



United Nations Development Programme

ACCESS TO JUSTICE IN ASIA AND THE PACIFIC

A DGTTF COMPARATIVE EXPERIENCE NOTE

COVERING PROJECTS IN CAMBODIA,
INDIA, INDONESIA AND SRI LANKA

The DGTTF Lessons Learned Series

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Preface

A justice system that is equally accessible to all citizens is a cornerstone of democratic governance.

All too often in judicial reform processes, though, questions of access have been overlooked. This is especially the case for excluded groups who, for a variety of reasons, have a limited political voice or lack the resources and knowledge necessary to seek assistance from legal institutions. For them, the justice system can remain a source of continued discrimination and inequity with little recourse for claiming their rights.

Through its access to justice projects, UNDP works within programme countries to help rectify these imbalances and so contribute to the broader goals of strengthening democratic governance and promoting human development.

This Comparative Experience Note summarizes recent experiences in the Asia-Pacific region, where a series of projects built on initial momentum generated by grants from the Democratic Governance Thematic Trust Fund (DGTTF). This UNDP funding mechanism supports innovative initiatives, especially on issues that may be new and/or politically sensitive and therefore difficult to fund. DGTTF-funded projects are by nature high-risk, but they also have a strong potential to bring about change.

This Note considers four Asia-Pacific countries where access to justice programmes have been among the longest running: Cambodia, India, Indonesia and Sri Lanka. Using a series of national and regional DGTTF project assessments, it seeks to answer the following questions:

- How did UNDP advance access to justice in these countries and the Asia-Pacific region through the DGTTF?
- What were the main challenges and limitations faced?
- What are the key findings, and what can UNDP learn from them?



All these projects encountered implementation challenges resulting primarily from sensitivity to the political and social environments, overambitious project design and insufficient capacity. To understand and overcome these and other related challenges, key findings and recommendations emerging from a comparative analysis are offered.

This publication is part of the Comparative Experience Notes published under the DGTF Lessons Learned Series, a collective effort to systematically capture lessons learned and best practices. It is shared with all stakeholders and will help to inform future UNDP policy and programming processes.

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Executive Summary



This Comparative Experience Note brings together key findings and lessons learned from assessments of five Democratic Governance Thematic Trust Fund (DGTTF) projects on access to justice and human rights in Cambodia, India, Indonesia and Sri Lanka.

The report is based primarily on a desk review of the Cambodia, India, Indonesia and Sri Lanka project assessments published in 2009, the first volumes of the DGTTF Lessons Learned Series. It also takes account of the Regional Assessment of the Asia-Pacific Rights and Justice Initiative, which is part of the series.

The five projects have been *innovative* in stressing new issues or pursuing new strategies within a given country. They have also been *catalytic*, in mobilizing new national or international commitments, programmes and policies, and resources. Each project has encountered challenges, from which important lessons can be drawn.

Applying a human rights-based approach to access to justice projects in Asia-Pacific involved a learning curve both at UNDP and among national partners. Required capacities were not always in place, although learning occurred throughout in a dynamic regional community of practice network. People participating in the projects made this a valued resource for sharing questions and finding answers to challenges as they arose.

One consistent challenge came from introducing ideas that, in effect, confront or alter the status quo. Calling for the correction of disparities in access to justice requires careful analysis and patient negotiation in the face of vested political and economic interests. This applies particularly in fragile societies where this can be perceived as another threat to stability. These factors led to problems with some projects—such as the formulation of objectives that far exceeded what was possible in a given context. Some activities had to be shut down midcourse, capacity gaps were not anticipated and could not be easily filled, and there was a drop-off in donor confidence in one case. One general lesson learned about embarking on access to justice projects is the imperative for thorough initial analysis that pays close attention to context and avoids prescriptive remedies, and is backed by ongoing monitoring and evaluation.

Despite some shortfalls, project assessments concluded that a human rights perspective was effective in consistently improving the identification of problems, target groups and the most effective entry points for programming. Today, the right to access justice is more firmly on international and national agendas than it was



when the initiative began gathering steam in 2002. Indonesia, to cite one example, has introduced a new policy architecture. It is based on a DGTTF-funded survey that offered some of the first comprehensive insights on obstacles to justice for poor and disadvantaged groups. Knowledge and understanding of what access to justice means for excluded groups has grown exponentially, as has understanding of what people need to claim their rights, and what reforms judicial systems can undertake to respond fully to these claims. UNDP has mobilized new resources to expand its own programmes and capacities, and has provided evidence and tools for other organizations to do likewise.

Based on comparative analysis of the achievements and limitations of these DGTTF access to justice projects, this publication concludes with recommendations for future programming:

- A human rights perspective can improve the identification of problems, target groups and the most effective entry points for access to justice programming.
- UNDP should deepen its context and situation analyses to include aspects of political economy related to access to justice.
- DGTTF project managers should pay close attention to ensuring the sustainability of results beyond project duration. Client surveys could be one way of measuring whether or not a human rights-based approach is being upheld over the longer term.
- Considering that DGTTF projects are by nature innovative, which implies a higher degree of difficulty in implementation, perseverance is extremely important for initial investments to pay off.
- The success of DGTTF projects depends on choosing credible partners and managing expectations.
- It is important to balance “demand and supply” by empowering rights holders, but also ensuring that duty bearers are equipped to uphold their rights.

- While the protection of individual rights is integral to access to justice, greater emphasis could be placed on group rights and strategies to uphold those, such as public interest litigation that produces legal precedents and policy changes.
- More could be done to foster engagement between formal and informal justice mechanisms.
- Future projects would benefit from additional research to anticipate and adjust to potential risks and benefits for target groups.
- The projects confirmed the value of intensive research that produces high-quality empirical evidence. While research on this scale can require significant investments of time and resources, it helps make a powerful advocacy case, improves the accuracy and impact of programming, and lays the ground for expanded programming.
- The community of practice was an invaluable asset to the access to justice work, but sustaining it and ensuring it reaches its full potential will require substantial support in terms of staff time and resources. A smaller community has proven more conducive to building trust among members, suggesting that expanding membership should be carefully planned.
- The practitioner's guide, *Programming for Justice: Access for All*, should be retooled based on the assessments and project experiences, including to underscore the messages that human rights-based access to justice projects need to be carefully tailored to diverse contexts, and that there are no prescriptive solutions.

1. A Quick View: Objectives and Achievements of the Projects



The Asia-Pacific access to justice programmes offered opportunities for UNDP practitioners and national counterparts to expand their understanding and practice of human rights-based programming. The approach focuses on people and analyzes what inhibits their access to justice.

Programme strategies target those groups least able to access justice, leading to actions that work to balance the empowerment of rights holders with the accountability of duty bearers. Assessment of the needs of both and provide also allowed capacity development support to be provided.

Access to justice is a particularly important part of UNDP's human rights-based work. Advancing access to justice supports the ability to claim other rights—such as increasing people's voices in decision-making, pursuing equitable opportunities for economic advancement—and generally contributes to a healthy, educated life.

Each reviewed project received an average of some US\$150,000 from DGTTF, with allocations ranging from US\$100,000 to US\$221,000 (*Tables 1-4*).

The projects' hallmarks have been increased knowledge, innovation that leads to action, and the development of capacities for deeper analysis and more effective interventions. By design, DGTTF projects are expected to remain short, modestly funded, and play an catalytic role in contributing to longer-term impacts and sustainability. The DGTTF guidelines define innovative and catalytic projects in this way:

- An **innovative project** addresses a critical democratic governance issue, recognized as such by a government and other donors or partners. It is an initiative previously not attempted in a given country, either in the problems addressed or the approach taken. The DGTTF project is expected to be riskier, or less certain of success, than a 'traditional' project. Carrying out the innovation is intended to help position UNDP as a key player in democratic governance in terms of 'pushing the frontier'.
- A **catalytic project** is characterized as having a high likelihood of receiving support from government or other governance institutions.

The five projects covered in this report have all been innovative, particularly in the way they have stressed new issues or pursued new strategies. They can also be seen as catalytic, insofar as they have mobilized new national or international commitments, resources, programmes and policies.



Table 1: Synopsis of the reviewed DGTF project in Cambodia

Project title	Access to Justice in Cambodia
Year	2006
Funding	US\$221,000 from DGTF
Aim	<ul style="list-style-type: none"> • Develop human rights training database • Support the Official Gazette • Publish judicial decisions • Establish alternative dispute resolution mechanisms
Results	<ul style="list-style-type: none"> • Human-rights training database developed • Alternative dispute resolution mechanisms piloted at the local level in six provinces • Improved access to justice through alternative dispute resolution mechanisms for disadvantaged groups, with a focus on the poor, women and indigenous people

Innovation in the **Access to Justice in Cambodia** project is found in the creation of new access to justice mechanisms to communities and groups. And the project has had a catalytic role in attracting significant new funding for access to justice programmes.¹

Operating in an environment where judicial institutions are inefficient and overly centralized, the project started by targeting both formal and informal justice systems. It sought to enhance alternative dispute resolution mechanisms, raise awareness of rights, including among women and disadvantaged indigenous communities, and improve and disseminate legal and judicial information. Planned activities included development of a human rights database, support to the Official Gazette, publication of judicial decisions and fostering alternative dispute resolution options.

The first three activities were added to the project at the government's request. However they were not completed, mainly because of capacity limitations and lack of agreement between government officials and donors. The fourth activity

¹ See UNDP, *Cambodia Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

carried out was successful in setting up alternative dispute resolution mechanisms in six provinces.

Those mechanisms have since been widely used. Work within communities has contributed to bolstering women's rights to protection from domestic violence and has helped alleviate the backlog in the formal justice system.

Table 2: Synopsis of the reviewed DGTTF projects in India

Project title	Access to Justice by Poor and Disadvantaged People
Year	2004
Funding	US\$100,000 from DGTTF
Aim	<ul style="list-style-type: none"> • To build a base for researching pro-poor justice at the National Judicial Academy • To provide a platform for key stakeholders from the judiciary and civil society to engage in an ongoing dialogue on access to justice by marginalized people • To initiate a process of networking among civil society actors on access to justice, and to develop a strategy to overcome barriers in access to justice • To help the National Judicial Academy draw up a curriculum for judicial training that is more sensitive to poor and marginalized people
Results	<ul style="list-style-type: none"> • The National Judicial Academy hosted three residential workshops with an initial focus on fostering a research culture in the state judicial academies, and enhancing capacities for self critique. Six state academies completed the exercise. • Six reports examined the pendency of cases; delays in the judicial process; the participation of the elderly, the disabled, tribal peoples, and women and children; and the literacy status of each group.

Project title	Legal Empowerment through Community Radio
Year	2005
Funding	US\$175,000 from DGTTF
Aim	<ul style="list-style-type: none"> • To use community radio to empower communities with information and awareness of their legal rights, enabling them to engage directly with legal professional
Results	<ul style="list-style-type: none"> • Radio programmes on legal awareness developed and broadcast • Community meetings to identify legal issues to be addressed in the broadcasts • A cadre of paralegals trained to provide counsel on the issues raised

Legal reform is underway in **India** to support its ambitions as a powerful emerging economy. However, the costs of legal representation, along with weak institutions, backlogged cases and biases, remain among the many obstacles to justice for poorer people.² The **Access to Justice by Poor and Disadvantaged People** project helped the National Judicial Academy build its first comprehensive body of research on these issues. Six reports drew on case records and collaborative re-

2 See UNDP, *India Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

search by judicial officials, academics and civil society advocates. The academy has consulted the research in incorporating law and poverty issues into its curriculum.

A second project in India, **Legal Empowerment Through Community Radio**, used community radio, which national policy has recently liberalized, to raise popular awareness of legal rights in two states. Broadcasts included sessions where lawyers fielded questions from listeners. Community meetings, plays and talks provided other means of outreach. The project produced more broadcasts than were planned and attracted additional funding from national and international donors. It has also positioned participants to capitalize on further liberalization of broadcasting.



Table 3: Synopsis of the reviewed DGTF project in Indonesia

Project title	Strengthening Access to Justice and the Rule of Law
Year	2004
Funding	US\$ 100,000 from DGTF
Aim	<ul style="list-style-type: none"> Strengthen access to justice and the rule of law as linked to good governance at the local level, with special consideration for contexts with social tensions and a history of violent conflict
Results	<ul style="list-style-type: none"> An access to justice assessment in five provinces led to the publication of <i>Justice for All?</i> Development of the National Access to Justice Strategy to inform the Government in preparing the 2010-2014 Mid-Term Development Plan The development of a new initiative between UNDP Indonesia and the National Development Planning Agency, Legal Empowerment and Assistance for the Disadvantaged

Poorly managed local disputes have fanned social instability in **Indonesia** during a period of political and economic transformation.³ Ongoing reforms have yet to fill longstanding gaps in the justice system's capacity and legitimacy, and have focused heavily on the national level. To help increase local access to justice and extend the reach of national reforms, the National Planning Agency and UNDP joined forces under the DGTF-assisted project, **Strengthening Access to Justice and the Rule of Law**.

The project's major output was Indonesia's first comprehensive study of access to justice at the local level, particularly for poor and disadvantaged groups. The results were published in a report, *Justice for All?*⁴, that drew national attention to previously invisible issues. The government used the report to craft its new National Access to Justice Strategy. National officials continue to reference *Justice for All?* as an important source of information for national and local planning, as do international organizations such as the World Bank.

3 See UNDP, *Indonesia Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

4 Available at <http://www.undp.or.id/pubs/docs/Access%20to%20Justice.pdf>. Last accessed on 30 August 2010.

DGTTF funds were critical to the launch of the project, but were not sufficient to provide for all the implementation costs. The final expenditure was more than ten times greater than the DGTTF funding. Additional resource allocation came from UNDP Indonesia through TRAC funds.

The Legal Empowerment and Assistance for the Disadvantaged project is a follow-up and much larger UNDP initiative. It supports local groups—a planned but unrealized component of the DGTTF initiative—by channeling grants to civil society organizations and universities working on access to justice programmes in three target provinces. UNDP's funding of its governance portfolio in Indonesia now stands at over US\$23 million.

Table 4: Synopsis of the reviewed DGTTF project in Sri Lanka

Project title	Equal access to justice project
Years	2004 – 2008 (Phase I), 2009 – 2012 (Phase II)
Funding	N/A ⁵
Aim	<ul style="list-style-type: none"> • To increase the number and diversity of people receiving effective legal services, documentation and information on their rights, with a special focus on people in conflict-affected areas, the plantation sector and prisons • To reduce barriers to accessing the legal system • To promote and protect human rights
Results	<ul style="list-style-type: none"> • Household survey conducted in partnership with the UN Office for Project Services targeting approximately 4,000 vulnerable people; data collected from 13 districts. • Production of a report, <i>The legal aid sector in Sri Lanka: Searching for sustainable solutions—a mapping of legal aid services in Sri Lanka</i> • Mobile legal aid clinics provided documentation for internally displaced people and other disadvantaged groups.

The **Sri Lanka Equal Access to Justice Project** demonstrated innovation in its introduction of a human rights-based approach in a highly sensitive environment that is shaped by 30 years of civil war.⁶ It sought to increase the number and diversity of people accessing legal services, particularly people in the conflict-torn North and East, the plantation sector and selected prisons. Project strategies have included training paralegals, police and prison officers on human rights; supporting legal aid clinics; introducing human rights studies in school curricula; and conducting research geared towards national policy formulation.

The project piloted the use of mobile vans as a new avenue for providing legal documentation in areas without state services. Forty mobile vans offered birth, marriage and death registration, national identity cards, citizenship certificates, drivers' licenses and passports to around 127,000 disadvantaged people. Work with

⁵ The Equal Access to Justice Project did not receive direct DGTTF support. However, the DGTTF *Lessons Learned: Sri Lanka Project Assessment*, states that the project “still benefited from the broader regional A2J DGTTF project” and its human rights-based approach programming guide (UNDP, p.7). See UNDP, *Sri Lanka Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

⁶ See UNDP, *Sri Lanka Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

prisoners has focused on extending legal aid services—not previously available for criminal cases in the lower courts—and on developing a pilot tracking system to monitor their welfare and progress through the justice system.

A nationwide survey on access to justice was halted by the government for security reasons after covering just 13 districts. It has, though, offered some of the first quantitative data on the ability of vulnerable groups to access justice and of service providers to deliver it. A legal aid assessment has helped galvanize commitments by the Bar Association and the Ministry of Justice to increase resources for legal aid services. Recommendations included cultivation of legal awareness and services through the lowest rung of village-based government administration, which is the first point of contact in localities for a range of legal affairs. A training programme for village administrators has begun in partnership with the Ministry of Public Administration, the Legal Aid Commission and an NGO recognized for paralegal training.

2. Advancing Rights and Justice in Asia Pacific



In all Asia-Pacific projects, advancing rights and access to justice entailed research, innovation and the cultivation of new capacities as key factors in leveraging project results. This section explores how these three elements played out within and across specific projects.

Providing new evidence

A critical starting point for developing new knowledge and attitudes often involved comprehensive research studies. These offered opportunities to collect data, develop capacities, cultivate new partnerships and jumpstart informed advocacy for subsequent actions that built on research results.

In **Indonesia**, the *Justice for All?* survey filled longstanding gaps in data on access to justice at the local level. Conducted in partnership with the government, a national research institute and university legal departments in each of the five conflict-affected provinces, the survey analyzed public perceptions of the justice system and court operations. It also examined the impacts of conflict on formal and informal justice mechanisms. It identified groups especially prone to deprivations in basic rights to public services, discriminatory treatment or systematic exclusion from decisions affecting their lives.

Highly participatory qualitative and quantitative research encompassed 200 focus groups organized around location, employment type, gender and ethnicity; 700 individual interviews; and a survey of 4,500 respondents, with roughly equal numbers of men and women. Local teams of academic researchers and NGO representatives trained in human rights work conducted the research. After it was completed, separate research teams met with people in each province to validate the data.

The survey achieved results both in the process of conducting it and through the release of its findings. For the first time, people in communities facing severe deficits in access to justice found outlets to voice their concerns. Local researchers acquired new skills in conducting participatory assessments, an approach that varied markedly from more conventional top-down methods relying on documents and official sources. UNDP rarely conducts research of this magnitude, but the survey affirmed that in-depth, high-quality empirical evidence can make for a powerful advocacy case and prepared the ground for expanded programming.

The survey benefited national policy makers through a more accurate depiction of local issues. Some problems had never been apparent before, such as serious

threats to land tenure resulting from migration. People in poorer communities repeatedly emphasized the importance of equality in access to public services, to which corruption is a major barrier. When the government began drafting a National Access to Justice Strategy, it used the survey's main themes—including legal aid, land management, public services, the rights of the poor and marginalized, labour rights and gender equality—as a framework.

The adopted version of the national strategy broke new ground in advocating access to justice for poor and vulnerable people as central to all poverty reduction programmes. It calls for all government policies to consider how to reach excluded communities and ensure that they can access legal protection, including in the improvement of their livelihoods. The strategy highlighted key links to corruption and this has led to new prevention initiatives that focus on improving public services.

In **Cambodia**, the project carried out an in-depth needs assessment. This mapped links between formal and informal justice systems, and chronicled disparities in access to justice. That, in turn, led to programming that targeted indigenous peoples and women, with a focus on land rights and domestic violence. Participatory workshops were used not only to collect information from people in communities that are typically outside the reach of the formal justice system, but also to share knowledge on legal rights.

The Access to Justice by Poor and Disadvantaged People project in **India** engaged diverse groups—including judges, lower level judicial staff, lawyers, academics and NGO representatives—for its research into pro-poor justice. They debated three questions. How do disadvantaged people define access to justice? Which obstacles prevent them from seeking justice? Which strategies have they developed to overcome obstacles? The series of reports they developed looked at issues such as case backlogs, delays at different points in legal procedures, and the participation of the elderly, disabled people, indigenous people, women and children. Since judicial officials were involved, the research was able to tap an impressive amount of case research, much of which typically remains inaccessible to people outside the judicial system.

The research deliberately fostered an exchange of knowledge among groups who work on similar issues, but not always collaboratively. Hierarchies broke down in an atmosphere of respect and understanding. The project encouraged judicial officials in particular to adopt a more research-based, analytical approach to judicial norms and procedures. They learned to probe differences experienced by poor and disadvantaged people, rather than assuming that judicial practices are neutral and that the law is equally accessible to all.

Pursuing innovation

The five Asia-Pacific access to justice projects have been innovative in their core advocacy message: that equitable access to justice is central to the achievement of human development and rights. They have also fostered innovative programme strategies that have demonstrated how new approaches can be effective and why they should be further developed.

In **Cambodia**, the formal justice system suffers from negative perceptions of its fairness and quality, insufficient coverage and serious capacity gaps that hinder effectiveness. In this environment, the DGTTF project sought to complement the formal system by emphasizing the provision of local alternative dispute resolutions mechanisms in six provinces. These brought justice physically closer to local communities—since the lowest level of the formal court system extends only to the provincial level—and adapted it to local needs and customs, including through research on traditional dispute resolution mechanisms in indigenous communities.

The project set up 20 *maisons de la justice* at the district level and 56 community dispute resolution committees at the commune level. The committees are composed of seven commune members, at least 30 percent of whom are women—an unusually high proportion among decision-making positions in Cambodia. The *maisons* collect and disseminate legal information, monitor the committees, cover communities where committees have not been established, and mediate cases not resolved by the committees, including by referring them to provincial courts when needed. There has been strong demand for both the *maisons* and the committees, although the latter appear to have garnered a higher degree of trust, because parties to a dispute can choose two of the three mediators to



resolve it. Provincial courts have credited the two systems with reducing a long backlog of cases.

To engage with and gain the trust of indigenous communities, many of which have been embroiled in land disputes, the project partnered with a local NGO that has close ties to, and long experience with, indigenous peoples. Peace Table dialogues were created as fora for local authorities and indigenous community members to come together to resolve disputes. Some cases have resulted in land being returned to indigenous peoples. Training on dispute resolution was offered to indigenous leaders, along with training on indigenous issues for national and local authorities, including police and judges.

Women's empowerment was highlighted in the Cambodia project through training on domestic violence for staff of the *maisons* and committees. A local NGO was contracted to offer legal aid services to women in three provinces, and a highly successful earlier programme that used community 'conversations' to address HIV and AIDS was adapted for domestic violence. Thirty trainers and 225 trained village facilitators conducted the 'conversations' in 75 villages. They encouraged local people to stop seeing domestic violence as a private issue shrouded in secrecy, and start seeing it as a community and social issue with implications for community well-being. Following the 'conversations', villagers developed community action plans to address domestic violence. The value of the 'conversations' has been evident from the willingness of local authorities to continue them, even without UNDP support.

In **Sri Lanka**, one particularly innovative approach used mobile vans to bring legal documentation services to people in areas least served by the state, where common barriers to accessing the justice system include language differences, transport costs and corruption. Before going to a community, mobile van operators would alert administrators at the lowest level of state structures—the *Grama Niladaris*—so that people could prepare their paperwork. In the first year, services were provided to 14,000 people in the estate sector, where workers toil on plantations and experience persistently high rates of poverty. Another 113,000 people were reached after the Ministry of Constitutional Affairs and National Integration replicated the practice as part of accelerating development in the Eastern Province.

Innovation catalyzed a larger-scale initiative in **Indonesia** when the access to justice study contributed significantly to the new National Access to Justice Strategy, which in turn was integrated into the Mid-Term National Development Plan 2010-2014. Referring to the survey model, the strategy drew on extensive participation: 530 civil society groups and government officials from all 33 provinces helped in its formulation. This marked the first time that the government had allowed civil society to participate from the start in framing policies that would feed into the Mid-Term Development Plan.

Indonesia and other country projects have attracted significant new donor investment following DGTF-assisted innovations. The **Cambodia** project led to a US\$2 million contribution from the Spanish agency for international cooperation, AECID, to support continued work on alternative justice mechanisms. **Indonesia's** LEAD project has US\$10 million in donor support and has become one of the leading access to justice projects operating at the national and provincial levels, as most internationally assisted initiatives still focus on institutions at the central level. Under LEAD, more than 20 civil society groups and universities work to extend legal services and raise awareness in poor communities and among disadvantaged groups, including women and indigenous communities.

Strengthening UNDP access to justice programming

The access to justice projects involved learning and experimentation. That has enhanced UNDP's own internal capacities to contribute effectively to access to justice. The human rights-based approach has led to more holistic needs assessments and greater strategic identification of programme entry points in the four countries profiled here, as well as in programmes in Afghanistan, the Maldives, Nepal and Timor Leste.⁷ UNDP has forged diverse partnerships and expanded its programming expertise in areas such as legal empowerment strategies for disadvantaged people, civil society oversight and the removal of obstacles to justice. Although more still needs to be done, there is now improved balance between initiatives that empower people to use the judicial system to claim their rights,

⁷ For more information, see UNDP, *Regional Assessment – The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

and those that encourage formal and informal institutions to play a more practical role in ensuring that justice is accessible and rights are protected.

Two in-house resources have been particularly important for UNDP's expanded access to justice programming: a community of practice for the Asia-Pacific region judged one of the most successful of its kind in the organization, and a practitioner's guide, *Programming for Justice: Access for All*.⁸

Launched in 2002, the community of practice was one of the first of its kind in UNDP. From the outset, it applied a human rights framework to efforts to improve UNDP's programming capacities, and expand networks in the justice sector nationally and regionally. A variety of governmental, non-governmental and international partners participated, including the Office of the High Commissioner for Human Rights, which provided high-level technical expertise.

Under the supervision of a facilitator, practitioners from country offices debated and defined the knowledge needed to promote people-centred justice programmes. They shared lessons from country experiences of designing and implementing access to justice projects that deepened the quality and complexity of analysis, and led to common policy positions being achieved. The thinking that emerged was then repackaged into tools that have been widely used within UNDP and by other partners.

The practitioner's guide, *Programming for Justice: Access for All*, has been one of the most important tools. It offers step-by-step guidance on the practicalities of designing and implementing justice programmes grounded in human rights principles. It has been widely disseminated, including to the Asia-Pacific Judicial Forum and the 2006 International Conference and Showcase on Judicial Reform, attended by chief justices from 49 countries. At the conference, interest by participants in the method used to create the guide led to the formation of the Secretariat for the Asia-Pacific Judicial Reform Forum, a network of judicial institutions which has been working on compiling case studies on judicial reform.

8 Available at <http://regionalcentrebangkok.undp.or.th/practices/governance/a2j/docs/ProgrammingForJustice-AccessForAll.pdf> Last accessed on 31 August 2010.

Further praise for the guide has come from the Canadian Bar Association and the International Commission of Jurists. In India, the launch of the guide became part of a process of garnering support from senior policy makers that led the government to agree, for the first time, to release UNDP core resources for access to justice projects.

UNDP programme staff using the guide have suggested that a next step is to improve capacities to translate its spirit into different national and local contexts, so that it is not applied prescriptively. Critical analysis of access to justice and human rights in each country and/or locality should be the basis for tailoring programmes accordingly.

New initiatives that stem from the access to justice work include the Asian Regional Consortium for Human Rights Based Access to Justice. This was established with UNDP support in response to high demand in the region for training and capacity development resources, cross-country networking and the sharing of experiences. Launched in 2010, the consortium comprises government and judicial officials, civil society representatives and academics. UNDP is also developing the *Access to Justice Assessment Toolkit* based on the regional assessments. It will cover aspects such as the design of the research framework, local partnerships, data analysis, advocacy, and policy and programming impacts. It will also examine the use of human rights-based approaches in all stages of the assessment process.

3. Challenges: What to Do Differently



Each of the Asia-Pacific access to justice projects encountered implementation challenges. These range from overambitious project design to inadequate analysis of the programming context and the incentives for change affecting different stakeholders.

Some longer-running programmes compensated for early errors by collecting more accurate information, reconfiguring assumptions and adopting more targeted strategies in subsequent project phases.

Understanding incentives

Human rights-based programmes are highly sensitive to political and social environments, a reality that was not always well managed in the DGTTF access to justice projects.

Resolving disputes related to land rights for indigenous people in **Cambodia** proved extremely difficult, for example, with the issue caught in a web of high-stakes political and economic incentives complicated by vested interests. While there were some overall successes, a process of engaging tribal elders in learning to claim their rights in an environment that so strongly militated against them generated frustration. Lawyers and NGOs who took cases to court faced threats. In contrast, domestic violence, an entrenched but less politically sensitive problem, allowed more latitude as an entry point for working towards the broader goal of increased access to justice.

UNDP had initially responded to a request from the Government of Cambodia to include initiatives to disseminate legal information as an integral part of the existing project. These were a diversion from the project's planned focus on local alternative dispute resolution mechanisms, and implementation was stalled by an absence of genuine buy-in. Government officials and NGOs were unwilling to participate in populating a human rights database—due to resource constraints for the former, and fears of rubberstamping government activities for the latter.

The broader dissemination of the Official Gazette never took off because a donor partner maintained that it would be better to distribute it for free on the internet. National partners who had been publishing it resisted the idea because they had been charging for it, and publishing it online would have meant a loss of revenue. They also stressed that internet access, especially in outlying areas, remains sporadic in Cambodia.



In **Sri Lanka**, the access to justice project was grounded in the notion that improved access would contribute to peace and reconciliation. While national partners initially endorsed this approach, the political climate changed dramatically when major military operations resumed in 2006 and internal conflict exploded. The project adapted as events unfolded by, for example, placing greater emphasis on people in conflict areas, but it did not fully grasp the ramifications of its detailed national survey on access to justice for vulnerable groups. The government came to see this as a threat to stability, and in 2008 shut it down after data had been collected from only 13 districts.

Realistic project design

Overambitious project design plagued several projects. This is perhaps explained by the fact that the human rights-based approach to access to justice was a relatively new programme area for UNDP at the time, and by the complex dimensions of the issue.

The **Sri Lanka** project tried to pursue too many activities, for example, which dif-fused project results and raised questions about the sustainability of the project as a whole. The formation of a project board comprising too many high-level members meant it could not meet frequently enough to provide adequate support. After the project's first phase, the major donor withdrew. A regrouping improved its focus for the second phase. This included a narrower emphasis on specific dis-advantaged groups most in need of support, and the selection of a smaller and more effective project board.

The project in **Indonesia** planned to establish local partnerships, structures and coordination mechanisms to implement initiatives identified in its access to justice assessment. Little progress was made for reasons that include a lack of coordination and monitoring capacity on the ground. A Community Initiatives Fund to respond to immediate community needs never took off, because the scope proved too demanding, although a similar strategy later became central to the LEAD programme.

Similarly, some projects encountered research challenges not addressed during the project design phase. The **Sri Lanka** project initially took too broad an approach, arguably because it had not invested sufficiently in identifying the people it was trying to reach.

In **Cambodia**, one issue that was not detected during the project design phase was the need to foster public confidence in alternative dispute resolution mechanisms, beyond the tacit assumption that the potential beneficiaries would use and trust them if they are there.

In **India**, the quality of research was hampered by the use of court cases as primary sources for project reports. This shed light on the situation of those who reach the courts, but ignored those who do not. The project consequently dwelt on general judicial system problems that affect poor and disadvantaged people, but made a more specific analysis of the multiple obstacles they face in gaining access to justice difficult.

Assessing capacity

All projects would have benefited from initial capacity assessments covering both UNDP and national partners. These could have helped to avoid some stumbling blocks.

In **Sri Lanka**, project officers with limited background of the human rights-based approach and access to justice programming initially leaned towards prescriptively applying the access to justice guide without giving sufficient attention to the national context in which the project was conceived. This tendency was later tempered by hands-on training.

In **Indonesia**, the project did not anticipate capacity gaps among local partners more often than not unfamiliar with a human rights-based strategy. When the Centre for Rural and Regional Development Studies at Gadjra Mada University, the main implementing partner on the access to justice study, resisted the approach, UNDP effectively imposed it. Regular technical inputs and coaching



were required. It was difficult, for example, to convince the Centre for Rural and Regional Development Studies to go beyond community leaders and speak to a range of community members when conducting the research. The LEAD initiative has taken a more focused approach to capacity development as a result of these experiences.

Balancing rights

Finally, most of the projects herein reviewed placed strong emphasis on claim holders and grass-roots level work, as well as on individual rather than group rights. While this produced results, and in some cases may even have been a necessary counterbalance to the longstanding emphasis on judicial institutions, it hampered broader policy achievements. Institutions and people with a duty to uphold human rights were not necessarily better prepared to respond to those seeking access to justice.

In **Sri Lanka**, for example, while documentation was provided to 127,000 persons, no lasting systems have been created to ensure that legal services are routinely available. The root problem of inaccessible and inefficient state administration remains.

The **Cambodia** project, with admirable achievements in terms of setting up alternative dispute resolution mechanisms at the local level, made no progress at the national level. Project advancements have been sustained mainly by continued donor investments and enthusiasm among members of the commune dispute resolution committees.

In the case of **Indonesia**, where the project has a strong impact on policy, broader partnerships might have extended this achievement even further. UNDP's main counterpart was the Directorate of Law and Human Rights at the National Development Planning Agency. The agency has been closely engaged and is equipped to carry the project forward, but other beneficial associations could have been struck with, for example, the Supreme Court, the Ministry of Law and Human Rights and the Attorney General. Under a new

system for judicial administration, the court in particular is now implementing a broad judicial reform programme with many aspects that relate directly to access to justice.

4. Key Lessons and Recommendations



Based on comparative analysis of the achievements and limitations of these DGTTF access to justice projects in the Asia and the Pacific region, the following key lessons and recommendations for future programming have emerged.

- A human rights perspective can improve problem identification. It can target groups and help define the most effective entry points for access to justice programming. It aims to protect poor and marginalized people by emphasizing their rights, but more work needs to be done to demonstrate its links to poverty eradication. Future access to justice programmes could explore these connections, perhaps referring to the Indonesia survey's findings on corruption and inequitable access to public services.
- UNDP should deepen its context and situation analyses to include aspects of political economy related to access to justice. This would assist in better understanding the programming environment in a given country or area, including the power structures and relationships that may favour change or obstruct the achievement of project objectives.
- DGTTF project managers should pay particular attention to ensuring the sustainability of results beyond the project's duration. Client surveys could be one way of measuring whether or not a human rights-based approach is being upheld over the longer term. Successful innovations and results could be dispersed to larger programming and development interventions, fostering a critical momentum behind development change. An exit strategy should be in place for projects that are scaled up.
- Given that DGTTF projects are by their nature innovative, which implies greater implementation challenges, perseverance is extremely important if initial investments are to pay off. There may need to be additional resource allocation from UNDP country offices, as was the case in Indonesia.
- The success of DGTTF projects depends on choosing credible partners and managing expectations. Even when NGOs are implementing UNDP projects, UNDP should continue to play a facilitation role and maintain direct involvement in implementation. Many NGOs still lack sufficient influence to advance sensitive agendas with government. Some are unfamiliar operating under a human rights-based approach to programming.



- It is important to balance ‘demand and supply’ by empowering rights holders, but also ensuring that duty bearers are equipped to uphold their rights. As the Sri Lanka project demonstrates, this is an issue of effectiveness and sustainability. In that case, it was not enough to provide people with temporary services, because permanent systems and institutions essentially remained unchanged.
- While the protection of individual rights is integral to access to justice, greater emphasis could be placed on group rights and strategies to uphold them. Public interest litigation, for example, produces legal precedents and policy changes.
- More could be done to foster engagement between formal and informal justice mechanisms. As the Cambodia project discovered, marginalized people in particular may have more initial trust in local, informal mechanisms where they have a greater voice in the justice process. At the same time, informal mechanisms, like formal systems, need to be scrutinized for any entrenched discrimination based on economic standing, gender, ethnicity and so on.
- Future projects would benefit from additional research to anticipate and adjust to potential risks and benefits for target groups. This is especially important for groups marginalized by forms of discrimination that the project may challenge. Women who seek judicial remedies for domestic violence, for example, can suffer severe family and community repercussions.
- The projects confirmed the value of intensive research that produces high-quality empirical evidence. While research on this scale can require significant investments of time and resources, it helps to produce a powerful advocacy case, improves the accuracy and impact of programming, and lays the foundation for expanded programming. It should be factored into access to justice initiatives particularly where existing information is limited or nonexistent, as is often the case among marginalized groups.
- The community of practice was an invaluable asset to the access to justice work, but sustaining it and ensuring it reaches its full potential will require substantial support in terms of staff time and resources. A smaller community has proven

more conducive to building trust among members, suggesting that expanding membership should be carefully planned.

- The practitioner's guide, *Programming for Justice: Access for All*, should be retooled based on the assessments and project experiences. This might include emphasizing the messages that human rights-based access to justice projects need to be carefully tailored to diverse contexts, and that there are no prescriptive solutions. It should also create stronger links to work on legal reform.

DGTF Lessons Learned Series – Project Assessments in the Asia and the Pacific Region:

UNDP, *Cambodia Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

UNDP, *India Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

UNDP, *Indonesia Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

UNDP, *Sri Lanka Country Assessment—The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

UNDP, *Mongolia Country Assessment – Integrity in the Health Sector*, Bangkok, New York and Oslo, 2009.

UNDP, *Regional Assessment – The Asia-Pacific Rights and Justice Initiative*, Bangkok, New York and Oslo, 2009.

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