confined to 43 districts in five provinces. At the same time, the Ministry of Health (MoH) was delivering health services in six pilot districts through the Rural Integrated Health Services (ROK/MoH, 2000). Both programmes were funded by Sida.

In time, both NALEP and the health programme consolidated and expanded their scopes and mandates to nation-wide coverage, hence emphasising the right of all Kenyans to access and benefit from extension and health services. Consequently, the agriculture sector is now delivering extension services through NALEP Phase 2 (ROK/NALEP, 2006) within the two Ministries of Agriculture (MoA) and Livestock and Fisheries Development (MoLFD) and will, over a three-year progression, incorporate the remaining 27 districts and five provinces to attain national coverage. Meanwhile, the health sector is delivering services through the Sector Wide Approach to programming (SWAp) (ROK/MoH, 2006). The programmes in both sectors continue to benefit from Sida funding, and deliver services through the national Government tiered administrative system, whose structures extend from the headquarters in Nairobi to communities.

5.1.4   Duty-bearers within the agriculture and health sectors

This is a background to who the main duty-bearers are in the agriculture and health sectors in Kenya and who are central to the assessment in this chapter. Duty-bearers have been identified at both policy and implementation levels within the two sectors.

In both the agriculture and health sectors, the lowest units for service delivery are the divisions. Divisional committees function as centres of coordination and implementation (ROK/NALEP, 2006: 65; ROK/MoH, 2006: 23). Within agriculture, the Programme Implementation Teams undertake activities on behalf of the Divisional Stakeholders' Forums and are comprised of nominated members from the Forums with representation of service providers and users. In the health sector, implementation is undertaken by the health centres and dispensaries, with support from the facility committees. In both sectors, implementation has been enhanced through decentralisation and the use of a bottom-up approach, and through empowering extension and health staff to make decisions. Implementation involves mobilising community participation, undertaking participatory problem diagnosis and prioritisation, receiving proposals, undertaking joint planning and implementation, collaborating with other service providers and undertaking data collection, supervision, monitoring and reporting.

At the district level, in the agriculture sector, the District Coordinating Teams (ROK/NALEP, 2006: 65) are the implementing arms of the District Stakeholders' Forums. Within health, the District Health Management Teams (ROK/MoH, 2006: 22) are the implementing committees. The roles of the district sectoral committees, especially in agriculture, include receiving project plans and proposals from the divisions, reviewing and recommending approval, improving planning and coordination of programme activities within districts and divisions, supervising divisional level staff

and the implementation of programmes, preparing and implementing district plans, promoting coordination and collaboration, and monitoring and evaluating implementation. District staff, especially extension workers, collaborate and network with agencies that work with vulnerable groups.

At the provincial level, the agriculture sector has established Programme Coordinating Teams (ROK/NALEP, 2006: 64), comprised of agricultural staff from the two core ministries. Within the health sector, provincial staff are members of the Provincial Management Teams (ROK/MoH, 2006: 54). The roles of these teams, especially in agriculture, are to provide technical support to district staff, training district/divisional staff, regulating and enforcing standards, participating in monitoring and evaluation, and assisting districts to develop their plans.

National level duties in the agriculture sector are delivered through the Agriculture National Programme Steering Committee (PSC) and the Technical Committee (TC), both with membership from the two ministries and the Programme Coordinating Unit (PCU), which is autonomous and comprised of a core technical team (ROK/NALEP, 2006:64). Within health, the national level structures (ROK/MoH, 2006: 54) include the Ministerial Management and Steering Committee, the Health Sector Coordinating Committee, the Health Sector Reform Secretariat, senior technical ministry officials spearheaded by the Permanent Secretary and the Director of Medical Services. The roles of these committees and officials are to facilitate policy formulation and implementation, receive and approve work plans and budgets, supervise, monitor, evaluate, and regulate standards, conduct training and mobilise resources.

5.2 The integration of the rights perspective in programming

This section focuses on the integration of the principles of the rights perspective in programming in the agriculture and health sectors. The concepts RBA and HRBA, are often used by partners in explaining the MAINIAC approach, that is, the integration of the rights perspective. There are nevertheless differences between various definitions of HRBA approaches, and between HRBA and the rights perspective (for further discussion, see Chapter 2). The focus here is the *principles* of the rights perspective. Thus, the principles of participation, non-discrimination, openness and transparency, responsibility and accountability, and how these have been integrated throughout programming forms the starting point; the terminology used in explaining the approach is less relevant here.

5.2.1 Programming changes following the introduction of the MAINIAC approach

Prior to the introduction of the MAINIAC approach, the Kenyan national policies and strategies (ROK, 1975; ROK/PRSP, 2001; ROK/ERS, 2003) had already embraced human rights principles through focus on rural development, decentralisation and poverty reduction. In line with the pro-poor programme focus in both sectors (introduced through the Sida-funded programmes), but especially in agriculture, service providers adopted and applied participatory methodologies for community entry during mobilisation and in programme design, planning and implementation phases. However, the participatory methods were not effectively reaching service users in

both sectors and were thus not benefiting the poor, especially in the health sector. Targeting was also introduced in both sectors, but only benefited a few service users. Moreover, within both sectors, staff training focused mainly on technical aspects and operation programme procedures.

With the introduction of the MAINIAC approach, poverty issues have become more focused and integrated with policies and strategies in the two sectors (ROK/NALEP, 2004; ROK/MoH, 2006), aligning with the national level policies and strategies on poverty reduction (ROK, PRSP, 2001; ROK, ERS, 2003), rural development and decentralisation (ROK, 1975). The two sectors, especially agriculture, are using approaches that identify and target the poor to promote human rights, particularly participation and accountability. These approaches include decentralisation, use of participatory methodologies and mainstreaming of cross-cutting issues. Now the decentralised strategy is applied consistently in the two sectors, especially in agriculture, and involves the transfer of most resources to reach communities, including the poor and vulnerable, for increased access to services. This enhances participation and non-discrimination. Decentralised management has additionally resulted in increased staff empowerment to make decisions. This is evidenced by shift in focus of implementation to the division units and is motivating division staff to effectively deliver services. Clientele is also participating in delivery of their services and implementation of reforms. Decentralisation furthermore involves transfer of decision making to the wider clientele in the form of stakeholder forums at the national, provincial, district and divisional levels (RoK/NALEP, 2005: 2-3; ROK/NALEP, 2006: 7).

The participatory methodologies developed and used in NALEP Phase 1 and the National Soil and Water Conservation Programme (ROK/NALEP, 2000: 8), are now used to effectively reach and empower poor and vulnerable groups and have become integral to community mobilisation in both sectors. These tools include the Focal Area Approach and the participatory rural appraisal. In the agriculture sector, additional tools such as the Participatory Analysis and Poverty and Livelihood Dynamics and the broad based surveys (ROK/NALEP, 2004: 6) have been developed and target poor men, women, girls and boys, the old and other vulnerable groups to empower them to claim their rights to public services. Improvement was undertaken with technical support from Sida and involved incorporating counselling and dialoguing techniques and the resources oriented approaches, and especially within agriculture, they target poor and vulnerable farmers (ROK/NALEP, 2005: 19).

A review of the tools was also a response to the entry into NALEP of ASAL areas and the need for more inclusive processes that recognise diverse socio-economic and ecological conditions (ROK/NALEP, 2006: 40). The broad based survey (BBS), used for community mobilisation in extension work, promotes non-discrimination through creating an enabling environment for poor farmers and vulnerable groups to develop their capacities and for freedom of association with other members of the society. The process creates awareness for farmers to hold staff accountable and has increased democratic space at the local levels by facilitating farmer-led organising and management of focal areas and emboldened stakeholder forums at provincial, district and divisional levels. Participatory methods assist in identifying and categorising poor and vulnerable groups and were successfully used by NALEP during the 2005-2006 plan period to identify the resource poor and vulnerable groups, and to provide appropri-

ate extension services in Nyanza, Western, Central and Eastern Provinces (ROK/NALEP, 2006: 32). These methods are routinely applied in extension work with Common Interest Groups (CIGs) (farmers' organisations), and they enhance the participation of vulnerable groups. Through their CIGs, farmers, including the poor and vulnerable, participate in and are represented on boards of farmers' associations and other committees, network and represent their interests, and engage in income generating activities. Farmers, in groups and individually, have begun to demand to be trained and provided with extension packages from extension staff. Some of the challenges, however, include declining attendance of farmers in CIGs, due to unmet expectations and lack of resources to implement enterprise activities. Further, the numbers of officers who attend CIGs are minimal, compared to the number of farmers, which may compromise the quality of services.

With the introduction of the MAINIAC approach in agriculture, the more efficient group targeting extension method is now emphasised (ROK/NALEP, 2006: 35). It favours the poor and vulnerable and promotes their participation in project design and implementation. Within health, outreach programmes targeting vulnerable populations with interventions such as immunisation have been revived and some of the positive impacts are realised. In Koibatek District, for example, there was dramatic improvement in immunisation from 65 per cent coverage in 2002 when there was no mobile outreach, to 100 per cent coverage in 2004 after 17 monthly mobile outreach clinics were established. This enhanced rights to non-discrimination and participation (Njoroge and Valdelin, 2005: 18). Targeting of vulnerable groups such as under-fives, pregnant mothers, HIV/AIDS infected and orphans is being implemented to improve access to services. Adolescent and Youth, HIV/AIDS and Family Planning are programmes within both sectors and this is mainstreaming issues of access to services by vulnerable groups. Within both sectors, studies are being undertaken to identify the best approaches for use in improved targeting of the poor and vulnerable (ROK/NALEP, 2006; APRH, 2006: 14).

Further, the introduction of capacity building training of divisional and community staff in agriculture and health provides skills to address cross-cutting issues that form the basis of marginalisation and poverty. Within agriculture, training focuses on gender, HIV/AIDS, drug and alcohol abuse and environmental degradation. The more specific training is identified in each area on the basis of broad-based surveys undertaken during community mobilisation as part of extension work. The bulk of the training activities on cross-cutting issues are conducted in the field among divisional and community extension workers. There is clear demonstration of commitment in the agriculture sector to training to mainstream cross-cutting issues among staff and working on cross-cutting issues as part of annual work plans (ROK/NALEP, 2005: 32-6; ROK/NALEP, 2006: 27-30). Trained staff are integrating these skills in their extension work. Female headed households, HIV/AIDS affected, youth, the elderly, and disabled, are targeted by extension workers, form extension groups and common interest groups[34] and are assisted to develop their own proposals. Cross-cutting issues are also being addressed in health, although to a lesser degree compared to agri-

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[34] These are business entities as well as extension groups which are formed and promoted to empower the farming communities in the focal areas to utilise agri-business opportunities. Emphasis is placed on opportunities that are market-oriented and income-driven. CIGs are based on the resource endowment of local are possible enterprises of existing and new markets opportunities based on analysis of information.

culture. Within the health sector, sensitisation training in gender mainstreaming has already been conducted among heads of divisions, senior programme managers and policy makers at the headquarters, and a rollout training of trainers programme in gender mainstreaming to districts and divisions is planned.

5.2.2 The integration of the principles of the rights perspective

Before the MAINIAC approach was launched in 2004, the principles of the rights perspective were being emphasised at the policy level in both the agriculture and health sectors. This approach has been intensified at all phases of programming following the introduction of MAINIAC. The ministries of agriculture and health increasingly demonstrate respect for these principles by aligning sector policies with national policies and strategies as well as relevant international and regional treaties and agreements to which the country is a signatory.

Participation, non-discrimination, openness and transparency, and responsibility and accountability – Inter-linkages during planning, design and implementation

Following MAINIAC, within agriculture, Sida has provided technical support that has contributed to improving participatory tools incorporating counselling and dialoguing techniques and the resources oriented approach (ROK/NALEP, 2005: 19). These tools are integrated in extension services and used to reach communities and enhance participation of the poor and vulnerable. As the programme has become more demand-driven, and as community members become increasingly aware of their human rights, systems of accountability have been incorporated to ensure that extension services are delivered when requested. The focal area approach delineates specific areas for extension work, and keeps the extension workers motivated, because in the demand driven programme they have to do community outreach work in order to trigger the demand. With increased visibility of the extension workers, there has been an overwhelming demand for their services. (Sida/KNCHR, Documenting NALEP Case Studies, 2005-2006: 14).

Participatory methods are also integrated within agricultural extension work, targeting common interest groups (CIGs) to enhance the participation of vulnerable groups. Hence, extension approaches are used to promote non-discrimination and participation of previously marginalised groups (ROK/NALEP, 2006: 32) in both the design and the implementation of programmes. The flexibility within these approaches is used to respond to varying cultural and ecological contexts and to include poor farmers, women, the HIV/AIDS infected and affected, youth and the elderly. The participatory rural appraisal tool has been improved and transformed into the Broad Based Survey, which is integrated within extension work and used to mobilise communities and identify the poor and vulnerable groups and categorise them for support using problem analysis, identification of opportunities and development of community indicators. Within health and agriculture, participation in programme implementation is enhanced through targeting with appropriate packages in order to reach the poor and vulnerable.

Within agriculture, female headed households, HIV/AIDS affected, youth, the elderly, and disabled are reached through decentralisation, and are targeted and assisted to develop their own project proposals and receive support. Information on projects

is provided through use of local leaders, chiefs' barazas and the radio in local languages. Collaboration with agencies that work with the poor and vulnerable groups, in particular common interest groups (CIGs), promotes ownership and accountability (ROK/NALEP, 2005: 23). Within health, the poor and vulnerable (who include pregnant women, children under-five, HIV/AIDS infected and re-admitted patients) are targeted with exemption and waiver schemes to enhance their access to services. Through decentralisation, the bulk of programme funds in both sectors (ROK/NALEP, 2005: 17; ROK/NALEP, 2006: 15-21; ROK/MoH, 2006: 42) have been allocated, disbursed and spent within divisions for service delivery. This has enhanced the participation of communities, including the poor and vulnerable. Apart from transfer of resources to communities, decentralised management has also resulted in increased empowerment of district and division staff to take decisions on planning and implementation. This is evidenced by a shift in focus of implementation to the division units, where clientele are also participating in reforms. At the same time, decision-making has been transferred to stakeholder forums at the national, provincial, district and divisional levels (ROK/NALEP, 2005: 2-3; ROK/NALEP, 2006: 7).

The integration of the principles of the rights perspective into monitoring and evaluation – strengthening accountability

Prior to MAINIAC, programmes in both the agriculture and the health sectors embraced sectoral internal assessments systems into all phases of programming (ROK/NALEP, 2001: 28-9; ROK/MoH, 2000: 49-51). Data were received from all programme levels, analysed and used to assess performance and identify problems, including those of vulnerable groups. Regular progress reports were prepared, following the government procedure and formats. External evaluations have identified major weaknesses in these systems (Tamm /Sida, 2002: 23). The weaknesses included vertical focus, fragmentation, poor quality of data, lack of focus on performance and failure to share the reports with other partners in the sector. Following MAINIAC, more comprehensive monitoring systems have been developed in both sectors in ways that promote accountability by emphasising participation, documentation and staff performance (ROK/NALEP, 2006: 38; ROK/MoH, 2006: 34). The health sector monitoring and evaluation system is still under preparation and still lacks human rights indicators, while the agricultural system is more robust and incorporates such indicators (ROK/NALEP, 2006: 9-10). The monitoring and evaluation (M&E) system in the agriculture programme is connected to the participatory planning processes, and involves all key stakeholders and assigns clear roles to farmers and NALEP staff. The framework has an action plan to build the capacity of staff and stakeholders to effectively undertake participatory M&E, establish appropriate operations structures and M&E systems at all levels and improve documentation and dissemination. The system has a clear and systematic linkage to the programme logical framework indicators and incorporates indicators on cross-cutting issues. Additionally, the system is simple for easy understanding, ownerships and use by stakeholders and has incorporated mechanisms for feedback. This system promotes effective monitoring of staff performance and targeting of poor farmers, pregnant women, widows, orphans, youth and people living with HIV/AIDS, and enhances rights to non-dis-

crimination and participation. Such internal assessments also promote accountability in all phases of programming.

With regard to the accountability principle, prior to MAINIAC, within both agriculture and health, staff assessment was ad hoc. Following MAINIAC, staff accountability has been emphasised through annual performance contracting, embraced by the agriculture and health programmes in 2005. In line with the system, the Programme Coordinator for NALEP and the Permanent Secretary in the Ministry of Health have each signed contracts with staff at the headquarter, provincial, district and divisional levels, pledging to assist them by providing requisite resources, operational procedures and services to achieve the programme targets and objectives. The health and extension staff, for their parts, have signed contracts to adhere to the results-based management to achieve the programme targets within the full programming cycle, from planning to monitoring and evaluation.

5.2.3   Summary: overall programming changes

The extent to which the principles of the rights perspective have been integrated in programming and, consequently, how programming has changed in the respective sectors is presented below:

Agriculture sector:

- The approach has expanded to reach national coverage after 2004.

- Through policy change in 2005, extension services are based on bottom-up decision-making that is empowering extension staff taking decisions and enhancing the principles of participation and accountability.

- Mechanisms have been created to ensure participation at the district level, with focus on groups who are poor, also during implementation.

- There is a routine to consult common interest groups (CIGs) – and the number of CIGs has increased.

- Openness and accountability are enhanced by information-sharing through community meetings/local media and improved reach of stakeholder forums.

- The institutional memory of, and learning from, the work with the principles of the rights perspective are enhanced by documentation of all programming phases.

- Collaboration with HR organisations and CIGs is enhancing the integration of the principles of the rights perspective together with cross-cutting issues, such as the rights of women and children, environment, and combating the spread of and the negative consequences of HIV/AIDS.

- There are monitoring mechanisms for different cross-cutting issues, which helps clarify the relationship between these issues and the principles of the rights perspective.

Health sector:

- After 2004, activities promoting the principles of the rights perspective have reached national scope: the approach is integrated into sector policies.

- Programming increasingly is pro-poor and emphasises non-discrimination and participation.

- Bottom-up planning is enabling district staff to take decisions and respond to local claims.

- Information-sharing is enhanced through community meetings/local media, and stakeholder forums with improved reach. This is enhancing the openness and accountability principles.

- Staff accountability is enhanced through annual performance contracting based on targets.

- Also cross-cutting issues such as the rights of women, the rights of the child and HIV/AIDS are targeted by the performance contracts.

5.3 Capacity among duty-bearers

This section focuses on the capacity developed among duty-bearers within the GoK (in the agriculture and health sectors) to integrate the principles of the rights perspective in programming. Identified changes in capacities following the introduction of the MAINIAC approach is of particular relevance here. Aspects of capacity development at both individual and organisational levels, as well as contextual factors, are discussed. At the organisational level, focus is on resources available and used to develop capacity to work with HRBA at different stages of programming, and on regular procedures established (such as training). Institutionalisation and sustainability of the approach are dealt with in the next section.

5.3.1 Resources

Capacities to work with HRBA cannot be studied in isolation from various supporting factors in the work environment. Before the MAINIAC approach commenced, NALEP Phase 1 (ROK/NALEP, 2000) and the Rural Integrated Health Services (ROK; MoH, 2000) were operated without the support from and benefit of comprehensive resource materials, operational guidelines and manuals on HRBA. There was no focus, in both sectors, on HRBA capacity building. Following the introduction of MAINIAC, however, the programmes in agriculture and health were recognised and acknowledged as aligned with the national policy and development priorities, as well as with the respective sector policies. Their focus is on rural development, decentralisation, poverty reduction and HRBA. Key resources for capacity building on HRBA for staff at all levels, as well as communities and their organisations, come from the Government's budgetary allocations, although this is inadequate.

Sida support to the agriculture (ROK/NALEP, 2006) and health (ROK/MoH, 2006) sectors has increased and expanded. Substantial resources that are contributing to the success of HRBA in both sectors, but especially in agriculture, come from Sida funding. Even more significant is Sida's contribution through consistent, complementary

and credible technical support derived from many years of Swedish experience with HRBA. This support includes identifying relevant participatory tools for community mobilisation, identifying and targeting the poor and vulnerable with agricultural extension and health services, supporting the improvement of these services, supporting the training of staff and communities in these tools, and promoting and nurturing the process. The consistency in participation and involvement of the Swedish Embassy, represented by the highest office, at annual and biannual Bilateral Reviews of the Programmes and at other strategic meetings, sends a powerful message to the key partners about the Embassy's commitment to the success of HRBA. Sida's Kenya Country Strategy emphasises the focus on poverty, and the presence of Sida within the programme is a constant reminder to the partners to remain focused on poverty issues and to include the poor and vulnerable within all levels of programming. This has promoted programme focus and understanding, respect and commitment to HRBA in both sectors. While the agriculture sector is making progress in directing resources for HRBA and programming to the poor and marginalised, the health sector is still steeped in the tradition of fragmentation and an entrenched bureaucratic culture that is resistant to HRBA. This emanates from misconceptions, and suspicion that HRBA is an external agenda.

The agriculture and health sectors have used their administrative structures, personnel and budgets to promote HRBA. Gender units have been established and staff identified at headquarters to promote gender issues within the ministries. Within agriculture, as part of Affirmative Action during the 2005-2006 plan period, the number of women District Agricultural Officers increased from three to 27, and three women were appointed to positions of Provincial Director of Agriculture (ROK/ NALEP, 2006: 52-3). These are powerful decision-making positions, with the potential to influence farmers and pastoralists who are mostly women. The programme has begun to use gender-disaggregated data to advocate increasing the involvement of women and youth in decision-making in extension activities. The agriculture sector has also created a new cadre of staff in districts and divisions, called Gender and Home Management Officers, with duties to promote women and youth participation in all extension training activities. However, the positive results are being undermined by traditional attitudes of male extension workers and inadequate staff training in HRBA. In the Ministry of Health, and its Division of Reproductive Health (DRH), there is a focal point that mainstreams adolescent and youth issues into programming. Equally, the division of the National AIDS Control Programme (NASCOP) has established AIDS Control Units (ACUs) in the public and private sectors to create awareness of HIV/AIDS mainstreaming.

Stakeholders' Forums (SHF) are frameworks that are used at all levels of programming within the agriculture and health sectors to build the capacity for HRBA. Stakeholders' forums within agriculture (ROK/NALEP: 48-9) are multi-sectoral, involving all actors, and empower local communities to take charge of their own development process. They provide policy direction, undertake training activities, participate in joint planning and budgeting, and target and reach vulnerable groups and the poor with information. Through collaboration and networking, community action plans are being developed, resources mobilised, and projects designed, implemented, supervised and monitored. Within the health sector, stakeholders' meetings are employed

for coordination, planning and provision of the Kenya Essential Package of Health. The programme is strengthening capacities of districts and communities, through their stakeholder forums, to claim their rights, identify health priorities and activities and to plan and implement them, and to expand the provision of services to reach households (ROK/MoH, 2006: 12), including the poor and vulnerable.

5.3.2 Changes in capacities

A study by Sida and KNCHR (2005-2006) documenting NALEP lessons and challenges found that extension staff in all districts had sound knowledge and understanding of HRBA programming, and that NALEP officers are successfully using and internalising HRBA concepts in the planning and implementation of their projects. In addition to promoting increased participation by various stakeholders in the development agenda and understanding the links between human rights and development, extension workers have been able to appreciate NALEP's principles on accountability, transparency, empowerment and non-discrimination. This is essentially an effect of the strengthening of staff capacity through improved documentation and training on HRBA, which is discussed further below.

Impacts of documentation, manuals and guidelines produced

Following the introduction of the MAINIAC approach, the programmes in both the agriculture and the health sector invested substantial efforts in consolidating and harmonising HRBA concepts within the framework of overarching policies (the National Agricultural Sector Extension Policy (NASEP) and the Health Sector Policy Frameworks). In both programmes, but especially in agriculture, resource materials have been developed, which have strengthened staff capacity to understand and integrate HRBA in design and implementation. Documentation has increased and improved on the basis of piloting, testing and learning. This has involved defining and clarifying concepts, reviewing sector policies and programmes for alignment with national policy and strategies focus, developing guidelines, procedures, and operational and governance structures, defining reporting structures, and identifying chains of events, from preparation, launch and implementation of the programming cycles and participatory tools. For example, gender-sensitive and compassionate technologies being successfully applied in focal areas are documented, and viable ones recommended to the various gender groups. The Gender Training Guide Book has been made available for use at all levels. Staff capacity in advocacy rights and governance has also been strengthened through sourcing and distributing training and information materials on democracy and human rights.

Agriculture and health staff have participated in this documentation process. Field interviews in both sectors, however, revealed that most of the documentation is undertaken at headquarters, with minimum participation of district and divisional staff and clientele. The documented operational procedures are integrated into work plans, and guide planning and implementation. They are also incorporated into the training of new staff (ROK/NALEP, 2006: 26). Consequently, staff are demonstrating internalisation of the programme and a greater appreciation of HRBA rules and accountability. The roles for staff directly involved at all levels of the programme, collaborators and stakeholders are also clearly defined, and this has enhanced the effectiveness

and efficiency of programming. Moreover, documentation is also enhancing the transfer of capacities between staff.

Impacts of improved monitoring systems

Staff capacity regarding monitoring and evaluation has also been strengthened. Before the introduction of the MAINIAC approach, extension and health workers used their existing internal assessment systems to collect information and evaluate programmes. Following MAINIAC, agriculture (ROK/NALEP, 2006: 38) and health (ROK/MoH, 2006: 34) staff have developed and adopted comprehensive participatory monitoring systems, incorporating community indicators and human rights. Within health, the systems are still in draft form, while in agriculture, staff from all levels, and community members, including vulnerable groups, have been trained in the use of the framework. Accountability is institutionalised through the integration of the monitoring frameworks into all phases of programming in the two sectors. The fact that all staff in the agriculture sector are able to effectively monitor activities and witness progress being made by farmers in the focal areas is a source of great optimism. During community mobilisation, extension workers regularly identify community indicators that are sensitive to poverty and vulnerability, and recommend their inclusion in the national participatory monitoring and evaluation framework, hence promoting accountability. Accountability is also enhanced and institutionalised within the two sectors through staff annual performance contracting.

Effects of training on staff capacities

Prior to 2004, emphasis was placed on training staff in programme operations and strategies in both sectors (ROK/NALEP, 2003: 45-6; ROK/MoH, 2000). After 2004 training in agriculture has been broadened in scope with training needs assessments undertaken regularly in relation to staff responsibilities. In both sectors, emphasis is now placed on continuous training of implementing staff at divisional levels to attain a high level of professionalism and broadened knowledge, in order to meet the demands of farmers and health users for the delivery of quality services. Training guidelines have been developed that provide direction for the training of various staff. Success in training builds on the collaboration and working partnerships that have been developed with individuals and organisations with expertise and other resources, and that are required in order to broaden training aspects of the programmes. There has been an increased effort, especially within agriculture, to provide extension and health service providers with training on cross-cutting issues, such as gender equality and women's rights in focal areas, HIV/AIDS, environment, and D/HR, and on strategies to reach the poor and vulnerable. This has enabled staff to bring services closer to the people, and is creating motivation and job satisfaction among them. Within agriculture, at the provincial and district levels there are now subject matter specialists who are trained in gender mainstreaming and are addressing the HIV/AIDS pandemic. Cross-cutting issues and participatory approaches, which have become integral to extension and health work, are incorporated in the training guidelines (ROK/NALEP, 2005).

Overall, staff training in operational procedures and guidelines is contributing to noticeable professionalism in the provision of extension services. Trained extension and health workers are using improved tools to identify and reach the poor and vulnerable

groups. However, training activities in both sectors are not regular. All staff are not trained and staff turnover and attrition undermines internal programme capacity in HRBA. For example, during field interviews in both Thika and Siaya districts, staff confirmed that human rights topics are never allocated adequate time or resources during training, and this leaves staff feeling incompetent. In NALEP one officer also expressed concern that communities and field level staff are ahead of the senior staff at headquarters in understanding and integrating the rights perspective. The biggest challenge to NALEP is lack of affordable resources, organisations and experts to support NALEP training activities in HRBA. During both the 2004/05 and 2005/06 plan periods, training activities were organised at all administrative levels, but they focused on management and technical skills. Some courses addressed issues of rights and governance but these were one-off activities, and the numbers of staff targeted were relatively small compared to the scope of work. Additionally, most training constituted short courses whose impacts were likely to be limited. An assessment of the resource poor and vulnerable targeting mechanisms in four pilot focal areas was carried out in the 2004-2005 plan period (ROK/NALEP, 2005: 27) and the study recommended more staff capacity building on resource poor and vulnerable targeting.

In the health sector, some human rights training activities have been undertaken. The bureaucracy and fragmentation within the health sector, however, makes it difficult to easily identify and document such activities. The current staff establishment strength of 44,813 (ROK/ MOH, 2006: 21), together with the cadre of community level staff yet to be developed, constitutes a huge resource potential and a challenge for capacity building in HRBA. Staffing is under review in order to address persistent issues such as gross imbalances across cadres, rural urban disparities and oversupply of some cadre. For example, staff are being re-deployed to arid and hard to reach areas for equitable service delivery and their retention is being promoted through appropriate incentive packages, which will promote inclusiveness. Training programmes, such as pre-service, in-service and continuous professional skills development, are opportunities to incorporate HRBA.

5.4 Sustainability of the approach

Sustainability of the MAINIAC approach is closely tied to the sustainability (institutionalisation) of capacity development among duty-bearers, which is, in turn, dependent on other external factors (for a more discussion on this, see Chapter 2). Sustainability is closely tied to established links to human rights organisations, as they are identified as an essential component for capacity development within the sectors and among duty-bearers. Further, the rights-holders are vital actors within HRBA, and their ability to demand their rights is another essential aspect of sustaining the approach.

5.4.1 Institutionalisation of capacity within the GoK

Prior to the introduction of the MAINIAC approach, the agriculture and health sector programming design and implementation applied a decentralised approach to service delivery, but with little evidence of ownership of HRBA. Following MAINIAC, programme design and implementation in both sectors have embraced decentralisation and devolution of power and resources, to effectively address the plight of the poor and vulnerable affected by rural unemployment, landlessness, un-

reliable subsistence farming, HIV/AIDS, and lack of access to markets or health services. The bottom-up implementation process goes hand in hand with other strategies that reflect the Government's efforts to provide an improved policy environment for public-private sector service provider partnerships. Collaboration and partnerships arrangements among service providers goes a long way to improving the conditions of extension and health services users, and eventually empowers them with better access, financial services and social and legal institutions that are close and accountable to them. The devolution of power and decentralisation of services thus enhance the success of the programmes, with the bottom-up planning and provision of services remaining the cornerstone. Within this programming, the stakeholders' concept empowers clientele to take charge of the project cycle management of projects and programmes in their areas.

Enhanced government ownership of HRBA at the design and implementation phases is reflected in capacity building in mainstreaming cross-cutting issues in gender equality, drug and alcohol abuse, human rights and HIV/AIDS in the agriculture and health programmes. Following the introduction of MAINIAC, both sectors, but especially agriculture, have shown greater commitment to training staff to mainstream cross-cutting issues, and a greater practice of affirmative action. In agriculture, gender training is integrated within regular extension training and is targeting the division and district staff. Gender-sensitive technologies being practiced in focal areas are being documented, and viable ones appraised and recommended for various gender groups. Human rights training has also been conducted among district and division staff, although not regularly. Trained staff are integrating these skills in their extension work. Cross-cutting issues are also being addressed in health, although to a lesser degree. Sensitisation training in gender mainstreaming has already been conducted among heads of divisions and senior programme managers at the headquarters. Policy makers are scheduled to receive similar training, and the programme will be rolled out to the districts and divisions.

5.4.2   Links to human rights institutions and organisations

Following the introduction of MAINIAC, NALEP undertook a number of activities during the 2004-2005 planning period (ROK/NALEP, 2005: 34-5) on advocacy, rights and governance that established links with human rights resources to ensure the integration and sustainability of HRBA in all phases of programming. NALEP promoted collaboration with relevant advocacy civil society organisations (CSOs) through organising a national workshop, in collaboration with the Kenya National Commission on Human Rights (KNCHR) and Sida. The CSOs that participated were identified from each province as those engaged in advocacy, rights and governance issues. The workshop attracted 170 participants, who also included agricultural extension managers and core team members. To enhance sustainability of HRBA, work plans were developed for implementation following the KNCHR/Sida workshop as a way forward. Over the same period, sustainability was also promoted through incorporating advocacy rights and governance into staff training programmes and curriculums. KNCHR trained three core team members and five coordinators on HRBA to be resource persons. Additionally, 63 officers, who included 22 women and 41 men, were trained to improve their capacity for advocating and implementing human rights approaches in their work.

NALEP has identified and relied on individuals and institutions with expertise in human rights as resource persons to create awareness during implementation of programmes. Thus, for example, Ngoma CSO in the Rift Valley advocated farmer friendly packaging of potatoes, while other districts reported that they were collaborating with forestry and children's departments, Faith Based Organisations (FBOs) and the Kenya Chapter of the Federation of Women Lawyers (FIDA), to create awareness. Incorporation of advocacy, rights and governance into farmers training programmes also enhanced sustainability. All FADC members and community leaders, and 20 per cent of the CIGs, were sensitised on human rights in order to participate in decisions affecting their rights and to demand accountability and transparency on the part of duty-bearers including NALEP (ROK/ NALEP, 2006: 64).

Through these partnerships, staff have undergone awareness creation, sensitisation and training in HRBA, although more training is needed. An internal impact assessment revealed that 54.3 per cent of farmers and 68 per cent of farmer groups were aware of their democratic and human rights. However, the impact is limited, as only 10 districts that attended the KNCHR workshop were found to be implementing their democracy and human rights work plans. There was also too few information materials on D/HR collected from the legal foundation and distributed – covering only five districts.

Further, the NALEP Coordinator and staff at the provincial levels have unsuccessfully attempted to establish a *sustained* relationship with KNCHR. A major constraint is the prohibitive cost of training activities. During interviews in Ruiru Division in Thika District, a NALEP collaborator reported being one of a team of three from Ruiru Division trained by KNCHR to create awareness and advocacy. NALEP has, nevertheless, established strong links with the Ministry of Health through the District and Division Stakeholders' Forums, and uses the services of the Ministry during training on mainstreaming of HIV/AIDS within programmes. AIDS Coordinating Units (ACUs) have been established within the Ministry, but the majority were reported to be currently non-functioning. They were active when they received regular funding from the National Aids Control Council (NACC), but when funding stopped so did all activities. Interviews revealed that the more serious problem was lack of understanding amongst ACU Coordinators about their roles, and a failure to establish important linkages with other programmes. NALEP has linked with organisations with expertise in gender analysis and gender mainstreaming. Despite incorporating them into project documents as issues for mainstreaming, NALEP has done little in the areas of youth and drug abuse, conflict and child rights.

Interviews with staff from KNCHR revealed that it is overstretched, and lacks the budget or the human resources to adequately respond to the growing demand for KNCHR training activities. The Legal Resources Foundation has undertaken some training activities for NALEP but charges for its services. More recently, NALEP is out-sourcing essential advisory services, including expertise in governance and human rights. This is forcing the programme to collaborate with other service providers. Further, the programme is continuously assessing and updating staff training needs and requirements – both technical and managerial – for the individual officers implementing the programme, with a focus on gender dynamics, poverty, rights perspective and governance issues (ROK/ NALEP, 2006: 37). The numerous agencies

that exist in Kenya with capacities for mainstreaming gender and human rights portray unevenness in their capacities and geographic distribution and scopes.

In the health sector, neither the Integrated Health Services Programme nor the Health Sector Reform Process have established any links with resource institutions or people in the field of human rights. Interviews with both headquarters and field staff confirmed this. There is an immediate need for a resource organisation or resource persons to create awareness and sensitisation, and generate demand for mainstreaming and institutionalising HRBA within the sector.

Thus, notwithstanding a number of initiatives that have been taken, especially in the agriculture sector, to create linkages with human rights institutions and organisations, it can be established that neither the agriculture sector nor the health sector has *strong and sustained* links with Kenyan institutions or people in the field of human rights. These resource organisations are strongly needed in both sectors to create awareness and sensitisation, and to generate demand for HRBA. However, the major constraints for establishing sustaining links are the cost of training activities, the limited financial resources among such organisations and their uneven capacities, distribution and scopes.

5.4.3   The demand side: the rights-holders

As envisaged in national, and agriculture and health sector, policies, a number of strategies have been promoted to improve the capacity of rights claimants, including training, collaboration, participatory methodologies and mainstreaming of cross-cutting issues.

Before the introduction of the MAINIAC approach in both sectors, service users and stakeholders in the field were trained to be involved in programme implementation. Following MAINIAC, training activities have been incorporated in the work plans and are undertaken at headquarters and within provinces, districts and divisions, targeting collaborators and stakeholders' forums to enhance ownership and participation. For example, within agriculture, during the 2004-2005 plan periods, the bulk of training targeted focal area development committees, farmers, common interest groups, extension groups, community leaders, young farmers and youth out of school. Skills were provided in conducting district and divisional collaborators' meetings, extension work planning, coordinator meetings and professional meetings with participation of poor farmers and vulnerable groups. During the 2005-2006 plan periods, training in the districts achieved 88.6 per cent coverage of collaborators, 100 per cent coverage of youth and young farmers and 83.6 per cent coverage of farmers (ROK/NALEP, 2006: 29). Training for collaborators was at national and provincial levels, and included study tours and attendance of international and national meetings to learn new technologies and approaches (ROK/NALEP, 2006: 27-8), and in participatory monitoring and evaluation. The bulk of the training targeted focal area committees, farmers in general meetings and in CIGs, community leaders, young farmers and youth out of school, district and divisional level collaborators and coordinators. Some training was provided for groups of the poor and vulnerable.

Training within the health sector, on the other hand, has placed focus on decentralisation and implementation of the community strategy and related activities. Within

districts, divisions, location/sub-location and at the village level, capacity building of rights claimants entails convening of stakeholders' forums and conducting training to strengthen collaboration, in order to facilitate sharing of experiences and evaluation and review. Within villages, the Community's Own Resource Persons (CORPs) mobilises community resources and undertakes social mobilisation for project implementation through facilitating education training on economic empowerment and transformation. The health committees collaborate with members of the community in providing information communication and education and training.

Before MAINIAC, stakeholders' collaboration was applied as a strategy within agriculture and health programmes. This collaboration has now been intensified and institutionalised at all administrative levels to empower stakeholders, but is more results-oriented within divisions. In the agriculture sector during the 2004-2005 plan periods (ROK/ NALEP, 2005: 26) the headquarter team facilitated exposure of provinces, districts and divisions to approaches and processes of formalising stakeholders' forums. Other activities included promoting the rural financing pilot scheme in all provinces and linking CIGs to rural finance institutions through formalised stakeholders' forums. Additional funds were accessed from constituency development funds (CDF) and the Local Authority Transfer Fund (LATF) and through membership contributions. Stakeholder analysis was carried out at division, district and provincial levels, and respective forums were formed and these elected steering committees. It was noted that, although the stakeholders had, to some extent, been able to develop joint work plans and implement activities, those at lower levels functioned better. During the 2005-2006 plan periods (ROK/ NALEP, 2006: 43) the programme stepped up efforts to identify and reach more collaborators at all levels to develop Community Action Plans (CAPs). Improvement was registered in the participation and management by stakeholders' forums, especially at provincial levels; there was increased interaction, increased participation in community planning and implementation, and in collaborator events. The challenges experienced included the perception that collaboration promoted the Government's agenda, joint planning and resource contribution to community action plans was still limited, people at lower levels in decision making in most institutions were still disadvantaged and there was a heavy government representation among collaborators, especially at the lower administrative levels.

Within health (ROK/ MOH, 2006), the Kenya Essential Package for Health (KEPH) activities have been emphasised. Promotion of collaboration and partnerships with health service users and stakeholders through strengthening their capacity was central to this process. Within districts, divisions, location/sub-location and at village level, capacity building of rights claimants entailed convening of stakeholders' forums and creating awareness about the new approach, strengthening collaboration to facilitate sharing experiences among them and enable them to evaluate and review meetings. Within villages, the CORPs undertake social mobilisation for project implementation through facilitating health education, economic empowerment and transformation to enhance access to means of production and marketing which determine health. The health committees collaborate with members of the community in providing information communication and strengthen the economic capacity of households. District and division level committees and CORPs create awareness among community lead-

ers and members on human rights to health to create understanding and dialogue on key challenges to health as well as to find solutions.

Participatory methodologies were further developed in both sectors following the introduction of the MAINIAC approach. Within agriculture, districts now choose extension approaches within the bottom up planning with the flexibility suited to their ecological, social and economic perspectives. In the extension approaches, the pro-poor, human rights and livelihood dimensions of extension are emphasised and reinforced as integral entities of demand driven extension to create confidence and social capital among the poor and vulnerable to become self-empowered. Piloting was undertaken in four districts to promote pro-poor technology, social development, equity and empowerment between poor and vulnerable farmers, pastoralists and fisher-people. The sites also served to train, develop skills and build capacities of, staff on how to work with poor and vulnerable groups, including through dialogue and counselling. Within the health sector, the methodologies that are being piloted and refined focus on health fees exemption and waiver schemes targeting vulnerable groups.

In the agriculture sector, there has been a demonstration of political will and support in involving stakeholders in the mainstreaming of cross-cutting issues. In addition, farmers have been made aware of the issues, especially of their role in the claim-holder/duty-bearer relationship. NALEP collaborated with civil society organisations (Legal Resource Foundation and Resource Project Kenya), NEMA, the Ministry of Health and NACADA in training extension officers as trainers of trainers (ToTs) to spearhead the mainstreaming of cross-cutting issues in their respective stations. Within communities, a total of 3,450 male and 1,818 female FADC members, and 50 per cent of CIGs and extension groups, were trained on cross-cutting issues. Within health, activities on mainstreaming of cross-cutting issues are still limited (spear-headed by the Division of Reproductive Rights); mainly confined to gender main-streaming and targeting headquarter policy makers and programme managers. How-ever, it is envisaged that training will soon reach communities and health users, through the planned training of trainers rollout programme to districts.

5.5 Relationship between the principles of the rights perspective and the cross-cutting issues to be mainstreamed

A further aim of the MAINIAC approach, in addition to integrating the principles of the rights perspective, was to mainstream a number of cross-cutting issues. HIV/AIDS, environmental degradation and conflict were identified as threats to poor people's ability to have their rights realised, and were to be mainstreamed according to specific needs in the sectors. This section elaborates upon the implications of integrating these cross-cutting issues in relation to the principles of the rights perspective in the sectors of agriculture and health.

5.5.1 Implications of integrating cross-cutting issues

Before the introduction of MAINIAC, the agriculture sector established a pro-gramme component on advocacy (ROK/NALEP 2001: 42), which collaborated with advocacy and legal rights groups in implementing good governance and democratic rights within communities as key elements of environmental sustainability. The pro-

gramme also created awareness and sensitisation among project staff and local communities about legal and rights issues. With the introduction of MAINIAC, the agriculture sector expanded the human rights approach by mainstreaming advocacy, legal rights and governance issues. Farmers were encouraged to demand their rights to food markets, production resources, natural resources and public services, such as extension interventions, affordable anti-retroviral drugs, home based care, nutrition and counselling for people living with HIV/AIDS, and orphan support. The inclusion of ASAL districts within the programme further prioritised issues of famine, drought, insecurity and conflicts over scarce resources. Focus was on dialogue, training and networking with common interest groups and communities, in relation to the use, management and conservation of resources to protect communities' livelihoods, life styles and cultures, minimising competition, conflicts, and marginalisation. The health sector has not yet incorporated programme components on advocacy in the mainstreaming of cross-cutting issues.

HIV/AIDS

Before the introduction of MAINIAC, both the agriculture and health sectors aligned with the HIV/AIDS policy (ROK, 1997) and implemented the first strategic plan (ROK/ NACC, 2000). The agriculture sector addressed the high HIV/AIDS prevalence that threatened production and increased the number of AIDS deaths and the number of poor and vulnerable female and child headed households (ROK/ NALEP, 2003: 15). The health sector focused on reduction of high national HIV/AIDS prevalence and mother to child transmission, the spread of TB and the lack of capacities within districts, at facilities and within communities.

Now the agriculture and health sectors are implementing the second National AIDS Strategic Plan 2005/6-2009/10 (ROK, 2006). The HIV/AIDS objectives, strategies, monitoring and evaluation systems and indicators in the two sectors have improved. The priorities identified in both sectors (ROK/ NALEP, 2006: 59; ROK/ MOH, 2006: 66) are: collaboration to create awareness amongst extension staff; formalise links with partners at all levels; strengthen links of district and division staff with research institutes for innovative and compassionate technologies; improve nutrition status of HIV/AIDS infected farmers; address stigma and discrimination in extension work; and training in counselling and home based care. The agriculture sector has, through focal areas approaches, formulated interventions that address stigma and discrimination, diversion of agricultural resources to the pandemic and increased child-headed households. Staff have been trained in mainstreaming HIV/AIDS and in counselling, and are providing extension education to farmers. The infected, especially orphans, are networked with the relevant organisations for material, moral and psychological support. Compassionate interventions that are friendly to the infected and affected are continuously promoted. Within health, staff have been trained, access to anti retroviral drugs (ARVs) is reducing HIV/AIDS complications, and social support mechanisms for HIV/AIDS infected people are being established. The institutional capacities for provision of care from the health facility into communities have been strengthened, and reach more community members including the poor and marginalised. The infected are reached with improved interventions for management of opportunistic infections.

Thus, there is greater focus in both sectors on addressing issues of HIV/AIDS-related discrimination and responding to the needs of the HIV/AIDS affected vulnerable groups, such as child-headed households. Interventions focus on advocacy, capacity building, care and support to the infected and affected, and access to anti-retroviral drugs by the infected.

Environmental Sustainability

Before MAINIAC, the agriculture sector collaborated with actors implementing soil and water conservation, and conducted training and participatory rural appraisals to identify and target the poor and vulnerable. During implementation, farmers' demands for soil and water conservation increased but varied within regions. Within health, the focus was on improving access to water supply systems and sanitation, improving hygiene among communities, strengthening environmental health and interventions on pollution, and enhancing control of vector-borne and communicable diseases. This was implemented through community mobilisation, support to local authorities, strengthening district inter-sectoral collaboration and enhanced women's participation.

Following the introduction of MAINIAC, the agriculture sector entered into partnership with the National Environmental Management Authority (NEMA) to train extension staff that have mainstreamed environmental impact assessments, to audit the work of these staff, and to identify and reach poor and vulnerable farmers with environmentally sustainable interventions. Farmers made increasing demands for interventions on their farms, while those in common interest extension groups demanded conservation activities for their income generation activities. The increased demand for interventions on the environment was attributed to deployment of specific officers to address environmental issues in provinces, districts and divisions (ROK/ NALEP, 2006: 62). Within the health sector, environmental management interventions have included focus on food safety, sanitation and water quality management, pollution control and occupational hazards (ROK/ MOH, 2006: 66).

5.6 Enabling and impeding factors

A methodological challenge in this evaluation has been to try to isolate effects of the MAINIAC approach from other factors affecting the integration of the principles of the rights perspective in programming. This section aims to identify this reality by elaborating upon a number of factors that, either directly or indirectly, may have enabled or impeded the integration of the principles in programming.

5.6.1 Enabling factors

- When the MAINIAC approach was introduced, an enabling policy environment existed within both agriculture and health. A number of policies and strategies for decentralisation (ROK, 1975), poverty reduction (PSRP, 2001), economic recovery (and ERSWEC, 2003) and HIV/AIDS mitigation (1997) had been introduced. Sectoral policies and strategies articulated HRBA to development through review and alignment with national policies and strategies, through Sida's Kenya Country Strategy, and through relevant international and regional

agreements and treaties to which Kenya is a signatory (in particular, the Millennium and Paris Declarations).

- NALEP Phase II (ROK/ NALEP, 2006), and the health sector using the sector-wide approach (SWAp) under the Joint Programme of Work and Funding for the Kenya Health Sector (ROK/ MOH, 2006), are building on earlier successful aspects of the Sida-funded National Soil and Water Conservation Programme, which enhances the integration of HRBA and cross-cutting issues. The specific aspects incorporated within programming in both sectors include demand-driven services, self-reliance, pluralism, professionalism, participation, transparency and accountability, sustained natural resource management and research extension linkages.

- The composition, roles and responsibilities of the Government structures being used by the agriculture (ROK/ NALEP, 2004) and health sectors (ROK/ MOH, 2006) have been more clearly defined, emphasising reporting lines, assessments and supervisory frameworks. The resulting efficiency and effectiveness is translating into improved service delivery and is enhancing the integration of HRBA at all programming phases. Clearer definition of roles and duties of the structures in the two sectors is, for example, enhancing participation of the clientele and promoting accountability. Integration of HRBA is also being enhanced, especially in agriculture, because in using the existing Government structures, the programmes in both sectors are benefiting from government staff that have been sensitised and trained in participatory approaches that promote human rights and mainstreaming of cross-cutting issues.

- The successful introduction and application, through Sida funded projects, of strategies and approaches that promote human rights in the two sectors, especially in agriculture, is enhancing the integration of HRBA. These strategies, which have been improved through Sida technical support, include counselling and dialogue techniques, and the resources-oriented approach to targeting the poor and vulnerable (ROK/NALEP, 2005: 19). In agriculture, the strategies include the focal area approach, which emphasises completion of extension programming in demarcated areas. The broad-based survey is used in community mobilisation and identification of the poor, while participatory analysis of poverty and livelihoods dynamics is used in targeting the poor and vulnerable. Within the two sectors, especially in the agriculture sector, integration of HRBA in programming is also being enhanced through the strategies on decentralisation, which emphasise allocation, disbursement and use of most programme resources within communities.

- During the 2002-2003 planning period, the agriculture programme prioritised promotion of the formation of farmers' associations within communities. These were called common interest groups (CIGs). The aim was to empower the farmers in the focal areas to take up agri-business opportunities, with emphasis on local ecological and economic conditions and markets. The concept of CIGs has now been institutionalised within extension service, and enhances the integration of HRBA in the agriculture sector through promotion of opportunities

for farmers (ROK/ NALEP, 2004: 9), with an emphasis on poor and vulnerable groups.

- Within agriculture, stakeholders' collaboration is being promoted as opportunities for formation of CIGs. Through such partnerships and collaboration the programme is implementing activities that target vulnerable groups (ROK/ NASEP, 2006: 49) and is thereby enhancing the integration of HRBA.

- Within the health sector, while there is lack of widespread awareness and full appreciation of HRBA, through collaboration with the Kenya National Commission on Human Rights and the World Health Organization, some sensitisation workshops have been conducted among headquarter staff, which is enhancing the integration of HRBA. Opportunities for enhancing integration of HRBA in health exist as part of ongoing training of provincial, district and divisional staff in SWAp and health sector reform, including the training of trainers programme for the new cadre of staff implementing the community health strategy (ROK/ MOH, 2006).

- Overall, the collaboration with resource institutions, such as KNCHR and various CSOs, is enhancing the integration of HRBA. Both sectors rely on individuals and institutions with expertise in human rights to provide training, to create awareness and to promote HR issues in programmes. However, the lack of *sustained* links with these resource institutions is an impediment to the sustainability of HRBA.

5.6.2   Impeding factors

The factors that have hindered the integration of HRBA in both sectors and at all programming levels, but especially at the design and implementation phases, include lack of in-house human rights capacity, ownership crisis, staffing issues and inadequate infrastructure.

- Through collaboration with Sida, KNHCR and the Legal Resources Foundation, some training and sensitisation activities on human rights were conducted, but were not sustained due to a lack of in-house capacity or strong linkages with organisations and individuals with human rights expertise. This has impeded effective integration of HRBA in the programmes. The health sector particularly lacks awareness and respect for HRBA programming and has made little progress in integration of HRBA. Within agriculture, however, efforts are being made to outsource human rights advisory services to support integration of HRBA into the programme (ROK/ NALEP, 2006: 64). Gaps in staff capacity is a common problem, and district and division staff in Thika and Siaya and provincial staff in Kisumu in both sectors attributed this to inadequate budgets and lack of responsiveness to emerging issues. This contrasts with the apparent availability of adequate resources for training in HRBA at the headquarter level and the responsiveness at that level to addressing the capacity gaps of staff. Although within the agriculture sector more resources are now being allocated within community action plans for human rights training (ROK/NALEP, 2006: 62), they remain inadequate, and this undermines the integration of HRBA.

- Poor administrative conditions exist in the agriculture and health sectors, which undermine effective programming and the integration of HRBA. They include a lack of adequate staff and inadequate transport and accommodation. A key issue in staffing is shortage caused by massive retrenchment, and normal staff turnover through retirements and other exits from the civil service. Inadequate transport is caused by a shortage of drivers, restrictive regulation over who can drive government vehicles and inappropriate transport (motor-cycles) for female staff within divisions, which limits staff mobility. Divisional NALEP staff in Thika complained that limited budgetary allocation for transport, combined with bureaucracy, prevents them from undertaking minor car repairs to enable them to reach farmers and the poor and vulnerable. Staffing in both sectors, but especially in the Ministry of Health, is unevenly distributed in favour of urban areas, and fails to make distinctions between the terms of employment of staff with diploma and certificate qualifications, which undermines staff morale. In both the agriculture and health sectors, staffing is further complicated because it is controlled externally by the Public Service Commission and the Office of the President, which undermines management and accountability. The divisional level staff in Thika, including the field staff, complained about the lack of adequate accommodation; they share one office room and lack working space or privacy during consultations with clients. From observation during field visits, it was clear that, while the headquarters is well stocked, district and division offices in both sectors lack basic facilities such as furniture and stationery, which undermines both performance and accountability.

- In both sectors, outdated laws and statutes hinder effective programming and undermine the integration of HRBA. The Public Health Act, for example, is an obstacle to effective health service delivery and is overdue for reform. The slow rate of legislative reform in the agriculture and health sectors is complicated by the dependence on reforms in other sectors, over which there is little scope to exert any influence.

- The heavy workload of service providers in the agriculture and health sectors undermines HRBA. The civil service has been retrenching staff and the health sector is experiencing disproportionate rates of staff exits, which is undermining delivery of services. In addition, the health sector undertakes coordination, as well as implementation, of service delivery, which overburdens staff and undermines their ability to deliver quality services. Inadequate staffing is also caused by the increasing demand for agriculture and health services resulting from community mobilisation and sensitisation within both sectors. During fieldwork in Siaya, it was reported that the high workload burdens the extension staff and undermines their ability to adequately respond to the demands for extension services. Staff also raised concerns that NALEP reporting requirements are complex, demanding and non-user friendly.

- An aid-dependency mentality still exists in both sectors, which undermines successful implementation of programmes. For example, rights claimants demand to be paid to attend project activities and meetings.

5.6.3 Factors enhancing the integration of each of the principles of the rights perspective in programming

The Sida-funded health and agriculture programmes have been under implementation for a number of years, and the factors which promote each of the principles of the rights perspective, and which need to be enhanced, are beginning to emerge.

Participation

Participation is promoted within the two sectors through the strategies of decentralisation and bottom-up approaches, participatory methodologies, stakeholder collaboration, use of poor people's structures, and mainstreaming of cross-cutting issues (especially at the implementation phase). The allocation of programme funds to divisions – a result of decentralisation – has enhanced the participation of communities, including the poor and the vulnerable. Coupled with decentralisation are participatory methodologies, which are applied to effectively reach and target poor and vulnerable groups, and which therefore need to be promoted to enhance participation. Stakeholder collaboration and networking has also been used to promote the participation of public and private sector organisations that work with the poor and the vulnerable. Participation is being institutionalised through such partnership formations within the programme.

Collaboration and the institutionalisation and formalisation of partnerships should be further enhanced to effectively reach vulnerable groups and to promote their participation. Rights to participation can also be enhanced through addressing administrative obstacles that hinder effective programme implementation, especially limited staff and transport. Studies need to be supported to identify more effective ways of using collaboration to promote participation at all programming levels. Furthermore, participation can be promoted through monitoring to ensure that adequate resources are allocated, disbursed and expended on activities of the poor and vulnerable groups, and on capacity building in HRBA of policy coordinators and programme implementers to strengthen their skills in order to address cross-cutting dimensions.

Non-discrimination

The principle that is consistently respected and integrated among duty-bearers at the policy and coordination levels is non-discrimination, demonstrated through a policy emphasis on rural areas and communities and the poor, where the bulk of funds are committed for allocation, disbursement and expenditure. The principle is reinforced through respective sector policy alignment (ROK/ MOH, 1994; ROK/ NALEP, 2005) with Kenya's national policies and strategies on rural development and decentralisation (ROK, 1975), economic recovery (ROK, ERS, 2003) and poverty reduction (ROK, PRSP, 2001). This creates ownership within the Government and justification for budgetary allocation to support all levels of programming. Non-discrimination is further reinforced through continuous advocacy focused on international and regional agreements and treaties to which Kenya is a signatory, as well as Sida's Kenya Country Strategy, which focuses on poverty reduction. Clear understanding of non-discrimination is, however, mainly confined to the headquarter staff within the policy coordination levels, and to a limited extent to the provinces. Within the health sector, for example, it is at this level where the bulk of the

resources and activities on awareness creation, sensitisation and training on HRBA in policy have been concentrated. Less policy training and information activities have trickled to the districts and divisions, and within communities, and knowledge and awareness have consequently suffered in those regions.

Non-discrimination can be enhanced through operationalising policies and strategies, simplifying them and translating them into local languages, using appropriate formats and widely disseminating them to enable service users in agriculture and health to claim these rights. Non-discrimination can also be enhanced by effectively using the national Government administrative system, whose structures extend from the headquarters in Nairobi to divisions, in order to effectively deliver agriculture and health services, and reach communities, including poor and vulnerable groups. Non-discrimination can be enhanced further through regularly streamlining these government administrative structures to make them more efficient in the delivery of agriculture and health services, and more relevant by clearly defining their compositions, roles and responsibilities. Studies on non-discrimination are lacking, and these need to be commissioned to identify gaps that need to be addressed within programming.

Openness and transparency

Before the introduction of MAINIAC, rights to openness and transparency were being addressed in the agriculture (ROK/NALEP, 2001) and health (ROK/MoH, 2000) programmes, through providing information via local leaders on projects and funding. Following MAINIAC, both programmes (ROK/NALEP, 2006; ROK/MoH, 2006) have expanded the information outlets for use to include local leaders, mass media and information, education and communication (IEC) materials. Openness and transparency can be enhanced in the agriculture and health sectors through regular and intensive use of local leaders, all media forums and IEC materials to supply information on projects and funding. Studies and documentation of rights to openness have not been conducted, and these should be supported to identify areas of programming focus.

Responsibility and accountability

Accountability is promoted and institutionalised at all levels of programming, including within communities, through improved monitoring systems that incorporate community and human rights indicators. Accountability is also institutionalised in the two sectors through performance contracting, which, together with collaboration, promotes continuous accountability of staff at all levels. Accountability can be enhanced within both the agriculture and health programmes through strict supervision and follow up, effective implementation of participatory monitoring and evaluation and performance assessments. Collaboration and networking with organisations that target the poor and the most vulnerable groups will lead to a demand for accountability. Studies and documentation of accountability are required in order to identify areas of programming gaps and appropriate interventions.

5.6.4 Summary: Enabling and impeding factors for the integration of the principles of the rights perspective in programming

The following enabling and impeding factors for the integration of the principles of the rights perspective in programming have been identified in the sectors of agriculture and health:

Enabling factors:

- Kenyan national reforms after 2002, focusing on HR, decentralisation, participation, and so on.

- Strong links between programmes and sectors, and overall national strategies and reforms that enhance decentralisation, pro-poor perspectives and participative mechanisms.

- Integration of the principles of the rights perspective with concurrent sector reform, such as the combining of participatory approaches with decentralisation policies.

- District focus within sectors, for example the "District-focus for Rural Development" policy, enhancing district staff responsibilities, and participation and accountability mechanisms.

- Timing of sector reform in relation to the start of new programmes.

- Performance contracting, including targets related to the principles of the rights perspective and cross-cutting issues.

- Prior HR piloting (although sometimes externally driven).

- Kenya National Commission for HR (KNCHR) acting as facilitator and bridging the gap between civil society, duty-bearers and donors.

- CSO participation in workshops promoting HR issues in programmes.

- Civil society partnerships enhancing principles of the rights perspective and cross-cutting issues, and providing synergy effects, for example non-discrimination, participation, gender.

- Existing common interest groups (CIGs) for linking communities to programming.

- Continued community involvement in decision-making at district level including the implementation phase.

- Documentation on work procedures for integrating principles of the rights perspective enhancing institutionalisation.

Impeding factors:

- General lack of awareness of the principles of the rights perspective at all levels (decision-making, implementation, and so on).

- Weak links to HR organisations, great dependency on KNCHR for training.

- Follow-up training on the principles of the rights perspective being conducted ad hoc by consultants.

- Irregular and ad hoc training on the principles of the approach: limited capacities at district- and local levels.

- Length of policy processes, delaying HRBA and reducing staff motivation.

- Lack of material facilities among staff at district and division levels is limiting opportunities to respond to rights-holders' claims.

- Uneven staffing in favour of certain groups or urban areas.

- In general limited efforts by duty-bearers at higher level to engage with rights-holders.

- Aid-dependency mentality among communities: need informing/training with rights claimants.

- Lack and non-use of indicators to monitor capacities among duty-bearers to work with the principles of the rights perspective.

- Lack of training about how to involve rights-holders in programming based on the principles of the rights perspective.

5.7 Conclusions and recommendations

Before the introduction of the MAINIAC approach, the agriculture and health programmes operated in a policy environment for poverty reduction, decentralisation and rural development. However, the participatory and targeting methods introduced only benefited a few service users and did not reach the poor, especially in the health sector. Staff training focused on technical aspects and operation programme procedures. Moreover, programmes in both the agriculture and health sectors operated without support from comprehensive resource materials such as operational guidelines and manuals.

The overall result of the introduction of the MAINIAC approach in the sectors of agriculture and health has been to enhance the effectiveness and efficiency in the management and delivery of agriculture and health services, establish clear lines of reporting, promote the effective exchange of information and engender respect for operational standards and quality services. District and division staff are empowered, and this is leading to programming success. Staff are benefiting from training in programme operations and skills in cross-cutting issues, and are bringing services closer to the people. Staff and communities are participating in monitoring and witnessing programme progress, and improved transparency and fairness is leading to appreciation of the rules of operations.

Following the introduction of the MAINIAC approach, both sectors have focused on issues of poverty through sector policy alignment, and with national policies on poverty reduction, decentralisation and rural development. The strategies of decentralisation within both sectors, but especially in agriculture, have been adopted, and more funds are reaching divisions and communities, including the poor and vulnerable, which enhances their participation and empowerment. Participatory

methodologies that have been adopted by programmes in both sectors have been improved through Sida's technical support, and are being applied to effectively reach and target poor and vulnerable groups. The methods incorporate accountability, and motivate staff to engage in outreach and extension work, and to promote the participation of previously marginalised groups. Targeting of the poor and vulnerable has intensified in both programmes, and this is promoting non-discrimination and participation in project design and implementation. Stakeholder collaboration has been intensified and institutionalised, and is undertaken at all administrative levels through incorporation into work plans. This collaboration promotes the emergence of stakeholders' forums to develop action plans and implement activities. Capacity building training in HRBA and cross-cutting issues, especially in agriculture, is integrated within annual work plans and mainly targets divisions and communities. Further, the programmes in both agriculture and health have harmonised and disseminated HRBA concepts, reviewed policies, and defined guidelines, procedures, operational and governance structures, chains of events within programming cycles, participatory tools, cross-cutting issues and case studies of lessons learnt. This has enhanced staff capacity to understand, respect and integrate HRBA. Internal assessment systems have been strengthened and transformed into comprehensive participatory monitoring systems, with human rights indicators, action plans and linkages to programme logical frameworks. Accountability is further enhanced through annual performance contracting, which is embraced by the agriculture and health programmes to achieve programme objectives and targets within the full programming cycle.

However, despite these positive developments in both sectors, and especially in agriculture, the sustainability of HRBA are obstructed in both sectors. The primary causes for this obstruction are the lack of capacity among duty-bearers and the lack of strong and sustained links with resource institutions and human rights organisations. Although the scope of training has been broadened, activities are still irregular and the impact is limited, especially in the health sector. Links with resource institutions have been established, as mentioned above, but collaboration is sporadic and has not been properly sustained.

Recommendations
- The existing government administrative system carries the potential for effective coordination and efficient delivery of quality agricultural extension and health services. To enhance HRBA, however, this system should be regularly reviewed, and streamlined to have clearly defined rules, roles and responsibilities that promote transparency and openness. The capacity of district and divisional staff should be strengthened through training in programme operations, in order to internalise programming for effective management; in cross-cutting issues to bring the services to the people; and in monitoring and evaluation in order that staff and beneficiaries can witness progress.

- In order to implement HRBA effectively, the strategies that address poverty should be applied at all phases of the programming cycle. At the national level, it should be incorporated into coordination and management, and find expression in national and programme policies and strategies. At the design, planning and

implementation programming phases, it should be incorporated within the training curriculums and implementation strategies, especially strengthening staff skills in participatory methodologies (which target the poor), and in cross-cutting issues (which are dimensions associated with poverty). Skills in targeting the poor and vulnerable will also enhance the achievement of HRBA.

- To demonstrate commitment to HRBA requires integration of human rights within sector policies. HRBA also requires the use of participatory methodologies that identify and target the poor with service delivery, and hence promote all the principles of the rights perspective in all programming phases. HRBA is further integrated through the development and use of monitoring and evaluation systems, including performance contracting, which promotes accountability.

- HRBA programming should be accompanied by comprehensive documentation of programming, including the development of clear concepts, review and alignment of policies, development of operational guidelines, implementation procedures and lessons learnt. Additionally, HRBA will be enhanced through consistent training, incorporating the core strategies that promote the principles of the rights perspective, such as participatory tools, decentralisation, and the development and use of participatory monitoring and evaluation systems.

- To enhance HRBA, rights claimants, especially beneficiaries – who include farmers, health services users and stakeholders – must be viewed as full partners and a huge resource at all levels of programming, but especially at the programme design, planning and implementation levels. They must therefore be consulted, trained, provided with resources and fully involved in implementation and monitoring and evaluation. Some of the issues that need to be addressed relate to effective strategies that will be used, for example language at stakeholders meetings, which will place rights claimants at the centre of these meetings, especially the vulnerable and poor.

- To successfully implement HRBA, it is important to identify factors that are facilitative of the programme, and to build on them. These were identified to include an enabling policy environment for HRBA, building on past experiences, use of efficient administrative structures and use of poverty-focused approaches. Factors that hinder HRBA – such as lack of internal human rights capacity within the programme, programme ownership crisis and management issues such as inadequate staffing and infrastructures, and outdated legislation – need to be identified and addressed.

- Government resources are important, but are inadequate to promote HRBA. Additional resources to support HRBA should be mobilised through partnerships with strategic external agents. Such resources should include strategies for HRBA, financial support, technical support on HRBA and physical presence to nurture and give direction to the process. HRBA should also tap into programme resource within the relevant sectors, as well as the huge resource that is represented by the stakeholders' forums.

- HRBA in Kenya needs to be supported by a core group/individuals/-organisations brought together to harmonise understanding of the theory and practice of HRBA programming. This group should be supported to develop curriculums, manuals, and other training materials, deliver capacity building training, based on a trainers of trainers framework, and provide skills on HRBA and training methodologies. The targets should be government programme officers and civil society organisations, in order to create a pool of local resource institutions/persons to sustain the training on HRBA.

- Promoting HRBA requires comprehensive reviews and consultations at the policy, planning and implementation levels. This will enhance participation and ownership of the programme by the staff and the wider government. Further, HRBA needs to be supported with key strategies, such as decentralisation, collaboration and networking as well as with capacity in mainstreaming cross-cutting issues, which will promote inclusiveness, participation and broad ownership.

- Promoting HRBA within health and agriculture programming requires the integration of rights to non-discrimination, participation, accountability and openness in all programming phases. Integration of non-discrimination can be enhanced through national policies and strategies on non-discrimination, supported by international and regional agreements and treaties, sector policies and an effective service delivery structure. The policies need to be operationalised and widely disseminated to enable users to claim their rights. Participation can be integrated through the poverty-focused strategies of decentralisation, participatory methodologies, collaboration, use of the poor people's structures, and mainstreaming of cross-cutting issues, especially at the implementation phase. Rights to accountability can be integrated through collaboration, internal assessments, participatory monitoring and evaluation systems, and performance contracting. Openness can be enhanced through the use of local leaders and other media to supply information. Integration of each of the principles can further be enhanced through studies that determine the gaps and areas of focus.

- The agriculture and health sectors need to adopt HRBA to enhance mainstreaming of cross-cutting issues, such as environmental sustainability, gender equality, HIV/AIDS and conflict resolution. The HRBA advocacy components can link communities and other interested groups to dialogue and resolve conflicts over environmental sustainability. Through advocacy, HRBA programming can create awareness and sensitise communities and programme staff to demand their rights, including access to public services such as affordable anti retroviral drugs for the HIV/AIDS infected, home based care services, nutrition, counselling services and material support for orphans, and security. The inclusion within HRBA programming of districts such as ASAL, with unique features and problems such as famine, drought, insecurity, conflicts over scarce resources and nomadism, can lead to a prioritisation of such local issues and the application of appropriate approaches and methodologies to address them.

- To promote HRBA, HIV/AIDS programming in agriculture and health should be aligned with the national AIDS policy, strategic plan and monitoring system, from which priority issues should be identified. The current issues include HIV-related deaths leading to female- and child/orphan-headed households, stigma and discrimination, home based care, nutrition support and opportunistic infections. HIV/AIDS responses should emphasise advocacy, capacity building, care and support to the infected and affected, and access to anti retroviral drugs by the infected in order to enhance rights to non-discrimination and participation, especially in the implementation phases.

- Environmental sustainability in the agriculture sector can be promoted through collaboration with implementers of soil and water conservation in conducting training and creating soil and water structures. This will lead to increased demand among farmers, and help reach the poor and vulnerable through their institutions, as well as enhancing and institutionalising rights to non-discrimination, participation and accountability, mainly in the implementation phase. Within the health sector, environmental management interventions should target households in implementing hygiene practices, and improving access to safe water and adequate sanitation, in order to enhance rights to non-discrimination and participation by reaching communities, including poor and vulnerable people.

The following recommendations are provided for the sectors of agriculture and health:

Agriculture sector:

- Strengthen local ownership in order to enhance lower level decision-making.

- Integrate HRBA further through alignment with the national decentralisation process.

- Give equal weight to all four principles: ensure that transparency and accountability mechanisms are developed and used.

- Promote institutionalisation by conducting regular and more extensive HRBA training.

- Integrate the principles of the rights perspective further, for example, by translating into local languages and disseminating information to enhance awareness among rights claimants.

Health sector:

- Focus more on transparency issues; the lack of openness is impeding participation and accountability.

- Develop monitoring and evaluation systems, focusing on the HRBA process.

- Integrate the principles of the rights perspective further, for example, by translating into local languages and disseminating information to enhance awareness among rights claimants.

6 Integrating the Rights Perspective in Programming – An Assessment of the Water and Urban Development Sectors

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6.1 Introduction

The notion of human rights based approaches (HRBA) to programming is new to Kenya, and more so in respect of the government's operations. The Government of Kenya's (GoK) policy and lawmaking processes have been historically highly centralised and secretive. However, Kenya's human rights movement, a strong opposition, the increased political space, and the constitutional reform process have yielded certain legislative reform in the first multi-party decade.[35] The Kenyan society has also become more open, and citizens are now more demanding of their rights. Moreover, the passing of the _Kenya National Commission on Human Rights Act (2002)_ (the Act) marks an important watershed in respect of HRBA in Kenya. Under the Act, the establishment of the Kenya National Commission on Human Rights (KNCHR) created and empowered the first statutory state human rights body. These factors, coupled with the election of a new regime in December 2002, created an enabling environment for the rights based discourse within the government.[36]

This chapter assesses and compares the extent to which the Kenyan duty-bearers, at decision-making and implementation levels, integrate HRBA and the principles of the rights perspective (through the MAINIAC approach) into Sida-supported programmes in the sectors of water and urban development.

6.1.1 Objective

An essential objective of the MAINIAC approach has been to strengthen the integration of the principles of the rights perspective in programming (with agreements from 2004) within six sectors supported by Sida. This was to be achieved through developing capacities at the Embassy and amongst its partners, as well as linking the KNCHR and other Kenyan resource institutions to the approach. The aim of this part of the evaluation is to document how the rights perspective has been integrated within the different sectors and in programming, including a discussion on the capacities of partners, that is, the GoK and its ministries. Specifically, the aim is to answer a number of questions pertaining to the MAINIAC approach. Firstly, to

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[35] The first multi party decade is 1992-2002. Kenya did have a period of multi-partyism at independence from 1963-1969. In 1969 the country became a _de facto_ one party state, with the proscription of the Kenya People's Union (KPU). In 1992 the first multi-party elections in two and a half decades were held, and in December 2002, the Kenya African National Union, which had held a stranglehold on the country's politics from independence, lost to the National Alliance Rainbow Coalition (NARC). See Walter Oyugi ed. _Politics and Administration in East Africa_ (Nairobi: East African Educational Publishers (EAEP), 1994), 161.
[36] As mentioned in earlier chapters, human rights and political instability has again raised its head with the political crisis and associated violence following the December 2007 elections.

identify who the relevant duty-bearers are within the respective ministries as different ministries have different structures and are more or less decentralised. Secondly, to document how and to what extent the principles of the rights perspective have been integrated in all programming phases, to analyse the capacity within the respective ministry at different levels and to identify factors enhancing or impeding the work to integrate a rights perspective. Thirdly, to identify links developed between the ministries and Kenyan resource institutions and to discuss sustainability as well as the relationship between the rights perspective and the cross-cutting issues targeted by the MAINIAC approach. Lastly, to elaborate on conclusions and recommendations for how to integrate this approach further.

6.1.2   Method and delimitations

Selection of Informants[37]

At the national level, informants were primarily selected on the basis of the institutions that they represented. The relevant institutions were all national duty-bearer institutions that have received funding from Sida, or are closely affiliated to an institution that is receiving funding from Sida in the water or urban development sector.[38] Thus, representatives of the parent ministries for each sector were initially selected: the Ministry of Water and Irrigation (MWI), the Ministry of Lands (MoL) and Ministry of Housing (MoH).

At the regional level, interviews were held with one institution in the water sector: the Rift Valley Water Services Board (RVWSB). RVWSB is one of the WSBs that are considered to be integrating the principles of the rights perspective well into their work. It was not possible to visit a Catchment Area Advisory Committee (CAAC). No interviews were held with urban sector officials at the regional level.

Thus, interviews were conducted with:

- Relevant Sida program staff (preparatory interviews), to provide background on the sectors and to assist in identifying persons that they had been partnering with within the two sectors;

- GoK officials, working in the two sectors of water and urban development;

- Representatives of state corporations in the water sector;[39]

- Technical advisers in the water and urban sectors;[40]

- A representative of the KNCHR, which has been a resource institution in respect of providing training.

A review of program documentation was also made, as well as a comparative analysis of the two sectors.

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[37] A full list of informants is provided at the end of this report.

[38] The Water Services Regulatory Board (WSRB), for example, does not receive funding from Sida, but works very closely with the Water Services Trust Fund (WSTF) and regulates the Water Services Boards (WSBs).

[39] There were no relevant state corporations in respect of the urban development sector

[40] Four technical advisers were interviewed at the national level: two in the water sector and two in the urban sector. One technical advisor – in the water sector – was interviewed at the regional level. Support for four of the five technical advisors interviewed is provided directly by Sida and indeed this is part of the support for mainstreaming rights based approaches that Sida provides.

Methodological strengths and challenges

Generally, as the HRBA to programming has a recent history in Kenya, especially within the GoK, there was a challenge with regard to the insufficient data on the situation/programming process before 2004, that is, before the MAINIAC approach commenced.

The challenge of articulating the MAINIAC approach theory emerged during the research. Sida's approach is subtle. Consequently, while there was an assumption underlying the Assessment Plan that informants knew about the approach and therefore could identify at what point it was introduced, in fact none of the informants in these sectors, except the KNCHR representative, had heard of it. Thus, even where capacity building with respect to mainstreaming of HRBA had been clearly provided and was identified as such, informants attributed this to the notion that the "Swedes have always been strong on human rights."[41] A clear articulation of a theory of the MAINIAC approach would greatly enhance the integration of the principles of the rights perspective, as it would facilitate the process of sharing the approach with partners. This is particularly important as most of the GoK partners identify Sida as a development partner that provides leadership in ensuring the mainstreaming of HRBA. In some instances, the only support that institutions have received for integrating HRBA has come from Sida.[42] Thus, it would appear that, for several of the partners, part of the value-added in Sida support lies in Sida's commitment to HRBA.

However, a methodological strength of this study lies in the fact that assessing the two sectors – one in which Sida has a long history of working (water) and one in which Sida does not appear to have such a long working history (urban development) – provided a "control". This is particularly important given the ongoing reforms in the two sectors, and the fact that the relevant institutions are relatively new, resulting in difficulties in obtaining a pre-2004 analysis: most of the water sector institutions are new (post-2004) and the Ministry of Housing (a key duty-bearer institution within the urban development sector) was established in January 2006.

Due to the water sector reform, there are many new institutions in the water sector that did not exist prior to 2004, leading to a situation where a number of informants could not give a pre-2004 comparative analysis. Similarly, the programmes which Sida is funding in the new ministries with respect to the urban development sector are post-2004. To address the issue of obtaining a pre 2004 perspective – where interviewees had worked in the sector prior to 2004, and especially with Sida – their opinions on the difference in programming due to the integration of the principles of the rights perspective were sought.

The reform and the new institutions also proved a challenge in the sense that many of the programmes have not yet undergone the evaluation phase, and in respect of the urban development sector, are not yet even at the implementation stage. Therefore, an analysis of the integration of the principles into these phases was not always possible.

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[41] This perception was held by most informants.

[42] While Kenya Slum Upgrading Program (KENSUP) began to be conceptualised in 2001 and was operationalised in 2003, it is the entry of Sida support in 2006 for the communication component that concretised the participation principle.

In respect of the urban development sector, there was a challenge in that, although the Local Government Ministry ought to be one of the parent ministries, Sida has not partnered with it. This is due to the fact that Sida's entry point into the urban sector has been through addressing the issue of governance and informal settlements. Thus, the parent ministries for Sida in addressing urban development is the MoL and the MoH, each one housing a separate component of Sida-funded urban development programmes. There are therefore relevant duty-bearer institutions that are not receiving funding from Sida, with which no interviews were conducted. Further, the communication, capacity building and Land Information for Informal Settlements (LIIS) components of the Kenya Slum Upgrading Program (KENSUP), all of which are Sida supported, were instituted in 2006. These programmes are therefore in their planning phases, with implementation scheduled to begin at the end of 2007. It was therefore not possible to observe and/or conduct interviews with officials at the regional level with respect to the urban development sector, nor was it feasible to make any analysis of the integration of the principles of the rights perspective in respect of the implementation and monitoring and evaluation phases.

In respect of the water sector, it was only possible to interview one regional water services board (WSB).[43] A visit to another regional body would have helped to ascertain the consistency in transfer of skills and integration of HRBA as well as to identify cross-cutting challenges that are emerging. In addition, a visit to a Catchment Area Advisory Committee (CAAC) would have enabled observations of how issues of water resource management play out at the local level. Given that Kenya is a water-scarce country, it is unfortunate that, due to time constraints, a visit to an arid or semi arid area, especially in Northern Kenya, was not possible.[44]

Finally, there was a challenge of attribution. Given that some of the sectoral reforms within the water sector ensure a more responsive water service provision environment, it was difficult to assess whether the high level of respect for the principles of the rights perspective that was observed is attributable to the MAINIAC approach or the legislative reforms and consequential new institutions. This is further compounded by the fact that Sida has supported the water sector for a long time and was key to the institution and enactment of the reforms. Thus, while informants in the water sector may attribute the integration of the principles of the rights perspective within the sector to the Sida approach, this may in fact be attributable to earlier Sida interventions, as well as to the quest for an increased democratic space and a new regime. In the urban development sector, demands by rights-holders for inclusion in policy and decision making (manifestations of the participation and accountability principles) was attributed by informants to the shift in housing policy that pre-dates Sida's partnership with the Ministry of Lands (MoL) and the Ministry of Housing (MoH).[45]

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[43] Various attempts were made to interview the staff of the Athi River Water Service Board, however none of the relevant officials were available during the interview period. Given that Athi River Water Service Board is also responsible for Nairobi and its peri-urban areas, it may have yielded some of the challenges that are also unique to water service provision in an urban as opposed to rural setting.

[44] A visit to Northern Kenya poses unique challenges in respect of access to water and also in addressing the issues of conflict and environmental concerns. Further, pastoralists face discrimination on the basis of their socio-cultural background.

[45] One informant in KENSUP attributed the shift in the Government from direct provision of housing to facilitation that birthed KENSUP in 2001 to an earlier shift in housing policy.

6.1.3   Background to the Water Sector

According to the Ministry of Water and Irrigation (MWI), only 60 to 65 per cent of the population currently has access to clean water. The GoK has therefore set the target of providing 100 per cent of the population with access to clean water by 2010.[46] Ironically, the poor pay more for their water and yet it is of a poorer quality. Addressing access to water is key to ensuring poverty reduction and spurring economic growth. Given the lack of adequate infrastructure and the fragility of Kenya's ecosystem, providing an adequate and reliable supply of clean water to the entire population is a major challenge.[47]

The water sector in Kenya has undergone immense reform since the passage of the _Water Act_ in 2002. The genesis of this reform process can be traced to the National Policy on Water Resources Management and Development (1999). The passage of the _Water Act (2002)_ ushered in a new regulatory framework for the sector, in which the State ceased to be directly responsible for water service provision and instead took on the role of a regulator of water service providers. In addition, the State has now provided for the integration of water resource management through the Water Resource Management Authority (WRMA). Thus, the new institutional framework for the water sector provides for the separation of water resource management from water and sewerage services, the establishment of autonomous regulation in the sector through the WRMA (for the water resources management) and the Water Services Regulatory Board (WSRB) (for water and sewerage services provision), and decentralisation of services to the regional level through a number of institutions.[48]

In the process of the State ceding direct water service provision, there is an increased presence of private actors (private companies and community groups) now involved in water service provision. Prior to the institution of the _Water Act_, local authorities (particularly in urban areas) were automatic water service providers. They must now compete with private actors.

Sweden has been cooperating with Kenya in respect of the water sector since independence (1963).[49] Much of current Sida funding towards the water sector has been directed to capacitating and strengthening the new water institutions, most of which were operationalised in 2004 or thereafter. Sida has thus transformed the way it supports the sector in response to the reforms. In the past, Sida provided financing to CSOs to provide water services; now Sida is largely providing technical assistance to the new water institutions, based on priorities identified by them. The currently supported Kenya Water and Sanitation Program (KWSP) is a joint programme of cooperation between Kenya, Sweden and Denmark, which started in January 2005 and will be ongoing until the end of 2009.[50] It consists of three components: the Rural Water Supply and Sanitation (RWSS), the Water Resources Management (WRM) and the Water Sector Reform (WSR). The technical assistance includes

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[46] MWRMD, DANIDA, Sida, 4.

[47] Kenya has an "extremely limited per capita endowment of freshwater resources (of less than 650m^3 making it among the most water scare countries in the world.)" See MWRMD, DANIDA, Sida, 5.

[48] See Ministry of Water and Irrigation (MWI), _A Handbook on the Water Sector Reforms_, March 2005, 9.

[49] Government of Kenya Ministry of Water and Irrigation, Sida and Ministry of Foreign Affairs Denmark, _Kenya Water and Sanitation Programme Inception Documents, Summary_, June 2005, 6.

[50] For further details see the Government of Kenya Ministry of Water and Irrigation, Sida and Ministry of Foreign Affairs Denmark, _Kenya Water and Sanitation Programme Inception Documents, Summary_, June 2005.

provision for two international technical advisers and general support to the seven WSBs.[51]

6.1.4   Duty-bearers within the water sector

The duty-bearers within the water sector are as follows:

Duty-Bearer	Key Responsibilities
Ministry of Water and Irrigation (MWI)	The primary role of the MWI is policy formulation, sector coordination and financing. It is responsible for strategy development, research, training, sectoral planning and supervision of sector institutions.
Water Appeals Board (WAB)	The WAB has "jurisdiction to hear and determine disputes" with respect to decisions or orders made by the WRMA, WSRB or the Minister for MWI, concerning a permit or licence under the Water Act 2002[52]. This is therefore the highest-level formal complaints mechanism within the water sector, outside of the formal judicial process.
Water Services Trust Fund (WSTF)	Given the increased privatisation of water service provision under the Water Act, the WSTF was established to finance the provision of water services to areas in Kenya without adequate water services.[53] The WSTF has been key to ensuring the provision of water and sanitation services to the poor and rural populations. It does not do so directly but rather by capacitating Water Service Boards to ensure water service provision. The WSTF became operational in 2004.
Water Resources Management Authority (WRMA)	The WRMA is charged with regulating the use and abstraction of water, and has the responsibility of protecting water resources (lakes, rivers etc.) from pollution, degradation etc.[54] In doing so, WRMA classifies, monitors and allocates water resources. It is also charged with determining reserve water and protecting the quality of water. It manages and conserves water catchments, determines applications and charges for water use. Finally, it is responsible for providing information on water resources and advising the Minister for MWI on water resources. The WRMA was operationalised in July 2005 and has one national and six regional offices.
Water Services Regulatory Board (WSRB)	The WSRB is responsibilities and powers include: issuing licences for the provision of water services; establishing procedures for handling complaints made by consumers against licensees, as well as monitoring compliance with established standards for the design and maintenance of facilities.[55] The regulatory body for water services provision was operationalised in March 2003.
Water Services Boards (WSBs)	There are 7 regional WSBs that plan and provide for water and sewerage services. They develop facilities for water service provision; apply for licenses to provide water and sewerage services; contract water service providers (WSPs); and purchase, lease or acquire water and sewerage infrastructure and land. The WSBs are the means through which water service provision has been decentralised.
Catchment Area Advisory Committees (CAACs)	The CAACs advise the regional WRMA offices on water resource conservation, use and apportionment. They also advice on grant adjustment, cancellation or variation of any permit as well as any "other matter pertinent to the proper management of water resources." [56] They are the means through which the WRMA is decentralised to the catchment, i.e. local level.

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[51] Government of Kenya Ministry of Water and Irrigation, Sida and Ministry of Foreign Affairs Denmark, *Kenya Water and Sanitation Programme Inception Documents, Summary*, June 2005, 11.

[52] Section 84 of the *Water Act 2002*.

[53] Section 83 of the *Water Act 2002*.

[54] Section 7 of the *Water Act 2002*.

[55] Section 46 of the *Water Act 2002*.

[56] For further details, see Ministry of Water and Irrigation (MWI), *A Handbook on the Water Sector Reforms*, March 2005, 9.

Duty-Bearer	Key Responsibilities
Water Services Providers (WSPs)	WSPs are responsible for the direct provision of water and sewerage services, and are agents of the WSBs. They are allowed to bid for service provision and if successful, operate and maintain water service facilities. Originally formally recognised WSPs were largely local government authorities in urban areas, but they now also include various private sector actors.
Water Resource Users Association (WRUAs)	WRUAs cooperatively manage water resources and conflict resolution.[57]
The National Water Conservation and Pipeline Corporation (NWCPC)	The NWCPC was established as a state corporation in 1988.[58] The NWCPC is therefore not one of the new water institutions, and its mandate and exact role within the water sector reforms is not entirely clear. Although the _Water Act_ provides for its use in two instances, mainly with respect to emergency and as a supplier to "state schemes", this would appear to conflict with aspects of the role of the WRMA, which is responsible for regulating the supply of all "raw water." The role of the NWCPC also contradicts the purpose of the reforms, which is to separate the regulation from direct supply role, therefore acting as a check and balance.

6.1.5   Background to the Urban Development Sector

Over 34 per cent of Kenya's population live and work in urban centres.[59] The Ministry of Lands (MoL) estimates that 55 per cent of Nairobi's population lives in "slum and squatter settlements", occupying a mere five per cent of the city's residential area.[60] The questions of shelter and urban poverty are closely related in Kenya. Further, Kenya is characterised by rapid urbanisation, which has not been matched by a growth in shelter or improved infrastructure. Three challenges accentuate poverty further in the urban areas of Kenya: 1) rapid urbanisation with limited services, 2) insecure land tenure among the poor, and 3) exclusion – that is, the urban poor are often excluded from the information and communication processes on issues that affect them.[61]

The issues of urban development are tied in the sense that Kenya's urban development has largely been unplanned and most of Kenya's urban population lives in informal settlements.[62] Further, one of the legacies of the colonial system is the fact that many indigenous citizens were displaced, and many were forced to live as squatters. Thus, insecurity of tenure is a serious problem in both urban and rural areas.[63] Disputes over land are known to erupt violently, hence the urge for a national land policy that can lead to equitable, sustainable and economically viable land use. For certain constituencies, issues of access to and control of land are even more

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[57] Ibid.

[58] Legal Notice No. 270 of 1988, pursuant to the _State Corporations Act, Chapter 446 of the Laws of Kenya_ is the legislation that governs state corporations, except where a particular parastatal is set up under its own statute, which is not the case with the NWCPC.

[59] Republic of Kenya Ministry of Lands and Housing, "Ministry of Lands and Housing Integrated Land and Urban Sector Programme, Program Proposal," submitted to Sida April 2005, 6.

[60] Republic of Kenya Ministry of Lands and Housing, 7.

[61] Ibid.

[62] Ibid.

[63] For further details see _Kenya Implementation Framework for the Land Reform Support Programme (August 2006 – May 2009)_, Lala Steyn, Prof Paul Syagga, Tommy Osterberg and Ibrahim Mwathane, 5.

acute; women for example do not have the right to inherit land under most of Kenya's customary law, resulting in them holding less than five per cent of Kenya's titled land.[64] Women's limited property rights have been made more acute by the HIV/AIDS pandemic and the consequential increased incidence of widowhood.

Kenya has never had a national policy on land. Given the country's settler colonial history, the issue of land use, access and control is a highly contested and emotive one. However, three events occurred in the last decade, which have particularly catalysed the need for a national policy on land use, management, administration, access and control. These are the constitutional reform process, the findings of the Commission of Inquiry on Land Laws in Kenya (the Njonjo Commission) (2002), and the Commission of Inquiry into Illegally Acquired Land (the Ndungu Commission) (2004). Kenya is currently undergoing a period of immense and radical policy reform with respect to its land use. A draft National Land Policy (NLP) has been developed and approved by the Cabinet, and was being prepared for presentation to Parliament at the time of writing this chapter. The Cabinet approval has led to the development of the Kenya Implementation Framework for the Land Reform Support Programme (August 2006 – May 2009) that is intended to guide the anticipated land reform process that the country will be undergoing. Both the GoK (through the Ministry of Lands) and its development partners are now working through the structures proposed in this framework.

In addition, as is happening in the water sector, the State has increasingly withdrawn from direct service provision with respect to housing since the promulgation of the National Housing Policy on 30 June 2004. The policy framework permits, and indeed encourages, "investment by the formal and informal private sector," in the "production of housing for low income and middle income urban dwellers."[65] The work Sida (and other development partners) supports within the urban development sector is still at the planning phase and is largely being undertaken by national level institutions. Much of this work pertains to the shifts that are occurring with respect to policymaking within the sector.

Sida was initially providing support to the urban development sector through the Integrated Land and Urban Sector Programme (ILUSP). The responsible Ministry for ILUSP was then known as the Ministry of Lands and Housing (MoLH). The objective of the ILUSP was "to reduce urban poverty through improved access to land, security of tenure and improvement of livelihoods in informal settlements." This was to be achieved by focusing on three components: the National Land Policy Formulation Process (NLPFP), the National Land Information System (NLIS), and the Kenya Slum Upgrading Programme (KENSUP). Support to the first component, the NLPFP, was to be provided for both the formulation and implementation of the National Land Policy (even though the formulation of the draft policy was fairly advanced by the time the programme was initiated). Support to the second component, the NLIS, was divided into two sub-components; the NLIS itself focusing on collecting information at the national level and the Land Information for Informal Settlements (LIIS) focusing specifically on urban informal settlements. The

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[64] Lala Steyn, Prof Paul Syagga, Tommy Osterberg and Ibrahim Mwathane, 14.

[65] MoLH, 12.

KENSUP component had a capacity building component to enable "stakeholders to participate meaningfully in the slum upgrading process."[66] In combination with a communication component, this was to improve communication within KENSUP and the MoLH at large.

In January 2006, the MoLH was split into two ministries – the Ministry of Lands (MoL) and the Ministry of Housing (MoH). The agreement between the MoL and the Development Partners Group on Land (DPGL, of which Sweden is one part) to undertake and initiate the Kenya Implementation Framework for the Land Reform Support Programme resulted in the establishment of the Land Reform Support Programme (LRSP) in October 2006. The objective of the LRSP is: "To support the reform of land administration and management in order to improve the prospects for economic growth and tenure security of the urban and rural poor, in particular women and children".[67] Sida's support was restructured accordingly, from supporting the pervious Integrated Land and Urban Sector Programme (ILUSP) to supporting the current programme LRSP. Of the three components of the previously Sida-supported ILSUP, the land policy formulation process (NLPFP) and the Information System (NLIS, which has become the Land Information Management System (LIMS) under the new programme, and LIIS) come under the jurisdiction of MoL, and the Kenya Slum Upgrading Programme (KENSUP) is under MoH.

When the transition was made from the ILUSP to the LRSP there was one important omission. One objective of the ILUSP had been: "To mainstream gender, HIV/AIDS, Environmental Impact Assessments, Human Rights and Conflict Resolution in all the Programme components and rollouts."[68] In order to ensure this mainstreaming, the then MoLH had designated a "Mainstreaming Coordinator". While the current LRSP Framework contains several broad statements with respect to the mainstreaming of human rights, it does not indicate how this will be achieved nor is there a provision for a similar office (that is, a Mainstreaming Coordinator). Thus, the mainstreaming of human rights in general has not been entrenched within the LRSP, although there is a MoL Gender Desk Officer who is also the Ministerial Integrity Assurance Program Coordinator.

6.1.6 Duty-bearers within the urban development sector

The main duty-bearers within the urban development sector are the Ministry of Lands (MoL) and the Ministry of Housing (MoH), both of which originally constituted the Ministry of Lands and Housing (MoLH). Together, the ministries (as well as the previous MoLH) have the following core functions:[69]

* Land policy and physical planning;

* Land transactions;

* Survey and mapping;

* Land adjudication;

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[66] MoLH, 17.

[67] Lala Steyn, Prof Paul Syagga, Tommy Osterberg and Ibrahim Mwathane, 8.

[68] MoLH: Integrated Land and Urban Settlement Program, 22.

[69] Presidential Circular No. 1/2004 as quoted in MoLH: Integrated Land And Urban Sector Programme, 14.

- Land registration;

- Settlement matters;

- Land valuation;

- Administration of State and trust land;

- Housing policy; and

- Shelter and slum improvement.

The Ministry of Lands currently has four departments: Land Adjudication and Settlement; Physical Planning; Survey and Administration. As the Land Reform Support Programme (LRSP) is cross-cutting, all Sida affiliated programmes, apart from KENSUP, are housed under the LRSP organs within the Ministry of Lands (MoL). The structure of the MoL is hierarchical, including the Minister, Permanent Secretary, director of administration, deputy secretaries, directors of departments, deputy directors, senior assistant directors and assistant directors.[70]

The Ministry of Housing (MoH) is responsible for housing policy and shelter and slum improvement. The Kenya Slum Upgrading Programme (KENSUP) began as an initiative of the MoLH and UN-Habitat in 2003. The aim of KENSUP is to "improve the lives of people living and working in slums and informal settlements."[71] KENSUP is focused on "selected slums within the statutory, regulatory and legal boundaries of the City Council of Nairobi, Mombasa, Kisumu and Mavoko Municipal Councils."[72]

The KENSUP Core Structures are as follows:[73]

Institution	Duties and/or Responsibilities
Settlement Executive Committees (SECs)	SECs are elected by settlement communities and link the project implementation units (PIUs) to the settlement communities. They also facilitate community networks and mobilise resources such as savings and credit schemes at the community level. They are facilitating full community participation in decision-making.
Settlement Project Implementation Units (SPIUs)	SPIUs link the KENSUP Secretariat to the PIUs and the communities. They are responsible for mobilising actors and coordinating activities at the settlement level.
Project Implementation Units (PIUs)	PIUs are established within Local Authorities to facilitate the formation of and coordinate the Settlement Project Implementation Units, assist in planning, design and construction of required facilities; provide technical, logistical and resource support.
The KENSUP Programme Secretariat	The KENSUP Programme Secretariat is responsible for the day-to-day operations of the programme. Three of the key institutions that are responsible for the implementation of KENSUP are: the Ministry of Housing; Local Authorities, which are responsible for implementing "projects that are within their areas of jurisdiction;" and UN-HABITAT which is a collaborative partner of the GoK.[74]

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[70] There are lower staff levels such as Senior Settlement Officer, then Settlement Officer, etc.

[71] Ministry of Housing (MoH), "Abridged Version of the Kenya Slum Upgrading Programme (KENSUP) Strategy 2005-2020," March 2007, 2.

[72] Ibid.

[73] MoH, 3-5.

[74] Ibid.

Institution	Duties and/or Responsibilities
Multi-Stakeholders Support Group (MSSG)	The MSSG is comprised of representatives of Development Partners, Civil Society, GoK, Local Authorities, and Communities and other stakeholders. It is a programme review and feedback mechanism that is a forum for partnership participation and fundraising.
Inter-Agency Steering Committee (IASC)	The IASC is the Programme supreme organ and is composed mainly of accounting officers from the relevant GoK Ministries, UN-HABITAT and Development Partners. As a policy-making organ, it reports to the Head of State, who is the patron of KENSUP, and in so doing, it links KENSUP to the centre of national decision-making.
Inter-agency Coordinating Committee (IACC)	The IACC is the intermediary between KENSUP stakeholders and the IASC. It includes civil society representatives and is a mechanism for coordinating all KENSUP related activities.[75] IACC is also a skills and technical expertise repository.

6.2 The integration of the rights perspective in programming

This section focuses on the integration of the principles of the rights perspective in programming. In doing so, the concepts of RBA and HRBA are concepts often used by partners in explaining the MAINIAC approach – that is, the integration of the rights perspective. There are nevertheless differences between various definitions of HRBA approaches, and between HRBA and the rights perspective (for further discussion of this, see Chapter 2). However, the focus here is on the *principles* of the rights perspective. Thus, the principles of participation, non-discrimination, openness and transparency, responsibility and accountability, and how these have been integrated throughout programming forms the starting point, and the terminology used in explaining the approach is not directly relevant here.

6.2.1 The integration of the principles of the rights perspective in programming

The principles of participation, non-discrimination, openness and transparency, and responsibility and accountability have all, to a varying degree, been integrated into the planning and design phases of programming in both the water and urban development sectors. There are also examples of the integration of the principles of the rights perspective in the implementation phase within the water sector. It has not been possible to assess the integration of the principles within the implementation phase with respect to the urban development sector, as the Sida supported programmes within this sector are new and not yet at this phase. It has also not been possible to assess the extent of the use of the principles of the rights perspective in evaluation in either one of the two sectors, as none of the programs are at that phase yet.

Respect, integration and promotion of the principle of participation

All informants reported an increased adherence to and respect for the participation principle in both sectors. That the Kenyan public is more active in claiming its right to participate was cited as one factor in promoting the respect for and integration of the participation principle in programming. In general, where there was a coincidence

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[75] There are slum upgrading activities being undertaken in the slums that were neither GoK nor UN-HABITAT initiated or funded. However KENSUP is intended as a coordinating facility for all upgrading and an information clearing house.

of principle between the GoK and Sida with respect to a marginalised group, there was a greater consistency in ensuring their participation.

The Ministry of Water has been described as being "responsive" towards human rights based approaches towards programming. The reforms introduced by the _Water Act_ have had implications for the integration of the principles of the rights perspective. The general structures of the new water institutions have created an enabling environment for the integration of the principles within the sector, and created an institutional framework that facilitates the deepening of this integration. For example, the Catchment Area Advisory Committees (CAACs) and the Water Resource Users Associations (WRUAs) enables rights-holders at the local levels to effectively participate in the water resource management, regulation and service provision.

Certain mechanisms and tools were evident in both sectors for ensuring the integration of the participation principle. Within the water sector, through the Kenya Water and Sanitation Programme (KWSP), the Community Project Cycle (CPC) has been developed. The CPC is a comprehensive and elaborate project-planning tool for every phase of the programme cycle, which also empowers communities to apply for and manage their water services. The CPC ensures participation in general and targets specific sectors of the communities. This is done for example through a requirement that at least one third of the decision makers in CBOs that apply for funding are women (therefore also, at least partly, promoting respect for the non-discrimination principle).[76] Compliance with this requirement is assessed through the Quality Control Agents (QCA), whose responsibility is to assess whether or not the participation and non-discrimination principles have been complied with.[77]

However, the CPC is a relatively new tool and as yet no thorough analysis of its impact has been conducted. The process has, however, already yielded a powerful objective tool for reaching and supporting the poorest populations in the form of the geographical targeting that is based on poverty mapping. The fifty poorest locations are ranked based on four criteria: 1) the location's ranking in the Poverty Index; 2) the index of availability of water; 3) the availability of other funding agencies within the area; and 4), the extent of sanitation coverage. This enables the Water Service Trust Fund (WSTF) to prioritise in which areas to intervene in any given location. The inclusion of these groups in the planning has also led to increased confidence and the actualisation of other human rights. The WSTF has developed approaches for ensuring the participation of persons with disabilities and/or HIV/AIDS in the planning and design phase, which have had an impact on implementation. In some communities where people hide persons with disabilities or the stigma pertaining to HIV/AIDS, talking about water and ensuring access have made it safe for communities to identify and support people suffering from these types of exclusion or marginalisation. In addition, the CPC has enabled training and capacitating of duty-bearers. For example, the staff at the Rift Valley Water Services Board (RVWSB) reported using the CPC, as it enables them to ensure better representation of marginalised groups within the planning committees at local level. The RVWSB had

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[76] See CPC, Document 9 Preparation Phase: QCA Field Verification Form for Community Application.
[77] Ibid.

also sought expert support in gender mainstreaming and ensuring the inclusion of persons living with HIV/AIDS or who are HIV affected.

Moreover, having private actors enter the sub sector of water service provision has enabled communities to manage their own water supply services, as community groups can now qualify as Water Service Providers (WSPs). Further, the State subsidises Community Based Organisations (CBOs), as they are eligible to apply for funding from the WSTF to ensure water service provision to areas that are under-served. The WSTF uses human rights standards in assessing whether or not a group qualifies for a grant; for example groups that do not have 30 per cent female representation in their decision-making organs do not qualify.[78] Historically, under Kenya's patriarchal socio-cultural and economic systems, women and girls are charged with the responsibilities of ensuring the provision of water and sanitation, yet their participation in decision-making with respect to water service provision has been limited.

Within the urban development sector, the National Land Policy Formulation Process (NLPFP) has afforded an excellent opportunity for participation and public sector/civil society partnerships. The entire process has built on partnerships between the MoL and civil society partners such as the Kenya Land Alliance.[79] The use of the participation principle can be attributed, in part, to increased public demand for participation in policy- and decision-making processes, which in turn can be attributed to the increased political space. As part of the NLPFP, not only did different departments of the MoL have to work with each other, they also worked with and consulted members of the public. Thus, the NLPFP process has enhanced relationships and partnerships not only between the MoL, the private sector and civil society, but also between the various departments of the ministry itself. Further, the Draft National Land Policy was published in the mainstream media availing it to the public at large, and it was also the subject of discussion at a National Land Conference. In the Foreword to the Draft Policy, the Permanent Secretary in the Ministry of Lands and the Coordinator of the Kenya Land Alliance note that they present it "as a sign of our continued commitment to sharing information leading towards our collective ownership of the product, and subsequent participatory implementation of the final National Land Policy."[80]

The challenge is to institute mechanisms for the public and community participation in the implementation phases. The Settlements Executive Committees (SECs), which are part of the Kenya Slum Upgrading Programme (KENSUP) structure, provide an example of how the participation principle is being integrated into the planning and design phases. Through the SECs, communities in the informal settlements are participating in the planning and decision-making processes of KENSUP. The SECs will also be instrumental in the implementation phases in some of the project sites, as communities will undertake construction. Informants within the MoH were clear that the Communication component of KENSUP was not only necessary in ensuring the effective participation of the public in the programme, but had also enabled the

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[78] Ibid.

[79] See the Draft National Land Policy as advertised in the *Daily Nation*, Thursday 19th April, 2007.

[80] Ibid.

KENSUP Secretariat to begin to effectively reach the public. It was observed that, due to technical support, the Secretariat had found that some of the KENSUP organs were not working effectively and identified the precise problems, which they were taking action to address. This illustrates that integrating the principles of the rights perspective has had a relatively quick impact in some respects – in this case in ensuring greater efficiency.[81]

With respect to the National Land Information System (NLIS), members of the slum communities were involved in the data collection phases, which may have enabled the collection of information pertinent to land information management that would not have been forthcoming to people from outside of the communities. The participation of tenants in the committees that were involved in the process also proved an effective dispute resolution mechanism. Sida support has been directed towards communication under the NLIS (now LIMS) and LIIS programs, which has contributed to inter-departmental cohesiveness. In fact, part of the purpose of the NLIS was to address the "uncoordinated" and "department-specific" nature of previous land information initiatives.[82]

Respect, integration and promotion of the principle of non-discrimination

As mentioned above, the recent policy pronouncement on the one-thirds affirmative action principle with respect to women in the civil service has greatly enhanced adherence to the non-discrimination principle in respect of gender equality in both sectors. In fact, there was a tendency by informants (particularly in the MoL) to conflate the principle of non- discrimination with ensuring gender equality. Within the urban development sector it was further noted that the fact that civil society is now participating in the policy making process is a major contributing factor to addressing gender equality. Although this acknowledgement of gender discrimination in respect of representation is one of the concerns addressed by adhering to the non-discrimination principle, there is a need to examine other manifestations of discrimination, including some of the more invisible facets of gender based discrimination, and to identify other discriminated groups. There is also the promotion of the non-discrimination principle in respect of persons with disabilities, pastoralists and people living with HIV/AIDS in both sectors. Of these, the integration of the principle of non-discrimination with respect to HIV/AIDS was particularly pronounced.

In respect of the water sector, the CPC process created a safe space for de-stigmatisation of people who were either HIV/AIDS infected or affected. Since one of the repercussions of the HIV/AIDS pandemic is an increase in child-headed households, it has become important to ensure the representation of children in the planning phase, in order to address their concerns. The CPC process also ensured that persons with disabilities are included in the planning process. Adherence to the participation principle in this respect resulted in facilities being planned that are more user-friendly for both persons with disabilities as well as children. One of the informants described it as being the realisation that "just the placing of a tap can make the difference in accessibility." Given that access is a critical issue for persons

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[81] For further details see Caesar Handa, "*KENSUP – A Communication Action Plan*," September to October 2006.

[82] See MoLH, 16 for further details.

with disability, this is an important gain out of integrating and promoting the non-discrimination principle. The Catchment Areas Advisory Committees (CAACs) and the Water Resource Users Associations (WRUAs) have also enabled the addressing of some of the forms of discrimination faced by pastoralist communities. It was observed that, while sedentary groups and farmers tend to form the majority of water users upstream, this affects the volume of water for pastoralists downstream. Both groups are represented within the CAACs and WRUAs, and this has had an immediate impact in reducing water-related conflict.

In the urban development sector, the National Land Policy Formulation Process (NLPFP) appears to have afforded an excellent opportunity for the integration and promotion of the non-discrimination principle. The draft NLP has graphically brought to the fore the issue of discrimination against women within Kenya's land tenure system. One of the informants attributed the strong presence of civil society organisations within the policy making process as a major contributing factor in gender equality being addressed. Notably the LRSP has also explicitly addressed the issue of gender discrimination and makes several policy statements in this respect that are rooted in the draft NLP. This would appear to suggest a shift in the MoL's capacity to integrate the principle of non-discrimination in their programming, particularly with respect to gender discrimination. However, the key will be the extent to which these policy statements and principles are manifested in the implementation phase. Also, pastoralist groups had a strong presence within the NLPFP process. However it was observed that persons with disabilities and those who are HIV/AIDS infected and affected are not as well organised, and did not have as strong a presence. Previously, when the Ministry of Lands was addressing the issue of HIV/AIDS it was from the perspective of providing support to staff that were HIV/AIDS infected or affected. However, the ministry is now examining how to effectively provide services to members of the public who are HIV/AIDS infected or affected. Informants in the urban development sector did state that they were grappling with how to identify and support people living with HIV/AIDS without stigmatising them. They noted that the culture of silence and stigma surrounding HIV/AIDS makes it particularly difficult to reach this constituency of rights-holders. Children's participation, and ensuring that they are not discriminated against, was cited as another challenge in the urban sector with respect to the issue of tenure, as children do not have the legal capacity to enter into certain types of contracts or hold title.

Respect, integration and promotion of the principle of openness and transparency
There are still challenges with respect to the integration of the openness and transparency principle. Firstly, while the increased democratic space has yielded a new openness and transparency, the legacy of institutionalised barriers to this principle still persists. One of these barriers is related to the legacy of a highly centralised state system.

In the water sector, where legislative reforms have provided for decentralisation (for example, in respect of water service provision through the water services boards), the sheer physical size of the geographic scope and terrain that has to be covered by some of the regional bodies still compounds issues of accessibility. The Rift Valley Water Service Board (RVWSB), for example, found that when they applied the CPC

tool, and specifically the criteria for identifying the poorest locations, most of them were Arid and Semi Arid Lands (ASAL) in the northwestern Turkana District. Thus while there is a commitment in-principle to, for example, provide services and information to far remote areas, the physical infrastructure supporting these services is still "centralised", as most regional bodies' headquarters are located in "provincial" centres.[83] However, the CPC does provide a tool for promoting openness and transparency, as it requires that projects be initiated by informing the community, and having representation of various sectors of the communities. The various water institutions have carried advertisements in the media and use forums such as barazas to inform the public about their existence and the availability of their various services.[84]

The urban development sector (specifically with respect to the MoL) has not been devolved, although there are, for example, District Land Boards (DLBs). Where a problem pertains to the national system, addressing it entails travel to Nairobi, which greatly inflates the cost of access to information. In the long-term, the Land Information Management System (LIMS) may address this problem, but since it is not yet in its implementation phase its impact is yet to be seen. In addition, the MoH was candid about the challenges that had been encountered with respect to communication between the various KENSUP structures, although the communication plan promises to yield some positive results. Again, it is not yet possible to tell how effective the measures contained in the communication work plan will be in addressing these challenges and ensuring effective integration of the openness and transparency principle in the implementation phase.

Respect, integration and promotion of the principle of responsibility and accountability

The increased democratic space also appears to have enhanced the integration of the principle of responsibility and accountability. Informants in both sectors noted that the public is far more aware of its rights and more willing to enforce them. The culture of performance contracts and service charters also seems to have reinforced the integration of this particular principle. Performance contracting and service charters are GoK mechanisms to enable rights-holders to hold duty-bearers accountable. The service charters were identified as being a particularly effective tool at the regional administrative levels.[85] However, it was also noted that these are tools that are mostly utilised by the literate public. Gender mainstreaming, addressing corruption eradication and HIV/AIDS are all measures within the performance contracts.[86] Performance contracts and service charters have the potential to, and sometimes already effectively do, provide incentives to integrate the principles of the rights perspective. As one informant put it, "it is a 'win-win situation' – the performance contract requires me to integrate these principles, Sida subscribes to these principles, they are consistent with the MDGs and my own experience in the

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[83] The WSBs' geographic terrain is not on the basis of the provinces; however they do cover roughly the same areas.

[84] This emerged in interviews with representatives of most institutions.

[85] One informant noted that in the Districts it is now increasingly common for members of the public to invoke the service charters.

[86] See Performance Contract Between The Government of Kenya and Rift Valley Water Services Board for the Period 1st July 2006 to 30th June, 2007.

water sector has illustrated that where the principles are respected there is greater success with projects."

One of the challenges identified by informants is the lack of formal complaints mechanisms, specifically at the lower level in relation to the water service provision sub-sector. However, the integration of the participation and non-discrimination principles in the planning phase had also resulted in greater confidence among communities, which is observed in the willingness of these communities to utilise existing complaints mechanisms. An informant in the Ministry of Lands noted that, not only was she receiving letters, but members of the public also came in and followed up on promises that had been made to them with respect to the Land Information for Informal Settlements (LIIS) programme. Within the water sector, the Water Resources Management Authority (WRMA) observed that the fact that complaints were now acted on had contributed greatly to minimising water related conflicts in some of the catchment areas. This can be attributed to the fact that, not only do water resource users have somewhere to raise their concerns, but they are now witnessing them being acted on. Both the WRMA amd Rift Valley Water Service Board (RVWSB) are now required to maintain a register of the number of water related conflicts resolved in a year, as part of their performance contracts. Previously, the public legacy of cynicism was such that people stopped complaining because they did not think that anything would be done, thereby exacerbating water related conflicts.

6.2.2 Overall programming changes after the introduction of the MAINIAC approach

The MAINIAC approach was introduced at a time when there was an absence of a mature human rights discourse in Kenya, and when state institutions were not familiar with HRBA discourse. Notwithstanding the lack of data on the pre-2004 period, the following observations can be made:

- Before 2002, programming in the public sector was highly centralised and did not make reference to rights.

- There was limited capacity to engage in HRBA; state institutions, donors and civil society lacked the capacity to mainstream rights.

- The discourse on HRBA was largely dominated by donors and a few CSOs.

Distinguishing how programming has changed since the introduction of the MAINIAC approach was, as mentioned before, challenging, since most of the institutions and programs that are supported in the water and urban development sectors were not in existence prior to 2004. This is the area in which the challenge of attribution manifested itself most clearly. However, due to the fact that Sida is perceived as having a strong emphasis on HRBA, most informants did attribute the integration of the principles of the rights perspective within their programming, amongst other factors, to their partnership with Sida (due to Sida's historical emphasis on rights-based and pro-poor approaches). There was a marked difference between the articulation of the principles of the rights perspective by informants from the water sector, where Sida has had a longer presence, and those from the urban development sector. Within the water sector, there was also a marked

difference between the capacity of representatives of institutions that are supported by Sida and those funded by other donors.

In general, both water and urban development sector informants stated that, as a result of the integration of the principles of the rights perspective, programming had shifted from a "technical" approach to adopting softer process issues and concerns.

The impact of the integration of the principles of the rights perspective, in particular the principles of participation and non-discrimination, was reported as having had a positive influence on programming in both sectors. For example, representatives stated that, as a consequence of the integration of these principles, they were now consulting members of marginalised groups in planning and design. This has had a major impact on their approach to programming. One informant in the urban development sector further stated that integrating the principles of participation and non-discrimination within the planning phase had greatly influenced how the programmes were designed. In the past, the public or the intended "beneficiaries" would not have been consulted in the planning phase. Specifically having to take on board the perspectives of women had had an impact.

6.2.3 Summary: Overall programming changes

The extent to which the principles of the rights perspective have been integrated in programming, and consequently how programming has changed, is described below:

Water sector:

- HRBA planning tools – participation and transparency (for example, CPC).

- Members of marginalised groups consulted in planning and design.

- Accountability: greater awareness of rights; participation and non-discrimination are enhancing the use of complaint mechanisms.

- Links to HR institutions exist, but are weak.

- CC-issues: skills have been developed for conflict resolution; peace is enhanced through participation and non-discrimination. Gender is well integrated. Non-discrimination of HIV infected/affected and the disabled is promoted. Increased recognition of the need to take on the issue of physical access in the design of facilities with respect to children and persons with disabilities. HIV/AIDS is actualising interdependence with the principles.

Urban development sector:

- Participation has been integrated, which enhances bottom-up decision-making (for example, SECs).

- Members of marginalised groups have been consulted in planning and design.

- Participation and non-discrimination mutually reinforce each other.

- CC-issues: skills have been developed for environment and conflict resolution. Gender has been integrated. Gender confused with mainstreaming HRBA.

However…

- There is a general lack of awareness.

- There is a lack of transparency and accountability (for example, complaint mechanisms).

- There is still little decentralisation in the sector.

- Links to HR institutions are weak.

6.3   Capacity among duty-bearers

This section focuses on the capacity developed among duty-bearers within the GoK (here in the water and urban development sectors) to integrate the principles of the rights perspective in programming. Identified changes in capacities following the introduction of the MAINIAC approach is of particular interest here. Although aspects of individual capacity development are briefly mentioned, the focus is on capacity developed at the organisational level, including resources available and used to develop capacity to work with HRBA at different stages of programming, and regular procedures established (such as training). Institutionalisation and sustainability of the approach are dealt with in the next section.

6.3.1   Changes in capacity

Prior to 2004, the capacity building process, where it existed, was mainly focused on specific areas of human rights, and was related to cross-cutting concerns such as HIV/AIDS, environmentally sustainable development and partnerships with the Kenya Anti-Corruption Commission (KACC). For example, in the urban sector, there was a prior-established relationship with KACC. The MoL had adopted integrity as a "core issue", and all staff had performance targets pertaining to integrity (that is, anti-corruption targets). The MoL had also adopted the issue of HIV/AIDS, although the concern here was on addressing the welfare of staff who were HIV/AIDS affected or infected. Consequentially, the MoL has had a long-standing partnership with the National AIDS Control Council (NACC). In the water sector, the Rift Valley Water Services Board (RVWSB) had sought support for mainstreaming gender and in ensuring that their programs were addressing the needs of people who are HIV/AIDS infected or affected. It hired a gender expert through NACC who also had expertise in addressing the needs of persons who are HIV/AIDS infected or affected.

Generally, there is an increased "openness" to addressing human rights in both sectors. The statutory, institutional and policy reform in the water sector has created a more enabling environment than that within the urban development sector. The existence of a State institution specifically charged with the task of promoting human rights – the Kenya National Commission for Human Rights (KNCHR) – has created an enabling environment. Notwithstanding that, there is still a perception of equating human rights with civil and political rights. As an example, in the water sector, while there is recognition of water as a human right at the senior regional level, the link between HRBA and the MDGs has not been made. Thus, these actors are engaged in mainstreaming HRBA – extremely effectively – without necessarily being aware that

they are doing so. In addition, those who have had human rights training were critical of traditional mainstream HRBA and human rights education, which tend to be biased towards civil and political rights, and are therefore perceived as being abstract. At a theoretical level, within human rights discourse there is an understanding that human rights are interdependent; however, historically, human rights education has not been developed in this way. There is, therefore, an acute need to develop tools and training modules that are relevant, and to operationalise the interdependence principle.

Within the urban sector, the NLPFP- and Sida-supported projects appear to have contributed to a conducive environment to mainstreaming human rights approaches and building capacity to do so. The mainstreaming of HRBA was described as being a "radical" and "new" shift for the MoL. One informant at the MoH described it as having created a "paradigm shift", in the sense that it has created and enabled a bottom-up approach (which is naturally discomforting for some staff as it is a new way of working). However, there is still a challenge with respect to internalising the concept of mainstreaming. For example, even if there was a discernible difference in the language of the ILUSP and LRSP, with the latter (which is the later programme) containing language that is markedly rights based, it currently does not indicate how this will be achieved. In addition, in a review of capacity gaps with respect to KENSUP's "Programme Logic", one resource person noted: "Although the program does mention cross-cutting issues in development, i.e. Gender, Environment, HIV/AIDS, there are no clear mechanisms of ensuring that they are well addressed in the program."[87] The lesson is that it is not sufficient to have a commitment to and broad statement of human rights; there is a need to also incorporate strategies and mechanisms that will enable the realisation of this commitment.

There is also greater technical capacity in integrating certain aspects of human rights or cross-cutting issues than others. The urban development sector and certain sub-sectors of the water sector seemed to have developed skills in respect of mainstreaming cross-cutting issues, such as environmental sustainability and conflict resolution. For example, the MoL has had a long-standing training program with respect to environmental sustainability, and currently has a standing relationship with the National Environmental Management Authority (NEMA). However, some of those operating at the regional level encounter practical challenges in respect of addressing cultural barriers to the realisation of certain rights. For example, one informant noted that there is resistance to having women in decision-making positions (one of the requirements of the CPC) due to the fact that in some of the communities women are regarded as minors.

6.3.2 Resources

The resources used to build capacity to work with a rights perspective were:

- Technical assistance; this included the hiring of people who were gender experts (Rift Valley Water Service Board), had expertise in participatory methodology (Water Resource Management Authority) or were communication experts (Kenya National Slum Upgrading Programme).

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[87] Senteu, 9.

- Training in human rights (mainly provided by KNCHR).

Only five out of 16 GoK informants had received some form of human rights training to enable them to integrate HRBA. Three of these were staff in the water sector, one was in the urban development sector and one was KNCHR Commissioner. A sixth informant had received training but prior to her joining the water sector. In addition, two of the technical advisers participated in human rights training provided, while a third technical adviser had some background with respect to human rights. For the informants who had received training, they reported increased confidence, which was evident in their ability to articulate and integrate the principles of the rights perspective in their work. This had resulted in clear policy documents such as the CPC and the RVWSB Service Charter that integrated these principles. Further, these informants knew where to obtain further information.

In both sectors, technical experts have been provided and there was evidence of technical resource persons being used effectively. Within the water sector for example, technical assistance is being provided at both the regional and national levels. As noted above, this assistance includes assistance in mainstreaming particular aspects of human rights. In respect of the urban development sector, for example, KENSUP now has communications and capacity building resource persons in-house. Regarding the capacity building of the stakeholders' component within KENSUP, resource persons are being contracted to address and support the GoK staff in implementing these components.

The one recommendation that was consistently made by informants was for more capacity building. One of the informants noted that although they had sent a staff member for training, unfortunately this staff member passed away just after she completed the course. This observation encapsulates the fragility of the stage that the institutionalisation of the mainstreaming of HRBA is still at. The human rights training provided by KNCHR was one–off, and the informants who had undertaken it recommended that there be follow-up. There was also a questioning of the nature of capacity building and calls for the need to customise the training according to the needs of the two sectors. Thus, there is little evidence indicating a more established process of institutionalisation of capacity development, at least not in terms of regularity of training and/or availability of resources.

Conclusion

The representatives of institutions that had been funded for the longest period of time by Sida demonstrated the greatest capacity to articulate HRBA and the principles of the rights perspective, and were best able to illustrate both how they were integrating these principles in programming, and the impact this had had on their work. Informants in both the water and urban development sectors also expressed greater confidence in their capacity to integrate the principles of the rights perspective. Informants in the water sector who had had human rights training attributed this to that training, general capacity building and support by Sida. Further, capacity within the water sector was not restricted to the senior national decision making levels. Training had been provided to staff at the regional level as well and technical assistance was being provided to both national and regional level

institutions.[88] However, all informants in both sectors felt that there was need to strengthen the capacity building process. Hence, while there appears to be increased commitment in the GoK to the integration of the principles of the rights perspective within programming, there is still a huge challenge with respect to the capacity to do so. It is vital to address the lack of capacity and mechanisms to ensure implementation; otherwise mainstreaming of HRBA will remain at the statement level.

6.4   Sustainability of the approach

Sustainability of the MAINIAC approach is closely tied to the sustainability (the institutionalisation) of capacity development among duty-bearers, which is, in turn, dependent on other external factors (for more discussion on this, see Chapter 2). Sustainability is closely tied to established links to human rights organisations, as they are identified as one essential component for capacity development within the sectors and among duty-bearers. Further, the rights-holders are vital actors within a HRBA, and their ability to demand their rights is another essential aspect of sustaining the approach.

6.4.1   Institutionalisation of capacity within the GoK[89]

The GoK's ownership of the integration of the principles of the rights perspective has been enhanced in several ways, partly due to the MAINIAC approach:

•   Firstly by *creating a forum for discourse on HRBA*. Since mainstreaming human rights is a requisite component of Sida partnerships, it creates an opportunity for instituting mainstreaming processes, or for support for integrating HRBA where it may have been lacking. Thus, the introduction and/or increase in the number and variety of forums for the mainstreaming of HRBA through the MAINIAC approach has increased the space for mainstreaming.

•   GoK capacity has been enhanced through the provision of technical support for the acquisition of skills for mainstreaming HRBA. While this is in its nascent stage, it has been manifested in two ways: human rights training and technical assistance. In the water sector, this technical assistance is being provided on the basis of priorities that are identified by the GoK itself, and by the resource persons working in partnership with a GoK programme officer.[90]

•   GoK commitment is also evident in the setting of human rights targets and indicators in the GoK's own mechanisms, such as the performance contracts and service charters.

•   Finally, GoK institutions are seeking support from human rights institutions on their own initiative.

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[88] See the Government of Kenya Ministry of Water and Irrigation, Sida and Ministry of Foreign Affairs Denmark, *Kenya Water and Sanitation Programme Inception Documents, Summary*, June 2005, 11 which notes that technical advisers will be provided to each of the WSBs.

[89] As mentioned in earlier chapters, human rights and political instability has again raised its head with the political crisis and associated violence following the December 2007 elections.

[90] See Senteu, 6.

6.4.2 Links to human rights institutions and organisations

Links with Kenyan human rights resource institutions were generally found to be tenuous at this stage. However, if these links are strengthened they have great potential.

As mentioned before, the government institutions that had strong partnerships with Kenyan human rights institutions tended to have partnerships that preceded the Sida support. The National Land Policy Secretariat, for example, has a strong partnership with the Kenya Land Alliance (KLA) and its various member human rights CSOs, which is attributable to the Kenya Human Rights Commission's (KHRC's) longstanding programs on land rights, as well as to the constitutional review process and the commissions on land.[91] The potential of this partnership is great. It has, for example, enabled a participatory launch of the Draft National Land Policy, which Sida, as a member of the Development Partners Group on Land (DPGL), supported. CSOs provide some of the expertise that is not available within the State institutions. For example, the concerns of pastoralists and the women's movement with respect to land have been brought on board through the civil society partnerships.

In terms of the sectors' linkages to KNCHR, it was noted that the urban sector staff had participated in a "generic human rights awareness course" while the water sector staff had sat with KNCHR in the HRBA networks. The Water Resources Management Authority (WRMA) had also sought KNCHR's support in reviewing their new regulations.

None of the government institutions have partnered with the National Commission on Gender and Development, while three had initiated a communication with the Kenya Anti-Corruption Commission (KACC). The Rift Valley Water Services Board (RVWSB) has interacted and partnered with the National AIDS Control Council (NACC) and the Gender Commission. It was also the only institution that had sought the services of a gender expert to assist it in gender mainstreaming.

One of the partnerships that was clearly attributable to the MAINIAC approach was that with CRADLE, a child rights CSO. Informants in both sectors reported partnering with this CSO. The water sector institutions further observed that it was mainly CRADLE that attended their meetings, and their opinion was that there was need for greater interaction with other resource institutions, in particular KNCHR.[92]

Regarding linkages between different resource institutions, the MAINIAC approach did provide a forum for Kenyan human rights organisations to start harmonising their human rights based approaches. The human rights training provided by KNCHR, although one-off, did provide a forum in which linkages were made. KNCHR intends following up on and refining the tools that were developed through this training. In modifying these tools there will also be a need to customise them in relation to the various sectors, as they have different needs. One of the challenges that the KNCHR

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[91] The Kenya Human Rights Commission, (KHRC) is Kenya's oldest human rights civil society organisation and had a "Land Rights Program", out of which the Kenya Land Alliance (KLA) evolved. For more information see Kenya Human Rights Commission (KHRC), *Ours by Right, Theirs by Might: A Study on Land Clashes: A Kenya Human Rights Commission Report 1996 Land Rights Program* (Nairobi: Kenya Human Rights Commission (KHRC), 1996) and the Draft National Land Policy as advertised in the *Daily Nation*, Thursday 19th April, 2007.

[92] The need for greater interaction with the KNCHR and customisation of the KNCHR training was also acknowledged by one KNCHR Commissioner.

is facing is thus that of customising the human rights training being provided in a manner that ensures that it is sector-relevant and specific.

6.4.3 The demand side: The rights-holders

There were four types of activities and/or mechanisms, within both sectors, observed as being utilised to develop the capacity of rights-holders. These activities can be broadly categorised as follows:

- Community Project Cycle (CPC), water sector.

- Land information for informal settlements (LIIS) data collection, urban sector.

- Capacity building within KENSUP, urban sector.

- National land policy formulation process and other planned activities under the Land Reform Support Programme (LRSP), urban sector.

Overall, it should be noted that these activities are also related to the actualisation of the principles of the rights perspective.

The CPC is conceptualised and designed to ensure the development of rights-holders' capacity to manage their water service provision. Not only does it contain activities for the informing and training of communities with regards to the availability of services and how to ensure service provision, the CPC also trains those who would capacitate communities. Thus, the CPC accepts, and addresses, the fact that communities have not been responsible for water service provision, by providing for a process in which the existing intermediary institutions, such as CSOs, equip and prepare communities to manage their own water service provisions. The CPC therefore provides for support organisations and a module to ensure their induction.[93] Community based organisations (CBOs) are also trained in proposal writing. A module of the CPC (Document 16) is dedicated to the training of CBOs and equipping and capacitating rights-holders. Finally, with respect to the water sector, there are statutory requirements that the public participate in certain activities and/or constitute certain institutions; in particular the Water Resource Users Associations (WRUAs), the Catchment Area Advisory Committees (CAACs) and the Water Users Associations (WUAs). In doing so, the *Water Act* indirectly places an obligation on the MWI and the new water institutions to capacitate rights-holders.

The LIIS data collection process incorporated the participation of the local communities. Members of the local communities in Kibera and Mweiga were trained in how to collect information and apply the research methodology that was going to be used in the LIIS data collection process. This facilitated the integration of the participation principle, as well as ownership, as informants noted that, since the researchers were from within the community, they were trusted.

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[93] See *CPC Doc 2: SO Induction Module*, which states: "Support Organizations whether NGOs or private companies screened and short listed by the WSBs are expected to assist CBOs in proposal writing and all preparatory activities in specific areas/communities. The specific communities are selected and screened WSBs with support from Partner Organizations. The entry point for the SOs into the community is through the CBO in the area (old or newly established, or identified by the community with support from the Partner Organization and WSB)".

KENSUP has a component for the "Capacity building of stakeholders to participate meaningfully in the slum upgrading process."[94] It was noted in a consultant report on capacity building in KENSUP that, in order to respond to the governance element of slum upgrading, there is need for representation at three levels: the settlement/community level (SECs and local authorities represented through the SPIUs); the city-wide level, which is achieved through the PIU; and the national level, represented through the IASC.[95] The needs assessment that informs the Capacity Building component of KENSUP was only conducted in August-November 2006, but it has already yielded results that are being used by the KENSUP Secretariat in reviewing and designing the programme. One of the findings was that the communities within the informal settlements and slums perceive KENSUP as "a government programme that will build houses for the slum dwellers;" and they "do not know their role in the programme."[96] This perception clearly illustrates how unacknowledged assumptions may have posed problems in the implementation of KENSUP.

The National Land Policy Formulation Process (NLPFP) – a component of the LRSP – has been conducted in partnership with non-state actors, and so is also geared to ensure the participation of rights-holders.

6.4.4   Factors enhancing sustainability of HRBA

Aside from the technical assistance that is being provided in both sectors, there are also institutions and other phenomena, which, if nurtured, would strengthen the institutionalisation of the approach, in particular the institutions and processes that facilitate rights-holders' and the GoK's ownership. These phenomena include the CPC process, the Capacity Building component of KENSUP, the CAACs and WRUA, all of which empower rights-holders, and, as such, promote ownership and sustainability of the approach. Empowered and informed communities will hold duty-bearers accountable, which is an important dimension of the rights perspective. Indeed this is already happening.

The participation principle is important as it reinforces public ownership. The CAACs, for example, make it possible for rights-holders to participate in the entire development process. One of the informants observed that the fact that communities are now involved in their own water service provision ensures sustainability, as they are now able to maintain these facilities, whereas in the past, water services would collapse as there was no knowledge within the communities about how to maintain them.

Notwithstanding these factors, there is much that needs to be done in respect of ensuring sustainability of the MAINIAC approach; that is the integration of the principles of the rights perspective in programming. In particular, the following would need to be addressed:

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[94] MoLH, 17.

[95] See, Joseph Senteu, *Capacity Building Final Draft*, 8-9 *NB this draft had just been completed at the time of undertaking research and the soft copy that was available to the researcher lacks a title page. Mr. Senteu was the consultant providing technical assistance, with respect to the Capacity Building Component, of KENSUP).
[96] Senteu, 11.

- Increased capacity building and training in HRBA is key to sustainability, as it will promote internalisation and further integration of the principles of the rights perspective.

- There is a need for mechanisms for mainstreaming within the institutions and at the various administrative levels; that is, intra-institutional mechanisms within the respective sectoral institutions that ensure institutionalisation of the principles of the rights perspective. The legislative environment within the water sector has ensured that there are some statutory and, therefore, entrenched mechanisms that promote the principles. However, even with these provisions, there is no budgetary requirement, and also no statutory provision with respect to other historically excluded groups such as women and pastoralists. Without other supportive policies, such as the one-third affirmative action policy, these groups' needs would not necessarily be addressed.

- It is also important to have mechanisms that ensure participation, such as the SECs and CAACs, as they ensure community ownership.

- Ultimately, a conducive legislative and policy environment is important in the sustainability of HRBA. This is observable within the water sector. The support of processes such as the Draft National Land Policy is actually a mechanism for ensuring the sustainability of HRBA, as in the long-term, it is only the existence of a policy and legislative framework responsive to HRBA that will ensure both their sustainability and eventually the development of a rights culture. These reforms are not only sectoral reform but also include other inter-sectoral reforms such as the constitutional reform process.

6.5 Relationship between the principles of the rights perspective and the cross-cutting issues to be mainstreamed

A further aim of the MAINIAC approach, in addition to integrating the principles of the rights perspective, was to mainstream a number of cross-cutting issues. HIV/AIDS, environmental degradation and conflict were identified as threats to poor people's ability to have their rights realised, and were to be mainstreamed according to specific needs in the sectors. This chapter elaborates upon the implications of integrating these cross-cutting issues in relation to the principles of the rights perspective in the sectors of water and urban development.

6.5.1 Implications of integrating cross-cutting issues

The impact of the cross-cutting concerns of HIV/AIDS, environmentally sustainable development and peace and conflict prevention on the integration of the principles of the rights perspective is varied.

HIV/AIDS

The impact of HIV/AIDS on the integration of the principles of the rights perspective in the first instance is that it has expanded the focus groups of rights-holders and, particularly, has focused attention on certain vulnerable groups of rights-holders. This, in turn, has led to a discourse on certain areas of human rights, which might not have been otherwise addressed. For example, there is an increased demand

for duty-bearers to address the claims of children as rights-holders, particularly in the area of property rights. The incidence of child-headed households has greatly increased, and this has had an impact on service delivery. In the water sector, there has been the realisation that this category of rights-holders has particular infrastructural concerns that other constituencies of rights-holders may not have. In the urban development sector, the impact of HIV/AIDS and the increase in widow- and child-headed households has also brought to the fore the discourse on the patriarchal nature of Kenya's land laws.[97] The Draft National Land Policy recognises and acknowledges the fact that the current legislative framework discriminates against women in relation to "land ownership and inheritance."[98] In addition, it is recognised that women are not sufficiently represented in institutions that deal with land. The Draft Policy also seeks to "harmonise and consolidate all the laws relating to children's inheritance of family property in order to protect and promote the rights of orphans."[99]

As a cross-cutting concern, HIV/AIDS also has had the impact of illustrating and actualising the interdependence of human rights in the water sector. Addressing the socio economic rights of persons living with HIV/AIDS by providing water enabled the realisation of their rights to freedom of association and expression.

Environmentally sustainable development

In respect of the issue of environmentally sustainable development, the MoL and MoH both reported having a long-standing environmental program. This is linked to the requirement under the *Environmental Management and Coordination Act (1999)* (hereafter *EMCA (1999)*), under which "all development programmes are required to undergo EIA [Environmental Impact Assessment] study before implementation." However, this does not necessarily incorporate HRBA. In the ILUSP, for example, the issue of environmentally sustainable development is solely focused on "environmental impact assessments"[100] and is not linked to HRBA.

The longer history of addressing some of the cross-cutting concerns in respect of both sectors is commendable. However, it does raise the issue of potential conflict between approaches and/or issues. Kenya has the unfortunate history of rhetoric pertaining to environmental concerns being politically manipulated and used in order to legitimise certain forms of human rights violations, such as the ethnic clashes of the 1990s.[101] Environmental protection does not therefore necessarily coincide with a respect for human rights. It is thus important that, in mainstreaming the principles of the rights perspective, the historical approaches that have been used in addressing cross-cutting concerns be addressed.

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[97] Persons living with HIV/AIDS and orphans are included amongst "vulnerable groups" within the Draft National Land Policy; where it is observed that vulnerable groups: "lack voice, power and representation in society, which limits their opportunities to access, use and own land and land based resources." See Government of Kenya, Ministry of Lands and Housing, National Land Policy Secretariat, *Draft National Land Policy*, (National Land Policy Secretariat: Nairobi, 2006) 42.

[98] MoLH, *Draft National Land Policy*, 23.

[99] Ibid.

[100] See MoLH, Integrated Land and Urban Sector Program, 43-4.

[101] In the 1990s this happened in relation to the controversial "Enoosupukia 'Water Catchment' area in Narok District," in relation to squatter populations. See KHRC, *Ours by Right, Theirs by Might*, 69.

One of the benefits of the longstanding environmental programme within the urban sector is that informants perceived addressing environmental concerns as part of their work. Therefore, there was an observable measure of ownership that did not exist in respect of HIV/AIDS. It was noted, for example, that the Physical Planning Department now conducts environmental impact assessments as a mandatory part of its planning processes. Meanwhile, within the MoH there is a clear recognition of the impact of environmental degradation as a consequence of informal settlements.

The situation was more complex in respect of the water sector institutions. The existence of the CAACs, WRUAs and WRMA has led to a situation where, as a result of the sectoral reform, rights-holders have an increased measure of power and mechanisms to enforce their rights. This has also had an impact on the cross-cutting issue of conflict resolution (which is discussed further below). Thus, the legislative reform in the water sector has led to a situation in which communities are empowered to enforce their rights to a clean environment, which is, in turn, said to be leading to a reduction in water-related conflicts.

Peace and conflict resolution

Integrating the participation and non-discrimination principles has played a key role in ensuring peace and conflict resolution. In respect of the urban development sector, an informant attributed the history of land use-related conflicts in Kenya to the old policy of the MoLH, which was non-consultative, and to the absence of a national policy on land. Informants in the MoL observed that integration of the participation principle had been an effective conflict resolution mechanism. In the LIIS program, for example, the fact that all categories of stakeholders in the informal settlements and slums had been involved in the programme design process resulted in an effective conflict resolution mechanism whenever conflicts arose. Similarly, the sector reform in the water sector has produced effective participation and accountability mechanisms, which in turn are having an impact on the incidence of water related conflicts. The WRMA reported that there had been a reduction in water related conflicts, which they attribute to communities having effective complaints and redress mechanisms.

In the water sector, in the past, there has been conflict when upstream users (who tend to be farmers) consume the bulk of a river or stream, thus denying downstream users (who tend to be pastoralists) access to the same resource. The fact that both groups are represented in the CAACs and WRUAs has created forums where water resource use can be discussed and apportioned equitably. This is already resulting in a reduction of water-related conflicts. The RVWSB and WRMA are now keeping registers of water related conflicts. The RVWSB noted that their register is serving as an early warning mechanism which they hope will enable them to detect trends in the incidence of water related conflicts.

Thus, cross-cutting concerns also raise the challenge of inter-sectoral partnerships and the need for inter-ministerial partnerships. A purely technical approach towards environmentally-sustainable development, for example, would not necessarily address the conflict dimension. Both sectors may have yielded some best practises, and there is a need to examine how to share these experiences. In customising the human rights based approaches, training will be needed for partnerships between KNCHR and

other agencies such as NEMA (the National Environmental Management Authority) and NACC (National Aids Control Council). There is also a need to ensure mechanisms for addressing the cross-cutting concerns as part of the mainstreaming process of integrating the rights perspective.

6.6   Enabling and impeding factors

A methodological challenge in this evaluation has been to try to isolate effects of the MAINIAC approach from other factors affecting the integration of the principles of the rights perspective in programming. This section aims at identifying this reality by elaborating upon a number of factors that, either directly or indirectly, may have enabled or impeded the integration of the principles in programming.

6.6.1   Enabling factors

• A national and global enabling environment: the Millenium Development Goals (MDG), the Paris Declaration, the New Aid Modalities and the fact that Kenya had a new regime in 2002, have all contributed to the creation of an enabling environment, conducive to HRBA. Moreover, the implementation of the Economic Recovery Strategy, amongst other GoK policies, did require a respect for the principles of the rights perspective.

• Sector Reform: the sector reform has created an enabling environment and immense incentive for the integration of the principles of the rights perspective. In the water sector this is reinforced by legislative and institutional reform that is conducive to the integration of the rights perspective. Within the urban development sector the ongoing discourse on the draft NLP has created opportunities for integrating the principles.

• Having "institutional champions" for HRBA also appears to be an enabling factor. These "champions for human rights" play a leadership role in the mainstreaming process. In the Ministry of Water, for example, it was noted that a previous Minister for Water[102] had been particularly keen on integrating human rights, and this had been a contributory factor in facilitating and enabling the reform process.

• Targeting senior staff for awareness training also seemed important. Training for staff at different levels within the new water institutions has been conducted, which may have contributed towards creating an enabling environment for the integration of the rights principles.

• The existence of intra-institutional mechanisms for mainstreaming HRBA institutionalises the integration of the principles of the rights perspective. In the water sector, for example, the CAACs and WRUAs are statutory mechanisms for community participation in water resource management that ensure the institutionalisation of this principle.

• The newly-introduced performance contracts include targets that are based on some aspects of the principles of the rights perspective. This is not to say that

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[102] Honourable Martha Karua.

the performance contracts are automatically a mechanism to integrate all the principles of the rights perspective, but the potential is there.

- The privatisation process[103] in both the water and urban development sectors has also been at least a partially enabling factor. The process has enabled the entry of new actors, which could place ownership and management of service provision within community hands.

- Civil society partnerships were an enhancing factor in respect of the non-discrimination and participation principles, particularly with respect to gender equality and the inclusion of identified marginalised groups.

6.6.2 Impeding factors

- Contesting theories of mainstreaming: many informants collapsed mainstreaming human rights or HRBA with gender mainstreaming; others had been mainstreaming various forms of human rights, such as women's rights, rights of marginalised communities (pastoralists), persons with disabilities, and so on, but did not identify this as "human rights," or part of a HRBA. This was attributable, in part, to the fact that they had not received human rights training, and so they perceived human rights as more geared towards civil and political rights. Thus, the contesting theories of mainstreaming are between the traditional hierarchy of rights and the indivisibility principle, which recognises the interdependence of rights. There may also be a contestation between GoK's interpretation of human rights – as reflected in documents such as the performance contracts which emphasise anti-corruption, gender mainstreaming and HIV/AIDS behavioural change and HRBA – and the rights perspective, which is broader. Finally, there may also be potential donor contesting theories, as the informants whose institutions were largely funded by donors other than Sida were the ones who had had the least capacity building with respect to HRBA. All of these factors suggest the need for a clear articulation of a theory of the MAINIAC approach, which would aid consistency and sharing with partners.

- Another factor impeding the integration of the principles of the rights perspective is a lack of capacity to integrate HRBA. The informants from the WSRB, for example, said that they would welcome training, and this perspective was echoed by informants in the urban development sector, most of whom had not received any training.

- The lack of clarification of roles of some institutions is also an impeding factor. In the water sector, for example, the National Water Conservation and Pipeline Corporation's (NWCPCs) role within the context of the ongoing sector reform is not clear. The NWCPC is both a supplier and regulator, and this has implications for the enforcement of the transparency and accountability principles.

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[103] In this case privatisation does not just refer to the private for profit sector (i.e. corporations and private businesses) but also other private actors such as community groups.

- A factor that was identified as impeding the integration of the non-discrimination principle, in particular, was the historical marginalisation of women and the patriarchal socio-cultural patterns. Although there are now affirmative action policies in place that, for example, provide for one-third representation of women at all levels in government, there is a dearth of women who have certain skills, which prevents them from taking advantage of these opportunities. In respect of socio-cultural practices, there is a challenge with respect to the fact that there are cultures where women are treated as minors.

- There is also a challenge with respect to how to ensure the participation of persons who are HIV/AIDS infected or affected. As they are often stigmatised, identifying them within a community poses a challenge. This was particularly identified as being problematic by interviewees in the urban development sector. The water sector informants appeared to have some best practises that could be shared in this respect. Their experience had been that discussing the water projects had actually provided a "safe space" for HIV/AIDS affected and infected people to speak out.

- Finally, there are certain reforms that need to take place within the public sector as a whole that would be key to the integration of the principles of the rights perspective. In the urban development sector, for example, the promulgation of a national policy on land has been very tied to the constitutional reform process, which is an area of great political contestation. While the MoL has sought alternative ways of addressing the issue of a national land policy, the very issues that have bogged it down as a constitutional issue may result in it being held hostage in Parliament.

6.6.3 Summary: Enabling and impeding factors for the integration of the principles of the rights perspective in programming

The following enabling and impeding factors for the integration of the principles of the rights perspective in programming have been identified in the sectors of water and urban development:

Enabling factors:

- Performance contracting, including targets.

- Concurrent sector reforms.

- Privatisation enabling entering of new actors.

- Civil society partnerships enhancing participation and non-discrimination.

- Mainstreaming mechanisms, for example Advisory Committees/Users' Associations enhancing institutionalisation.

Impeding factors:

- Contesting theories/understanding of mainstreaming.

- Lack of capacity to integrate HRBA – limited and non-customised training.

- Lack of certain reforms within the public sector as a whole.

6.7   Conclusions and recommendations

- Clearly, the integration of the principles of the rights perspective has had a positive impact on programming. However, to build on these positive developments, there is need to build not only the capacity of those working in the urban development and water sectors, but also that of human rights institutions so that they can deliver on this particular mandate.

- There is a need for an overall assessment of linkages. For example, it may be necessary for KNCHR to partner with thematic human rights institutions that are specifically addressing cross-cutting concerns, such as the National Commission on Gender, NEMA, NACC or KACC, in order to customise human rights training. This would ensure consistency in the human rights training and capacity building being provided. Since Sida is known as a leader in respect of supporting gender equality, it is strategically placed to facilitate greater interaction between KNCHR, the Gender Commission and other GoK partners.

- There is need for a structured and targeted approach to capacity building to integrate HRBA effectively. The capacity building needs to be customised to ensure that it is sector-relevant and specific. This will entail conducting assessments of the training needs, as they vary from sector to sector and at the different administrative levels. Follow-up of capacity building and training activities, and the creation of a structured forum for exchange, would also enhance and deepen linkages.

- There are opportunities for inter-sectoral partnerships. Overall, the MWI seems to have been quite successful in ensuring consistency in integration of the principles of the rights perspective across administrative levels, and the CPC appears to be an excellent tool that could be shared with other ministries. Moreover, both the water and urban development sectors seem to also be quite successful in integrating environmental principles, and may have best practices to share with other sectors.

- There are also issues that will require inter-ministerial cooperation, in particular with respect to the cross-cutting issues. For example, mainstreaming environmentally sustainable development would entail partnering with the Ministry for Environment and Natural Resources, which has not happened to this point in respect of either of the sectors. Similarly, addressing gender equality would entail partnering with the Ministry of Gender, Sports, Culture and Social Services, and in particular the Gender Department (now the Gender Division).

- There is a need to address the institutionalisation of the mainstreaming process within the two sectors and their institutional frameworks. The fragmented nature of the MoL resulted in the mainstreaming component being left out when the programme was re-structured. There is also a need to ensure that those tasked with mainstreaming hold offices that are senior enough to enable them to influence the various levels of the institutions.

- Respect for the participation principle often facilitated the integration of the non-discrimination principle. This suggests that it is important to ensure

representation of marginalised groups in various structures. This poses a particular challenge with respect to policymaking, as marginalised groups are often not represented at the decision-making level.

- In respect of the openness and transparency principle, there is a need to develop a strategy that will ensure decentralisation, enabling inter-sectoral and intra-sectoral reforms that are necessary to facilitate effective integration of the principles. The centralised nature of the Kenyan State, for example, provides unique challenges in respect of the integration of the openness and transparency principle. This is particularly exacerbated in the urban development sector. However, centralisation still poses challenges, and also impacts upon the issue of accessibility in the water sector, despite the decentralisation of institutions.

- The question of decentralised formal effective complaints mechanisms also needs to be addressed in both sectors. In respect of the water sector, this particularly concerns the water service provision sub-sector, while it is an issue that needs to be addressed generally within the urban sector.

- There are certain reforms that need to take place within the public sector as a whole that would be key to the integration of rights principles. In the urban development sector, for example, the promulgation of a national policy on land has been closely tied to the constitutional reform process, which is an area of great political contestation.

The following recommendations are provided for the sectors of water and urban development:

Water Sector:

- Customise training to the sector-specific context and by relating HRBA to cross-cutting issues.

- Develop tools for integrating the principles of the rights perspective and cross-cutting issues.

- Develop capacity among HR institutions and organisations.

- Strengthen interaction between the GoK and HR institutions through structured exchanges.

- Institute mechanisms for community participation in *implementation.*

- Strengthen accountability, for example, by developing formal complaint mechanisms.

Urban Development Sector:

- Conduct more HRBA training at all levels to enhance awareness.

- Customise HRBA training for both HRBA and cross-cutting issues.

- Develop tools for integrating the principles of the rights perspective and cross-cutting issues.

- Develop capacity among HR institutions and organisations.

- Strengthen interaction between the GoK and HR institutions through structured exchanges.

- Link training on HRBA and cross-cutting issues, involving civil society organisations.

- Institute mechanisms for community participation in *implementation.*

- Strengthen accountability, for example, by developing formal complaint mechanisms.

- Introduce inter- and intra-sectoral reforms, for example, decentralisation, which facilitates HRBA.

7 Integrating the Rights Perspective in Programming – An Assessment of the Governance and Justice and the Roads Sectors

Author: John Murimi Njoka

7.1 Introduction

This chapter assesses and compares the extent to which the Kenyan duty-bearers, at decision-making and implementation levels, integrate HRBA and the principles of the rights perspective (through the MAINIAC approach) into Sida-supported programmes in the sectors of governance and justice and roads.

Before the coming to power of a new government in 2003, there existed no elaborate governance and justice programme in Kenya. Government activities were conducted without openness and without participation of the public. In fact, most of Kenya's grand corruption and poor governance issues stemmed from how activities in this sector were carried out. It is in this context that the introduction of human rights based approaches (HRBA) and related activities can be seen as having made a significant difference in programming in this sector.

The roads sector offers an interesting case for the integration of HRBA in a more technical sector, in which human rights have not been traditionally embraced. In this sector, the introduction of HRBA has had great impact, not least in terms of strengthening participatory methodologies.

7.1.1 Objective

An essential objective of the MAINIAC approach has been to strengthen the integration of the principles of the rights perspective in programming (with agreements from 2004) within six sectors supported by Sida. This was to be achieved through developing capacities at the Embassy and amongst its partners, as well as to link the KNCHR and other Kenyan resource institutions to the approach. The aim of this part of the evaluation is to document how the rights perspective has been integrated within the different sectors and in programming, including a discussion on the capacities of partners, that is, the Government of Kenya (GoK) and its ministries. Specifically, the aim is to answer a number of questions pertaining to the MAINIAC approach. Firstly, to identify who the relevant duty-bearers are within the respective ministries as different ministries have different structures and are more or less decentralised. Secondly, to document how and to what extent the principles of the rights perspective have been integrated in all programming phases, to analyse the capacity within the respective ministry at different levels and to identify factors enhancing or impeding the work to integrate a rights perspective. Thirdly, to identify

links developed between the ministries and Kenyan resource institutions and to discuss sustainability as well as the relation between the rights perspective and the cross-cutting issues targeted by the MAINIAC approach. Lastly, to elaborate on conclusions and recommendations for how to integrate this approach further.

7.1.2   Method and delimitations

The design and execution of this evaluation was guided by the evaluation approach and methodology established in SADEV's assessment plan (included in Appendix I). The plan elaborates the human rights based approach of Swedish development policy, and includes a checklist of questions to be asked as well as a description of the division of responsibilities between SADEV and the Kenyan evaluators.

The methodology used in this evaluation was: 1) a review of relevant documents, for example, the document establishing the MAINIAC approach, workshop and training reports, sector plans, and comments on sector plans; 2) undertaking key informant interviews with Swedish programme staff and relevant duty-bearers; 3) undertaking field visits and observation of project sites where human rights based approaches have been used. Visits were undertaken specifically in districts implementing the Nyanza Roads 2000 programme: Kisii, Gucha/Kisii South and Kuria. These districts were selected after consultations with the Roads 2000 office at the Ministry of Roads and Public Works and the responsible Programme Officer at the Swedish Embassy in Nairobi. No field/district visits were conducted for the Governance, Justice, Law and Order Sector (GJLOS), as it is mainly a Nairobi-based programme; and 4) undertaking qualitative analysis of the data collected.

While the evaluation touches upon aspects related to rights-holders, it is limited to programming process issues, hence emphasising the role of the GoK as the primary duty-bearer. The evaluation process has been faced with a number of challenges, resulting in certain delimitations. One such challenge was a time constraint. A lot of data gathering and analysis was required in a relatively short period of time. However, the duty-bearers that were selected as informants were preoccupied in their roles, and were thus not readily available for interviews. Secondly, gathering data on the MAINIAC approach for GJLOS was somewhat contradictory since GJLOS, as a governance and justice programme, implies a human rights focus. The concept of MAINIAC therefore appeared confusing in this programme. Moreover, little primary data could be obtained from GJLOS staff as requests for information from staff were referred to the KNCHR. Accordingly, what is used to explain issues on GJLOS is drawn mainly from secondary data. Thirdly, the assessment plan developed by SADEV was quite elaborate in terms of the principles of the rights perspective (participation, non-discrimination, openness and transparency, responsibility and accountability), and it was necessary to ask questions of informants regarding the integration of these principles in the project cycle (assessment, design, implementation, monitoring and evaluation). Unfortunately, the conceptualised principles were not so clear to interviewees. Much of the discussions, therefore, may be seen as having been superficial, since more probing for each principle and stage risked being counterproductive. From another angle, this limitation is a crucial finding in so far as the mastery and internalisation of the principles and stages are concerned. It is recommended that further, more detailed and assertive, grounding with HRBA is

needed. Finally, attribution of the changes in the two sectors (GJLOS and roads) to the MAINIAC approach is a challenge, since human rights programming has also benefited from other initiatives. Notably, the National Rainbow Coalition (NARC) Government, which came to power after the December 2002 elections, began to embrace a broad range of governance and justice reforms. The government's "open door" reformist policy after 2003 created opportunities for the carrying out of various reforms in different sectors. Further, within the roads sector, some initiatives had begun earlier than MAINIAC, implying ongoing changes. In this regard, the MAINIAC approach added impetus, but it is difficult to specifically identify its precise contribution. In addition, MAINIAC's role was limited to events such as workshops. Some of those interviewed were not aware of the approach as such, although they had a good understanding of rights based issues. This report has therefore been careful not to attribute all of the changes in the two sectors to this specific approach. This chapter should therefore be read in this context.

7.1.3 Background to the governance and justice sector (GJLOS)

GJLOS is a sector-wide, cross-institutional reform programme led by the GoK and presently supported by 17 international development partners[104]. Coordinated through the Ministry of Justice and Constitutional Affairs (MoJCA), the programme is being implemented in 32 government institutions located in, or linked to, the Office of the President, the Office of the Vice President and the Ministry of Home Affairs, the State Law Office, the Judiciary and the Ministry of Justice and Constitutional Affairs (a full listing of the GJLOS institutions and institutional membership is presented in Appendix III of this report). As the first ever Sector Wide Approach (SWAP) to reforms in Kenya, the programme recognises systemic interdependencies across the entire sector and thereby moves beyond traditional and narrow institutional approaches to reform. Thus, GJLOS presents an opportunity for governance and justice institutions to work together and thereby to create synergies in their work. It also provides ministries, departments and agencies (MDAs) with a space to complement their respective efforts, because "ripple effects" in one institution have the potential to impact on another institution. Prior to GJLOS, MDAs tended to work on their own with little dialogue or exchange of views, or even without reference to one another. The new interdependencies, however, depend on an elaborate implementation of the partnership approach, which is a challenging task.

GJLOS is undertaken in two phases: the Short Term Priorities Programme (STPP), which ran from July 2004 to September 2005, and the Medium Term Programme/Strategy (MTP/MTS), which started in October 2005 and will run until June 2009. The MTS is a strategy of reforms, GOK-led, and builds on experience as well as the results framework of the STTP. The MTS is now nearing the end of its third programme year (MTS 2), and planning for a fourth programme year (MTS 3) is firmly in place. The MTS identifies five priority reform areas: governance reforms, human rights reforms, justice reforms, law and order reforms, and reform-oriented capacity building.[105] Activities of MDAs reflect these priorities. MDAs have their

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[104] Six donors support GJLOS through the multi-donor basket funding mechanism while the other eleven are direct donors.
[105] GJLOS, 2005.

work grouped into seven thematic areas.[106] These thematic groups and their respective conveners include (for details see Chapter 1.5.1 and Appendix III):

- *Ethics, Integrity and Anti-corruption*: governance, ethics and integrity, including the fight against corruption. Convened by the PS, Office of the President (Governance and Ethics);

- *Democracy, Human Rights and Rule of Law*: improving respect for human rights in government institutions. Convened by KNCHR;

- *Justice, Law and Order*: strengthening public prosecutions and legal services available to the public. Convened by the Registrar of the High Court;

- *Public Safety and Security*: crime prevention, police reforms (including community policing) and penal reforms. Convened by the PS, Office of the President (Provincial Administration and National Security);

- *Constitutional Development*: the drive towards a rights-based and gender-mainstreamed constitution for Kenya. Convened by the Kenya Law Reform Commission;

- *Quality Legal Services to Government and the General Public*: enhancing access to justice, particularly for the poor, marginalised and vulnerable (particularly decongestion of prisons). Convened by the Solicitor General; and

- *Capacity for Effective Leadership and Management of Change*: reformist-led capacity building with a focus on attitude and culture change. Convened by the PS, MoJCA.

Sweden (Sida) has been the lead donor for GJLOS, from its inception to the present day. Leadership of the programme implies taking a lead in harmonising and aligning donors' thinking and efforts towards one end, to prevent a situation where donors would give different ideas on the programme or promote different interests. Although it is difficult to attribute any specific changes in the programme to Sida's leadership, the programme has held together as a sector-wide programme, despite a number of challenges and threats.

7.1.4   Background to the roads sector

Kenya depends largely on road transport for both human and materials mobility. The country has 197,290 kilometres of road network, of which only 63,000 kilometres is classified (Classes A, B, C, D, E and F[107]). The remainder (134,000 kilometres) is unclassified.[108] The majority of the unclassified roads (60 per cent) fall under the jurisdiction of the county councils and are gravel or earth roads.[109] Funding for the maintenance of these roads has been a major challenge due to irregular and inadequate resources from GoK revenue. Roads sector funding in the 1990s declined

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[106] http://www.gjlos.go.ke

[107] Class A (International trunk roads), Class B (National trunk roads), Class C (Primary roads), Class D (Secondary roads), Class E (Minor roads) and Class F (Special purpose roads).

[108] This excludes some 14,000 kilometres maintained by the Kenya Wildlife Service and Forestry Department of the Ministry of Environment.

[109] Ministry of Roads and Public Works, 1997.

by about 50 per cent (1989-1993), forcing the GoK to introduce the Roads Maintenance Levy Fund (RMLF). This fund constitutes a domestic resource base for roads maintenance, thereby reducing over-dependence on normal GoK allocations. However, even if the RMLF has occasioned an increase in funds for roads maintenance, it still has not been able to eradicate the roads financing deficit.

As the major programme emphasising secondary roads from a "poverty reduction perspective", "Roads 2000" was developed in the 1990s, but could not be implemented due to limited political will and inadequate funding. The reasons for inadequate funding were the poor macroeconomic environment and lack of foreign support, caused by the then government's poor relations with the donor community. After the coming to power of a new government in December 2002, the programme nevertheless picked up and began to emphasise the poverty reduction strategies.

Roads 2000 focuses on:

• Use of local resources, that is, contractors, labour, equipment and materials, and improvement of secondary roads. Popular participation in the development of roads were a crucial component; and

• A network approach to the roads, whereby emphasis was to be placed on opening up roads feeding into other roads, hence opening up strategic areas so as to boost livelihoods and socio-economic development.

Roads 2000 is based on the country-wide Strategic Plan for the Roads Sector (1997), which recognises the benefits of labour-based technologies, both in terms of roads infrastructure delivery and in addressing local social problems related to poverty eradication. The programme was initially expected to be rolled out all over Kenya by 2000 but this never occurred due mainly to delays in the institutionalisation of the concept within the Roads Department, reluctance by development partners to fund road programmes before the development of a complete Roads Sector Strategy, uncertainties related to the institutional set-up in the roads sector, excessive delays in some of the donor-supported projects to take off, and issues of democracy, governance and human rights.

Sweden's support to Roads 2000 started in Kirinyaga and Nyeri Districts in 1997-98. The original agreement between GoK and Sida was to expire in 2000 but it was extended for a further two years. The major activities of the programme included partial rehabilitation, spot improvement, routine maintenance and soil conservation works. Roads Department personnel and small-scale contractors were also trained at district level.

The "Nyanza Roads 2000" programme (2005-2008), supported by Sida, focuses specifically on the 11 districts of Nyanza Province[110] It was launched in 2004 with the expectation of borrowing from the experiences of Roads 2000 in Kirinyaga and Nyeri. These experiences included the need for enhanced local capacity building and incorporation of cross-cutting issues.[111] Four components have been pursued in this programme: roads improvement and maintenance, soil conservation, capacity

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[110] Kuria, Migori, Gucha/Kisii South, Kisii, Nyando, Suba, Homa Bay, Rachuonyo, Kisumu, Bondo and Siaya.

[111] Ministry of Roads and Public Works, November 2004.

building, and training and awareness creation. Cross-cutting issues of gender, HIV/AIDS and environment should be mainstreamed in the activities of the programme.

7.1.5 Duty-bearers within GJLOS and roads

The main duty-bearers for both sectors are the state ministries and departments. In each ministry, the "strata of duties" range from the Minister[112] to the Permanent Secretary (PS),[113] working through the technical frontline workers. Kenya has a decentralised (de-concentration) system in which each technical officer has clearly defined duties towards rights-holders. Recent emphasis on performance appraisal and "results for Kenyans" is increasing awareness of the responsibilities of the various duty-bearers. The President himself has on several occasions pointed out that Kenyans want services, not mere talk. This has become a major challenge for duty-bearers. While the top strata of each ministry (PS up to district) take part in the development of policies that should impact on duty-bearers, the interpretation of national or sector policies lies with the mid-level technocrats, including district heads of ministries, such as District Roads Engineers. Implementation occurs at all strata but is mainly the responsibility of front-line workers.

The policy formulation process in Kenya is lengthy, due to the many stages and actors involved. Implementation is therefore often delayed from the time an issue is problematised to the enactment of the appropriate policy. As noted below, many of the challenges in the Roads sector, for example, the establishment of the Roads (KRB) Policy, emanate from this problem. The GJLOS programme was launched without any real legal or policy framework, although the drafting of a policy has now begun.[114]

GJLOS

Being a sector-wide and cross-institutional programme, GJLOS is under the responsibility of a large number of duty-bearers, each with specific roles and responsibilities. The 32 participating MDAs constitute some of the main duty-bearer groups. They each have both policy and implementation responsibility for their components (activities and outputs as per annual work plans and budgets). This distribution of duty-bearer roles across the board sounds good in theory but, in practice, the Ministry of Justice and Constitutional Affairs (MoJCA) and its Programme Coordinating Office (PCO) are still being seen as the key players in GJLOS. Indeed, GJLOS is quietly viewed as a project of donors with MoJCA; hence most of the MDAs do not feel that they have ownership of GJLOS [115].

The MoJCA has a double role in GJLOS. First, it is an implementing institution just like the other 32 MDAs, with a GJLOS reform mandate and role. Second, it is the coordinating ministry for the overall GJLOS programme. As the coordinating organ, MoJCA is responsible for:

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[112] The political head of the ministry responsible for policy.

[113] The chief accounting officer spearheading the technical processes of policy formulation, interpretation and implementation.

[114] Within the process of developing a GJLOS Policy Framework, a draft concept paper for GJLOS was produced in March 2007, following consultations with and endorsement by a number of stakeholders.

[115] GJLOS, 2006.

- Technical leadership of GJLOS, which is achieved through the role played by the PS, MoJCA as Secretary of the TCC;

- Broad sector-wide leadership of the GJLOS implementation, including, but not limited to, MTS and annual work plans coordination through the PCO and budget coordination, especially by ensuring sector-wide GoK counterpart contributions; and

- Monitoring and reporting on the overall GJLOS Reform Programme on behalf of the GoK, particularly as part of the Joint Government-Donor Review process.

Programme Counterparts, Change Champions[116] and PCO (Programme Coordinating Office, within MoJCA) Specialist Counterparts are designated at institutional level in each MDA so as to ensure practical programme coordination and management as well as to lay a foundation for sustainability of reforms within each MDA. Although it is a worthy innovation, the idea of Counterparts and Change Champions has not institutionalised in all participating MDAs.

In addition, there are specific GJLOS institutions/groups/forums with specific duty-bearer mandate and powers. These include:

- Inter-Agency Steering Committee (IASC), which is jointly chaired by the Vice-President and Minister for Home Affairs. The IASC is mandated to oversee the overall GJLOS sector reform policies and provide political, policy and overall strategic leadership. In reality, however, the IASC rarely meets, as the Committee members are usually occupied with mainstreaming ministerial duties.

- Technical Coordination Committee (TCC), which is chaired by a Justice of the Court of Appeal. The TCC translates policy and communications from the IASC into specific directions and advisories on GJLOS reform programme implementation through TGs. It endorses and translates for IASC political and policy approval for all proposals, papers and recommendations generated by GJLOS stakeholders. It provides technical guidance in the implementation of the programme and ensures such implementation is in line with GoK policy objectives. The TCC oversees effective coordination of programme implementation across sector institutions and liaises with development partners and non-state actors. It mainstreams cross-cutting public sector reforms and provides a forum for engagement with wider public sector reforms. Lastly, the TCC ensures that the next level (PCO) performs its coordination role effectively. The TCC works with a Management Committee – the TCC sub-committee that is entrusted with day-to-day executive decision making, programme oversight, and monitoring and coordination of the TCC.

- Programme Coordinating Office (PCO), which is located within MoJCA (and thus is one of the 32 MDAs in GJLOS), acts as a Secretariat to the TCC Management Committee. The PCO has officers who are experienced in communications, monitoring and evaluation, strategic planning and budgeting, and the timely, effective and sustainable implementation of the programme,

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[116] A Change Champion is meant to infuse the reform agenda into the programme.

including quality assurance, technical advice, overall programme coherence and operational support to MDAs and all the committees. The PCO is indeed the brainchild of all the processes and activities in GJLOS as it runs the day-to-day affairs and provides routine technical support.

- Seven Thematic Groups (TGs), each of which is convened by the chief executive of the senior leading institution (PS, full-time chairman, Registrar, and so on).[117] The TGs provide a forum for MDAs to share information, lessons, and experiences, and to streamline their thinking on the respective thematic priorities. Each TG is expected to have its own work plan and budget developed through an assertive multi-stakeholder forum. The TG is a focal point for original work plans and work plan revisions. It mobilises and energises peer organisations to assume responsibility and execute actions that are appropriate to their mandate in the implementation of the programme. The TG guides stakeholders responsible for thematic outputs and outcomes to effectively communicate and coordinate their implementation activities to reduce the risk of duplicity. In addition, the groups catalyse inclusive monitoring and evaluation of implementation for different strategic results.

- Development Partners Coordination Forum, officially known as the Legal Sector Reform Coordination Committee (LSRCC). On the basis of the Paris Declaration principles for partnership, this forum brings together the Basket Fund Donors (B-Partners), direct donors (S-Partners) and "mixed" donors (M-Partners). It is represented in the TGs and the TCC. Donors have been very strong in GJLOS, particularly in terms of resource mobilisation and ensuring use of all-inclusive mechanisms in the programme.

- Private Sector Forum under the leadership of Kenya Private Sector Alliance (KEPSA). This forum may participate in GJLOS in several ways, including implementation of specific initiatives, through TGs and through contributions to collective decision making at the TCC.

- Civil Society Forum (CSF), which is engaged through implementation, peer review of GJLOS through TGs, or participating in, and contributing to, collective decision making at the TCC. In addition, the CSF gives civil society the opportunity, time and space for independent tracking and monitoring of GJLOS' programme progress, thus playing an independent "watchdog" role.

- Financial Management Agent (FMA), which acts for the Basket Fund Development Partners on matters of financial management, procurement and reporting with links to the PCO.

- An Advisory Team, to provide an independent external review on the programme progress every year through Joint Review Meetings.

While the MDAs are responsible for mainstreaming rights-based approaches in their respective activities, the Thematic Groups constitute the main entry points for HRBA programming in GJLOS. From the review of the GJLOS documentation, HRBA appears to be an important aspect in the work planning of these TGs. There is broad

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[117] The Designated Convenor may also appoint a Co-convenor in order to have continuity and leadership.

space for participation, as the TGs comprise representatives of key organisations in civil society, government and the private sector. The TGs also emphasise openness in sharing of information, equal participation, responsibility and accountability of all participating institutions. These institutions have their constituencies among the rights-holders. This evaluation comments below on the application of the principles of the rights perspective in GJLOS.

There have already been a number of reviews – a mid-term review and three Joint Review Meetings for GJLOS – which have recommended specific institutionalisation, capacity and cross-cutting issues. Surprisingly, neither of these reviews, nor the programme documents, has paid specific attention to HRBA programming in GJLOS. This is an area that future reviews may focus on in order to ensure that the programme is anchored fully in HRBA.

HR as a goal is, however, well integrated in GJLOS, and within the context of Thematic Group 2, *Democracy, Human Rights and Rule of Law*. The Theme Group Convenor (KNCHR) is instrumental in leading the way in HRBA processes. It is observable that HR training is the most visible aspect running through the programme, but it is done differently in the different departments involved. Externally, Thematic Group 4 (*Public Safety and Security*) integrates HR, for example, in training of police. Other activities also take place, such as in the children's departments. Thus the focus is more on D/HR as goals and not specifically on HRBA.

Roads Sector

As a key institution in roads construction and maintenance in the country, the Kenya Roads Board (KRB) was established under the Kenya Roads Act, 1999 (the Act), after a long and arduous institutional reform process rooted in the World Bank sponsored Road Maintenance Initiative (RMI).[118] KRB was to be the custodian of the road network in Kenya, in addition to being the principal advisor to the GoK on all matters related to the management of the roads network. The KRB board of directors comprises representatives from ministries of Roads and Public Works, Finance, Local Authorities, Regional Development, Transport and Communication, and representatives from different institutes and associations.[119] It is jointly chaired by a presidential appointee and a chief executive officer recruited competitively. Thus, the board represents both private and public sector stakeholders, with the latter having eight of the Directors. However, except for one actor in the name of the League of Kenya Women Voters, representation of the broader civil society is glaringly absent in the KRB. The Board could therefore be missing important skills and knowledge in mainstreaming rights issues in roads.

The objectives and purposes of the board are: to oversee the maintenance, rehabilitation and development of the road network throughout the country; to

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[118] RMI was a component of the Bank's Sub-Saharan Africa Transport Programme (SSATP), developed with the United Nations Economic Commission for Africa (UNECA) and a number of Development partners, including Sweden/SIDA. It focused on using country-specific policy reform initiatives to identify and resolve road maintenance problems. This was to be done through sustainable funding mechanisms, development of policy frameworks for the roads sector, institutional capacity strengthening and use of appropriate technologies (Roads 2000 Project Document, November 2004).

[119] Institute of Engineers of Kenya, Automobile Association of Kenya, Kenya Association of Manufacturers, Institute of Surveyors of Kenya, League of Kenya Women Voters, Kenya Association of Tour Operators, Kenya Transport Association and the Institute of Certified Public Accountants of Kenya.

administer the Roads Maintenance Levy Fund (RMLF); and to allocate funds to the roads management agencies in line with the requirements of the Act and the needs of the road network. There are three key road agencies in Kenya recognised by the Act: the Roads Department of the Ministry of Roads and Public Works, the District Roads Committee (DRC), and Kenya Wildlife Service (KWS). The main duty-bearer is the Roads Department, represented at district level by the District Roads Engineers or Officers (part of the District Roads Committee). The duty-bearers at district level are those of particular interest to this evaluation. According to the District-Focus for Rural Development policy, adopted in the country in 1984, the district, working with its sub-district units, is the key entity for programmes prioritisation and implementation. Thus, many policy organs tend to work directly with the districts.

The District Roads Committee (DRC) is responsible for all Class D, E, special and unclassified (rural and urban) roads within their respective districts. The Committee, the formation of which is legally required in each district, comprises all Members of Parliament (MPs) in the district, the Chairperson or Mayor of every local authority in the district, the District Commissioner, the District Roads Engineer (DRE) in charge of the district, and two other members co-opted by the Committee to represent such special interests as the Committee may determine. Members elect the Chairperson of the DRC, usually from among the MPs or the Civic leaders (Chairpersons or Mayors of local authorities), while the DRE serves as the Secretary. Thus, the DRC gives itself executive powers, yet its membership is largely political. Litigation in December 2000, challenging the executive powers of the DRC, rendered them powerless in discharging their duties, but they have remained pivotal instruments for identification and prioritisation of roads for improvement and maintenance. The litigation clearly illustrates the non-accountable nature of the DRC, with political figures highly dominating the entity. From the time of this legal challenge, Roads 2000 has been working with local/community roads committees, which are highly accountable as they heavily represent the local people.

The District Roads Engineers (DREs), working with the DRC, are responsible for the coordination and implementation of roads rehabilitation, spot improvement and routine maintenance activities in their respective districts. They are also responsible for the preparation of annual plans and administration of project resources (humanpower, finances and equipment). Thus, they shoulder the burden of accounting to the public. The DRE is assisted by a District Roads Officer (DRO) who, in turn, coordinates the activities of routine and periodic maintenance overseers. The Head Office of Roads Department, Ministry of Roads and Public Works, has been approving the annual plans and conducting occasional visits by engineers. The Head Office also handles procurement of services for large rehabilitation and spot improvement contracts based on bills of quantities prepared by the DRE.

Thus, the duty-bearing within roads heavily rests at district level with the DRC and the DREs. In GJLOS, on the other hand, the duty-bearing mandates are distributed across the 32 MDAs and a number of specific GJLOS institutions. Hence, GJLOS has a broader spectrum of duty-bearers and a horizontal structure, unlike roads, which operates with the Ministry's hierarchy, with immense powers vested in the DREs.

7.2　　The integration of the rights perspective in programming

This section focuses on the integration of the principles of the rights perspective in programming in the roads and GJLOS sectors. The concepts RBA and HRBA are often used by partners in explaining the MAINIAC approach – that is the integration of the rights perspective. There are nevertheless differences between various definitions of HRBA approaches, and between HRBA and the rights perspective (for further discussion on this, see Chapter 2). The focus here is on the *principles* of the rights perspective. Thus, the principles of participation, non-discrimination, openness and transparency, responsibility and accountability, and how these have been integrated throughout programming forms the starting point, and the terminology used in explaining the approach is not directly relevant here.

7.2.1　　Integration of the principles of the rights perspective

The findings show that the extent to which the principles of the rights perspective are applied with success varies from one context to another, and from one type of activity to another. Within GJLOS, the principles are well applied at the level of the programme apex, but the extent to which MDAs apply them in their every-day work is unclear. Even at the apex level there are some activities that take place without the participation (in conceptualisation) of all the MDAs, although institutions such as thematic groups and the Technical Coordination Committee (TCC) fill this void. Within the roads sector, it is clear that the principles are applied to a great extent, particularly because of the continued involvement of communities in making key decisions about the implementation of the programme.

In general, however, the legal and institutional aspects relating to the principles are a further limitation to the application of the principles, due to the lack of synergies with related legal instruments. For example, while the duty-bearing officers know the principles of participation and non-discrimination, it emerges that the officers may be unclear or even totally ignorant of the related frameworks such as the Employment Act, the Occupational Health laws and the Children Act. These synergies need further attention in the future.

The principle of participation

The principle of participation appears to be over-riding the other principles whenever the issue of HRBA is raised.

The Roads 2000 programme, which accelerated in earnest after the entry of the NARC Government in 2003, emphasises participation and local resources. The traditional practice in roads construction and improvement has been for engineers to undertake all processes regarding the road assessments, design, implementation, monitoring and evaluation. Following the Roads 2000 initiative (and following the commencement of the MAINIAC approach), however, there have been efforts to include all types of stakeholders (women, children, youth, people living with HIV/AIDS, churches, NGOs, CBOs) at local and district levels, especially in terms of developing a "wish-list" of priority roads and implementation.

Piloting for Nyanza Roads 2000 was carried out in 3 districts: Kuria, Kisii and Kisii South (Gucha). The stakeholders were initially called to a forum in Kisumu to

prioritise roads in their districts. Participation stopped at this stage of assessment, since the design still remains a specialist engineering activity. The prioritised roads were taken through a design process by the District Roads Engineers (DREs) and the Intermediate Technology Transport (ITT) Consultants so as to develop the network of the roads as envisaged in the Roads 2000 approach. Participation then resumed with regard to labour, since the DRE and the contractors work with local/community (locational or sub-locational, depending on the road network) roads committees, comprised of local leadership and stakeholders, to decide on who to employ. Monitoring and evaluation of the roads improvement is done by the local committees, together with the DRE.

GJLOS is essentially a participatory programme of 32 MDAs, including CSO interests. Indeed, for the first time in Kenya, the GoK and CSOs, and the private sector, were able to sit together and discuss D/HR issues. Thematic Groups and Joint Review Meetings provide opportunities for various stakeholders, and in particular non-state actors, to inform planning and implementation of the programme. However, programme design was reported by those interviewed to be a complex issue, which has not been part of the participatory process for the people, but rather only for the MDAs. According to the MTS (2005), the MDAs have been participating in designing the programme and developing work plans within the respective Thematic Groups (TGs).

The GJLOS Joint Review Meeting reports (2004, 2005 and 2006, respectively), however, have underlined weak participation of non-state actors as an issue of concern. The reports also note that active participation of thematic groups as well as other governance institutions is critical for sustaining the momentum of implementation, because declining enthusiasm would have negative consequences for the programme. GJLOS has also not been well integrated in the reforms programmes of government, for example, Results for Kenyans, which has more political clout and hence could enhance participation in all stages of programming. The strong focus on the role of consultants at the Programme Coordinating Office (PCO) and in the Advisory Team could be a further barrier to programming participation of other actors within the MDAs.

An additional problem of participation relates to the programme cycle. The PCO takes a central role in conceptualisation and planning for the overall programme, while the MDAs rarely take part in the development of the main framework. Centrality of PCO in programme planning has implications for sustainability of the programme and capacity development of MDAs, because, as mentioned above, the PCOs are sourced from outside the bureaucracy. When their contracts come to an end, the MDAs will be faced with the challenge of collectively developing a framework for the programme. Further, some of the MDAs do not involve rights-holders in the conceptualisations of their projects. While this is dependent on the type of activities an MDA is carrying out, there is a need to begin evolving strategies for involving rights-holders in what the MDAs plan to do.

The principle of non-discrimination

In the roads sector, the informants claim that the principle is well integrated. Women, who are taken as the measure of non-discrimination, are included in the programme.

The concept of identifying women only as synonymous with discrimination is a misconception of this principle, and represents a gap, for future and urgent attention; over-emphasis on women risks marginalising other vulnerable groups. Nevertheless, other vulnerable groups that are mentioned (after probing) as involved in roads sector work include children, the young, the poor, people living with HIV/AIDS and the disabled. Involvement of children is raising controversies due to the existence of the Children Act 2001, which prohibits child labour. The challenge is for contractors to understand the Employment Act and the Children Act, both of which prohibit hazardous work for children and labour for children. As long as hazards and exploitation are understood, the involvement of children will be clearer.

At district level, inclusion of women and people with disabilities is being promoted by contractors in the roads sector. The District Roads Committee (DRC) has powers and provision to include any interest groups it deems fit, but this has recently been limited by the moribund nature of the DRC, following the litigation that challenged the executive role of MPs. In any event, the DRC is a "high level" structure that cannot effectively deal with the non-discrimination principle. At the local levels, emerging community/local roads committees are in place to ensure that women, the disabled, children and those living with HIV/AIDS are part of the roads labour-force, and that they are not discriminated against. The involvement of these groups is, however, peripheral and only limited to labour provision during the implementation stage.

In GJLOS, some of the MDAs do not involve districts in planning and general programming work The programme's call for all Kenyans to take part is not matched with action, particularly with regard to citizens having a voice in GJLOS programming, except of course as represented through the MDAs. In this regard, there is a need for MDAs to integrate strategies for involving rights-holders in their work. KNCHR, for example, undertakes activities that seek to give power to the voiceless by promoting respect for their rights.

The principle of openness and transparency

In the roads sector, local roads committees are fully involved in the work plans and other plans, including budgets being made available for scrutiny when and if needed. Information about the road is clearly displayed at a strategic point on the road.

In GJLOS, information is displayed on the website, while specific issues, such as anti-corruption, justice for all accorded by police, and so on, are openly displayed on notice boards and posters in public places such as police stations. Thus, there is a good level of information sharing about the programme.

The principle of responsibility and accountability

As mentioned above, Roads 2000 was started with the express intention of ensuring that secondary roads are improved, as a poverty reduction mechanism. This is evidence of the Government taking responsibility in a context much different from the past, when political commitment for roads was limited.

There is reporting through the District Roads Committee (MPs, Councillors and other key stakeholders) all the way down to the local level, where community roads

committees are being formed with the role of monitoring roads work. Never before in Kenya has the work of monitoring and ensuring accountability in roads been so devolved.

In GJLOS, specific institutions, such as the Inter-Agency Steering Committee (IASC), the Technical Coordination Committee (TCC) and the Thematic Groups (TGs), serve to ensure accountability. However, the IASC has been reported as meeting irregularly.[120] Moreover, GJLOS is currently at the stage of defining the path the programme will take. It is hoped that the programme's new direction will involve strengthening structures for accountability within the five reform priorities.

7.2.2 Programming changes following the introduction of the MAINIAC approach

The findings show that there is no systematic documentation of the MAINIAC approach and that the institutional memory about MAINIAC at both GJLOS and in the roads sector is weak. It is therefore difficult to ascertain the differences between programming before and after the approach was launched. In addition, the preparation phase of the Nyanza Roads 2000 programme, and the start of GJLOS, coincided with the launch of the MAINIAC approach, which makes it difficult to show the difference in programming, as none of the programmatic aspects can be discussed for the period prior to 2004. As mentioned above in the methodology, attribution of changes to MAINIAC is therefore difficult.

Regarding GJLOS, however, it can be observed that there was no elaborate governance and justice programme before the coming to power of a new government in 2003. Prior to this, it was difficult to undertake a rights programme. Government activities in the law, order and security sector were conducted without openness and without participation of the public. The result was widespread corruption, inefficiency and ineffectiveness. In fact, most of Kenya's grand corruption and poor governance issues stemmed from the way in which activities in this sector were carried out. Thus, this is where MAINIAC-related activities can be more clearly seen as making a difference.

Participation of institutions in GJLOS, such as the police, the prisons, provincial administration, the judiciary, and so on, has opened them to scrutiny and also enabled them to synergise with other institutions. There is now more openness about how they identify their priorities, how they conduct their public business, and so on. They have been forced to become more responsive and accountable.

In general, programming is now more open to integration of rights approaches. While in the past, institutions like the police and prisons were insensitive to rights issues, MAINIAC and related initiatives have created opportunities for them to begin appreciating rights, which has in turn precipitated the numerous workshops. MDAs have also been enabled to work more closely with civil society institutions. This was not possible in the past. Since 2002 Kenya has also had a pro-active governmental institution (KNCHR) that is mainstreaming rights in government departments.

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[120] GJLOS, 2006.

KNCHR is interacting with various government departments to integrate rights in their programmes.

Specifically, there are several emerging differences that have been reported since the introduction of the MAINIAC approach:

- Civil society organisations report that they have had their ideas included in government programming, including for child rights issues and environmental concerns. It is noteworthy that CSOs, in the past, rarely influenced formulation of government programmes, in particular in the governance and justice sectors. They were often seen as critics and therefore were rarely involved in government programmes. Participation of CSOs at this level is therefore evidence of a trend towards a HRBA framework. CRADLE, a child rights NGO, has, for instance, been instrumental in commenting on child rights issues in roads design and implementation, for example, on the pivotal role of children in roads (particularly as constituents and not just as consumers), as well as the importance of rural access roads in child survival promotion and mortality reduction.[121]

- As discussed above, the principles of the rights perspective are now being included in the design of sectors that until now were primarily technical, social and/or economic in nature. For example, through focus on *participation*, involvement of stakeholders in, for instance, deciding on priority roads and who will provide manual labour, is occasioning a shift in power relations, with rights-holders having more power to define how, when and what happens.

- Citizens now increasingly understand that taking part in government programmes is a right, not a privilege, and benefits that accrue from the interventions are also rights as opposed to privileges and favours. Two examples are the community policing in GJLOS and roads labour provision cases in Nyanza Roads 2000. Field observations in Nyanza reveal that people feel involved in roads improvement, especially as the model being used afford them an opportunity to take part in implementation by providing their labour and earn a living.

- Because of the principle of progressive realisation, the fear within many civil servants that "all poverty must be taken care of now" is gone. Patience is beginning to become an aspect of the citizen's environment, as they also realise their roles in working with duty-bearers. Citizens are starting to recognise that the work of duty-bearers is complex, and that changes cannot occur overnight. In sectors such as roads, for example, greater involvement of rights-holders is helping them understand the huge task of making improvements in roads. They are hence less likely to continuously make unrealistic demands.

- Most people are beginning to understand that human rights are non-threatening and that they have a place in traditional socio-economic development. Traditionally, rights issues were seen as essentially an affront to government, since the state had failed to deliver and civil society was demanding greater accountability and responsiveness by the state. Through activities of government

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[121] CRADLE, 2004.

and civil society in both GJLOS and the roads sector, it is now clear that human rights issues are not necessarily anti-government. As one government informant explained: "... it is now easy to discuss human rights issues with people in the civil society since we are able to sit at one table and ... with less emotion ... they are less activist now." This implies that the change of approach towards engaging with, as opposed to confronting, GoK is more conducive to cultivating a less threatening, collegial environment.

• There is increasing reference to human rights issues in government business, for example, in budget speeches, the Vision 2030 initiative, and so on. This is a recognition that there is no turning back on HRBA.

• In some areas, there are emerging impacts of HRBA, for example, computerised registration of companies and birth and death certificates, and better visibility of the police due to GJLOS. Moreover, prisons and police stations are becoming more responsive to public needs, for example, listening to the citizens more, and treating prison visitors with dignity. Within the roads sector, the condition of access roads in the visited districts (Gucha and Kuria) is improving, following the use of local resources in the form of contractors, labour and materials.

• Before the introduction of HRBA, human rights appeared only in international conventions and were constantly referred to only theoretically, or referenced in international instruments. These conventions have now become a programming tool. Implicitly, this means that rights are now being looked at in terms of how they feature in practical terms during programming. It is, however, evident from the findings that the programming in question does not cut across all stages of the programme cycle, that is, assessment, design, implementation, monitoring and evaluation. Observations of the roads sector, for example, show that a human rights based approach to programming has mainly been adopted at the implementation stage. The local/community roads committees are, at this stage, involved in deciding who can be given employment. They also work with the contractors on monitoring progress. The design of the programme, on the other hand, is mainly done by the DREs, and involves little stakeholder participation, due to its technical nature.

Although changes are visible, programming in GJLOS generally has less of a rights-based focus than in roads, due to weak integration of HRBA in the participating MDAs. MDAs, as individual institutions, are responsible for their own work plans and how they involve stakeholders in their activities. Some MDAs undertake activities that directly involve rights-holders, but only in some phases of their programme work. This is partly because some of the MDAs are still learning how to engage in a new reform programme, and partly because the old ways of doing things are deeply rooted in their bureaucracies and are taking time to whither away.

7.2.3 Summary: Overall programming changes

The extent to which the principles of the rights perspective have been integrated in programming and, consequently, how programming has changed in the respective sectors is presented below:

Governance and Justice Sector (GJLOS)

- More focus on integrating D/HR as goals than on HRBA.

- Improved CSO links and KNCHR key role (HRBA network).

- Increased participation through multi-stakeholder consultation routine, thematic groups and review meetings.

- More openness in duty-bearers' priority setting and conduct (for example, the police).

However…

- Key players are duty-bearers at high levels.

- Weak participation of non-state actors.

- Nairobi-based CSO participation.

- Hence, risk of weakening ownership and of impeding HRBA.

- CC-issues: unclear how they are integrated in programming.

Roads Sector

- Decentralised HRBA (monitoring, and so on) – but lack of documentation.

- Participation and poverty focus: use of local resources/labour – priority setting through district committees.

- Accountability: decentralisation of responsibilities to district committees and engineers: not only technical, also rights.

- Civil society links: improved CSO participation after HRBA training.

- Training also with rights-holders, for example, on monitoring.

- CC-issues: gender, HIV/AIDS and environment mainstreamed. Manual developed. Efforts to involve women, children, people with HIV/AIDS, CBOs, and so on, to develop "wish lists". But, gender confused with non-discrimination.

7.3   Capacity among duty-bearers

This section focuses on the capacity that has developed among duty-bearers within the GoK (in the roads sector and the governance and justice sector) to integrate the principles of the rights perspective in programming. Identified changes in capacities following the introduction of the MAINIAC approach is of particular interest here. Aspects of capacity development at both individual and organisational level, as well as contextual factors, are discussed. At the organisational level, the focus is on resources available and used to develop capacity to work with HRBA at different stages of programming, and on the regular routines that have been established (such as training). Institutionalisation and sustainability of the approach are dealt with in the next section.

7.3.1 Changes in capacities

Although much HR work in Kenya has traditionally been undertaken by CSOs,[122] capacity within GoK for integrating HRBA in both GJLOS and the roads sector has reportedly been partially present. Many public officers have had occasional trainings on human rights and programming aspects, but the contexts of their work have not allowed them to work effectively. The main problems have been lack of technical motivation, limited political will, and inadequate financing from GoK and development partners. Roads 2000 was, for instance, conceptualised early but limited political will delayed its implementation.

Technical motivation here means that the officers responsible for programming in the GoK needed a government that made them work as expected of duty bearers. They did not have this government in the pre-2003 Kenyan State. There are numerous accounts of officers spending their time pursuing their private business instead of carrying out their duty-bearing roles. This has observably changed with the new Government's emphasis on public service delivery and accountability. Technical motivation has also been developed with the establishment, in 2006, of Central Planning Units, which are expected to profile the planning functions of duty-bearers. The units will not necessarily enhance planning capacity but will strengthen the effectiveness of the officers involved.

Political will was missing mainly because the government lacked morality and commitment to public service, and responsiveness to rights-holders. This had improved substantially since the NARC Government came to power.[123] The President, in meetings with ministers and permanent secretaries, has emphasised that each duty-bearer will be held personally responsible for non-performance of their duties and delivery of services to citizens. What some people regard as a "hands-off" policy by the President, where he leaves officers to conduct their duties as per procedures and policy, is indeed letting them have a free hand in what they are expected to do. Political "bad will" (opposite of good will) in the previous regime came in the form of unnecessary interference.

There are also issues of depth (technical capacity within the GoK ministries and departments) and breadth (spread across ministries) in capacity for HRBA.

Four factors regarding capacity at all levels need to be considered. These are: capacity to develop policy, capacity to interpret policy, capacity to implement technical programmes (such as Roads 2000), and institutional frameworks. These all need consideration in light of the necessity to maintain a commitment to human rights values.

Capacity to develop policy

Within all ministries that have been engaged in HRBA work, there are individuals occupying senior levels who understand how to develop policy with principles of the rights perspective integrated. For roads, a policy is in place, and the roles of the

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[122] KNCHR, 2005.

[123] However, as mentioned in earlier chapters, human rights and political instability has again raised its head with the political crisis and associated violence following the December 2007 elections.

District Roads Committee (DRC) and the District Roads Engineers (DREs) are clearly elaborated. This policy was developed with capacity within the Ministry of Roads and Public Works. Regarding GJLOS, with the MTS in place and the move towards development of a GJLOS Policy in progress, it is hoped that implementation will be more entrenched in integrating a HRBA.

Capacity to interpret policy

Within Roads 2000 there are individuals, such as Provincial Roads engineers and the DREs, who understand how to interpret policy with human rights aspects integrated. These individuals were able to receive comments from CSOs and other human rights centres, and consider them when interpreting policies. The roads document benefited from CRADLE's input on child rights and requirements for minimum wages for labourers. These have been effectively standardised, which is evidence of capacity to interpret policy. The DREs have been instrumental in this process. The guidelines on minimum wages for casual labourers were implemented accordingly.

Capacity to implement policy

Within Roads 2000 there are individuals, especially at the district level, who understand how to implement the policy without losing human rights aspects, for example, ensuring that technical road designs are sound, and are sensitive to cross-cutting issues, having women contractors, giving jobs to locals, and so on. The DREs, with their staff at district level, take charge of the implementation process. In GJLOS, capacity to implement is there at the district levels of the MDAs but the programme has not always been able to reach out to the provinces.

Institutional arrangements

Technical ministries are still assigned to report on technical issues as a core function, while additional human rights and other issues are non-core reporting requirements (except in some cases in Roads 2000). Since programmatic changes relating to HRBA are not included in wider civil service reform measures (such as performance contracts of specific officers) they risk being lost in the long-term. The institutional framework of GJLOS is still under preparation and the programme has therefore not yet been fully integrated within GoK. Currently, Programme Counterparts, Change Champions and PCO Specialist Counterparts are designated at the institutional level in each MDA so as to ensure practical programme coordination and management. However, as mentioned earlier, these have not yet institutionalised in all participating MDAs.

In terms of breadth, not all ministries have been engaged in HRBA; a lot of work is still needed. This is particularly true for GJLOS, where HRBA has not yet been completely integrated into all of the 32 participating MDAs.

7.3.2   Resources

The main resources used were human skills from the government, CSOs and private sector, including:

• KNCHR.

- The 32 ministries and departments in GJLOS.

- Child Rights Advisory Documentation and Legal Center (CRADLE).

- Kenya Private Sector Alliance (KEPSA).

- Africa Medical and Research Foundation Kenya (AMREF) in training on HIV/AIDS for Roads.

- International Centre for Research on Agro Forestry (ICRAF) on environmental mainstreaming.

- Institute for Law and Environmental Governance (ILEG) which prepared a report on mainstreaming environmental issues in GJLOS.

- Kisii Training College[124] for Roads 2000.

- Sida, including the international consultants.

Some of these organisations, such as CRADLE, have been important resources in commenting on HRBA and mainstreaming issues in government programming, particularly in the roads sector. KNCHR has been particularly important in terms of providing training to ministries and sector staff as well as to other resource institutions/persons (Training of Trainers) on how to integrate HRBA in programming. The training activities, workshops and experience-sharing forums undertaken under the MAINIAC approach sought to promote awareness on HRBA and to equip the participants with skills to undertake HRBA in programming.

It is significant that the activities were relatively few, and the number of days spent in carrying out these activities relatively short, compared to what is ideal for a structured training programme. Workshops, meetings, and other forums for sharing experiences are generally appropriate for promoting awareness and improving knowledge on a specific subject; however, as one-off events, they have little impact. They impact on knowledge only when they are integrated into an established process for promoting knowledge, such as structured training or education programmes. Thus, intensification of such activities is important for progressive consolidation of gains made through the MAINIAC approach and thereby sustainability of programme outputs.

Specific resources for capacity development exercises have been two manuals/packages produced by KNCHR (for GJLOS) and ITT Consultants (for roads). The KNCHR package (first draft, 2005) is a training manual on HRBA incorporating the following modules:

- Development, Democracy and Human Rights.

- Origins and Meaning of Human Rights.

- Key Components of HRBA.

- Consensus on HRBA.

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[124] A key institution within the entire region on roads capacity development.

- A Method for HRBA.

- Implementation Issues.

- Human Rights, Women and Gender.

- Child Rights.

- Cultural Rights and Diversity.

- UN Reform and Millennium Declaration.

- Kenya: State of Human Rights Report.

The Manual by ITT Consultants (draft, 2006) has been developed with technical support from a local consultant (ANFA Management Services) and focuses on Mainstreaming Crosscutting Issues in the Roads Sub-sector. The manual addresses the following topics:

- Human rights based approach to development.

- Human rights, governance, participation and the roads sub-sector.

- How public resources are managed.

- How good governance can be achieved.

- HIV/AIDS mainstreaming.

- Gender mainstreaming (equality, roles, expectations, social construction, stereotypes, etc).

While the two documents will undoubtedly make critically important contributions in the respective sectors, it would have been more efficient for HRBA to benefit from a consolidated manual with applications in the various sectors, so as to ensure a uniformly designed capacity development package and approach. In addition, it would have been useful to include guidance on how to apply the HRBA principles in the different sectors.

Financial and other resources for roads are cushioned under the Roads Levy. In the Nyanza Roads 2000 Programme, cross-cutting issues have no separate budget lines but are integrated in every relevant activity. For example, work contracts include a non-negotiable sum for HIV prevention, training courses have blocks dedicated for HIV prevention, and environment protection measures are included in the works items.[125] This practice was criticised by Sida's Project Committee in a meeting on 29 October 2004. With no direct resources being allocated to mainstreaming issues, it was feared that they would be treated as secondary in relation to technical issues.[126]

 GJLOS capacity development is dependent on donor funding, which is not sustainable unless the government allocates resources from national budget funds[127]

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[125] Sida INEC, 2004.

[126] Sida POM, 2004a.

[127] GJLOS, 2005; GJLOS, 2006.

and creates links between GJLOS and other public reforms that are already accepted and supported financially.

Thus, it can be seen that capacity problems exist, in the two ministries (MoJCA and MRPW), in terms of staff shortages, sector-specific factors and lack of in-depth technical know-how on the specific principles of the rights perspective and how they relate to programming processes. Evidence of implementation is also clearly lacking. One-off trainings and a series of meetings on D/HR cannot substantially develop capacity in GoK. A more elaborate programme is needed, and this is proposed in the recommendations section below.

7.4 Sustainability of the approach

Sustainability of the MAINIAC approach is closely tied to the sustainability (the institutionalisation) of capacity development among duty-bearers, which is in turn dependent on a number of external factors. The true test of sustainability is when there is budgetary provision and when HRBA programming processes are included in guidelines, rules and principles that apply to all civil servants, and also deemed important to be included in civil service courses. This can only be achieved if intensive efforts are taken at the initial stage of capacity development and if this level of sustainability is seen as a goal in itself. It also requires that the State (GoK), as the key duty-bearer, takes it upon itself to use HRBA, and enforces the respective principles, with or without donor support. Sustainability is also closely tied to established links to human rights institutions and organisations, as these are identified as one essential component for capacity development within the sectors and among duty-bearers. Further, the rights-holders are vital actors within HRBA and their ability to demand their rights is another essential aspect of sustaining the approach. The focus of this chapter is on the two latter aspects.

7.4.1 Links to human rights institutions and organisations

A local network of resource persons working on HRBA has been developed, and meets quarterly at KNCHR to discuss HRBA. If well utilised and supported, this network will positively contribute to enhanced HRBA. The network depends largely on the mobilisation of support of KNCHR as the legitimate leader of HR issues in Kenya.

As mentioned above, civil society organisations with experience and knowledge of human rights issues have been an important resource for the GoK in integrating HRBA in programming and in mainstreaming particular cross-cutting issues. However, although the ideas on HRBA from CSOs reportedly have been incorporated into government programming documents, the optimisation of these inputs has been hampered by the lack of follow-up of these activities. Moreover, had these CSOs been more involved in defining capacity needs within various levels and departments of government, and worked with government partners to undertake capacity development, links would have been further sustained.

In the roads sector, linkages have been developed between the Kisii Training Center for training of contractors and technicians, engineering consultants (ITT), support organisations, such as local consultants (ANFA Management Services) assisting in

developing a manual on cross-cutting issues, and local communities, who are the main actors in protection of their own human rights. Through the DRCs and community roads committees at the local levels, it is hoped that these linkages will be sustained and will constantly provide a cost-effective way of managing and monitoring roads projects.

Links with KNCHR do not appear to have been effectively sustained in the roads sector. The organisation has provided crucial training on HRBA but there has been no reported follow-up of these activities. In Kisumu, for instance, the engineer at ITT reported that they have tried in vain to solicit support from KNCHR.

In GJLOS, KNCHR has taken the lead in the effort to integrate HRBA in programming, and is thus a major resource in particular in terms of training of sector staff. Otherwise, however, links between GJLOS and HR organisations involved in HRBA are found to be generally weak. This is largely due to the overall weak participation of non-state actors in GJLOS. Further involvement of these actors in the HRBA effort would no doubt improve prospects for sustaining the approach within the sector.

7.4.2   The demand side: The rights-holders

In GJLOS, the MDAs were expected, as part of their mandate, to follow-up on the foregoing initiatives by working with rights-holders. However, as highlighted in the Third Programme Review (2006) report, no activities have been carried out to develop the capacity of rights-holders. The programme has mainly concentrated on the MDA level without rolling out to the rights-holders at all stages of programming. This may be explained by the fact that GJLOS, at the start of the MAINIAC approach, was in a phase of "inception" insofar as the strategies and structures are concerned. Some MDAs, such as KNCHR, have, for several years, been working with rights-holders and developing their capacity to claim and protect their rights but, as mentioned above, the old ways of doing things are preventing some of the MDAs from working with rights-holders. Others have responsibilities that make it difficult to work directly with the rights-holders.

Within the MTS (2005), which is arguably the guiding document for GJLOS, efforts to build the capacity of rights-holders do not emerge clearly. Most of the reforms are intended to benefit the public but not to work *with* this public. However, it is implied that the MDAs will consult the public in the course of implementing their work plans as part of the overall GJLOS programme and their respective work plans.

In the roads sector, there have been efforts to develop the capacity of rights-holders as follows:

- ITT Transport consultants have been forming and training community roads committees at the local level on matters of management of roads affairs, including equitable labour allocation to local people;

- The training of the local roads committees has focused on working with the contractors during project implementation;

- The committees are trained in cross-cutting issues including HIV/AIDS, gender and environmental aspects; and

- There is training on monitoring the work being done on the roads.

Due to the use of community/local roads committees in the roads sector, there has been better and more visible capacity development of rights-holders in this sector, as opposed to GJLOS, which largely remains a "project of the duty-bearers". Roads 2000 is a project with closer links to the grassroots level (rights-holders) by its very design and focus on using local resources.

Capacity development of rights-holders in both sectors has nonetheless remained concentrated at the level of implementation, and is weak in the other stages of the programme cycle.

7.5 Relationship between the principles of the rights perspective and the cross-cutting issues to be mainstreamed

A further aim of the MAINIAC approach, in addition to integrating the principles of the rights perspective, was to mainstream a number of cross-cutting issues. HIV/AIDS, environmental degradation and conflict were identified as threats to poor people's ability to have their rights realised, and were to be mainstreamed according to specific needs in the sectors. This chapter elaborates upon the implications of integrating these cross-cutting issues in relation to the principles of the rights perspective in the sectors of governance and justice and roads.

7.5.1 Implications of integrating cross-cutting issues

Except for peace and conflict resolution (which does not feature anywhere in GJLOS and roads programming), the other cross-cutting issues (HIV/AIDS and sustainable development) are more accepted aspects of governance. Given that the issues of HIV/AIDS and sustainable development are already in the agendas of established government entities, they arouse less fear, as they do not threaten to change power relations between duty-bearers and rights-holders.

Some examples of already existing initiatives within the GoK on these issues are: the National AIDS Control Council (NACC), which has become a well-known name even at the constituency level, due mainly to its outreach and funding for community level activities; and the National Environment Management Authority (NEMA), whose work on environmental conservation, especially environmental impact assessments (EIAs), and environmental audits (EAs), has become a statutory requirement since 1999. These initiatives have provided a good starting point for HRBA. Rights-holders have been able to easily identify with the issues, especially HIV/AIDS, which has been demystified by NACC.

Some of the mainstreaming activities within roads have been:

- Distributing condoms and posters warning against HIV infection and promoting safer sex in construction sites;

- Soil and water conservation on roads where drainage water is now being shared among farmers along the road on a mutual understanding basis; and

- Training of local community committees on HIV/AIDS, gender and environment issues.

Within GJLOS, the most visible effort in environmental mainstreaming occurred in April 2004, when a report of mainstreaming environment issues was prepared for the Embassy of Sweden by the Institute for Law and Environmental Governance, ILEG (M. O. Makoloo). The report discusses the MTP/MTS of GJLOS and proposes a thorough editing of the document to include key environmental issues of concern to the sector, to develop a summary of the environmental policies of GoK and its partners, and to incorporate a reference to the fact that human rights also includes a right to a clean and healthy environment. However, informants did not provide further information about whether these issues were ever incorporated into the sector.

Further, the manuals being developed by KNCHR and ITT/ANFA on cross-cutting issues such as HIV/AIDS will provide useful reference materials for developing the capacity of the respective sectors and sub-sectors to mainstream these issues.

7.6 Enabling and impeding factors

A methodological challenge in this evaluation has been to try to isolate effects of the MAINIAC approach from other factors affecting the integration of the principles of the rights perspective in programming. This section aims at identifying this reality by elaborating upon a number of factors that, either directly or indirectly, may have enabled or impeded the integration of the principles in programming.

7.6.1 Enabling factors

- Financial support from the Embassy of Sweden, which made the organisation of various trainings, workshops and meetings between GoK and stakeholders possible.

- Direct communications between the frontline staff and Sida, which helped to avoid bureaucracy and red tape. The GoK contact staff in the duty-bearer ministries have had direct links with the Embassy, making it possible to plan meetings more quickly and share experiences during MAINIAC implementation.

- A generally supportive environment for both high-level government officials and Sida staff. The situation could have been very difficult, if not impossible, if MAINIAC had been implemented in the early 1990s. Indeed, a roads programme was planned in 1997/98 but did not take off in earnest. GJLOS came into being following the single-handed initiative of the first minister at MoJCA, who had been a progressive crusader of human rights and good governance within civil society. The entry of progressive forces into the GoK in January 2003 ushered in a conducive environment for HRBA[128].

- The use of local resource institutions, such as KNCHR acting as facilitator for HRBA, and various HR CSOs raising HRBA issues in workshops and other training activities. Another important local resource for capacity development within the roads sector has been the Kisii Training Center.

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[128] GJLOS, 2006.

- Participatory approaches were already in use in roads, with the District Roads Committee and the Kenya Roads Board processes in tandem, and the GJLOS programme, with broad participation of MDAs, in formulation; hence HRBA found a fertile ground in which to germinate and grow.

- The MAINIAC approach is being rooted in national strategies and important recent reforms, including the legal sector reforms, roads reforms and the poverty eradication debates and processes.[129] These helped raise the profile of HRBA, as the approach was largely viewed as timely and relevant.[130]

- Other initiatives contributing to an enhancing process include:

    - The Millenium Development Goals Report (2005), which has created an environment calling for accelerated change in people's conditions by 2015, as a right; and

    - Various Kenya Human Development Reports (1999, 2001, 2004 and 2005). The 2001 report focuses on social and economic disparities while the 2004 report addresses participatory governance for human development.

7.6.2 Impeding factors

- Sector staff, such as engineers in roads and legal staff in GJLOS, may be so preoccupied with the technical aspects of their work that they are not fully aware of human rights and cross-cutting issues.

- A substantial part of the HRBA process has been donor–funded, and there is doubt about the extent to which the processes started can be sustained with similar zeal.

- The principles of the rights perspective are highly theoretical and yet they were disseminated using one-off training workshops and experience-sharing forums, which are hardly adequate for a comprehensive institutionalisation, given the lack of experience in human rights based approaches among the officers. It requires time and consistent investments to change people's orientation to programming, especially on such critical issues as HR.

- There is, in general, a lack of synergies between the principles of the rights perspective and related legal instruments in the two sectors. For example, while the duty-bearing officers are aware of the principles of participation and non-discrimination, it emerges that they are unfamiliar with or ignorant of the related frameworks such as the Employment Act, Occupational Health laws and the Children Act. Thus, duty-bearers do not approach the principles from a comprehensive angle, which impedes their integration into programming.

- There is a lack of the use of indicators for HRBA capacities among duty-bearers in both sectors.

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[129] The Economic Recovery Strategy for Wealth and Employment Creation (ERSWEC) launched on 11 June 2003, the Poverty Reduction Strategy Paper (PRSP, 2001), the National Development Plan (2002-2008), and the National Poverty Eradication Plan (2000-2015).
[130] Sida/KNCHR, 2005a.

- Follow-up support has not been forthcoming, for example, from KNCHR, on HRBA. The result has been use of consultants as opposed to using established HR institutions.

- Slow processes: the preparation process, including training of stakeholders, took a very long time, which slowed implementation, for example, of roads construction. The time lag between stakeholder consultations and inception of the project led to decreased "interest levels" among rights-holders. It also created frustration among rights-holders, who wanted to see progress in roads being built.

- The Ministry of Roads and Public Works has a limitation in that it is not trained to work with the community/rights-holders, hence pervasively lacking "soft skills". This has delayed HRBA integration and made it difficult to introduce follow-up measures.

- GJLOS has not been fully integrated into the government systems; hence some MDAs have yet to fully accept it as their responsibility.[131]

- Ministerial specialisations make it difficult for inter-ministerial cooperation on HRBA in a programme such as GJLOS. Indeed, the programme has mainly been seen as the affair of MoJCA.

- Because of association of GJLOS with MoJCA, some MDAs are now less active in the programme. The Thematic Group meetings are, for instance, not held as frequently as during the early phases of the programme.[132]

7.7   Conclusions and recommendations

From the findings, it is clear that the MAINIAC approach, as a reference on human rights based approaches, is not a new concept in Kenya, but is certainly a major development in HRBA programming processes. It has tried to combine with other sectoral and environmental context forces to make a difference in the programming styles and outputs of the duty-bearers, in addition to strengthening the dialogical relationship between state and non-state actors in the development process.

Although the MAINIAC process is only a few years old, it is already being embraced, albeit slowly in some sectors like GJLOS. The roads sector, in which human rights were not traditionally embraced, has showed encouraging initiative, by venturing into HRBA more aggressively. This is in contrast to GJLOS, which was ostensibly founded to deepen governance and access to justice and therefore, by implication, is rooted in rights-based principles, yet has not been able to embrace HRBA to the same extent as in the roads sector. The relatively greater success in the roads sector is partly due to the very design of Roads 2000 as a poverty reduction programme, using local participation and resources. GJLOS may have been captured by established patterns established through longer experience in the HR field; hence HRBA issues may have been taken more for granted. Further, GJLOS is yet to integrate and

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[131] GJLOS, 2006.

[132] Ibid.

institutionalise in all of the 32 participating MDAs and to be clearly defined in policy; hence the programme may not have benefited from effective GoK support.

Although HRBA has been substantially adopted, at least in the roads sector, more work needs to be done to enhance HRBA as a process. The main obstacles have been the technical approaches in some ministries, such as Roads, a lack of capacities of the duty-bearers to internalise HRBA, limited ownership of programmes such as GJLOS, donor-dependency of GJLOS, and the association of specific duties with one ministry, which limits networking.

The MAINIAC approach focused heavily on training, through episodic or one-off workshops and experience-sharing forums, without due focus on the programming process itself at all stages (assessment, design, implementation, monitoring and evaluation). There was investment in policy development aspects of each ministry, however less intervention was present at policy interpretation and implementation. There was also a lack of follow-up of HRBA-related activities such as workshops and experience sharing forums, which impedes sustainability of the approach.

General recommendations

- More work needs to be done in lobbying government to mainstream HRBA programming in national planning processes and performance reviews of specific officers. This lobbying may necessitate the need to work more closely with the Central Planning Units in the ministries and the Ministry of Planning and National Development.

- Develop a consolidated capacity development manual on HRBA, to ensure a uniformly applied approach. This manual should be based on the principles of the rights perspective with practical and illustrated guidance about how to apply the principles in the different sectors and sub-sectors.

- Ensure that HRBA is integrated in all the stages of the programme cycle: assessment, design, implementation, monitoring and evaluation.

- A monitoring and evaluation system for HRBA needs to be put in place. This was planned in the document establishing the MAINIAC approach, but it appears not to have been implemented.

- Incorporate regular follow-up of HRBA activities, such as training, with measurable indicators of capacity development. The follow-up should also involve discussions with, and mentoring of, the duty-bearers in the respective sectors, in order to deepen the understanding of the principles of the rights perspective and their specific applications at each programming stage, for example, how to conduct participatory assessments and design as well as joint monitoring and evaluation (phases that are often left to technical personnel) with stakeholders.

- Support to the capacity development of KNCHR and other resource institutions must be undertaken to facilitate their ongoing support to other players and actors in GJLOS, roads and other sectors.

- Strengthen cross-sectoral linkages between the roads sector and GJLOS, as well as the other sectors involved in the MAINIAC approach, in order to share experiences and unify work on HRBA.

- The HRBA network that has been created needs specific support in terms of internalising the principles of the rights perspective, with differentiation between the principles as goals, as opposed to programming tools, and using them to support the work of other agencies.

- A thorough theoretical synopsis of the differences between HR goals and programming tools needs to be provided to the HRBA network for it to advance its work.

- The HRBA network needs a clear plan of activities for supporting the sectors and sub-sectors without becoming just another human rights NGO.

- Increase the general understanding of the principles of the rights perspective, using practical examples, and ensure equal attention to all principles – HRBA is not synonymous with participation.

- Clarify relations between the principles of the rights perspective and the cross-cutting issues to be mainstreamed.

- Create further synergies by linking HRBA and cross-cutting issues to related national policy frameworks, for example, the Children Act, and Employment Act, in order to provide the sectors with a comprehensive approach.

- Monitor capacity development for HRBA targeting capacities in order to: a) *develop* policy, b) *interpret* policy, and c) *implement* policy.

- Include HRBA in wider civil service reform measures, for exaple, through performance contracts.

- Improve documentation of the HRBA process to learn from and institutionalise the process.

Sector-specific recommendations

Governance and Justice Sector (GJLOS):

- Focus more on how to integrate and institutionalise HRBA within *all* participating Ministries, Departments and Agencies (MDAs) – HR are not integrated just because of HR objectives exist.

- Develop strategies to enhance participation of rights-holders in planning and conceptualisation of the programme and in the course of implementing work plans in the respective MDAs.

- Accelerate efforts to develop the capacity of rights-holders to claim and protect their rights at all programming stages.

- Develop and strengthen accountability mechanisms.

- Link programming to a wider range of CSOs so as to enhance institutionalisation and sustainability.

Roads Sector:

- Enhance the participation of rights-holders in all programming phases, including assessment and design.

- Involve and give equal attention to *all* vulnerable groups in *all* programming phases.

- Support training of the Ministry of Roads and Public Works to work more closely with the community.

8 Conclusions and recommendations

The starting point in this evaluation has been the rights perspective, as a form of HRBA. The focus has been on the *process* of integrating the principles of the rights perspective in Swedish-Kenyan development cooperation within the framework of the Mainstreaming In Action (MAINIAC) approach. The evaluation team has assessed the capacities and capacity development at the Swedish Embassy in Nairobi to promote the integration of the principles of the rights perspective in programming (*objective one*). The team has also assessed how and to what extent these principles have been integrated within the targeted programmes and sectors receiving Swedish support (*objective two*). On the basis of lessons learnt from the MAINIAC approach, the *overall aim* has been to increase knowledge about how to promote and integrate the rights perspective in Swedish development cooperation and to develop recommendations for how this work may be further enhanced. This chapter draws conclusions and makes recommendations about how the MAINIAC approach may be continued in Kenya and how the integration of the rights perspective in Swedish development cooperation may be enhanced (*objective 3*).

8.1 The MAINIAC approach – Lessons learnt and recommendations about how the approach may be continued

This section summarises the specific conclusions (in Chapters 4-7) related to objectives one and two of this evaluation. Thereafter, and based on these conclusions, recommendations are given as to how the MAINIAC approach may be continued.

8.1.1 Conclusions

The MAINIAC document is vague, most likely due to its pioneering nature. The ambition was to focus on what to do, that is, to develop a methodology for how to promote and integrate the rights perspective in programming. Thus, the MAINIAC document provides little guidance about perception of the issues to be prioritised under the approach (the rights perspective, sustainable development, peace, and prevention and the consequences of HIV/AIDS) and the relationship between them. Neither does the document provide guidance about the principles of the rights perspective, or elaborate the meaning of training and capacity. In addition, the process of implementing the approach has been sparsely documented, which has limited exchange of experiences and learning from the process.

However, it is clear that internally, within the Swedish Embassy, much has been achieved. Capacities for promoting the integration of the principles of the rights perspective have been enhanced. Programme officers (POs) are now more consciously and explicitly promoting the integration of these principles within the sectors and programmes supported by Sweden. The Embassy has a committed leadership, which has created conditions and practices conducive to capacity development on the rights perspective and its principles, through initiatives such as

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training, structures for follow-up and internal feedback. Resources have been made available for the approach, in terms of personnel, time and finances. Links to Kenyan resource institutions have been created, to enhance and sustain capacity at the organisational level. The Kenyan context has been reasonably enabling, with government prioritisation of human rights issues.[133] These factors have contributed to achievements in terms of capacity development for promoting the principles of the rights perspective and its institutionalisation at the Embassy.

However, challenges remain for capacity development at the Embassy to be further institutionalised and sustained over time. One of these challenges is to pursue training on a more regular basis, and to provide for continuous follow-up of this training. The training under MAINIAC was most frequent at the start of the approach (in 2003), after which it has become much less regular. Another challenge is to further develop the links to Kenyan resource institutions, and to establish long-term relationships between these organisations and the Embassy. These linkages are still weak. An additional challenge is to further clarify what the rights perspective entails, and to clarify the relationship between the principles of the rights perspective and the cross-cutting issues (environment, HIV/AIDS and peace) also encompassed by the MAINIAC approach. The evaluation team found that, among Embassy staff, perceptions vary about the relationship between the rights perspective and the cross-cutting issues. It will also be a challenge to ensure a more equal focus on all of the principles of the rights perspective (as interrelated and mutually reinforcing), throughout all programming phases. The main focus has been placed on the planning and design phases, and, of the four principles, participation and non-discrimination appear to have received most attention (and hence, have achieved most visible results).

The capacities and capacity development at the Embassy are summarised as follows:
- Generally, knowledge and awareness of the rights perspective, and the ability to integrate the principles of the rights perspective in programming, have increased.

- There is variance in perceptions of the MAINIAC approach and the relationship between the rights perspective and the cross-cutting issues to be promoted under the approach.

- Of the four principles of the rights perspective, participation and non-discrimination appear to have received the most attention. There might be legitimate explanations for this; for example a strategy of using a less controversial principle of the rights perspective (such as participation and/or non-discrimination) as an "entry point" for further and more structural work, for example on accountability. However, the principles are interrelated and mutually reinforcing, and there lacks an explicit strategy for ensuring an equal focus on *all* of the principles of the rights perspective in the medium- to long-term perspective.

- The main focus has been on the planning and design phases. Again, this might be explainable, since: a) the approach is still in its early phases, and b) one

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[133] However, as mentioned above, the opportunities for pursuing HRBA in Kenya have been severely compromised by the political crisis and associated violence following the December 2007 elections.

essential task for Programme Officers (POs) is to assess the planning and design phase of a programme. However, POs are also responsible for the monitoring and follow-up of programmes, and there lacks an explicit strategy for promoting the integration of the principles of the rights perspective throughout all programming phases.

- Leadership has been strong and committed, emphasising the priority given to work with the principles of the rights perspective. This has been an important factor leading to commitment and a high level of knowledge and awareness among POs. Resources have also been made available, in terms of personnel, time and finances. The leadership has however been less successful in clarifying the relationship between the rights perspective and the cross-cutting issues.

- Institutionalisation has increased through training and regular internal feedback on programming work. Work procedures and routines for integrating the principles of the rights perspective in assessments and dialogue have been at least partially developed. However, there is a lack of ongoing training opportunities for POs. These training sessions were most frequent at the commencement of MAINIAC.

- There is little evidence of documentation routines for the MAINIAC process. This impedes institutionalisation, exchange of experience and learning in general and, in particular, learning about how the MAINIAC approach could be improved.

- Links to Kenyan resource institutions have been created but are still weak. The resource organisations have played important roles in commenting on programme documents and in creating awareness, particularly in relation to the initial phases of programming. However, the linkages have not been entrenched over time (institutionalised) and collaboration has been ad-hoc.

- The organisational framework of Sida has been an enabling factor, manifested in the support and feedback provided to the Embassy.

- The Kenyan political context of recent years, with a government emphasising the priority given to HR, has constituted an important enabling factor for the Embassy in promoting the integration of the rights perspective in sectors and programmes.[134]

Integrating the rights perspective in programming requires recognition of the contexts in which the programmes are implemented. The sectors and programmes targeted under the MAINIAC approach operate within different institutional frameworks, implying, for example, different administrative structures, varying stages of reform processes, and differences in capacity and/or leadership (and motivation to work with the rights perspective). Thus, the extent to which the principles of the rights perspective have been integrated varies from one context to another.

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[134] However, as mentioned above, the possibilities for pursuing HRBA in Kenya have been compromised with the political crisis and associated violence following the December 2007 elections.

Nonetheless, efforts to integrate the rights perspective have had a positive impact on programming in all sectors.[135]

The principles of participation and non-discrimination have been integrated as essential criteria for programming in most sectors. Participatory methodologies were applied in many programmes before the introduction of MAINIAC, which has facilitated further integration of the principle. A number of mechanisms and tools have also been developed to ensure the proper integration of participation and non-discrimination, one example being the Community Project Cycle in the water sector. By means of these tools, poor and vulnerable groups are increasingly targeted and consulted. However, there remains a tendency to conflate non-discrimination with gender, which risks excluding other vulnerable groups. A challenge also consists in ensuring the participation of communities in all programming phases (planning, design, implementation, monitoring and evaluation). The integration of the principles of transparency and accountability is hampered in many sectors by the legacy of institutionalised barriers, such as a highly centralised state system. However, the integration of the principle of accountability has been enhanced by the observed increasing awareness among Kenyan citizens of their rights, and their willingness to claim these rights. In some sectors tools have been developed to enable the integration of this principle, for example through complaint mechanisms. Nevertheless, many challenges remain, including the effective utilisation of these existing complaint mechanisms.[136]

The general awareness of HRBA, and the capacity of staff capacity to integrate them, appear to have increased in most sectors. This is largely due to the development of guidelines, procedures and training on HRBA and cross-cutting issues. However, there is still a great need for further capacity development among duty-bearers. Moreover, there appears to be variance in perceptions about what HRBA entails and how it relates to cross-cutting issues such as gender equality, HIV/AIDS and sustainable development. Kenyan resource institutions also emphasise different issues and do not always have similar perceptions of HRBA. As these organisations have been instrumental in providing HRBA training, this has probably strengthened the tendency for variance in perceptions about HRBA among Kenyan duty-bearers. Further, in all sectors, the training provided by resource institutions has been ad hoc, with a lack of follow-up and customisation to sector-specific needs. This severely obstructs capacity development and the sustainability of the integration of HRBA in sector programmes.

Nevertheless, links have been formed between programmes (and duty-bearers) and resource institutions. KNCHR has played an instrumental role in providing training on HRBA. Further, the participation of civil society organisations (CSOs) in workshops and other capacity development activities has promoted human rights issues in programmes and facilitated the integration of HRBA in general. However, despite their crucial importance, these linkages are relatively weak in all sectors and

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[135] This is also highlighted in the Embassy's Mid-Term Review, 2004-2006, of the Swedish Country Strategy 2004-2008 for Development Cooperation with Kenya, which states: "The MAINIAC programme is making a great difference in programme implementation and partners are now aware of a Human Rights Based Approach to development." (Emb/Nairobi, 2006c).
[136] At the national level, general elections constitute a key complaints mechanism. However, the credibility of this mechanism has suffered in the recent political crisis: see footnote 5.

collaboration is sporadic. This is another major challenge to achieving sustainability of the approach.

The following summarises the specific conclusions about the integration of the principles of the rights perspective and the overall programming changes in each respective sector:[137]

Agriculture sector:

- The integration of HRBA has been intensified at all programming phases.

- Through policy change in 2005, extension services are based on bottom-up decision-making that is empowering extension staff and enhancing the principles of participation and accountability.

- Mechanisms have been developed to ensure participation at the district level (also during the implementation phase), with a focus on groups who are poor.

- The number of common interest groups (CIGs) has increased, and there are more detailed procedures for consulting these groups.

- Openness and accountability are enhanced by information sharing through community meetings, local media and improved reach of stakeholder forums.

- The institutional memory of, and learning from, the work with the principles of the rights perspective is enhanced by documentation of all programming phases.

- Collaboration with human rights organisations and CIGs is enhancing the integration of the principles of the rights perspective and cross-cutting issues, such as the rights of women and children, the environment and combating the spread of HIV/AIDS.

- Monitoring mechanisms are in place for the various cross-cutting issues. This assists in clarifying the relationship between these issues and the principles of the rights perspective.

Health sector:

- After 2004, activities promoting the principles of the rights perspective have reached national scope, and the human rights based approach is integrated into sector policies.

- Programming is increasingly pro-poor and increasingly emphasises non-discrimination and participation.

- Bottom-up planning is enabling district staff to take decisions and to respond to local claims.

- Information-sharing is enhanced through community meetings and local media and stakeholder forums with improved reach. This is enhancing the openness and accountability principles.

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[137] For detailed discussion, see Chapters 5-7.

- Staff accountability is enhanced through annual performance contracting, based on targets.

- Cross-cutting issues, such as the rights of women, the rights of the child and HIV/AIDS, are targeted by staff performance contracts.

Water sector:
- Established planning tools, such as the Community Project Cycle (CPC), are enhancing participation and transparency.

- Members of marginalised groups are increasingly consulted in planning and design of programmes.

- Increasing participation and advances in non-discrimination are enhancing the utilisation of complaint mechanisms, thereby strengthening the accountability principle.

- Links to HR institutions exist, but are weak.

- *Cross-cutting issues:* skills have been developed for integrating conflict resolution, and peace is enhanced through participation and non-discrimination. Gender is well integrated. Discrimination against HIV infected and affected, and the disabled, is actively discouraged. There is increased recognition of the need to tackle the issue of physical access in the design of facilities with respect to children and people with disabilities.

Urban development sector:
- Participation has been integrated, which enhances bottom-up decision-making (for example, through Settlement Executive Committees, SECs).

- Members of marginalised groups are increasingly consulted in the planning and design of programmes.

- The principles of participation and non-discrimination are mutually reinforcing.

- *Cross-cutting issues:* skills have been developed for integrating environment and conflict resolution. Gender is well integrated but confused with mainstreaming HRBA.

However…
- There is a general lack of awareness of HRBA.

- The principles of transparency and accountability are poorly integrated (for example, poor use of complaint mechanisms).

- The sector remains centralised, which undermines bottom-up decision-making.

- Links to HR institutions are weak.

Governance and Justice Sector (GJLOS):
- There is more focus on integrating D/HR as goals than on HRBA.

- Links to civil society organisations (CSOs) and the KNCHR have been improved (for example, through the HRBA network).

- Participation has increased through multi-stakeholder consultation, thematic groups and review meetings.

- There is increasing openness in duty-bearers' priority-setting and conduct (such as the police).

However…
- The key players are duty-bearers at high levels (entrenched centralisation).

- The degree of participation of non-state actors is weak: participation is limited mainly to Nairobi-based CSOs.

- Hence, there is a risk of weakening ownership and of impeding HRBA.

- It is unclear how cross-cutting issues are integrated in programming.

Roads Sector:
- HRBA is increasingly decentralised (for example, through monitoring), but there is a lack of documentation of the process.

- Participation and poverty reduction are emphasised, for example, through the use of local resources and labour, and priority-setting through district committees.

- Accountability is enhanced through decentralisation of responsibilities to district committees and engineers.

- CSO participation has improved, following increased HRBA training.

- Training of rights-holders (for example, on monitoring) is being conducted.

- *Cross-cutting issues*: gender, HIV/AIDS and the environment are being mainstreamed. Efforts are being made to involve women, children, people with HIV/AIDS, CBOs, and others in developing "wish lists". However, gender is frequently conflated with non-discrimination.

8.1.2 Recommendations about how the MAINIAC approach may be continued

Based on the conclusions above, this section makes recommendations about how the MAINIAC approach may be continued. The approach has encompassed and involved a number of actors, such as the Embassy of Sweden as initiator and promoter, the Swedish partners/duty-bearers in the GoK as implementers within the targeted programmes, and the Kenya National Commission for Human Rights (KNCHR) as a key resource institution in terms of sustaining capacity development for HRBA. The recommendations below are divided into *overall recommendations* for the approach (and hence, how the Embassy, their partners in GoK and/or the KNCHR may continue their efforts), and *context-specific recommendations* for the sectors and programmes targeted under the approach.

General recommendations for how the MAINIAC approach may be continued

- Document the approach, what to do (programme theory) and how to do it (method), and improve documentation procedures throughout the process. A strong commitment to documenting the future endeavour will increase the opportunities for learning and exchange of experiences, both internally and externally, and contribute to developing an institutional memory;

- Clarify the goals and means of integrating the rights perspective. Clarify the differences (and relationship) between the rights perspective and the cross-cutting issues encompassed by the approach. Make more explicit that the main focus of the approach is on integrating the principles of the rights perspective in programming;

- Explicitly acknowledge the mutually-reinforcing nature of the principles of the rights perspective, and develop a strategy to better ensure the promotion and integration of *all* of the principles throughout *all* programming phases;

- Further define and elaborate the concepts of capacity (what *kinds* of capacities are required to promote the rights perspective) and capacity development (*how* should the desired capacities be enhanced). This would contribute to a common understanding amongst actors under the approach. However, the actual needs, both the kinds of capacities and how these are best developed, will vary depending on the situation, context and target group;

- At the Embassy: continue the institutionalisation of capacity development on the rights perspective through regular training and internal work procedures; that is, expand upon established practices and routines. The training should focus on clarifying the difference between HRBA, the rights perspective and the cross-cutting issues, and on clarifying the operationalisation and practical use of the principles of the rights perspective in programming;

- Develop indicators to allow for monitoring and evaluation of the approach. By further elaborating how activities are to lead to sub-objectives and overall objectives, the most relevant mechanisms can be identified, as well as indicators to measure the process. As an example, one indicator of capacity development at the Embassy could be that the integration of the principles of the rights perspective, and their obstacles, are explicitly discussed in Embassy assessment memos;

- Further strengthen the capacity development for HRBA among duty-bearers within and between sectors and programmes (at all levels) by increasing support for training (and training on a more regular basis). This training could consist of general training on HRBA, the practical use of the principles of the rights perspective, and customised training clarifying HRBA and the rights perspective, and linking them to relevant sector-specific cross-cutting issues. The linkages between HRBA, the rights perspective and national policies and reforms could also be made more explicit. The Kenyan resource institutions, with the KNCHR playing a key role, are important actors in providing this training;

- At the Embassy, and as a form of sustaining capacity development, establish long-term linkages between Kenyan resource organisations and the Embassy, and support the linkages between these organisations and the partners within GoK implementing the programmes in all the targeted sectors;

- The Embassy should further promote a strengthened collaboration *between* the Kenyan resource organisations (for example, through the HRBA network and/or by using the recently produced KNCHR concept paper on HRBA), with the ambition for these actors to develop a common understanding of HRBA. Support further capacity development at KNCHR, as this organisation is identified as a key resource institution;

- Promote and support the enhancement of capacities among rights-holders. Both the duty-bearers within GoK and the rights-holders encompassed by the programmes need capacities in order for the rights perspective to be integrated in programming.

Specific recommendations for how the integration of the principles of the rights perspective may be enhanced in each sector

Agriculture sector:

- Strengthen local ownership in order to enhance lower level decision-making.

- Further integrate HRBA through alignment with the national decentralisation process.

- Give equal weight to all four principles; ensure that transparency and accountability mechanisms are developed and used.

- Promote institutionalisation by conducting regular and more extensive HRBA training.

- Integrate the principles of the rights perspective further, for example, by translating into local languages and disseminating information to enhance awareness among rights claimants.

Health sector:

- Focus more on transparency issues; the lack of openness is impeding participation and accountability.

- Develop monitoring and evaluation (M&E) systems focusing on the HRBA process.

- Integrate the principles of the rights perspective further, for example, by translating into local languages and disseminating information to enhance awareness among rights claimants.

Water Sector:

- Customise training to the sector-specific context and by relating HRBA to cross-cutting issues.

- Develop tools for integrating the principles of the rights perspective and cross-cutting issues.

- Develop capacity among HR institutions and organisations.

- Strengthen interaction between the GoK and HR institutions through structured exchanges.

- Institute mechanisms for community participation in *implementation.*

- Strenghten accountability, for example, by developing formal complaint mechanisms.

Urban Development Sector:
- Conduct more HRBA training at all levels to enhance awareness.

- Customise HRBA training both on HRBA and cross-cutting issues.

- Develop tools for integrating the principles of the rights perspective and cross-cutting issues.

- Develop capacity among HR institutions and organisations.

- Strengthen interaction between the GoK and HR institutions through structured exchanges.

- Link training on HRBA and cross-cutting issues, involving CSOs.

- Institute mechanisms for community participation in *implementation.*

- Strengthen accountability, for example, by developing formal complaint mechanisms.

- Introduce inter- and intra-sectoral reforms to facilitate HRBA, for example, decentralisation.

Governance and Justice Sector (GJLOS):
- Focus more on how to integrate and institutionalise HRBA within *all* participating ministries, departments and agencies (MDAs); HR are not integrated *per se* because of HR objectives.

- Develop strategies to enhance participation of rights-holders in the planning and conceptualisation of the programme, as well as in the course of implementing work plans in the respective MDAs.

- Accelerate efforts to develop the capacity of rights-holders to claim and protect their rights at all programming stages.

- Develop and strengthen accountability mechanisms.

- Link programming to a wider range of CSOs in order to enhance institutionalisation and sustainability.

Roads Sector:

- Enhance participation of rights-holders in all programming phases, including assessment and design.

- Involve and give equal attention to *all* vulnerable groups in *all* programming phases.

- Support training of the Ministry of Roads and Public Works to work more closely with the community.

When the MAINIAC approach was initiated, bilateral characteristics of development cooperation resulted in a specific context within which the Embassy could promote the integration of the rights perspective. Continuing the approach in a changing context of donor harmonisation and coordination will be an ongoing challenge. A joint strategy could enhance the promotion of the rights perspective (as a form of HRBA) among donors and within various programmes and sectors. However, various donors have their own perceptions about what to include in, and on how to work with, HRBA. This presents a risk of agreement only on "lowest common denominators". It will be essential for Sweden to work together with other like-minded donors in order to ameliorate this risk.

8.2 Recommendations about how the integration of the rights perspective in Swedish development cooperation may be enhanced

The adoption of the Swedish Policy on Global Development (PGD) in 2003 placed an increased emphasis on the importance of integrating the rights perspective into all development activities, and on ensuring that this perspective guides both the goals and the process of Swedish development cooperation. To achieve this, the rights perspective needs to be well integrated into development agencies' operational practices, and development partners need to be both aware of the perspective, and motivated to work with its integration. Great efforts, not least by Sida, have been expended in further elaborating how to integrate the rights perspective in development cooperation. For example, Sida has developed recommendations that emphasise the need to form an understanding of the rights perspective within the organisation, and stress that the perspectives should guide planning and assessment (Sida, 2006). The recommendations below take these efforts into account, and further elaborate on issues that are necessary to enhance the integration of the rights perspective in Swedish development cooperation. The recommendations are directed to the Swedish Ministry of Foreign Affairs (MoFA), Sida and other Swedish actors involved in development cooperation.

- Elaborate further on the relationship between the rights perspective and a HRBA (that is, that the Swedish rights perspective is broader than most other HRBA, in that it includes not only human rights but also democracy, gender equality and a specific emphasis on the rights of the child).

- Clarify the differences between the rights perspective and cross-cutting issues. Cross-cutting issues are often identified and prioritised because they are conceived as threats to development and poverty reduction (such as

HIV/AIDS, environmental sustainability and the non-fulfilment of democracy and human rights). The rights perspective, on the other hand, finds its point of departure in a number of standards (desirable outcomes) from which, through its principles, vital criteria for a *process* leading to sustainable results could be developed.

• Develop a policy that clarifies the goals of the rights perspective, elaborates on the two bullet points above, and emphasises the importance of the rights perspective being integrated in all development activities. Such a policy would stress the importance of integrating the rights perspective in accordance with the PGD. This policy should also further define the principles of the rights perspective, and stress their interrelationships and mutually-reinforcing character.

• There is a need to provide more support to policy implementation. Develop an action plan for how to work with the rights perspective, and develop internal rules to provide for this work to form part of the institutional structure. Various guidelines and strategies, such as guidelines for cooperation strategies and operational planning, could more explicitly identify how to work with the integration of the rights perspective.

• Capacity and capacity development on the rights perspective is vital for promoting the integration of the perspective in development cooperation. Further elaborate on the concept of capacity (what *kinds* of capacities are required to promote and integrate the rights perspective) and capacity development (*how* should the desired capacities be enhanced) for working with the integration of the rights perspective. Analyse existing and possible capacity gaps, and viable ways to support capacity development; direct support accordingly.

• Allocate resources to promote the integration of the rights perspective (such as personnel, time to devote to the issue, and economic resources for capacity development). Leadership becomes essential. A committed leadership is vital to imbuing institutions with a mandate to work and devote time to promote the rights perspective. A committed leadership has the ability to institutionalise capacities through, for example, establishing regular routines and work procedures, and through providing opportunities for capacity development among staff.

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Name of Respondent	Title and Institution Affiliated with	Place of Interview	*Date and Time of Interview*
Japheth Kiara	Programme Officer-Agriculture & Rural Development	Embassy of Sweden Nairobi	*23 February 10.30-11.40 am*
Arne Erikson	Advisor-NALEP	Hill Plaza Building Nairobi	*26 February 2.15-2.30 pm*
Rosemary Magambo	Head Gender & Social Economic Section, NALEP	Hill Plaza Building Nairobi	*27 February 3.00-6.30 pm*
Isaac J.W. Mulagoli	Programme Coordinator NALEP	Hill Plaza Building Nairobi	*28 February 7.30-11.30 am*
Dr. Samuel Otieno	Programme Officer Health Sector reform Secretariat Ministry of Livestock Production and Fisheries Development	Kilimo House Nairobi	*28 February 12.54-2-30pm*
Walter Mwangovya	Head Gender Unit Department of Livestock Production	Hill Plaza Building Nairobi	*28 February 2.56-3.47pm*
Judy Gachora--Small Ruminants Officer Mwaniki Muiruri-District Livestock Marketing Officer Regina Thamaini-District Gender and Home Management Officer Esther Wakala-District M&E Officer	NALEP Thika District Coordinating Team	Ministry of Livestock and Fisheries Development Thika Thika District	*6 March 10.10am-12.15 pm*

Name of Respondent	Title and Institution Affiliated with	Place of Interview	*Date and Time of Interview*
Patrick Kinyanjui-Division Livestock Officer Elizabeth Kariuki-Agri-business Development Officer Peris Mbuguar- Thika Division Gender and Home Management Officer Beatrice Mbugua-Environmental and Land Development Officer Alex Njau-Frontline Extension Officer Rosemary Macharia-Crops Development Officer Lilian Mbau-Horticultural Crops Development Officer Patrick Muthima-Collaborator/ Stakeholder	NALEP Ruiru Division (in Thika District) Implementing Team	District Officer's Compound Ruiru Division Thika District	*6 March 2.00am-4.30 pm*
Julius Inyingi-	Thika District Public Health Officer	Thika District Hospital-Thika District	*7 March 9.30am-1.00pm*
Dr. Joseph Muregi	Member of Thika District Hospital Management Board	His Private Clinic Thika District	*7 March 1.00-2.15pm*
Julius S. Macharia	Chairman of Getumbwa Health Center in Kakuzi Division in Thika District	Getumbwa Health Center in Kakuzi Division in Thika District	*7 March 2.30-3.30am*
Stephen King'ara-Chairman of Ruiru Health Clinic Committee Charles Nderitu-Public Health Officer	Members of Ruiru Health Center Committee in Ruiru Division in Thika District	Ruiru Health Center in Ruiru Division in Thika District	*7 March 3.30-4.30am*

Name of Respondent	Title and Institution Affiliated with	Place of Interview	*Date and Time of Interview*
Hudson Nyamwange-District Agricultural Officer & NALEP Coordinator Morris Wambia – District Dairy Officer-Department of Livestock John Katimbwa-Training, Extension and Research Francis Gikonya-M&E Officer Virginia Gitau-Gender and Home Management Officer Soita Lumala-Environment and Land Development Officer	NALEP Siaya District Coordinating Team	District Agricultural Officer's Office SiayaDistrict	*14 March 10.00am-1.00pm*
Dr. Elizabeth Okoth-	District Medical Officer of Health	Siaya District Hospital	*14 March 1.35-3.00pm*
Johnstone Imbira-Provincial Agricultural Office Florence Odero-Provincial Livestock Production Officer	Provincial NALEP Coordinators	Provincial Livestock Office/ Provincial Administration Block Kisumu	*14 March 3.15-5.00pm*
Isaac Onyango-Provincial Health Information Officer Omondi Obiero-Provincial Laboratory technologist Judy Onyoni-Data Clerk Monica Owuor-Nursing Officer under Provincial Medical Officer Nora Bett-Registered Nurse under Provincial Medical Officer Karen Owuor- Registered Nurse under Provincial Medical Officer	Medical Team under the Provincial Medical Officer	Office of the Provincial Medical Officer-(PMO) in Kisumu-Nyanza Province	*14 March 5.15-6.30pm*

Name of Respondent	Title and Institution Affiliated with	Place of Interview	Date and Time of Interview
Rose Ayugi	Health Records Information Officer	Ministry of Health Afya House Nairobi	*1 March 9.30am-12.30pm*
Dr. Samuel Were	Programme Officer Health Sector Reform Secretariat-MOH	Ministry of Health Afya House Nairobi	*1 March 2.30-5.30pm*
Abebe Alebachew	Advisor Health Sector Reform Secretariat –MOH	ETC-Crystal East Africa Consulting Firm in Africa Conference of Churches Building Nairobi	*16 March 9.30-11-30am*
Ivy Macharia	*Legal Counsel-Kenya National Commission for Human Rights (KNCHR)*	*CVS Plaza- Office of KNCHR*	*20 March 9.30am-12.30pm*

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- Engineer Jacqueline Musyoki, Acting Chief Executive Officer, Water Services Regulatory Board (WSRB), 6 March, 2007.

- Mr. John Cheruiyot, Inspectorate Manager (WSRB), 6 March, 2007.

- Mr. Patrick Oloo, Chief Executive Officer, Water Resources Management Authority (WRMA), 15 March, 2007.

- Mr. Peter Jorgensen, Sector Adviser, Kenya Water and Sanitation Programme (KWSP), 7 March, 2007.

- Engineer Robinson Gaita, Chief Executive Officer, Rift Valley Water Services Board (RVWSB), 13 March, 2007.

- Mr. John Ondari, Long Term Technical Adviser (RVWSB), 13 March, 2007.

- Mr. John Ingutia, Gender and HIV/AIDS Coordinator (RVWSB), 13 March, 2007.

- Mr. Jeremy Notley, Integrated Water Resource Management (IWRM) Adviser and KWSP TA Team Leader, 2 April, 2007.

Ministry of Lands:
- Mr. Reuben Murugu, Coordinator National Land Policy Formulation Program, 8 March, 2007.

- Mr. P. Kahuho, Land Information Management Systems (LIMS), 8 March, 2007.

- Ms. Theresia Munyua, Assistant Director, Physical Planning, Ministry of Lands, Program Coordinator Land Information for Informal Settlements (LIIS), 14 March, 2007.

- Ms. Miriam Kebuka, Senior Physical Planner, Ministry of Lands, 14 March, 2007.

- Ms. Lucy Ndiho, Senior Settlement Officer and Mainstreaming Coordinator, LRSP and Gender Desk Officer Ministry of Lands, 30 March, 2007.

- Mr. Ibrahim Mwathane, Consultant, LIMS and LRSP, 2 and 4 April, 2007.

Ministry of Housing:
- Ms. Marion Rono, Acting Chief Housing Officer, Ministry of Housing, 12 April, 2007.

- Mr. Joseph Senteu, Consultant, Capacity Building, 12 April, 2007.

The Kenya National Commission on Human Rights (KNCHR):
- Ms. Wambui Kimathi, Commissioner KNCHR, 7 April, 2007.

Sida:

- Ms. Ulrika Åkesson, Senior Programme Officer, Water and Environment, 21 February, 2007.

- Mr. John Ndiritu, 22 February, 2007.

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- Camilla Redner – Sida D/HR Officer.

- Eng. Gitau – Roads 2000 project.

- Eng. Kiragu – District Roads Engineer, Kisii.

- Eng. Takoe – DRE Gucha.

- Eng. Gikombe – DRO Kuria.

- Alice Nderitu – KNCHR.

- Jeoffrey Maganya – CRADLE.

- Jacques Castells – GJLOS.

- Dennis Kibara – GJLOS.

- Dave Jennings – ITT Project Manager.

- Dr. Racheal Flanary – Consultant ITT.

- Jane Ndirangu – Improvements Engineer, Roads 2000.

Appendix I

Assessment Plan: Evaluating the Impacts of the Project "Mainstreaming in Action (MAINIAC) on Programming in Swedish Supported Programmes in Kenya

Swedish-Kenyan development cooperation is based on a multidimensional view of poverty that encompasses not only material needs, but also human rights. The approach is in line with the UN rights based approach (RBA) which stresses that development cooperation should be guided by human rights conventions. Swedish development policy is somewhat broader however, since it includes also democracy as a key value in a RBA. Democracy and human rights (D/MR) are regarded as important starting points for tackling poverty. According to Swedish development policy, the lack, or the weakness, of the D/HR principles of non-discrimination, participation, openness and transparency, and responsibility and accountability are root causes of poverty. Hence, these principles help reveal causes, and not only symptoms, of poverty. Swedish support to Kenya is based on an understanding of a weak integration of these principles in the operation of the Kenyan government (MFA, 2003).

In 2003, the Mainstreaming in Action (MAINIAC) project was started at the Swedish Embassy in Nairobi to ensure that the programmes with agreements from 2004 promote a multi-dimensional poverty reduction, in terms of poor people's development, D/HR including women's and children's rights, sustainable development, peace as well as prevention of HIV/Aids and of the consequences of HIV/Aids. The MAINIAC project targets the areas of agriculture, health, legal sector reform, water, roads and urban development (Emb/Nairobi, 2003:2). The key aim of MAINIAC is to assure that Swedish-supported programmes promote the mainstreaming of rights and "the rights principles", which guide the way in which Sida works with a RBA, namely *non-discrimination, participation, openness and transparency,* and *responsibility and accountability.* These principles form the basis of the concept of 'democratic governance', which "seeks to promote the power and influence of poor people in society through a democratic political process" (Sida, 2003:8). The strengthening of these principles is hence a means for tackling the root causes of poverty. In practical terms, these principles should be promoted and respected throughout all stages of programming, including situation analysis, planning and programme design, implementation, follow-up and evaluation. The integration of the

rights principles into the whole programming cycle is a vital prerequisite for further promotion and integration of HR.

During 2007, a SADEV project team will together with Kenyan evaluators analyse *if, how, and to what extent the rights principles have been and are integrated into all programming phases of Sida-supported development programmes with agreements from 2004 in Kenya.* Apart from comparing different programme areas, the evaluation will moreover compare programming before and after 2004 in an effort to draw conclusions about the effects of the MAINIAC project. The impacts of MAINIAC with regard to overall development goals will however not be targeted. Instead, the evaluation focuses on the impacts of MAINIAC on the programming level and the very *process* of programming. The process by which rights are realised is just as important as the outcome in a human rights based approach. Such an approach places great emphasis on duties and obligations, and thus focuses on both *accountability* and *process*. A RBA *demands* a high quality process which *must* adhere to human rights principles (process criteria) (Jonsson, 2003:7; Jonsson, 2006:10). There are also a number of other reasons for focusing this evaluation on the process itself. Firstly, we need to know how rights may be integrated into programmes at the programming level, in order to single out the tools that enable RBA to take root. This is also an important prerequisite for further, and broader, impact assessments to be carried out at a later stage. Secondly, the integration of a rights perspective is a long-term process and it might be too early to assess the impact of MAINIAC on overall development goals. Further, it is important to assess how *mechanisms* for the integration of rights (an important aspect of a human rights process) are/have been developed in the case of MAINIAC to learn how these efforts could be enhanced to become more effective. This knowledge will be useful to provide recommendations for how to implement the rights perspective, which is a cornerstone of Swedish development cooperation policy, in order to tackle the root causes of poverty.

We will be able to draw some more general conclusions on which to base practical guidelines and policy recommendations due to the comparative approach of the evaluation, comparing varied programmes in different sectors over time. The evaluation serves three key objectives:

1 Document how a RBA (referred to as "the rights perspective" in Swedish development cooperation policy) may be integrated in different programmes and sectors (there is still very little documentation on this) in order to identify factors that enhance, respectively impede, this approach and thereby provide practical guidelines and policy recommendations for the implementation of this approach;

2 Assess the effects of MAINIAC on all programming phases of programmes supported by Sweden in Kenya since 2004 to provide the Swedish Embassy in Nairobi with practical recommendations for how to integrate this approach further;

3 Advice more specifically on how MAINIAC in Kenya can be continued in order to enhance the integration of the rights principles in programming, as well as enhance the sustainability and Kenyan ownership of this process.

This assessment plan explains the approach, and the principles, to be analysed and guides the practical carrying out of the evaluation. The first section of the plan reviews international and Swedish efforts to mainstream human rights and discusses implications of RBAs for development policy and programming. The second part gives a brief introduction to the RBA in Swedish support to Kenya and provides practical guidelines for the carrying out of the evaluation. The third and concluding section explains how the empirical evaluation of MAINIAC will be carried out, including the division of responsibility between SADEV and the Kenyan evaluators.

1. BACKGROUND: MAINSTREAMING RIGHTS AND EVALUATING THE INTEGRATION OF "A RIGHTS PERSPECTIVE" IN PROGRAMMING

1.1 International mainstreaming initiatives: Background and normative foundation

Initial international mainstreaming efforts reflected a number of initiatives to strengthen D/HR through development cooperation. In 1986 the UN General Assembly adopted the Declaration on the Right to Development, which recognised development as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized" (UN, 1989). It also described the human person as the central subject of development and as an *active participant* and beneficiary of the right to development (UN, 1989).

Increased attention to the rights of the child was an effect of the adoption by the UN General Assembly of the Convention on the Rights of the Child (CRC) in 1989 (Gov. of Sweden, 2002: 2). A few years later, at the 1993 Vienna World Conference on HR it was emphasised that development and D/HR are interdependent and mutually reinforcing. There was a call for increased efforts to integrate rights into various sectors (OECD, 2006: 26). At the 1995 UN Conference in Beijing governments committed themselves to work for gender equality and women empowerment. Mainstreaming was recognised as an important tool (Moser and Moser, 2005: 11). Shortly thereafter, in reform proposals in 1997 and 2002 the UN Secretary-General argued that HR are cross-cutting issues to be mainstreamed in all UN activities (UNDP, 2003a).

Following the first UN reform proposal, the United Nations Development Programme (UNDP) adopted a policy on human rights: *Integrating Human Rights with Sustainable Human Development (1998)*, which suggested strategies for mainstreaming UNDP support for human rights, and means for implementing these strategies. One of these means was the joint UNDP/OHCHR (UN Office for the High Commissioner for Human Rights) Human Rights Strengthening programme (HURIST), which was launched in 1999 with the aim of identifying best practices and learning opportunities in the application of a HR approach to development programming (UNDP/OHCHR, 1999). The *UNDP Human Development Report 2000*, devoted entirely to human rights, was also a breakthrough in the discussion of the mainstreaming of rights. It recognised that human rights and human development share a common vision and a common purpose – to secure the freedom, wellbeing

and dignity of all people everywhere. The two principles reinforce one another, expanding people's capabilities and protecting their rights and fundamental freedoms. It further stressed that the rights perspective can add potential value to the development agenda, drawing attention to issues of accountability, non-discrimination, social justice, the need for information (transparency) and political voice for all people (participation) etc. It brings legal tools and institutions as means to secure freedoms and human development. It also helps shifting the priority to the most deprived and excluded. Human development, in turn, contributes to building a long-term strategy for the realisation of rights (sustainability) and directs attention to the socio-economic context in which rights can be realised (UNDP, 2000:1-2).

The year 2000 also saw the adoption of the Millennium Declaration and the subsequent identification of a set of Millennium Development Goals (MDGs). It was followed by a UN Secretary-General report entitled "Road Map Towards the Implementation of the United Nations Millennium Declaration", outlining strategies for action to meet the goals of the Millennium Declaration. This document emphasised that human rights are a vital principle of UN Reform and central to all activities of the system. However, with the focus being on the MDGs and not the Millennium Declaration, this issue was somewhat thrown into the shade (Jonsson, 2006:3).

The launch of the UN Reform in 1997 had nevertheless triggered a debate in most UN agencies about the 'operationalisation' of a human rights based approach to development and the practical implications of adopting such an approach. An informal UN interagency working group was set up in 2000 to review this matter. In 2003, an agreement was reached on a *Common Understanding among UN Agencies to Development Cooperation* (Jonsson, 2006:4). It stated that HR standards and principles should guide all programmes and all phases of development cooperation (OECD, 2006: 29). This referred to both goals and the processes by which to reach the goals. To this end, donors now use checklists based on international HR treaties and conventions to assure that HR are respected throughout context analyses, planning, programming, implementation and evaluation (Filmer-Wilson, 2005). Donors integrate HR through *mainstreaming* (into different sectors), *dialogue* (foreign policy and aid dialogues, sometimes linked to conditionalities), *HR projects* (CSO etc) and *implicit HR work* (support to HR goals and objectives, e.g. of multilateral organisations) (Piron and O'Neil, 2005).

HR may be mainstreamed by a systematic integration in decision-making, country analysis, policy formulation, implementation, monitoring and evaluation (Radstaake and de Vries, 2004: 13-18). The European Commission (EC), for example, stresses that benchmarks in each Country Strategy Paper (CSP) should help mainstream HR (EC, 2001a; 2001b). An analytical framework for the integration of rights in programming is developed by UNICEF through *causality analysis* (identifying causes behind inequalities), *role analysis* (exploring relationships between rights-holders and duty-bearers) and *analysis of capacity gaps of duty-bearers' and rights-holders'* (responsibilities and resources) (Nyamu-Musembi and Cornwall, 2004: 22).

Most development agencies now have mainstreaming policies in place. But there are few practical guidelines. Common constraints to mainstreaming of gender, pointed

out by European development agencies, are: unequal capacity levels between central and decentralised units; isolation of gender expert units; over-use of external experts; unclear priorities; unfocused leadership; lack of participation by partner representatives (both policy-makers and beneficiaries) (Braithwaite et al., 2003: 6, 7, 12). Also, experience shows that mainstreaming issues sometimes get less attention when responsibility is shared among all staff and that progress still depends on commitment and skills of key individuals (Moser and Moser, 2005: 15-16). Other obstacles are internal resistance and weak accountability due to a lack of stated minimum standards, goals and targets (Moser and Moser, 2005: 17). To enable mainstreaming, programme objectives must be clear. They also need to be realistic, based on thorough situation analysis. However, as cross-cutting issues increase in numbers it may be difficult to assure the same weight to each one in all programmes. Also, cross-cutting issues need to be complementary to a rights-based approach (RBA).

1.2 General definitions and guiding principles of a '(human) rights based approach to development'

An essential ingredient of the mainstreaming of HR is the definition of development objectives in terms of rights (UN, OHCHR, 2006).

["A rights-based approach to development is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights."

"Essentially, a rights-based approach integrates the norms, standards and principles of the international human rights system into the plans, policies and processes of development."

"The norms and standards are those contained in the wealth of international treaties and declarations. The principles include equality and equity, accountability, empowerment and participation."]

UN, OHCHR, 2006

Another widely accepted definition, in this case of a 'human rights based approach to programming', was presented by the HURIST project in 2003:

["The fundamental purpose of all programmes of co-operation is the realisation of human rights. The normative framework for programming is set out in international human rights treaties and conventions."

"Human rights principles guide all programming in all sectors, including all programming directed towards achievement of the Millennium Development Goals and the Millennium Declaration."

"Human rights principles guide all phases of the programme process, including assessments and situation analyses; the design and implementation of country programmes of co-operation; and the monitoring and evaluation of these programmes.

"Programmes support the development of capacities of 'duty-bearers' at all levels to meet their obligations to respect, protect, and fulfil rights, as well as the development of capacities of 'rights-holders' to claim their rights."]

Quoted in Jonsson, 2003:25-26

Most UN development agencies have traditionally been pursuing a 'basic needs approach', i.e. an approach based on identifying the basic requirements of human development and advocating in favour of their fulfilment. *A 'human rights based approach' differs sharply from the basic needs approach in that it implies the existence of a 'duty-bearer' with duties and obligations towards the 'rights-holder'* (also called 'claim-holder' or 'subject of rights'). It focuses primarily on accountability and process (Jonsson, 2003:7). Another important difference is that all actions taken within a HRBA are based on *legal and moral obligations* to carry out a duty (to protect and assist), and encourages rights-holders' empowerment to claim their rights. A human being is a *subject* of human rights, not an *object* of charity and benevolence as is the case in a basic needs approach (Jonsson, 2003:20, Save the Children, 2002:22).

Despite the 'common vision and purpose' that they share, there is also one major difference between a 'human rights based approach' and a 'human development approach' which relates to outcome and process. Human rights based approaches go beyond traditional human development approaches by focusing more on the quality of the *process* by which outcomes are achieved. Human development approaches, on the other hand, are more concerned with social and economic development as an *outcome* of development efforts. This is not to say that the outcome is not equally important in HRBAs. Human rights *standards* define benchmarks for desirable outcomes (e.g. the MDGs), while human rights *principles* represent conditions for the process (Jonsson, 2006:7).

The *identification* of claim-holders (and their claims: 'claim to something' or 'claim against somebody') and duty-bearers (and their duties or obligations) is necessary to raise the level of accountability and is thus crucial to a human rights based approach to development programming (Jonsson, 2003:15). This means looking both at the positive obligations of duty-bearers (to protect, promote and provide) and at their negative obligations (abstain from violations). In order for the duty-bearers to deliver on entitlements/claims, to respond to denial and violations, and to ensure accountability, adequate laws, policies, institutions, administrative procedures and practices, and mechanisms of redress and accountability must be developed. It also requires "the translation of universal standards into locally determined benchmarks for measuring progress and enhancing accountability" (UN, OHCHR). A HRBA does not imply a strengthening of HR *per* se; it demands much time and research to be rooted in local contexts (Braithwaite et al., 2003:13-14).

It is also necessary to identify the obligations of duty-bearers and their extent of accountability. All signatories to a UN Convention have three types of obligations: to *respect*, *protect* and *fulfil* (facilitate and provide). These obligations should be equally applied to all duty-bearers. The obligation/duty to respect requires the duty-bearer to refrain from interfering directly or indirectly with the enjoyment of rights; the obligation/duty to protect requires the duty-bearer to take measures that prevent

third parties from interfering with the enjoyment of rights; the obligation/duty to fulfil (facilitate) requires duty-bearers to adopt appropriate legislative, administrative, budgetary, judicial, promotional, and other measures towards the full realization of rights; and finally, the obligation/duty to fulfil (provide) requires duty-bearers to directly provide assistance or services for the realization of rights (Jonsson, 2003:15-16).The extent to which and how well rights are claimed and duties fulfilled depend on the *capacity* of duty-bearers. In other words, "a person cannot be held accountable for fulfilling a duty if he or she lacks the conditions necessary to do so" (Jonsson, 2003:16). Accountability of duty-bearers rests upon three conditions: 1) the person must accept *responsibility* for carrying out the duty; 2) the person must have the *authority* to carry out the duty; and 3) the person must have access to and control of the *resources* required to meet the obligation. In short, "a person can only be held accountable if that person feels that he/she *should* act; that he/she *may* act; and that he/she *can* act" (Jonsson, 2003:16).

There are many similarities between the concepts of 'good programming' and 'human rights programming'. Even though good programming is not the same as a human rights based approach to programming, most of the components/elements of the former are necessary to the latter (Jonsson, 2003:23). This is particularly evident in the following elements of human rights programming: (i) empowerment, especially of the poor, to claim their rights; (ii) facilitating participation in societal decision-making; (iii) a people-centred approach based on dignity and respect for the individual; (iv) accountability which 'requires monitoring at all levels of society'; (v) identification of the relationship 'between all claim-holders and all duty-bearers'; (vi) 'disparity reduction' with a view to poverty eradication; (vii) 'respect for local knowledge' but leaving room for external promotion of alien rights values; (viii) the need to understand all structural causes and to pay 'simultaneous attention' to all of them; (ix) equal attention to ensure that both outcomes and processes are human rights determined; (x) a 'country's human rights realisation must come from within and be supported from outside' (the UN Development Assistance Framework is of particular importance here); and (xi) the comparative advantage of each international agency should determine the actions of each (Alston: 41-42, interpreting Jonsson, 2003:23-25).

To sum up, a RBA implies that both goals and processes by which to reach the goals are based on norms and values in international HR laws and conventions. The main principles of a RBA are accountability of duty bearers, participation of rights-holders and equality, equity and non-discrimination (Theis, 2003: 3). Accordingly, evaluating the integration of a RBA in programming implies analysing both the *processes of implementation* and the *outcome of that process.* (To avoid confusion, it should once again be stressed that the evaluation of MAINIAC will only include an analysis of the process of implementation.)

Still, there does not seem to be any consistency in international definitions of the terms RBA and human rights based approach (HRBA). The exact understanding of these concepts may vary slightly in between donors. However, what is common for any use of these terms is that international HR treaties and conventions form the normative base, both for how development assistance is carried out and for the objectives. When we use the term RBA we refer to this general understanding. In the

context of evaluating Swedish mainstreaming efforts however, it is important to be clear about what is meant by the more specific understanding of "a rights perspective", since this is an encompassing concept to be integrated into all development interventions supported by Sweden. Below is a background to the rights perspective.

1.3 Swedish mainstreaming efforts, "the rights perspective" and "the perspective of the poor" – Policy and programming implications

Already in the early 1990s, HR were integrated into Swedish development co-operation through the concept of democratic governance. Democratic governance is broader than the RBA in that the former encompasses also popular participation, division and balance of state power, good governance and the development of a democratic culture (Sida, 2001:2). In 1990, following the adoption of the UN Convention on the Rights of the Child (CRC) by the General Assembly in 1989, Sweden ratified the CRC. Although children and adolescents have always been target groups in Swedish development cooperation, the CRC pushed for further integration of the rights of the child as a perspective in different areas receiving support (Gov. of Sweden, 2002: 2). Moreover, a parliamentary decision of 1996 (reflecting the Beijing conference) established equality as an overarching development goal. This pushed for enhanced mainstreaming. Accordingly, development programmes in various sectors must address inequalities in the access to resources and opportunities arising from differences between men's and women's activities and responsibilities (Sida, 1997:9).

In 1997-1998 (in line with the UN interagency common understanding) the Swedish parliament approved a development policy that promotes a HRBA (Sida, 2001:1). Consequently, Swedish partnerships with developing countries are based on those HR conventions to which all parts adhere. To enhance mainstreaming, Sida operationalised HR conventions into questions to be considered in country analyses and cooperation strategies (see Sida, 2001c). It was important to form an understanding of poverty in terms of a lack of rights. This was a way of fighting the root causes of poverty. To enhance mainstreaming and tackle context-specific poverty situations, the Swedish "perspective of the poor" publication was produced to ensure that all strategies, plans and programmes be based on multi-dimensional poverty analyses (Sida, 2002:7-8). D/ HR are viewed as an important means:

["Human rights' frameworks provide a normative base for poverty reduction, while democracy organises political and social life to this end."

"A democracy and human-rights approach translates poor people's needs into rights, and recognises individuals as active subjects and stakeholders. It further identifies the obligations of states that are required to take steps – for example through legislation, policies and programmes – whose purpose is to respect, promote and fulfil the human rights of all people within their jurisdiction."]

Sida, 2002: 34

The principal goals and policies of Swedish development cooperation in the area of democratic governance are outlined in the government's communications on *Democracy and Human Rights in Sweden's Development Co-operation (1997/98)*, *Human Rights in Swedish Foreign Policy (1997/98)*, and in *Sida's Programme of Action for Peace, Democracy and Human Rights (1998)* (Sida, 2003:7). Both government communications maintain that the 'rights perspective' shall be viewed as a starting point for development cooperation and be used both as a goal and as a means in dialogue (including diplomatic dialogue) as well as direct assistance. A 'rights dimension' should be guaranteed in all major development programmes (Gov. of Sweden, 1997/98a:55, Gov. of Sweden 1997/98b:27).

In 2003 Swedish policy on global development was revised and HR were integrated further. Sweden's Policy for Global Development states that all Swedish foreign policy should be based on *a rights perspective* and *the perspective of the poor*. The rights perspective encompasses both democracy and respect for HR, as well as gender equality and the rights of the child. The rights perspective implies a focus on the power, capacity and will of individuals to create development. Priority is consequently on individuals denied the opportunity to use that power, capacity and will (i.e. discriminated, excluded and marginalised individuals) (PGD, 2003:20-21). Phrased somewhat differently, a rights perspective is about sharing existing resources more equally and strengthening of processes by which marginalised people assert their rights (Nyamu-Musembi and Cornwall, 2004: 2, 3).

The perspective of the poor implies that individuals should not only drive their own development but also shape the substance of that development (PGD, 2003:22). It should thus once again be noted that the Swedish "rights perspective" is broader than the internationally used RBA, as the former includes democracy as a core value. The rights perspective's close association, and overlapping, with the perspective of the poor further accentuates its encompassing nature. Within the rights perspective, a RBA may be used to identify groups discriminated against, expose existing power structures and to clarify the division of responsibility between duty bearers and rights holders (Wiking, 2005:1).

It should however be noted that there is an important difference between the rights perspective and the perspective of the poor. While the rights perspective is based on an internationally recognised framework, there is no such explicit framework for the perspective of the poor. The latter is merely based on the individual's *personal experience* of poverty and individuals' different prerequisites for improving their own quality of life. Yet some claim that the Millennium Declaration and the Millennium Development Goals form a framework where the perspective of the poor is included. Nevertheless, as previously mentioned, the two perspectives *do* overlap and reinforce one another. Together they form a framework for assessment and analysis and a basis for improving conditions in partner countries (Sida, 2006a:7).

Reflecting the rights perspective, HR need to be integrated into all development activities. Sida's mainstreaming tools are situation-analyses, country strategies, cooperation across agencies and sectors, collaboration with various stakeholders (governmental and civil society), networking between HQ and field offices, regular training programmes and help-desk functions (Braithwaite et al., 2003:7, 12). In 2003

Sida came up with the following recommendations, drawing upon evaluations in the field of gender mainstreaming (Braithwaite et al., 2003: 16-17):

- Use cooperation strategies to provide context-specific guidance (based on local analysis/situation analysis);

- Form alliances of expertise, internal and external to the organisation (CSOs etc);

- Institutionalise the issues, their priority within the organisation, and among senior managers;

- Link the issues to other sector objectives;

- Base arguments about responsibilities among different stakeholders on international conventions;

- All staff must be aware and recognise issues (but not all of them need to be specialists);

- Adapt training of personnel to the functional roles of those being trained;

- Make sure the issues are not understood as the responsibility of only certain-, but to all staff;

- Give staff clear guidance about work procedures;

- Provide follow-up support and work with indicators and targets against which to evaluate;

In 2005 Sida presented the following methods for gender mainstreaming (Sida, 2005a):

- Develop knowledge and competence at HQ;

- Integration into cooperation strategies, plans and programmes;

- Consider impacts of different thematic policies;

- Assess impacts of budget and sector support (i.e. of those national plans receiving support);

- Integration in capacity development;

- Provision of competence and adequate resources for staff at all levels;

- Monitoring and evaluation at all levels (project-, programme- etc);

- Dialogue and communication with partner governments and other stakeholders;

- Co-ordination and harmonisation with other donors;

Both lists of recommendations above emphasise the need to form an understanding of rights issues within the organisation. It is for example emphasised that all staff must be aware of and understand the issues. Further, the rights issues should guide planning and assessment. An important lesson stressed by many, is the carrying out of good situation analyses for the development of programmes that effectively

strengthen HR (see e.g. Save the Children, 2002:30). It is through the situation analysis that common HR standards and principles can be adapted to local contexts. The analysis should include types of violations (formal and informal) of different rights at different levels of society and assumptions about the factors causing such violations (Save the Children, 2002:30). Situation analyses are important prerequisites for all assessments of changes in HR relations.

To sum up, in order for RBAs such as the "rights perspective" of Swedish development cooperation policy to be implemented, they must be well integrated with development agencies' operational practices. In addition, development partners, as owners of the programmes and initiatives, need to be aware of and embrace the importance of the integration of the rights principles. This is where the programming level plays a vital role. Firstly, programmes must be based on thorough context analysis to be able to deal with different kinds of rights in a relevant way. Secondly, throughout programme assessments there is a need to follow-up the extent to which the rights were respected, promoted and integrated. Such assessments are prerequisites for the revision of programmes so that they can be made more efficient in their promotion of human rights. This background to the evaluation of MAINIAC thus points at the relevance of assessing impacts of MAINIAC on the programme cycle. The following section gives a brief background to Swedish support in Kenya. Thereafter follows some guidelines for the practical carrying out of the evaluation.

2. HOW TO EVALUATE THE MAINSTREAMING OF "A RIGHTS PERSPECTIVE" IN SIDA-SUPPORTED PROGRAMMES IN KENYA: PRACTICAL GUIDELINES & CHECKLIST

2.1. Normative foundation

When evaluating development cooperation supported by Sweden we need to consider the *normative foundation* along with general directives for this cooperation. Cooperation strategies are the Swedish government's most important policy instrument for this kind of cooperation. The Swedish MFA and Sida develop guidelines for the strategies to ensure common structures and normative bases. The strategies should help orient all development programmes and activities towards the overarching goals. The 2001 guidelines defined the overall goal as "to raise the living standard of poorer groups of people in the world". This goal was to be reached through a number of interim goals: economic growth; economic and social equality; economic and political independence; democratic development in society; the long term sustainable use of natural resources; protection of the environment; equality between women and men (Swedish MFA and Sida, 2001). Due to the 2003 governmental bill for Sweden's Policy for Global Development, the guidelines were slightly altered to stress the rights perspective and the perspective of the poor. The current overall aim of Sweden's current Policy for Global Development is "to contribute to equitable and sustainable global development" (Gov. Bill 2002/3:122). With the passing in parliament of the bill for this policy in 2003, the objective of Swedish development cooperation was defined as (Swedish MFA, 2005:5):

> "to contribute to an environment supportive of poor people's own efforts to improve their quality of life"

In the same vein, the current guidelines for cooperation strategies emphasise that development cooperation must be based on a rights perspective and the perspective of the poor (Swedish MFA, 2005:15-16). The rights perspective accentuates the principles of *non-discrimination, participation, openness and transparency, responsibility and accountability.* Democracy, good governance and HR, equality between men and women and the rights of the child are all central components of the rights perspective (Sida, 2005b). The principles should be seen as *guiding principles* in the work on the integration of the rights perspective in Swedish development cooperation. They can help reveal the *causes*, and not only the symptoms, of the problems of poverty. Moreover, they can contribute to a more effective development policy by drawing on the problems and needs formulated by the population in partner countries (Sida, 2003:12).

To work on the basis of these principles necessitates an increased understanding of formal and informal power structures in society. Powerlessness is one of the expressions of poverty according to Sida. The two perspectives are thus important in the sense that they demand an analysis of power relations. Such power relations establish who is included and who is excluded from the possibility of demanding one's rights as well as the possibility for an individual or group to exert influence and decide over his or her own development (Sida, 2006:10).

Internally, it is vital that the work with the two perspectives is integrated in the development agency (in this case Sida) in its entirety. To have an effect on the whole organisation, measures need to be taken on all levels, both on an organisational level and in all the processes by which the agency pursues development cooperation. Instead of simply focusing on results, increased attention should be paid to the *quality of the process* leading up to development policies and decisions (Sida, 2006:1).

Reflecting the Swedish adoption of a RBA, Swedish-Kenyan development cooperation is based on international HR treaties and conventions ratified by both parties. Kenya has ratified those core conventions that form the main normative foundation for Swedish development cooperation (UN, OHCHR, 2006):

- the International Covenant on Civil and Political Rights (CCPR).

- the International Covenant on Economic, Social and Cultural Rights (CESCR).

- the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

- the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

- the Convention on the Rights of the Child (CRC).

As a signatory to these legally binding UN conventions and as an ultimate duty bearer, the Government of Kenya thus has the obligation to ensure respect for human rights norms and principles (to *respect*, *protect* and *fulfil* (see section 1.2 and section 2.2.), and are held politically accountable for its actions and decisions. Equally,

the Government's multilateral and bilateral development cooperation partners are required to programme according to the strategic principles that underlie human rights instruments. Thus, the work of these partners must not simply be evaluated according to project or programme objectives. It is just as important to evaluate whether these objectives, and the process by which they were achieved, adequately reflected the specific objectives stipulated in the UN Charter and other human rights instruments/conventions (Jonsson, 2003:22).

The Swedish cooperation strategy with Kenya states that democratic governance should be supported through direct support, dialogue and mainstreaming into all programmes. The strategy emphasises equality and the right to local participation and influence. How different groups are/may be affected by development interventions must be considered throughout all planning processes (MFA, 2003:21-22). Dialogue issues are equality (including gender), sustainable use of natural resources, the rights of the child, and combating of Hiv/Aids (MFA, 2003:23). The dialogue issues should be incorporated and promoted within all programmes (Emb/Nairobi, 2006:10). Further, the country plan states that the rights perspective has been and increasingly will be applied throughout the planning processes of all programmes.

2.2. MAINIAC and "the rights principles"

The MAINIAC (mainstreaming in action) project was started at the Swedish Embassy in Nairobi in 2003, to build capacity and analytical skills to review how poor people are affected by and may influence programmes (Sida, 2004:5). The mainstreaming approach was to be based on the rights perspective and the perspective of the poor, and used as a point of departure when assessing programmes. MAINIAC should thereby help answering the question of 'how the rights of the poor can be strengthened through the programme' (Sida, 2004:8). The project is to ensure that the programmes in the areas of agriculture, health, legal sector reform, water, roads and urban development, with agreements from 2004, promote poor peoples development, D/HR, sustainable development, peace and the prevention and mitigation of HIV/Aids (Emb/Nairobi, 2003:2). All major programmes in all sectors supported by Sweden in Kenya go through MAINIAC (Sida, 2004: 8). Hence, the ambition is to integrate the principles of *non-discrimination, participation, openness and transparency, and responsibility and accountability* into all programmes that receive Swedish support. At the time of initiation, MAINIAC was seen as a comprehensive attempt to start integrating the rights perspective "in reality" (i.e. to start in practice within the different programmes and in their specific contexts). .

To evaluate how MAINIAC has affected Swedish-supported programming in Kenya we need to further explore Sida's normative understanding of the rights principles. In short, the overall meanings of the rights principles, that should guide the implementation of the rights perspective, are (Sida, 2006):

- *participation*: to make sure that all people are enabled to participate in decision-making processes that concern them;

- *non-discrimination*: allowing all individuals equal value and rights;

- *openness and transparency*: to enhance peoples right and access to information (not least as a prerequisite for participation);

- *responsibility and accountability*: to enable people to keep decision-makers responsible and accountable for their decisions and their work;

Participation

The principle of participation is identified as a cornerstone of democracy and a prerequisite for increased power to enhance poor peoples' opportunities to improve their lives. Participation is thereby fundamental to the implementation of the Swedish Policy on Global Development and of a RBA (Sida, 2006a:10). As the roots of poverty often can be traced to unequal power relations, it is important to enhance participation of the poor in political, economic and social life (Sida 2002:35). To do this often implies a change of current power relations, between government and people as well as among people, which will ultimately lead to a more inclusive and equal society.

The UN Declaration on the Right to Development states that "development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their *active, free and meaningful participation* [emphasis added] in development…" (UN, OHCHR, 1986). It further asserts that "States should *encourage* [emphasis added] popular participation in all spheres as an important factor in development and in the full realization of all human rights" (UN, OHCHR, 1986).

Participation should thus be viewed as a goal in itself as well as an important means to achieve other development goals (Sida, 2002:47; Sida, 2006a). It is thereby both a result and a process. Participation is desirable from the point of view of ownership and sustainability but it is also a *right* with profound consequences for the design and implementation of development activities (UNDP, 2001b:7). Participation per se however, might not always allow for all people to participate in decision-making. For example, to avoid changes of the current power relations, mere consultations could be used as a way to legitimise government policy and to give the impression that it has taken peoples' voices into account. To increase participation in this way can instead reinforce inequality as the more advantaged in society find it easier to make their voices heard (Sida 2002a:19). Thus, for participation to be "active, free and meaningful", as stated in the Declaration, it must go well beyond mere formal or "ceremonial" contacts with rights-holders (communities, civil society, minorities, indigenous peoples, women and other local actors). Development strategies must be formulated in a way that they *empower* citizens, especially the most marginalized, to articulate their expectations towards the State and other duty-bearers, and take charge of their own development (UN, OHCHR, 2006:26).

However, for people to participate in society to the maximum of their potential requires provision of a supportive environment (UNDP, 2001b:7). Participation is only constructive if it occurs within structures that enable some impact on events/decisions (Sida 2002a:11). The more people feel they have influence on the development of their society, the more motivated they are to participate. Both the capacity and the will to participate, as well as to create favourable

conditions/structures for participation, are thus essential components of the principle of participation (Sida 2002a:2-3). For people to participate also requires attention to issues of 'accessibility', including access to development processes, institutions, information and redress or complaints mechanisms. This means e.g. situating development project mechanisms in proximity to partners and beneficiaries (UN, OHCHR).

Sida (2002a:34) has brought forward some important issues to bear in mind when working to enhance participation:

- Participation should be viewed as a continuous process (i.e. it is a long-term process to see the outcomes);

- Participation is context specific (i.e. it depends on the economic, political, social and cultural context, the degree of empowerment of people, their interest, and the power structures in society);

- Participation at different levels in society is essential (for example, state and civil society organisations);

- Participation can be defined by different degrees (the first being to be informed, the second to be consulted regarding limited issues and the third to influence major decisions);

- Participation is difficult in an unequal, intolerant and/or conflict ridden society (and thereby, it is important to prevent exclusion of groups from mechanisms that promote active participation).

Non-discrimination

The principle of non-discrimination constitutes a general principle relating to the protection of human rights, and is a fundamental aspect of the rights perspective. It is based on equality in dignity and rights, including equal access of all persons within a society to goods and services, rights and freedoms, equality before the law and equal protection of the law. The principle applies to all state polices and practices, including those concerning health care, education, access to services, travel regulations, entry requirements and immigration (UNDP, 2001b:7). Non-discrimination is a multifaceted term, covered in a number of international conventions.[138] Even though many of these conventions deal only with discrimination on specific grounds, the term 'discrimination' can generally be defined as "any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms" (UN, OHCHR, 1989). The term "other status", referred to above, includes personal circumstances, occupation, life style, sexual orientation and health status (e.g. people living with HIV and AIDS) (UNDP, 2001b:7).

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[138] Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination against Women, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The human rights imperative of a rights-based approach to development requires that particular attention is given to the issues of discrimination, equality, equity and vulnerable groups (e.g. women, minorities, indigenous peoples and prisoners). This means that development programmes must give priority to the most marginalized/vulnerable people, and be accessible to all (also those in remote areas) without any distinction. The issue of who is most vulnerable in every given context can only be determined locally and requires development data to be disaggregated as far as possible by race, religion, ethnicity, language, sex etc. (UN, OHCHR). *Qualitative* analysis of the data is also necessary in order to bring the individual behind the quantitative analysis to light and to understand social relations, processes and values in a given society (Sida, 2006a:8). Development programming may therefore need to be directed at strengthening capacities for data collection and analysis (UN, OHCHR, 2006:24).

Thus, RBAs secure the incorporation of express safeguards in development instruments to protect the human rights of marginalized and disadvantaged groups. All development decisions, polices and initiatives must also guard against simply reinforcing existing power imbalances between different groups, e.g. men and women, landowners and peasants, urban and rural populations, workers and employers. (UN, OHCHR). Moreover, development programming must not only avoid unintentional or direct discrimination but must also address the underlying and systematic *causes* of discrimination. (UN, OHCHR, 2006:24).

The UN Office of the High Commissioner for Human Rights (OHCHR) has brought forward some specific recommendations on how to address the issue of non-discrimination in development programming (UN, OHCHR, 2006:24):

- Directing priority attention towards those suffering discrimination and disadvantage, especially the poorest of the poor and those suffering multiple discrimination;

- Strengthening capacities for data collection and analysis to ensure that data are disaggregated as far as possible on the grounds of race, colour, ethnicity, religion, sex, geographic location, language etc.;

- Advocating temporary special measures to rectify structural discrimination, including affirmative action for women and special forums for participation;

- Making project information available in accessible formats and minority languages;

- Supporting civic education, communication campaigns, law reform and institutional strengthening to foster non-discriminatory attitudes and a change in behaviour.

Openness and transparency

Openness and transparency, and to enhance the right and access to information are prerequisites for participation and thereby, to deepen the democracy and equality in society. If people have access to relevant information, and are enabled to take active part in decision-making, this will increase the transparency and build a culture of

democracy at different levels of society (Sida 2002a:20). Openness and transparency are also important complementary and prerequisite principles for accountability. To hold governments accountable requires, among other things, that people be informed and able to claim political space, and also calls for transparency in the use of public funds (UNDP, 2000:78).

UNDP's guidelines on accountability and transparency (CONTACT) states that "transparency comprises all means of facilitating the citizen's access to information and also his/her understanding of decision-making mechanisms. Transparency is built on the free flow of information: processes, institutions and information are directly accessible to those concerned, and enough information is provided to understand and monitor them" (UNDP, 2001a:2).

Thus, making information available is a direct example of transparency. Access to information is both about promoting and protecting *rights to information* and promoting and protecting *communication* (use of information) to voice one's views, to participate in democratic processes at community, national, regional and global level, and to set priorities for action. Access to *official* information is of particular importance in this sense as it represents one of the means for ordinary people to make informed decisions about matters that affect their lives (UNDP, Oslo Governance Centre, 2003:6).

However, information availability means little if people are not aware it exists and how they might have access to it. It also means little if the costs of accessing it are unreasonable (time and money) or if the information is not user-friendly (e.g. written in a difficult language). Research has shown that poor people and other vulnerable groups face a number of problems in locating and using information for their own benefit. The information is often inappropriate to meet their needs, either because the content does not reflect their reality or because it is not available in their local language. To make transparency meaningful, it is therefore crucial to address the information needs of these people/groups and to consider the relevancy and appropriateness of mechanisms to access information (UNDP, Oslo Governance Centre, 2003:6).

Nonetheless, transparency is a broad concept, included in the 'good governance' debate, and also involves a number of other issues, such as openness and transparency in government (including local authorities) policies and budgets (measures to increase citizens' opportunities to have transparency in public finances, with a fair show of costs etc.) and in particular parliament's opportunity to debate the budget, hold open meetings with the public and disseminate legal decisions publicly; and transparency of policies and systems of taxation (increased openness within the tax administration). These issues, together with the right to information, are critical in the fight against corruption. Sida was lagging behind in this area and has recognized the need to work more purposefully and determinedly through dialogue with partner countries to strengthen accountability and increase transparency (Sida, 2002b:40). To this end, an anti-corruption advisor has been recruited and a new policy on culture and media developed.

Responsibility and accountability

In order to promote a rights perspective and the perspective of the poor it is not only important to create mechanisms for participation, all-inclusiveness and open access, it is also crucial that decision-makers take *responsibility and are held accountable* for their decisions (Sida 2006a:10). As previously mentioned, human rights based approaches are all about duties and obligations, and places great emphasis on accountability. Accountability is an essential principle in human rights based approaches as it helps secure an enabling environment for development (UNDP, 2001b:8). It is sometimes described as "the obligation of political leaders to answer to the public for their actions and decisions" (Afrobarometer, 2006:2). This defines the issue of *political accountability*, which both entails checking the power of political leaders to prevent them from ruling in an arbitrary or abusive manner, and helping to ensure that governments operate effectively and efficiently. In a functioning democratic system, all public officials, including not only politicians but also bureaucrats and civil servants as well as the judiciary, police and military, should be held accountable. Thus, the state has the primary responsibility and obligation to ensure respect for human rights norms and principles (Afrobarometer, 2006:2-2).[139]

Ensuring accountability can be a rather difficult matter, especially where national capacities are weak or duty-bearers are unwilling to act. OHCHR has brought forward a number of strategic recommendations on how to tackle this issue (UN, OHCHR, 2006:24-25):

- Raise awareness of rights and responsibilities, and develop the capacities of duty-bearers to fulfil their obligations. Ownership by duty-bearers can be built in by involving stakeholders in analysis, programme planning, implementation and reviews;

- Build relationships between rights-holders and duty-bearers;

- Increase the incentives for better performance by duty-bearers;

- Strengthen central and local accountability mechanisms including judicial, quasi-judicial and administrative;

- Strengthen the capacities of national human rights institutions;

- Ensure that national laws are harmonized with international human rights treaty standards;

- When duty-bearers are private corporations or non-government actors, advocate adherence to international human rights norms and voluntary codes of conduct;

- Where weak institutions are being re-established, not only the state but all those institutions that fulfil a servicing and monitoring role should be strengthened;

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[139] Some would however argue that accountability is extended to include not only the state but all relevant subjects and objects at sub-national, community and household levels, such as individuals, local organizations and authorities, private companies, aid donors and international institutions (which are duty bound to provide effective international cooperation) (Jonsson, 2003:15).

- Foster greater knowledge of the national reporting processes under the international human rights treaties in force in the country concerned, widely publicizing the treaty bodies' recommendations;

- Encourage greater recourse to human rights "special procedures" and international petition procedures;

For a more thorough discussion on accountability, see also section 1.2.

2.3 Scope and delimitation: Identifying the MAINIAC process and the roles of the stakeholders involved

We have now elaborated on the principles to be probed in order to capture the integration of a rights perspective into the Sida-supported programmes in Kenya. It is now time to turn to the object of study and how it is to be approached. It should first of all be stressed, once more, that *the evaluation of MAINIAC will not assess the achievement of overall development goals, but evaluate the process at the programming level assumed to lead to those goals.* This process, consisting of different programming phases, progresses at different sites and involves different stakeholders. These sites and stakeholders need to be at least rudimentary described already here.

A first delimitation of this evaluation that must be stressed is that the assessment will not focus on those Sida-supported programmes that aim at strengthening the capacity of different groups of rights holders *per se.* In other words, the evaluation will not include assessments of the UNICEF, UNIFEM, UNDP, Diakonia and Save the Children programmes that work directly with the strengthening of women's and children's rights. Although these programmes have no doubt been important in the work with a rights perspective in Kenya, the delimitation is of a practical character and falls well in line with the stated scope of the MAINIAC project. The focus of this evaluation will instead be on the *effects of MAINIAC on programming, and efforts to integrate the rights principles in programmes, where the partner is the government of Kenya.* The key object of study is hence the government of Kenya – and its capacity - as a partner in working with the rights perspective, and in its role as duty bearer. It should however be pointed out that this does *not* imply that right holders are inconsequential to the study. The delimitation merely implies that the point of departure for the assessment is the Kenyan government and its capacity rather than the Kenyan citizens. The role of right holders should become apparent below. The specific interest of the assessment is the capacity of Kenyan duty bearers within the six sectors supported by Sida to integrate a rights perspective in all phases of programming. From this ambition follows a number of implications for the set up of the evaluation:

1. Scope   The assessment is delimited to the programming phases of planning (including situation analyses carried out before the drawing up of the programme), design (as it is described in the programme document), assessment, implementation and follow-up/review/evaluation.

2. Main theme   As mentioned, the integration of (or capacity to integrate) all four "rights principles" should be assessed in all phases of programming. This is not to say that they are expected to be of equal importance in all phases. The principle of participation may perhaps be of more importance in the planning phase than the

principle of accountability. The point of departure, however, is that such assumptions must be probed to illustrate *why* a principle is of little consequence for the particular programming phase.

3. Duty bearers This evaluation focuses on the role, capacities and ownership of the duty bearers directly involved in the different programming phases. The duty bearers (i.e. GoK) will be found at different administrative levels: national, provincial, district and local. Duty bearers at the different levels must therefore be mapped out, their roles identified and their capacities assessed. It is moreover essential that the assessment considers the extent to which different duty bearers have been involved in the process (or in the work on the rights perspective) and whose capacities have hence not been enhanced. Similarly commitment among duty bearers, as an important aspect of ownerships, needs to be investigate as well as the spread of such commitment due to MAINIAC.

4. Rights holders The capacity of duty bearers to integrate a rights perspective cannot be assessed without taking into account *the role ascribed to rights holders in programming.* Hence, in the assessment of each programme phase, questions must be raised about participation, non-discrimination, transparency, and responsibility and accountability *in relation to relevant rights holders.* The evaluation must probe to what extent the principles have been considered (through situation analyses, disaggregated stakeholder analyses etc) in relation to relevant right holders. It follows from the rights perspective and the perspective of the poor that "the relevant" rights holders are those who are discriminated, excluded and marginalised (and hence denied the power, capacity and will to create their own development) (PGD, 2003:20-21). Exactly who those individuals and groups of individuals are is naturally in part context specific. The MAINIAC project document and Sida country reports (Emb/Nairobi, 2003; Sida, 2004; MFA, 2003) give an indication of who they may be in the Kenyan context: *the "poor"* (considering the focus on inequality in Kenya), *women, children, HIV/Aids infected, and minority groups.* Other vulnerable individuals or groups may well be "relevant" in a particular programme and an initial question is hence the extent to which programming has included an analyses identifying relevant right holders in the particular case. (The above mentioned five groups should however be considered in the assessments as a minimum.) Focus in the evaluation is on the extent to which the principles of participation, transparency, non-discrimination and, responsibility and accountability have been considered in programming: how mechanisms to ensure their integration have been built and, where possible, how different right holders (such as the poor, women, children, HIV/Aids infected and minority groups) have been able to make use of these mechanisms in order to claim their rights. In every programme phase (in every sector) efforts within the programmes to probe the effects of different measures to ensure participation, transparency, non-discrimination and, responsibility and accountability on the poor, women, children, HIV/Aids infected and minority groups should be identified. The centre of attention is programming per se and not on its outcome as it is beyond the scope of the evaluation to consider the impact of a RBA on development. Similarly, interviews with rights holders to include their views on HR mechanisms in the programmes – however desirable - are beyond the scope of the present evaluation.

5. Mainstreaming The study of each programme must also include an analysis of how the other mainstreaming issues identified in MAINIAC (HIV/Aids, conflict and environmental concerns) have affected the integration of the rights principles in programming (or at least how such considerations have been dealt with in the programmes), as well as impacts of MAINIAC on the dealing with those other mainstreaming issues.

Finally, it should be noted that this evaluation also includes two aspects related to, but not part of, the programming process itself. The first aspect has to do with the means and resources made available to enhance the integration of a rights perspective through MAINIAC. This entails an assessment of a) the capacity to work with the rights perspective at the Swedish Embassy in Nairobi and b), the use of, development of and linkage to Kenyan resource institutions in the field of HR. The latter is one fundamental part of ownership and hence sustainability to complement the commitment to the rights principles among duty bearers. The second related aspect concerns the way forward. Conclusions drawn from the assessment must be sufficiently specific to allow suggestions about how to strengthen the integration of a rights perspective in development programming in Kenya, and the future role of Sida in that endeavour. The conclusions also need to be of general interest. On the basis of the Mainiac experience, we hope to develop both practical guidelines for the implementation of the rights perspective and policy recommendations.

Evaluating from a rights perspective

The rights perspective has implications also for the very carrying out of the evaluation. On the one hand, a RBA implies that specific rights-based questions (such as those discussed in the checklist below) are being asked. On the other hand, the evaluation process itself must try and respect these principles.

A first step in the adoption of the rights perspective in the evaluation is to carefully identify the whole programming process and the parties involved in that process. Then, one should endeavour to let as many as possible of the different stakeholders that were involved in programming have a say in the evaluation. Hence, it is imperative to map out the stakeholders, their roles and relations. We may also need to consider whether some stakeholders are given more space than others – in the evaluation - and whether some relevant groups have been excluded. Which stakeholders/groups could not be reached? How may this have affected the perspectives/conclusions of the evaluation? By discussing the reasons behind such problems we may improve our methods for evaluating *from* a rights perspective. The extent to which this approach can be realised in practice, however, of course depends on the amount of time and resources available for evaluation.

Again, this evaluation is delimited to the programming process and will focus on the duty bearers (rather than the rights holders). Stakeholders should here be defined primarily as duty bearers within GoK. As mentioned earlier, interviews with rights holders to include their views – however desirable - is beyond the scope of the present assessment. However, since the integration of a rights perspective cannot be assessed without taking into account the *role also of relevant rights holders* in programming, we at least need to identify if there are measures to ensure non-

discrimination, participation, openness and transparency and responsibility and accountability and how these measures influence or affect relevant rights holders.

The checklist guiding this evaluation

The checklist below outlines the questions that need to be posed throughout the evaluation in order to emphasise the rights principles. As emphasised below, these questions must target all programming phases of all programmes in all the sectors included by the evaluation. The checklist also includes some issues of more practical character to structure data collection and analysis according to the key objectives of the evaluation.

CHECKLIST: Questions to guide the evaluation of the impact of MAINIAC on Swedish-supported programming in Kenya

The questions below refer to the rights principles and are to guide the evaluation of the impacts of MAINIAC on programmes that receive Swedish support in Kenya. The evaluation must assess *if (and if not, why not?), how* and *to what extent* these principles have been respected, integrated and promoted throughout all phases in the programme cycle: planning, design, assessment, implementation, evaluation.

There are many ways of operationalising the principles here referred to. The operationalisations that follow are of a general character and should be elaborated further in the analysis. However, it is important that data collection and analysis are guided by the same initial understanding of these principles in order to enable comparison between the different parts of the evaluation.

It is of vital importance that the questions below guide the data collection, text analysis and interviews carried out within this evaluation in order for the different parts of the evaluation (targeting different programmes and sectors) to hold for comparison and the drawing of practical and policy-oriented recommendations in the final analysis. Further, in order for us to compare changes over time due to MAINIAC, the questions should be asked referring both to the agreements or programmes prior to 2004 and after 2004.

The questions below shall be asked in all the assessments of the programmes/sectors that are included by this evaluation and target all of the following programming phases:

- *Planning & programme design*

- *Implementation*

- *Follow-up & evaluation*

Principles to be integrated	Operationalisation in programming
I. Participation	*- Programming before compared to after the year 2004:* • Who are the relevant duty bearers and right holders in the programme? • Which duty bearers participated at different stages and levels of programming? How? • Which relevant rights holders (e.g. poor, women, children, HIV-infected, minority groups, people with diabilities) participated? How did they participate? Who did not participate? Why not? • What mechanisms for participation were put in place within the programmes? • What mechanisms for documentation of participation were put in place? • How did the mechanisms cater for participation among the relevant right holders? • Form, frequency and impact on decision-making of participation? • Any informal practices for consultation, participation and influence? *(Study of analyses conducted within the programmes)* • What kinds of situation/context analyses were carried out within the programme and how were they used? • How were rights holders and duty bearers identified within the programme? • What kinds of analyses on participation were carried out? • Was participation documented?
II. Non-Discrimination	*- Programming before compared to after the year 2004:* • To what extent was priority given to the most marginalised (e.g. poor, women, children, HIV-infected, minority groups) at the different phases of programming? • To what extent was priority given to the most marginalised when creating mechanisms for participation, accountability and transparency (e.g. through special forums, affirmative action, use of local languages)? • Are there any policies on non-discrimination in place? • *(Study of analyses conducted within the programmes)* • What kinds of analyses were carried out on who the marginalised groups in the specific context are? • Were analyses on how marginalised groups were affected by programme mechanisms (for participation, accountability and transparency) carried out? • How did these analyses affect the programmes?
III. Openness & Transparency	*- Programming before compared to after the year 2004:* • How, where and when do right holders get information about the programmes - on consultation, plans, objectives, budgets etc? • How are obligations and responsibilities among duty bearers clarified and spread? • How has information been made available at different administrative levels - national, regional, local? • How reasonable are the costs of accessing information for different groups? • How accessible are information systems for the most marginalised? *(Study of analyses conducted within the programmes)* • Are there analyses on how mechanisms of transparency have functioned for different marginalised groups? • Are there studies on what different groups of right holders know about the programmes?

Principles to be integrated	Operationalisation in programming
IV. Responsibility & Accountability	*- Programming before compared to after the year 2004:* ▪ To what extent have right holders held duty bearers accountable within the programme? ▪ Are there mechanisms within the programme to raise awareness on the role and obligation of duty bearers? ▪ (How has capacity among duty bearers been developed?) ▪ What formal mechanisms are there for influence and/or complaints and what do they look like? ▪ What incentives for high performance among duty bearers have been built into the programme? ▪ What complaint mechanisms have been put in place? ▪ What *in*formal mechanisms are there for complaints? ▪ What mechanisms are there for corrective measures after complaints? *(Study of analyses conducted within the programmes)* ▪ Have analyses been conducted on how accountability mechanisms function and in particular on the extent to which they enable marginalised groups to hold duty bearers accountable?

In line with the aims of this evaluation, i.e. to….

• Document how a RBA (referred to as "the rights perspective" in Swedish development cooperation policy) may be integrated in different programmes and sectors (there is still very little documentation on this) in order to identify factors that enhance, respectively impede, this approach and thereby provide practical guidelines and policy recommendations for the implementation of this approach;

• Assess the effects of MAINIAC on all programming phases of programmes supported by Sweden in Kenya since 2004 to provide the Swedish Embassy in Nairobi with practical recommendations for how to integrate this approach further;

• Advice more specifically on how MAINIAC in Kenya can be continued in order to enhance the integration of the rights principles in programming, as well as enhance the sustainability and Kenyan ownership of this process.

…all the different parts of this evaluation need to answer to the following questions:

1. **Who are the relevant duty bearers with regard to programming in the sectors affected by MAINIAC and which are their responsibilities?**

2. **How is programming different after the introduction of MAINIAC in 2004 (as compared to programming just before 2004)? Has MAINIAC helped focusing on the root causes of poverty (i.e. the rights principles)?**

3. **How and to what extent has the Government of Kenya's (GoK's) capacity to integrate the rights principles in programming changed due to MAINIAC (i.e. capacity after 2004 compared to practise just before 2004)?**

4. **Have there been activities with in the programmes to develop the capacity of rights holders?**

5. **What factors enhanced and impeded, respectively, the integration of each rights principle at each programming phase?**

6. **What resources were/are used to build capacity to work with a rights perspective at different stages of programming, before and after 2004?**

7. **Were links developed between different Kenyan resource institutions/ people in the field of human rights? Which ones and how? Were such resources developed and used effectively?**

8. **Has ownership of the GoK been enhanced? How and to what extent?**

9. **Is sustainability of this approach enhanced through links to local resource institutions/people - or in other ways?**

10. **How can the integration of each principle in the different programme phases, in the different sectors be enhanced further?**

Further, different programmes/sectors also impact upon, and are affected by, other cross-cutting issues. In relation to MAINIAC, especially the cross-cutting issues of prevention and mitigation of HIV/AIDS, environmentally sustainable development, and peace and conflict prevention are mentioned. Although the main rights principles should be respected in all areas that receive Swedish support we may assume that the types of questions asked may be slightly different in different sectors (you may consult section 2.3 above once more for a reminder of other mainstreaming issues, how to identify relevant duty bearers and rights holders etc.). In order to understand how MAINIAC relate to the other crosscutting issues, the following additional questions need to be posed in the evaluation:

11. **How did the other crosscutting issues – i.e. prevention and mitigation of HIV/AIDS, environmentally sustainable development, and peace and conflict prevention - impact on the integration of the rights principles in programming?**

12. **How did the work with MAINIAC impact upon the dealing with the other crosscutting issues – i.e. prevention and mitigation of HIV/AIDS, environmentally sustainable development, and peace and conflict prevention - in programming?**

3. PRACTICAL OUTLINE & DIVISION OF RESPONSIBILITY IN THE EMPIRICAL INVESTIGATION OF THE MAINIAC PROJECT

This evaluation will be carried out in two main parts that will then be put together into one comprehensive analysis. The first part will be carried out by the SADEV evaluation team and the second by three evaluators/researchers based in Kenya, as described below. Final conclusions and recommendations will be developed jointly. *Importantly, this evaluation will be guided by the practical guidelines outlined in Chapter 2.* Here follows a description of the division of responsibilities between the partakers in the evaluation, i.e. between the SADEV team and the three Kenyan evaluators.

1) The MAINIAC programme theory & capacity to promote the integration of a rights perspective among Embassy Staff

Evaluators: the SADEV team

a) MAINIAC PROGRAMME THEORY

The first part of the assessment will portray and analyse the programme theory behind the MAINIAC project. This section serves to clarify goals and objectives, and discusses whether there is a logical and explicit programme theory.

The *overall development objective* of all Swedish development cooperation in Kenya is to contribute to Kenyan efforts to reduce poverty. The focus is on promoting democratic governance and strengthening access by the poor to their rights (Sida, 2004:20). This is to be achieved through direct support, through dialogue at all levels and through the mainstreaming of D/HR into all development programmes (Sida, 2004:21).

The *overall project objective* of MAINIAC – Mainstreaming in Action - is to "promote poor people's development, D/HR including women's and children's rights, sustainable development, peace as well as prevention of HIV/Aids and the consequences of HIV/Aids" (Embassy of Sweden, 2003:2). Sida's multidimensional approach to poverty implies that a focus on poverty reduction presupposes the integration of a number of mainstreaming issues into all assessment and support. In the Swedish support to Kenya four cross-cutting issues are to be mainstreamed:

1   democracy and human rights including women's and children's rights

2   sustainable development

3   peace/conflict prevention

4   prevention of HIV/Aids and the consequences of HIV/Aids

The objective of MAINIAC is to be achieved through building capacity and analytical skills among Embassy staff and their partners (i.e GoK) to review how poor people are affected by and may influence programmes (Sida, 2004:5). The mainstreaming approach is to be based on the rights perspective and the perspectives of the poor, and hence the rights principles forms the point of departure.

It seems necessary to devote some effort to further exploring *how* the MAINIAC project, with its identified target groups, aims to mainstream the rights principles into programming. The assessment will amongst others discuss to what extent the objectives and sub-objectives of MAINIAC are clearly defined, relevant stakeholders identified and how the different cross-cutting issues relate to the rights principles and vice versa.

The second part of the introductory analysis needs to thoroughly explore how activities are perceived to lead to sub-objectives (i.e. enhanced capacity among various stakeholders), and how the latter in turn (and in theory) are thought to impact on the attainment of the overall objective. The programme theory, as it is portrayed in project documentation and by the various stakeholders will be summarised in one, or

several, log frame(s), depending on the consistency in perceptions among stakeholders.

Relevant actors: Embassy in Nairobi and Sida HQ staff, (initiators of MAINIAC), resource people

Data needed: MAINIAC project documentation and reports, interviews

Method: Project documentation review, review of theory/method/-models used, interview analysis

b) CAPACITY TO PROMOTE THE INTEGRATION OF A RIGHTS PERSPECTIVE AMONG EMBASSY STAFF

This part of the assessment analyses ***if, how and to what extent the capacity at the Embassy to promote the integration of the rights principles in programming has changed due to MAINIAC.*** The analyses of the effects on Embassy capacity ought to be structured *both* on the MAINIAC programme theory *and* the general discourse on RBA. Apart from the strategy outlined in the project theory, what kind of analytical capacity could have been developed, using what methods? What analyses could have been carried out? And so on. This is to say that the capacity at the Embassy will be discussed not only in relation to the goals set up for capacity building in the MAINIAC programme theory, but also in relation to the international discourse on guidelines for RBA in programming. To capture this, several aspects need to be studied:

- A comparison of the integration of a rights perspective in Sida's assessments made before and after the initiation of MAINIAC (i.e. 2004): Are the assessments carried out in different ways, i.e. are the rights principles visible in the process?

- Also, in relation to the MAINIAC project document and its expected outputs, have the "check lists" (output a1-a3) been produced/spread and are they used by the Embassy programme officers? If so, how user-friendly are they?

- A comparison of the "dialogue" during the planning and implementation phase of programming, before and after 2004: To what extent did/do Sida's programme officers participate in dialogue with its partners on the rights principles? Are different kinds of aspects highlighted?

- In addition, have the MAINIAC "check lists" on important dialogue issues for each of the mainstreaming areas been produced and are they used by Embassy staff? If so, are they all as frequently used and how user-friendly are they?

- A comparison of reviews of programmes prior to and after 2004. This refers to review meetings and other follow-up activities during program implementation. Are the integration of the rights principles continuously monitored? Have rights indicators been developed (in different ways relating to the various sectors and mainstreaming issues)?

- Also, have the MAINIAC "checklists" (a3) of process-, output- and impact indicators reflecting the mainstreaming issues for each area of support been developed? Are they used by Embassy programme officers?

- An analysis of how the Embassy staff currently perceive their own capacity to mainstream the rights principles in the different phases of programming.

The analysis also needs to consider whether there may have been other factors (apart from MAINIAC) that have influenced changes in capacity at the Embassy. For example, have there been other capacity building exercises conducted? How have the Embassy capacity been affected by new recruitments/staff leaving the Embassy?

Finally this section will include a general discussion on whether there is reason to believe that the (possibly) increased capacity of Embassy staff has in turn promoted poor people's development, democracy etc., i.e. the overall objective of the project.

Relevant actors:	Current and previous Embassy/Sida programme officers, partners in GoK, resource people.
Data needed:	Project/programme assessments, reports, MoUs/notes from meetings and reviews from the period prior to 2004 and after 2004, interview data, documentation on checklists.
Method:	Comparative documentation review, interviews analysis, checklist reviews and review of theory/method/models. The ambition is to study all the programmes' initially included in MAINIAC and the programming processes, focusing on the role and capacity of Embassy staff.

2) Ownership and capacity of partners to promote the integration of a rights perspective in programming - local resources & sustainability

Evaluators: Kenyan evaluators, responsible for 2 Programmes/sectors each (as defined in the ToR)

a) OWNERSHIP AND CAPACITY OF PARTNERS TO PROMOTE THE INTEGRATION OF A RIGHTS PERSPECTIVE IN PROGRAMMING

This being an exploration of the rights perspective in development co-operation it is natural that the focus of the study is on those holding rights or bearing duties in Kenya, i.e. Kenyan citizens and the Government of Kenya (GoK). Consequently, this part of the assessment constitutes the core of the study. As mentioned earlier, the GoK in its role as a duty bearer forms the point of departure for this evaluation. Hence, the specific interest is whether the GoK's level of ownership of the work with the integration of the rights principles has increased. The question links on to the capacity of GoK, within the six sectors supported by Sida, to integrate a rights perspective in all phases of programming. Initially, these duty bearers will be found at different administrative levels, and needs to be mapped out and identified (se chapter 2).

With regard to the issue of ownership, we need to consider *the extent to which the work with the rights principles is integrated within the practices of the GoK*. Is the GoK increasingly working with the rights principles? Is the work with the rights principles spread within the GoK?

Further, the section explores *if, how and to what extent the capacity of the GoK to integrate the rights principles in programming has changed due to*

MAINIAC. How has MAINIAC affected the capacity of partners to analyse, implement, develop outputs, indicators and establish processes that promote the rights principles? Once again, the assessment of the effects of MAINIAC on the capacity of partners in the GoK to integrate a rights perspective within programming will be made both in relation to the explicit goals found in MAINIAC programme theory and in relation to international guidelines on integration of a rights perspective (or RBA).

To capture this, several aspects need to be studied:

- A *comparison of programming processes* in the Swedish supported sectors prior to and after 2004. The aim is to establish to what extent the rights principles have been integrated and promoted by GoK in the preparation and planning, design, implementation and follow up within the different sectors and their programmes. Is a rights perspective visible in the different phases of programming; situation analysis, development of programmes goals, design, means of implementations (programme activities), analyses of the effects of those activities, review and monitoring etc (Chapters 1 and 2 of this assessment plan elaborate on the approach and practical guidelines to be used).

- An analysis of how the duty bearers in GoK currently perceive their own capacity to mainstream the rights perspective in the different phases of programming. For example, do the partners find the rights principles to be important/equally important aspects within the different phases of programming and within their various sectors/programmes? It also reflects the ambition to study what resources that have been made available to partners included in MAINIAC. Focus will be on studying demand for resources – their origin, differences in demand and the satisfactions with the supplied resources/capacity building exercises.

The assessment should also consider other factors that may have affected the capacity of partners. For example, what capacity has been created within the GoK? Have there been other (i.e. not within the frame work of the MAINIAC project) capacity building exercises conducted? What possible enhanced capacity within GoK could be contributed to the MAINIAC project? Similarly the section ought to end with a general discussion of whether there is reason to believe that any enhanced capacity in GoK has had any impact on the promotion of poor people's development, democracy etc., i.e. the overall objective of MAINIAC.

Relevant actors:	GoK partners within different sectors and at various administrative levels, relevant rights holders (through secondary data), resource persons.
Data needed:	Comprehensive programme/project documentation such as programme planning documents, stakeholder workshops, various assessments, programme document, MoUs/Notes from meetings and reviews from the period prior to and after 2004, documentation on capacity building exercises, interview data.

Method: Comparative programme documentation review, interview analysis, reviews of method/models/mechanisms used. The ambition is to study all the programmes' initially included in MAINIAC and the programming processes, focusing on the role and capacity of Government of Kenya as duty bearers (see also the ToR for more details on requested methods to be used). When studying the respective programming process prior to 2004, only the preceding programme (i.e agreement on support between Sweden and Kenya) should be analysed.

b) LOCAL RESOURCES AND SUSTAINABILITY

This next section addresses the questions of ***if, how and to what extent MAINIAC has made effective use of local knowledge on a rights based approach, developed local resource persons/NGOs, and if sustainability has been ensured by promotion of links between local resource persons and partners in the GoK.***

The use, development and exchange of knowledge about the rights perspective (or a rights based approach) will be studied from a number of angles.

- The first aspect concerns the mapping out of utilised local knowledge on the RBA and mainstreaming issues. For example, what resource institutions have been involved and why were they selected? How have the resource institutions participated and what has been their primary role? Could knowledge and competence have been made use of differently? And so on.

- The second issue deals with the extent to which MAINIAC has contributed to the further development of local resource persons/NGOs working with a rights based approach in programming. This reflects the ambition to study what resources have been made available to local resource persons/NGOs and their demand for resources in general.

- The final and most important part of this section focuses on the linkages and exchange of knowledge between local resource persons and partners in GoK. The study will probe the institutionalisation of that link as an important aspect of sustainability. It will be considered to what degree the link is anchored in the respective organisations, if there is an explicit continuation, if the support offered by resource people is "demand-driven", during what phases of programming support is offered and so on.

This section should consider possible other factors influencing exchange of knowledge and sustainability. For example, how did the linkages and exchange of knowledge between local resource persons and partners in GoK look prior to 2004? What linkages created after 2004 can be contributed to MAINIAC? What kind of linkages has been institutionalised? Have linkages been created outside the frame work of MAINIAC? Finally, this section should also include a discussion on whether there is reason to believe that the above use, exchange and linkages (if established) has in turn promoted the integration of a rights perspective in programming.

Relevant actors:	Local resource persons/NGO's, partners in GoK, Embassy staff
Data needed:	Documentation on Embassy inventories of resource persons/NGO's, workshops and capacity building exercises, MoUs/notes from meetings and possible other documentation on institutionalisation of exchange, interviews (Embassy staff, Local resource persons/NGO's and partners in GoK).
Method:	Documentation review, interview analysis. All links between resource people and partners in GoK will be probed. This will include an analysis of documentation from formalised exchanges but primarily rely on interviews. A comparison of how the use, development and exchange of knowledge have/have not developed prior to and after 2004 should be included.

3) Conclusions and Summary

Conclusions will on the basis of the analyses described above be drawn specifically about the capacity to mainstream a rights perspective throughout all the different phases of programming among partners in the Swedish-Kenyan development co-operation. Emphasis will be on the capacity of Kenyan duty bearers and the sustainable resources available to them. On the basis of the international discourse on RBA, it will be discussed how that capacity and hence, the integration of a rights perspective, might be enhanced further.

It is of vital importance that the different parts of this evaluation are guided by, and endeavour to answer to, the questions outlined in the Checklist in Chapter 2 of this evaluation plan. As stated initially in the evaluation plan, the conclusions should hold for the following kinds of recommendations:

1. Document how a RBA (referred to as "the rights perspective" in Swedish development cooperation policy) may be integrated in different programmes and sectors (there is still very little documentation on this) in order to identify factors that enhance, respectively impede, this approach and thereby provide practical guidelines and policy recommendations for the implementation of this approach;

2. Assess the effects of MAINIAC on all programming phases of programmes supported by Sweden in Kenya since 2004 to provide the Swedish Embassy in Nairobi with practical recommendations for how to integrate this approach further;

3. Advice more specifically on how MAINIAC in Kenya can be continued in order to enhance the integration of the rights principles in programming, as well as enhance the sustainability and Kenyan ownership of this process.

Appendix II
Terms of Reference for Evaluating the Impacts of the Project: "Mainstreaming in Action" (MAINIAC) on Programming in Swedish Supported Programmes in Kenya

1. BACKGROUND & PURPOSE OF THE EVALUATION

The Mainstreaming in Action (MAINIAC) project was started at the Swedish Embassy in Nairobi in 2003, due to an understanding of a weak integration of the principles of democracy and human rights (D/HR) in the operation of the Kenyan government. Based on a multidimensional view of poverty, that includes democracy and human rights, MAINIAC was to ensure that programmes with agreements from 2004 in the areas of agriculture, health, legal sector reform, water, roads and urban development, promoted poor people's development, D/HR including women's and children's rights, sustainable development, peace as well as prevention of HIV/Aids and the consequences of HIV/Aids (Emb/Nairobi, 2003:2). This was to be assured by integrating human rights principles into all the programming phases (i.e. assessment, planning, design, implementation and evaluation) within the sectors concerned. According to Swedish development policy, the lack, or the weakness, of the D/HR principles of non-discrimination, participation, openness and transparency, and responsibility and accountability are root causes of poverty. Hence, these principles help reveal causes, and not only symptoms, of poverty. Starting in February 2007, SADEV will together with three Kenyan evaluators assess the effects of MAINIAC on the different phases of programming of programmes supported by Sweden in Kenya after 2004. This evaluation shall be strictly based on SADEV's assessment plan (found in Annex 2). The assessment plan explains the rights based approach of Swedish development policy and the rights principles of MAINIAC to be analysed. Thereafter, and importantly, *the assessment plan guides the practical carrying out of the evaluation*, including a checklist of questions to be asked and the division of responsibilities among SADEV and the Kenyan evaluators.

The overall objectives of the evaluation are to:

1. Document how a RBA (referred to as "the rights perspective" in Swedish development cooperation policy) may be integrated in different programmes and sectors (there is still very little documentation on this) in order to identify factors that enhance, respectively impede, this approach and thereby provide practical guidelines and policy recommendations for the implementation of this approach;

2. Assess the effects of MAINIAC on all programming phases of programmes supported by Sweden in Kenya since 2004 to provide the Swedish Embassy in Nairobi with practical recommendations for how to integrate this approach further;

3. *Advice more specifically on how MAINIAC in Keny*a can be continued in order to enhance the integration of the rights principles in programming, as well as enhance the sustainability and Kenyan ownership of this process.

More specifically, the Kenyan evaluators shall (according to Chapters 2 and 3 in the assessment plan) answer to the following questions:

• Who are the relevant duty bearers with regard to programming in the sectors affected by MAINIAC and which are their responsibilities?

• How is programming different after the introduction of MAINIAC in 2004 (as compared to *programming* just before 2004)? Has MAINIAC helped focusing on the root causes of poverty (i.e. the rights principles)?

• *How* and *to what extent* have the principles of *non-discrimination, participation, openness and transparency, and responsibility and accountability* been respected, integrated and promoted throughout all phases in the programme cycle; planning, design, assessment, implementation, evaluation; in sectors targeted by MAINIAC?

• How and to what extent has the Government of Kenya's (GoK's) capacity to integrate the rights principles in programming changed due to MAINIAC (i.e. capacity after 2004 compared to practices just before 2004)?

• Have there been activities within the programmes to develop the capacity of rights holders?

• What factors enhanced and impeded, respectively, the integration of each rights principle at each programming phase in the sectors concerned?

• What resources were/are used to build capacity to work with a rights perspective at different stages of programming, before and after 2004?

• Were links developed between different Kenyan resource institutions/people in the field of human rights? Which ones and how? Were such resources developed further and used effectively?

• Has ownership of the GoK been enhanced? How and to what extent?

• Is sustainability of this rights approach enhanced through links to local resource persons/organisations or in other ways?

• How can the integration of each principle in the different programme phases, in the different sectors be enhanced further?

• How did the other crosscutting issues – i.e. prevention and mitigation of HIV/AIDS, environmentally sustainable development, and peace and conflict prevention - impact on the integration of the rights principles in programming?

- How did the work with MAINIAC impact upon the dealing with the other crosscutting issues – i.e. prevention and mitigation of HIV/AIDS, environmentally sustainable development, and peace and conflict prevention - in programming?

(See Assessment Plan, chapter 3, section 2 a & b for clarifications on the questions above)

2. SCOPE OF RESEARCH OF KENYAN EVALUATORS

The Kenyan evaluators will analyse programmes with agreements from 2004 that receive Swedish support in two sectors each as follows[140]:

Evaluator	Sector
Prof. Khasiani, Shanyisa	Health Programme & Programme on Agriculture
South Consulting Africa Limited, under the team leader and advisor Dr Kanyinga, Karuti:	
Mr John Njoka	GJLOS Programme & Roads Programme
Ms Chesoni, Atsango	Urban Development Programme & Water programme

The exact delimitations and divisions of responsibilities, between the Kenyan evaluators and the SADEV team, are described in the assessment plan (Annex 2).

In practical terms, *each* Kenyan evaluator shall:

- gather the data needed (including assessments and programme documents just prior to the signing of new agreements in 2004 and after 2004, other relevant documentation, text analysis, interviews with relevant stakeholders) to verify *whether and how* all of the rights principles have been promoted and integrated in the programmes during all programming stages; planning, implementation and assessment; *just before 2004 compared to after 2004* (i.e. before and after Mainiac was started) within programmes in two sectors supported by Sida in Kenya;

- carry out *comparative analyses and assessments* (comparing the kind of programming just before 2004 to practices due to the new agreements affected by MAINIAC from 2004) according to the questions outlined in the checklist in the assessment plan (see Annex 2);

- produce reports (instructions for reporting procedures are found under heading 4 below), with each sector, each programming phase and each rights principle receiving the same amount of attention, with analysis and preliminary conclusions referring to the questions in the checklist in the assessment plan and the aims of this evaluation (see Annex 2);

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[140] According to this scheme, each Kenyan evaluator is in charge of one sector that receives up to 100MSEK (Health, GJLOS, Urban Development) in Swedish support and one sector which receives more (Agriculture, Roads, Water). Also, following this division, sectors with more experience of working with MAINIAC (i.e. Agriculture and Roads) will be analysed by different evaluators and compared to sectors with less experience of MAINIAC (e.g. Health).

- comment on all the draft reports and discuss preliminary conclusions with SADEV at an interim workshop in Nairobi (see time frame and deadlines under heading 8 below);

- comment in writing on the draft of the final synthesis report and participate in the presentation of this report with SADEV in Nairobi;

Coordination

SADEV is responsible for coordinating this evaluation. The Kenyan evaluators must address the SADEV team with questions referring to the carrying out of the evaluation (e.g. with regard to methodological problems, reporting procedures etc). The Kenyan evaluators should also be in touch with each other to exchange ideas referring to such problems or other practical issues.

3. METHODOLOGY

The evaluators shall take an as objective standpoint as possible in carrying out the evaluation and try to identify possible biases of the sources of information when compiling the analysis.

All evaluators taking part in this assessment shall strictly use the comparative methodology as outlined in the assessment plan (in Annex 2). It is of vital importance that each evaluator uses the same sets of questions, throughout data collection, text analysis, interviews and analysis, in order for the different parts of the study to hold for comparison.

4. REPORTING

The Kenyan evaluators shall submit a draft report each of approximately, but no more than, 40 pages of analysis (covering all questions outlined in the Checklist in the assessment plan in Annex 2) and preliminary conclusions, including about 5 pages dealing specifically with methodological problems encountered in the carrying out of the evaluation. The draft report shall be submitted electronically, in MS word for windows format to SADEV no later than XX (see time frame below).

A meeting shall take place between the SADEV team and the Kenyan evaluators on XX. Prior to this meeting the Kenyan evaluators shall read all three draft reports (i.e. including the other two evaluators' reports) and be prepared to provide input on preliminary conclusions. The Kenyan evaluators shall also give oral briefings on their respective reports (analysis and results, method used, strengths and weaknesses and so on).

When the SADEV team has compiled a joint synthesis report (see time frame below) including all parts of the evaluation this synthesis will be submitted to the Kenyan evaluators for comments. The Kenyan evaluators shall, in writing and by e-mail, submit comments on the synthesis report in its whole no later than XX.

Finally, the Kenyan evaluators shall participate in a joint presentation to various stakeholders of the final results by XX in Nairobi.

How to present data and analysis

Data analysis and presentation must apply the following standards:

1 Include *a very brief* background to each programme/sector to be analysed;

2 Consist of one comparative analysis *per sector* of how programming was/is conducted just before programme agreements were affected by MAINIAC in 2004 and after (strictly based on the checklist in the assessment plan in Annex 2);

3 Conclusions and reflections about progress, drawbacks and obstacles, with integrating the rights principles in the programmes and sectors analysed. Here the evaluator should compare the sectors she/he is in charge of;

4 Recommendations according to the three overall aims of this evaluation;

   o there must be clear references for all data and sources used in all reports that are part of this evaluation, using footnotes (the same system as in the assessment plan);

   o exact references to all interviews must be given, including names (if informants ask for anonymity it is enough to refer to what the informant represent – for example public institution, type of NGO etc), date, time and place;

   o methodological considerations should be thoroughly treated in a separate section (of about 5 pages) that discusses: how the questions in the checklist in the assessment plan have been dealt with; problems/weaknesses of data collection and sources; how different informants were selected and how representative the interviews are; and how such methodological problems have been approached by the evaluator;

   o the respective evaluation, including all drafts, shall be written in English;

   o the report will serve as input for a synthesis report that covers the areas of agriculture, health, legal sector reform, water, roads and urban development *- it is therefore imperative that instructions and formats described in this TOR and in the assessment plan (Annex 2) are strictly observed*;

   o the report of each evaluator will be put together by the SADEV team, and after further elaboration, result in a SADEV publication. The Kenyan evaluators will be co-authors of this report (se below for copyright issues);

5. COPYRIGHT

SADEV shall have the copyrights of all the reports conducted for this evaluation and be allowed to edit and use them as SADEV finds appropriate.

The Kenyan evaluators may use their own respective reports - but only after the official publication of the SADEV final evaluation synthesis report (where the Kenyan evaluators will be co-authors).

6. TIMING

The Kenyan evaluators shall commence this assignment after signing the contract with SADEV. The expected commencement date is XX. Data collection, analysis, drafting of the report, commenting upon joint conclusions, and participation in the interim as well as the final seminars are expected to amount to XX per Kenyan evaluator. The assignment, including all its parts, shall be concluded no later than XX.

7. BUDGET & PAYMENT PROCEDURES

The daily rate, including all expenses, to be paid to XX for the contract period of XX working days starting on XX is a maximum of XX. Thus, the total amount of this assignment is a maximum of XX.

The evaluators shall be reimbursed and submit invoices to SADEV in accordance with the following:

• A first invoice of 50% of the total fee shall be submitted in connection with the signing of the contract.

• The last invoice of 50% of the total fee shall be submitted after that the evaluators have completed the assignment, i.e. after also having participated in the seminar in Nairobi in XX (see time frame below).

8. TIME SCHEDULE (XX days contract per Kenyan evaluator)

Below are the deadlines to be followed in the carrying out of this evaluation.

DEADLINES	
Contract signed	XX
Data collected, analysed and sent to SADEV	XX
Interim seminar with SADEV in Nairobi	XX
(SADEV writing of synthesis draft report	XX
Comments on synthesis report sent by SADEV	XX
Presentation & reflections on final results seminar in Nairobi	XX
Publication of final report	XX

Time frame

Activity	Duration	Deadline
Data collection, analysis & draft report sent to SADEV	XX	XX
Reporting seminar in Nairobi	XX	XX
Comment on the synthesis report (the synthesis draft will be sent by SADEV to the evaluators by mid May 2007)	XX	XX
Presentation with SADEV team in Nairobi	XX	XX
Total	**XX weeks**	

9. APPENDIXES

Annex 2.

Assessment Plan: Evaluating the Impacts of the Project "Mainstreaming in Action" (MAINIAC) on Programming in Swedish Supported Programmes in Kenya

Appendix IIIa
GJLOS Institutions/Duty-bearers

OFFICE OF THE PRESIDENT – PROVINCIAL ADMINISTRATION AND INTERNAL SECURITY

1   Kenya Police

2   Administration Police

3   Provincial Administration

4   National Agency for Campaign Against Drug Abuse (NACADA)

OFFICE OF THE PRESIDENT – MINISTRY OF IMMIGRATION AND REGISTRATION SERVICES

1   Immigration

2   Civil Registration

3   National Registration Bureau

OFFICE OF THE PRESIDENT

1   Governance & Ethics

OFFICE OF THE VICE-PRESIDENT AND MINISTRY OF HOME AFFAIRS

1   Prisons

2   Probation and Aftercare Services

3   Children's Services

4   National Youth Service

MINISTRY OF JUSTICE & CONSTITUTIONAL AFFAIRS

1   Office of the Minister, Justice and Constitutional Affairs

2   Kenya National Commission on Human Rights

3   Kenya Anti-Corruption Commission

4   Kenya Law Reform Commission

5   Kenya School of Law

6   National Anti-Corruption Campaign Steering Committee

7   Finance and Administration

8   Programme Coordination Office

JUDICIARY

1   Judiciary

2   Judicial Service Commission

3   National Law Reporting

STATE LAW OFFICE/OFFICE OF THE ATTORNEY-GENERAL

1   Office of the Attorney-General

2   Office of the Solicitor-General

3   Advocate Complaints Commission

4   Public Prosecutions

5   Civil Litigation

6   Legislative Drafting

7   Treaties and Agreements

8   Public Trustee/Administrator-General

9   Registrar-General

Appendix IIIb
Membership of Key GJLOS Committees/Units

INTER-AGENCY STEERING COMMITTEE

The IASC is jointly chaired by the Vice President and Minister of Home Affairs: Its members are:

1   Minister of Justice and Constitutional Affairs (Committee Convenor)

2   Minister of State for Provincial Administration and Internal Security/Office of the President

3   Minister of State for Immigration and Registration Services/Office of the President

4   The Attorney General

5   The Chief Justice

6   Permanent Secretary, Provincial Administration and Internal Security/Office of the President

7   Permanent Secretary, Ministry of Immigration and Registration Services/ /Office of the President

8   Permanent Secretary, Office of the Vice-President and Ministry of Home Affairs

9   Permanent Secretary, Ministry of Justice and Constitutional Affairs

10   Permanent Secretary, Governance & Ethics/Office of the President (Committee Secretary)

11   Solicitor-General

12   Registrar of the High Court

TECHNICAL COORDINATING COMMITTEE

All stakeholders are represented in the TCC, including development partners and the civil society organisations. Its full membership is:

From GoK GJLOS Institutions:

1   A Justice of the Court of Appeal appointed by the Chief Justice (Chairperson)

2   Permanent Secretary, Ministry of Justice and Constitutional Affairs (Secretary)

3   Permanent Secretary, Governance & Ethics/Office of the President

4   Permanent Secretary, Provincial Administration & National Security/Office of the President

5   Permanent Secretary, Office of the Vice President and Ministry of Home Affairs

6   Solicitor General

7   Registrar, High Court

8   Director of Public Prosecutions, Office of Attorney General

9   Commissioner of Police

10   Director of Criminal Investigations

11   Commissioner of Prisons

12   Chairperson, Kenya Law Reform Commission

13   Chairperson, Kenya Anti-Corruption Commission

14   Chairperson, Kenya National Commission on Human Rights

15   Director, Children Services

16   Director of Probation and Aftercare Services, Ministry of Home Affairs

17   Principal Immigration Officer, Ministry of Home Affairs

From GoK Institutions with Cross-Cutting Inputs to GJLOS Reforms:

18   Permanent Secretary, Office of the President/Directorate of Personnel Management

19   Secretary, Public Service Reform and Development Secretariat, Cabinet Office

20   Director, Gender Commission

21   Director, National Environment Management Agency

22   Director, National AIDS Control Council

23   Director of Budget, Ministry of Finance

24   Director of External Resources, Ministry of Finance

25   Director of IT, Ministry of Finance

26   Head of MTEF Secretariat, Ministry of Finance

From Civil Society:

27   Chairman, Law Society of Kenya

28   Executive Director, Kenya Human Rights Commission

29   Executive Director, FIDA

30   Executive Director, CRADLE

31   Executive Director, Transparency International

32   Representative, Faith-Led Reform Initiative (Ufungamano Initiative)

From the Private Sector:

33   Chief Executive Officer, Kenya Private Sector Alliance

From Development Partners:

34   Representatives of International Development Partners who sponsors the Programme

TCC MANAGEMENT COMMITTEE

The membership of this sub-committee is:

1   A Justice of the Court of Appeal appointed by the Chief Justice

2   Permanent Secretary, Ministry of Justice and Constitutional Affairs

3   Permanent Secretary, Provincial Administration & National Security/Office of the President

4   Permanent Secretary, Office of the Vice President and Ministry of Home Affairs

5   Solicitor General, Office of Attorney General

6   Director of Public Prosecutions, Office of Attorney General

7   Registrar, High Court

8   Chairman, Kenya National Commission on Human Rights – To represent Kenya Law Reform Commission and Kenya Anti-Corruption Commission

9   Director of Budget, Director of External Resources and Head of MTEF to be co-opted as needed

10   Executive Director, Kenya Private Sector Alliance

11   Executive Director, FIDA-K – To represent gender concerns and civil society

12   Programme Coordination Office.

THEMATIC GROUPS AND CONVENORS

The present seven Thematic Groups are envisaged to retain their mandate and membership through the MTS period. Their focus and leadership is listed below.

Thematic Group 1: Ethics, Integrity and Anti-Corruption.

Convener: Permanent Secretary, Governance and Ethics – Office of the President

Thematic Group 2: Democracy, Human Rights and Rule of Law

Convener: Chair, Kenya National Commission on Human Rights

Thematic Group 3: Justice, Law and Order

Convener: Registrar of the High Court

Thematic Group 4: Public Safety and Security

Convener: Permanent Secretary, Provincial Administration andNational Security – Office of the President

Thematic Group 5: Constitutional Development

Convener: Chair, Kenya Law Reform Commission

Thematic Group 6 Quality Legal Services to Government and the Public

Convener: Solicitor-General

Thematic Group 7: Capacity for Effective Leadership and Management of Change

Convener: Permanent Secretary, Ministry of Justice and Constitutional Affairs

TERMS OF REFERENCE FOR THEMATIC GROUPS
1. ROLE DEFINITION

Each Thematic Group: provides an assertive, multi-stakeholder forum for information and knowledge-sharing and crossinstitutional collaboration during workplan and budget preparation (which are specific institutional responsibilities) reviews and confirms that the programme's key results are consistent with:

• annual workplans

• reviewed workplans

• the subject theme covered by the group

The TG acts as a focal point and clearing house for original workplans and workplan revisions. It mobilises and energises peer organisations to assume responsibility and execute actions appropriate to their mandate in the implementation of the programme;

The TG guides stakeholders responsible for thematic outputs and outcomes to effectively communicate and coordinate their implementation activities so that: (i) the risks of working at cross-purposes and duplicating effort are minimised; and (ii) the opportunities for complementarity and synergy are collaboratively identified and exploited.

The TG catalyses inclusive monitoring and evaluation of implementation for different strategic results as they relate to that theme.

The convenor of each of thematic group is the chief executive (Permanent Secretary, full-time Chairman, Registrar, etc) of the sector institution mandated to lead in the achievement of the target outputs and outcomes in that thematic area. To provide leadership and continuity within Thematic Groups, every designated convenor may appoint a co-convenor. The designated convenor will remain the lead convenor, but will be able to call on the support of the co-convenor as the need arises.