EVALUATION 2004/1

SDC'S HUMAN RIGHTS AND RULE OF LAW GUIDANCE DOCUMENTS

INFLUENCE, EFFECTIVENESS AND RELEVANCE WITHIN SDC

DEZA DIREKTION FÜR ENTWICKLUNG UND ZUSAMMENARBEIT
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Independant Evaluation of

SDC's Human Rights and Rule of Law Guidance Documents

Influence, Effectiveness and Relevance within SDC

Commissioned by the Evaluation & Controlling Division
of the Swiss Agency for Development and Cooperation (SDC)

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Berne, March 2004

I Evaluation Abstract

Donor	SDC (Swiss Agency for Development and Cooperation)
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Subject Description

The purpose of the evaluation is to analyse the influence of SDC's 1997 Human Rights Guidelines and 1998 Rule of Law Conceptual Framework in terms of awareness-raising, and policy and programmatic guidance, including an assessment of factors that foster or hamper the use of guidance documents in development agencies, and to provide recommendations to further SDC's human rights and rule of law orientation.

Evaluation Methodology

A range of techniques were used, including:

- semi-structured interviews with SDC staff, Swiss ministries and departments, and Swiss NGOs;
- a review of SDC policy and programme documents and financial data;
- a brief electronic survey of SDC staff, Swiss embassies and Swiss NGOs;
- four case studies: Bosnia-Herzegovina, Pakistan, Peru and Rwanda;
- focus group discussions with DFID and Geneva-based development experts;
- an 'Episode Study' of changes to gender policy within SDC;
- a review of four development agencies: DFID, Sida, UNICEF and USAID

Major Findings

Relevance. The development of guidance documents on human rights and the rule of law was highly relevant given the international and domestic political and policy contexts. The existence of human rights policy was particularly relevant for SDC staff because of the need to take more account of the political situation in partner countries, as particularly experienced e.g. in Rwanda, and the specific human rights and rule of law objectives for support to Eastern European and the former Soviet Union countries. The documents themselves were not relevant for SDC partners. They had much less operational relevance, and could be made more poverty-focused, in line with SDC's current policy priorities.

Efficiency. The Working Group approach to formulating the documents took time but was cost-effective through its use of a consultant. It helped achieve intra-governmental consensus. Greater efficiency in terms of influence would have required a higher degree of investment in the production and communication of the documents, including more involvement of the country offices, training and awareness-raising activities, senior-level supportive messages and technical follow-up capacity at headquarters.

Effectiveness. Human rights awareness remains general and there is a lack of consistent knowledge about the content of the human rights policy amongst SDC staff, together with a degree of complacency. There is also an incertitude how to shape confusion about rule of law interventions. The Human Rights Guidelines were generally better known and more used than the Rule of Law Concept. SDC partners, including other donors, have little knowledge about the policies.

Policy coherence across Swiss government remains a challenge, and the SDC documents have little influence on other ministries and departments. There is a perception that SDC could do more to promote human rights overseas. Human rights dialogue can be difficult given the projectised nature of SDC assistance, and the demands this makes on field staff.

There has been an increase in funding for human rights and rule of law activities, which can be estimated at 2.6% of SDC bilateral programmes in 2002, but this remains a marginal proportion of SDC's overall budget. Human rights programming mostly takes the form of projects, principally in the area of civil and political rights, and usually for short-term activities. Very few SDC country programmes have adopted human rights as a transversal theme or have developed human rights strategies. It is 'Governance' that has become a more important issue over the period.

Conclusions

Policy guidance documents Guidance documents on their own cannot achieve policy change. SDC needs to become better at clarifying the different products that are needed for different purposes. Official policy statements should be short and should be distinguished from operational guidance documents or tools. A dynamic approach to preparing and sustaining policy guidance would be more effective. SDC also needs to ensure that it communicates its policies effectively, including identifying target audiences, and providing supporting measures, such as technical support, training and lesson-learning events. SDC issues a great number of guidance documents, and needs to clarify the implications when policies, such as that on human rights, are intended to be binding. SDC could have a greater influence on policy in certain contexts by including explicit efforts at influencing key actors and processes at the macro level as part of its programming.

Human rights orientation SDC's senior management need to reaffirm their commitment to human rights, in line with the priority given to this issue in Swiss foreign policy. Resources should be allocated to make human rights better understood amongst SDC staff and visible in programming. SDC should update its human rights and rule of law policies, in line with current best practice and highlighting their contributions to poverty reduction. There is a danger that human rights may be seen as prioritising civil and political issues, given the location of the focal point in the governance division. Adequate management systems need to be adopted, in line with the 'binding' nature of the human rights policy, indicating who is to be held to account for implementation. A number of simple steps can be taken to ensure that SDC staff have a common understanding of the policy, including issuing a short policy statement, providing training and learning events, practical tools and networking, and translating major documents into local languages.

II Lessons learned

Below is a list of lessons learned drawn out by the Core Learning Partners (CLP) and ODI during the Agreement at Completion Point meeting on October 2nd 2003 about how SDC approaches (or should approach) policy making in general and Human Rights and Rule of Law policies in particular.

1. Strategy

Be Strategic from the Outset
Policy change processes need to be approached strategically. It may be stating the obvious, but it is essential to first clarify why, what for and for whom a policy is needed before an actual policy is drafted. Thus the CLP strongly emphasized the need for a clear strategy from the outset. After the purpose of a policy and the expected results are agreed upon, the concrete steps to be taken can be identified.

2. Process

Policy making
Policy making is a dynamic, comprehensive and iterative process that involves dialogue within the organisation. This process needs to take the specific needs of each audience into account.

Capitalisation of existing experiences
A policy making process should start with capitalisation of one's own and other experiences rather than depart from an abstract level.
Often development workers need guidance on how to put human rights into practice. This is best done with training based on experience-based examples.

Supportive networks
Supportive partners and the creation of networks are prerequisites for attaining a sound backing of and an interest for a policy in an organisation.

Dialogue and Communication
Particularly in the domain of raising human rights awareness, dialogue is an important element in the process of drafting and introducing a new policy. This calls for a sound communication strategy that addresses the particular needs of different audiences (headquarters; field offices and partner organizations) and considers that countries with extremely varied human rights issues exist**.**

Senior support
It matters who says what! The backing of senior management is essential for ensuring policy implementation and is as important as good policies.

Roles and responsibilities
Clearly defined roles and responsibilities are important for sound implementation of a policy. Senior management needs to identify policy elements of a binding nature and to distinguish them from optional ones. This is essential for clarifying the roles and responsibilities at all levels. Otherwise policy implementation is left to individual preferences.

3. Product and Implementation

Simplicity
Simplicity is an art. Policy statements should be concise. Bulky and differentiated documents contribute to “policy overload”. Clear and concise messages are particularly essential in the domain of Human Rights.

Think in Packages – Policy + Tools + Training + Monitoring
It is not sufficient to just send a policy document to staff and partners and expect change to occur. Policies need to be complemented with implementing instructions, tools, training and advice on request. Furthermore policy implementation needs to be monitored. Sufficient resources need to be allocated for the whole package.
Different audiences need different information and training. For example, development workers need to know how it works on the ground, how to put human rights into practice. Training modules should thus be based on concrete examples and proven practices and show how Human Rights principles can be integrated in development programming and practice.

What else?
As a decentralised organization, SDC finds it hard to implement and secure ownership of new policy orientations. Senior management might not be keen to change SDC practice.
There is a big difference between the rhetoric of human rights at the diplomatic/policy level and the practice on the ground.

Finally
A policy should

- make a difference in SDC's dialogue and programmes;
- transform aware and un-aware partners and colleagues into Human Rights champions;
- result in increased conceptual clarity leading to improved programme coherence.

III Agreement at Completion Point: Stand of the SDC Management regarding the Main Recommendations

A General comment by SDC Management

Before addressing the main recommendations, SDC points to the following general remarks with regard to the findings and conclusions of the evaluation report.

- SDC broadly agrees with the evaluation report that the two policies have been relevant and timely but have only moderately influenced its staff and even less its partners and have not sharpened SDC's profile in the international cooperation and development community. However, SDC points out that the "Rule of Law and Development Cooperation" document was more an issues paper and not formally a policy document.
- SDC acknowledges that a lack of focus and prioritisation amidst policy proliferation and SDC's decentralised structure contributed to a reduced impact.
- In spite of the limited relevance of the documents as practical guidance attested by the evaluation report, SDC points out that both documents were a useful orientation for some SDC program officers in designing programs as well as for providing an institutional backing for SDC staff confronted with these issues in the field. It is furthermore underlined that there are no contradictions between ongoing programmes and the orientation recommended by both documents.
- SDC holds that the evaluation report failed to sufficiently differentiate between "Eastern and Southern cooperation" where there are significant differences in focus and resources, particularly regarding the Rule of Law.

As an **overall and fundamental recommendation**, SDC agrees that there is a need that senior management decides on the status of policies and documents (in particular regarding hierarchy, binding character, prioritisation - deprioritisation).

B Stand taken with respect to Main Recommendations regarding policy guidance documents

Strategic Consideration 1:

Beyond projects towards macro policy influence. *Evidence suggests that changing policy requires sustained, longer term efforts with specific objectives in mind. If SDC wants to move towards greater policy influence in partner countries, this will require a shift in the nature of some aspects of SDC programming. It is an issue of overall strategy as well as one for each COOF. The question is: how best can a small donor affect policy? Locally-based assistance or short-term activities can be valuable to achieve certain objectives, but tend to have limited policy influencing consequences unless they are designed as such. Greater impact would be achieved by explicit efforts to identify and influence key players and processes at the macro level. This would require a strategic shift, including in the use of aid instruments, and would generally help SDC better achieve its objectives. Our recommendation is that SDC starts by piloting such an approach in certain countries.*

Stand of SDC Management

SDC agrees with this recommendation. It notes that working at the micro-level is necessary but not sufficient. SDC stresses the need for macro policy influence while maintaining micro- and meso-level engagement. Moving towards a program approach would enable more conscious and pro-active policy dialogue. In particular, efforts to identify key players, partners for alliances and related processes need to be strengthened.

Strategic Consideration 2

Clarify the meaning of "binding". *SDC produces a rather large number of often lengthy policy guidance documents. Some, such as the Human Rights Guidelines, are considered "binding" but no particular instructions reflect that status. This approach has a dual negative impact: (i) some staff feel a "policy document overload" and (ii) the term "binding" loses its value. It should be giving an indication of what actually is a priority and how this priority should be translated into practice. We would suggest that only a limited number of key policy statements be classified as binding. If a policy is binding, it should be clear upon whom it is binding, objectives or targets should be set, and a monitoring and evaluation system should be put in place to monitor progress. Important policy issues should have funding allocated to support their promotion, and be reflected in country programme strategies and expenditures. Some issues may need to be "de-prioritised" by senior management.*

Stand of SDC Management

SDC fully agrees with all elements of this recommendation. The status of a policy (i.e., whether or not its application is compulsory) should be made explicit. Declaration of binding status should be selective and focused, not pervasive or automatic. Priorities in the policy domain should remain manageable in number and volume. The tendency to add on without deleting should be avoided.

A working group has been entrusted with elaborating a proposal for classifying policy statements, position and issue papers, etc. based on characteristics to be defined by the group.

Practical Recommendation 1:

Clarify the different products that are needed for different purposes. *When developing new policy guidance instruments, SDC needs to be clearer about its objectives. We would suggest that official policy positions be outlined in short statements, of for example one page. They should highlight key issues, what is expected of staff or partners and who, within SDC, is responsible for implementation. All staff should be expected to know SDC's most important policy positions. Longer documents could complement policy statements to assist those directly responsible for implementation. Issues papers could be prepared when the objective is to help raise awareness or "open the door" to work on a new issue. If staff are expected to change their behaviour, documents or tools providing practical guidance will need to be prepared, accompanied by training and making technical assistance available.*

Stand of SDC Management

SDC fully agrees with this recommendation. From the beginning, SDC needs to be clearer about the purpose, the targeted audience and the status of policy guidance instruments. General policy statements should be straightforward, simple, sharp in profile and easy to remember. Background papers serve a different purpose and are, therefore, more extensive and discursive than policy statements. They elaborate the rationale, the experiences and the limits while providing food for thought and the basis for training. Toolkits and case studies should capitalize on experience and highlight what works in a given context.

Practical Recommendation 2:

Adopt a dynamic approach to preparing and sustaining policy guidance*. A Working Group approach, drawing on an expert consultant, seems to have worked well. It is also vital to draw on the viewpoints from staff beyond Berne. Policy documents benefit from being illustrated by concrete examples, in particular evidence from SDC's own experiences. This will help them be more relevant for SDC readers. Consideration should be given to producing "living" policy guidance, using the internet as the source. While official policy statements need to be reviewed only periodically, SDC could add background papers, operational toolkits or useful examples to a website. Experiences from non-SDC staff should also be included, in particular country partners and other donors. Sustaining new policy orientation also requires adequate support from headquarters, including training / learning events and technical assistance that would enable COOFs and divisions to translate the policy orientation into practice.*

Stand of SDC Management

SDC broadly agrees with this recommendation. From the outset, senior management needs to clarify the status of each document as well as the target audience and to designate responsibility for implementation. For each policy guidance, the types of documents which are needed and an implementation process, with or without a discussion platform, should be specified. It should be kept in mind, that SDC needs to strike a balance between demand, production capacity and the absorption capacity of the target audiences within an appropriate cost-benefit ratio.

SDC, while agreeing in principle with the categories defined by the evaluators, deems that a certain amount of flexibility is needed, either to combine levels or in some cases to refrain from producing background papers or illustrative case studies.

Practical Recommendation 3:

More effective communication is essential*. SDC needs to give greater attention to who it is trying to convince, what it wants them to do and what it needs to provide in order to help do so. The audience for policy guidance needs to be differentiated: whether it is internal to SDC or meant to be a "publicity" tool. Much shorter official documents, better presentation and a greater focus on conclusions and concrete suggestions would be more useful. Major policy documents should be translated into local languages so that partners are aware of SDC's positions. New policy statements should be accompanied by a clear communication strategy, including pro-active dissemination and identification of target audience. Repeating key messages, and reinforcing measures, from senior management are needed for enhanced and sustained policy influence. SDC should also consider investing in seminars or training courses for staff on the key aspects of communications for policy change in a development context.*

Stand of SDC Management
SDC fully agrees with this recommendation. A communication strategy aiming to achieve a proper match with the audience and its language is a key. Adequate resources (human and financial) need to be earmarked for communication and appropriate dissemination channels need to be identified.

C Stand taken with respect to Main Recommendations regarding human rights and rule of law policy orientations

Strategic Consideration 1:

Re-affirm SDC's commitment to human rights. *The Evaluation noted a lack of explicit senior level support to prioritise human rights. Current practice, in particular the Strategy 2010 and associated SDC restructuring, is privileging "governance" and has made human rights a sub-sector under the "access to justice" theme. This is not consistent with human rights being amongst one of the five top Swiss Foreign policy objectives. Senior management should issue a short statement to re-affirm the importance of human rights for development. This should be complemented by the allocation of sufficient resources to making human rights better understood amongst SDC staff and more visible in programming. Staff recruitment and training needs to take into account the ability to understand and respond to human rights considerations (e.g. background in law, politics, international relations).*

Stand of SDC Management
SDC agrees with this consideration and further emphasises the strong link between human rights on the one hand, poverty reduction and transition to democracy on the other hand. It also reminds that the mentioned priority of Swiss foreign policy also encompasses human rights, democracy and rule of law.

SDC acknowledges that, by subsuming human rights under the governance label there is a danger that it may lose visibility. However SDC reminds that human rights is a constitutive element of SDC's concept of good governance.

Strategic Consideration 2:

Update SDC's human rights and rule of law policies. *International knowledge and policies have evolved since the guidance documents were produced. In particular, a number of agencies say that they are adopting a "rights based approach" to development, which goes beyond developing human rights projects and highlights the indivisibility and interdependence of all rights. An updated policy document needs to be produced, in line with current international best practice and drawing on SDC's own experiences. SDC will need to decide if it wishes to explicitly adopt a "rights-based" approach. It should be explicit about the contribution to poverty reduction, and how SDC policy promotes the realisation of all rights. In addition, the Rule of Law Concept should be replaced by an up-to-date "Access to Justice" document, explicitly focusing on how support to the justice sector can contribute to the fight against poverty and respect for human rights. It should provide concrete strategies and advice on how poor and marginalised people can benefit from the rule of law, beyond legal assistance interventions. To produce both documents, SDC should draw on other donors' and SDC's own experiences to provide concrete examples, and involve COOFs.*

Stand of SDC Management
SDC generally agrees with this consideration and mandates the Governance Division to elaborate an update of the SDC Human Rights Guidelines. SDC agrees that SDC policy needs to be revised to better reflect the link between poverty reduction and human rights as well as the indivisibility of human rights while taking into account the latest international developments (such as the "rights-based approach" adopted by the UN) and specific contexts.

SDC notes that further elaborating on Access to Justice (which definitely includes an institutional dimension) is already an objective of the Medium-Term Orientation of the Governance Division.

Strategic Consideration 3:

Adopt adequate management systems in line with the "binding" nature of the human rights policy. *Systems and procedures need to be adapted to make sure that SDC staff understand and implement the policy. In particular, senior management should clearly designate who is to be held to account for ensuring that policies, dialogue and programmes are in line with the human rights policy orientation. We recommend that a Working Group be established to review SDC's management systems to asses how human rights are taken into account at the levels of: (i) country assessment; (ii) policy dialogue; (iii) programming; and (iv) monitoring and evaluation. The group should consider how management systems need to be amended, possibly by adopting a sequenced approach, building on country pilots where human rights are already better integrated in programmes.*

Stand of SDC Management
SDC broadly agrees with this strategic consideration. Action, however, is at present not required, as the issue is assigned low priority.

Practical Recommendation 1:

Communicate better and develop a consistent understanding. *There are a number of practical steps that SDC can take in order to ensure that its human rights policy in particular is better known and understood among SDC staff and partners. Both the Human Rights Guidelines and Rule of Law Concept should immediately be put on the SDC website. It should also be made clear to COOFs that these are public documents and should be displayed along other SDC documents, in particular in countries where human rights programming takes place. Senior management should issue a one page short statement on SDC's human rights policy, which all SDC staff need to be made aware of. The short version of the statement should be translated so that it is accessible to local staff and local partners. The internet or intranet should be used to create "living" documents.*

Stand of SDC Management
SDC agrees with this recommendation.

Practical Recommendation 2:

Provide more support to implementing the policies. *Training and learning events, practical tools, and networking are required to assist SDC staff to better understand and implement the human rights policy. Priorities established by the survey include providing opportunities for staff to learn from one another and holding practical workshops on integrating human rights in development. A global event of a similar nature to the recent May 2003 Capitalising Gender conference should be held within a year. The survey also identified a demand for practical tools to assist in implementation. Staff priorities include an up-dated list of indicators on governance and human rights for the MERV, and "key questions" for assessing human rights and rule of law projects/programmes. Finally, in order to adopt a more "mainstreamed" approach, SDC should develop practical sectoral tools on rights and another area of speciality within SDC (e.g. decentralisation, or land and rural development). A more mainstreamed approach could be supported by establishing a human rights network which would go beyond the Governance Network.*

Stand of SDC Management
SDC broadly agrees with this recommendation and highlights the importance of training and learning events. SDC does not support the establishment of a human rights network separate from the governance network.

IV Evaluators' Final Report

Influence of SDC's Human Rights and Rule of Law Guidance Document

commissioned by SDC, Evaluation and Controlling Division

London, October 2003

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Overseas Development Institute

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Abbreviations and Acronyms

BiH	Bosnia-Herzegovina
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment, or Punishment
CCA	(UN) Common Country Assessment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CIS	Commonwealth of Independent States
COOF	(SDC) Country Office
CNDDHH	Coordinadora Nacional de Derechos Humanos Peru
CRC	Convention on the Rights of the Child
DFID	UK Department for International Development
EFA	Education for All
DFA	Federal Department of Foreign Affairs
HRBA	Human Rights Based Approach
HRMAEP	Human Rights Mass Awareness and Education Programme
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenants on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MERV	Monitoring, Evaluating, Reporting and Verifying (Framework)
NGO	Non-Governmental Organisation
NORAD	Norwegian Agency for Development Cooperation
ODA	Overseas Development Assistance
ODI	Overseas Development Institute
OHCHR	(UN) Office of the High Commissioner for Human Rights
OHR	Office of the High Representative
OSCE	Organisation for Security and Co-operation in Europe
RAPID	(ODI) Research and Policy in Development
SDC	Swiss Agency for Development and Co-operation
seco	Swiss State Department for Economic Affairs
Sida	Swedish International Development Agency
UN	United Nations Development Fund for Women
UNDAF	UN Development Assistance Framework
UNDP	UN Development Programme
UNICEF	United Nations Children's Fund
UNIFEM	United Nations Development Fund for Women
USAID	United States Agency for International Development

1. Executive Summary

1.1 Introduction

In 1993, human rights, democracy and the rule of law were made one of the five priority topics of Swiss foreign policy. In order to respond to this changing policy orientation, the Swiss Agency for Development and Co-operation (SDC), a department of the Federal Department of Foreign Affairs, established an Intra-governmental Working Group to identify ways of making the new orientation relevant to its staff and external partners. Two policy documents were issued and distributed widely to SDC staff and partners:

- *Promoting Human Rights in Development Co-operation* in 1997 (a binding text).
- *The Rule of Law Concept: Its Significance in Development Co-operation* in 1998.

SDC has very limited information about their specific use and impact. Moreover, its Thematic and Technical Resources Department would like to issue new policy documents. Relatively little is known, however, within SDC and more generally amongst donors, about the key factors that affect how policy guidance can affect practice. Given a perception of 'policy fatigue', SDC wishes to find out how future guidance could be made more effective.

Given this context, the purpose of the Evaluation was three-fold:

- to assess the influence exerted by the Human Rights Guidelines and Rule of Law Conceptual Framework in terms of their policy and programmatic guidance;
- to identify ways of making these specific policy orientations more effective and more relevant;
- to highlight key factors that might foster or hamper the impact of policy guidance documents.

This independent Evaluation was undertaken by the Overseas Development Institute. The study went beyond an evaluation, and included elements of 'learning'. A number of different techniques were used to gather and triangulate information:

- semi-structured interviews with SDC staff, Swiss government departments and Swiss NGOs;
- a review of SDC policy and programme documents and financial data;
- a brief electronic survey;
- four country case studies (Bosnia-Herzegovina, Pakistan, Peru and Rwanda);
- focus group discussions with staff from the UK Department for International Development (DFID) and Geneva-based development experts;
- an 'Episode Study' of changes to gender policy within SDC;
- a review of the experience of four development agencies: DFID, Swedish International Development Agency (Sida), UN Children's Fund (UNICEF) and the US Agency for International Development (USAID).

1.2 Analytical Framework

Our approach emphasises that guidance documents are only one aspect of a broader process of policy change within development agencies. This is a complex, non-linear process, where policy-making and implementation cannot be fully separated and change can take a long time to become apparent. The following list identifies the key requirements for 'successful' policy change processes, drawing on lessons learnt by the ODI Research and Policy in Development (RAPID) programme, SDC's experience with gender mainstreaming, and that of other donors in the area of human rights and the rule of law. According to our findings, important elements of successful processes include:

1. a supportive international and domestic environment;
2. a clear, concise and well-communicated policy statement;
3. policy champions and the commitment of senior managers;
4. instructions, systems and resources to put the policy in practice;
5. visible translation into policy dialogue, programmes and projects;
6. supporting measures, such as staffing, training and communication;
7. practical guidance, using evidence and lesson-learning to support the policy; and
8. links and networking.

There is very little practical experience of integrating human rights into development practice. Two main approaches have been identified: an 'empowerment' or inspirational approach, which privileges social contestation and civil society interventions, and a 'legalistic' or institutional approach, grounded in international human rights instruments, and focusing on how states can better meet their obligations. To date, this second approach has often been associated with prioritising civil and political rights. Best practice would suggest taking on board both approaches. SDC's Guidelines combine both institutional and empowerment dimensions.

Integrating human rights into development assistance can take a number of forms. The starting point involves assessing the political context of the partner country. Human rights can also become the subject of diplomatic dialogue. In terms of programming, specific projects can be developed, for example in the areas of access to justice, political participation, labour standards, minority protection, etc. A greater challenge is to 'mainstream' human rights, that is to ensure that all donor-funded activities contribute to the realisation of rights and cause no harm, and that rights are not considered a separate area of programming. 'Human rights-based approaches' to development assistance not only involve mainstreaming but also treat respect for human rights as constitutive of development itself, and not just a way of achieving it. Development should follow a number of human rights principles, including non-discrimination, equity, participation, accountability, and respect for human dignity. SDC's Guidelines include the use of positive measures, dialogue, and conditionality, and recommend a 'programmatic' rather than project-based approach. They do not explicitly discuss adopting a 'rights-based approach'.

The rule of law, as a topic for donor dialogue and intervention, can be defined in a broad sense, to mean that state behaviour should remain within the confines of the law and be rules-based. It can also be used in a narrower sense to refer to the functioning of the justice system, and in particular the independence of the judiciary. SDC's Concept adopts a broad definition, and notes that the rule of law is not just a topic for projects.

1.3 Summary of Evaluation Findings

The main focus of the Evaluation was to assess the influence the two policy guidance documents have had on SDC and its partners, in terms of awareness-raising, policy and programmatic impact. We did not review the details of SDC programmes nor their impact on countries. We placed greater emphasis on the Human Rights Guidelines, which were considered to be 'binding' and which are a more complex policy issue to put in practice.

1.3.1 Relevance

The development of policies on human rights and the rule of law was highly relevant, given both the international and domestic political and policy contexts. SDC was amongst the first agencies to have done so at the time. The process adopted, that of a Working Group, suited the domestic style of policy-making.

The documents, and the existence of the policy, were particularly relevant for SDC staff because of the need to take greater account of the political situation in partner countries, as was particularly the case in Rwanda, and the specific human rights and rule of law objectives for support to Eastern European and the former Soviet Union. The documents themselves were not relevant for SDC's partners, who encounter SDC policy through its actions rather than statements. It was, however, important to have a public policy orientation, and this was achieved by the documents, which had much less operational relevance, and could be made more poverty-focused, in line with SDC's current policy priority.

1.3.2 Efficiency

The Working Group approach to elaborating the documents took time but was cost-effective through its use of a consultant. It helped achieve intra-governmental consensus. Greater efficiency in terms of influence would have required a higher degree of investment in the production and communication of the documents, including relevant training and awareness-raising activities, senior-level supportive messages and more involvement of the country offices (COOFs). SDC's reorganisation at headquarters, in particular the loss of experienced staff involved in the policy process, also caused disruption.

1.3.3 Effectiveness and Impact

Human rights awareness remains general and there is an absence of consistent knowledge about the content of the human rights policy amongst SDC staff. There is also a degree of complacency; 'we know about human rights because we are Swiss'. There is also confusion as to the boundaries of rule of law interventions. The Human Rights Guidelines were generally better known and more used than the Rule of Law Concept. SDC partners, including donors, have little awareness of the policies.

Policy coherence across government remains a challenge, and the SDC documents have little influence on other departments, including those with differing priorities such as the State Department for Economic Affairs (seco) and the Refugee Office. There is a perception that SDC could do more to promote human rights overseas. Human rights dialogue can be difficult given the projectised nature of SDC assistance, and the demands this makes on COOF staff. There are also possible tensions between political and development priorities. The Swiss government has recently reviewed its human rights policy conditionality approach in light of problems in consistent implementation.

There has been an increase in funding for human rights and rule of law activities, estimated at 2.6% of SDC bilateral programming in 2002, but it remains a marginal proportion of SDC's overall budget (though it constitutes 22% of aid expenditure in Eastern Europe and the former Soviet Union). Human rights programming mostly takes the form of projects, principally in the area of civil and political rights, and usually for short-term activities. Very few countries have adopted human rights as a transversal (that is, cross-cutting) theme or have developed human rights strategies. This assessment does not capture activities, for example in the social sectors, which might be consistent with human rights and rule of law principles, but which were not designed or labelled as such, and thus cannot be included in a global evaluation.

There is an absence of management systems to ensure that human rights and rule of law issues are systematically taken into account at the level of assessment, implementation and monitoring. This is problematic given the 'binding' nature of the Human Rights Guidelines, and the need to assist staff in prioritising policy areas. There is a demand for more practical tools to complement the policy documents, and for training and learning events. The

implementation of the human rights and rule of law policy orientations seems to depend a great deal on the priorities set by regional divisions or as identified by country teams. The professional background of staff is also important. The decentralised nature of SDC explains this pattern.

It is Governance which has become an important issue during the period under review. A Governance Network and Governance Division have been established. Governance and gender have been made transversal issues, whereas human rights are not considered cross-cutting, and responsibility for technical support has been located under the 'access to justice' thematic area of intervention. A number of country programmes are developing governance strategies, which subsume human rights and the rule of law. There is a danger that human rights may be reduced to civil and political concerns if they are seen only as constitutive of governance, and not as part of a broader approach to development assistance.

1.3.4 Conclusion on Policy Guidance Documents

SDC produces a variety of guidance documents aimed at influencing policy (within SDC and externally) on a range of issues. There does not appear, however, to be a coherent approach. Staff complain of a policy 'overload' and a lack of prioritisation, and that the organisation is producing too many dense documents of limited operational relevance. They prefer more operational advice and learning from the experience of their colleagues. There seems not to be a coherent strategy towards influencing SDC's partners. The Evaluation confirmed that documents, on their own, cannot achieve policy change. They are only one aspect of broader processes of policy and institutional change within development agencies.

1.4 Recommendations on Policy Guidance Documents

1.4.1 Strategic considerations

1. Move beyond projects towards macro policy influence.
Locally-based assistance or short-term activities tend to have limited policy-influencing consequences unless they are designed as such. Greater impact would be achieved by explicit efforts to identify and influence key players and processes at the macro level, plus a strategic shift, including in the use of aid instruments. SDC should start by piloting such an approach in particular countries.

2. Clarify the meaning of 'binding'.
SDC produces quite a large number of often lengthy policy guidance documents, some of which are considered 'binding' but with no particular instructions to reflect that status. Only a limited number of key policy statements should be classified as binding, and it should be clear upon whom they are binding, objectives should be set, and a monitoring and evaluation system should be put in place to measure progress. Funding should also be allocated to support their promotion. Some issues may therefore need to be 'de-prioritised'.

1.4.2 Practical recommendations

1. ***Clarify the different products needed for different purposes.***

2. ***Adopt a dynamic approach to preparing and sustaining policy guidance.***

3. ***More effective communication is essential and policy guidelines need to be differentiated, as to whether they are internal to SDC or meant to be 'publicity' tools.***

1.5. Recommendations to Further SDC's Human Rights and Rule of Law Policy Orientations

1.5.1 Strategic considerations

1. ***Re-affirm SDC's commitment to human rights.***
   The Evaluation noted a lack of explicit senior-level support to prioritise human rights. Current practice, in particular the Strategy 2010 and associated SDC restructuring, is privileging 'governance' and has made human rights a sub-sector under the 'access to justice' theme. This is not consistent with human rights, democracy and the rule of law as one of the five top Swiss foreign policy objectives. Senior management should reaffirm the importance of human rights for development, plus the allocation of sufficient resources. Staff recruitment and training needs to take into account the ability to understand and respond to human rights considerations.

2. ***Update SDC's human rights and rule of law policies.***
   SDC will need to decide if it wishes to explicitly adopt a 'rights-based' approach, and the Rule of Law Concept should be replaced by an up-to-date Access to Justice document.

3. ***Adopt adequate management systems in line with the 'binding' nature of the human rights policy.***
   A Working Group should be established to review how human rights are taken into account at the levels of: (i) country assessment; (ii) policy dialogue; (iii) programming; and (iv) monitoring and evaluation, and to consider how management systems need to be amended, possibly by adopting a sequenced approach, building on country pilots where human rights are already better integrated in programmes.

1.5.2 Practical recommendations

1. ***Communicate better and develop a consistent understanding.***
   Both the Human Rights Guidelines and Rule of Law Concept should immediately be put on the SDC website. It should also be made clear to COOFs that these are public documents and should be displayed along other SDC documents, in particular in countries where human rights programming is taking place.

2. ***Provide more support to implementing the policies by way of training and learning events, practical tools, and networking, including opportunities for staff to learn from one another via workshops.***

2. Introduction

2.1 Background

In 1993, human rights, the promotion of democracy and the rule of law became one of the five priorities of Swiss foreign policy[1] and, a year later, that concern was reflected in the new directions for Swiss development co-operation.[2] In 1995, the senior management of the Swiss Agency for Development and Co-operation (SDC), a department of the Federal Department of Foreign Affairs (FDFA), gave its Policy and Research Section the task of identifying ways of making these new orientations relevant for SDC.[3] An Intra-governmental Working Group was established under the chairmanship of the head of the Policy and Research Section, composed of 16 members from within SDC and the other relevant sections of the Federal Government.[4] A consultant provided technical support to the group. Two documents were produced:

- *Promoting Human Rights in Development Co-operation* in 1997;
- *The Rule of Law Concept: Significance in Development Co-operation* in 1998.

The two documents have different characteristics and purposes. The Human Rights Guidelines, an A4 brochure, were approved by the SDC Board of Directors in February 1997 and issued as a binding SDC document, all the units involved in their preparation committing themselves to 'adhere to the guidelines and…contribute to their implementation'.[5] They define human rights based on the international framework, and explain how they can be promoted through development co-operation. Ten strategic principles for engagement are identified (see Box 1), as well as some practical recommendations on operational implementation, focused primarily on civil and political rights (for example, access to justice, press freedom, democratisation), though interventions in the areas of health and education are also mentioned. Political human rights conditionality is a dominant theme, and a focus on 'positive measures', based on an assessment of the local context and government commitment, is recommended. The Guidelines reflect international thinking at the time, and therefore give only limited advice on how human rights might be treated as a transversal theme. They do not have an explicit poverty focus or discuss a rights-based approach.

The Rule of Law Conceptual Framework, an A5 brochure, is an issues paper, providing conceptual and historical explanation of the rule of law, defined in broad terms as including respect for human rights, administrative reform, legal and judicial reform and decentralisation. The Working Group had decided that a separate document would be needed on the Rule of Law. It was not meant as an operational document, but it does make some practical recommendations for implementation. Its production was outsourced to the consultant to a considerable extent and it was issued as an orientation (rather than binding) document in 1998. It is a useful introduction to the role of the state and of the law in development, at a time when international thinking was changing.

Neither document is illustrated by practical examples. Both were systematically distributed to SDC staff, Swiss government departments and international organisations between 1997

1. Report of the Federal Council on Switzerland's Foreign Policy, 29 November 1993.
2. Report of the Federal Council on North-South Relations in the 90s, 7 March 1994.
3. The role of the unit, which no longer exists, was to develop policy. This is now the responsibility of the SDC's Thematic and Resources Department.
4. FDFA political division IV (human rights policy), political division II (bilateral relations), and directorate of international law, as well as from the State Secretariat for Economic Affairs (economic development) and the Federal Office of Justice (legislation division). Within SDC, regional sections were represented by headquarters-based staff, and the humanitarian and legal divisions were also involved. There was one additional staff member from the Policy and Research Section.
5. *Promoting Human Rights in Development Co-operation*, p.2, where a list of all the Working Group members can also be found.

and 1999. They have been translated from German and French into English, Spanish, Italian and Russian. 11,300 copies of the Human Rights Guidelines and 7,500 copies of the Rule of Law Concept have been printed. They are available from SDC on request but have not been put on the internet.

Box 1: Promoting Human Rights in Development Co-operation: Ten Strategic Principles

- *A different approach from country to country*: There is no blueprint and measures should be based on an assessment of the domestic environment. In some cases, discrete work is preferable.
- *Emphasis on positive measures*: Activities can include awareness-raising, supporting groups subject to discrimination, civil society strengthening, improving legislation and its application, rights education and media support, as well as sectoral interventions (e.g. health and education).
- *Emphasis on political dialogue:* The purpose is to persuade the representatives of the partner country that improving human rights has a beneficial effect on their country's development in the longer term.
- *Differentiated approach to human rights conditionality*: In cases of gross and systematic human rights violations, termination of assistance may be required. Aid can also be redirected to non-state agencies, or limited in time with regular monitoring of performance until assistance can be resumed.
- *Calculated risk:* Support for human rights groups can be sensitive and risks politicising assistance. There can be an effect beyond aid, on political and economic relations with Switzerland.
- *Projects and programmes:* A programmatic approach should be preferred, with both specific measures in favour of human rights and a transversal approach, for example in administrative reform, decentralisation, rule of law, health or education.
- *Resources, patience and endurance*: Improvements will take time and human resources. Training employees and evaluating early experience are recommended.
- *International co-ordination:* All forms of interventions require co-ordination with local, bilateral, multi-lateral and non-governmental partners.
- *Preventing negative effects of projects and programmes:* Projects should be checked for negative consequences (e.g. population displacement, restricted access to services, strengthening authoritarianism, undermining the position of women, etc).
- *Coherence:* The human rights policy dimension needs to be coherent with the policy priorities of other Swiss government interests: diplomatic, economic and commercial, incentives for return of refugees, exports and investment, war materials, or migration policy.

2.2 Purpose

According to the Approach Paper (the Terms of Reference of this Evaluation, see Annex 1), these policy guidance documents were meant to:

- raise awareness amongst SDC staff and their partners of the importance of human rights and the rule of law for sustainable development;
- integrate human rights and the rule of law into programmes and policies.

No monitoring mechanism was set up and, to date, there has been no systematic analysis of compliance with the documents. In addition, SDC's Thematic and Technical Resources Department is planning to develop a new series of strategic papers, conceptual frameworks and guidelines, in particular in the area of governance, and wants to learn from past experiences. Given a perception of 'policy fatigue', SDC is keen to discover how future guidance can be made more effective.

Given this context, the purpose of the present Evaluation is three-fold:

- to assess the influence exerted by the Human Rights Guidelines and Rule of Law Conceptual Framework in terms of their policy and programmatic guidance;
- to identify ways of making these specific policy orientations more effective and relevant;
- to highlight key factors that might foster or hamper the impact of policy guidance documents.

The study thus goes beyond evaluating the influence of the two guidance documents, to drawing conclusions and making recommendations on how to promote policy change in the area of human rights, and how to improve the usefulness of policy guidance documents in general. The main focus is on the Human Rights Guidelines, which are binding on the SDC. It must be stated at the outset that this is not an evaluation of SDC's policies and programmes or of human rights and rule of law processes and outcomes in SDC's partner countries.

2.3 Methodology

The Evaluation was undertaken by the Overseas Development Institute. The team was composed of Laure-Hélène Piron (team leader) and Julius Court, with research assistance from Tammie O'Neil and peer-reviewing from Simon Maxwell and John Young. Local surveyors were subcontracted to undertake field work in Bosnia-Herzegovina, Pakistan and Peru. The team is extremely grateful for the support and assistance it received from SDC staff, both at headquarters and in the field, as well as for the contributions from other Swiss and international respondents.

It used several parallel methods and activities to gather information and triangulate findings. These included:

- *Semi-structured interviews* with SDC staff (from a range of divisions and units), other Swiss government officials, and Swiss NGO staff. It was not possible to interview staff from the Humanitarian or Multilateral Departments of SDC. In total, over 150 people were interviewed (see Annex 2).

- A *review of SDC policy and country documents*, as well as other Swiss official statements, in order to track and assess the impact of the guidance documents on broader policy and practice (see Annex 3). In total, over 200 documents were consulted, including from other donors and academic sources (see Annex 10).

- A *brief survey* issued to 52 SDC staff, Swiss embassies and Swiss NGOs, eliciting 23 completed responses (see Annex 4).

- A *review of statistical financial information* to assess trends in SDC programming in the areas of human rights and gender (see Annex 5).

- *Four country case studies* to provide more detailed information. Research was conducted in Pakistan by Mohammed Saif and in Peru by Carlos Basombrio. A team composed of Julius Court and Jelena Jelic visited Bosnia-Herzegovina, and Laure-Hélène Piron visited Rwanda (see Annex 6).

Specific techniques were also added to facilitate 'learning'. These included:

- Convening an *Informal Workshop* at the UK Department for International Development (DFID) to discuss the key factors affecting the impact of policy documents on practice, and a *Focus Group* with experts in Geneva to search for innovative approaches to providing policy guidance (see Annex 7).

- Undertaking an *Episode Study* of gender mainstreaming in SDC, to learn from an example of a successful policy change within SDC (see Annex 8).

- *Reviewing the experiences of four other donors* (DFID, Swedish International Development Agency (Sida), UN Children's Fund (UNICEF) and the US Agency for International Development (USAID) with regard to their human rights and rule of law policy and practice (see Annex 9).

2.4 Outline

Chapter 3 presents the analytical framework. Chapters 4, 5 and 6 contain the body of the Evaluation and review the relevance, efficiency, effectiveness and impact of the two policy guidance documents. Chapter 7 brings together the key conclusions, lessons and recommendations of the report.

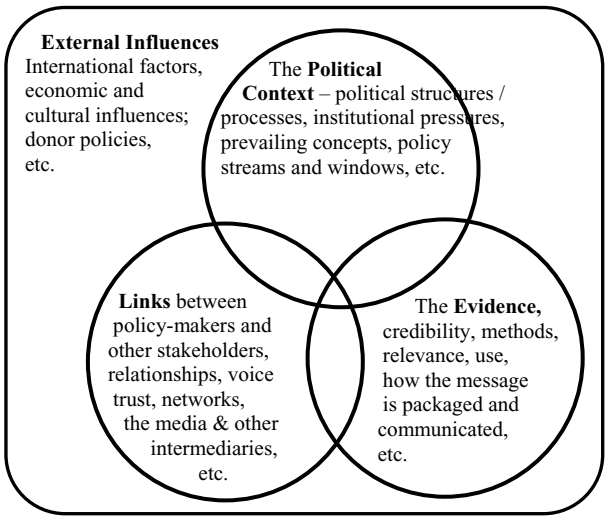
3. Analytical Framework

3.1 Understanding the Role of Documents in Changing Policy and Practice

The main focus of this Evaluation is on assessing the influence that the two policy guidance documents have had on SDC practice, in particular on staff awareness and programming. Guidance documents are, however, only one aspect of a broader process of policy change within development agencies. This is a complex, non-linear process, where policy-making and implementation cannot be fully separated and change can take a long time to become apparent.[6] Any analysis must recognise the multiple pressures on staff, the inconclusive nature of much of the evidence, and the complexity of relationships between and amongst policy-makers and other actors.

A new framework, developed by the Research and Policy in Development (RAPID) programme at ODI to help understand the influence of research on policy, groups the wide range of factors into three overlapping areas: (i) political context; (ii) evidence; and (iii) linkages.[7] These are located within a broader contextual background as shown in Figure 1. This model is the starting point for our analytical framework.

Figure 1: Framework of Factors Affecting Policy Change



Experience suggests that *policy documents* do play a role in policy change.[8] The quality of the documents is clearly important for policy uptake.[9] Influence on policy is affected by topical relevance and, equally important, operational usefulness. The credibility of the evidence in a document is important; it helps if a new approach has been piloted and the document can demonstrate the value of a new option. Participatory approaches that include implementers in defining strategies contribute to effective policy change.[10]

A key set of issues concerns *communication*. Strenuous efforts may be required to change policies and practice, both within agencies and by external actors, in particular in sensitive areas such as human rights. Policy uptake tends to be greatest if the process has a clear communication and strategy from the start. The sources and conveyors of information, and the way new messages are packaged (especially if couched in familiar terms) and targeted can all make a big difference to how the document is perceived and utilised. The key message is that communication is a very demanding process, and it is best to adopt an interactive approach.[11]

6. Sutton, R. (1999) *The Policy Process: An Overview*. ODI Working Paper 118. London: Overseas Development Institute.
7. For more details, see www.odi.org.uk/rapid/
8. Court, J. and Young, J. (2003) *Bridging Research and Policy: Insights from 50 Case Studies*. ODI Working Paper No. 213. London: Overseas Development Institute, September.
9. This point was reinforced in the workshop at DFID (see Annex 7), though documents were considered less important than the international environment and senior-level support.
10. Neilson, Stephanie (2002) *Knowledge Utilisation and Public Policy Processes: A Literature Review*. Ottawa: IDRC, Evaluation Unit.
11. Mattelart, A. and Mattelart, M. (1998) *Theories of Communication: A Short Introduction*. London: Sage Publications.

The literature indicates that the *political context and institutional framework* are the most important dimensions affecting the uptake of policy into practice.[12] Political contestation, institutional pressures and vested interests matter greatly. In certain contexts, policy documents may be completely ignored by staff on the ground or may be inappropriate. So too the attitudes and incentives among officials, their room for manoeuvre, local history, and power relations greatly influence policy implementation.[13] At its broadest level, the degree of policy change seems to be a function of political demand and contestation.

Finally, the framework emphasises the importance of *links* – communities, networks and intermediaries such as the media and campaigning groups – in affecting policy change. Issues of trust, legitimacy, openness and formalisation of networks have emerged as important, including the role of 'translators' and communicators.[14] There is often an under-appreciation of the extent and ways that intermediary organisations and networks impact on how formal policy influences officials.

It is clear from this framework that policy guidance documents can and do matter, but, crucially, that they are only a (small) part of the process of policy formulation and implementation. Documents need to be complemented by additional measures which reinforce the importance of the policy and its content for staff members, and provide support for implementation. Lessons from experience in applying the policy should feed back into further policy clarification.

3.2 Human Rights, the Rule of Law and Development Assistance

Policy change in the area of human rights is particularly challenging, as it is seen as a 'political' area. Though there is an internationally agreed human rights framework, with legally binding conventions and institutionalised monitoring mechanisms through the United Nations, human rights remain a controversial topic. They are seen by some Southern countries as 'Western' concepts and principles, not necessarily appropriate to local culture or levels of development, and giving greater prominence to civil and political rights, rather than economic and social rights.[15] Some Asian governments argue that human rights also privilege individual over communal values and are thus culturally inappropriate.[16]

In terms of development assistance, human rights sometimes have been interpreted as creating a new layer of political conditionality. A 'violations' approach focuses on condemning human rights violations committed by governments. Aid may be suspended if gross and systematic violations of fundamental rights continue. This approach does not always try to identify ways in which governments can be assisted to live up to their international obligations.

It is only fairly recently that the relevance of human rights for development has been taken into account. Following the 1993 World Conference on Human Rights in Vienna[17], and the 1997 UN reform programme which recommended that human rights should be integrated

12. Crewe, Emma and Young, John (2002) *Bridging Research and Policy: Context, Evidence and Links*. ODI Working Paper No. 173. London: Overseas Development Institute).
13. See Kingdon, J. W. (1984) *Agendas, Alternatives, and Public Policies*. New York: Harpers Collins; Clay, E. J. and Schaffer, B. B. (1984) *Room for Manoeuvre: An Exploration of Public Policy in Agricultural and Rural Development*.

structures can make mainstreaming into sectoral work difficult (for example, in to health and human rights if the focal point is based in a governance department).

Best practice would require taking both the legal and the inspirational aspects of human rights into account; it would identify 'rights-based' principles, cover both processes and outcomes, and focus on *how* and *why* development assistance should be done differently as a result. This is what the UN Development Programme (UNDP) recommends in its recent practice note (see Box 2).

Box 2: UNDP *Poverty Reduction and Human Rights: A Practice Note*, June 2003

This note outlines a framework for the integration of human rights into poverty reduction and provides practical steps to guide UNDP programming. A human rights-based approach (HRBA) to poverty reduction can address the root causes of poverty by applying the ***principles*** of: equality and non-discrimination, universality and indivisibility, participation and inclusion, accountability and the rule of law.

UNDP will take six ***practical steps*** in its programming to apply a HRBA to poverty reduction. It will:

- encourage all actors to adopt a HRBA approach in tailoring and customising the Millennium Development Goals to the local context;
- focus on the capacities of duty-bearers to meet their obligations and rights-holders to claim their rights;
- enhance the synergy between poverty reduction and democratic governance;
- engage in the work of the UN Human Rights Treaty Bodies;
- develop rights-sensitive participatory methodologies;
- build in-house capacity to undertake multi-disciplinary reviews and analyses that maximise meaningful participation.

Integrating human rights into development assistance can take a number of forms. A starting point involves assessing the political context of the partner country, whether rights are generally respected, and whether there is a commitment to change. Human rights can also become the object of diplomatic dialogue, which will normally be led by the Ministry of Foreign Affairs. In terms of programming, specific human rights projects can be developed, for example in the area of access to justice, political participation, labour standards, minority protection, etc. The SDC Human Rights Guidelines recommend the use of all these instruments (see Box 1).

A greater challenge is to 'mainstream' human rights into programming, that is, to ensure that all donor-funded activities contribute to the realisation of rights, and do not cause harm. This requires more than developing new projects, and can include new programme management tools, such as rights assessments. Some agencies, such as UNICEF or UNDP, claim that they have adopted 'human rights-based approaches', which not only include mainstreaming human rights, but also consider that respect for human rights is constitutive of development itself, and that the process of development should follow a number of human rights principles, including non-discrimination, equity, participation, accountability, and respect for human dignity. SDC policy has not gone in for systematic mainstreaming. It recommends a programmatic approach (rather than projects), starting in a few countries.

The rise in importance of human rights has coincided with a growing realisation during the 1990s that 'governance', that is, the way political authority is used and relations between the state, civil society and the private sector, matters for successful development (see Box 3 for different interpretations of governance). An effective, and responsive, state is required.[23] The rule of law is a fundamental requirement to achieve good governance: in its simplest form, it means that state activities should be within the confines of the Constitution and the law, and be rules-based. The expression is also used more narrowly to refer to the functioning of the justice system, and in particular the independence and impartiality of the judiciary, and

23. World Bank (1997) *World Development Report 1997: The State in a Changing World*. New York: Oxford University Press and World Bank (2001) *World Development Report 2000/2001: Attacking Poverty*. Oxford University Press.

equality of all before the law. The rule of law is usually identified as a way of realising all human rights. It is considered a topic area for project activities (for example, police or penal reform), which will contribute to respect for rights, or as a broader programmatic or transversal goal (for example, as a component of governance). SDC's use of the term does not appear to be fully consistent. It is defined in its broadest sense in the 1998 Concept, but projects are usually narrowly defined.

Box 3: The Meanings of Governance

Governance has become a more prominent issue in development since the 1990s, but its meaning can at times be vague. A distinction can be drawn between donor agencies who adopt what we might call a 'technical' definition of governance, and those that explicitly include 'political factors'. For example, the European Commission defines governance as the 'transparent and accountable management of all a country's resources for its equitable and sustainable economic and social development'. Democracy, the rule of law and human rights are seen as related, but separate, issues. USAID also separates governance from democracy, whilst, by contrast, donors, such as UNDP and Sida talk of 'democratic governance'. DFID prefers to list seven governance capabilities, which include both technical issues, such as public expenditure management and civil service reform, as well as political participation and state-society relations. Donors seem to consistently include the rule of law as part of 'good governance', but human rights may not always be explicitly included. In general, there has been a trend towards accepting the political dimensions of governance, though the International Financial Institutions are less comfortable with this approach.

In its Medium Strategy, SDC's Governance Division defines governance as 'the exercise of political, economic and administrative authority in the management of either world or an individual country's affairs a all levels. Governance is a concept comprising the complex mechanisms, resources, processes and institutions through which citizens, legal entities, gender and social groups articulate their interests, mediate their differences and exercise their legal rights and duties. Governance includes the state, but transcends it by taking in the private sector and civil society. The governance-situation can be analysed on the global, regional, national as well local level. In development policies, promoting governance aims at creating an enabling environment ensuring full respect of the rule of law, human rights protection and gender equality, a shared and accountable exercise of power, macro-economic stability and a sharing of responsibilities for human development between the state, the private sector and civil society, according to their respective roles.'

3.3 Key Issues Affecting Policy Change: Lessons from the Gender Episode Study and Other Donors

In this section, the conceptual framework is completed by identifying key characteristics of 'successful' processes of policy change (see Box 4). The list has been drawn up from the review of the literature on policy change and human rights and rule of law policies and programmes, as well as from three sets of 'lesson-learning' activities.

First, we undertook an *Episode Study* to analyse how a significant policy change process within SDC (gender mainstreaming) has taken place and to draw a comparison with human rights mainstreaming. Gender has appeared, from documents, interviews and our brief survey, to be the main transversal issue within SDC, and there are many specific gender projects. Many country offices (COOFs) have a gender focal point. We estimate that gender perspectives were formally included in projects representing 24% of SDC total spending in 2002.

Box 4: Elements of Successful Policy Change Processes

1. A supportive international and domestic environment.
2. A clear, concise and well-communicated policy statement.
3. Policy champions and the commitment of senior managers.
4. Instructions, systems and resources to put the policy into practice.
5. Visible translation into policy dialogue, programmes and projects.
6. Supporting measures, such as staffing, training and communication.
7. Practical guidance, using evidence and lesson-learning to support the policy.
8. Links and networking.

Second, the experiences of four other development agencies were also reviewed. UNICEF is considered to be the UN agency which has most successfully adopted a rights-based approach to programming, including operational directives. Sida and DFID are considered to be amongst the leading bilateral agencies which have prioritised human rights. Finally, USAID has undertaken assistance to the justice sector since the 1960s and has produced useful guidance documents. DFID has also recently adopted an innovative approach to what it calls 'safety, security and access to justice', which prioritises the perspectives of the poor and inter-sectoral linkages in reform processes.

Third, two *Focus Group Discussions* were held, one with DFID staff and another with Geneva-based development experts, to identify elements of successful processes of policy change and make proposals for innovative approaches.

These lesson-learning activities helped us confirm the relevance of a number of factors, in addition to the positive role to be played by clear and concise policy statements, for the successful translation of new policy orientations into practice. They are examined below.

3.3.1 International Environment

Gender became a prominent issue within SDC in response to a changing international environment. In the 1970s, the international women's movement raised the importance of women's issues at a global level and this spilled over into the development arena. The World Conference on Women in Beijing in 1995 gave substantial political force to gender issues in development. Similarly, DFID's shift towards poverty reduction, and in support of Poverty Reduction Strategy Papers, would not have occurred without a change in international policy. But agencies can also influence their environment, in particular if they work together. DFID and Sida have become known as agencies which have adopted rights-based approaches in part because of the assistance they have provided to organisations such as UNICEF and the UN Office of the High Commissioner for Human Rights (OHCHR).

3.3.2 Domestic Environment

Gender mainstreaming within SDC also needs to be seen in the context of broader moves towards gender equality within Swiss society and government. It is noticeable, however, that SDC appears to be more advanced in this respect than other Federal agencies. Gender in development certainly gained synergy with efforts to promote equal opportunity for women within SDC (for example, the gender adviser reports direct to the SDC director). Domestic political considerations also matter in the adoption of human rights and rule of law policies. For example, it was following the Labour Party's accession to power in 1997 that the British government adopted an 'ethical foreign policy' and included human rights considerations in its first White Paper on International Development.[24] A Social-Democratic political culture is seen as explaining Swedish commitment to human rights.

24. DFID (1997) *Eliminating World Poverty: A Challenge for the 21st Century*. White Paper on International Development, November. Cm 3789.

3.3.3 Policy Champions and Senior-Level Commitment

To become accepted, new policies require sustained high-level support over time. Within SDC, there has been a strong push for gender mainstreaming from the Director General himself; our analysis also points to the importance of a mid-level policy champion in the late 1980s who created momentum for change. Within DFID, the former Secretary of State, Clare Short, was a strong champion of poverty eradication and renewed not just DFID's policy (through White Papers and strategy papers) but also its systems. However, champions cannot work on their own: they need to build support with country programmes, as was the case with gender at SDC. DFID's human rights senior management champion left her post once the policy statement had been adopted, which made translation into implementation more difficult.

3.3.4 Instructions and Resources to Move from Policy to Practice

There should be an identification by senior management of who is to be responsible for the implementation of a new policy. UNICEF's Executive Director issued a Directive to accompany the new Human Rights Programming Policy in 1998, stating that all heads of country offices had to discuss the policy with staff, and requiring regional directors and relevant senior staff at headquarters to report on progress.[25] This helped to kick-start the process of mainstreaming, and led to UNICEF becoming well known for its human rights policy. Organisational characteristics affect how instructions are received. The shift from gender policy to practice within SDC is partly explained by the relative independence of COOFs to experiment and pilot new approaches. As a result, there remain different degrees of implementation on the ground, but systems and methods have been adapted to ensure that the gender policy is being institutionalised.

Resources are also needed to promote change. Since 1999, DFID, for example, has been designing a number of new 'safety, security and access to justice' programmes to demonstrate the value of its new approach. USAID is well known for its support for the rule of law, and has projects in about two-thirds of the countries where it is active. It is not just a question of volume, but also of how money is being spent which matters; small but well-positioned, well-connected and well-documented projects can influence domestic processes, and not just donor policies.

3.3.5 Supporting Measures

Staff are needed at headquarters to help in policy development and production of guidance, to assist with implementation in country programmes and to monitor progress. At one point, DFID had 5 staff at headquarters, responsible for 'safety, security and access to justice', and USAID had a team of 6 working on the rule of law. Sida's 25-member Democratic Governance team is responsible for both policy and country programmes, and has staff located in the regions. Staff training is also important within UNICEF and Sida, and human rights are part of the regular curriculum. Support was provided in SDC by both a Gender Unit established at headquarters, the appointment of gender specialists in country teams, and a number of learning and sharing events.

25. UNICEF (1998) *Executive Directive: Guidelines for Human Rights-Based Programming Approach*. New York: UNDP.

3.3.6 Evidence and Lesson Learning

Good policies should draw on available evidence and reflect on past organisational practice. For example, DFID developed its 'safety, security and access to justice' policy as a result of: (i) a critical evaluation of its assistance to police projects, which showed that assistance should take a 'sector-wide' perspective and focus on linkages rather than funding individual agencies; (ii) the recommendations of an in-depth NGO review of international experience, which emphasised beneficiaries' views; and (iii) in its response to findings from the Voices of the Poor studies which showed that security and justice mattered for the poor.[26] It is also noticeable that the mainstreaming of gender within SDC has been supported by extensive evidence on its importance; staff say that 'you can't argue with gender'. Evidence from within the organisation has been used to illustrate gender guidance documents.

3.3.7 Practical Guidance

Guidance material complementing policy statements is extremely important to link policy with practice. For example, Sida has issued guidance to country offices on how to undertake human rights and democracy analysis.[27] USAID has developed detailed guides in the area of the rule of law, which are used not just by its staff but are known internationally. SDC has also been able to develop practical gender 'toolkits' which are highly valued by staff. The best guidance material seems often to have been developed through participatory approaches and followed by active communication. USAID's guide on the independence and impartiality of the judiciary took 2 ½ years to be produced, and involved both experts and seminars in the regions with staff in an iterative process. [28] This was complemented by workshops to present the guide to country offices, and by funding international conferences on the topic.

3.3.8 Networking

Successful policy change is usually documented to help agencies further refine their approach and feed into guidance, and this process can help create and sustain networks, including bringing staff together to reflect on what change has been achieved and the challenges ahead. For example, UNICEF has commissioned a significant number of case studies and organised annual global consultations with its staff. In 2003, DFID organised its first meeting for staff working on justice, and SDC held a global gender workshop.

The importance of the existence of an informal network on gender within SDC cannot be overemphasised. As one staff member put it: 'There is a natural network and lobby on gender'. This has been reinforced by formal networks within SDC and between SDC and other government agencies. In a contentious policy area such as human rights, international networking amongst like-minded donor agencies is also extremely important. A number of key events have been held since 1998 to reinvigorate efforts. There have also been informal efforts, including one organised by SDC in February 2003.[29]

26. DFID (2000), *Justice and Poverty Reduction*. London: DFID.
27. Sida (2003) *Country Strategy Development: Guide for Country Analysis from a Democratic Governance and Human Rights Perspective*. Stockholm: Sida.
28. USAID (2002) *Guidance for Promoting Judicial Independence and Impartiality* (revised January). Washington, DC: USAID.
29. For example: 1998 meeting on human rights and human development in Oslo, 2000 meetings for donors and civil society in Sweden, the 2001 and 2003 UN inter-agency meetings on human rights as well as the February 2003 SDC organised informal donor meeting in Geneva, and the Cologne meeting in September 2003.

3.3.9 Mainstreaming

It does not always seem appropriate to make human rights a separate area of intervention, as it may mean that other staff within the organisation will not make it their responsibility. UNICEF requires all staff to be responsible for human rights and to receive adequate training. By contrast, within DFID, it is the Social Development group of advisers which is seen as having primary responsibility, and this has not always facilitated mainstreaming, for example by other advisers or programme managers. Sida has been working with other professional or regional groups to develop sectoral or regional rights-based policies, such as on human rights and education, or a strategy specifically for Eastern Europe.

4. Relevance

The relevance of an intervention measures the extent to which the activity is suited to the priorities and policies of the target group. In this section, we examine the relevance for developing policy on human rights and the rule of law of issuing two documents, first with reference to the context (international and domestic) and then from the point of view of the priorities and policies of the possible target groups (SDC staff and SDC partners).

4.1 International and Domestic Context

Section 3.2 made it clear that the international political environment created the key context within which the documents have to be considered. Following the end of the Cold War and the 1993 World Conference on Human Rights, governments recognised the importance of human rights for development, and overcame the distinction between civil and political rights, on the one hand, and economic and social rights, on the other. In this context, it was highly relevant for SDC to elaborate a policy on human rights.

SDC may even be considered as amongst the first agencies to publish a policy document explicitly on rights and development, as mentioned by the UN High Commissioner on Human Rights.[30] Other international development agencies, such as UNICEF, UNDP and the World Bank issued policy statements in 1998, the year of the fiftieth anniversary of the Universal Declaration on Human Rights. DFID published its human rights policy document only in 2000. [31]

The Rule of Law Concept was also a positive response to a changing international environment which, during the 1990s, saw a growing interest in institutional and governance issues. It was a first attempt by SDC explicitly to justify the importance of taking account of the nature of the state for development assistance. Other donors had, however, been providing assistance to the justice sector for a number of years, so SDC cannot be considered to be in the lead.

The documents were also relevant from a domestic perspective. The then Minister of Foreign Affairs, Flavio Cotti, had a particular interest in human rights and the documents responded to government's need to translate a new commitment to human rights into its development assistance framework. This changing Swiss policy was also illustrated by the adherence in the 1990s to important international human rights treaties.[32]

Finally, the documents were also relevant in identifying the main contribution of development assistance to human rights, 'positive measures', at a time when Switzerland was adopting a policy of 'negative conditionality', requiring agreements with foreign partners to contain conditionality clauses, on human rights and corruption, which would allow the suspension of Swiss assistance in cases of gross violations, and required 'political dialogue' to take place. By contrast, the documents emphasise the importance of interventions to assist

30. Statement by Mary Robinson, in *Human Development and Human Rights*. Report on the Oslo Symposium, 2-3 October 1998: 'development agencies from other countries, such as the Swiss Agency for Development and Co-operation, which adopted Guidelines on Promoting Human Rights in Development Co-operation…'.
31. UNICEF (1998) *Executive Directive: Guidelines for Human Rights-Based Programming Approach*; World Bank (1998), *Development and Human Rights: The Role of the World Bank*; UNDP (1998) *Integrating Human Rights with Sustainable Human Development*; DFID (2000) *Realising Human Rights for Poor People*.
32. Switzerland acceded to the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR) in 1992 and to the Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1994. It ratified the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1997.

governments in meeting their international human rights obligations, for example, by supporting institutional reforms or civil society advocacy.

4.2 Relevance for SDC

The new policy documents were relevant internally to SDC staff for three main reasons. First, the new policy orientation is considered to have been a response to the practical needs of staff working on country programmes. Already in the early 1990s, situations such as apartheid in South Africa or growing tensions followed by genocide in Rwanda, required SDC staff to take a different approach to understanding domestic political contexts. Exchanges between FDFA's Political Division IV and some of the country programmes increased. Some COOFs had started developing human rights strategies independently of the Working Group (see Box 5). SDC staff needed confirmation that development aid could play a role in such circumstances.

Box 5: A Country Strategy before the Official Policy

In Pakistan, the process was internal to SDC Pakistan rather than being a result of the Working Group. In May 1996, SDC Pakistan developed a human rights strategy which aimed to formulate a framework for mutual support to achieve human rights, examine how to improve exposure and compliance with human rights requirements through the existing SDC programme, and facilitate a joint learning process. SDC had been actively involved in networking with local civil society organisations through the Swiss NGO Programme Office and this strategy evolved out of a SDC paper presented at a workshop in Lahore.

Secondly, SDC as an organisation has had to come to terms with the trauma of the Rwanda experience. Rwanda was one of its first priority countries, as early as 1966, and SDC was one of the largest providers of assistance. The 1994 genocide is seen as having contributed to a realisation of the need to look more broadly at the social and political conditions within which aid is provided, including whether human rights and the rule of law are being respected, as well as at the type of assistance, and not necessarily to privilege rural or forestry interventions at the expense of institutional and governance reforms.

Thirdly, the documents responded to a more specific set of priorities for Swiss co-operation with Eastern Europe and the former Soviet Union. The legal framework explicitly prioritises human rights, the rule of law and democracy.[33]

Overall, therefore, we can conclude that the documents were topically relevant at the time they were produced. However, they were seen as not having provided sufficient *practical* advice. Data from our survey and interviews confirm that they were considered relevant as orientation documents but were weaker as operational documents.[34] Some of the original Working Group members suggested that it had been their intention to produce additional practical tools. This was not done at the time, however, or in subsequent years.

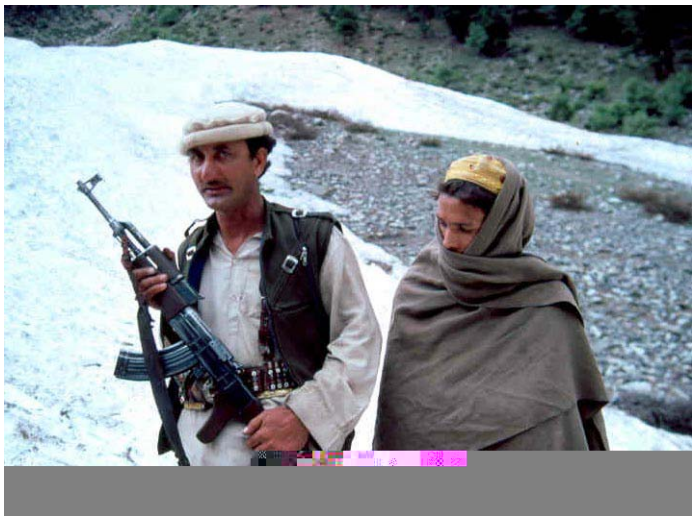
There is also the view that the documents might no longer be fully relevant. Findings from the brief survey suggest that they are perceived as having met a historically well-defined need, but that they require updating. As a respondent stated: 'I think that at the time it was produced, the [human rights] document was very useful for clarifying a number of concepts which were considered as 'trendy' but were unclear to many people in the development sector. Today we need to have a more practical document based on the experiences of SDC (and others) in this field during past years'.

33. These objectives were defined in the Federal Decree of 24 March 1995 and in the *Foreign Policy Report* of 2000. In addition Swiss aims also include sustainable and economic development, based on market principles.
34. Survey respondents gave a score of 3.20 for the operational and practical relevance of the Human Rights Guidelines, as compared to 4.92 for its clarification of SDC policy (on a 1-7 scale).

In addition, SDC's overall policy orientation towards prioritising poverty reduction, already legislated for in 1976, was made more explicit during 1999-2000. The two guidance documents, produced before then, could be updated to make them more relevant to current SDC needs to be explicit about poverty outcomes. SDC has recently commissioned work on Poverty Reduction Strategies and Human Rights from the OHCHR. This is a positive step towards identifying the links between human rights, the rule of law and poverty reduction. Similar work should be undertaken to clarify and update the Rule of Law policy. An explicitly pro-poor approach would prioritise an 'access to justice' perspective, which would go beyond promoting legal assistance, to identify how poor and marginalised people can benefit from better and fairer police, penal and judicial performance, and to take account of non-state systems.

4.3 Relevance for SDC Partners

Opinions are divided as to whether the guidance documents were meant to be explicitly relevant also for SDC partners. At the time, the distinction between producing a statement of policy aimed not just at Swiss officials but also at Swiss partners, such as other governments, local or international organisations, did not seem to be clearly made. As a result, we found that the documents were relevant because there was need for a statement of Swiss policy rather than because of the way they were produced and distributed or because of their style and content.



The case studies indicate that government partners do not know that SDC has a policy document on human rights. They encounter Swiss human rights policy when they are engaged in human rights dialogue or are discussing country programming. In one rare example, Peru, the Human Rights Guidelines were used at one of the annual *Commissions Mixtes*, which had governance as its theme. This was far from the norm. Similarly, local NGOs have not seen the documents. We found them being used only by a local youth NGO in Kibuye province, Rwanda, when a Rwanda-specific document might have been more appropriate.

The documents were relevant to, and particularly appreciated by, Swiss human rights NGOs, from the point of view of helping to create a positive image of SDC as an organisation which takes human rights seriously. Although some of these organisations have been working on rights issues for many years, they do think it laudable that SDC has produced a policy document. One NGO uses the Guidelines as part of its annual human rights training course. However, many other Swiss or international development NGOs, including those funded by SDC, are unaware of the documents or that SDC has a specific rights policy.

Issuing a policy statement should also be relevant to other international organisations, in particular at headquarters, and the documents were sent to a number of agencies. However, at the time of the Evaluation, most donor partners interviewed had not seen them, and were not aware of the main aspects of Swiss human rights policy.

regions.[38] Requests from the field to assist with developing local understanding, for example from Peru, could not be met. An evaluation planned for 2000 or 2001 could not take place, as the Section had been disbanded. There was then a gap until the new Thematic and Technical Resources Department was established and a new Governance Division created in October 2000, leading to a significant falling-off in headquarters support for the new policy. In addition, staff from the Policy and Research Section who had been involved in formulating the policy were not transferred to the new Governance Division once it was set up, thus failing to preserve the 'institutional knowledge' that had accumulated. The appointment of a member of staff with full-time responsibility for human rights/the rule of law only happened in mid-2001.

It had been hoped that the 'channel of transmission' from headquarters to the field would have been carried out by Working Group members, who constituted a network once the drafting work had been completed. This was achieved to some extent: Working Group members were certainly committed to distributing the documents when they were posted overseas, and in developing local thinking (for example, in Mozambique, Pakistan, Peru). However, they were not necessarily human rights or communications experts, and had other responsibilities. They could not be relied upon to be the main mechanism to ensure that the policy was implemented consistently across SDC or communicated to local partners.

What appears to have been lacking is the identification of and support for other mechanisms that might have done this. One instrument for consistent implementation would have been clear instructions, for example, to heads of regional divisions, that it was their responsibility to ensure that country programmes took steps to adapt to the new policy environment, and to institute controlling or monitoring and evaluation tools to assess the extent to which this happened.

A strategy which seems to have been successful, and which is the best suited to SDC's decentralised structure, has been regional departments discussing the new policy locally and deciding how to respond. But this does not seem to have happened consistently throughout SDC. Latin America provides us with an example of how the policy was picked up regionally (see Box 6). In Pakistan, a strategy was developed in 1996 independently of the headquarters' initiative (see Box 5), and regular training has been undertaken ever since.

38. A one-day workshop for about 12 people to discuss the document when it was issued, followed a year later by a 3-day event on governance and human rights for about 15 people.

Box 6: Translation of the Policy Orientation into a Regional Strategy: Latin America

In 1998, the Latin American Division undertook a rule of law analysis for all its priority countries. This was followed by two regional meetings in 1999 and 2000 to share experiences, with a view to developing specific guidelines. As a result, regional guidelines on governance were published in 2002 (*SDC Contribution to Latin American Governance*, Latin American Division), covering areas such as checks and balances, the armed forces' relationship to political decision-making, an unresponsive and unaccountable state, lack of judicial independence, and human rights violations, particularly in relation to minorities and vulnerable groups. It also set out the rule of law and human rights as one of four principles integral to good governance, giving more priority to the rule of law. (The additional principles are listed as: transparency and broad access to public information, accountability and the rational use of economic resources).

6. Effectiveness and Impact

Effectiveness measures the extent to which an activity attains its objectives, that is, the influence the documents exerted in terms of their policy and programmatic guidance. We therefore assess the extent to which the documents:

- helped to raise awareness of human rights and the rule of law for sustainable development amongst SDC staff and partners;
- improved Swiss policy coherence and its human rights policy dialogue;
- became integrated into country programmes, as a transversal theme or as a sector;
- contributed to the rise of governance within SDC.

6.1 SDC Staff Awareness

SDC was relatively effective in distributing the documents to all staff members when they were issued. They are also visible at SDC headquarters, and new staff working on related issues, such as the new local human rights programme officer in the Rwanda COOF had been given them. The vast majority of those interviewed confirmed that they had seen the Human Rights Guidelines, and a large proportion said that they had read or glanced at them. Interviewees remembered the Rule of Law Concept less well. This finding is confirmed by the survey: 88% of SDC staff surveyed had a copy of the Human Rights Guidelines and 75% of the total respondents had read it.[39] By contrast, only 56% had a copy of the Rule of Law Concept, and 47% had read it. There also appears to be a differentiation between Swiss and local staff in overseas offices: locally-appointed programme staff tended not to have read or to know of the documents.

Even if most SDC staff received or read the documents in 1998 or when they joined the organisation, we found a mixed pattern in terms of how the documents are remembered, and more broadly, how human rights and the rule of law are understood. Interviews and the survey indicated that the documents probably helped raise awareness and clarified the concepts at a general level. The overall picture is well summarised by a survey respondent, who noted with reference to the Human Rights Guidelines: 'Not much impact, but helped to get a common understanding about the issue'.

However, the documents only raised awareness amongst some staff. For those who already had a background in this subject, they were considered good but not new, and possibly requiring additional support, such as training, for those who were not experts. More problematically, we found a number of respondents saying 'we already know about human rights because we are Swiss'. It may be that the Swiss political system encourages awareness of political rights and cultural diversity, but this is not the same as being aware of the implications of human rights for development assistance. In addition, not all SDC staff are Swiss. The Pakistan case study noted that, at a training event in 2000, the facilitator had been shocked by the poor level of understanding of human rights, and even hostility, by local staff.

During interviews, few respondents could describe the contents of the documents, the international human rights framework, or more importantly the main messages of SDC policy, such as the ten strategic objectives summarised in Box 1. Some staff talked about the Human Rights Guidelines as the 'Giacometti thing', referring to the cover of the document, and indicating indifference or lack of awareness of its content. Almost none could remember

39. It should be noted that there was a bias in the survey sample in favour of SDC staff responsibile for governance, which probably overestimates the findings.

what the Rule of Law Concept was about and there was a lack of consensus as to whether it dealt principally with access to justice, or governance more generally.[40]

Box 7: A Wide Range of Views on Human Rights within SDC

- We know about human rights because we are Swiss.
- Human rights can be about anything and everything.
- Human rights are principally about freedom of association and expression.
- Social and economic rights are pre-requisites for development and more important than political rights.
- The indivisibility of human rights makes them meaningless.

International human rights policy has evolved since the development of the Guidelines and we found little evidence that the SDC staff had been able to follow this. In particular, there was little understanding of what it might mean in practice to take a 'rights-based approach', that is, to treat human rights not just as a sector or even a transversal issue in a country programme, but to see development co-operation in general as contributing to the realisation of human rights for all. Some staff expressed an interest in being brought up to date.

With the establishment of the Governance Division and the appointment of a human rights and rule of law specialist, steps are being taken to address poor staff awareness. Though no induction training was provided in 2003 on governance (including human rights) for new SDC staff, a number of recent Berne events have been highly appreciated, such as a seminar on the new UNDP human rights Practice Note and a discussion with the department working on Eastern Europe. There have also been a few training events at the local level, such as in Pakistan. No global event has yet taken place. An unintended consequence of this Evaluation has probably been to raise awareness amongst staff as to the existence of the documents (which were found or re-read before the interviews), and, possibly, of the 'priority status' accorded to human rights and the rule of law in Swiss foreign policy.

6.2 SDC Partners' Awareness

Interviews, the case studies and the survey all support the finding that the policy documents were not systematically distributed to partners. They are not even available on the internet, which is the easiest and cheapest way of making documents widely available to external users.

In both Bosnia-Herzegovina (BiH) and Rwanda, only one local partner had seen them. None were reported to have done so in Pakistan or Peru. An international donor noted that there was already too much BiH-related documentation, and that general policy documents would not be considered. In Rwanda, in contrast, some donors expressed an interest in seeing documents from like-minded agencies, but because SDC was not a lead agency, old policy guidance, such as the documents being evaluated, was of less relevance.

Box 8: The Limited and Confused Use of Documents in Bosnia-Herzegovina

The SDC BiH country office received the documents in 1998. There was no internal discussion on them. It does appear that there was some uncertainty about what to do. They were circulated to staff and put in the library but were not distributed to partners or to the public. There was some confusion as to whether they were 'public' documents or not. At the time of the evaluation, neither document was available in the BiH SDC office or the embassy.

40. This confusion is probably related to the different meanings of the 'rule of law' as noted in section 3.2 In addition, there is the issue of translation of the concept into the various languages used within SDC: 'rechstaat' or 'état de droit'.

In some country contexts, the political situation was deemed inappropriate for their distribution. From the point of view of COOF staff, it was, and still is, not clear whether the documents ought to be made public: this was, for example, the case with BiH and in a decentralisation project in Kibuye, Rwanda. In both cases, given the sensitivity of human rights issues, it was felt that it would be better not to publicise them, even though SDC was engaged in political dialogue and supporting projects in these domains.

A review of statements in international fora, such as at the UN or the World Bank, found no direct references to the SDC documents, apart from the Oslo seminar referred to in section 4.1. This may be because it is not the Swiss government's style to refer to internal policy documents at international meetings. We were told that they were used by the Swiss mission to the UN in Geneva which attends Un human rights meetings.

The relevant evaluation question is therefore not whether SDC partners know about the policy guidance documents, but whether they are aware of SDC's human rights policy, and whether they have been influenced by it. We interviewed only a few SDC partners in our case studies and as a part of the review of donor experiences, thus encountering only a small range of informants. Our findings suggest that SDC is not particularly well-known for its human rights or rule of law policies, particularly amongst donors.[41] This is because the activities of COOFs do not seem to be directed principally at influencing policy. Even in BiH, where Switzerland is the third largest donor, we did not find that policy influence was proportionate to the amount of aid. When SDC co-funds relevant activities with other donors, its status and policy influence are probably increased, as was the case with early human rights activities in Pakistan (with ILO, UNICEF, NORAD) and currently co-funded national projects in Rwanda.

6.3 Policy Coherence and Human Rights Dialogue

6.3.1 SDC Policy Coherence

It has been difficult to assess the role of the documents in promoting SDC's internal policy coherence with regard to human rights and the rule of law. We found little reference to the main content of the Human Rights Guidelines and Rule of Law Concept in other policy documents, and were unable to identify any direct impact. There has been a lack of staff continuity which would probably have been essential to ensuring that account was taken of the documents in other policy areas. No obvious inconsistencies were noted, because the language used was quite general. We were not able to interview staff from the Multilateral or Humanitarian departments, but evidence suggests that they have made no particular effort to integrate human rights in their policies/activities, and do not use the documents under review.

The two key SDC overall policy orientation documents, the *1999 Guiding Principles* and the *2000 Strategy 2010*, are not inconsistent with the main message of the Human Rights Guidelines, but they do not make human rights one of the key areas of development co-operation, whereas they are one of the five priority areas of Swiss foreign policy. In particular, a shift has occurred which has privileged 'good governance' as one of the five key topics of SDC co-operation. The rule of law is mentioned as a priority area, whereas human rights are considered to be only a supplementary or specific area.[42] The same prioritisation can be found in the recent SDC Governance Strategy, where human rights are considered as a sub-topic under 'access to justice' as opposed to a transversal theme for the whole of

41. We heard the comment that Switzerland was 'known for human rights', but this seemed to be because of the location of the United Nations and the International Committee of the Red Cross in Geneva.
42. SDC (2000) *Strategy 2010*, p.16.

SDC, such as gender.[43] Changes in overall SDC policy and structure subsequent to the documents were thus not fully consistent with the legal priority to be given to human rights in Swiss foreign policy.

Staff interviewed expressed a concern that SDC had too many policy documents, and that too many themes were being prioritised at once. There are for example annual themes (for example, peace and security), regional themes (for example, decentralisation), and transversal issues in country programmes (for example, gender). Staff, who are usually generalists, feel a 'policy overload'. Yet, the 'binding' nature of the Human Rights Guidelines, and Swiss foreign policy priorities, can be used to make the case that human rights and the rule of law need to be more clearly prioritised by senior management, and systems put in place to facilitate this. Guidance documents for other sectors should be available for those who need them, but not necessarily given the same status. As in other donor agencies, it is important to identify what can be 'de-prioritised'.

6.3.2 Intra-governmental Coherence

The process of elaborating the policy documents jointly with other government departments helped develop a consensus on the place of human rights in development co-operation, in particular the importance of 'positive measures'. It also established a mechanism whereby discussion could take place. For example, informal interactions across government and between group members continued after the Working Group was disbanded, and there is still a group working on human rights issues across government.

We did not find any evidence that the policy guidance documents were used directly by other departments, apart from the Swiss UN Mission in Geneva, nor that they promoted governmental policy coherence. Political Division IV has its own human rights documents, such as directives to embassies to issue annual human rights reports, or its own general brochure on international human rights. The State Secretariat for Economic Affairs (seco) has established its own mechanisms, such as the use of political stability and good governance criteria by its Operations Committee, or taking human rights and governance into account in the selection of priority countries. It has recently produced its own policy note on human rights, which does not refer to that of SDC.[44]

Policy coherence is reflected not simply in procedures but through the practical decisions taken by various departments. Although we held only a limited number of interviews, we noted two areas where coherence is still a challenge. First, some departments seem to think that SDC could do more to integrate human rights into its work. They consider that it does not have enough human rights projects, that it may be providing assistance to countries regardless of their rights record, and that its staff have little awareness of international human rights instruments.[45]

Second, the priorities of two other federal departments are not always consistent with human rights considerations. A significant amount of Swiss ODA is managed through seco[46], which needs to take Swiss economic interests into account to a greater extent than SDC, and cannot give the same priority to human rights issues from the point of view of poverty

43. SDC Governance Division (2000) *Medium Term Orientation 2003-2007*, April, p.3.
44. Seco (2003) *Droits humains et économie: notre politique sous le signe de la synergie et de la complementarité*, July
45. Possibly to remedy this, a request for a new credit for Political Division IV has been submitted to Parliament proposing to allocate CHF 220m over 4 years in the areas of conflict prevention, 12.5% of which would be for human rights promotion. (Federal Council Message to Parliament (2002) *Message concernant l'ouverture d'un crédit-cadre pour des measures de gestion civile des conflits et de promotion des droits de l'homme*, October).
46. In 2002, SDC provided CHF 1,049m in ODA (including humanitarian aid, co-operation with Eastern Europe and the former Soviet Union and development co-operation, and seco provided a total of CHF 231m.

reduction. Thus a significant amount of development assistance does not prioritise human rights. In addition, the Office of Refugees is also insisting that 'return clauses' continue to be included in conditionality agreements with partner countries, which some consider to be inconsistent with human rights principles.

6.3.3 Human Rights Dialogue

The main tool for external policy coherence has been in the area of human rights dialogue as a way of implementing 'political conditionality'. This has been a real challenge for the federal government. A number of countries were exempt from human rights clauses, for example, Indonesia, and it was felt that only small countries had been subject to clauses. We found no evidence that aid had ever been suspended on the basis of political conditionality. In some countries, such as Pakistan, political dialogue has been suspended, and human rights activities continue (see Box 9). By mid-2003, the federal government had actually revised its position, principally because of the case of China, where the refusal to sign contracts containing political conditions threatened seco financing. The new policy emphasises 'common objectives' rather than strict human rights conditionality. SDC was involved in this discussion.

Box 9: The Challenges of Political Dialogue with Pakistan

The presence of a democratically elected government with commitment to human rights provided an environment conducive to political dialogue in the late 1990s, and this was initiated by Political Division IV in 1997. A high-level Swiss delegation visited Pakistan and identified four priority areas: women, children, awareness-raising, and penal reform. SDC was already working in the first three areas. Prisons were added as a result of the visit. A Pakistani delegation, including NGO representatives, made a return visit to Switzerland in April 1998.

Political Division IV suspended the dialogue in 1998, primarily as a result of the government's decision to focus dialogue exclusively on China, but the unstable political situation following Pakistan's nuclear tests in 1998 was also a contributory factor. SDC was not consulted and felt unable to withdraw from the commitments it had made in the human rights sector to penal reform without adversely affecting its credibility in Pakistan. It therefore continued its human rights programme but did not enlarge its penal reform portfolio.

At the level of programming and selecting SDC priority countries, a country's human rights situation is taken into account not just by SDC but also by the government. This can create a difficult situation when assessments vary across departments or within SDC, and when there is domestic pressure for or against assistance. This is particularly the case with regard to Rwanda (see Box 10).

Box 10: Engaging in a Difficult Human Rights Context: The Case of Rwanda

Following the 1994 genocide, the Swiss government has been extremely cautious in its dealings with the Rwandan Government, as are most donors, given allegations of domestic human rights violations and military intervention in the Democratic Republic of the Congo. Given different views (those from the field being in general more favourable than those from Berne), a compromise common position was worked out by the FDFA and approved by the Federal Council in September 2001, whereby a 3-year Special Programme has been put in place (rather than reinstating Rwanda as a priority country, or suspending aid). This makes the provision of development assistance problematic, as projects have been delayed subject to political decisions, and no long-term planning can be envisaged. This compromise was seen by some as symbolic of a 'consensual' Swiss political culture.

Human rights dialogue has been difficult to conduct for SDC. Firstly, staff are not trained in this area and the Guidelines are not considered to have provided practical advice. Development assistance requires long time-frames and the bias is usually in favour of continuing rather than suspending aid. Secondly, SDC staff working in the field spend a considerable amount of time managing projects or locally-based assistance, which is not conducive to high-level or policy-based interactions with government. Projects do not appear

to have been generally designed with policy influence in mind. Thirdly, human rights dialogue requires monitoring and analysis capacity, which is not always available in COOFS. SDC does have a number of political monitoring tools, such as the MERV, which cover human rights considerations. Additional tools have also been developed as needed, such as a Memorandum of Understanding in Rwanda or the use of human rights criteria for projects in Pakistan. However, effective use of such tools requires staff resources, time and skills, which may not always be available, given other demands (see Box 11).

Box 11: Innovative Human Rights Monitoring Tools in Rwanda

Like some other donors in Rwanda, SDC is using a Memorandum of Understanding to clarify mutual expectations. It will be monitored by both governments and the assessment should feed into the next programming cycle. SDC is also gathering independent information, for instance by funding Penal Reform International in Kibuye province to monitor progress with *gacaca*, a participatory mechanism to replace formal genocide trials. SDC also joined other donors in monitoring elections. Peace and Conflict Impact Assessments have been formulated for all the main programmes, and include human rights and conflict indicators. Internal political monitoring is frequently conducted through the use of MERV. Monitoring constitutes an added burden for the head of the COOF, who is also responsible for project administration and donor co-ordination and for activities in Burundi. A need has been identified for an additional Swiss staff member in Kigali, who will be finally in post next year.

6.4 Country Programmes

The direct impact of the documents on programming has not been strong. Our review of country documents did not lead us to conclude that the guidance documents had had a direct practical or visible impact. Neither document was explicitly referred to, apart from two programmes (Palestinian Territories and Pakistan) that had already been working on human rights before the documents were issued.[47] The survey and interviews indicated that, in some cases, the documents were consulted in the preparation of country programmes, but this was not systematic and the feeling was that they offered little practical guidance. Box 12, based on the interviews, gives an indication of the different types of use. Only in the cases of Rwanda and Peru has there been an explicit acknowledgement that they were used as part of country programming. The survey indicated that no new activity was undertaken as a result of receiving the guidance documents. One respondent summarises the overall picture rather well: 'For other purposes (preparing country strategy, other projects or policy dialogue) the [human rights] document is too general. The local context cannot be taken into account in such a policy document'.

Box 12: Varied Examples of the Use of Documents

Ecuador: Led to a review of the content of the country programme. Checklist useful.
Pakistan: Human Rights Guidelines quoted in lesson-learning document for other donors.
Palestinian Territories: Already aware of the issues, but documents shared with donors locally.
Peru: Document used to stimulate discussion on rule of law in region. Regional strategy.
Rwanda: Head of Mission, new to SDC, read the documents carefully to design the country strategy.
Mission to the United Nations: Documents used to prepare public statements.

Increased spending is another potential source of evidence that the new policy orientations have been internalised. We found confirmation that, since the early 1990s, SDC has been spending more on governance, with a growing proportion on human rights (see Box 13). This change is marginal, however, and explicit human rights or democracy spending only increased from 1.4% of total bilateral aid in 1999 to 2.6% in 2002. This indicates that limited change consistent with the new orientation took place, but does not identify the origin of that change. In addition, these figures must be treated extremely carefully, as additional activities

47. As with the policy document review, this probably says more about the SDC style of drafting country strategies than about the influence of the guidance documents on the content of country programmes.

consistent with human rights or rule of law programming are not necessarily included in the statistical information.

Box 13: Small Increase in Human Rights Spending

The 1994 Message to Parliament gave information on 1992 data, with funding divided by sector allocation. Out of a total of CHF 456m. only CHF 10.7m was spent on social policy, administration and justice. This was the smallest sector allocation, representing 2.35% of the total. By 1999, good governance and empowerment projects made up 3.4% of total bilateral aid. This had increased to 6.3% in 2002. In 1999, such projects, with either democratisation or human rights promotion as their primary focus of activity constituted 0.9% of total bilateral aid and this had risen to 2.1% in 2002. The figures for human rights promotion alone are 0.3% and 1.2% respectively. When activities with either democratisation or human rights promotion as their secondary focus are also included, the figures increase to 1.4% of total bilateral aid in 1999 and 2.6% in 2002. The figures for human rights promotion alone also increase to 0.7% and 2.1% respectively.

Here, our analysis needs to draw a distinction between SDC co-operation with the South and with the East. The first (of only two overall) goals of SDC co-operation with Eastern Europe and the Commonwealth of Independent States concerns the promotion and strengthening of the rule of law, human rights and the construction of a democratic system. According to a recent review of 12 years of Swiss co-operation with this region, one-third of all projects and programmes produced a major, or a side, contribution to that overall goal. In financial terms, the proportion of projects in this field rose from 14% in 1992 to 22% in 2002.[48]

Implementation of the policy was in general not fully consistent with the Human Rights Guidelines. It seems to have taken place mostly via projects which appeared to be usually short-term, and not through a programmatic perspective aiming at long-term change. Very few countries have adopted human rights as a transversal issue. Of the 30 country documents reviewed, only one (Palestinian Territories) had done so, whereas gender was a transversal issue in 19 of the documents. Of our four case studies, only Pakistan had explicitly adopted human rights or the rule of law as a transversal issue and had a specific human rights strategy. Otherwise, the majority of projects seemed to concern civil and political rights. Some projects in the social sectors, or in support of municipalities, could be consistent with human rights or rule of law programming, but were not explicitly designed or labelled as such, and thus could not be included in the Evaluation. The Guidelines had also recommended focusing programming on a few countries, training employees, evaluating early experiences and compiling best practice, none of which was done, or at least not in a systematic way.

The most important finding is that there is no institutionalised mechanism to ensure that country programmes are consistent with, or are required to take account of, the 'binding' Human Rights Guidelines in their design, implementation, monitoring and evaluation. This seems to be a matter of individual judgement at the level of the COOFs, regional divisions or senior management. The legal background of some staff, for example in Tajikistan or Bolivia, may have influenced programming. In a sensitive situation, where civil and political rights issues are prominent, such as Rwanda, discussion involves other government departments and embassies, and is reflected in programmes. In general, however, there seems to be no systematic approach.

48. Terra Consult/E Basler, Partner AG/Taesco and NADEL (2003) *Bilanz der schweizerischen Zusammenarbeit mit Osteuropa under den Staaten der GUS, 1990-2002*, covering SDC and seco. Assistance to Eastern Europe and the former Soviet Union.

Box 14: Human Rights and Rule of Law in the Case Studies

Bosnia-Herzegovina Projects in the current Special Programme include: support for private media, Ombudsman, and police training. Assistance to the Office of the High Representative includes a Swiss secondee and a Quick Reaction Fund that supports economic and legal reforms. A new project on rights and municipalities is in preparation. Human rights and the rule of law are not transversal issues, but it is planned to include these topics under a new governance strategy for BiH.

Pakistan Projects, a considerable number of which are co-funded and which constitute a significant proportion of the overall portffolio, include: human rights advocacy, child labour, non-formal education for girls, penal reforms for women and juveniles, equal rights for women and improvement in the status of women and girls. There is a 1996 human rights strategy, which was revised in 2000. A new human rights strategy has been elaborated in 2003.

Peru Apart from support for the Ombudsman and citizens rights itinerant teams, projects have mostly been very short-term, and for one-off activities: access to justice assessment in Ayacucho, organisational development for the umbrella human rights organisation, support for the NGO Transparency and the Electoral Office. Plans are to continue working with the Ombudsman but not with human rights organisations. Governance will become a new transversal issue under which human rights and the rule of law will be located. The transition to a democratic government was seen as making human rights programming less relevant.

Rwanda Human rights and justice constitute one of the three areas of focus of the current Special Programme. Projects include: support to the 6th Chamber of the Supreme Court for the implementation of *gacaca* (participatory justice for genocide trials), *gacaca* monitoring in Kibuye, support for local human rights organisations in Kibuye and the local justice institutions, and research on land disputes. Earlier projects included support for human rights organisations at the national level. Human rights dialogue and monitoring with other donors are ongoing.

6.5 Institutional Factors

6.5.1 Overall Rise of Governance

The period under evaluation saw the adoption of the concept of 'good governance' as a core aspect of international development policy. For SDC, this requires a shift upstream from direct technical interventions (for example, in rural development or forestry) to supporting effective state institutions and taking into account the 'conditions-cadre' for development assistance. SDC is in the process of making this transition, and the effectiveness of the policy guidance documents should be evaluated as part of this broader process.

Though this was not identified in the original paper as the main motivation for producing the guidance documents, we found that the intention of the Research and Policy Section had been to issue a number of documents in order to promote a better understanding of governance amongst SDC staff, for example on corruption. Here, the Rule of Law Concept is more significant. The way it defines the rule of law is very broad and covers many aspects which can be seen as central to how governance has come to be understood within SDC, including public administration, access to justice and reinforcing SDC's interest in decentralised development.

A (possibly unintended) consequence of the production of the documents has been the progressive transformation of the Working Group into a Governance Network. The process of policy development certainly enhanced the importance of governance and contributed to the establishment of a Governance Division in the new Thematic Department. A number of governance strategies are being developed, for instance in Latin America or Tajikistan (see Box 15), demonstrating strong interest at the level of regional divisions and COOFs. The recent review of co-operation with the East found that governance as a domain of co-operation was seen as very wide and covered perhaps too many themes and topics.

Box 15: Tajikistan Governance Strategy 2002-4

The focus on governance within SDC programming and policy is an extremely positive trend and brings SDC in line with other agencies. By focusing on the state, and state-society relations, it creates an entry point for ensuring that human rights and the rule of law influence programming. However, governance can be taken into account without paying attention to rights. The World Bank, for example, gives priority to anti-corruption efforts or public sector reform in its definition of governance, but explicitly states that it is not adopting a rights-based approach. A governance approach could possibly lead to emphasising the legal and political aspects of human rights at the expense of supporting the realisation of economic and social rights, or prioritising 'institutional' rather than 'empowerment' approaches.

These negative consequences do not necessarily follow, but there is certainly a danger that SDC is 'de-prioritising' human rights. In its recent Governance Strategy, human rights are only a sub-sector, under 'access to justice', and not a transversal issue. Within the Governance team, only one person has responsibility for human rights and access to justice, whereas Sida has a Division of 25 staff whose responsibilities include human rights and democracy. DFID, which on average has only one person responsible for rights, has found it difficult to make much progress at the level of implementation. SDC's rights focal point will need to network internally and with other donors and NGOs, in order to build up interest and continuous pressure for change, as well as engaging in programming to demonstrate internally the 'practical' value of human rights. This is a great deal for one staff member. Being located in the Governance Division will make mainstreaming in other sectors (for example, health) more of a challenge.

6.5.2 The Limitations of Internal Systems

The decentralised nature of SDC is both a strength and a weakness in terms of how it implements the human rights policy orientation. On the positive side, it allows for creativity and innovation. On the negative side, it means that there are no strong internal management mechanisms whereby country programmes can be made to implement new policy orientations.

Interest in human rights policy guidance is not negligible, particularly amongst SDC middle-level and younger staff, across the Swiss government, and within the international community. The survey revealed that staff would like to have training and learning events, as well as practical tools. This creates a favourable environment for further developing SDC's human rights orientation. Senior management support would be required, including the recognition that human rights are not only a governance theme, but also affect the way in which broader development policy dialogue and programming are conducted.

7. Conclusions and Recommendations

7.1 Conclusions

The main conclusion is that the two policy documents under review were relevant and developed relatively efficiently, but that the process was not as effective as it could have been. Some changes have occurred within SDC that reflect the new policy orientations, but spending on human rights and rule of law programming is marginal, SDC staff do not have a consistent understanding of human rights, and SDC is not particularly well-known for its human rights and rule of law policies.

It was highly relevant at the time for SDC to have developed policy statements on human rights and the rule of law. This responded to a changing international and domestic political environment and to the need of SDC staff for advice on the role of development co-operation in promoting human rights. However, the documents have had relatively limited relevance as practical programming guidance for SDC staff, and only limited relevance for SDC partners, including governments, local or international NGOs, or other development agencies.

Given the resources available at the time, the process of developing the policy orientations through a Working Group with the support of a consultant was efficient. However, very limited resources were invested in the communication of the documents and follow-up supporting measures, including relevant training and awareness-raising activities. SDC's reorganisation at headquarters, in particular the loss of experienced staff, also caused a disruption in the process.

The direct impact of the two guidance documents has been limited, in particular because of the decentralised nature of SDC, the absence of strong statements from senior management and institutionalised mechanisms, a lack of clarity as to the implications of the 'binding' nature of the Human Rights Guidelines, and the lack of practical programmatic guidelines. The documents seem to have had even less impact on SDC's partners. Since the early 1990s, there has been a small increase in SDC programming in the area of human rights and the rule of law, attributable to the international policy environment and staff initiatives in response to individual country situations. Considerable efforts have also been made to improve Swiss foreign policy coherence in this area, in particular through the difficult implementation of 'political conditionality' and human rights policy dialogue.

While there has been an increase in funding for human rights and rule of law activities, which can be estimated at roughly 2.6% of SDC bilateral programming in 2002, up from 1.4% in 1999, this remains a marginal proportion of SDC's overall budget. Human rights programming mostly takes the form of projects, principally in the area of civil and political rights, and usually for short-term activities. Very few countries have adopted human rights as a transversal theme or have elaborated human rights strategies. Activities in other sectors, such as health or education, might be consistent with SDC's human rights policy, but have not been labelled or designed as such, and were not therefore included in the Evaluation.

The trend has been for the Human Rights Guidelines and Rule of Law Concept to be considered as one aspect of the new interest in 'governance'. There is a danger that human rights may be seen as solely related to civil and political concerns and not mainstreamed if they are seen only as constitutive of governance, and not as part of a broader approach to development assistance. The fact that they are not given more prominence does not seem fully consistent with the 'binding' nature of the Guidelines and their status as supporting one of Switzerland's top five foreign policy priorities.

The Evaluation noted an interest amongst staff in better understanding and implementing the human rights policy, with a demand in particular for training and learning events and practical tools. A number of international aid agencies are continuing to develop their human rights policies, which creates a favourable international environment.

More generally, SDC produces a variety of documents aimed at influencing policy (within SDC and externally) on a range of issues. There does not appear to be a cohesive approach, however. Staff complain of a policy 'overload' and a lack of prioritisation, and often consider that the organisation is producing too many dense documents of limited operational relevance. They prefer more operational advice and learning from the experience of their colleagues. There also seems to be no coherent strategy with regards to influencing SDC's partners.

The Evaluation confirmed that documents, on their own, cannot achieve policy change. They are only one aspect of broader processes of policy and institutional change within development agencies or more generally. Such processes are affected by a range of factors during policy development and implementation. However, SDC staff receive little, if any, formal guidance or training on how to understand and influence policy processes in different contexts.

7.2 Recommendations on Policy Guidance Documents

7.2.1 Strategic Consideration 1: Beyond Projects towards Macro Policy Influence

The evidence suggests that changing policy requires sustained, longer-term efforts, with specific objectives in mind. If SDC wants to move towards greater policy influence in partner countries, this will require a shift in the nature of some aspects of its programming. This is an issue of overall strategy as well as one for each COOF. The question is: how best can a small donor affect policy? Locally-based assistance or short-term activities can be valuable to achieve certain objectives, but tend to have limited policy-influencing consequences unless they are designed as such. Greater impact would be achieved by explicit efforts to identify and influence key players and processes at the macro level. This would require a strategic shift, including in the use of aid instruments, and would generally help SDC achieve its objectives better. Our recommendation is that SDC starts by piloting such an approach in particular countries.

7.2.2 Strategic Consideration 2: Clarify the Meaning of 'Binding'

SDC produces quite a large number of often lengthy policy guidance documents. Some, such as the Human Rights Guidelines, are considered 'binding', but no particular instructions reflect this status. This approach has a dual negative impact: (i) staff complain of a 'policy document overload' and (ii) the term 'binding' loses its value. It should be giving an indication

of what actually is a priority and how this priority ought to be translated into practice. We would suggest that only a limited number of key policy statements be classified as binding. If a policy is binding, it should be clear upon whom it is binding, objectives or targets should be set, and a monitoring and evaluation system should be put in place to gauge progress. Important policy issues should have funding allocated to support their promotion, and should be reflected in country programme strategies and expenditures. Some issues may need to be 'de-prioritised' by senior management.

7.2.3 Practical Recommendation 1: Clarify the Different Products Needed for Different Purposes

When developing new policy guidance instruments, SDC needs to be clearer about its objectives. We would suggest that official policy positions be outlined in short statements, of, for example, one page. They should highlight key issues, what is expected of staff or partners, and who, within SDC, is responsible for implementation. All staff should be expected to know SDC's most important policy positions. Longer documents could complement policy statements to assist those directly responsible for implementation. Issues papers could be prepared when the objective is to help raise awareness or 'open the door' to work on a new issue. If staff are expected to adapt their behaviour, documents or tools providing practical guidance will need to be prepared, accompanied by training and making technical assistance available.

7.2.4 Practical Recommendation 2: Adopt a Dynamic Approach to Preparing and Sustaining Policy Guidance

A Working Group approach, drawing on an expert consultant, seems to have worked well. It is also vital to draw on the viewpoints from staff beyond Berne. Policy documents benefit from being illustrated by concrete examples, in particular evidence from SDC's own experiences. This will help them be more relevant for SDC readers. Consideration should be given to producing 'living' policy guidance, using the internet as the source. While official policy statements need to be reviewed only periodically, SDC could add background papers, operational toolkits or useful examples to a website. Experiences from non-SDC staff, in particular country partners and other donors, should also be included. Sustaining new policy orientation also requires adequate support from headquarters, including training/learning events and technical assistance that would enable COOFs and divisions to translate the policy orientation into practice.

7.2.5 Practical Recommendation 3: More Effective Communication is Essential

SDC needs to give greater attention to who it is trying to convince, what it wants them to do and what it needs to provide in order to help them do so. The audience for policy guidance needs to be differentiated: whether it is internal to SDC or meant to be a 'publicity' tool. Much shorter official documents, better presentation and a greater focus on conclusions and concrete suggestions would be more useful. Major policy documents should be translated into local languages so that partners are aware of SDC's positions. New policy statements should be accompanied by a clear communication strategy, including pro-active dissemination and identification of the target audience. Repeating key messages, and reinforcing measures from senior management are needed for enhanced and sustained policy influence. SDC should also consider investing in seminars or training courses for staff on the key aspects of communications for policy change in a development context.

7.3 Recommendations to Further SDC's Human Rights and Rule of Law Policy Orientations

7.3.1 Strategic Consideration 1: Re-affirm SDC's Commitment to Human Rights

The Evaluation noted a lack of explicit senior-level support to prioritise human rights. Current practice, in particular the Strategy 2010 and associated SDC restructuring, is privileging 'governance' and has made human rights a sub-sector under the 'access to justice' theme. This is not consistent with human rights, democracy and the rule of law being one of the five top Swiss foreign policy objectives. Senior management should issue a short statement to re-affirm the importance of human rights for development. This should be complemented by the allocation of sufficient resources to make human rights better understood amongst SDC staff and more visible in programming. Staff recruitment and training need to take into account the ability to understand and respond to human rights considerations (for example, background in law, politics, international relations).

7.3.2 Strategic Consideration 2: Update SDC's Human Rights and Rule of Law Policies

International knowledge and policies have evolved since the guidance documents were produced. In particular, a number of agencies report that they are adopting a 'rights-based approach' to development, which goes beyond developing human rights projects and highlights the indivisibility and interdependence of all rights. An updated policy document needs to be produced, in line with current international best practice and drawing on SDC's own experiences. SDC will need to decide if it wishes to adopt a 'rights-based' approach. It should be explicit about the contribution to poverty reduction, and how SDC policy promotes the realisation of all rights. In addition, the Rule of Law Concept should be replaced by an up-to-date Access to Justice document, explicitly focusing on how support to the justice sector can contribute to the fight against poverty and respect for human rights. It should provide concrete advice on how poor and marginalised people can benefit from the rule of law, beyond legal assistance interventions. To produce both documents, SDC should draw on other donors' and its own experiences to provide concrete examples, and should involve COOFs in the process.

7.3.3 Strategic Consideration 3: Adopt Adequate Management Systems in Line with the 'Binding' Nature of the Human Rights Policy

Systems and procedures need to be adapted to make sure that SDC staff understand and implement the policy. In particular, senior management should clearly designate who is to be held to account for ensuring that policies, dialogue and programmes are in line with the human rights policy orientation. We recommend that a Working Group be established to review SDC's management systems to assess how human rights are taken into account at the levels of: (i) country assessment; (ii) policy dialogue; (iii) programming; and (iv) monitoring and evaluation. The group should consider how management systems need to be amended, possibly by adopting a sequenced approach, building on country pilots where human rights are already better integrated in programmes.

7.3.4 Practical Recommendation 1: Communicate Better and Develop a Consistent Understanding

There are a number of practical steps that SDC can take to ensure that its human rights policy, in particular, is better known and understood among its staff and partners. Both the Human Rights Guidelines and the Rule of Law Concept should immediately be put on the SDC website. It should also be made clear to COOFs that these are public documents and should be displayed along with other SDC documents, in particular in countries where human rights programming takes place. Senior management should issue a one-page statement on SDC's human rights policy, which all staff need to be made aware of. This short version should be translated so that it is accessible to local staff and local partners. The internet or intranet should be used to create 'living' documents.

7.3.5 Practical Recommendation 2: Provide More Support for Implementing the Policies

Training and learning events, practical tools, and networking are required to assist SDC staff to better understand and implement the human rights policy. Priorities established by the survey include providing opportunities for staff to learn from one another and holding practical workshops on integrating human rights in development. A global event of a similar nature to the May 2003 Capitalising Gender conference should be held within a year. The survey also identified a demand for practical tools to assist in implementation. Staff priorities include an up-dated list of indicators on governance and human rights for the MERV, and 'key questions' for assessing human rights and rule of law projects/programmes. Finally, in order to adopt a more 'mainstreamed' approach, SDC should develop practical sectoral tools on rights in connection with different specialised areas within SDC (for example, decentralisation, or land and rural development). A more mainstreamed approach could be supported by establishing a human rights network which would go beyond the Governance Network.

Annex 1

Approach Paper

Berne, May 15, 2003

Approach Paper

Independent Evaluation of SDC Guidelines 'Promoting Human Rights in Development Co-operation' and SDC Concept 'The Rule of Law. Its significance in Development Co-operation'

1. Why an evaluation an why now? Background and rationale

1.1 Background

Human rights, promotion of democracy and the rule of law have been clearly considered among the five top priorities set by the Federal Council in its Foreign Policy Report[49] issued in 1993. A similar concern was then reflected in the 'Report on North-South relations'[50] adopted at the same level in 1994. Based on that and keeping abreast of international trends set in particular by the UN Human Rights Conference, SDC, along with other Federal Administration Departments involved[51] has set up a working group with the aim to spell out the requirements of a practical implementation of those goals, in relation to developing and transition countries.

As a result the Guidelines «Promoting Human Rights in Development Co-operation» [52] were endorsed and issued by SDC in 1997. It is considered a binding document.

During the same period, governance was generally recognized as a key element of any development process. Due to a strong demand coming from the field, an orientation document «Rule of Law Concept: Significance in Development Co-operation»[53] was worked out and issued in 1998.

These two documents[54], although distinct from the point of view of their significance, have been broadly distributed within SDC divisions and units, at Headquarters as well as in Field Offices and Embassies, to Swiss NGOs active in the field of development co-operation, to international development agencies and local partners, Government and civil society as well, selectively to the Swiss public at large. They have been translated from German and French into English, Spanish, Italian and Russian. Altogether a total of 11'300 and 7'500 copies respectively have been printed.

They have helped SDC to join the mainstream along with other multi- and bilateral agencies.

The overarching goal of such policy documents is twofold:
i) Awareness of SDC staff and its partners for HR & RoL critical importance with respect to sustainable development is raised and nurtured,
ii) Integration of HR & RoL into programmes and policies is promoted and take roots.

49. Report of the Federal Council on Switzerland's Foreign Policy dated 29 November 1993.
50. Report of the Federal Council on North-South relations in the 90's dated 7 March 1994.
51. The working group comprised of representatives of Foreign Affairs Ministry' Pol.Dept II & IV, the State Secretariat for Economic Affairs ('seco'), the Federal Office of Justice.
52. Promoting Human Rights and Development Co-operation. Guidelines, SDC 1998.
53. The Rule of Law-concept: Significance in Development Co-operation, SDC 1998.
54. Hereafter under the abbreviation HR & RoL

Achievable objectives may be construed as follows:
i) SDC staff and its partners are sensitized to and understand the interdependency and mutual reinforcement between HR & RoL on the one hand, and social and economic development on the other hand;
ii) programmatic implications of HR & RoL are reflected in SDC and partners' joint strategies and put into practise in the implementation of their joint programme;
iii) policy discussions and dialogue held by SDC and its partners have drawn their inspiration from HR and RoL perspectives.

Five years later, very little information as to the use and impact of those two documents has been returned to SDC. No monitoring of the dissemination and influence has been carried out so far. Due to lack of collected data, no answer can be given to the following questions: To what extent those documents have been used by SDC while issuing country programmes, institutional strategies, while conducting policy dialogue and designing individual projects? To what extent have they induced changes of behaviour and practices within SDC staff and SDC partners?

Experiences made by other bilateral development agencies in the same domain point out to a similar difficulty. The degree of compliance to guidelines is rarely identified and related information as to their impact rarely compiled.

Such an observation could trigger a more general questioning: What actually makes a policy paper on those subjects acceptable, owned and used in an organisation? What makes its operational value highly rated ? What are the main factors that might further or hamper it? Those features have to be assessed throughout the process: from the conceptual brainstorming to the production itself, then to disseminating, marketing-lobbying, constant recalling of their importance – in particular when symptoms of 'policy fatigue' come up in an organization.

Last but not least, one should know more about changes induced by guidelines, their outcomes: what makes guidelines effective as an agent of change? What kind of contextual hindrances or incentives might exert an influence in that respect?

1.2 Why Now ?

HR & RoL are high on the SDC agenda and are even gaining in importance.

The aforementioned documents were issued in 1998. The time span allows for an assessment of their acceptance in the organisation and of the influence they exerted on programmes and activities. Echoes and feedback may be gathered, from readers and practitioners as well.

An initial request about the actual use and influence of the documents was submitted by SDC's Governance Division during the summer of 2002, to be handled as an independent evaluation. The request was then endorsed by SDC Top Management in February 2003.

In 2003 and 2004, the SDC 'Thematic and Technical Resources' Department is contemplating issuing of a large array of strategic papers, conceptual frameworks and guidelines. On the verge of issuing new policy documents and thematic concepts, SDC conventional way of addressing strategic and policy guidance might become either enriched or questioned.

Some signs of an in house 'fatigue' with respect to policy documents and instructions from above might be noticed at present and need to be sorted out and tackled without further delay.

2. Evaluation Objectives

The purpose of the evaluation is

1) to assess the influence exerted by the HR guidelines and RoL conceptual framework in terms of policy and programmatic guidance,
2) to identify ways of making those specific policy orientations more effective and more relevant.
3) to highlight key factors that might foster or hamper impact of policy guidance instruments.

The evaluation will:

- measure the outreach of those documents and compare the level of effort (from preparation, formulation to distribution and dissemination) with the outputs (product, readers, readers' interest, downstream use);

- gauge the concrete influence exerted by those documents on practical operations through changes in designing and planning of operations, negotiations, policy dialogue;

- assess their own quality, edge and sharpness, considered under the perspective of strategic guidance for an organisation that implements programmes and conducts policy dialogues - but without questioning its intellectual substance and statements as such;

- submit recommendations as to the most effective way of providing policy guidance.

The evaluation results will enable SDC
- to learn what the main conditions are that make a thematic policy document a driver of effective change, so that HR, RoL are practiced practical in development co-operation
- to learn how to better attain policy objectives in HR & RoL related matters while formulating, disseminating and applying guidelines and how to monitor it
- to decide about necessary modifications of the present Guidelines HR and the concept RoL with respect to their form and their use
- to draw more general lessons useful for the coming generation of thematic guidelines and for streamlining the whole process of policy guidance from formulation to dissemination

2.1 Key Questions

2.1.1 Relevance ('are we doing the right thing ?')

1. How were the documents received and appraised by the addressees? How useful and relevant were the documents deemed by policy makers, programme managers, executive officers, by SDC staff and by partners? What kind of comments, criticisms, suggestions have been raised by recipients? Any pattern linking comments to specific recipient groups?
2. What have been the main considerations behind positive assessments and more negative judgments? for instance with respect to their content, conceptual clarity,

formulation, sharpness, strategic guidance, appropriateness for dialogue, operational significance?
3. Are there any alternative ways to effectively provide thematic strategic guidance in those domains rather than through issuing documents, meant for the overall SDC portfolio, irrespective of any regional or cultural peculiarities?
4. Which are the key ingredients that could make thematic policy documents more attractive, inspiring, close to reality, talking to emotional intelligence and overcoming readers' fatigue?

2.1.2 Effectiveness

5. To what extent have the two documents concretely contributed to orientating development co-operation activities towards HR and RoL, improved awareness of SDC staff and partner organisations, and strengthened convergence of strategic orientations as well as operational decisions with regard to HR & RoL? In which situations and how?
6. To what extent have the two documents inspired and nurtured policy dialogue with partners (both governmental and civil society) and enhanced co-ordination with other Donors?
7. Have those documents triggered unforeseen or unexpected effects? Which ones? Are those effects converging, diverging or simply neutral?
8. To what extent may positive effects be attributed to other factors, for instance other SDC policy guidelines having consistent links with HR & RoL guidelines (e.g. on poverty reduction, conflict prevention, decentralisation, gender balance…)?
9. To what extent have SDC's profile and image been enhanced due to the quality of those documents?

2.1.3 Efficiency and Quality

10. Who have been the actual readers and what is the order of magnitude? What is the readers' profile (inside SDC: role and position; outside SDC, institution wise: Swiss Embassies, Swiss NGOs; other agencies, partner Government, civil society)?
11. Did they understand the objectives of such documents? How and when did they concretely use those documents?
12. Is the content of HR & RoL Guidelines still traceable in other SDC policies, in SDC present programmes, annual work plans, project' documents, statements made in international fora ? Which ones? Were proposed lines of action implemented?
13. To what extent has a dissemination and user friendly strategy been set out, along with a monitoring system or was it kept implicit? What should a strategy and a simple monitoring of strategy implementation look like?
14. What accompanying measures proved or could prove most appropriate for proper implementation of the guidelines: for instance through training, coaching, counselling, networking, lobbying, advocating; producing toolkits, instruments, case studies, collecting good practices; managing a web discussion platform, other ways and means?
15. Have any external factors that have enhanced or compounded the inherent quality of those two documents, from the consultative brainstorming and formulation to the layout and design?
16. What were the costs incurred to work out the two topics, formulate the document as well as to publish and distribute it (time expense and monetary expenditures)? May the value for money be deemed reasonably good?

2.2 Expected Results

2.2.1 At output level

- An evaluation report containing findings, conclusions and recommendations not exceeding 30 pages plus annexes and including an executive summary.
- An Agreement at Completion Point and management stand regarding key conclusions and recommendations
- Lessons drawn
- Dissemination of lessons learned

2.2.2 At outcome level

SDC Division Governance avails of a sound basis to reshape – if needed – those two documents or adopt a set of suitable accompanying measures

SDC Department Thematic and Technical Resources avails of a solid basis to review its processes, re-frame, improve, sharpen up / shape up future documents, to specify strategic thrusts for guidelines production and dissemination and to guide and monitor the process, to take suitable accompanying measures and improve the effectiveness.

SDC Top Management avails of a solid basis to decide about the most appropriate way to formulate policies, give them the proper format and secure an efficient dissemination and impact.

3. Partners

3.1 Core learning partnerships (CLP)

(= those who are directly concerned by evaluation's recommendations and lessons and who need to take action)

- SDC Thematic & Technical Resources Department: Division Governance: Jean-François Cuénod, Rahel Bösch
- SDC Thematic & Technical Resources Department: Division COPRET: Günther Baechler
- SDC Thematic & Technical Resources Department: Division SODEV: Barbara del Pozo
- SDC Thematic & Technical Resources Department: Knowledge Management Unit: Manuel Flury
- SDC Department Development Co-operation (South): Véronique Hulmann Marti
- SDC Department Humanitarian Aid: Willi Lenherr
- SDC Department Co-operation with Eastern Countries: Liselotte Staehelin
- SDC Department Multilateral Co-operation: Development Policy Division: Martin Faessler
- SDC Department Multilateral Co-operation: UNO Division: Barbara Ekwal
- Ministry of Foreign Affairs, Political Dept IV, Human Rights Division: Andrea Aeby

3.2 Broad learning partnership

(= others interested in the evaluation's lessons, e.g., others with similar programs or objectives)

- SDC Thematic & Technical Resources Department: Head: Dora Rapold
- Federal Ministry for Foreign Affairs, Political Department IV:
- SDC Department Multilateral Co-operation:

- SDC Department Humanitarian Aid:
- SDC Media and Communication Division: ….
- Swiss NGOs Coalition
- Specialized NGOs based in Geneva
- Amnesty International (Swiss Branch)
- Informal Working Group (DANIDA, Irish Aid , Netherlands, DFID, NORAD, CIDA)
- UN High Commission for Human Rights (UNHCHR)

3.3 Organisational set-up and respective roles

- The **Core Learning Partnership** (CLP) ensures that the consultants have access to all necessary information (documents, interviews). It comments on the evaluation design and the draft evaluation report (feedback to consultants about whether additional research needs to be done). During the Completion Point Workshop, it discusses the evaluation findings, conclusions and recommendations and negotiates and approves the Agreement at Completion Point and the Lessons Learned. It decides who should be targeted for dissemination.
- The **Broad Learning Partnership** may be interested in the evaluation results and will be targeted for dissemination.
- **Consultants** contracted by SDC E&C Division elaborate an evaluation working plan, carry out the evaluation, submit the draft report to the CLP, take on board comments as appropriate and finalize their evaluation report.
- Within SDC, a Management Response on the Agreement reached at Completion Point is provided by **department-level** management along with the **General Director** in a COSTRA meeting.
- A small **Steering Group**[55] to accompany the evaluation process, sort out practical problems and link with organisational units
- A small **Focus Group**, made of resource persons and other experts will comment on selected questions with respect to future alternatives and potential options.

4. Process

An evaluation, which will answer the aforementioned key questions, will be conducted by the consultants contracted by SDC.

The evaluators will submit a draft report to the CLP, note their comments and follow-up as appropriate. The Final Evaluation Report will consist of a DAC summary, an executive summary, a main report including findings, conclusions and recommendations, annexes and the Agreement at Completion Point and Lessons Learned drawn up by the CLP.

4.1 Methodology[56]

- Stock Taking of relevant documents and literature.
- Interview of 40 selected expert persons: policy writers, policy makers, programme officers.
- Electronic brief survey of recipients and readers.
- Selective Country studies (up to four),

55. made of, Jean-François Cuénod, Rahel Bösch and Benoit.Girardin
56. See Annex 1: a flow chart, 'How were Guidelines developed, used, impacting?'

- two country studies through field visit by the consultants in Rwanda and Bosnia-Herzegovina
- additional country studies in Pakistan and Peru based on field visits by local surveyors with distance backing
- Comparison with at least three other agencies selected among the working group of like minded agencies: SIDA, DFID, UNICEF, and with respect to Rule of Law: USAID.
- Exploratory focus groups: to brainstorm about frontiers and alternative ways and means.
- an Episode study will be carried out with the aim to highlight a successfully implemented policy change within SDC as a whole; an instance will be drawn from the Gender policy

The consultants will elaborate a detailed work plan that will include a timetable, allocation of responsibilities, justification of the evaluation methodology and a consolidation and refinement of the key questions.

A story telling initiative, triggered and organised by SDC will be dovetailed to the evaluation process, with the aim to formulate findings or lessons identified during the evaluation in the form of stories. The evaluator will interact with the British Company SparKnow.

5.2 Main steps-Schedule

Activities	Deadline
Preparatory work. Approach Paper drafted	Nov-Dec 2002
Terms of Reference ; Consultant pre selection ;	Jan 2003
Approach Paper discussed by CLP and made final	Feb 25, 2003
International Bidding. Tenders submission..	March 2003
International Bidding. Tenders rating and Final selection.	end March
Contracts signed, finalised Approach Paper posted on SDC Intraweb	May
Mid term meeting and decision with respect to additional field visits	Early May
Evaluation implementation: inception phase	May - June
Evaluation implementation: field visits	mid June –early July
Intermediate report based on literature, interviews and electronic survey	July 7
Focus Group Meeting in Geneva	July 8
Draft report issued by consultants	15 August
CLP meeting to discuss draft Evaluators' Report	16 Sept
Final Evaluators' report	22 Sept
Completion Point Workshop. CLP negotiates and approves Agreement at Completion Point and Lessons Learned, determines follow-up.	Mid October
Final Evaluation Report ready for publication	End October
Dissemination completed, report posted on Internet	November 2003

SDC Senior Management Standpoint	December 2003

5.3 Consultant selection and time-effort

Who

Main Consultant(s): Overseas Development Institute, London UK
Profile
Evaluation Methodology, Impact Monitoring,
Topical Knowledge: Human Rights and Rule of Law; in international development co-operation
Experience with Policy Documents; Dissemination and Use, as well as with Bilateral Development Co-operation Institutions and SDC[57]
Leadership and communication

Name	Present function	Role in the evaluation
Laure-Hélène PIRON	Research Fellow ODI	Team Leader
Julius COURT	Research Officer ODI	Research Officer
John YOUNG	RAPID programme manager	Research Fellow
Simon MAXWELL	Director ODI	Internal Peer Reviewer
Local subcontractors		Local surveyors

Local Surveyors (subcontracted):
Methodological skills in surveys and interviews
Exposure to Policy Documents dissemination and use
Names: to be identified during the inception phase and contracted after mid-term review

Focus Group: Erika Schläppi; Robert Archer, Eric Sottas, John Young, plus 2 additional persons still to be identified will be part of the Focus Group.

Duration/Time effort:

A total of 60 person days, supplemented by around 4X8 working days for local surveyors.

SDC
Evaluation and Controlling Division
Author: Benoit Girardin assisted by Wilfrid Kuster

57. In case the selected consultant is not acquainted with SDC approaches, instruments and set-up, an amount equivalent to 2 working days, will be topped up to arrange for the subcontracting of a resource person acquainted with SDC.

Annex 2

People Interviewed

List of people interviewed

1. SDC Headquarters, Berne

Adrian Schlaepfer, Head, Southern Bilateral Aid
Annick Tonti, Head, Middle East and Northern Africa Division
Benoit Girardin, Deputy, Controlling and Evaluation Division
Dora Rapold, Head, Thematic Resources Department
François Binder, Head, East Africa Division
Jean-François Cuénod, Head, Governance Division
Jean-Marc Clavel, Asia I Division
Jean-Maurice Deleze, Head, West Africa Division
Konrad Specker, Head, NGO Division
Liselotte Staehelin, CIS Division
Marie-Noelle Bossel, Training Unit
Maya Tissafi, Governance Division
Olivier Burki, Governance Division
Patrick Etienne, Stability Pact, Eastern Europe Division
Peter Meier, Evaluation and Controlling, Southern Bilateral Aid
Peter Sulzer, Coordinator, Bolivia and Latin America Division
Rachel Bösch, Governance Division
Véronique Hulmann Marti, Asia I Division

2. Other Swiss Government Departments

Thomas Greminger, Political Affairs Division IV, Federal Department of Foreign Affairs, Berne (former head of Working Group)
Andrea Aeby, Political Affairs Division IV, Federal Department of Foreign Affairs, Berne
Christoph Pappa, Advisor, Federal Department of Justice and Police, Berne
Elodie de Warlincourt, Development and Transition Division, Seco, Berne
Markus Boerlin, Crisis Unit, Federal Department of Foreign Affairs, Berne
Ridha Fraoua, Legislation Division, Federal Department of Justice and Police, Berne
Jean-Daniel Vigny, Minister, Federal Department of Foreign Affairs, Swiss Representation to the United Nations, Geneva

3. Swiss NGOs

Robert Archer, Executive Director, International Council on Human Rights Policy
Robert Trocme, Director, Université d'été des Droits de l'Homme
Deborah Long, Association pour la Prévention de la Torture
Monique Prinsedis Director, Ecole Instrument de la Paix
Eric Sottas, Director, Organisation Mondiale contre la Torture
Antonia Potter, Centre for Humanitarian Dialogue

4. SDC Gender Network Workshop, Fribourg

Almira Drino, Coof Sarajevo
Barbara del Pozo, HQ, Social Development Division
Caren Levy, DPU London
Carol Russel, Sparknow London
Cesarina del Carmen Quintana Gracia, Coof Lima

Charlotte Sever, Bridge
Chrystel, Ferret, HQ Governance Division
Humaira, Daniel SDC-IC Peshawar, Project
Elisabeth von Capeller, HQ, Conflict Prevention Division
Hans Peter Reiser, Coof Dushanbe
Ines Islamshah, Coof Nairobi
Julian Walker, DPU London
Maya Tissafi, HQ Governance Division`
Nomfundo Mbuli, Coof Pretoria
Paul Corney, Sparknow london
R. V. Jaya Padma, SDC India, Project
Stephanie Coulton, Sparknow London
Susie Jolly, Bridge London
Susie Jolly, Bridge

5. Bosnia-Herzegovina

Aida Kajic, Finance Officer, SDC Sarajevo
Alan Holmes, Head of DFID Office, British Embassy Sarajevo
Alma Zukorlic, Assistant Program Officer in Governance, SDC Sarajevo
Amir Ibrovic, Country/Project Director of Internews (local NGO)
Amra Kazic, Deputy Federation Ombudsman/Head of Mostar Office
Avis Benes, Press Officer, OHR, Mostar
Charles Briefel, Deputy Director of Human Rights Department, OSCE
Christell Melly, Interco-operation (Swiss NGO), Responsible for Municipality Project
Damir Omerbegovic, Interco-operation (Swiss NGO), Responsible for Municipality Project
Dzemaludin Mutapcic, Assistant Minister, Federation Ministry of Justice
Fidelma Donlon, Deputy Head of the Criminal Institutions and Prosecutorial Reform Unit, OHR
Gabriella Fuchs, Delegate for BiH, Caritas Switzerland
Jayson Taylor, Deputy Head of Department (Acting Head), Reconstruction and Return Task Force, OHR
John-Erik Jensen, Programmes Office Support Coordinator, EUPM
Justin Davies, Chief Political Advisor, EUPM
Laure Anne Courdesse, JPO in the UN High Commissioner for Human Rights (Swiss Secondment)
Mima Dahic, Vive Zene, Tuzla NGO
Murray McCulloch, Head, EC Delegation in Mostar
Nermina Mesic, Information Officer for Free Media Help Line (FMHL)
Peter Arnhem, Head Delegate for BiH, Caritas Switzerland
Rafael Nagel, First Secretary, Swiss Embassy
Rene Edward Knupfer, Programme Officer, UNHCR (Swiss Secondment).
Rudolf Schoch, Deputy Head SDC BiH
Samir Sefo, Director, *Piramida* Humanitarian Organization
Slobadan Nagradic, Assistant Minister for Human Rights, State Ministry for Human Rights and Refugees
Tarik Jusic, Executive Director, Media Center
Zdravko Djuricic, Legal Advisor, Free Media Help Line (FMHL)

6. Pakistan

Ajmal Malik, SDC/CHIP Islamabad
Anees Jillani, SPARC Islamabad
Arshad Ali, SPARC Peshawar
Ayesha Khan, SDC Islamabad
Fauzia Yazdani, NORAD Islamabad
Kaneez Fatima, SDC Islamabad
Mannan Rana, UNICEF Islamabad
Ruidi Hager, Country Director, SDC Pakistan
Rukhsana Rasheed, CIDA Islamabad
Saadiya Hamdani, ILO Islamabad
Shuja ul Mulk, HRCP Islamabad
Zarak Saleem, SDC Peshawar

7. Peru

Anika Anchorena, Sida
Chantal Nicod, Assisting Resident Director, COSUDE
Francisco Soberón, Human Rights National Coordinating Committee Executive Secretary
Marfil Francke, Senior Program Officer, DFID
Pablo Rojas, Executive Director, Human Rights Commission
Richard Kohli, Acting Resident Director, COSUDE
Sofia Macher , Truth and Reconciliation Commission
Violeta Bermudez, Strategic Analysis and Planning Director, CIDA
William Lopez, Territorial and Promotion Office, National Director, Ombudsman Office

8. Rwanda

Berne
Erika Schläppi, consultant
Jean-François Cuénod, Governance Division (former Rwanda programme)
Yvan Pasteur, Rwanda and Great Lakes Desk

Kigali
Alfondis Kagaba, AJPRODHO
Benoît Joanette, consultant, formerly RCN
Claude Niwerkundo, National Human Rights Commission
Edmond Bayingana, Norwegian People's Aid
Florien Ukizemwabo, LIPRODHOR
Francesca Pavarini, European Commission
Gana Fofang, United Nations Development Programme
Hugo Jombwe, Avocats sans Frontières
Jean Jacques Nyirubutama, Central Public Investments and External Finance Bureau
Jean Paul Pinvidic, RCN
Jeroen de Lange, Netherlands Embassy
Joanna Athlin, Swedish Embassy/Sida
Klaas de Jonge and Jean Charles Paras, Penal Reform International
Libérata Uwimana, Supreme Court 6th Chamber gacaca jurisdictions
Mark Cumming, TROCAIRE
Mark James, Department for International Development
Michel Rwamirindi, SDC Programme Officer
Noël Twagiramungu, Ligue des Droits de la personne dans la région des Grands Lacs

Pierre Combernous, Swiss Ambassador to Nairobi
Rose Mukantabana, Haguruka
Ulrik Splid, Danish Centre for Human Rights
Verena Münzenmeier, SDC Resident Coordinator
Kibuye and Gitarama
Alice Uwimbabazi, Haguruka Gitarama
Dr Kitoko Mbuguje, Provincial Government, Health Region
Emglebert Habumuremyi, NPA
Haguruka Kibuye
Judith Cowley, Swiss Tropical Institute
Kibuye Public Prosecutor
King Ngoma, AJPRODHO

Geneva
Brigitte Kehrer (former Rwanda programme)

Telephone interview
Anton Stadler, UN Global Compact (former Rwanda programme)

9. Other donors

DFID meeting

Richard Dewdney, Africa Policy Division
Andy Norton, Acting Chief Social Development Adviser
Keith Mackiggan, Governance Adviser, Policy Division
Tamsyn Barton, Social Development Adviser, Policy Division
Dylan Winder, Central Research Team, Policy Division
Barbara Hendrie, Drivers of Change Team Leader, Policy Division
John Roberts, Economist, ODI seconded

Julius Court, ODI
Simon Maxwell, ODI
Laure-Hélène Piron, ODI
John Young, ODI

Geneva

Patrick van Weeralt**,** Human Rights Focal Point, UNDP
Thandika Mkandawire, Director, UNRISD

Telephone interviews

Dorothy Rozga, Senior Programme Officer, Programme Guidance and Quality Assurance Section, Division of Policy and Planning, NYHQ, UNICEF
Harold M. Motshwane, Program Manager, Rule of Law Unit, Democracy and Governance Team, USAID South Africa
Lisa Fredriksson, Programme Officer, Division for Democratic Governance, Department for Democracy and Social Development, Sida
Michael Miklaucic, Policy and Planning Bureau, USAID Washington, DC

10. Geneva Focus Group

Robert Archer, International Council on Human Rights Policy
Julius Court, ODI
Manuel Flury, SDC
Dharam Ghai, ILO
Benoit.Girardin, SDC (chair)
Laure-Hélène Piron, ODI
Eric Sottas, Organisation Mondiale Contre la Torture
John Young, ODI
Patrick van Weerelt, UNDP
Erika Schlaeppi, Consultant

Annex 3

Summary of Document Analysis

Summary of Document Analysis

This section summarises findings from a document review (of both country and policy documents) and from an internet search to identify the use of documents in official statements. The list of documents reviewed can be found at Annex 10. We attempted to review country documents from 1997, 1999 and 2002 for the most important countries in each of the SDC regions, in order to see whether we could identify an SDC-wide trend and to complement the case studies. Not all documents were available in English or for the relevant dates. Findings should therefore be considered only as indicative and to be complemented by interviews, the survey and the case studies.

1. Country Documents

Thirty country documents were reviewed including annual programmes, country programmes and mid-term strategies from Asia, Africa and Europe.[58] 25 of these were produced in or after 1998.

1.1 Background Analysis

Only one explicit reference was found to the Human Rights Guidelines[59] and none to the Rule of Law Concept. 20 of the documents made references to either rights or the rule of law within their background context/political analysis and the majority of the remainder mentioned issues related to the political system and culture (elections, constitutions, police, judiciary, press) and other areas of human rights concern, such as structural and social discrimination against specific groups (for example, India). The quality of the analysis varied, however, with many of the documents only providing brief narratives of political events. Some of the documents attached as an annex the MERV analysis, which contains specific human rights and rule of law criteria.[60] The Ukraine 2003 Annual Programme has a specific section on human rights violations but this also includes information that is not relevant, such as details of Ukraine's relationship with neighbouring states and donors, perhaps indicating a lack of understanding of what should be included under the human rights heading.

1.2 Programming

23 of the documents contained human rights projects and 19 rule of law projects. Some countries had human rights projects before 1998 (Palestinian Territories, India and Mozambique) and others only after 1998 (Tanzania, Mekong Region). However, it would be difficult to link these new projects to the guidance documents.

Only one country/region of the 13 reviewed, the Palestinian Territories, has adopted human rights as a transversal theme and around the time the policy was adopted (human rights was adopted as a transversal theme in the 1998 Annual Programme which was written in 1997). In comparison, gender appears as a transversal theme in 19 of the documents (10 of the 13 countries/regions), demonstrating greater success in the implementation of this policy. In

58. Regional documents included: Central Asia, Eastern Europe and the former Soviet Union, Mekong Region, South Asia, South-East Europe; and country documents included: India, Kosovo, Mozambique, the Palestinian Territories, the Russian Federation, Tanzania, Ukraine, Yugoslavia.
59. '…the North-South guidelines and programmes of SDC sector services (especially the guidelines on the promotion of human rights have provided valuable orientation to the SDC's activities in Gaza and the West Bank as well as in the region'. West Bank and Gaza, Annual Programme 1999.
60. This is the Swiss monitoring tool for development-related changes which is conducted annually, or more often when the political situation is difficult.

general, the COOFs appear to be slowly getting to grips with the implementation of transversal themes but there are also references to difficulties in mainstreaming themes (for example, decentralisation and democratisation in Tanzania[61]) and the transversal themes that are identified are often not apparent in the sector and project summaries.

Nevertheless, examples exist of programmes that are attempting to implement transversal themes that fall within the human rights and rule of law remit. These include good governance in the former Soviet Union and Eastern Europe[62] and Human and Institutional Development in Asia 1.[63] Also, some of the countries have relevant sectors (for example, civil society and the rule of law in Macedonia and Romania, equal access to services in Bulgaria, and social justice in Albania). There is some evidence that human rights is an implicit transversal theme, for example references to equal access in some of the health and education sectors in countries such as the Former Yugoslavia and Kosovo with an emphasis on equal opportunities for minorities, or on discrimination in some of the Asian countries. However, these do not seem to be applied consistently and most of the documents do not contain enough information to judge this with any certainty.

Whilst there has been some movement towards transversal themes that reflect human rights and rule of law concerns, it is unlikely that this can be connected to the guidance documents. One reason for this is that, in countries such as Palestinian Territories and India, these orientations pre-date the guidance documents. More importantly, although there is evidence of progression within these transversals over the years, they continue to omit the substantive points contained within the guidance documents. For instance, the principle of indivisibility is entirely absent from the documents reviewed. In fact, economic and social rights are explicitly mentioned only twice.[64] There is only one explicit reference to human rights as an objective of development.[65] None of the documents contain explicit references to human rights risk assessments[66] and only 9 of the documents refer to international human rights standards and conventions and 5 of these occurred in the Palestinian documents. 15 of the documents refer to dialogue on human rights and rule of law issues, although this obviously does not indicate that dialogue is not taking place in those countries that do not mention it.[67] One issue on which the documents were in line with the guidance documents is the emphasis on positive measures.

2. Policy documents

Similar results emerge from the review of policy documents. Of the 15 policy documents that were reviewed, 2 of which were non-SDC documents (seco and FDFA), 14 were completed after 1998 and could therefore have drawn on the human rights and rule of law guidance. Although there is a noticeable improvement in terms of clarity and presentation since the

61. Although D&D is a transversal theme, there is no reference to it in the sector summaries. Further, the emphasis is on the decentralisation aspect and the democratisation component consists of empowering local communities to express their needs. Although democratisation is a transversal in the 1997 AP, the first human rights-oriented project does not appear until 2000.
62. The Mid-term Strategy 2002-6 for Central Asia stresses that good governance is a condition for development and each sector has a sub-section on governance.
63. Asia 1 Division Annual Programme 2003 expresses a clear desire to adopt working practices that facilitate the incorporation of transversal issues. The HID team are to be the core actors for project controlling tools and cycles, and training is planned for all staff.
64. Palestine Annual Programme 2000 and Tajikistan Governance Strategy.
65. India Country Programme 1996-2003. Some documents do have achievement of human rights as a programme objective but not as a development objective.
66. Although 4 documents do contain references to ensuring that projects do not impact negatively on areas of human rights concern. For example, impact on social justice and minorities in Kosovo, on governance issues in Tajikistan, on vulnerable groups in Tanzania and a reference to HR scenario-planning in Mozambique.
67. The Mekong Region 2000 AP shows that the FDFA selected Vietnam as a focal country for HR dialogue.

earliest document that was reviewed,[68] there is very little explicit discussion of either human rights or the rule of law, and only 2 of the documents explicitly refer to the human rights and rule of law guidance.[69] Given that promoting human rights is one of the five main objectives of Swiss foreign policy, it is surprising that human rights is given such a low priority in the Strategy 2010 paper, issued in 2000, and that it is not at all prominent in the multilateral strategy paper.

It is only in the document of another department, seco's Development and Transition Strategy 2006, that human rights are considered as a transversal theme. SDC's various sector policies fail to make the necessary linkages with international human rights standards and do not explicitly refer to the ten strategic objectives of the Human Rights Guidelines. As with the country documents, it is difficult to conclude that the discussion of human rights and the rule of law that does exist in the documents can be linked to the guidance documents because of the omission of the substantive issues that are raised within the latter.

Whilst gender does appear as a transversal theme more frequently than human rights, and is generally given more priority, it is still not as prominent as could be expected, particularly given the information provided in interviews.

3. International Fora

A web-based search was conducted to determine how the guidance documents have been used in international fora. This included a general search using search engines (for example, google) and ones focused on relevant organisations.[70] These searches covered both general references to Swiss/SDC guidelines/guidance on human rights and specific references to the document titles. Only one reference was found.[71] It may be that, by comparison with other organisations, SDC does not quote its own policy documents as part of its international communication strategy, or that other SDC policy documents are more often quoted. The sole reference to the Human Rights guidance was in an important context, at one of the first events on human rights and development held in Oslo in 1998. At a time when international development organisations were just starting to take on board human rights, SDC already had a guidance document.

The methodology used might have missed out a number of actual references to the documents, for example in UN statements distributed at Commission on Human Rights meetings, but not on the web. In addition, we should look at the way the documents influenced the content of Swiss statements. The Swiss Permanent Mission to the UN in Geneva has used these documents as a reference tool while drafting official statements before the Human Rights Commission or during informal consultations on resolutions, as well as in interventions before the Commission's Working Group on the Right to Development.

68. Environment Policy, 1993.
69. Social Policy and Governance Strategy 2003-7.
70. These included the Swiss Mission to the UN in New York and Geneva, Swiss comments at the commission on Human Rights, World Bank, IMF and UNDP.
71. Statement by Mary Robinson, in *Human Development and Human Rights*. Report on the Oslo Symposium, 2-3 October 1998: 'development agencies from other countries, such as the Swiss Agency for Development and Co-operation, which adopted Guidelines on Promoting Human Rights in Development Co-operation…'.

Annex 4

Findings of Survey

Findings of Survey

1. Introduction

A quick and brief survey was carried out as part of the Evaluation. The objective was to get a quantitative view of the awareness of the two documents and of their impact, and to identify lessons for the future of SDC human rights policy, and the production of guidance documents more generally. This survey report provides descriptive statistics and a brief analysis of the findings.

2. Method and Responses

The questionnaire used consisted of 11 (largely multiple-choice) questions. We were well aware that these standard questions could not capture the full complexity of the issues involved. We therefore sought additional comments through open-ended questions.

The survey was sent out by SDC headquarters to ensure a better response rate. The responses have been treated in confidence and analysed by ODI.

The details of the response rates – overall and for the different groups – are shown in the table below. SDC response rate was predictably higher.

Type of Recipient	COOF	Embassy	NGO	Total
Sent	21	18	13	52
Received	16	4	3	23
Response Rate (%)	76	22	23	44

Care must be taken in drawing conclusions from the findings. There are not enough respondents to undertake any kind of rigorous analysis or to draw any firm conclusions. The findings must be assessed alongside the findings from the other methodological approaches.

In addition, there is one major source of bias within the sample. Although the questionnaire was sent generically to SDC COOFs, embassies or NGOs, it was suggested that it be completed by someone 'dealing with those issues', i.e. human rights and rule of law. Consequently, a majority of the respondents indicated that they do substantial work on governance issues. This does not reflect the overall picture in the Swiss development community.

3. Main Findings

3.1 Mainstreaming

To what extent have the following issues been mainstreamed in the development assistance work of your organisation?

How Mainstreamed?	Average *(1 = not at all; 7 = very much)*
Gender	4.57
Of which SDC	5.07
Human rights	3.70
Of which SDC	3.57

While gender was seen as having been mainstreamed to a slightly greater degree than human rights issues in all the organisations surveyed, the difference is much more marked when the figures for SDC only are assessed separately. This reflects the findings of our interviews that gender has been mainstreamed to a greater degree than human rights within SDC, and also implies that gender is more mainstreamed in SDC than in other organisations surveyed in Switzerland.

3.2 Human Rights

Seen/Read Document:

	Total		SDC	
	Yes	**No**	**Yes**	**No**
Have a copy of the human rights document	18	4	14	2
Have read human rights document	14	8	12	4

A significant proportion of those surveyed had seen and read the Human Rights Guidelines.

Views:

What was your view of the document Promoting Human Rights in Development Co-operation*?*

Issue	**Score *(1 = very poor; 7 = good)***
Readability/clarity to non-experts	5.80
Relevance of document to your work	4.33
Use in clarifying SDC policy	4.92
Use in providing strategic guidance	4.46
Use in providing practical or operational guidance	3.20

Readability and clarity for non-experts is relatively high, though this result has probably been affected by the fact that half the respondents work on governance issues. By contrast, the rating for use in providing practical or operational guidance is low. This is explained by one respondent as: 'I think that at the time it was produced the document was very useful for clarifying a number of concepts which were considered as 'trendy' but were unclear for many people working in the development sector. Today we need to have a more practical document based on the experiences made by SDC (and others) in this field during the past years.'

Use:

Have you used the document Promoting Human Rights in Development Co-operation *in your work?* (number of respondents who ticked – more than 1 was OK)

Used human rights	Yes	No	NA
Preparing a country strategy	3	4	3
Designing a human rights project	5	5	1
Designing other projects	4	7	1
Treating human rights as a transversal issue	8	4	1
Policy dialogue with government	6	3	3
Dissemination to partners:			
(a) local NGOs	3	7	1
(b) government officials	3	7	1
(c) local donor agencies	3	7	1
Monitoring or evaluating a programme or project	1	7	2

Commenting on the importance given to human rights in relationships with local partners, a respondent noted that: 'Human rights is mentioned only in the general agreement with the government, then forgotten about'.

Given the limited responses, the main conclusions might be drawn that: (i) the document was seldom communicated to partners and (ii) it has had limited impact. As one respondent put it: 'Not much impact, but helped to get a common understanding about the issue'. Another noted: 'For other purposes (Preparing Country strategy / Other projects / or Policy dialogue) the document is too general (the local context can not be taken into account in such a policy document)'.

Impact:

What impact did the document Promoting Human Rights in Development Co-operation *have on your work?* (number of respondents who ticked – more than 1 was OK)

Human rights impact	Ticks
I was already working on human rights issues before 1998	8
I became more aware of human rights as a result of reading the document	7
I started working on human rights as a result of reading the document	0
I started working on human rights for other reasons	5
The country context is/was not suitable to work on human rights	1
I find human rights issues not practical enough for country activities	1
I find that human rights is not a priority for my work	0

This table supports the views from other parts of the survey that the documents had little operational impact. They did not encourage those surveyed to start engaging in human rights activities, but they did raise awareness amongst some readers. Human rights engagement seems to be affected by broader contexts in the country or other individual reasons.

3.3 Rule of Law

Seen/Read:

	Total		SDC		
	Yes	No	Yes	No	Missing
Have a copy of rule of law document	9	13	9	7	
Read rule of law document	7	14	7	8	1

It is significant that, as compared with the Human Rights Guidelines, the Rule of Law Concept is less available, and has not been read to the same extent.

Views:

What was your view of the document Rule of Law Concept: Significance in Development Co-operation*?*

Issue	Score *(1 = very poor; 7 = good)*
Readability/clarity to non-experts	5.67
Relevance of document to your work	4.00
Use in clarifying SDC policy	4.83
Use in providing strategic guidance	4.33
Use in providing practical or operational guidance	3.33

As with the Human Rights Guidelines, while readability is higher (possibly because of the bias in the sample), the rating for use in providing practical guidance is low.

Use:

Have you used the document Rule of Law Concept: Significance in Development Co-operation *in your work?* (number of respondents who ticked – more than 1 was OK)

Used rule of law	Yes	No	NA
Preparing a country strategy	3		2
Designing a human rights project	3	2	1
Designing other projects	1	3	2
Treating human rights as a transversal issue	3	2	1
Policy dialogue with Government	3		3
Dissemination to partners*:*			
(a) local NGOs	2	3	1
(b) government officials	2	3	1
(c) local donor agencies	2	3	1
Monitoring or evaluating a programme or project		4	1

As with the human rights document, the main conclusions might be drawn that: (i) the document was seldom communicated to partners, and (ii) it has had limited operational impact.

4. Demand

Finally, the survey was used to identify what demand exists for assistance in the area of human rights, and lessons on how to develop and use guidance documents.

What kind of further assistance from SDC would help you integrate human rights in your work?

Issue	Score *(1 = not at all valuable; 7 = very valuable)*
Clarifying SDC policy on human rights and development	4.22
How to assess the human rights situation in a country	5.21
How to engage in political dialogue on human rights	5.11
Latest international approaches to human rights and development	5.06
Highlighting SDC experience of integrating human rights and development	5.75
Practical workshops on integrating human rights into aid programmes	5.26

While there was above-average demand for various kinds of support, the top two priorities were related to operational issues:
- highlighting SDC experience of integrating human rights and development; and
- practical Workshops on integrating human rights into aid programmes.

In addition, respondents provided examples of ongoing COOF activities:
- We organised a HR orientation for SDC staff/partners.
- We had a UNICEF expert give SDC staff/partners an orientation to rights-based programming.
- We are planning 2 workshops – basic and advanced training on rights-based approaches.

Some suggestions include:
- Key questions for assessing human rights and/or rule of law projects and programmes.
- An up-dated list of indicators on governance and human rights for the MERV exercise.
- Development of monitoring tools.
- An exchange on lessons learnt and practical experiences, and in particular on instruments/tools/recipes for monitoring and evaluating the impact of human rights projects and programmes.
- More work needs also to be done about the intercultural aspects of human rights since in this part of the world they are largely seen as a foreign Western concept and a perfect illustration of the double standard (i.e. donors are ready to support local human rights organisations financially, but are reluctant to apply political or economic pressure on (a government) to get human rights respected.

5. Lessons

A final open-ended question invited respondents to identify useful SDC policy guidance documents.

One respondent provided a clear summary of the general view: 'For the preparation of the country programme the Guiding Principles and the Strategy 2010, practically the PMET series and gender. The many other documents may be useful on specific occasions and help to keep track of SDC's institutional development, but generally are not 'Nachschlagewerke [reference texts].''

Another noted the widely held opinion that: 'I think in general there is a wealth of policy documents published by SDC and others (DAC, World Bank); what is most needed – at least from my point of view – are practical tools for planning, implementation, monitoring and evaluation especially in those fields which – like human rights or conflict resolutions – are fairly new and where SDC does not have experiences going very far back in time'.

The PMET (Project Cycle) documents were widely appreciated (by both SDC and an NGO). For practical tools and information to partners, the following were suggested as models:

- politique de promotion de l'égalité homes femmes (new Gender Policy);
- the new gender toolkit;
- guidelines for dealing with HIV/AIDS in bilateral co-operation;
- pauvreté bien-être (cahier d'information et de travail); and
- lignes directrices lutte contre la corruption.

Annex 5

Financial Information

Financial Information

SDC spending on human rights and the rule of law in the early 1990s was relatively small. Information from the 1994 Message to Parliament gives information for 1992 data with funding divided by sector allocation. Out of a total of CHF 456m., only 10.7m. was spent on social policy, administration and justice. This was the smallest sector allocation, representing 2.35% of the total. Human rights and rule of law activities can only be considered to have constituted part of this amount.[72]

The analysis below should be seen only as a rough indication of trends because of the problems of defining and coding human rights projects. Coded statistical information is only available from 1999 onwards. We decided to look at programmes with a strategic focus on good governance and empowerment. Within that, we have included projects with either human rights promotion or democratisation as primary fields of activity. This means that we are excluding activities within the strategic area of focus covering decentralisation, sectoral reforms, information, awareness-raising, training, research, or organisational development which are not described as relating to human rights promotion or democratisation. These activities may be related to human rights and the rule of law as defined in the SDC guidance documents but, without looking at the details of the project documents, it is not possible to assess whether this is the case. We are also not including projects which may have a sectoral strategic focus (for example, health, education) applying a human rights approach, as the information is not available.

Breakdown of Development Assistance (CHFm)

	1999	***2002***
Bilateral total	*861.5*	*925.8*
Strategic Focus = Good Governance or Empowerment	*29.2*	*58.1*
Strategic Focus = Good Governance	*23.8*	*49.9*
Activity (1) = Democratisation or Human Rights Promotion	*7.7*	*19.0*
Activity (1) = Human Rights Promotion Only	*2.9*	*11.3*
Activity (1) or (2) = Democratisation or Human Rights Promotion	*12.4*	*33.7*
Activity (1) or (2) = Human Rights Promotion Only	*5.6*	*19.5*

Human rights and rule of law activities seem to remain marginal in terms of overall SDC bilateral spending. In 1999, good governance and empowerment projects made up 3.4% of total bilateral aid. This had increased to 6.3% in 2002. In 1999, such projects with either democratisation or human rights promotion as their primary focus of activity constituted 0.9% of total bilateral aid, and this had increased to 2.1% in 2002. The figures for human rights promotion alone are 0.3% and 1.2% respectively. When activities with either democratisation or human rights promotion as their secondary focus are also included the figures increase to 1.4% of total bilateral aid in 1999 and 2.6% in 2002. The figures for human rights promotion alone also increase to 0.7% and 2.1%.

72. Information quoted in 1996 Rwanda evaluation: Joseph Voyame et al. (1996) La co-opération suisse au Rwanda. Berne: Federal Department of Foreign Affairs, p.34.

Nevertheless, we do notice an important increase. Projects designated as having either good governance or empowerment as their strategic focus almost doubled (an increase of 99%) from CHF 29.2m. in 1999 to 58.1m. in 2002. Whereas projects with either democracy or human rights as their primary activity more than doubled (an increase of nearly 150%), the number of projects which only had human rights promotion as their primary categorisation increased by 290%. Similar increases occur when activities with democratisation or human rights promotion as their secondary activity are also included. During the period under consideration, SDC overall spending only increased by 7.5%.

Annex 6

Summary of Case Study Countries

Summary of Case Study Countries

1. Bosnia-Herzegovina

1.1 Programme

Swiss assistance to Bosnia-Herzegovina (BiH) began with the provision of humanitarian aid during the 1992-5 war and continued with support to reconstruction (as the third largest bilateral donor in BiH). In 2000 the focus switched to the provision of longer-term development assistance. Governance is one of the operational domains in the evolving, more comprehensive, programme in BiH. By 2003, governance projects accounted for CHF 1.9m of SDC's total CHF 8.8m annual programme in BiH.

Current SDC strategy in BiH includes the rule of law as part of the governance arena. However, human rights are not explicitly mentioned as part of the programme, even though human rights issues are included in some of the governance projects. The main governance projects are the police and the municipal development programmes. SDC is currently planning to include, for the first time, a specific human rights component in the governance section of the country strategy plan.

As with the other country case studies, the BiH study found little direct impact of the guidance documents on partner awareness, policy dialogue and programming. As a result, the report focuses more on the lessons learned and on general ideas and suggestions.

1.2 Key findings

Awareness, use and views of the document. The documents were received and circulated by the SDC office in Sarajevo in 1998, but neither was explicitly used in their work or distributed to partners. The documents were stored in the library and neither the SDC Office nor the Swiss Embassy has them available for public awareness. Most of the current Swiss staff have seen the documents but most skimmed through them rather than read them in detail. The issues were thought to be already known. Most of the local SDC staff have not read the documents. No international or local partners have seen the documents.

Context and policy processes. BiH is a complex post-conflict country with many development challenges. In addition, there are many international organisations, donors and governments who play major but often overlapping roles. The international community, through the Office of the High Representative (OHR), continues to play a leading role in directing policy. The main question is how a small country such as Switzerland can affect policy in view of the presence of major donors (EU, USA).

Views of human rights issues in BiH. Human rights and the rule of law were widely recognised as crucial issues in BiH, but human rights are widely considered to be less important than the development of the economy, the resolution of political problems and the establishment of the rule of law. However, it was commented that members of the government and the general public tend to have a limited understanding of the nature and importance of human rights issues. In concrete project work, the feeling is that making human rights the bottom line criterion would make things very difficult.

Perceptions of Swiss assistance. The Swiss have a good reputation for their project work because of their rigour in programme development, promotion of ownership, professionalism, and investment of research time before launching projects, and because

they consult local authorities about ongoing and planned projects. The availability of the Swiss Quick Reaction Fund at OHR was deemed highly successful because of its flexibility. However, there is some confusion amongst local and international organisations as to the difference between and the roles of Swiss Disaster Relief, SDC and the Swiss Embassy. There also seems to be a need for more projects to be implemented by local partners, and for the Swiss to co-ordinate more closely with the other major donors and policy actors.

Gender issues. The SDC country strategy identified gender, together with youth, as the transversal themes. There is a specific gender adviser, gender guidelines have been widely distributed, and progress has been achieved. The perception of SDC staff was that it was no longer necessary to maintain gender as a transversal theme, but it will definitely remain as a working principle.

1.3 Lessons and Recommendations on Achieving Policy Impact

It was noticeable that policy documents are likely to have a greater impact within SDC where there are clear management decisions. Shorter documents, better presentation and a greater focus on conclusions and concrete suggestions would be more useful. A better communication approach is essential; many relevant local partners were simply not aware of the SDC policy documents.

In terms of broader lesson-learning regarding policy impact in BiH, we believe this can be enhanced through: (a) better identification of key players and processes and influencing policy discussion through continued secondments to the main agencies (OHR, OSCE); (b) finding leverage through flexible funding mechanisms either at the OHR or directly through SDC; (c) building coalitions with other partners (donors, NGOs and government agencies); (d) further supporting local NGOs that successfully affect policy.

2. Pakistan

2.1 Programme

SDC involvement in Pakistan began in 1966 with technical assistance and infrastructure-related projects. It became engaged in the human rights sector during the 1980s through its collaboration with the ILO and UNICEF. During the 1990s, the presence of a democratically elected government committed to human rights and a more active media and NGO community presented new opportunities to work on human rights. A framework paper for human rights in Pakistan was formulated in 1996 with the aim of improving exposure to and compliance with human rights requirements. Although reference is made to the new orientation in Swiss foreign policy and the North-South Guidelines[73], the development of this strategy was internal to SDC Pakistan (developed from a paper presented by SDC at a workshop organised by the Swiss NGO Programme Office in Lahore).

Political dialogue with Pakistan was initiated in 1997 by Political Division IV, but did not lead to a major shift in programming, as SDC had already identified human rights priorities. The main change was that prisons/penal reform were added to the pre-existing themes of: children's rights, women's rights and awareness-raising. A mandate for SDC to pursue human rights is reflected in the 1999-2005 Country Programme, in which human rights are both a sector and a transversal theme. Human rights criteria are compulsory throughout the

73. SDC (1994) *Lignes directrices Nord-Sud*. Rapport du Conseil fédéral sur les relations Nord-Sud de la Suisee dans les années 90.

project cycle for all projects,[74] and empowerment, decentralisation, participation and human and institutional development are essential components of the programme. Human rights and non-formal education became one of three priority sectors, along with awareness-raising, child labour, rights of disadvantaged women and children and penal reform. The non-formal education component focuses on support for non-formal education programmes for girls without access to public education. Specific projects include: HRMAEP, a three-year programme on human rights jointly sponsored with NORAD; a UNICEF Programme for Advocacy and Communication; Combating Abusive Child Labour; the Penal Reform Programme; and the Women's Law and Status Project. The increased emphasis on human rights is reflected in the increase in resources allocated to human rights projects from approximately CHF 150,000 in 1996 to CHF 3m. in 2003. However, this still represents less than 10% of the budget.[75]

A review of Pakistan's human rights sector in 2002 recommended an increased focus on the sustainability of projects, increased donor coordination, the reopening of dialogue, and an increase in linkages with governance-related initiatives.[76] Together with changes in the political and social context, this has led to a revision of the human rights strategy, which is currently under way.

2.2 Views on Human Rights Issues and Knowledge of the Guidelines

The Programme Officer on the Human Rights desk has acted as a human rights 'champion', playing a pivotal role in making human rights a priority and providing a focal point for human rights projects. She was the only person, of those interviewed, who had read the Human Rights Guidelines. Only one member of staff had also read the Rule of Law Concept paper. None of the partners remembered the documents and many had not seen them. SDC documents are not kept in any central location and there was no formal effort to disseminate the guidelines, although 50 copies were distributed among SDC partners and regional offices in 1998.

Several human rights sensitisation exercises have been conducted for SDC Pakistan staff and partners, including human rights orientation workshops in Islamabad and Peshawar in 2000, a training session on rights-based programming in 2001 and two sessions on rights-based approaches in July and September 2003. However, whilst commitment to human rights and the rule of law is evident, it is based on local learning and priorities influenced by the local context. Staff are aware that SDC is working to promote human rights but an understanding of them from an academic standpoint is not widespread, particularly amongst local staff.[77] There is therefore a need for increased sensitisation of SDC staff and partners, which would also provide a forum for dissemination and discussion on the guidelines.

2.3 Political Dialogue

The presence of a democratically elected government with commitment to human rights was also conducive to political dialogue and this was initiated by Political Division IV in 1997 with SDC asked to provide support. A high-level Swiss delegation visited Pakistan and four priority areas were identified: women, children, awareness-raising, and prisons/penal reform.

74. These criteria were strengthened after Pakistan carried out nuclear tests in 1999.
75. Spending also does not appear to be on track for the increase to 24% of the budget in 2005 detailed in the SDC paper on 'Mainstreaming Human Rights in SDC Country Programmes: Case Study Pakistan' (p.4), presented at the Stockholm Conference in October 2000.
76. The review did not refer to either the Human Rights Guidelines or the Rule of Law Concept.
77. The facilitator at the orientation workshop in 2000 observed hostility towards human rights among the personnel of SDC's partners.

SDC had already been working on the first three themes. A Pakistani delegation, including NGO representatives, made a reciprocal visit to Switzerland in April 1998.

Political Division IV suspended dialogue in 1998, primarily as a result of the Swiss Government's decision by the Swiss Government to focus exclusively on China; the unstable political situation following the nuclear tests in 1998 was also a contributory factor. SDC was not consulted and felt unable to withdraw from the commitments it had made to penal reform without adversely affecting its credibility in Pakistan. It therefore continued its human rights programme, albeit with a reduced budget.

3. Peru

In general, SDC Peru staff welcomed both guidance documents and have used them when drafting conceptual and programme documents. Some commented, however, that they had found other more practical guidelines, such as those on planning, monitoring and external evaluation, to be of more direct use to their work. There was also a feeling that the guidance documents should not be thought of as being directly relevant to partners and other agencies. There had not therefore been a deliberate dissemination strategy.

Few direct references were found in the documentation. Human rights have not been adopted as a transversal theme and there is no explicit human rights assessment in the project cycle.[78] However, there have been important developments within the Peru programme since 1997, many of which are in line with the guidance documents, particularly on the rule of law.

The first programmatic shift occurred during 1998. Prior to 1997 there had been no human rights or rule of law projects in SDC's Peru portfolio. In contrast, during the 1999-2002 period the following projects were undertaken:

- Support for the Ad Hoc Commission at the Ombudsman's Office that recommended pardon for more than 500 innocent people (1997-9);
- Citizens Rights Protection Itinerant Teams, Phase I: Ombudsman's Office (1998-2001);
- Access to Justice in Ayacucho's rural areas: Assessment COMISDEH (1998);
- Organisational Development Workshops for CNDDHH local committees (2000);
- Support for Transparency, a civil society organisation promoting free and fair elections (2000);
- Support for the Andean Commission of Jurists to develop tools and training to help the Ombudsman's Office in its work on due process (2000-1);
- Support for the Electoral Processes National Office ONPE (2001).

However, whilst the new direction in SDC policy, including the issuance of the two guidance documents, may have had some influence on the Peru programme, there is more evidence to suggest that the main impetus came from the changes in the Peruvian domestic context and the response of the SDC Peru team to this.

Another discernible shift occurred with the introduction of good governance as one of three transversal themes (equating to 20% of the budget) in the Peru Country Programme 2002-7. Whilst this conceptualisation does contain elements of human rights concerns, more emphasis is given to the rule of law and decentralisation.[79] The introduction of good

78. Although the consultant did feel that it is implicit in the project cycle because of the solid human rights principles held by SDC staff.
79. The 2002-7 Country Programme defines good governance as follows: 'Functional relations between the state, civil society and the private sector are basic requirement for good governance. The selection of counterparts and the roles

governance, and the way it is defined, are a result of the process that led to the adoption in 2002 of regional guidelines on SDC's contribution to governance by the Latin America Division. Here, also, more weight is given to rule of law concerns.[80]
SDC Peru's conceptualisation of good governance is further elaborated in its recent guidelines (April 2003), which include explicit references to the use of the two guidance documents in devising its strategy. This sets out decentralisation (empowerment of local communities and democratisation of government) and the rule of law (equal treatment for marginalised people, access to independent justice and respect for human rights) as the topics the programme will focus on. Projects planned for 2002-7 within the area of governance include:

- Citizens Rights Protection Itinerant Teams – Phase II – Ombudsman's Office (2002-5); and
- Support for Decentralisation. Phase I (2002-4).

SDC Peru has no plans to work systematically with human rights organisations, and the Ombudsman's Office project is the only human rights project in the current programme. Human rights are seen as less of a priority since the election of a new democratic government. Whilst the human rights specialists are of the opinion that it would be beneficial for SDC Peru staff to build up their expertise and tools to monitor and evaluate their human rights work – a view which is not shared by SDC staff themselves – the lack of continuing human rights projects means that this is unlikely to occur.

4. Rwanda

4.1 Background

Swiss assistance to Rwanda started in 1963, a year after independence. From 1966 to 1994, Rwanda was a priority partner country and Switzerland was one of the largest donors. Assistance was mostly in the areas of rural development and forestry, with half of the funds going to the remote and under-developed prefecture of Kibuye. As the political situation became more repressive in 1990, the Swiss response included a mix of human rights projects (media, human rights NGOs, legal aid) and political dialogue. Total Swiss aid to Rwanda for the period 1963-93 is estimated at CHF 292.1m., with CHF 0.5m. for the press, legal aid and human rights NGOs.[81]

Swiss assistance was suspended in April 1994 in the wake of the genocide, and Switzerland commissioned the first overall bilateral evaluation of pre-genocide aid to Rwanda.[82] The evaluation noted that Swiss aid had been appreciated, but that SDC had undertaken very little political analysis until 1990 and that the programme paid little attention to 'political mentalities' and to the destabilising problem of the refugees. Nor had it focused on structural reforms. Switzerland, like other donors, could have done more to support the fragile democratisation process. It should have recalled the presidential adviser it had been funding

assigned to different actors in development projects take the above into account. Furthermore, decentralization and the possible strengthening of local actors should appear as crosscutting issues in the activities of SDC' (p.23).

80. Good governance is seen as being measured by four principles. The rule of law and human rights principle is described as follows: 'good governance requires juridical stability and egalitarianism before the law. Laws and rules should be defined and modified as a result of a transparent process. Additionally, laws and rules should be applied to all citizens with the same criteria'. The other three principles are transparency and broad access to public information, accountability and the rational use of economic resources.
81. Guichaoua, André (ed.) (1995) *Les crises politiques au Burundi et au Rwanda (1993-1994)*. Karthala: Université de Lille 1.
82. Voyame, Joseph, Richard Friedli, Jean-Pierr Gern, and Anton Keller (1996) *La Coopération suisse au Rwanda* Berne: Federal Department of Foreign Affairs.

since 1984 and who stayed in post until 1993, giving the appearance of Swiss support to the regime.

Following the genocide and the end of the civil war, Swiss assistance was mostly humanitarian, and development co-operation began only progressively. It included a media project, rule of law and justice activities, support for UN activities (including human rights observers, MINUAR and the International Criminal Tribunal for Rwanda) and humanitarian assistance to prisons through the ICRC. This was later complemented by a re-engagement in Kibuye province, support for civil society and involvement in health activities.

The political analysis of the Swiss government was fully cognisant of the human rights issues, including concerns about the large proportion of people detained in prison on genocide charges, as well as the political restrictions. Interventions in the first Special Programme (1998-2000) responded to these priorities with 'positive measures', including capacity building for fragile human rights NGOs and support for international NGOs providing assistance to the justice sector. Funding for justice and human rights was also channelled through a UNDP Trust Fund. Projects were co-funded with other donors. Some activities have been extremely well-timed and forward-looking, such as early support for *gacaca*, the innovative transitional justice mechanism inspired by traditional practices to deal with the backlog of genocide crimes. However, full development partnership was not re-established, and concerns about military intervention in the Democratic Republic of the Congo led to the cancellation of budgetary support for the health sector which was transformed into health sector projects in December 1998.

4.2 Current programme

Following an evaluation in 2000, Switzerland still found it difficult to decide whether or not to re-establish Rwanda's priority status. Staff on the ground argued for it, given the government's commitment to poverty reduction and the needs of the population, whilst senior staff at SDC and in Political Division IV had more reservations. The Federal Council was obliged to intervene and reached a compromise decision in September 2001, based on a proposition by the FDFA: to introduce a second Special Programme. The delayed decision affected programming on the ground, and some projects failed to receive the expected funding. The small size of the programme (CHF 5m. per year, with CHF 2.5m. for justice and human rights) makes Switzerland a small and not very visible donor. It is, however, respected for its professionalism.

The 2002-4 Special Programme continues to prioritise human rights and rule of law activities, with a mix of support for government initiatives (the National Human Rights Commission and the National Unity and Reconciliation Commission), NGOs, and research at the University of Butare. Support for the 6th Chamber of the Supreme Court which co-ordinates *gacaca* is co-funded with Austria and the Netherlands, and makes Switzerland somewhat more visible in the donor community as it attends co-ordination meetings. Most activities, however, are concentrated in Kibuye, which limits the national impact of SDC resources. Projects have a strong poverty focus, and prioritise, in particular, assistance to women and young people. Consideration could be given to adopting a 'chain-linked' approach, which would facilitate collaboration between NGOs and government institutions in Kibuye and could serve as a national model for justice sector reform. It may also be important to continue to support human rights NGOs at the national level.

Like a few other donors in Rwanda, Switzerland is using a Memorandum of Understanding as a political dialogue tool to clarify mutual expectations. It will be monitored by both governments, and the assessment should feed into the next programming cycle. Dialogue with the government is conducted by the Nairobi-based Ambassador, and the Director of

SDC has also visited Rwanda. SDC is also gathering independent information, for instance by funding Penal Reform International in Kibuye to monitor progress with *gacaca,* and joining other donors as part of the monitoring of the elections. Conflict and Peace Impact Assessments have been developed for the most important programmes, and include human rights indicators. Internal political monitoring is conducted through the frequent use of MERV. This monitoring constitutes an added burden for the head of the COOF, who is also responsible for overseeing project administration, and donor co-ordination and for activities in Burundi. A need has been identified for an additional Swiss staff member in Rwanda; someone has finally been appointed and will take up post in 2004.

4.3 Impact of the documents

Current and past heads of the country office had seen the documents. One in particular, new to SDC, had made considerable use of them to formulate human rights and justice programmes. A recently appointed local human rights project officer had received a copy of the Human Rights Guidelines as part of his induction.

However, no government official or donor had seen the documents. This may be because those interviewed were not in post in 1998. What seems more likely is that no proactive dissemination of the documents was undertaken. This is understandable, given the fact that the political and human rights situation has remained generally tense. Only one local NGO (a youth rights organisation) had a copy of the Human Rights Guidelines, which it held in its library in Kibuye. The company implementing the decentralisation project in Kibuye had received copies of the documents (possibly in the context of the evaluation), but felt it might be better not to display them alongside other SDC publications. The Guidelines were not visible at the COOF.

In terms of what the Human Rights Guidelines recommend, it can be concluded that Swiss assistance has been consistent with them. There has been a mix of support for both government and civil society organisations. There is an on-going political dialogue and close human rights and political monitoring, combined with 'positive' measures to build up local capacity. Rwanda remains a country where SDC is learning to adjust its human rights policy, and there is a great deal of senior-level interest, from within SDC, the Nairobi Embassy and Political Division IV. It is through this senior-level engagement, and responsive programming which prioritises human rights and justice (including technical assistance provided by the Governance Division) that SDC's orientation is being put into practice.

Annex 7

Summary of Focus Group Discussions

Summary of Focus Group Discussions

1. The Impact of Policy Documents on Practice
An Informal Workshop at DFID, London, 20 June 2003

1.1 Introduction

Donor agencies produce a variety of policy guidance documents ranging from concept notes to ministerial speeches to official policy papers. But what role do they actually play in influencing practice? On 20 June, 2003, the Overseas Development Institute (ODI) facilitated a small, informal, brainstorming workshop to discuss the impact of DFID policy documents and processes on agency practice, with seven DFID staff from a range of different divisions attending.

The ***objectives and outputs*** were to: (i) discuss DFID experience of how different policy documents affected agency practice; (ii) inform the evaluation of the impact of the SDC human rights and rule of law guidance documents; and (iii) discuss how these relate to the results of the ODI RAPID programme.

1.2 Approach

A participatory pair-wise ranking approach was used to identify and rank the relative importance of factors influencing the success of 8 policy processes in DFID and the role policy documents played in them. The processes and documents included the 1997 and 2000 White Papers, the Human Rights and other Target Strategy Papers, Justice and Poverty Reduction, Making Connections: Infrastructure for Poverty Reduction and the Sustainable Livelihoods and PRSP approaches. A wide range of factors were identified which influenced the success of these processes in changing behaviour within DFID. The importance of each varies, but the most important were:

- the existence of political will, political direction or champions at senior level;
- the international policy environment;
- the degree of innovation, strategic vision or intellectual contribution; and
- the degree of follow-through into mainstreaming.

The nature of the key documents mattered, but to a lesser degree.

The participatory approach generated substantial enthusiasm, though there were few surprises in the initial results. Participants suggested that more detailed case studies might unlock more useful information.

1.3 Conclusions

Clearly what matter in DFID are agendas and processes rather than documents, though documents can be a key tool to conceptualise an agenda, especially in a decentralised organisation. Understanding and influencing policy processes are important for DFID. Staff receive little formal guidance or training in understanding and influencing policy processes, and having the skills and tools to contribute to them would be useful

2. The Impact of SDC Policy Documents
Focus Group on Strategic Guidance, Geneva, 8 July 2003

2.1 Introduction

A focus group was organised in Geneva on 8 July 2003 with the objectives to:
- comment on the preliminary results of the evaluation – after a presentation of its preliminary findings; and
- provide comments and considerations as to the most appropriate way to shape policy guidance instruments for an institution like SDC – after a presentation of the findings from the DFID workshop and the RAPID programme.

2.2 Lessons on how to promote human rights policy within SDC

- It should be reaffirmed that human rights are a particularly important theme in Switzerland –one of five foreign policy objectives. Civil society is very aware of human rights issues.
- More practical help should be provided to field/country staff on how to operationalise human rights policy.
- The use of practical cases is 'crucial' (especially if from SDC experience).
- Simple methodologies should be provided – indicating how field staff could do things differently.
- These should not be too much attention to developing high-level documents.
- Simple positions should be worked out and all staff should recite the simple SDC human rights policy messages – even if they do not fully understand the issues. Complexity makes human rights issues disempowering.
- Less emphasis should be placed on polemic and preaching – staff dislike missionary zeal.
- There is a need to listen and provide training.
- Peer networks and communities of practice should be developed to share practical ideas and solutions to problems.
- Both policy-makers and practitioners should be engaged.
- The different needs of different policy-makers should be understood.
- Political analysis could be made part of project monitoring.
- There is a need for different kinds of documents for different stakeholders.
- The focus should be on learning up and out, rather than communicating down.

2.3 Lessons on policy processes and general policy guidance

- There is a need to be clear about what you want to get from 'policy' documents. Different people described different functions for them:
  - to communicate about an issue within the organisation;
  - to 'open the door' for work on these issues;
  - to establish a 'policy';
  - to provide practical guidance for programmes;
  - to bring different programmes/departments together.
- More effort could be made to assess the level of demand and contestation as part of the process of developing and promoting policy positions.
- There are many policy-makers at many different levels in SDC, each needing different things. There is a need to know what they need.
- Policy and change processes are usually driven by individuals or interest groups within an organisation rather than by the organisation or the issue itself.

- Having a policy impact often depends on having people and funds pushing a policy position.
- Different parts of the organisation interpret documents to suit themselves.
- External agendas often initiate and influence policy processes; for example, the Rwandan genocide provided political incentive for a human rights policy; Swiss political systems (all policies can be subject to a referendum, and need to ensure consistent application in a decentralised environment) contribute to the formal and descriptive nature of many policy processes in Switzerland.
- Whatever their purpose, policy documents need to be easily available to the people they are aimed at.
- SDC is a small donor and therefore not only needs to focus on certain countries and issues, but also to be strategic and to focus on particular policy processes where there are 'windows' of opportunity.
- There is a need for a clear communication strategy for policy documents/processes. It is not enough just to produce and distribute the documents.
- Policy documents that are intended to change behaviour must be promoted (the carrot) and enforced (the stick). The practical implications of specific policies (for example, budgetary changes) should be explicitly described.
- Many high-level policy documents are both too specific to be of much practical use centrally in discussions with other donors and too vague to be of much use in the field.
- There is huge irritation at policy documents which are often seen as polemic and preaching and do not provide much practical guidance for practitioners.
- There is a need to build capacity if SDC wants things to change at country level.

2.4 New policy processes and knowledge management

- Working Groups should liaise with other OECD/DAC donors (and the public?).
- Working Groups should liaise with COOF staff.
- Working Groups should seek to build on existing practice, which demonstrates SDC's attention to the issue.
- The emphasis should be on clarifying the issues and seeking contributions from other stakeholders rather than producing a final policy document.
- SDC should produce 'living documents' with regular reviews by all stakeholders to make sure they remain useful.
- There is a need to be strategic (i.e., looking at the issues in a structured and organised way) *and* opportunistic (i.e., seizing opportunities to develop and promote the policy as they arise). SDC is good at being strategic and co-ordinated, but less good at being opportunistic and flexible.
- There should be an explicit communication strategy from the outset, identifying the specific information needs of specific stakeholders.
- The process should not be driven entirely by SDC experience and staff. There is also a need to learn horizontally at all levels.

Annex 8

Gender Episode Study: Summary of Findings

Gender Episode Study: Summary of Findings

1. Introduction

Gender has appeared, from documents, interviews and our brief survey, to be the main transversal issue within SDC. Many country offices have a gender focal point. Gender is often mainstreamed into country programmes and there are many specific gender projects. We estimate that gender perspectives were included in projects representing 24% of SDC total spending in 2002.

As part of the lesson-learning aspect of the evaluation, we undertook an 'episode study' on how gender has come to be mainstreamed within SDC. An episode study analyses what has contributed to the evolution of a notable policy change. The aims of the gender episode study were to:

- understand why gender has been mainstreamed within SDC; and
- discover whether there are any lessons for how policy papers in general – and the human rights and rule of law documents in particular – can have greater impact.

2. Methodology

The findings from the episode study were drawn from:

- *Interviews in Switzerland*. As part of our semi-structured interviews, we asked about the success of SDC's gender policy, and the difference from human rights.
- *Document review*. This included a comparison between the extents to which SDC human rights and gender issues were included and mainstreamed in country and policy documents.
- *Survey*. One of the questions sought ratings on the extent to which gender (and human rights) have been mainstreamed within the organisation.

In addition, Julius Court participated in the SDC 'Gender Capitalisation' workshop in Fribourg in June 2003, and held informal and informal gender-specific interviews.

3. Explanation: Why have gender issues emerged as being so prominent?

There are a number of important reasons, over a long period of time, to explain why gender has emerged as such an important policy issue within SDC. We cluster our insights to this question based on the framework for analysis developed by the ODI RAPID programme. Some of the key issues are outlined below:

(i) External Influences: It was clear that the international women's movement raised the importance of women's issues generally and that this spilled over into the development arena. The World Conference on Women in Beijing in 1995 gave substantial political force to gender issues in development.

(ii) Domestic and organisational context: (a) Gender mainstreaming within SDC needs to be seen in the context of broader moves towards gender equality within Swiss society and government. It is noticeable, however, that SDC appears more advanced in this respect than other Federal agencies. (b) Gender has been on the SDC agenda for longer than many other policy issues. Our analysis points to the importance of a policy champion in the late 1980s. Gender in development certainly gained synergy with efforts to promote equal opportunity for women within SDC (for example, the gender adviser reports direct to the director). (c) The shift from policy to practice within SDC is partly explained by its

organisational character, in particular the relative independence of COOFs to experiment and pilot new approaches. This was supported by the establishment of a gender unit and by the strong political impetus for gender issues from the SDC Director. There remain, however, different degrees of implementation on the ground.

(iii) Evidence: It is noticeable that the mainstreaming of gender within SDC has been supported by extensive evidence about the importance of the issue. It is seen as so convincing that 'you cannot argue with gender'. Equally important, however, SDC has provided operational toolkits and practical support on gender issues which is based on evidence derived from its own practice.

(iv) Links: The importance of the informal network on gender cannot be overemphasised in terms of sharing ideas. As one person put it: 'There is a natural network and lobby on gender'. This has been reinforced by formal networks within SDC and between SDC and other government agencies.

4. Main Lessons

There are a number of reasons why gender may differ from other policy issues more generally and from human rights in particular. Nevertheless, we list below the issues that the gender study highlights, along with their implications for efforts to promote policy guidance (particularly regarding human rights) which SDC provides in the future.

(a) This study demonstrates that political support matters. There are good reasons (i.e., the prominence of human rights in Swiss foreign policy) why SDC senior management should promote human rights issues more strongly.

(b) The gender case emphasises the impact of the synergy with broader Swiss societal and governmental trends. There is also scope for SDC to generate synergies with groups in government (Departments of Foreign Affairs and Justice and Police) and civil society in Switzerland.

(c) The nature of the evidence was one of the key factors in bringing about gender policy change. For example, the new (2003) gender policy is short and clear. There is need for a much clearer presentation of the evidence about the importance and the added value of a human rights approach (as well as other future SDC policies).

(d) The operational toolkit for gender is very impressive – in terms of comprehensiveness and operational usefulness. There is a need for investment in practical documents that demonstrate how to operationalise a human rights approach (or any other policy). This could cover, for example, how rights issues might affect the selection of partners, or highlight specific examples of how a rights approach has been used in each of the other main sectors of SDC work. The gender Cutting Edge packs contained a fact sheet for key sectors.

(e) It would be enormously beneficial to hold a 'Capitalisation of Human Rights' workshop similar to the gender one. Practical examples and lessons from within SDC seem to be the most effective way knowledge is shared and practice changed within the organisation.

(f) Further reinforcing human rights backstopping would do more to help COOFs, driven by local demand, to promote human rights issues on the ground. It is best to work first with those who are interested in the issues so as to demonstrate the benefits, rather than attempting to persuade all staff at once of the value of the new approach.

(g) Mainstreaming a policy via the planning, monitoring and evaluation cycle involves an extremely complicated agenda. There was a highly relevant discussion of such issues at the gender workshop, but SDC is probably not yet ready to engage this set of issues with regard to human rights or the rule of law.

(h) The gender study also highlighted the methodological challenges of monitoring changes, and this is equally the case with human rights. There is an important discussion on these issues in the gender arena, as well as the human rights arena more generally, that human rights staff should follow/support.

Annex 9

Donor Experiences

Donor Experiences

This annex reviews the experiences of three donors that have adopted 'rights-based approaches', as well as DFID and USAID policy guidance in the area of the rule of law.

1. Swedish International Development Agency (Sida)

1.1 Policy

Since 1997, the promotion of human rights has been one of the main objectives of Swedish foreign policy and Sweden has explicitly adopted a rights-based approach to its development co-operation.[83] This approach is premised on the belief that development is a question of achieving human rights[84] and reflected in the fact that the international human rights conventions provide the guidelines for both Sweden's development assistance and its political dialogue.

The first government communication on democracy and human rights in Sweden's development co-operation (*Democracy and Human Rights in Sweden's Development Co-operation*), and to a lesser extent Sida's policy document (*Justice and Peace: Sida's Programme for Peace, Democracy and Human Rights*), give more prominence to democracy than to human rights. This is probably because 'democratic development' is one of six sub-objectives of Swedish development co-operation and these documents preceded the Government Communication on *Human Rights in Swedish Foreign Policy*. Democracy and human rights are, however, seen as mutually reinforcing; respect for human rights is a prerequisite for democracy (both institutional and cultural) and democracy reinforces the protection of human rights.[85] The 2003 guidance document (*Country Strategy Development: Guide for Country Analysis from a Democratic Governance and Human Rights Perspectiv*e) gives equal importance to human rights and democracy, and they are grouped, along with 'people's participation' and 'good governance', under the umbrella term of democratic governance.[86]

1.2 Implementation

Sida's rights-based approach is implemented through specific capacity-building programmes and as a transversal theme. The promotion of human rights and democracy is the primary objective in some of its partner countries and activities, and it is also a transversal theme that is integrated, as far as possible, into all its programmes. Furthermore, 'do no harm' risk assessments are to be carried out for all programmes. Sweden also promotes the ratification of the main human rights conventions actively through political dialogue and will usually only use conditionality as part of co-ordinated action with other donors.

83. 'Sweden will work actively for a rights-based approach to international development co-operation as well as for greater effectivity in the international monitoring of economic, social and cultural rights.' *Human Rights in Swedish Foreign Policy*. Government Communication SKR 1997/98: 89, p. 5.
84. '…the UN development agencies have started to develop policies based on the idea that development is a question of achieving human rights. Sweden wants to regard its development co-operation in the same perspective.' *Democracy and Human Rights in Sweden's Development Co-operation*. Government Communication SKR 1997/98: 76, p.81.
85. This is in terms of both civil and political rights which are essential for a functioning democracy, and economic and social rights which determine whether people are able to participate, e.g. adequate standard of living, etc.
86. The relationship between democracy and human rights is also further refined, with human rights providing the substantive content to the framework which institutional democracy establishes (Sida, Country Strategy Development: Guide for Country Analysis from a Democratic Governance and Human Rights Perspective, 2003: p.4)

The Sida policy document provides detailed policy guidelines, an analysis of experience and a 3-5-year action plan, including details of activities where either the primary or secondary objective is the promotion of democracy and the priority areas in each partner country. This is further supplemented by the 2003 guidance document which was produced to facilitate the implementation of the approach in Sida's Country Strategy Mechanisms. Whilst recognising that flexibility is needed, the expectation is that the principal areas of democratic governance detailed in this document should be included in *every* country analysis. The guidance is divided into the four areas of democratic governance, with each section providing an explanation of the main concepts involved and giving a detailed list of questions to enable the user to carry out an in-depth analysis of the country situation.[87] The strength of this document is that it makes policy accessible by translating it into step-by-step operational guidance and thus provides the crucial link between the policy and devising a country strategy conducive to supporting human rights and democracy.[88] Specific departments, such as the Department for Central and Eastern Europe, have also produced guidelines on supporting human rights and democracy and Sida has carried out two evaluations of the impact of its human rights activities.

Sweden's emphasis on the international human rights instruments as the basis for its rights-based approach is reflected in its policy in other sectors. For example, Sida's Education Policy[89] is explicitly based on the human rights conventions and is underpinned by a rights-based approach ('the right to education and rights in and through education').[90] The analytical tool which is applied to requests for support contains gender and rights indicators, including reference to the Convention on the Rights of the Child and progress indicators which are disaggregated by gender. Sida is committed to the Dakar 'Framework for Action on Education for All' (EFA) and the full text of this is given as an appendix, along with the core EFA indicators and a list of human rights paragraphs relevant to the right to education. This policy is supplemented by a guidance document which further elaborates what a democracy and rights-based approach means for education.[91] This focuses on international obligations and the more fundamental relationship between access to education and respect for human rights/democracy.

1.3 Institutional issues

Sida has allocated significant staff resources to support the implementation of the policy. Within the Department of Democracy and Social Development, a Democratic Governance division provides assistance on a number of issues, including the integration of human rights into country programmes. The 25-member team provides a number of training courses (from three short core courses on democracy, human rights and children's rights to longer training courses focusing on implementation (for example, country assessments and development of strategies).[92]

87. For example, the section on Human Rights explains the Swedish position on rights based on the international instruments; leads the user through an analysis of whether these commitments have been translated into domestic law and whether they have been implemented; describes the main HR principles; and categorises the substantive civil, political, economic and social rights and provides a further sub-set of questions for each. The other three sections – democratisation, people's participation and good governance – are similarly disaggregated and together they provide the basis for a comprehensive analysis of a country's situation with regard to human rights and democracy.
88. A criticism of this guidance document put forward at the Stockholm conference on Human Rights-based Approaches to Development Co-operation organised by Sida in 2000 is that it does not make the link between HR and poverty reduction explicit enough.
89. Sida (2001) *Education for All: A Human Right and Basic Need*.
90. Ibid., p. 23.
91. Sida (2001) *Education, Democracy and Human Rights in Swedish Development Co-operation*.
92. Sida has about 600 staff at headquarters and 150 overseas. The plan is to increase field presence, including by recruiting local programme officers,

In comparison with other transversal policy areas which have full-time staff dedicated to mainstreaming (for example, gender, conflict, HIV-AIDS), democracy and human rights staff are also responsible for country programmes. The negative consequence of this is that only about three people have part-time responsibility for human rights training, but benefits are that human rights can be better integrated into country programming. In addition, there are regional human rights advisers in Harare, Nairobi, Bangkok, and, shortly, in Cairo. The division has also been successful in working with other departments, for example, Education, Eastern Europe, to mainstream the approach.

Sida has seen a shift in its approach to human rights, and this is reflected in its staffing policy. The approach was originally developed by international human rights lawyers, taking the international conventions as a starting point for interventions. Some staff did not find this approach helpful, and the trend has shifted towards a common identification of problems, based on the principles and standards that can be found in the international conventions. Sida staff working on human rights now include not only lawyers but also political scientists and former human rights activists.

1.4 Lessons

- The approach was initially fairly legalistic. Though international conventions are now used as a point of reference, the focus is on common principles and standards and not just on international legal obligations.
- A detailed guidance document has been produced. It requires undertaking democracy and human rights assessments as part of every country analysis.
- There are staff at headquarters and in the regions responsible for training and assisting in the development of programmes.
- More detailed policy guidelines have been developed for regions (for example, Eastern Europe) and sectors (for example, human rights and education).

2. UNICEF

2.1 Policy

UNICEF was involved in the drafting of the Convention on the Rights of the Child (CRC) and is specifically mentioned in it. Uniquely amongst development agencies, UNICEF decided to push for its ratification and, as a result, near universal ratification has been achieved. During the 1990s, UNICEF moved away from using the CRC as a basis for advocacy and instead began to utilise the convention as a framework for its programme design and implementation, along with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).[93] This adoption of a human rights-based approach is set within the wider context of UN reform which began in 1997[94] and initiated the process of mainstreaming human rights throughout the UN agencies.

UNICEF's official move to implement a rights-based approach was signalled by the 1998 Executive Directive, which provides guidance on the application of a human rights-based approach to development programming and was accompanied by instructions that establish responsibility for dissemination and ensuring implementation.[95]

93. UNICEF (2003) *UNICEF and the Human Rights Based Approach to Programming,* p.1.
94. United Nations (1997) *Renewing the United Nations: A Programme for Reform*. A/51/950, 14 July.
95. UNICEF (1998) *Executive Directive: Guidelines for Human Rights-Based Programming Approach.*

Box 16: Instructions in the 1998 Executive Directive

1. Every Head of Office should engage all staff, but especially the programme team, in an in-depth review and discussion of this document. In the course of this year, I would like all offices to report through their Annual Reports on the ways in which they are using the guidelines with staff and with partners.

2. I will ask all Regional Directors and concerned headquarters Directors to report briefly at coming GMT meetings on how these guidelines have been used during the year.

3. As you will note from the Guidelines, Representatives, heads of offices and senior programme officers must assume primary responsibility for applying these Guidelines in the context of UNICEF's programmes of co-operation at country level. I also encourage Regional Directors and Division Directors in headquarters to play an important leadership role in making these Guidelines widely known and understood throughout the organisation.

This document defines UNICEF's rights-based approach as drawing on both general human rights principles and the specific standards contained within the CRC and CEDAW[96] and provides an explanation of the meaning of these principles. It then details the programming implications of applying a rights-based approach, particularly to UNICEF's 'Triple-A' model (assessment, analysis and action). Assessing and analysing the situation of children and women from a rights perspective mean, *inter alia*, using rights-sensitive indicators, utilising the monitoring and reporting processes of relevant UN human rights committees, and analysing the immediate and underlying structural causes of problems, roles/obligations and resources.

2.2 Implementation

Since the guidance document was issued, UNICEF has undertaken various actions to strengthen its capacity to operationalise a rights-based approach. These include systematic documentation, assessment and monitoring of its experience of applying a rights-based approach, and mainstreaming the rights-based approach into its programme guidance.[97] It decided not to develop separate thematic guidelines, for example on health and human rights, but to mainstream rights by making every programme staff member and country office responsible for implementation. There are now fewer child protection officers. A revised version of the procedures manual including human rights language was released in 2000. Training has also been an important tool. A three-tier programme of training for staff includes: a basic core course on human rights principles based on the CRC, delivered by the heads of country offices; programme process training with a module on rights but also looking at how rights affect other aspects of programming (for example, supply of goods and services); and then a specialised training course.

In order to support mainstreaming, UNICEF has been involved in lesson-learning and inter-agency dialogues. Examples of both innovative human rights projects and the application of a rights-based approach to programming in general are included in UNICEF's annual summary of *Innovations and Lessons Learned* across its country programmes. In 2002, UNICEF hosted the first global consultation on human rights programming to inform its approach. It is now moving towards evaluation, which is a challenge, given the decentralised nature of UNICEF programming and also the relatively short timeframe (UNICEF has a five-year programme cycle and the directive was only issued in 1998). UNICEF headquarters uses a set of proxy indicators to monitor how country offices are doing. In 2001 and 2003, UNICEF took part in the UN's inter-agency meetings on human rights which looked at integration into the CCA/UNDAF frameworks and made some recommendations to strengthen the guidelines. In 2003, nine agencies agreed for the first time on a joint definition

96. 'Adopting a human rights approach simply means that we look for the 'value-added' that the general principles and specific standards of the Conventions can provide'. UNICEF (1998) *Executive Directive*, p.5.
97. UNICEF (2003) 'UNICEF and the Human Rights Based Approach to Programming'. Information Paper presented at the Second Inter-Agency Workshop on Implementing a HRBA to Development, Stamford, US, 5-7 May.

of a rights-based approach. UNICEF's success has been to translate human rights principles and legal documents into practical programming tools.

2.3 Lessons

- It is essential to issue a directive to senior staff requiring them to take human rights into account in programming and reporting on it (as in the 1998 Directive).
- Human rights should not be made a separate area of programming, but all staff should be made responsible for them and given appropriate tools.
- Different types of training have been developed and the head of office is responsible for delivering the basic staff training.
- It is necessary to develop process and outcome indicators to track how the organisation is doing.

3. DFID

3.1 Human rights policy

DFID's commitment to human rights was first expressed in its 1997 White Paper and became more explicit with the adoption of a rights-based approach to its development co-operation in the 2000 White Paper (*Eliminating World Poverty: Making Globalisation Work for the Poor*) and its 2000 Human Rights Target Strategy Paper (TSP) (*Realising Human Rights for Poor People*).

The focus of DFID's rights-based approach, as detailed in its Human Rights TSP, is the empowerment of poor people,[98] which is seen as being instrumental to the achievement of the International Development Targets/Millennium Development Goals, and is to be achieved through the application of three transversal principles: participation, inclusion and obligation. The document indicates that human rights should be a transversal theme in that they are to be integrated into DFID's 'development work at all levels'[99] and this is to be monitored through regular reviews of the country and institutional strategies to see whether they incorporate 'a focus on the rights and empowerment of poor people'.[100]

3.2 Implementation

DFID's 'empowerment' approach to rights evolved out of the participatory approaches that DFID developed during the 1980s and 1990s.[101] The policy has come to be associated with a particular professional group (the Social Development Department) rather than with Democracy experts as in other agencies. Consequently, DFID has downplayed the legal and political dimension of the policy (the nature of state obligations), and there is a weak relationship between human rights and the governance and rule of law agendas.[102] This has also had consequences for the extent, and manner in which, human rights have been mainstreamed in other policies and country strategies. The policy documents that contain the more advanced analysis of the implications of applying a rights approach are those that

98. 'The human rights approach to development means empowering people to take their own decisions rather than being the passive objects of choices made on their behalf'. DFID (2000) *Realising Human Rights for Poor People,* p.7.
99. Ibid.: p.24
100. Ibid.: p.28.
101. Eyben, R. with Ramanathan U. (2002) *Rights-based Approaches to Inclusive Development: Perspectives on the Implications for DFID India*. Brighton: IDS, October: pp.16-18.
102. Piron, Laure-Hélène (2002) *Learning from the UK Department for International Development's Rights-based Approach to Development Assistance*. London: Overseas Development Institute, pp.12-13.

originated in the Social Development Department (Gender, Children, Land Rights), and even these do not use the relevant international conventions as the framework for policy.

The person chiefly responsible for developing DFID's policy left soon after it was adopted, which created a void at senior management level. Only one mid-level staff had full-time responsibility for further policy development and assistance to country programmes. Furthermore, unlike Sida and UNICEF, there is very little in DFID's policy document which is prescriptive about the application of a rights-based approach, and senior management sent no messages on how all staff should take this into consideration. In addition, the policy document does not provide practical guidance on how to apply it to programming, nor has any further information been issued subsequently. Combined with the lack of a strong dissemination and training programme, this has meant that, whilst many country programme staff are aware of the importance of human rights, their interpretation and implementation of the policy are inconsistent. Only Bolivia, Peru, India, and now Rwanda, are explicitly adopting rights-based approaches. DFID has also not adopted any rights-based assessment, analysis or monitoring tools for its programme cycle management to facilitate the implementation of rights as a transversal theme.[103]

DFID has played an important role in working with other international organisations to help develop rights-based approaches. For example, it is a significant funder to UNICEF and the second largest bilateral donor to the OHCHR and is also supporting the ILO and UNIFEM. It has also funded research for the World Bank on human rights and livelihoods.

3.3 Safety, security and access to justice

In around 1998, DFID decided to review its approach to assistance to the justice sector which had been dominated by policing projects. A review of DFID police projects recommended taking a 'sector-wide' approach, that is, taking into account all the institutions that compose the justice sector and focusing on linkages rather than supporting individual agencies. This new approach was also supported by a ground-breaking study by the International Council for Human Rights Policy, *Local Perspectives: Foreign Aid to the Justice Sector* (2000) as well as findings from direct consultations with the poor funded by DFID and the World Bank, which identified that a lack of security and safety mattered a great deal to the very poorest.[104]

From 1999 onwards, a team of about five staff at headquarters supported the development of new programmes following this new approach. A short policy statement[105] was issued in 2000 and presented to all staff belonging to the governance network at annual retreats in 2000 and 2001. A few large new programmes were developed during that period, including in Bangladesh (not implemented), Malawi and Nigeria.

In 2002 a guidance note was produced, drawing on the experience of the new DFID programmes and based on a review of other best practice.[106] Policy is currently being developed on how to work with non-state systems of security and justice, as this had been identified as a primary concern of staff. A workshop bringing together DFID staff and

103. Ibid: p.17. Although the Policy Information Marker System (PIMS) which provides a framework for measuring the extent to which DFID's projects and programmes are being targeted on key policy areas, and is applied at the project approval stage, has been revised to take into account the human rights policy. DFID is also working to develop a new human rights assessment mechanism, Participatory Rights Assessments Methodologies (PRAMS) which is being piloted in four country programmes.
104. World Bank (1999) *A Review of World Bank Participatory Poverty Assessments: Consultations with the Poor*. Poverty Group, September.
105. DFID (2000) *Justice and Poverty Reduction*.
106. DFID (2002) *Putting Policy into Practice: Safety, Security and Accessible Justice*.

programmes for the first time was held in February 2003. It highlighted some of the challenges between the stages of design, based on the new policy, and implementation of the new approach. DFID has now reduced its number of staff working on the policy at headquarters, but a panel of justice consultants, with four lead consultants, has been established, to provide on-going support to country teams. The message of the 2003 workshop was that DFID's approach is highly innovative, but, as this is still a new area of work, support from headquarters should have continued for longer.[107]

3.4 Conclusions

- DFID has adopted a 'social development' rather than a 'governance' approach to human rights, focusing on participation and inclusion, but paying less attention to government obligations and international norms.
- DFID has been successful in working with multilateral organisations to help the development of rights-based approaches, in particular with UNICEF.
- Internally, DFID has been less successful in mainstreaming the approach. It is seen as the domain of a particular set of 'social development' advisers. There is no strong senior management support for the approach and very little support at headquarters. No guidance was issued, but a rights assessment methodology is being developed.
- DFID has adopted an innovative policy on the rule of law, called 'safety, security and access to justice'. It emphasises the needs of the poorest and the importance of considering justice as a sector rather than as a series of individual organisations. Practical guidance has been issued in addition to a policy statement, based on DFID experience and other sources of best practice. For a period, DFID had five staff working in this policy area, complemented by a group of experienced consultants.

4. USAID

We reviewed USAID's experience because of its long-term commitment to the rule of law and the quality of its policy guidance documents.

4.1 Policy and institutional framework

'U.S. foreign assistance has always had the twofold purpose of furthering America's foreign policy interests in expanding democracy and free markets while improving the lives of the citizens of the developing world'.[108] The rule of law is considered to be part of the promotion of these two objectives.

For USAID, the term 'rule of law' embodies the basic principles of equal treatment of all people before the law, fairness, and both constitutional and actual guarantees of basic human rights. A predictable legal system with fair, transparent and effective judicial institutions is essential to the protection of citizens from the arbitrary use of state authority and lawless acts of both organisations and individuals. In many states with weak or newly-emerging democratic traditions, existing laws are not fair or are not fairly applied, judicial independence is compromised, individual and minority rights are not truly guaranteed, and institutions have not yet developed the capacity to administer existing laws. Weak legal institutions endanger democratic reform and sustainable development in developing countries.

107. Piron, Laure-Hélène (2003) *Report on the DFID Workshop on Safety, Security and Accessible Justice*, March.
108. http://www.usaid.gov/our_work/democracy_and_governance/rol.html

Without the rule of law, the executive and legislative branches of government operate without checks and balances, free and fair elections are not possible, and civil society cannot flourish. Beyond the democracy and governance sector, the accomplishment of other USAID goals also relies on the effective rule of law. For example, civil and commercial codes that respect private property and contracts are key ingredients for the development of market-based economies. USAID's efforts to strengthen legal systems fall under three inter-connected priority areas: supporting legal reform, improving the administration of justice, and increasing citizens' access to justice.'[109]

USAID has a tradition of working on justice reform which dates from the Law and Development Movement of the 1960s (which focused on legal training and legal aid), followed by 'public safety programmes' in the 1970s, in particular in Latin America where some human rights violations were identified (for example, police training). In the 1980s, new initiatives promoting democratisation and economic development included a focus on the rule of law. Political commitment dates back from President Carter's focus on human rights and President Reagan's promotion of democracy. USAID now works on the rule of law in about 50 to 60 countries, out of 90 receiving some sort of assistance.

USAID's 1997 Strategic Plan identifies four strategic objectives in the democracy sector: (i) the rule of law (with a focus on promoting the independence of the judiciary); (ii) elections and political processes; (iii) civil society; and (iv) governance (transparency, accountability, participation). USAID works to encourage more transparent and accountable government institutions in five areas: governmental integrity; democratic decentralisation; legislative strengthening; civil-military relations; and effective policy implementation.

In 1994 the Center for Democracy and Governance was established, with approximately 6 staff working on the rule of law (there is now only one person). Their role includes assisting with programme design and training new staff, as well as overseeing the production of relevant materials. It is estimated that USAID has rule of law programmes in about two-thirds of the countries in which it is active.

4.2 Publications

USAID has developed approximately six practical guides on the rule of law. They are aimed at AID staff who may not have any expertise in this area, but are required to develop programmes and assess opportunities. They focus on lessons learned and on programmatic guidance. They have been developed through different processes.

The *Guidance for Promoting Judicial Independence and Impartiality* (revised January 2002) is possibly the most successful publication. It was elaborated through a participatory process which involved country offices. The IFES (the International Foundation for Electoral Systems) was commissioned to produce the guide but with inputs from USAID. Between 20 and 30 regional experts identified key country issues relevant for the rule of law, based on a questionnaire. This was followed by a workshop in Washington, DC where findings were synthesised. It took about 2 ½ years to complete the guide, but the process was deemed important. Regional workshops and conferences were held to help promote the guide and its main message – that the rule of law is not just a technical issue but is also highly political – to USAID staff and their partners. It was not explicitly planned to influence other donor agencies, but the quality of the guide, and its availability on the web, has helped ensure that it is widely known throughout the donor community. Feedback has shown that the guide has been widely used by USAID staff and partners. It is an extremely long and detailed document.

109. Source: http://www.usaid.gov/our_work/democracy_and_governance/rol.html

The *Alternative Dispute Resolution Practitioners' Guide* (March 1998) was developed by an NGO, the Conflict Management Group, through an independent process managed by headquarters, and country offices were not involved. It identifies when alternative dispute resolution might be appropriate and what kind of support can be provided by donors. As it is relatively specialised, and the process was less participatory, it is not regularly used by country offices.

The *Case Tracking and Management Guide* (September 2001) took an intermediate approach. It was produced by the National Center for State Courts but involved some overseas missions.

Weighing in on the Scales of Justice: Strategic Approaches to Donor Supported Rule of Law Programs (1994) is one of the earliest donor publications evaluating interventions in the justice sector. It is not a 'technical publication' as is the case with the other three guides, but was produced as part of a series reviewing policy implementation. It drew on in-house expertise to review US experiences to date. It also provided a strategic framework to guide intervention in the field. It became an important guide, though it was not a statement of official policy.

Box 17: Dissemination and policy influencing

The Second Arab Justice Conference was held on 21-4 February 2003 in Cairo. The conference, which was supported by USAID through its implementing partner, the International Foundation of Election Systems (IFES), centred on 'Supporting and Advancing Judicial Independence'. The meeting brought together judges, lawyers, academics, and members of the NGO community from the region, as well as experts from the wider international community.

Despite the current troubled political climate, the conference moved forward and yielded a bold political statement in the form of the unanimously adopted 'Cairo Declaration on Judicial Independence'. For example, the declaration calls on stakeholders to 'abolish emergency laws and extra-judicial courts', 'guarantee that no court decisions be exempt from judicial review' and 'undertake efforts to instil the culture of human rights through all levels of the education system'. The conference was organised by the Arab Center for the Independence of the Judiciary and the Legal Professions, in collaboration with UN Office of the High Commissioner for Human Rights and UNDP.

Source: USAID website

4.3 South Africa

We interviewed a Program Manager from the Rule of Law Unit in USAID's South Africa Office. He confirmed that his office had been involved in the development of democracy guidelines (on civic education and conflict vulnerability). Documents from headquarters are not seen as official instructions but as guidelines that should be taken into account when developing programmes. They are regarded as being useful.

USAID has a long tradition of supporting the rule of law in South Africa that predates NGO support in 1994. The new government requested US assistance and a bilateral agreement was signed. The US contributed to helping the drafting of the new South African Constitution and the establishment of the Truth and Reconciliation Commission.

4.4 Conclusions

The following success criteria have been identified, based on the USAID experience:

- historical and political commitment to the subject area;
- support based at the centre to train staff and assist in programming;
- building institutional capacity and knowledge over time and documenting it;

- participatory processes of guidance development seems to be most successful, followed by regional workshops;
- pro-active dissemination is required (for example, international conferences);
- building a local reputation with government and partners (for example, in South Africa).

5. Donor networking

A number of events have taken place where international development organisations working on human rights were able to share experiences. They included the 1998 Oslo meeting sponsored by UNDP, the 2000 Stockholm events to which NGOs and donors were invited by the Swedish government, as well as the first UN inter-agency meeting on integrating human rights, held in Princeton, NJ in 2001. Events of this kind, as well as informal networks, are important in assisting policy-makers and practitioners to learn from one another, and have also encouraged staff, who might have been isolated in individual agencies, to keep working on further defining the implications of a rights-based approach.

During 2003, there has been a renewed interest in informal human rights donor co-ordination, and SDC has played an important role in this process. It initiated an informal email list and, in February 2003, organised an informal meeting of like-minded bilateral donors in Geneva on the margins of the Working Group on the Right to Development. In the same month, Save the Children Sweden organised a meeting on children's rights also attended by international development agencies. In May 2003, donors supporting the mainstreaming of human rights in the UN system were invited to attend the second Inter-Agency Workshop on Implementing a Rights-Based Approach, this time held in Stamford, CT. The German government, which through the German Development Institute has commissioned a number of case studies on bilateral and multilateral agencies, held a conference in Cologne in September 2003, and an informal donor meeting was held in the margins. Finally, it is reported that CIDA is establishing an informal network under the umbrella of the Development Assistance Committee of the OECD.

5.1 Conclusion

The role that SDC is playing in furthering exchanges among donors is praiseworthy. It will help SDC in offering more operationally relevant advice to its country offices, and is also supportive of building an international policy environment where human rights are seen as making an important contribution to development.

Annex 10

Documents Consulted

Documents Consulted

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