The Application of the Human Rights-Based Approach to Programming into the Common Country Assessment of the United Nations in Viet Nam

A Case Study

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LIST OF ABBREVIATIONS USED:

CAT: Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment
CCA: Common Country Assessment
CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women
CG: Consultative Group
CPRGS: Comprehensive Poverty Reduction and Growth Strategy
CRC: Convention on the Rights of the Child
ECOSOC: Economic and Social Council
HoAs: Head of Agencies
HRBAP: Human Rights-Based Approach to Programming
HRWG: Human Rights Working Group
ICJ: International Criminal Court
MDGs: Millennium Development Goals
MFA: Ministry of Foreign Affairs
MPI: Ministry of Planning and Investment
NGOs: Non-governmental Organizations
ODA: Overseas development assistance
OHCHR: Office of the United Nations High Commissioner for Human Rights
PRSP: Poverty Reduction Strategy Paper
Sida: Swedish International Development Agency
SWOT: Strengths, weaknesses, opportunities and threats
TA: Technical Assistance
UN: United Nations
UNCTs: United Nations Country Teams
UNDAF: United Nations Development Assistance Framework
UNDP: United Nations Development Programme
UN-DG: United Nations Development Group
UNFPA: United Nations Population Fund
UNICEF: United Nations Children’s Fund
U5MR: Under Five Mortality Rates
1. Background and Rationale: This case study examines how the human rights-based approach to programming (HRBAP) has been integrated into the Common Country Assessment (CCA) in Viet Nam. The CCA is a joint assessment of a country’s situation by the United Nations (UN). It aims to identify key development challenges through a collective process of discussions and analysis between UN agencies, in collaboration with Government agencies, the wider overseas development assistance (ODA) community as well as with civil society. The CCA builds the basis for the programmes and projects supported by UN agencies under the United Nations Development Assistance Framework (UNDAF) in a country. The CCA is thus a high profile document, which is closely linked to the reputation and value-added of the UN in that particular country.

A HRBAP adds a new dimension to the CCA. It merges perspectives and experiences on poverty reduction, human development and human rights into a new approach to developmental programming. It is therefore important for the purpose of this study to clarify that the CCA is a critical document within the cycle of joint programming of the UN and development agencies but that it is not intended to be a human rights report about a country. Nevertheless, the inclusion of human rights as an important dimension of developmental programming raises the bar in the policy-dialogue between the UN and the Government of a country.

It is to be noted at the outset that the political, technical and institutional complexity of a collective rights-based analysis by UN agencies is high while available space, time, human resources and funding are limited. Therefore, expectations regarding rights-based CCAs will have to be rather modest. In addition, the typical 30-page limit for the CCA does only allow a very broad and strategic analysis of problems and challenges in development and human rights. In the case of Viet Nam, the CCA was agreed upon by 12 UN agencies, 17 Government agencies under the leadership of the Ministry of Planning and Investment (MPI) as well as nine ODA partners. The process was coordinated by a small team of two staff at the Office of the Resident Coordinator with access to a budget of US$ 50,000. The team employed a consultant and liaised with an editing team of staff from United Nations Development Programme (UNDP) and United Nations Children’s Fund (UNICEF) with support from United Nations Population Fund (UNFPA).

Despite many challenges (that are highlighted in Section 4), one also has to recognize that the institutional and political environment for a HRBAP has improved significantly in recent years. The UN Secretary-General has instructed that human rights be included into the work of all UN agencies as a cornerstone of the UN reform. The United Nations Development Group (UN-DG) has also reached an agreement on the principles related to such programming (the “Stamford Agreement”) and provided technical guidelines for the CCA/UNDAF with particular emphasis on rights-based

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2 Human rights and related topics are sensitive issues for many Governments worldwide and UN agencies may face difficulties in raising such issues with these Governments. Managing such sensitivities requires diplomatic skills and a close dialogue among all parties involved in the CCA process.

analysis and rights-based programming. In Viet Nam, these developments have found a supportive environment. The Resident Coordinator has strongly supported the human rights dialogue with the Government as well as towards a rights-based approach to programming. Another set of enabling factors were the increasing confidence and willingness of the Government to discuss developmental challenges from a human rights perspective and their acceptance of such programming in the CCA and the UNDAF.

This study briefly explains the country background, describes process and methodologies for the incorporation of the HRBAP into the CCA, presents the outcomes, compares the CCA with previous CCAs and the World Bank’s Poverty Reduction Strategy Paper (PRSP) and finally proposes some lessons learned, challenges and recommendations.

**Country and Programme Context:** Viet Nam is going through an extremely fast and complex process of social and economic change called “Doi Moi”. This process presents a dominant social and political background for a diverse picture of the situation of human rights in the country.4 The process of change started in 1986, when the 6th Congress of the Communist Party of Viet Nam decided to substantially reform the Vietnamese State and society.5 “Doi Moi” is based on three key processes: a) transition from a centrally planned economy to a market oriented economy with State management; b) strengthening of the rule of law and citizen’s participation in decision-making processes; and, c) an open-door policy towards all countries of the world. These processes have ever since marked the development of the Vietnamese society and have also opened the door for an increasingly open environment for dialogue and programming on human rights, child rights and women’s rights.

The success of economic reforms apparently led the Party leadership at the 8th Party Congress in 1996 to reconfirm and expand the direction taken in the past years and to

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5 One party - the Communist Party of Viet Nam - is the only political power in the State and Government of Viet Nam. The Party has around two million members, out of a total population of 80 million citizens. Every five years, around 1000 party delegates meet at a National Congress to decide on basic guidelines relating to laws and policies in Viet Nam, including those for children and adolescents. Article 4 of the Constitution of the Socialist Republic of Viet Nam stipulates the role of the Communist Party of Viet Nam as follows: “The Communist Party of Viet Nam, the vanguard of the Vietnamese working class, the faithful representative of the rights and interests of the working class, the toiling people and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh’s thoughts, is the force which leads the State and the society. All organizations of the Party operate within the framework of the Constitution and law”. The Party is governed by the principle of democratic centralism. The National Congress elects the 150 members of the Central Committee. The Central Committee elects the Politburo. The Politburo appoints the General Secretary. The highest position in the Party is the Party Chairman (which was held by Ho Chi Minh, but is now left vacant). The post of General Secretary or First Secretary follows that of the Party Chairman. Every Vietnamese citizen, if voluntarily joins the Party and has all qualities that the Party requires, will be admitted. However, the new Party member has to experience a time of probation, lasting for at least one year, before having the right to vote, elect and stand for election in the Party.

add an ambitious time frame: “From now to the year 2020, we will strive strenuously to turn our country basically into an industrialized country.” This decision was supported by a detailed agenda of economic modernization, including the attraction of foreign investment and guarantees for private property in order “to encourage private capitalists to invest in and operate long-term businesses.” At the same time, Viet Nam also started to play a prominent international role within the UN. The country was elected Vice Chair of the Executive Board of UNICEF from 1996-1998, to the UN Economic and Social Council (ECOSOC) in 1998-2000 as well as to the Executive Board of UNDP/UNFPA from 2000-2002.

The 9th Party Congress followed the line of previous Congresses in detailing and specifying the goals, plans and strategies for the reform process to an even more larger extent – this is witnessed by the Party endorsing a 10-year socio-economic strategy (2001-2010) towards achieving the goal of industrialization by 2020; a five-year socio-economic plan; as well as several broad-based programmes targeting poor people and ethnic minorities.

“Doi Moi” has witnessed economic growth rates between eight and 12 per cent per year over the past 10 to 15 years. The impressive economic and social development of Viet Nam has also changed the environment for foreign assistance dramatically. Today, the Government of Viet Nam finances its budget largely through national taxes; other national sources of State revenue and official development aid to Viet Nam has increased to US$ three-four billion per year (by 2005). About 400 international organizations are contributing to the developmental process. This is in contrast to the situation 10 years ago, when only a handful of international organizations were present in Viet Nam, and UN agencies like UNDP and UNICEF were among the main ODA actors. To this has been added the remarkable commitment of the Government to improving the situation of children and women. This has led to a halving of poverty and significant reductions in Under Five Mortality Rates (U5MR) and malnutrition, inter alia. Viet Nam has also achieved many of the Millennium Development Goals (MDGs). The country has reached high levels of primary education enrolment and is aiming towards achieving universal lower secondary education.

Given this new enabling environment, the CCA and UNDAF processes in 2004 provided a strategic opportunity for the UN agencies and the Government to seriously re-think the added value and re-position the development cooperation mechanism of the UN-system in order to make the most effective use of UN support. Given the limited financial volume of the cooperation of the UN with Viet Nam, technical assistance and policy dialogue on newly emerging problems within the process of transition towards a market-based economy as well as on matters related to international integration such as human rights and the Millennium Declaration/MDGs have assumed more importance than ever before.

The following section delves into the processes involved while incorporating a HRBAP into the Viet Nam CCA.
2. Process:

Integrating Human Rights into Development Programming in Viet Nam: The full integration of a HRBAP into the CCA is closely linked to the overall process of strategic repositioning of the UN in Viet Nam within the wider ODA-context as well as by the strong emphasis of the UN Secretary-General for a UN-system wide approach to human rights.

As a first step in this process, the Resident Coordinator in Viet Nam organized a retreat for all Heads of UN agencies (HoAs) in 2002. At this retreat, senior UN staff undertook an analysis of strengths, weaknesses, opportunities and threats (SWOT) of the UN system in Viet Nam. HoAs also brainstormed on development challenges of Viet Nam. While the “human rights approach” was not on top of the short list of issues to be addressed, the HoAs identified a number of priorities with high human rights relevance such as governance, democracy, participation, civil society, youth, HIV/AIDS and inequalities amongst groups.

The UNCT also endorsed a joint training on human rights for UN staff. This was conducted at a later date by facilitators from the regional offices of the UN Office of the High Commissioner for Human Rights (OHCHR) and UNICEF (more information on this training is elaborated in a latter section in this paper). Shortly after this training, a CCA/UNDAF-mission of the Government visited the headquarters of UNICEF, UNFPA and UNDP in New York and came back with the clear message from the UN Executive Committee agencies about the importance and need of the HRBAP for a CCA/UNDAF that reflects the needs and priorities of the Vietnamese people.

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6 “In sum, UN strengths were identified as: neutrality; universality; strong UN Conventions/declarations; good history/credibility in Viet Nam; close trusted relations with the Government; strong collective technical knowledge/skills base which can contribute towards a multi-sectoral approach to development; availability of international/regional technical resources; and, a strong and well-capacitated national staff. UN weaknesses included meager resources for which agencies must compete; lack of institutional continuity; bureaucratic and slow to respond on many fronts; little negotiating space with Government; lack of common systems and coherence in policy; overlapping agency agendas; poor UN coordination /communication; and, weak partnerships with NGOs. The overall opportunities identified for Viet Nam’s development were: the country being stable and peaceful with a positive development environment (e.g., strong Government ownership, reform process, drive for development); opportunities from globalization; demographic shift to youth; grassroots democracy decree; private sector interest in development; some actors looking to UN for leadership; and UN agencies (at UN Headquarters) having agreed to harmonize some procedures. The threats in the Vietnamese context were outlined as: rapid change and widening social inequalities; economic development emphasis may overwhelm need to mitigate widening social disparities; marginalization of the UN with decreasing ODA; technical assistance (TA) mobilizing other large donors; questioning of UN’s effectiveness/efficiency and ability to hire best staff; Government gatekeepers acting as a barrier to accessing civil society; contradictory/incoherent Government social policies; Government cuts to social sector budgets; vertical Government structures, duplicating aid requests and inter-ministerial competition; decentralization without capacity strengthening; and growing HIV/AIDS threat”, UNCT Summary Minutes. UNCT, 13-14 June 2002.

7 Ibid. Refer to footnote No.4.
The Resident Coordinator highlighted the importance of the human rights training as well as the findings of the Government mission during the HoA Retreat in New York in 2003. The HoAs in 2004 subsequently discussed the importance of the Millennium Declaration as an important worldwide framework for further dialogue among agencies and between the UN and the host Governments on human rights as follows: “It was agreed to expand the focus to make the Millennium Declaration the collective framework for the UN work. This would more effectively allow the UNCTs to better address the agenda on human rights, equity, governance and harm reduction among other issues.”

These developments predated the UNCT CCA workshop in March 2004. At that workshop, the UNCT re-emphasized the Millennium Declaration and the six core values of freedom, equality, solidarity, tolerance, respect for nature and shared responsibility as a key framework for the UN system in Viet Nam (see box below).

**Building Diplomacy around Human Rights:** The sensitivity of the Government around human rights and a human rights-based approach to development required a careful process of dialogue and consensus building. In a letter to the OHCHR in Geneva, the Resident Coordinator explained the need for well-thought through diplomacy around the programming process and elaborated on the rationale for the structure, process and methodological approaches for a rights-based CCA: “Among the issues discussed (at the CCA workshop) was also how to best integrate and mainstream human rights. We are considering several alternative approaches (or a combination of approaches) but feel comfortable about developing an overview and analysis of Viet Nam’s human rights commitments in a separate chapter of the CCA with three-four priority issues being addressed in more depth in relevant chapters. We also need to discuss further the consideration of developing a full rights-based CCA document involving a comprehensive causality as well as pattern analysis. As you may know, the subject of human rights remains a sensitive issue in Viet Nam and we have already been given the first signal from the Government that our focus should be strictly on “development rights”. While the UNCT recognizes the added value of the rights framework, we are also conscious of the potential tension with Government if we move ahead too boldly in this matter.”

In fact, the Government did pay special attention to the fact that the UNCT applied a human rights perspective to the CCA and indicated to the Resident Coordinator informally, that “at least initially, that they are not looking for any separate chapter

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10 Letter from Jordan Ryan, UN Resident Coordinator, Viet Nam to Maria Luisa Silva, Team Leader, Human Rights and Development Unit, OHCHR, Geneva, 4 March 2004. It is important to mention in this context that overall, the Government did not place a very high priority on the CCA - Government involvement in the process was rather sporadic and at a relatively low hierarchical level. This may be due to the fact that the CCA is not a joint document between Government and the UN. Another factor may be that the CCA does not include budget negotiations for development programmes that are to be implemented in collaboration with the Government.
on human rights (but would positively consider a more “human rights-based” approach to development).”

Box 1: The UNCT CCA March 2004 Workshop - A Step in Integrating Human Rights into Development Planning and Programming in Viet Nam by Identifying Development Priorities

During the UNCT CCA workshop, two key documents for the CCA were presented: the UN-Report on the implementation of the MDGs - a report that had been elaborated with the participation of all UN agencies in Viet Nam – and, a UNICEF-assessment on key entry points and challenges for adopting a HRBAP in Viet Nam. Both documents presented an agenda of important challenges for Viet Nam’s future agenda, based on solid research and documentation. Both agendas were merged and built the basis for a CCA with five priority development challenges and a rights-based analysis. The key developmental challenges identified include:

* Decreasing quality of growth;
* Widening social disparities;
* The growing threat of HIV/AIDS;
* Youth; and,
* Governance.

It was also agreed that human rights and gender should be mainstreamed into the text. Hence, the CCA process Viet Nam mirrored the international trends in this area - a merger between the concept of human development and the human rights paradigm.

11 Message from UN Viet Nam Resident Coordinator to the UN Preparation Team for the training on human rights-based approach to programming.

12 The key points for the CCA to address resulting from the MDG Report were:
- Decreasing quality of investment and growth;
- Growing corruption;
- Potential for destabilizing financial imbalances;
- Widening social disparities;
- Rapid urbanization and growing migration;
- Growing threat of HIV/AIDS;
- Environmental treasure chest being depleted;
- Rapidly growing young labor force with rising expectations;
- Poverty remains significant and many near poor, highly vulnerable living just above poverty line; and,
- Challenge of reaching remaining poor and the most needy in isolated remote areas.

Key conclusions for implementing rights-based developmental programmes according to the case study on “Human Rights-based Approach to Programming in Viet Nam” are:
- Continued and deeper recognition of the rule of law, especially within the context of a one-Party State;
- Improvements on human rights since 1992 mainly focused on economic rights although advances in terms of some political rights (e.g. presumption of innocence and no arrest without a court decision) are to be noted;
- Viet Nam’s commitment to the ideals of non-discrimination and equity is very high and thus there is great public concern for vulnerable groups (marginalized groups, disparities between different ethnic groups, etc);
- Interdependence and indivisibility of rights need to be well analyzed – there is a risk in Viet Nam that human rights of certain groups are suspended in the interest of the majority or in the interest of the State;
- Participation and empowerment, monitoring and accountability are big challenges in a one-Party State. Civil society also plays a limited role in Viet Nam. Important entry points for people’s participation is to support the National Assembly at all levels as well as to enable grassroots participation in planning, monitoring and evaluation.

13 Ibid. Refer to footnote above.
Based on the discussions and agreement among HoAs as well as on the solid technical documentation for the CCA (like the MDG Report and the UNICEF assessment), the Resident Coordinator informed the Government at the preliminary stages itself that the upcoming CCA should be rights-based. In his letter to the Minister in the MPI, Mr. Vo Hong Phuc, dated 13th February 2004, he stressed: “Furthermore, the new (CCA/UNDAF) guidelines emphasize mainstreaming of a rights-based approach to development and of national ownership and engagement in this process. The UN-Secretary-General continues to emphasize the importance of the rights-based approach and we hope to move this forward in the new CCA.”

Shortly thereafter, at the CCA workshop held in March 2004, he informed the International Relations Department of the MPI again about the rights-focus and methodology for the CCA. This was followed by another letter to the MPI dated 5th March 2004 wherein he stated: “The new CCA/UNDAF guidelines, which are global instructions to all UNCTs, are explicitly requesting the UN to address a range of issues. This include human rights and the adoption of a rights-based approach to development, which will help to focus our analysis on some of the fundamental issues related to development.”

This intention was further explained in several face-to-face meetings with related Government officials and the fact that the Viet Nam Government finally signaled its agreement with the CCA indicates that the policy of early information and transparency with the Government officials related to UN intentions successfully created the necessary space for a rights-based country assessment by the UN agencies in the country.

After endorsement by the UNCT and subsequent acknowledgement by the Government, 1,000 Vietnamese and 500 English copies of the CCA were printed and distributed to Government agencies, the National Assembly, Embassies and various international agencies. As expected, the CCA built the substantial foundation for the elaboration of the UNDAF 2006-2010. However, at this stage, there has been no presentation to the press and only limited use of the document for advocacy purposes, such as at the annual Consultative Group Meeting (CG) between the international donor community and the Government of Viet Nam.

**Methodology and Working Mechanisms:** The UN-DG guidelines suggest a set of tools and methodologies for the elaboration of the country assessment: problem tree analysis (causal trees), pattern analysis (duty-bearer/rights-holder analysis), capacity gap analysis (authority, responsibility, motivation, resources) as well as disaggregated data analysis i.e. by age, gender and ethnicity. These instruments were presented and explained at the CCA workshop of the UNCT held in March 2004.

Five CCA Inter-agency working groups prepared initial causal trees for the five CCA priorities during the CCA retreat (see Box 1). These groups were composed by a number of management and technical staff from different agencies, coming from very diverse professional backgrounds. The groups built up the initial causal trees during a two-hour brainstorming session and HoAs asked the groups to finalize these causal trees in follow-up meetings.

Shortly afterwards, the Resident Coordinator’s Office, the regional Office of the UNOHCHR and UNICEF Viet Nam organized a HRBAP training for the members of
the human rights working group and the CCA focal points of the UNCT in Viet Nam in order to strengthen the rights-approach to the CCA from the very beginning.\textsuperscript{14} This training had several expected outcomes, primarily related to: a) a common understanding about the HRBAP among the UNCT in Viet Nam along the lines of the new CCA/UNDAF guidelines and the Stamford Agreement of UN-DG on HRBAP; b) a review of HRBAP work undertaken in Viet Nam; c) a review of CCA causal trees from a HRBAP-perspective; and, d) elaboration of inputs for a rights-holder/duty-bearer analysis in the CCA.

Despite the inputs given at the CCA workshop and the HRBAP-training, the working groups on the five CCA-themes encountered numerous difficulties in applying tools and methodologies for the analysis. The five priority themes are very different in nature: the “youth” issue relates to problems of a specific group of beneficiaries; “quality of growth”, “access to social services” and “governance” are broad areas of institutional and structural concern of both State and society, while “HIV/AIDS” is a particular social and public health problem. It is almost impossible to analyze themes that are so different in nature with the same tools without entering into problems of coherence and consistency. For example, the underlying and structural causes of fundamental problems such as economic growth and governance are very different from the factors underlying youth-related issues. Weak governance is a crosscutting, structural issue directly related to many problems encountered by youth or insufficient quality of growth. The causal tree for a very specific issue like HIV looks very different from a causal tree analyzing the problems of one particular target group like youth. So the integration of the causal analysis of each theme into one coherent framework for analysis created inconsistencies and contradictions.

The analytical task was further complicated by the attempt to develop a pattern analysis based on the causal trees. At each causality level (immediate, underlying, structural causes) there are factors that enable or disable duty-bearers from fulfilling their obligations and of rights-holders to claim or not be able to claim their rights - so the attempt was made to identify these factors for all relevant rights-holders and duty-bearers. This attempt resulted in a very complicated and in the end, an impractical analytical framework.

In diplomatic language, the Resident Coordinator’s Office highlighted such methodological difficulties in a paper about lessons learned from the CCA process: “The UNCT in Viet Nam benefited from the Programming Tools for analyzing and planning the CCA and UNDAF developed by UN-DG. While the documentation is “heavy” and not written in a way that can be translated into Vietnamese so it can be easily understood, it did at least provide material to prepare the UNCT for the lengthy and extensive CCA and UNDAF preparatory processes. It can never be viewed as a “light” exercise.”\textsuperscript{15}

Apart from the intrinsic challenges of conducting such causal analysis and pattern analysis and linking them together into one coherent framework of analysis, one has

\textsuperscript{14} UN Human Rights Training Workshop, Hanoi 6-7 April 2004.
to also recognize that few of the members of the working groups had the necessary substantive knowledge on the five development challenges or the planning skills to develop appropriate causal trees or pattern analysis. Furthermore, UN staff had very little time to dedicate to further the analysis of priority themes, causal trees or duty-bearer/rights-holder analysis for the CCA once the CCA retreat was over.\textsuperscript{16} It seemed that UN managers expected that staff would carry out joint work on CCA on top of their regular key assignments in individual agencies. This created overload and serious capacity constraints resulting in high staff fluctuation in the working groups.

As a result of this process, the application of tools and methodologies for the CCA analysis was very uneven. Four groups developed causal trees but the causality levels of each problem tree were not coherent. The Governance group undertook a duty-bearer/rights-holder analysis but no causal analysis. The Youth and HIV/AIDS groups tried to combine a causal tree analysis with a capacity gap analysis but concentrated the latter only on Government capacities, leaving out the capacity gaps that enable citizens to claim their rights. The “Regional Readers Group” - a group of regional UN staff that provided feed-back and quality control for the CCA - noted such methodological shortcomings as such: “While the introductory chapter mentions, for example, an explicit methodology for incorporating the human rights-based approach into an overall analysis (causality analysis, role-pattern analysis and capacity gap analysis) the subsequent chapters adopt a more implicit approach. In some cases, we have assessment followed by prescription with only limited analysis.”\textsuperscript{17}

The methodological problems were compounded by the need to contract an external consultant to produce the first draft of the CCA. Faced with five separate and divergent processes on the main themes of the document, the consultant presented his own personal framework for analysis in an attempt to shape the inputs of the UN agencies into a coherent framework for the CCA. However, as the consultant’s framework did not take sufficient account of the methodological approach and analytical content of the working groups, the first draft did not meet the expectations of the UNCT. Therefore, the Resident Coordinator appointed a small editing team of senior technical staff from UNDP and UNICEF to rewrite the text. This editing team restructured the text and re-analyzed the existing information. The methodology adopted combined an assessment of the situation found in each area with an analysis of key challenges and brief conclusions. The assessment sections put particular emphasis on difficulties encountered in each area and on the situation of poor and marginalized groups. The analytical part mostly focuses on capacity gaps of duty-bearers, i.e. the Government, with the exception of the chapter on Governance. This latter assessment puts greater emphasis on the barriers and capacity gaps of citizens to claim their rights.

\textsuperscript{16} The Office of the Resident Coordinator of Vietnam noted: “…CCA/UNDAF working group meetings were at times attended by low level staff who displayed little technical expertise on the subject discussed and reviewed. As a consequence, these people could neither provide the inputs nor have the authority to decide on substance. This greatly affected the quality of the initial draft of the CCA. At least, in the case of some chapters, there was good group Inter-agency discussion and inputs around the draft prepared by the consultant but then very poor, and in some cases, non-existent follow-up by designated responsible focal points to improve the draft.” Ibid. Refer to footnote above.

\textsuperscript{17} Regional Reader Group Comment on the Viet Nam CCA, Bangkok 2004.
In sum, the process leading to the production of the CCA was less systematic than initially envisioned largely because of staff shortages in the UNCT and the limited amount of resources available to complete the task. The application of rights-based methodologies such as pattern analysis or capacity gap analysis was rather scattered and sporadic. Although it finally generated important substantive elements including strong rights-based information elements for the CCA, it could have been more efficient. Drafting documents by working groups or committees is difficult under the best of circumstances. Given that working group members were already overburdened by their agency responsibilities, it was unlikely that they were in a position to develop technically sound, high quality analysis. Agencies were formally present in the groups to make sure that the issues related to the mandate of each agency are covered by the CCA. But they were not in a position to contribute sufficient time and effort to ensure that each of the working groups achieved a rights-based country assessment of high methodological and substantive quality. The task of ensuring the quality and consistency of the CCA therefore ultimately fell to a smaller group of senior professional staff.

3. Rights-Based Outcomes of the Viet Nam CCA: The CCA in Viet Nam emphasizes a strong explicit commitment of the UN in Viet Nam to the realization of human rights. The “Message from the UNCT”, accompanied by the signatures of all HoAs, states that: “This assessment marks an important step in the process of promoting a rights-based approach to development”. The same emphasis can be found throughout the main text as the executive summary highlights: “The unique contribution of the CCA is to analyze the current development situation in Viet Nam from the perspective of the rights-based approach of the UN. Rights-based approaches view of development as part of a larger process of promoting and protecting human rights”.

The unequivocal commitment of the UN in Viet Nam to human rights and a rights-approach to development thus should not be underestimated. The explicit use of human rights terminology in itself an important part of creating a culture of respect for human rights in the country. It also influences the substance and arguments within the CCA. Finally, it opens the door for the design of rights-based development programmes within the UNDAF process and provides valuable lessons learnt that could be taken into consideration while developing such rights-based CCAs in other countries. Such application of rights-based language that would guide UN development programming in Viet Nam and as stated under the CCA are highlighted below:

- **Stressing on the universality of human rights as a non-negotiable**: The CCA dedicates substantial attention to the establishment of the rule of law in Viet Nam, most explicitly in the chapter on Governance. Improvements in the legal system are acknowledged and shortcomings such as insufficient precision of legal provisions, inconsistent application of laws, limited capacities of judges and low public confidence in the justice system are reviewed. For example, the document states: “In the area of juvenile justice, there remains a need to adopt international practices and to keep children and adolescents away from the criminal justice system.” (34) The

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18 Ibid. Refer to footnote No. 15.
CCA also contains references to the need to create a culture of rights and to increase the awareness about human rights in the population: “New legislation and institutional development also will not remove all barriers to participation. Promoting people’s participation over the longer term will require a frank public discourse touching on all aspects of the relationship between citizens and authority and the social values and perspectives underlying this relationship.” (35) In this context, the CCA touches upon the right to information and the role of the mass media: “Restriction on the print and electronic media impede the development of a culture of accountability and transparency. More freedom to report corruption cases would discourage corrupt practices and increase public awareness of rights and laws.” (36)

- **Highlighting the principles of Non-discrimination:** The CCA presents important information about emerging structural social disparities in Viet Nam which highlights the human rights principle of non-discrimination: “...the benefits of the reform process have not been distributed evenly across all strata and segments of society. Indeed, evidence has begun to emerge of widening economic and social disparities in recent years...evidence of emerging systematic disparities in living standards...” (7) Many different aspects of social disparities are analyzed in all chapters of the CCA and supported by disaggregated data whenever available. The CCA highlights particularly the situation of ethnic minorities, of women, migrants and people infected and affected by HIV/AIDS.19

The CCA for example states: “Poverty is particularly high among the ethnic minority groups concentrated in these regions... Moreover, the rate of poverty reduction among ethnic minority groups is slower, which suggests that in the absence of concerted action to reverse these trends, ethnic minorities will account for most of the country’s poor by the year 2015.” (7f.) However, the CCA describes problems of marginalization of indigenous populations only in a broad manner and hardly analyzes shortcomings in the fulfillment of rights (such as insufficient birth registration, bilingual education, lack of culturally sensitive health services for women and children, issues related to culture and religion as well as the protection of children from traditionally harmful practices, violence and abuse).20

- **Looking into the principles of indivisibility:** Indivisibility means that one right should not be achieved by suspending another one. Although the indivisibility of rights is not emphasized in the CCA, the document does give concrete examples on the violation of this principle in Viet Nam: “Some aspects of the initial response to HIV/AIDS raised serious human rights issues. These included the isolation of injecting drug users and female sex workers in State institutions...” (29) Other examples of partial suspension of human rights of a specific group of people or even violation of human rights of certain citizens like the use of force by State authorities.

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19 Problems of discrimination of people infected by HIV/AIDS are strongly highlighted in the chapter on HIV/AIDS: “There is growing evidence that discrimination against people living with HIV/AIDS is common in Viet Nam, especially in employment and health services.” (28); several sub-sections deal with gender issues and women’s rights, for example: “Gender equality has progressed further in Viet Nam than in other countries at a similar level of per capita income...However important gaps remain. Women are still paid less for equal work, ad are often denied equal rights to household property...” (5)

to control uprisings of ethnic minorities in the central highlands are not mentioned in the CCA. Similarly, international criticism of Viet Nam for repression of religious freedoms or the death penalty is not addressed. However, one has to bear in mind what was mentioned at the beginning of the present study: the classical system of reporting and recommendations from the international human rights system are a more suitable mechanism to capture serious violations of human rights that occur in a country and the CCA is not a report on human rights but a situational analysis of development challenges and thus, has technical and political limitations in addressing human rights violations.

> **Emphasizing the principles of participation:** Participation and access to information are fundamental requirements for citizens to be able to claim their rights. The CCA analyses progress in participation of citizens - particularly Government attempts to stimulate grassroots participation in local development planning (“Grassroots Democracy Decree”) but also refers to the lack of concrete mechanisms to promote public participation in provinces and districts and other shortcomings. The analysis of barriers to participation and access to information is particularly sharp and a good example of a rights-perspective on challenges for development and governance: “Information is often shared through one-way communication channels, effectively restricting the ability of people to express their views and of local officials to benefit from useful information relevant to decision-making. However, in recent years, the mass media have played an increasingly important role in disclosing incidences of corruption and abuse of power.” (34)

> **Accentuating the principles of accountability:** Accountability is a key concept of a HRBAP. One key element of accountability is the existence of systems to monitor compliance and of mechanisms that enable rights-holders and their advocates to hold states accountable for the fulfillment of rights. Another key element is the possibility of the population to complain about human rights violations and to enforce the laws through legal action. A third important element is related to budget – for instance, does the State provide sufficient funding for a progressive realization of rights and non-retrogression? The issue of accountability is raised in the CCA, although perhaps not as prominent as, for example, the deliberations on participation. The CCA sub-chapter on International Human Rights Obligations, for instance, mentions the recommendation of various human rights bodies to establish independent monitoring mechanisms for human rights. Moreover, the Governance chapter mentions problems of accountability and transparency in the Vietnamese State: “Some Government agencies operate on the assumption that the public neither has the right to access information relating to the business of Government, nor the capacity to use this information in socially constructive ways.” (36) There is, however, limited analysis of mechanisms of accountability within the chapter on Access to Social and Protection Services which merits higher attention as privatization and

21 See the detailed analysis of the regional readers group, especially the feedback from OHCHR: “There is no analysis of freedom of association” and “an examination of the most basic accountability tool, namely, the mechanisms by which remedies are provided to victims of violations, is absent.” Ibid. Refer to footnote No. 17.

22 William G O’Neill, “Human Rights Approaches in CCAs/UNDAFs”: “In general, country teams seem to have difficulties to capture mechanisms of accountability well in CCAs as the review of over a dozen CCAs/UNDAFs prepared for OHCHR has indicated”, Geneva, 2004.
increasing user fees for social services raises the question on who is accountable for the provision of social services to all social strata of the population. Furthermore, there is limited analysis in the CCA of the role of civil society and local non-governmental organizations (NGOs) in holding Government accountable - with the exception of a brief mention of “NGOs will provide an important additional avenue of public participation.” (35)

- **Incorporating recommendations of human rights bodies:** One fundamental aspect of a rights-based CCA is to incorporate the conclusions and recommendations of the human rights treaty bodies to a given State. Towards this end, the OHCHR prepared an excellent Human Rights Country Profile on Viet Nam. This Profile was shared with all UN agencies and the CCA drafting committee. In addition, the report was shared and discussed with Vietnamese Government officials and a brief extract of this paper describing the status of ratification and reporting on major human rights treaties was provided to Ministry of Foreign Affairs (MFA).

Based on the Human Rights Country Profile, a special sub-chapter on human rights treaties was included in the CCA. It lists the ratification of major human rights treaties, mentions important international treaties such as Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT) or the Rome Statute of the International Criminal Court (ICJ). The sub-chapter also refers to delays in international reporting obligations of the Vietnamese State. However neither the sub-chapter nor the other chapters of the CCA explicitly refer to specific recommendations of the human rights treaty bodies. In other words, although the CCA does reflect a number of important findings and recommendations from the international human rights system, it does not explicitly refer to them. OHCHR has observed that the country profile may not have sufficiently been taken into account during the CCA process: “OHCHR provided a Human Rights Country Profile to the UNCT, which seems not to have been used in the preparation of the draft. It recommended that the country profile be reviewed, as it could contain valuable support for the analysis that the CCA should present.”

This shortcoming could have probably been avoided, had the Country Profile paper of the OHCHR been broadly discussed among the HoAs and CCA focal points. However, the Country Profile paper was simply delivered to the UNCT as background material. Senior management of UN agencies did not review this paper systematically during the process and hence, it had less impact on the CCA than it might have had. Another and potentially more important factor was that it seems that there was limited, if any, possibility for the country team to give inputs before finalization of the country profile. Initial feedback from the Chair of the Human Rights Working Group (HRWG) failed to have any impact on the contents of the paper. Without any consultation with HoAs on its preparation in early draft stages or an in depth presentation to the CCA working groups, the OHCHR country profile failed to gain traction within the process.

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23 Letter from the UN Viet Nam Resident Coordinator to Ministry of Foreign Affairs, 5 April 2005.
24 Ibid. Refer to footnote No.17.
It is worth to note that the prospects for integrating human rights do not necessarily rest on the existence of a Country Profile document alone. Nevertheless, it would require staff in UN agencies with specific skills and technical know-how on human rights and human rights treaties to provide the UNCT with similar information and analysis.

4. Comparison with the Previous Common Country Assessment and the Poverty Reduction Strategy Paper:

An appropriate assessment of the 2004 CCA regarding a HRBAP needs to put the document into a country-specific historical perspective. The comparison with the previous CCA from 1999 and the PRSP of the World Bank from 2003 shows the significant advancement that the CCA presents in terms of rights-based analysis and use of rights-language.

The first CCA in 1999 largely avoided the use of words such as “human rights”, “child rights” or “women’s rights”. It also struggled with an adequate assessment of the situation of the rule of law in Viet Nam, as sentences such as “to put in place a transparent rule-based guide to social, economic and political interaction that will promote accountability” reveal. There are only very few examples for the use of the term “rights” in form of “citizen’s rights”, such as the following: “The issues of corruption, abuse of power and respect for citizen’s rights have been recognized by the Party and the Government...” The latter is also one of the few phrases with critique in the CCA and even this modest critique had to be formulated in form of a national self-critique rather then a critical remark by the UN on Viet Nam.

Despite obvious political limitations in the use of rights-language, the first CCA does refer to dimensions of human rights. For example, there are recommendations in the first CCA towards “increasingly effective governance”, “greater participation of the non-State sector”, “wider involvement of all sectors of society in decision-making processes” and “greater accountability as a basis for building upon past achievements”. Inequalities were addressed in the CCA, as was the problem of child labor. The situation of ethnic minorities is briefly described and some attention is given to insufficient access of ethnic minority children to bilingual education. But again, direct references to human rights, to child rights or to accountabilities under international human rights law are lacking. The first CCA refers only briefly to the Convention on the Rights of the Child (CRC) or the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and focuses more on Viet Nam’s commitments at international conferences. Population policies such as forced resettlements or family planning, which can be problematic from a human rights perspective, are mentioned but not discussed in any way.

26 Ibid. Refer to footnote above.
27 Ibid.
28 Ibid.
29 Ibid.
It is also interesting to note the little progress in addressing human rights or assessing development from a rights perspective between the first CCA and the Comprehensive Poverty Reduction and Growth Strategy (CPRGS) or the Viet Nam PRSP, which was written four years later. The CPRGS concentrates on economic growth, large-scale infrastructure and social sectors such as health and education. It generally does not use the term “rights” with three exceptions. “Child rights” are mentioned in a sub-chapter on Gender Equality and Children’s Rights, and reference is made to “equal rights in the area of labor and work” of women. The third exception constitutes the use of the highly problematic concept of “legitimate rights”, which suggests that there are illegitimate rights without further specification. While rights-language is largely absent from the document, pejorative terms are widespread. There is relatively frequent use of terms such as “social ills”, “social diseases” or the even more problematic “social evils” in order to characterize phenomena such as HIV/AIDS, drug abuse and alcoholism.

The CPRGS does address important issues related to the fulfillment of human rights such as growing inequalities, difficulties that urban migrants face, the problematic social situation of ethnic minorities, gender equality and the need for greater participation of the poor. However, the overall assessment of the development situation of Viet Nam has little “rights base”, as a study conducted by the Swedish International Development Agency (Sida) concluded: “The overall impression from a rights-based perspective is that the Strategy indirectly covers many areas of human rights, but that there still are important gaps..... Human Rights are not mentioned in the Strategy. The focus is on needs, not rights, of the poor, and there is nothing in the document to imply that the Government of Viet Nam sees itself to be under any obligation under human rights law to carry out the measures described in the Strategy. Consequently, there are few references to follow-up measures and how the Government and its staff are to be held accountable if obligations are not respected.”

5. Some Lessons Learned and Recommendations:

**Positive Lessons Learned:**

- Incorporating a human rights-based approach to developmental programming: The CCA in Viet Nam largely succeeded incorporating a human rights-based approach to the assessment and analysis of key developmental challenges of Viet Nam. While this reflects a general trend in CCAs/UNDAFs in many countries of the world, it is a special achievement in a country like Viet Nam where despite significant progress “human rights” continue to be a considered a sensitive area. Consequently the CCA and the rights-based UNDAF is currently the main inter-

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30 Ibid.
31 Ibid.
32 Ibid.
35 Ibid. Refer to footnote No. 22.
institutional development framework in Viet Nam that offers a human rights perspective to development and as such, goes significantly beyond the strategic perspectives offered by the previous CCA and by the PRSP.

- **Ensuring a transparent engagement on human rights issues between the UN and the Government:** Following from the above, the importance of widespread use of rights-language in the CCA in Viet Nam should not be underestimated. It is one of the major successes for the CCA to establish rights-based language without rejection from the host Government. This will allow a transparent engagement with the Government on human rights and the HRBAP and has the potential to facilitate a stronger programmatic commitment of UN agencies and their counterparts to the HRBAP in the years to come. This is a considerable achievement given the persistent sensitivities on issues relating to “human rights” countries like Viet Nam and the fact that neither the PRSP nor the earlier CCA would mention human rights. This CCA has demonstrated that non-fulfillment of human rights can and frequently does underlie key developmental challenges of a country and that they can be addressed in the CCA but have to be framed and formulated in a non-confrontational way. However, in order to further develop rights-based analysis and rights-based programming, systematic capacity development for Government on the HRBAP will be necessary.

- **Buying-in of senior UN management essential:** The experience of Viet Nam shows that it is necessary to have a clear understanding and good management of the political and institutional limitations for a human rights discourse in a given country in order to maximize the human rights elements within the CCA. The political complexities around a human rights-based approach means that the extent to which a HRBAP can be built into the structure, language, substance and process of the CCA depends on the ability of the Resident Coordinator to organize the dialogue on such an approach within the UNCT as well as with the Government. In the case of Viet Nam, the Resident Coordinator has given full support to the inclusion of a HRBAP to the CCA. As a result, the CCA has explicitly adopted such an approach, analyzed a number of important developmental issues from a human rights perspective and thus constitutes an important inroad in the human rights dialogue between the UN and the Government.

- **Existing and strong documentation imperative to build a rights-based CCA:** The experience in Viet Nam also shows that the quality of the CCA from a rights perspective depends on the degree of already existing strategic analysis and rights-based situation analysis that UN agencies had done before the elaboration of the CCA. In the case of Viet Nam, documents like the MDG Reports with good data and analysis of social and regional disparities and the case study on a human rights-based approach to programming by UNICEF built the technical backbone for streamlining such an approach into the CCA. Hence, UNCTs should be encouraged to undertake joint rights-based assessments of different topics as regular part of their joint collaborations or individual endeavors.
Challenges:

- **Placing more emphasis on economic and social rights**: The CCA process has probably “pushed the envelope” for rights-based development discussions as far as possible under the given social, cultural and political conditions in Viet Nam. However, while the CCA in Viet Nam managed to addressed a wide range of developmental challenges from a human rights perspective, including non-fulfillment of rights in a number of areas, the fact that the document is meant to be a basis for joint development programming between the UN agencies and the Government, poses limitations to the extent that human rights violations or non-fulfillment of rights can be openly addressed. Given the nature of the CCA as a consensus-oriented development document, there is a tendency to emphasize social and economic rights as opposed to the more controversial civil, political and cultural rights.

- **Producing Country Profiles Imperative**: As mentioned elsewhere, the Country Profile of the OHCHR could have been a third key reference document and as such would have further strengthened the rights-focus of the CCA. However, it did not have as much impact on the text as it could have had, mainly because the document was delivered to the UNCT without a formal mechanism to discuss the Profile before its finalization. As a result, the recommendations from human rights treaty bodies have not been incorporated as fully as possible into the CCA.

- **Understanding of UN agencies on a coherent approach to framing of the CCA process essential**: Finally, the CCA process requires further consideration. The double essence of a CCA as a document of strategic analysis of data and knowledge about a country as well as a result of a negotiation process amongst institutions and individuals on topics and approaches means that a CCA can be read twofold: as a technical document for UN programming, as well as an expression of an Inter-agency policy dialogue. The experience in Viet Nam indicates that the need for Inter-agency negotiation and consensus building tends to dominate over the technical exercise for joint strategic analysis of certain developmental challenges. In addition, the tools that are being put forward -- such as causal analysis and pattern analysis -- seem to be too complicated to be applied within a process that is mostly oriented towards formal participation and consensus-building among agencies. Teams composed of staff with uneven capacity and experience cannot be expected to be able to apply sophisticated planning and analysis tools in an appropriate way. At the same time, it has not been possible to overcome the difficulties of the Inter-agency process by simply hiring a consultant. The process in Viet Nam shows that a coherent rights basis of the CCA text was only ensured by an editing team of senior technical staff from UNICEF and UNDP rather than an outcome of a systematic application of programming tools and methodologies by the country team.

Following from the above, several recommendations for UNCTs and the UN-DG can be formulated as a result of the experience in Viet Nam:
For UNCTs:

1. UN agencies should expand rights-based research and analysis on specific topics related to their mandates and practices which create the basis for a rights-based CCA and UNDAF;
2. It is highly recommendable that UNCT staff receives training on a HRBAP before engaging into the CCA/UNDAF process;
3. UN agencies need to identify technical teams of their own staff according to the technical capacity and planning skills required for the analysis and assessment of CCA priorities in order to ensure a smooth process and a high quality product. If a consultant is brought in, he or she can play a role as facilitator of the process but cannot substitute the technical and editorial responsibilities of UN staff;
4. A formal mechanism for consultation between OHCHR and UNCTs on human rights Country Profiles should be established as part of the CCA Process;
5. From a rights-based perspective, an active national dissemination and popularization of the CCA/UNDAF is desirable. Therefore, it is recommended to design and implement a strategy for advocacy and communication of the CCA/UNDAF towards the general population as a contribution to national awareness on human rights and Rights Based development; and,
6. UNCTs needs to build develop capacity of the Government on the HRBAP for UNDAF in order to further practical impact of such an approach in developmental programmes.

For the UN-DG:

1. The leadership and commitment of the Resident Coordinator towards human rights (and on the HRBAP) is essential for rights-based CCAs/UNDAFs. Hence, special trainings for Resident Coordinators on rights-based situational assessments and such an approach to programming are recommendable in order to improve the rights-basis of CCA’s (and UNDAF’s);

2. UN-DG should further discuss and develop alternative methodological tools for rights-based analysis. A full-blown rights-analysis on top of a causal analysis seems to be too heavy a methodological requirement for the CCA process. Perhaps, a better way to ensure a rights-based assessment could be to focus on pattern analysis (duty-bearer/rights-holder) instead of the causal analysis and to link it more directly to international human rights standards;

3. The methodological tools suggested by the UN-DG guidelines are designed for a technical process of strategic analysis and strategic planning. They are not sufficient to guide the inter-institutional policy dialogue regarding CCA. It is recommended to develop tools and methodologies for organizing Inter-agency policy dialogue and consensus building, for example, through brainstorming, open debate and systematic use of participatory techniques.
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