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Sharing Experience in Access to Justice

Engaging with Non-State Justice Systems & Conducting Assessments

Access to Justice Week
Summary of Presentations and Discussions

October 2010
UNDP Asia Pacific Regional Centre

Sharing Experience in Access to Justice: Engaging with Non-State Justice Systems and Conducting Access to Justice Assessments

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Introduction

This report summarises the presentations and discussions from the Access to Justice Week in October 2010 in Bangkok, Thailand, hosted by UNDP Asia-Pacific Regional Centre.

By 'access to justice', UNDP means "the ability of people, particularly from poor and disadvantaged groups, to seek and obtain a remedy through formal and informal justice systems, in accordance with human rights principles and standards." Access to justice supports the consolidation of peace by creating the conditions necessary to allow people to resolve legitimate grievances, which might otherwise lead to social conflict. Furthermore, it empowers people to defend themselves and improve their lives and livelihoods. Therefore, accelerating access to justice is consistent with UNDP's strong commitment to the achievement of human development, where peace, justice and poverty reduction are simultaneously attained.

UNDP as an institution also has a particular commitment to follow and to facilitate the human rights-based approach (HRBA) to programming in development work, in order to address the structural issues underlying poverty and injustices and to assist the most vulnerable and the disadvantaged in the society. In the Asia region, UNDP has already published a programming guide and training manuals on access to justice for practitioners. These tools have been much appreciated by those engaged in A2J initiatives, both within and outside UNDP, and within and outside Asia.

In this context, the Access to Justice Week in 2010 focused on sharing experience and facilitating critical discussions among practitioners, academics, and policy makers on two important subjects in this field, namely engagement with non-state justice systems and access to justice assessments. The Week consisted of two separate yet related events: 1) Non-State Justice Systems: Principles and Practices Symposium (4–6 October 2010); and 2) the Regional Consultation on Access to Justice Assessments (7–8 October 2010). The Week had participants from institutions and organisations such as National Legal Services Authority in India, the Supreme Court and Civil Court of the Maldives, the Economic Social and Cultural Rights- Asia, TIFA Foundation Indonesia, the Alternative Law Groups, Asia Foundation, Open Society Justice Initiative, World Bank Justice for the Poor Indonesia, International Council of Jurists as well as UNDP country offices and universities.

This report provides a snapshot of the presentations made by the participants and key points of discussions during the Access to Justice Week. This report is divided into two sections according to the following two thematic events.

Non-State Justice Systems: Principles and Practices Symposium

UNDP has been seeking entry points for working with non-state justice institutions, having regard not only to their accessibility, and the recourse taken by people to those institutions for resolving a multitude of disputes, but also to serious concerns from the normative standpoint of international human rights law about inherent biases in non-state systems, especially about gender-related justice outcomes. As such, critical reflections and knowledge-sharing are important to improve the way we think about and design programmes for non-state justice systems, as part of efforts to strengthening access to justice for the poor and the marginalized.

In this context, practitioners, academics, civil society and government representatives were invited to the Access to Justice Week to discuss existing policy, analytical literature, and field experience with non-state justice systems. From this, participants were encouraged to consider common themes, which could then lead to the formulation of some key 'principles of engagement' to maximize the potentials and benefits of engaging with the non-state justice systems. During the A2J Justice Week, the discussions on non-state justice systems highlighted difficulties in formulating general principles of engagement of state justice systems with non-state systems in the context of widely prevalent legal pluralism. They underlined the inevitability of adopting an 'anthropological' approach to the existence of both state and non-state systems, which means addressing particular questions that arise from particular contexts and real life experiences. Nevertheless, key recommendations for programming purposes were made in the course of discussions – for instance, no programming in this area should be taken up without adequate research and full involvement of the constituencies that give non-state justice actors their legitimacy and influence over community norms and behaviour.

Regional Consultation on Access to Justice Assessments

Access to Justice Assessments (A2J Assessments) are integral to efforts to integrate a strong pro-poor perspective in justice reform. They offer a methodology framework which specifically seeks the perspectives of disadvantaged groups about justice services they currently receive from both state and non-state providers, and how they should be improved. This is critical in terms of understanding who has access, and importantly, who does not, and why. Previous assessments have highlighted a broad understanding of justice as equality, fairness, accountability for abuse of authority and access to remedies for grievances among communities surveyed. Assessments are useful not just for academic research purposes but also in terms of policy and planning for government and civil society. Assessments can also be a powerful means of bringing about social and political change by raising awareness of laws and rights and by building capacities of communities to articulate their claims. The process of undertaking an assessment can convene various stakeholders and stimulate dialogue on initiating reform processes to address access to justice issues and enhance the lives of disadvantaged groups.

Within the Asia-Pacific region, UNDP A2J Assessments have been started or completed in several countries. APRC supports UNDP Country Offices in conducting assessments by providing technical support in the design, particularly the development of tools and questionnaires; with sourcing international expertise when needed; and, with delivering workshops to familiarize the counterparts and assessment teams on the HRBA and access to justice.

The Access to Justice Assessments Regional Consultation was an opportunity for UNDP Country Offices and practitioners to share their own experiences and lessons learned. Participation from a broad range of countries (such as Indonesia, Sri Lanka, the Maldives, Viet Nam, Mongolia, Cambodia, Timor-Leste, the Philippines, India, and Pakistan) provided a rich basis for discussion and learning on the challenges and opportunities encountered in designing and conducting the assessment, as well as disseminating and utilising findings for policies and programming. Similarities and differences among various assessments were highlighted, and an open discussion was held on what worked and what would be done differently by practitioners.

This report complements a companion publication, *Access to Justice Assessments in the Region: A Review of Experiences and Tools from the Region* (UNDP 2011), as well as a forthcoming global study report on non-state justice. Taken together, these publications should provide critical pointers to programme staff about how to engage with non-state/traditional/customary/informal justice systems, as they are variously described, and should motivate practitioners to adhere more closely to UN System's commitment to adopt the HRBA, especially in the context of justice and human rights related projects. As a follow up to the Access to Justice Week, APRC in 2012 will make ongoing efforts to strengthen access to justice and human rights in the region, including: assistance to UNDP country offices in conducting access to justice assessments (notably in Sri Lanka); study of the impact and lessons learned from conducting capacity needs assessment of national human rights institutions; facilitation of activities and dialogues to create a sub-regional human rights mechanism in South Asia; and support to the ASEAN human rights bodies.

Without exception, we benefitted tremendously from the insights and expertise of all the resource persons and participants in the Access to Justice Week workshops, and we are grateful to everyone for actively sharing their experiences and knowledge. Special thanks go to the organizing team of both events: R. Sudarshan, Emilia Mugnai, Aparna Basnyat, and Johanna Cunningham. Mila Sopova was the Rapporteur for the workshop, and Ahjung Lee also contributed in editing this report. Lastly, we acknowledge the financial support from the UNDP Global Access to Justice and the Asia Regional Governance Programmes, without which the events and this report would not have been possible.

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Table of Contents

Executive Summary

In October 2010, UNDP Asia Pacific Regional Centre (APRC) in Bangkok hosted a weeklong knowledge sharing event on two key access to justice issues in the region: engaging with non-state justice systems and conducting access to justice assessments in the region.[1] Since there has been significant interest in both of these areas demonstrated by UNDP country offices in the Asia Pacific region, UNDP APRC sought to bring together academics and practitioners to discuss key challenges and opportunities in engaging with non-state justice systems and in conducting access to justice assessments, so as to share best practices and lessons learned for better programming and to ensure that interventions in the region are grounded firmly in human rights standards. The following report captures some of these discussions.

Engaging with Non-State Justice Systems (NSJS) to Enhance Access to Justice for the Poor

Non-state justice systems are complex and varied structures. They exemplify the relationships between authoritative (often poly-centric) powers within communities and their constituents who legitimise those authorities. These systems, their processes and procedures, embody and reflect community values and identity. As such, they are dynamic and evolving structures, capable of both shaping and responding to socio-economic dynamics within a community.

For development organisations and justice practitioners, non-state justice systems demand particular scrutiny. On one hand, as highly accessible, culturally legitimate sources of authority they are valuable in settling community disputes, enabling people to collaborate and cooperate. On the other hand, they can perpetuate cultural biases and be discriminatory, creating more barriers to equality and empowerment.

Increasingly, development agencies are working with non-state justice systems to improve access to justice for marginalised and poor communities. UNDP, for instance, has been working with non-state justice systems in Afghanistan, Indonesia, Lao PDR, Nepal, Pakistan, Timor-Leste, and Viet Nam. These development partners and their national counterparts are grappling with the practical implications of working with such pluralistic legal systems.

Critical questions include: How can external development partners support processes of positive change within non-state justice systems without undermining their legitimacy, inhibiting their dynamism and responsiveness, or disempowering community actors? In the case of non-state justice systems, which are contextually specific and vastly diverse, could there be best practice or guiding principles for agencies working on improving access to justice?

Participants at this symposium were invited to discuss existing policy, analytical literature, and field experience with non-state justice systems. From this, participants

1 UNDP Asia-Pacific Regional Centre is grateful to all participants in the Access to Justice Week workshops. Academics, practitioners, government and civil society representatives engaged in lively discussion which was provoked by insightful presentations. We acknowledge that this report cannot do full justice to the richness of the dialogue. The points associated with participants named in this report are drawn from notes, which may not completely convey the import of the concerned participant's intended meaning. Available papers are posted to the A2J Portal: www.a2jportal.org. The Access to Justice Week was organized by the justice and human rights team of UNDP APRC Democratic Governance Unit including R. Sudarshan, Justice and Legal Reform Policy Advisor, Emilia Mugnai, Justice and Human Rights Policy Specialist, Aparna Basnyat, Human Rights Specialist and Johanna Cunningham, Legal Empowerment of the Poor Consultant. Mila Sopova was the Rapporteur for the workshop.

were encouraged to consider common themes, which could then lead to the formulation of some key 'principles of engagement'. After two and a half days of deliberations however, it was evident that the complexity and contextual-nature of non-state justice systems defy encapsulation in a definite set of principles of engagement.

However, clear recommendations for programming purposes were often made in the course of discussions. Among them is the recommendation that no programming in this area should be taken up without adequate research and full involvement of the constituencies that give non-state justice actors their legitimacy and influence over community norms and behaviour.

Some Key Points on engaging with NSJS

Research – *Are we asking the right questions? How is the problem identified?*

Who identifies the problem is important. Concerns with non-state justice systems identified by the state may not reflect concerns of the actual users. Likewise, values espoused by international development partners may not resonate with existing community norms. If there are no local champions to espouse an alternative set of norms and values, there remains the risk that desirable changes in current community norms may not come about. Moreover, activism on the part of international actors in this arena carries the risk of defining the issues as a conflict between two sets of norms that are incommensurable or irreconcilable.

The notion of 'injustice' was identified as a starting point better suited to identifying more holistic solutions. In this context, the entry point for engagement becomes 'people's grievances', or discriminatory actions against particular groups, i.e. horizontal inequalities[2]. Such a programmatic focus directs attention to the *purpose* and *function* of justice systems, rather than only the *forms* of justice systems.

While identifying problems, we must also 'identify ourselves': How do we manage our own self-awareness? What can be achieved by expanding community-awareness raising? What is the role of international actors in systems of governance and organisation established through custom? Are interventions having the desired affect? Rather than measuring awareness levels raised, agencies should seek to measure *impact* – what are the tangible results of the programme and has the user's experience improved.

[2] Francis Stewart, 'horizontal inequalities', forthcoming.

Programming tools – *What kind of programmatic initiatives can support more holistic approaches to expand access to justice?*

Providing Platform for Dialogue on Injustices and Just Solutions

Where international development partners are perceived to be neutral, they can provide a platform for dialogue. They can support state authorities, non-state justice actors and community representatives to discuss issues of injustice and 'just solutions'. Further, they can catalyse community-based discussions on these issues which could lead to constructive proposals for change and reforms in the understanding of justice.

'Supporting the good struggle'

Research is needed to locate 'critical insiders' – those who are questioning prevalent norms and who are committed to transformative change. These are the people that can bring about changes from within the community itself. External partners can help ensure that the communities themselves resolve normative conflicts by confronting normative dilemmas.

Paralegals

Training laypersons with sufficient legal knowledge can be a cost-effective means of making legal services more accessible to people. Paralegals who have familiarity with both the formal and non-state systems can bridge the two, to benefit seekers of justice. Often, as members of the community, they will be known and trusted and can counter ill will and negative feelings towards professional lawyers and the formal system. However, paralegals who are perceived to push justice seekers towards mediation or towards particular outcomes will compromise the neutrality and trust which their position requires. Therefore, there must be clarity in the purpose of paralegals including a clear mandate and appropriate training.

Codes of Conduct & Demarcation of Jurisdiction

It is essential to provide platforms for deliberation on the demarcation on jurisdictions between non-state and state systems so there is consensus on which crimes should be handled by the state and what redress is best provided through non-state systems. There is the risk of 'vigilantism' should the state fail to meet the community's needs for justice and security. Retributive justice meted

by self-appointed agents will often be violent, lack due process and result in irreversible consequences. Non-state justice actors can be encouraged and supported to develop codes of conduct for themselves to ensure due process and reduce arbitrariness in their modes of making decisions as well as to ensure increased fairness, clarity, and standard procedures in dispute resolutions.

'Substitution' – eliminating harm whilst maintaining harmony

In the course of resolving disputes, traditional communities often tolerate what could be seen as violations of human rights in the interest of 'balance' or 'social harmony' between disputing parties and also in the community as a whole. In such cases, creating space for discussions on what is 'injustice' with a broader perspective could help the communities to find alternative ways of dealing with such issues, so that more fair and transparent justice outcomes for the victims can be made without criminalising a party or naming certain practices as human rights violation.

Training Manuals

It can be strategic and effective to develop training manuals for non-state justice actors that reflect their local values (e.g. religious norms) while identifying legal and human rights standards. Such trainings can help develop their legal knowledge in culturally sensitive ways and reduce discrimination and arbitrary decision-making as a result. For instance, discussing human rights issues through the application of verses of the Qur'an, other religious texts, local folklore, or particular traditions can lead to greater understanding and acceptance of human rights standards and legal norms among non-state justice actors.

Roles of government – *Duty to Engage with the NSJS?*

Under the human rights-based approach, the state has the duty to protect human rights and provide access to justice for the claim-holders. The need and potential scope for governments (both local and central) to engage with non-state justice will be circumscribed by specific contexts. 'Problematising' the interface between the state and non-state justice systems then requires adequate research into the capacity and willingness of the state to work towards the realisation of rights.

Roles of external partners – *Do No Harm*

An understanding of the risks of a sudden or large infusion of donor funding into community-based justice systems is important. Non-state justice systems normally do not need large amounts of external resources, and any additional resources must be invested in ways that do not upset the existing social structures and distribution of power and influence within the community.

Since making positive changes in non-state justice systems is a long term project, there is always the risk that short-term project horizons of external partners can cause more harm than good. Therefore, such interventions should be designed only after adequate research leading to a proper understanding of such poly-centric power equations within the community.

Regional Consultation on Access to Justice Assessments

The second component of the Access to Justice Week – the Regional Consultation on Access to Justice Assessments was an opportunity for UNDP Country Offices and practitioners who have conducted access to justice assessments to come together and share their experience and lessons learned in designing and conducting access to justice assessments as well as in utilising the assessment findings to influence policies and programmes.

The experience from a broad range of countries such as Indonesia, Sri Lanka, the Maldives, Vietnam, Mongolia, Cambodia, Timor Leste, the Philippines, India, and Pakistan provided a rich basis for discussion and learning on the challenges and opportunities encountered in designing and conducting the assessment as well as analyzing and disseminating findings and building partnerships. The similarities and differences between the assessments were highlighted and a open discussion was held on what worked and what would be done differently by practitioners to achieve better results.

The consultation also benefited from the participation of various institutions and programmes such as National Legal Services Authority in India, the Supreme Court and Civil Court of the Maldives, the Economic Social and Cultural Rights – Asia, TIFA Foundation Indonesia, the Alternative Law Groups, the Asia Foundation, Open Society Justice Initiative, World Bank Justice for the Poor Programme Indonesia, International Council of Jurists, as well as several UNDP country offices in the region. Participants also provided valuable and concrete recommendations which will contribute to a review and mapping of access to justice aasessments in the region supported by UNDP APRC.

Key Points on Conducting A2J Assessments

- Participatory action research is a way to empower people in the process of conducting an assessment – the assessment itself can be a political process to initiate change.
- The assessment can strengthen ownership of national partners – government and civil society -in the data collection process and contribute to national data collection effort. National ownership and strong political will to carry forward the assessments and uphold the findings are critical, if we want the findings to influence national policy. At the same time, it is important to ensure that other local stakeholders – including customary authorities – also participate in the assessment to ensure buy-in.
- A significant investment of time and resources is necessary to apply a human rights-based approach in the assessment and to properly conduct participatory consultations. This is particularly relevant when assessments seek to build local capacities and skills as part of the assessment process.
- Note that translation can provide many challenges especially in translating such complex concepts such as "justice" and precautions and extra efforts need to be made to ensure appropriate translation.
- Explore alternative means of collecting information such as the use of paralegals to strengthen participation in projects and promote dialogue within the community members.
- Choose carefully an appropriate time to initiate for an A2J assessment. In times of conflict or transitional periods, access to justice assessment can touch on very sensitive issues, and may not be condusive to peace building. Furthermore, there are additional risks involved in terms of safety of the teams and suspicions regarding the motives behind the assessments.
- Discern and assess expected benefits as well as potential risks of using local data collectors to deal with sensitive information (especially in conflict or post-conflict situations) .
- Sometimes the best results of the assessment can be unanticipated ones.
- Explore creative and innovative tools to enrich the assessment process, from the data collection stage (e.g. use of PDAs and storytelling format for questionnaires) to the dissemination of findings (e.g. through documentaries and street theatre performances).
- Media can be a powerful tool to publicize results of the assessment and to encourage positive action on recommendations from the assessment. The assessment process should find ways of partnering with the media, such as inviting journalists to take part in the assessment, holding press conferences, developing documentaries, hosting photo exhibitions, etc.
- If it is not possible to conduct an access to justice assessment, it may be useful to incorporate access to justice elements into other ongoing assessments/ surveys.
- In data analysis, be aware of and avoid analysis deadlock and 'paralysis out of too much analysis'.
- Monitor the impact of access to justice assessments – what happens after the assessment and how it influences policies and programming. In particular, document whether and how the assessment translates into a process of strengthening access to justice for the beneficiaries (i.e. obtaining remedies for grievances).
- Assessments are expensive and time consuming and it would be beneficial to ensure donor coordination in conducting assessments to avoid duplication and 'assessment fatigue'.
- Be sure to document processes in conducting the assessment including partnership building and ensuring government buy-in, so as to generate useful lessons learned for other countries.
- Ensure that best practices and lessons learned are shared of what works and also of what does not work in conducting access to justice assessments.

Some recommendations that emerged from the consultation include:

- Set realistic objectives that are commensurate with available resources.
- Establish and revise objectives based on people's priorities as identified by the civil society, government or public survey, feasibility upon the given time-frame and resources. It is useful to think in terms why the assessment is being conducted and for whom.
- Maximize government partnership to minimize risks and negative consequences; government endorsement is critical to ensuring the utilisation of the assessment results. It is useful to identify and collaborate with a 'champion' within the government who can oversee and support the implementation and utilisation of the assessment.
- Local participation and capacity building should the key and guiding principle in any A2J assessment. Assessments should help to build local capacities through their processes.
- Select a good translator for a successful involvement of the community in the assessment process.

- Team composition should consider how the findings of the assessment can be disseminated. For instance, journalists and documentary filmmakers can be invited in addition to social scientists and legal experts.
- Focus more on the quality rather than the quantity of the research sample.

Lastly, recommendations included suggestions to move away from developing a toolkit or specific guidelines (since it would be difficult to develop universal approaches given diverse local contexts), and instead develop a review and analysis report that highlights the implications of different choices employed in different assessments. Such publication could include short case studies written by those practitioners who conducted different assessments. The case studies could provide a rich and contextual discussion of key issues such as how to define objectives, ensure ownership, develop appropriate targets, tailor to the local context, analyse pros and cons of particular approaches, and engage in partnership building.

PART I:
Engaging with Non-State Justice Systems (NSJS)

Introduction

The following discussions were informed by presentations by:

Marc Galanter, Professor of Law Emeritus, University of Wisconsin

Vijay Nagaraj, Research Director, International Council on Human Rights Policy

Erica Harper, Senior Rule of Law Officer, International Development Law Organisation

There is a notion that law is made by the state, legislators and judges and that this rule of law permeates society and regulates social behaviour. Therefore, it is assumed, society reflects the great pyramid of legal order. Yet, as we go through life we discover it is not exactly that way.

'Pluralism', 'Non-State', 'Informalism': each of these terms represents a departure from regulated, pyramid-like legal order, and suggests a counter-utopia, characterised by a lateral exchange rather than hierarchical authority.

However, the term 'informalism' is a very elusive concept: When a tribunal labels something 'informal' what exactly does it mean? It can mean that decisions made are non-binding, or that procedures depart from those of a state established court system. If the formal meets at a specified place, during a specified hour, by people who wear distinct clothing, and render decisions based on specified rules, is the absence of any one of these informality?

Legal pluralism often presents a confused landscape where we must remember that not everything is as it is labelled. Like animals disguised to fool predators and prey, we find 'informal' systems and formal systems often use or reject each other's characteristics to serve specific purposes.

In spite of claims made by promoters and defenders, none of the terms – formal, informal, state and non-state – can be referred to as a homogenous 'good thing'. There is no formulaic loyalty that can be drawn to any of these terms. We should be sceptical of generic claims of moral superiority and judge each scheme meticulously based on its particulars.

Issues of 'injustice' will be more effectively addressed by moving from a frame focused on the dispute, to look at the dynamics of the situation in a wider frame. For instance, when the Supreme Court of India undertook the case to free bonded labourers twenty years ago, the court successfully declared the cessation of such practices. But 20 years later, practices have not changed significantly, because the Court did not understand the complex dynamics and underlying causes of bonded labour and the court's ruling provided no real incentive to change. Most workers today still have no claim and no means to claim their rights. In other words, on the books, the law was inspiring; but on the ground, it had little effect.

> *"If conversations about human rights in plural legalities are restricted to binaries, ('culture' versus human rights, 'traditional versus modern') then real ways of protecting rights on the ground becomes obscured by terminologies and apparent competing interests."*

Modifying social norms and behaviours involves more than simply a change in legislation or policy. We should be alert to identify the underlying conditions and provide strategic and holistic assistance that can address injustice on the ground.

Human Rights and Non-State Justice Systems: 'Recognising the particular, based on the universal'

When examining non-state justice systems and their role, terminology is not just a question of semantics. The terms are highly political, speaking to the users and the power players.

Where human rights principles and values are threatened, it becomes important to reflect on how legal reform can safeguard principles, while at the same time making sure that it does not advance certain narrow versions of what is 'legal'. There is a strong tendency to institutionalise the asymmetries of custom and law. If conversations about human rights in plural legalities are restricted to binaries (e.g. 'culture' versus human rights, 'traditional versus modern'), then real ways of protecting rights on the ground becomes obscured by terminologies and apparent competing interests.

To overcome such black-and-white approaches, it is necessary to recognise the debate as a political issue – despite it often being posed as an issue of contested 'cultures'. The power of law lies in making the weak powerful and thus shaping social realities. For example, indigenous peoples' claims are often considered acceptable, so long as they are framed as a human rights issue. They often become less amenable when framed in terms of 'self-determination'.

International human rights law can be used to legitimise certain claims to civil, political, social, economic and cultural rights; however, when referencing international human rights law, it must be remembered that the results are a negotiated compromise between states. This is not to say that human rights standards and laws are not relevant, but it becomes critically relevant to ensure that justice programming takes its direction from the struggles and principles of human rights, rather than the results of negotiations between states. Justice should be remembered as an enduring political negotiation, one in which supporters use and evoke rights not just as legality, but as political legitimacy.

When we look at legal empowerment of the poor, we must ask, who are we talking about? Are the poor easily identified? How do we 'unpack' poverty itself? Are we trying to save those who are already victims of the law, through 'more law'? What is the rationale behind our intervention?

Development agencies generally seek to apply general principles and standard frameworks to their responses. However, when working in the absence of such standards, we are required to go beyond wholesale approaches and to take on more 'messy' approaches which require political commitment and a wholly different vision.

> *"There is no formulaic loyalty that can be drawn to any of these terms. We should be sceptical of generic claims of moral superiority and judge each scheme meticulously on its particulars."*

Engagement with Non-State Justice Systems: 'Enhancing legal empowerment through engagement with non-state justice systems'

For those seeking to engage with non-state justice systems, there is a common expectation to enhance the strengths and mitigate the weaknesses of non-state justice systems. This has led to a 'fix it' approach where solutions are applied to specific weaknesses within non-state justice systems. These may include more representative dispute resolution, codification of customary rules, establishment of jurisdictional limitations, specific practices proscribed by legislation, among others.

However, 'fix it' solutions often simply challenge vested interests, provide few returns and present no better alternatives. Limiting the jurisdiction of non-state justice systems in certain instances (e.g. violent crime, rape, murder, etc.) can create a vacuum of remedy in these instances if the formal system is unable, unwilling or not welcomed to respond. Similarly, the act of codifying customary practices to ensure predictability of results can risk locking communities into narrow, static interpretations of certain norms, while undermining the positive aspects of the non-state justice, namely flexibility and intuitive decision making.

There is a movement towards approaches that seek to expand choice and place power in the hands of disputants themselves, as changes to customary norms driven by bottom-up or competitive forces are more likely to be sustainable. Justice programmers should consider instead empowering non-state justice system users to make choices and expand their freedoms in accessing and participating in justice services. By providing more options as to where individuals can resolve their disputes, often incentivized through better protections, non-state justice systems are capable of reforming themselves to maintain legitimacy based on the expectations of the community.

Encouraging competitive forces can include enhancing access to the formal justice system through court reform procedures, and expanding access through mobile courts and legal aid. Alternative sources of justice can include NGO-led mediation and community-based paralegals.

> *"There is a movement towards approaches that seek to expand choice and place power in the hands of disputants themselves… Justice programmers should consider instead empowering non-state justice system users to make choices and expand their freedoms in accessing and participating in justice services."*

Most significantly, change makers can be the users themselves. They can push for changes in their leaders and among themselves. This should be recognised and incorporated into any justice programming.

"Doing Harm" – Risk Awareness

The following discussions were informed by presentations by:

Dominik Kollhagen, Institute of Development Policy and Management, University of Antwerp, Belgium. *The National Institutionalization of a Local Justice System: A failed experience from Burundi.*

Meneka Guruswamy, Attorney, Supreme Court of India. *Accessing Injustice: Gram Nyayalayas/Village Courts in India.*

The Bashingantahe, Burundi – Delegitimising Local Actors

In Burundi, the *Bashingantahe*, a 'council of wise men', once held a central role as independent councils capable of resolving minor disputes and claims in the community. Major crimes were deliberated by village Chiefs and/or the *Mwami* (king). Under the colonial period, the Napoleonic/Belgian/Congolese legal system legalised apartheid. Many statutory laws were only available in French and customary systems, such as the *Bashingantahe*, were not recognized. However most people continued to use the customary councils.

In 1987 the *Bashingantahe* were integrated into the official legal system. The nomination procedures were almost exclusively controlled by political parties which used the nominations as a means of seeking political legitimacy.

After 7 years of civil war, the 2000 peace accord in Burundi provided new opportunities for the "rehabilitation" of the *Bashingantahe,* and UNDP financed a nation-wide programme to identify the "real" *Bashingantahe*. However, the process became increasingly politicised, and due to inadequate participation and consultation with local actors in the programme, the initiative ended up reinforcing the dominance of urban elites within the *Bashingantahe*.

After democratic elections held in 2005, the newly elected Hutu government decided to exclude the *Bashingantahe* from the formal judicial system again, and created democratically elected hill councils to work specifically on mediation, arbitration and conciliation in the local entity. Unlike the *Bashingantahe*, the hill councils had women elected to their boards and spoke a distinctly 'alternative dispute resolution (ADR)-oriented' language, which was perceived to be a very 'Western concept' by the locals.

> *"Research has shown that the interference in local dynamics was so disconnected from cultural perspectives and on-the-ground realities that it has almost completely discredited traditional authorities."*

Recent research has shown that the interference in local dynamics was so disconnected from cultural perspectives and on-the-ground realities that it has almost completely discredited traditional authorities. Further, frequent changes to the formal legal system have discredited state systems, as there is confusion as to which legal system is recognised and where access to remedy is guaranteed. There has been no improvement to citizen's ability to access justice in Burundi, and there is even an indication that access has decreased as a result of heightened interference.

Proper participation and consultation with the users of the *Bashingantahe* councils, and more detailed research into the nature of inter-ethnic relations could have provided justice programmes with better insight as to appropriate responses to the divisions between the non-state and state justice systems. Gradual reforms based on consultation would have been more sustainable; and the involvement of justice 'users' could have prevented elite capture and deligitimisation of justice suppliers and avoided bringing justice actors discredit.

Gram Nyayalayas, India – Poor Justice for Poor People?

The Gram Nyayalayas Act of 2008 provides for establishment of nearly 5067 village courts across India. The Act purports to provide access to justice to the citizens and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. A key purpose of the Act is to reduce court backlogs.

The Act declares that Gram Nyayalayas will be the lowest court of subordinate judiciary in a State, and shall exist in addition to the regular civil and criminal courts. At the same time, in order to speed up the case disposal, the Act has removed some basic procedural rights in the judicial system, such as the right to appeal[3], the right against self-incrimination, and rights to legal aid and legal counsel.

The jurisdiction of the Gram Nyayalayas covers certain crimes (such as theft, concealment, disposal and receiving of stolen property, and insult with intent to provoke a breach of the peace) and includes other offenses which are not punishable by death or imprisonment for a term exceeding two years.

It is also tasked with adjudicating disputes relating to social welfare legislation under the Payment of Wages Act, 1936, the Minimum Wages Act, 1948, the Protection of Civil Rights Act, 1955, the Bonded Labour System (Abolition) Act, 1976, the Equal Remuneration Act, 1976 and the Protection of Women from Domestic Violence Act, 2005.

Most social welfare entitlements and claims based on them affect people living in poverty. The creation of such a fast-track system has resulted in unequal access to justice by doing away with procedural rights in cases where poor people are the litigants, whilst those with resources can continue to access regular courts with all the procedural rights.

In effect, the Gram Nyayalayas has combined the negatives of the formal system with inherent weaknesses of the non-state justice system: results are binding, adversarial, and non-restorative, while there is no appeal, legal representation and support for the poor. The result is 'rough justice', considered to be 'good enough' for poor people: poor justice for the poor.

[3] Gram Nyayalayas Act, 2008, S. 19. States: "No appeal shall lie where an accused person has pleaded guilty and has been convicted."

> *"The creation of a fast-track system that takes shortcuts with procedural rights in cases where the poor are litigants, whilst regular courts maintain procedural rights for those who can afford it, creates unequal justice."*

Discussion

- In seeking to improve access to justice, it must be asked what is behind the decision to 'unburden' the courts in this matter? In favour of whom? Even judges at Gram Nyayalayas are generally less well trained. We need to look at social disempowerment from a wider perspective. Would fettering the right of the State to appeal actually have more impact on reducing the burden on courts?
- We need to consider our motives – why are we bringing about change? There is a tendency to urbanise the way we express concerns and the remedies we promote. Results achieved for urban populations cannot give less, to a lesser quality, while reinforcing hierarchical control. It should not become UNDP policy to blindly promote the 'urban'– and yet, often international agencies work with urbanised NGOs and hardly ever with social movements.
- Politicisation of the Gram Nyayalayas is significant. They are better imagined as little parliaments, rather than little courts. They are thoroughly political. If we pretend they are sources of justice like courts, we are disillusioning ourselves.

Gender Issues in Engaging with Non-State Justice Systems

The following discussion was informed by presentations by:

Hamid Afridi, National Project Manager, GJTMA Project. *Increasing Gender Justice through non-state means in Pakistan: The Gender Justice through Musalihat Anjuman Project.*

Tamara Relis, Assistant Professor, Touro Law School in New York and Research Fellow, London School of Economics *CEDAW Permeation in Mahila Panchayats and Nari Adalats.*

Discussant**: Usha Ramanathan,** Independent Law Researcher.

Gender Justice in Pakistan

The Gender Justice through *Musalihat Anjuman* Project in Pakistan has made a number of successes in increasing access to justice for women by establishing community-based Alternative Dispute Resolution (ADR) mechanisms.

Some of the critical challenges faced in accessing justice in Pakistan includes: high levels of poverty and low levels of literacy, outdated colonial legal frameworks, growing populations and meagre resources leading to an over-burdened formal justice system, and very weak enforcement of decisions. For women, additional social, economic and cultural barriers may further prevent them from accessing justice.

The *Musalihat Anjuman* (conciliatory bodies) at the grass roots level (Ward/Union Council level) provide for the amicable resolution of disputes through mediation, arbitration, or conciliation. The courts frequently refer cases for resolution to the *Musalihat Anjuman*.

Typically, cases at the *Musalihat Anjuman* include issues of inheritance, domestic violence, forced marriage and other illegal cultural practices, human trafficking, child abuse, and property disputes.

Critical success factors:

- The *Musalihat Anjuman* mediates disputes based on standards that draw from various sources such as the *Quran* and other Islamic scriptures, the Constitution of the Islamic Republic of Pakistan, existing cultural practices, as well as local government legislation.
- The *Musalihat Anjuman* recognizes strong achievements for its service providers and provides incentives and rewards to them for cases resolved according to best international practice.
- Through a cost sharing arrangement with federal and provincial governments, *Musalihat Anjuman* are established in 1,063 Union Councils, with 992 (93%) women members. Members are persons of integrity and good judgment who are respected in their communities.

Training on the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) influences decisions among Mahila Panchayats and Nari Adalats

Detailed studies of non-state justice systems, their actors and users, alongside comparable studies on formal or state systems, reveal insights and information as to how certain interventions can affect those seeking justice.

A study conducted across non-state, NGO-based 'women's courts', the *nari adalat* and *mahila panchayats*, lower formal courts, and court-linked mediations known as *lok adalats*, involved four hundred semi-structured in-depth interviews and questionnaires to gather information from victims, accused, family members, lawyers, judges, arbitrators and mediators in 200 cases.

The in-depth study of the actors and users of the *panchayats* and *nari adalats*, which focus on serving poor and marginalised populations in slum-like resettlement colonies, found a high level of understanding and implementation of international human rights principles and norms, particularly those defined by CEDAW, among decision makers when dealing with cases of serious violence against women. In comparison, such principles, particularly those of equality and autonomy, rarely featured in the decision making processes at formal, lower courts or *lok adalats*.

Generally, lawyer advocates and lower court judges processing cases involving violence against women in *lok adalat* proceedings did not feel that international human rights principles, including those enshrined in CEDAW, were pertinent to their cases. Thus neither the language nor the principles of international human rights such as equality or autonomy were utilised in case processing. Decision makers referred instead to mainly local customs and traditions as reason for verdict.

The study proposed three contributing factors for discrepancy in the application of human rights norms in the two settings:

- As there is no mandatory legal education for those who completed their legal training before CEDAW was ratified, those justice professionals may not be aware of such new international legal standards.
- Civil society organisations, especially those who have received regular training in international human rights laws and principles by various international agencies and external partners are more knowledgeable and apply that knowledge to their decisions.
- These female, non-lawyers, who are the adjudicators in the *nari adalat* and *mahila panchayat* are better able to appreciate multiple modes of disempowerment and empathise with the victims of injustice. This disposes them to greater sensitivity to a rights-based approach to decision making.

'Holistic Approach'

The *Mahila Panchayats* and *Nari Adalats* were also found to provide 'holistic case processing' not available through formalised courts also dealing with cases of violence against women. Members of the women's courts provide numerous follow up visits to former sites of abuse to ensure that their judgments and signed agreements

> *The data supports evidence that grassroots compliance with legal, international and other norms requires additional factors beyond the norms per se. These include local systems of legitimacy and sanctions which can have more influence on compliance than state sanctioned decrees.*

are being followed. These visits to victims, accused, and family members are considered by the community to be critical to the successes of the system in stopping violence against women. As community members themselves, the *panchayat* members were able to additionally use social pressure and public shaming to motivate perpetrators of violence against women to acquiesce to their judgments.

The non-state justice systems were often enlisted by poorer victims of violence as a means of obtaining compromise agreements with their abusers in order to peacefully return to, or remain in, their places of abuse. As poor, disempowered women, most likely to be living with her spouse's family, an adversarial court driven process against one individual may jeopardise her security at home. Cognisant of this, women's courts often first seek to educate, apply peer pressure, or establish support networks, rather than seeking criminal convictions.

Drawing Evidence-Based Conclusions

The data supports evidence that grassroots compliance with legal, international and other norms requires additional factors beyond the norms per se. These include local systems of legitimacy and sanctions which can have more influence on compliance than state sanctioned decrees.

Discussion

- We need to examine what actors in formal legal systems imagine are the advantages of non-state justice systems. This may include more flexibility and less formality, however attempts by formal justice systems to 'informalise', without acquiring at the same time the cultural understanding of non-state justice actors, can result in informality informed by continued bias or prejudice. For example, informally dealing with cases on women's rights in the formal system, without the required empathy for victims may not improve the situation of women.
- Human rights laws and standards are used by women's groups to advocate for rights. But to try and change customs and practices through a top-down system would be dangerous. We must remember, if it cannot be done in 50 years, we should not try to do it in a quick five years and risk deligitimising or making 'foreign' the genuine argument for women's rights.
- Human right standards are important, but they can mean something different locally. For example, 'untouchables' in India have for generations been told that they are not to be touched. A fundamental principle of human rights is the notion of 'bodily integrity' that no one, not even the state, may violate. Suddenly, untouchability is a key to human rights!
- The Gender Justice through *Musalihat Anjuman* Project scores advances in women's rights through a gradual process, in which they allow for the local customs and local traditions to take root in the new system and be accepted, while encouraging and endorsing positive outcomes for women.

Indigenous Peoples and Non-State Justice Systems

The following discussion was informed by presentations by:

Naomi Johnstone, the Research Council of the Chief Judge's Chambers at the *Waitangi Tribunal. Melding Indigenous Methods and Mediation In Melanesia: Lessons from a customary justice intervention in Bougainville.*

Sopheap Yin, Programme Advisor for Cambodian Indigenous Youth Associations. *Customary Practices of Indigenous Peoples in Northeast Cambodia: Working with Peace Tables and documenting customary practices.*

Discussant: **Chandra Roy**, Regional Indigenous Peoples' Programme at UNDP Asia-Pacific Regional Centre.

There is a need for creative approaches when considering legal pluralism, customary law and indigenous peoples. Multiple, layered identities and a traditional, yet dynamic culture make generalisations difficult when talking about indigenous peoples and legal pluralism.

Indigenous peoples are not statically bound in their traditional roles and nor does change limit their 'indigenousness'. Instead, it is an affirmation of their ability to adapt and accommodate as they alone deem fit.

There is a tension between the right to self-determination and the duty to conform to international human rights norms, if self-determination is understood to mean autonomy and exemption from compliance with

international norms. It is important to overcome this tension not by denying self-determination, but by focusing on what changes are needed in traditional normative systems and values in order to bring about consistency with universal human rights norms.

Gender Justice in Bougainville

In post-conflict Bougainville, Papua New Guinea, the Peace Foundation Melanesia, a mainland-based NGO, worked to increase dispute resolution skills among customary leaders, women and youth in a participatory way.

A study conducted on Peace Foundation Melanesia's training and methodology focused on topics including gender roles, mediation, and restorative justice techniques. The objective of the research was to understand the impact of this training for justice seekers, with a particular focus on the experience of women and cases involving gender-based violence.

Peace Foundation Melanesia's training had increased the skills of many of the chiefs and mediators engaged in dispute resolution, particularly by providing more opportunities for participation during the dispute resolution process. As a result, the satisfaction levels of users in relation to process and outcome were higher when the chief or mediator had received training.

The Peace Foundation Melanesia training had largely focused on procedural issues, and dealt minimally with strengthening human rights. However, by directing mediation skill development training towards women and youth, research showed that women could be empowered to offer alternative interpretations and solutions to serious issues facing women and youth, such as domestic violence and rape.

Female mediators were also found to deal with gender-based violence in different ways: changing the interpretation and application of legal norms and processes, while not deligitimising the non-state justice system with what is seen as 'radical' or 'incompatible' values at the expense of values of harmony in the community. Female mediators were more likely to consider 'alternate pathways' to justice, and were, in some cases, able to link victims to NGOs that provide specialised services to women in abusive situations.

External training however was unable to effect change on power asymmetries reinforced through decisions made by many chiefs. Despite mediation training, some disputants felt they were under significant pressure to agree to outcomes that reflected notions of fairness within the community.

Nevertheless, there is some potential for an external intervention to reform non-state justice systems. The findings of the research point to the development of an internal dialogue within the community, facilitated by engaging marginalized groups (such as women) in decision-making and thus challenging the dominant group's monopoly over the interpretations and applications of customary law. However, tackling power asymmetries and empowering the disempowered is a long term process that requires champions within the community who can give voice to it and define its struggle.

Customary Law in Cambodia

The UNDP Access to Justice initiative in Cambodia recognised the particular challenges facing the indigenous people and sought to address them by strengthening the capacity of the traditional authorities, raising awareness of government and political stakeholders to the situation of the indigenous peoples, providing legal representation and translation as required, and through experimentation with 'peace tables' – discussions involving customary leaders and local and national government officials.

These 'peace table' discussions shed light on challenges faced by indigenous peoples in Cambodia in accessing justice, namely: a lack of legal information in rural communities; exclusion from benefits of development initiatives; exclusion from formal power structures; lack of access to public services; land and natural resource insecurity; lack of official recognition of traditional authorities and customary law; and lack of legal representation and translation. They also acted as a conflict resolution mechanism, providing a platform for concerns to be voiced and solutions to be reached through discussion.

Cambodia's Land Law (August 2001) defines indigenous communities as 'a group of people that resides in the territory of the Kingdom of Cambodia whose members manifest ethnic, social, cultural and economic unity and who practice a traditional lifestyle, and who cultivate the lands in their possession according to customary rules of collective use'. Further, the law stipulates exactly who may be described as 'indigenous'.

The drafting of the national Land Law presented an opportunity to discuss and advocate for recognition of the rights of indigenous people to own land collectively. However, tying the definition of indigenous peoples so closely to land and land ownership raised concerns of inequality between indigenous people and lowland individuals. Indigenous peoples are less able to sell land parcels, whereas non-indigenous, lowland people can readily enforce purchase contracts with a title from the cadastre office.

> *Certain 'solutions' can and will be contested within communities – there is human agency. To assume that human rights is an abstraction, that it is not based on the struggle of individuals and agency, is a mistake.*

Given the spectrum of ministries and agencies with a role to play in the empowerment of indigenous peoples, the UNDP project partnered with the Ministry of Justice, Ministry of Interior, and local NGOs.

The project noted the need for awareness raising among the government, other stakeholders, as well as the indigenous communities. In doing so, the project supported the documentation of customary procedures and practices. Rather than codifying the laws, the research highlighted the values and rationale that drive some of the decision-making on the ground. The research and the subsequent publications also highlighted the strengths of storytelling methods as well as fair, full and equal participation as means of mediating conflicts. It also noted the shifts in customary norms and rulings – for example, the cessation of the use of the death penalty. This reflects the acceptance of state abolition of the death penalty by traditional leaders.

Discussion

Gender:

- When we talk about 'restorative justice' we must ask: 'Restorative' to whom? To the individual pressured into remedy that serves community harmony?
- Further to this, we must ask what constitutes a 'better outcome' for women seeking justice as victims of violence. In majority patriarchal systems, women occupy positions of social and economic dependence on husbands or their patrilineal family. Breaking that connection may leave her without the recognition of the community and the protection of an income. Yet exonerating perpetrators of crime in the name of 'social harmony' is an untenable solution.
- We must be wary of 'choicelessness' masquerading as 'choice'. Women who 'choose' to forego their individual human rights to restore balance to the community may in fact do so because they have no other choice. Choosing between devastating economic and social exclusion or staying in a relationship with an abusive partner is not much of a choice.
- Looking at customary practices through a binary prism of human rights and culture is unhelpful. We should not presume that human rights principles do not fit into an internal critique. This is demonstrated in narratives of struggles against gender based violence.
- Certain 'solutions' can and will be contested within communities – there is human agency. To assume that human rights is an abstraction, that it is not based on the struggle of individuals and agency, is a mistake.

Indigenous Peoples:

- The definition of 'indigenous people' as recognised by the state will have a bearing on the kind of system the individual can access.
- Fundamentally, choice is at stake here too. Does 'free and prior informed consent' apply to the choice of indigenous peoples between state and non-state systems? Should indigenous peoples be able to choose whether they participate in communal land management, or can they sell individual parcels?

Non-State Justice Systems in Contexts of Socialist Legalities

The following discussion was informed by presentations by:

Tong Dam Tuan, *Social Policy Ecology Research Institute Programme* in Viet Nam

Laurent Pouget, Legal Program Specialist, *UNDP Lao PDR*

'Rethinking the Role of Customary Law in Dispute Resolution at Highland Communities in Viet Nam: Case studies of the H'Mong and Ede minorities'

Much of the research conducted in Viet Nam on non-state, or customary systems of 'ethnic minorities'[4], is anthropological. UNDP is supporting the Social Policy Ecology Research Institute Programme in Viet Nam to study justice systems of ethnic minorities and examine the potential role of customary justice in the development of ethnic communities. In particular, the research sought possibilities of linking customary law with social and political transformation in three key areas: livelihood security, land tenure and natural resource management, and community governance.

Swift changes in the Vietnamese society over last 20 years may have had a positive influence towards rethinking the role of customary practices and laws in local governance and promoting access to justice for ethnic minorities.

[4] In Viet Nam the term 'ethnic minorities' is used to refer to people who would be classified as 'indigenous' in other countries. In total there are considered to be 54 ethnic groups, of which the Kinh or Viet represent more than 80% of the total population.

A brief overview of this historical shift is as follows:

- Before 1945: French scholars studied minority groups from anthropological perspectives
- 1954–1975: War of independence and the American war.
- 1975–1990: Viet Nam launched the ethnic minority development policy (which was limited by a lack of knowledge base).
- 1990s: Ethnic customary studies – studies of customary practices and procedures, yet no positive impact on ethnic minority policy in general.
- Early 2000: Demonstrations and riots in the Central Highland Hill Tribes protesting land encroachment for coffee plantations by lowland Vietnamese. The Hill Tribes also protested the government's restriction of their religious practices.
- At present, customary laws and legal systems are acknowledged by local officials but regulatory obstacles remain.

The Vietnamese Constitution recognises the equality among the country's ethnic groups. At official levels, the equality of ethnic minorities is protected by the department of Minorities within the National Assembly. The Ministry of Mountains and Ethnicity is headed by a member of the Hmong community. However, this does not ensure that the laws are actually put into practice.

The role of traditional elders and clan leaders in ethnic community governance remains significant. There are clearly stipulated guidelines as to who has the responsibility for dispute resolution in which instances and at which levels. For example, among the Hmong people:

- 'Level 1 disputes' refer to the more frequent, simple cases such as animals destroying crops and family borders, is usually self-regulated among families, with only a minor role of elders and clan leaders.
- 'Level 2 disputes' are complex cases pertaining to land border, land/asset division, land inheritance, etc. These issues are resolved at the clan, or inter-clan level and are adjudicated by more influential clan leaders or elders. 'Level 3 disputes' are taken to the new *to hoa giai* (conciliation unit) or alternative dispute resolution mechanism to resolve the irresolvable cases within and between clans. The structure of the new ADR is diverse, depending on each village; however, it is proven that most effective when clan leaders and elders are involved. 'Level 4 disputes' are those beyond the Hmong boundaries and those where the matter is one of state law.

Despite this clarity of practice, and the recognition that customary laws in principle may be recognised in civil dispute settlements, judges and judicial officials interviewed for the study revealed they are reluctant to take customary rules into consideration. Further, official recognition of ethnic minority autonomy in natural resource management is challenged by forest areas being re-classified as 'watershed-forest' by the watershed forest management board. Much forest area is being used for national development interests and private companies seeking to extract resources or develop plantations.

> *"Community based natural resource management through clan systems is still strong in practice, but without formal recognition of their potential role in ensuring sustainable development, there is a risk that ethnic minorities will be forced off their land."*

Community-based natural resource management through clan systems is still strong in practice, but without formal recognition of their potential role in ensuring sustainable development, there is a risk that ethnic minorities will be forced off their land.

Initial recommendations from the study (forthcoming) are:

- Uphold Constitutional rights and principles (recognition towards customary law)
- Continue to raise the awareness of policy makers to role of customary systems in contributing to community and national development
- Promote traditional education and bilingual education for ethnic minorities
- Extend research efforts to other ethnic minority groups
- Advocate for ethnic empowerment and legal empowerment

'Mapping Customary Practices: UNDP experience in Lao PDR'

Customary practices remain a crucial source of law for many people in Lao PDR, where social structure, language and culture, including customary practices of ethnic groups[5] are still flourishing. This is largely due to a very weak formal sector, a fact recognised by national authorities. However, there are currently no policies addressing the role and place of customary law in Lao PDR.

The UNDP Customary Law Project in Lao PDR forms part of the programme for the implementation of the Legal Sector Master Plan and serves as complement to Access to Justice Survey led at the same time.

Initial goals of the project were to enhance the knowledge of central authorities on customary practices, facilitate the practice of customary law where it serves the needs and

[5] Lao PDR officially recognises 49 'ethnic groups' like Viet Nam, of which the majority, Lao Loum, represent between 60–65% of the population.

interests of people, and ensure compliance with general standards of Human Rights and gender equality principles.

The main areas of investigation covered by the survey were: reviewing and cataloguing of customary norms and practices with a focus on most relevant topics; people's perception of customary law (including targeted / disaggregated groups); and potential impact resulting from a change in the context and environment of the community.

The survey sought to cover five key areas:

1. Cultural configurations – social organizations, religious beliefs and practices, leadership and decision making, basic concepts related to customary law
2. Civil issues – Family obligations and rights; marriage; inheritance; community level rights and obligations; land ownership and access to resources; contracts
3. Criminal issues – Concept and definitions; proof-evidences; conflict resolution and adjudication; arbitrage; infraction against individuals; infraction against assets and reputation
4. Changes in customary law – Induced by market economy, policies, urbanization and transition toward formal justice system.
5. Perceptions of the customary law – By villagers, women, youth, poor, and users.

Consultations were conducted successfully and all 49 ethnic groups were included in study results. However, a number of challenges plagued the survey, from methodology to results, such as the following:

- The protocol for lessons learned was not used by the project, subsequently, no reports have been presented to the consultant concerning the lessons learned
- Often also the planning has not been respected while conducting the workshops
- Not enough feedback was provided on the process and methodology used for each workshop
- Low capacity of the ethnic researchers to develop reports prohibited a clear analysis of results

> *"It should be recognised that state dominance in the conduct of customary justice studies may not be in the best interests of indigenous peoples. Indigenous peoples have a strained relationship with the state owing to unresolved differences over their rights to self-determination."*

In hindsight, the involvement of the Lao Front for National Construction members may have discouraged the participation of certain ethnic groups due to a history of mutual distrust between them and the state. A number of ethnic groups did not attend the workshops arranged by the project, and the data initially provided by the Lao Front led to the selection of a few inappropriate districts in a few cases.

The project relied heavily on the capacity of the ethnic researchers to gather data and develop reports, through a Participatory Action Research methodology. Their actual capacity to do this to a level which would support analysis was limited.

Further, the project recognised that codification of customary laws will negatively affect the flexibility of the systems. The intention of the Lao government *vis a vis* the findings of the study is not clear. There is a risk that the documented laws and customs will be defined as either 'positive' or 'negative' and certain practices and customs banned or used to further discriminatory stereotypes of indigenous peoples. Lastly, the Lao Customary Justice Project found that it was 'too ambitious' to define a national strategy on how to incorporate such a demanding and complex process.

Discussion

- It should be recognised that state dominance in the conduct of customary justice studies may not be in the best interests of indigenous peoples. Indigenous peoples often have a strained relationship with the state owing to unresolved differences over their rights to self-determination.
- While there can be benefits to cataloging and formalising customary rules, there may be also inherent risks as to who actually benefits from such codification. Thus, cautions need to be exercised. As in the Cambodian experience, the documentation of customary practices can help raise awareness of the potential contributions from the non-state systems for community development without locking the communities into 'the genius of the now'.

Using Information Technology for Non-State Justice Systems

The following discussion was informed by a presentation by:

Cindy Jeffers, Oral Wiki. *Oral Wiki: A Phone Archive for recording case decisions in Informal Justice Systems*

The OralWiki uses mobile phone technology to support new ways of facilitating dispute resolution and sharing

information in rural communities, conflict-prone regions, or among tribal groups distanced by geography. The OralWiki is a reporting tool that creates an audio archive of decisions made by tribal elders or other non-state justice actors.

The case study shown addressed the *abunzi* non-state justice system in Rwanda. Reconciliatory in its aim, the *abunzi* justice system uses mediation and arbitration to resolve disputes. In the *abunzi* system, mediated decisions are not documented. Interviews among the *abunzi* revealed that they have to walk long distances in order to discuss practices and procedures with their peers.

The OralWiki enables the *abunzi* to call a recording service and describe the context of the case, the evidence available, the parties' positions, and the reasoning behind the decision made. Other *abunzi* can call the service and listen to cases classified by category. By sharing information, the *abunzi* decision makers can ensure consistency in mediated outcomes, and thus develop a 'jurisprudence'.

Day 2 – October 5 2010

Designing Strategies

The following discussion was informed by a presentation by:

Deborah Isser, Senior Rule of Law Advisor, United States Institute of Peace. *Designing Engagement Strategies: Lessons from Seven Countries.*

Designing Engagement Strategies: Lessons from Seven Countries

Lessons, findings and principles illustrated in this presentation were adapted from studies on how justice reform efforts can engage customary justice systems in order promote justice and sustainable peace in Afghanistan, East Timor, Guatemala, Iraq, Liberia, Mozambique and Southern Sudan.

Research – Develop an Evidence Base for Policy and Programming

The value of empirical evidence in understanding non-state justice systems and designing relevant and useful strategies to engage with them is imperative. But often we begin with the wrong question. Instead of asking 'how do we engage?', we need to ask 'how do we improve the experiences of justice users?'

By narrowing our focus to 'engagement with non-state justice systems', we risk misunderstanding and indeed, missing too much of the problem. If we take 'people's disputes' as the starting point, we are better able to focus on function rather than form and bridge the academic/practitioner divide. From here we move from legalistic forms of justice – the laws, institutions, and structural relationships – to focus on the qualitative function of justice – fairness, effectiveness, legitimacy.

"By narrowing our focus to 'engagement with non-state justice systems' we risk misunderstanding and indeed, missing too much of the problem. If we take 'people's disputes' as the starting point, we are better able to focus on function rather than form and bridge the academic/practitioner divide."

We have to recognise also that research should consider inevitable variations from one location or social structure, to another. Differences in local specificity will include religion and ethnicity; urban and rural; the degree of heterogeneity; impact of conflict; extent of government presence; and other historical, political and social factors.

The research process should also bridge the academic/practitioner divide and involve both legal experts and social scientists as a deeper, contextualised understanding of the issues and challenges will go beyond the procedural legal framework. As much as possible the communities themselves should be supported to develop the capacity to examine their own systems and use the evidence base to advocate for change among district actors and national policy makers. Empirical data can de-politicise the discussion about customary law and prevent it from being co-opted and misused for power or political gain.

- Research should focus on the actual experience of those seeking justice
- Research should aim to understand justice and dispute resolution on a deeply contextual basis
- Research should take into account the inevitable variations from one location to another
- Research should be a joint effort of policy makers/practitioners and social scientists
- Research should not be seen as a one-time event, but a process for both informing policy and measuring impact
- Research can be used as a policy tool in a variety of ways

Adopt a Practical Problem Solving Approach

We must be clear on what it is that we are trying to achieve. Have we properly identified the pertinent problem?

Some see the existence of multiple systems as counter-productive to state building and incompatible with human rights. The apparent solution to this dilemma is often 'replace or integrate' customary systems within the formal justice system. This approach was applied to the United Nations Transitional Administration in East Timor attempt to replace the customary systems with a formalised system; ascertainment and harmonisation efforts in Southern Sudan; international interventions to train leaders to comply with human rights; and policies in Liberia, Afghanistan, Guatemala and elsewhere aimed at limiting the jurisdiction of customary systems to minor matters.

In Liberia, the dual legal system was seen by the international community as perpetuating discrimination, which prompted the UN to promote one system for all. Whereas the perception among Liberians who used the non-state system was that it is *this* move that is discriminatory, against their system and them. The right questions to ask in this context could be: 'how can the justice demand of the population be met so as to fill the current justice vacuum?' and 'how can the Liberian justice system be more inclusive of the values of all of the Liberian people?' The answers to these questions would open up consideration of a wider range of policy options and improvement in the delivery of justice.

Earlier described efforts of the *Gram Nyayalayas* established to address backlog of cases in India is another example of a poor effort to 'problematise' justice gaps. This leads to the fundamental question we must ask ourselves regularly, *who gets to decide what the problem is?*

Take an incremental approach calibrated to current realities

Shifting the point of departure to 'what is', rather than 'what should be' grounds reform strategies in current and realistic contexts. Studies show that laws and policies banning certain practices or limiting the jurisdiction of non-state justice systems do not consider the realities of people's disputes. Support to demarcation of jurisdiction has often backfired if there is no viable alternative in place to provide remedy to legitimate grievance, reducing faith in the state and state institutions due to their limited capacities. This can lead to mob violence and vigilantism.

> *Justice reform strategies should be focused on promoting a constructive process of change, rather than imposing an end state.*

Engagement with non-state justice systems must address the social context. Many of the rights abrogating decisions and practices within customary systems serve an alternative social purpose. Practices such as *bad* in Afghanistan, a process whereby a family's daughter is married to another family in order to repay a debt, or the identification of 'witches' through trials by ordeal in Liberia, serve a social purpose. Abhorrent as these practices may be, communities are economically and socially dependent on one another, and alternative terms of exchange must be found to protect and facilitate social order.

Promote an Inclusive Vision of Legal Pluralism

Local solutions are more likely to have sustained and transformational effect. The international community and NGOs should help to facilitate constructive spaces for concerned communities to come up with solutions and to advocate those solutions to national policy makers.

An illustration of altering terms of exchange can be found in Liberia. Previously, swearing an oath had to be done by drinking poison to affirm the primacy of promise over person. Nowadays, the demonstration of the commitment to upholding the seriousness of the oath is done by swallowing a bit of dirt from the earth, which also symbolically demonstrates a commitment to the land.

For such changes in the terms of exchange we should allow sufficient time for experimentation and pilot activities undertaken with the concerned communities.

Support the good struggle

Practitioners seeking to engage with non-state justice systems should look to critical insiders who contest given norms. An example of such critical insiders would be women mediators in Bougainville who challenge the received wisdom that women seeking to escape abusive relationships must necessarily be bound by the decisions of village chiefs.

> *As much as possible the communities themselves should be supported to develop the capacity to examine their own systems and use the evidence base to advocate for change among district actors and national policy makers.*

Discussion

- Adopting an incremental approach need not always imply that a great deal of time is needed to bring about changes. It may be possible to make use of media and technology to change people's attitudes and perceptions relatively quickly. Young persons in a community can often be counted upon to inculcate new norms and change traditional practices.
- We need to consider the national – how do we connect the national and the district level activities? At the state level there is a tendency to act on principles. States will not, as a matter of principle, allow non-state justice systems to deal with serious crimes. But at the local level there may well be opportunities for dealing with such crimes without devaluing their seriousness. This means that state policy should not be dogmatic, and in fact, should be informed by empirical evidence and complemented by recognition of organic processes of choice and change that overcome the apparent determinism of customary practices.
- When should we problematise the state? The variations of quality of service and reach of the state affect their degree of involvement with non-state justice systems. The state is not the same at every level. Local governments and local authorities may be better at navigating non-state justice jurisdictions based on community realities and needs than could a distant state located in a national capital.
- A research process dealing with the interface between state and non-state justice systems is itself a part of the dynamics of change because it necessarily opens up spaces for dialogue and discussions about what to do about 'injustice'. The contents of Indonesia's national access to justice strategy would have been different but for the fact that it grew out of a large-scale assessment of people's perceptions about injustice.

Traditional Actors in New Councils

The following discussion was informed by a presentation by:

Ah-Jung Lee, Acting Programme Manager, Human Rights, Legal and Justice Sector Reform Cluster, Democratic Governance Unit, UNDP Indonesia. *Strengthening Informal Justice System through Guideline Development and Training: Case of UNDP collaboration with Aceh Adat Council in Indonesia.*

Strengthening Informal Justice System through Guideline Development and Training: Case of UNDP collaboration with Aceh Adat Council in Indonesia

The case study from Aceh, Indonesia, examined linkages between customary (*adat*) actors and state institutions at lower levels of governance.

The people of Aceh had suffered 30-year-long conflict and the 2004 tsunami, which together killed more than 200,000 people and devastated the lives of another million. In this context, UNDP Indonesia with the Indonesian National Development Planning Agency (BAPPENAS) conducted a comprehensive Access to Justice Assessment in Aceh in 2006–7, and found a range of challenges that constrain the ability of formal and informal justice providers to handle grievances effectively. According to the assessment, a majority of Acehnese preferred the *adat* (customary/informal) justice mechanisms available in their communities for resolving their disputes over the formal justice system. At the same time, the adat justice system had various challenges, such as: lack of knowledge and capacity of customary (*adat*) justice leaders, absence of guidelines and common standards, discrimination against women and other vulnerable groups, ambiguity of jurisdiction divisions with the formal system, and insufficient accountability safeguards. Therefore, the assessment recommended engaging with the *adat* justice system in Aceh, so as to improve the quality of justice delivered to people in the communities.

Out of these findings, UNDP Indonesia implemented "Adat (customary or informal) Justice Enhancement Component" as part of the Aceh Justice Project (2007–11) in partnership with the Aceh Customary Council (MAA). The project developed and distributed the Informal Justice Guidelines, and trained thousands of informal justice practitioners on these guidelines and case management. MAA first produced a description of current *adat* practices and the normative framework governing *adat*[6]. Following extensive consultations with relevant stakeholders, the MAA developed information which sets out agreed demarcation of jurisdiction, standards and procedures for *adat* justice. The guidelines focus on substantive rather than procedural functions of the MAA.

The general guidelines on *adat* justice cover the following issues:

- Principles of *Adat* Justice
- Legal Basis of *Adat* Justice
- The Aceh *Adat* Justice Executive Institution
- Types of Dispute and Resolution Procedures

[6] The project did not work with sharia law specifically due to donor requests.

- Negotiating Techniques in *Adat* Justice,
- Execution of *Adat* Justice Decisions
- Referral Mechanisms from Adat to Formal Justice
- Women's Participation in *Adat* Justice Reconciliation Processes

These guidelines were disseminated through a training programme, which included sessions on gender and human rights through UNDP advocacy. A critical component of the programme's success was the involvement of the community police in the trainings. In the post-conflict setting, MAA *adat* justice project thus helped to build partnerships and restore trust between the local police and communities.

Given the socio-cultural and religious context of Aceh, adopting the human rights norms of gender equality among *adat* leaders was first a challenge. However, through UNDP engagement over the course of few years, MAA staff came to recognize the important role of women in providing better justice for women in the *adat* system and thus increased their work on this issue, utilizing their networks and respected authorities within Aceh. Empirical evidence gathered by the project showed that women often thought themselves unsuitable for *adat* related work. As such, rather than simply demanding women's participation or setting quotas, confidence and capacity building activities for women were adopted, and MAA implemented a dedicated programme to build the capacity of female elders in its latest stage.

The MAA experience resulted in:
- Improved understanding of the appropriate division of jurisdiction between *adat* justice and the police.
- Increased communication and coordination between *adat* leaders and community police in resolving or closing cases that may have been reported and investigated simultaneously through both channels.
- Improved means of resolving jurisdictional conflicts between village *adat* justice providers and community police through reporting.
- Overall improvement in case management, including standardized documentation and filing practices that facilitate the correct implementation of jurisdictional divisions and coordinating procedures.
- Recognition and acceptance by MAA and *adat* leaders of the importance of gender and human rights in strengthening the *adat* justice system to make it fairer and more equitable.
- In relation to the local regulations, strengthening of the *adat's* role in supporting and driving the empowerment of *adat* leaders in providing community-level justice.

For UNDP Indonesia, working to improve the informal justice systems is not to diminish the importance of the formal justice systems. Rather, it is based on the recognition that adat system, derived from local wisdom of the various ethnic groups in this vastly plural nation plays a critical role in strengthening access to justice, particularly of the poor and marginalised, using mechanisms that they are most familiar with.

Lessons from the Aceh Justice Project:

1. Begin with a needs assessment of high quality.
2. Work with those who have a standing in legal institutions and the reputation and legitimacy to promote non-state justice.
3. Creating an enabling environment through appropriate legislation on powers of the police and non-state justice system actors is important. In the case of Aceh, the MAA's legitimacy and effectiveness was significantly enhanced by provincial legislation addressing these issues. Partners must have, or be willing to establish, a legal basis for their work.
4. External partners cannot be the main drivers. In the case of Aceh, it was the MAA that led the process.
5. Working in coordination with other projects and agencies to synchronize similar or mutually supportive programs is essential to ensuring the effective implementation of non-state justice programs.
6. In order to promote cooperation between state and non-state justice actors, it may be desirable to extend support to both sets of institutions, instead of only focusing on non-state justice systems.

Practices in the Interface of State and Non-State Justice Systems

Discussions were informed by presentations by the following:

Devasish Roy, Chakma Raja and chief of the Chakma Circle and Advocate at the Supreme Courte of Bangladesh. *State Recognition of Traditional Justice Systems.*

Tiernan Mennon, then Senior Project Manager, Legal Empowerment of the Poor, Open Society Institute. *The Role of Paralegals in Developing the Interface Between State and Non-State Justice.*

Raquel Yrigoyen Fajardo, International Institute of Law and Justice. *Participatory Consultations for Constitutional Recognition of Non-State Justice Systems in Timor Leste: Involving non-state actors in drafting procedures.*

'Asserting Customary Law & Procedure in State, Quasi-State & Hybrid Justice Systems: The Case of the Chittagong Hill Tracts, Bangladesh'

The state recognition of the customary justice systems of indigenous people raises an important issue. Should the state assimilate customary laws and deprive them of their distinctive identity or should the state acknowledge and uphold the distinctiveness and validity of customary law? Moreover, this issue is important because under existing frameworks of legal pluralism, there can be asymmetry in the standing accorded to different legal systems. Politics often decides which system will prevail over another. Furthermore, legal pluralism can lead to some questionable forms of forum shopping where the more powerful parties to a dispute can pick a forum that will favour them.

In the case of the Chittagong Hill Tracts in Bangladesh, there are three justice administration bodies, under the Bangladesh Supreme Court. They are the District and Sessions Courts, which oversee major criminal offenses, commercial and civil disputes; the Courts of Chiefs and Headmen, which adjudicate family law disputes, customary resource disputes and minor criminal offenses; and the Chittagong Hill Tracts Land Disputes Resolution Commission, which oversees land disputes.

Chittagong Hill Tracts Key Characteristics:
- State Courts and Courts of Chiefs and Headmen
- State Courts barred from 'tribal' jurisdiction as courts of first instance
- Civil Administration retains 'revisional' and limited 'appellate' jurisdiction over 'tribal' courts
- Civil Procedure Code inapplicable
- Lawyers have restricted access to Chittagong Hill Tracts state and "tribal" courts

According to the Chittagong Hill Tracts Land Disputes Resolution Commission Act, 2001, the Commission's mandate/authority includes the following:
- Provide decisions on *land-related disputes brought before it in accordance with* 'laws, customs and systems prevailing in the CHT';
- It has the authority to declare land grants illegal and to restore possession.
- It is inclusive (headed by retired judge and including Indigenous Institutional Heads)
- It considers and applies customary law.
- Procedures are simplified, and avoid complicated court procedures (and legal practitioners).
- Will decide disputes expeditiously
- Its decisions have the status of a court of law and hence will be supported by executive action by state
- Procedure-dependent ("due process") system vs. custom-dependent dispute resolution

> *"Codification of customary laws surrenders self-determination. It risks freezing customs to the 'genius of one generation' and constrains the ability of customary law to evolve."*

Conflict of Laws and Systems – Areas of challenge

Land Surveys are contentious. The state's proclivity to conduct cadastral surveys gives rise to distrust among the people in the Chittagong Hill Tracts who have an understanding of common property resources that is at odds with granting titles to individual owners. Perpetual requests for land surveys by the state are met with distrust, as land surveys are seen as alien concepts. There is a fundamental tension between the state approach to land and land ownership and customary commons.

The state-preference for documentation of laws can be at odds with a typically oral history. Codification of customary laws surrenders self-determination. It risks freezing customs to the 'genius of one generation' and constrains the ability of customary law to evolve.

Areas of challenge for customary law, procedure and justice administration include:
- Gender and human rights sensitisation of Customary Law Practitioners;
- Capacity-development of state justice policy-makers and practitioners;
- Documentation of customary laws; sans codification
- Synergising administration of customary justice (and resisting 'harmonisation' tendencies)
- Promoting non-adversarial modes of justice;
- Dealing with 'non-state' and 'non-traditional' actors; and
- Adjusting asymmetries in legal pluralism (dealing with the state).

Discussion

- Positing the state as the 'other' and pitching it against customary systems is undesirable in most cases, but in contexts involving the self-autonomy of indigenous peoples under ILO Conventions, is it necessary to recognize that the state *is* in fact, the other?
- Should external development partners avoid the state and approach the communities directly more often? Once there, they should maintain a level of openness – to not preach and provide, but engage and learn.
- We must be mindful that norms of customary law as interpreted elite groups within the community will be biased and not necessarily accurate or authoritative.

> *By working across the plural justice spectrum, paralegals begin from the perspective of 'people's disputes' and can navigate both state and non-state systems to reach an appropriate remedy. Interventions can be more context-specific and non-law solutions are often found.*

'The Role of Paralegals in Developing the Interface between State and Non-State Justice'

Paralegals exist worldwide. They can have professional profiles, or be layperson volunteers. Community-based paralegals require a variety of skills, including mediation, education, and organizing. They frequently work with lawyers, but the degree to which paralegals are regulated or even recognised by the formal system varies greatly.

The Open Society Institute's work with community-based paralegals has identified a number of qualities and advantages that paralegals can bring to communities. For instance, paralegals can:

- Empower people to access and use the law to their advantage;
- Work with people to help solve problems;
- Provide practical solutions;
- Be mobile and can support a more deep and broad reach among a community;
- Know their communities well;
- Demystify the law;
- Be cost-effective; and
- Straddle plural justice systems.

By working across the plural justice spectrum, paralegals begin from the perspective of 'people's disputes' and can navigate both state and non-state systems to reach an appropriate remedy. Interventions can be more context-specific and non-law solutions are often found.

Paralegals who are capable of transferring cases between systems can stimulate community interest and demands of justice system. On the other hand, they can also encourage reform based on empirical evidence gathered at the community level and advocate for incremental changes to improve the functioning of both systems. The advantages of this coming from paralegals is that they generally have a detailed understanding of the socio-economic and political contexts 'on the ground' and can recommend appropriate action based on the realities of people's justice needs.

Discussion

- The issue of sustainability is key – programmes should consider ways to support paralegal structures independently of donor funds. Sharing lessons among the expansive global network of paralegals would be useful.
- The idea of sovereignty of state has increasingly taken hold. Consequently it is the state that often creates paralegals and determines what their objectives should be. Paralegals who are organically connected to their communities and who serve the needs of those communities are more likely to be effective in delivering justice than those conforming to a state-centric notion of what paralegals should be. State-created paralegals create yet another problem. They can be part of the process by which the state can renege on its primary obligation to have well-functioning justice institutions and use the paralegals in processes that have been characterised as 'band-aid' or 'bypass' modes of justice dispensation. This can result in a form of 'gruff justice'.
- Paralegals may be more trusted among community members than are lawyers. This can help bridge a state/non-state divide.
- It is important not to 'essentialise' paralegals. They can be people sent to 'squelch' legitimate claims, or they can be helpful, creative mobilisers of accountability and justice. The effective use of paralegals *in conjunction with* efforts to reform courts is imperative.
- Where possible, the term 'paralegal' should be clearly defined with the concurrence of professional legal associations to avoid challenges over their legitimacy.
- Above all we must remember that access to justice is a long-term goal to be pursued in a variety of ways – paralegals can be one amongst them.

Participatory Consultations for Constitutional Recognition of Non-State Justice Systems in Timor-Leste: Involving non-state actors in drafting procedures'

Why a process of consultation?

Processes of consultation in drafting laws on customary justice systems is necessary in order to ensure that the legislation responds to the reality of the country, the needs and demands of the population. Participation is a constitutional right in many countries, including Timor-Leste. Further, consultation processes provide space for dialogue and consensus among justice actors, i.e. traditional authorities, women, justice operators, human rights organizations, NGOs, and others.

A research and consultation process is also necessary for the following purposes:

- Clarify and understand the social demand for justice vis-à-vis the supply
- Clarify the history of the system – does it represent a colonial power?
- Empower the poor, women, indigenous peoples by providing a space for their voices to be heard.
- Create a platform for negotiation and identification of common values.

In Timor-Leste, UNDP supported a Consultation Process prior to the drafting of legislation. This process involved:
- Field trips and interviews (October 2008);
- Decentralised and sector consultation workshops;
- Sector consultation (women, justice actors, human rights organisations); and
- National consultation.

The consultations resulted in four main proposals related to local justice:
1. Recognition of customary mechanisms for conflict resolution as non-jurisdictional mechanisms. This includes the customary authorities' capacity to negotiate mediate or decide on remedies to which both parties voluntarily commit. These negotiations will have legal effect before the courts, after agreements or decisions are reviewed to determine correlation to human rights standards. If the agreements are related to semi-public crimes, the case will be dismissed, if the case is related to public crimes, the reparation or reconciliation may help reduce the penalty imposed by the court.
2. Recognition of customary law with limitations to accommodate human rights, based on consultation. The Timorese people proposed limits to customary practices related to gender issues (forced marriages, domestic violence, inheritance issues), elimination of the cast system, and systems of prohibitions and fines.
3. Establishment of a commission for victims support at community level. As most of the victims of domestic violence are women and children, and women are isolated, participants have proposed the establishment of a Commission for victims support at the *suco* level. The Commission will accompany the victims to every authority and institution, and refer cases to correspondent authority and advise customary and community judicial authorities in relation to women's and children's rights. These commissions would consist of the women representative of *conselho de suco* and other local organizations. Mechanisms for gender justice should apply simplified proceedings, local customs and should be delivered in local languages.
4. Establishment of community judicial tribunal. The Constitution only recognises jurisdictional powers of judges and not those of customary authorities. (*lia nain*, *chefe de suco*, *aldeia*, etc.) Participants at the consultations proposed that the law may create community-level tribunals with jurisdictional powers. The members would be lay judges elected by the communities with competences for resolving minor civil cases and promote arrangements in semi-public crimes, with judicial revision and control by the district courts.

Multiple State and Local Justice Hybrids in 'Special Areas' of Pakistan

Discussions in this session were informed by a presentation by:

Osama Siddique, Department of Law and Policy, Lahore University of Management Sciences.
Multiple State Systems and the Case for Non-State Justice Solutions in Pakistan.

There are two broad categories of approach prevailing in these discussions: the prescriptive (i.e. those based on best practice, success stories and lessons) and the deconstructionists (i.e. context determines everything and every context is unique). We must develop bridges between the two. There is no convenient binary. Every context has similarities and differences.

Similarly, there is no convenient duality between state and non-state; instead there are overlaps and ambiguities. The challenge is how to use them to increase access to justice among those typically excluded.

The Reality of Multiple State/Local Justice Hybrids in 'Special Areas' of Pakistan

Pakistan's 'Special Areas' include the Federally Administered Tribal Areas (FATA), Provincially Administered Tribal Areas (PATA), Frontier Regions, Special Areas in Baluchistan and the special cases of 'Swat' and Malakand Division. These tribal areas did not come under a central authority and have been subjected to colonial governance policies followed by a period of 'post-colonial experimentation' resulting in differential access to rights.

External Development Partner Engagement Strategies

The Post-Conflict Needs Assessment for FATA, PATA and Khyber-Pakhtunkhwa was conducted by the European Union, the World Bank, the United Nations, and the Asian Development Bank. The Needs Assessment was limited in its effectiveness because of the plurality of the systems it was supposed to examine, and the linearity of

the assessment design. Further, the rushed timeframe (consultants had 15 days to develop the strategy) and unclear conceptions led to prescriptions without data and without deliberation.

Lack of adequate engagement with non-state justice systems in the rest of Pakistan is on account of the predominant court-centric approach. The courts are confronted with mounting litigation, delays and backlogs. The challenge of case management has resulted in general neglect of substantive and procedural reforms in law. Complex dualities of supply and demand, state and citizen, state and non-state justice have been overlooked. In some cases traditional non-state justice systems have been co-opted, i.e. *Panchayat, Faislo & Jirga* has also been revealed. In this context there is a growing tendency on the part of people to avoid courts and increasingly rely upon non-state or private dispute resolution.

Institutional, Theoretical and Cultural Obstacles

- 'Judicial Independence' or 'Insularity'? The policy of non-engagement by the judicial leadership
- From 'Efficiency Plus' to 'Micro-Efficiency'- the shrinking menu of international rule of law projects in Pakistan
- The reform discourse and the hegemony of the 'technocrats'
- 'The siege of the legal academy' – confused regulation, shrinking budgets and low research output
- The reign of the lawyers in the aftermath of the Pakistani 'Lawyers' Movement'
- Recent failures – the ADB-funded Access to Justice Pakistan initiative in the areas of alternative dispute resolution

Suggested Approaches

In special areas:
- Deeper and more transparent political engagement on change
- Gradual mainstreaming of existing frameworks and devolution of non-state modules for certain kinds of disputes
- Consensus on overarching constitution based normative framework
- Concomitant administrative, social, cultural and development reforms

In rest of Pakistan:
- Mapping and empirical understanding of non-state justice systems
- Broadening the dialogue beyond the judiciary
- Consensus building for decentralization and enabling legislation
- Accessible local processes with state constitutional oversight

The Role of Non-state Justice Systems in Afghanistan: Challenges and Opportunities

Discussions in this session were informed by presentations by the following:

Abdul MajidGhanizada, Head of Civil Law Unit, Ministry of Justice of Afghanistan.

LailaLangari, Programme Officer, Education and Training Centre for Poor Women and Girls of Afghanistan (EWC). *The Role of Non-state Justice Systems in Afghanistan: Challenges and Opportunities in Context.*

Afghanistan is a country with long tradition of customary justice represented through Shura and Jirga councils. Nowadays, the justice system in Afghanistan uses both formal and traditional justice to settle disputes.

In 2009 the Ministry of Justice approved a policy for the regulation of *jirga* affairs. In 2010 a draft law was prepared which, among other things, specified a demarcation in jurisdiction for customary justice systems. The proposed bill seeks to regulate the membership of the *jirga*, requiring that members must:
- Be elected to the position
- Not be younger than 25
- Be of good reputation in the community
- Be knowledgeable of laws,
- Be a local resident
- Include a percentage of women.

The Bill requires that community based *jirga* may no longer deprive disputants or defendants of their freedom, nor may they improve monetary fines. It further states that decisions must be in accordance with human rights standards, particularly for women and children. Under the proposed law, if the *jirga* cannot resolve a case it will be referred to a formal court, once the case is reviewed, the

> *"There is no convenient duality between state and non-state; instead there are overlaps and ambiguities. The challenge is how to use them to increase access to justice among those typically excluded."*

formal system will not allow for appeal to review the case again. Cases at the *jirga* must be registered.

Some challenges within the non-state justice systems of Afghanistan include:

- Exclusion of women from participation in decision-making;
- Discrimination against the poor and powerless;
- Violations of human rights principles, for example: *bad,* or forced under-age marriages;
- Procedures and rulings that are contradictory to national laws;
- Enforcement of decisions is not guaranteed;
- Lack of proper record keeping;
- Traditional perceptions and tribal codes/values are considered instead of 'real justice';
- Deep roots of enmity among the tribes can result in discriminatory decision-making;
- Low level of knowledge about human rights (Islam and international constitution);
- Weak coordination between the NGOs and Government and donors; and
- Low rate of literacy.

Civil Society Organisations in Afghanistan

Civil society groups in Afghanistan have been conducting awareness training for judicial officials, government employees (men and women), religious leaders, Mullahs, Maliks, village leaders, police, school teachers and students, youths, housewives, and NGO employees. The topics covered have included Constitution of Afghanistan, Islamic Human Rights, and other adopted laws. CSOs have also supported advocacy projects. They have sought to empower women through literacy programmes. They have also addressed means of engaging with parliament, provincial level *shura,* and to participate in Community Development Councils (CDC). Guidance has also been given on small business development.

One civil society organization, the Education and Training Centre for Poor Women and Girls of Afghanistan (EWC), has worked with non-state justice systems in Afghanistan to:

- Train more than 2000 influential people, such as religious leaders, as potential trainers to work as Human Rights Awareness trainers;
- Establish Youth Volunteer Committees at village and city level to advocate for human rights;
- Develop and publish materials on human rights awareness, including conflict resolution and mediation training manuals with the help of the community elders and leaders;
- Establish a Legal Aid Clinic in Kunduz province focusing on women's rights support and have encouraged the community to report on incidents calling for legal attention; and
- Conduct advocacy campaigns to call for support on human rights.

Recommendations

- The donors and NGOs should support and implement programmes that directly or indirectly support and assist the formal justice systems.
- The programmes related to non-state justice systems conducted by NGOs, should highlight positive aspects of those institutions and Afghanistan traditions that give them legitimacy.
- There must be strong coordination among the government, councils and NGOs (CSOs and Donors).
- A proper and standard database should be established for recording the cases decided by state institutions and non-state institutions.
- The international community should provide the formal justice system with technical assistants and advisors to assist them in the implementation of law.

The Role of Non-state Justice Systems in Afghanistan: Challenges and Opportunities – Continued

Discussions in this session were informed by presentations by the following:

Jennifer Brick Murtazashvili, Assistant Professor, Graduate School of Public and International Affairs, University of Wisconsin. *Understanding the Political Economy of Customary Organisation to Better Inform Interventions for Local Self-Provision.*

Taguhi Dallakyan, Consultant and Analyst; former Project Manager, Access to Justice at the District Level, UNDP Afghanistan. *Raising Awareness of Community and Religious Leaders in Human Rights: Experiences from Afghanistan.*

Jasteena Dhillon, Visiting Scholar, Harvard Law School, andAdjunct Professor, University of Windsor Law School. *Legal Pragmatism and Rights Protection in Customary Legal Mechanisms in Afghanistan.*

Understanding the Political Economy of Customary Organisation to Better Inform Interventions for Local Self-Provision

It is difficult to differentiate "justice" and non-state legal systems from informal governance structures. These organizations derive their authority and legitimacy not

from the state but from traditional and religious bases. Similarly, it is also difficult to separate religion from custom (*Pashtunwali,'urf, adat, sharia).*

Three key observations that external development partners should do:
- Understand what customary organisations do and what they do not do.
- Abandon the assumption of the zero-sum relationship between state and customary bodies.
- Recognise that ALL assistance is political.

The survey on ways in which customary institutions in Afghanistan are organized centred on:
1) Empirical Objective – WHAT
- Gauged the state of village governance in an increasingly crowded institutional landscape
- Yielded data from the largest, independent qualitative study of village governance in "post-Taliban" Afghanistan

2) Theoretical Objectives – WHY
- Understand institutional mechanisms that facilitate local provision of public goods
- Analysis of rules that govern communities
- Are communities effective in providing public goods?
- What goods can they provide? Why?
- What are the limits to village self-governance?

3) Relationship between communities
- Under what conditions can communities cooperate to provide public goods?

4) Relationship between communities and the (district) government
- When does the government respect communities? When do communities respect the authority of the government?

Why are customary systems of organisation effective?

The separation of local authority as well as checks and balances between actors maintains the legitimacy, authority and perceived fairness of the systems. The *Malik*, the *shura* and the *Mullahs* are largely independent entities whose legitimacy is derived from different sources. The study found that village governance is most effective when no single actor dominates the others.

Customary governance actors maintain long time horizons. They are familiar with the history of the community and they are recognised as enduring entities. This is an advantage not enjoyed by the international community, nor the state.

"Access to customary organisations is highly compatible with democratic values. And, government leaders are more legitimate in the eyes of community members when they take cognizance of customary law instead of only the state law."

Customary governance actors maintain and use revenue from reliable local sources and are not dependent on aid, local government budgets or bribes. As such, customary decision makers are accountable to the community.

Key findings from the survey include the following:
- There is no evidence that the presence of customary organisations undermines state support. In fact, better quality of customary organisations is associated with increased level of support for the state. Faith in their *shura* and *jirgas* with increased accessibility to decision-making and participation also reflects a faith in the state and confidence in democracy. Access to customary organisations is highly compatible with democratic values. And, government leaders are more legitimate in the eyes of community members when they take cognizance of customary law instead of only the state law.
- When the scale of conflict increases, the ability to resolve issues locally decreases. The scale of conflict is affected by the influx of larger numbers of power holders and claimants. Following the influx of finance from CDC projects (these can be community 'mobilisation' grants of up to $60,000) the number and complexity of claims have increased.
- Strong customary actors have the ability to check the authority of the state, because customary structures *are* governance structures. They are much more than courts or arbiters.
- Aid can only have a limited positive impact, and is not a substitute for the state.
- There is regular interaction between customary actors and the state at the local level.

For practitioners and development partners, the fundamental question becomes: "Engage for What?"

We have to remember that external engagement alters incentives. Non-state actors can be perceived as, or indeed, become agents of the state or agents of NGOs.

Engagement raises other critical questions – do we strengthen one body over others? What are the incentives and disincentives we are creating and how will that affect the balance (or imbalance) of power?

How can we overcome limitations of projects with short durations? Lack of long term planning horizons is often a cause for failure in development programming.

If we are creating new bodies, altering incentives, and flushing certain systems with attention and money – what happens when the attention and money is gone and the systems are abandoned?

The research demonstrates that intervention by the state is in high demand, particularly for larger scale public goods and services, such as intra-communal goods and infrastructure. Yet, donor proclivities are towards 'community development'. There is tremendous demand for impartial state structures, even among those who are strongly supportive of customary structures. The international community should continue to build the state, but should not distort/support customary structures at the risk of undermining their legitimacy and the security of village governance.

'Raising Awareness of Community and Religious Leaders in Human Rights: Experiences from Afghanistan'

The UNDP supported Access to Justice at the District Level (AJDL) project worked in 9 provinces, and more than 60 districts of Afghanistan. A major component of the project was raising human rights awareness.

Rights-based training sessions were conducted for representatives of the traditional justice system and a training manual developed for religious leaders (*Ulama)*. A separate training manual was developed for officials within the formal justice system.

The training materials combined statutory laws, *Sharia* and those international conventions which had a positive resonance among the beneficiaries. The human rights messages in these manuals were supported by direct citation of Quranic verses and the *hadith*. Other sources of law, including interpretations by non-authoritative institutions or personalities could not have the same kind of credibility among the trainees.

The training gave the *ulama* opportunities through the facilitated and interactive discussions to reach 'human rights compatible' interpretations. After each chapter the manual set out examples of conflicts and disputes that could be resolved on the basis of authorities cited in order to guide other users of the manual.

"If we are creating new bodies, altering incentives, and flushing certain systems with attention and money – what happens when the attention and money is gone and the systems are abandoned?"

'Legal Pragmatism and Rights Protection in Customary Legal Mechanisms in Afghanistan'

Some key points regarding the process of understanding how to engage with non-state actors include the following:

- Ownership by Afghan stakeholders is critical.
- We must engage a multi-disciplinary approach to understanding this system – history, anthropology as well as current approaches of law and political science and to some extent economics. The current approach to intervention in Afghanistan's justice system is policy driven and implemented by legal scholars, however, this is too narrow. A recent example of this is the law that has been passed by Parliament to regulate the operation of *shura*. The Ministry of Justice is not in a position of regulating such a mechanism for justice. The regulation of these mechanisms should be done by the traditional authorities and respected persons, including both men and women.
- The international community's interventions in Afghanistan have been hampered by an over reliance on international human rights norms and complex legal formulations, and a relative neglect of existing power structures within the community.
- The injection of international funding has created 'dependency' in both the state and non-state actors in the justice systems of Afghanistan.
- International actors need to employ a 'more humble approach'. The use of regional examples of justice delivery institutions drawn from neighbouring countries (e.g. India or Pakistan) might be more useful than borrowing from 'Western' models and practices.

Engaging with Non-State Justice Systems – Principles and Recommendations

The symposium participants broke into four groups to address the following concerns:

1. Problematisation: defining objectives and the research agenda for engaging with non-state justice systems
2. The relevance of local legal principles and practices
3. Consideration of feasible, alternative mechanisms for justice delivery

4. Possible principles governing the state/non-state interaction

Problematisation: defining objectives and doing the research

At the very outset the issue of whether to engage or not with state or non-state systems should be proceeded with an understanding of 'what is known' and 'what is not known'.

- The dichotomy 'non-state/state system' is problematic. Both sets of justice systems operate with different forms of formality. The assumption that non-state systems are less formal compared to state systems may not be correct.
- It is important to recognize that justice systems, both state and non-state are part of the political landscape and cannot be treated as insulated entities. Therefore, it may be better to approach the problem as part of governance involving a plurality of governance modes and mechanisms.
- The idea of justice should be broadened from a narrow sense of 'seeking remedies to resolve conflicts', to encompassing questions of distribution, social justice, and violations of human rights.
- Which comes first – identifying the problem or doing the research? Action research provides a 'way out' because it enables problems to be identified through participatory research, informed by interactions amongst stakeholders. This method is capable of yielding solutions that make sense to the community.

The relevance of local legal principles and practices

- *Identifying local needs*: identify real needs and local collaborators through comprehensive needs assessments that engage scholars from various backgrounds, e.g. law, anthropology, sociology, gender advocates, etc.
- *Identifying and enabling duty bearers ('Responsibilisation')*: This entails capacity development of duty bearers so they can understand their responsibilities towards the people they are meant to serve, their duties as part of a hierarchical structure, and their accountability.
- *Sustainability*: ensure the durability of the benefits of development interventions by putting in place mechanisms for institutional memory and capacity to change and adapt over time in response to evolving needs of the community.
- *Culturally sensitivity*: care must be taken to ensure that terms, categories and concepts that are derived from international discourse are translated into forms that are familiar to the communities whose justice systems are sought to be reformed.
- *Non-intrusive intervention: 'catalytic but not cosmetic'*: This relates to the principles of 'responsibilisation', and the need to respect the requirements and preferences of community level actors. It rules out grandiose projects of social-engineering.

Consideration of feasible, alternative mechanisms for justice delivery

The discussion in this group identified some entry points and the pros and cons of alternative modes of justice delivery that need not be grouped into state or non-state. The role of paralegals in justice delivery can often straddle both state and non-state institutions. Some examples from country contexts were provided:

Cambodia: Access to formal institutions affected by logistical and resource constraints. Where justice is delivered at the community level by 'elders' or community leaders, there is the problem of enforceability. This raises the need for state recognition, in addition to community acceptance of these mechanisms.

China: Sending paralegals to remote areas has proved to be a viable option in China. Paralegals have been successful where they have been properly trained and they have been able to win the trust and confidence of communities. Peoples' Mediation Boards have also proved to be useful in resolving disputes and avoiding recourse to state courts. When a mediated agreement has the consent of disputants, this serves as a contract between them which they are obliged to respect. If necessary, it can be also enforced by a formal state authority.

India: Non-state 'justice' systems range from mechanisms established by communities of scavengers and sweepers, to grain traders in towns to which farmers bring their produce, to diamond dealers. All of these are grounded in their respective communities and are motivated to avoiding excessive costs and maintaining harmony and fair play in their transactions.

Pakistan: The *Musalihat Anjuman* enjoys legitimacy as their processes are grounded in local culture, and they are a component of the national judicial policy. All stakeholders are willing to use the system, and the police are mandated to respect their outcomes.

Possible principles governing the state/non-state interaction

The group discussing this topic did not think it desirable to draw up 'principles of engagement'. Instead, it directed attention to the following points:

- Nature of engagement: The reasons for and the nature of engagement with state and non-state actors must be clearly understood.
- Nature of state: It is important to understand the type of authority that a state might want to assert when it seeks to determine the jurisdiction of non-state institutions. A dogmatic adherence to the state as having a Napoleonic ideal of the state as having monopoly over delivery of justice should be avoided.
- Actors: who are the relevant actors – what is their duty and what role can they play in improving access to justice? Where is the agency of the community? How can this be developed with regards to relationships with the state?
- Nature of context: it is important to consider the demand of communities that are engaged and their context, as this is helpful for the designing of an intervention. Participation from all bodies is a key for a good programme design.
- Above all, 'Do No Harm': Interventions should not spur new conflict.

Concluding Reflections

Marc Galanter: It is important to acknowledge the moving frontier of justice and that it is inherently dynamic. Injustice is a valuable starting point when engaging with state and non-state justice systems. People can have different senses of what injustice is. Different senses of injustice can give rise to different expectations. The sense of injustice is triggered not only in instances of unfairness amongst individuals but could also emanate from a more general appraisal of the performance of governance institutions, especially police and executive officials.

Erica Harper: Several points are important for any development programme, including the value of research and evidence based programming with a participatory and multidisciplinary approach; holistic programming; the 'do-no-harm' principle; and the importance of finding entry points other than justice and thus avoid marginalising people's priorities. Responses must be multi-faceted; no issue can be addressed in isolation. Impact evaluations are critical – is our work having the desired effect? In short, nothing can substitute thoughtful, considered and well thought-out programming.

Vijay Nagaraj: Contextualized programming stands out as an overarching idea, but there are three additional points to be made:

- Do what works best. There can be a conflict between 'what works' and 'at whose cost is it working'. This relates to varying conceptions of injustice. Perceptions over the 'ideal' will vary.
- It is important to recognize agency. People are not mere clients. They are capable of fashioning solutions to injustice.
- Justice should be understood broadly. Justice needs to be done not only to prevent violence and conflict, but also to ensure that people have access to everything that is needed for life with dignity and humanity.

Anyone who seeks to work in the area of justice must be prepared to shoulder the burden of a high standard of accountability which extends not only to the people that are sought to be served, but also to patterns of funding and committment to durability and the 'long haul'.

Deborah Isser: The focus of development partners should be function, not form. This is why they must evaluate our impact. A couple of points to in elaboration:

- While selecting the right entry points is important, assessment of impact is more important. What do programmes supported by external actors actually do is the point, not what inputs they provided, such as how many people they may have trained. Bringing about desirable changes in inequitable distribution of power would be an important impact. The challenge is how to make that happen.
- Raising legal consciousness: What does this actually mean? Awareness and sensitization are not useful terms. The question is instead, how do we help create real opportunities?
- Engaging in order to reinforce justice for the poor. Making a difference in the lives of people who are struggling against exploitation and injustice should be the touchstone.
- Social embeddedness: Socially embedded interventions are more likely to have a systemic impact.

Masood Amer: We must be critically aware of the dynamism of non-state justice systems. They are capable of change, they are susceptible to incorporating new norms when they are supported or pressured by their constituencies. It is important to avoid confusing, diluting or deligitimising this inherent dynamism among non-state justice systems. External development partners must be cognizent about this potential for change and coherent in their support for change.

PART II:
Conducting Access to Justice Assessments

Introduction – UNDP and Access to Justice Assessments in the Asia Pacific Region

Discussions in this session were informed by presentations by the following:

Aparna Basnyat, UNDP APRC Human Rights Specialist. *Moderator.*

Emilia Mugnai, UNDP APRC Justice and Human Rights Programme Specialist. *UNDP's work on Access to justice in the region.*

Ramani Jayasundre, UNDP APRC Access to Justice Assessments Consultant. *Mapping and review of access to justice assessments in the region.*

The UNDP regional initiative on the human rights-based access to justice – the Asia Pacific Rights and Justice Initiative (AP-A2J) has been ongoing since 2002. The AP-A2J Initiative is focused on a bottom-up approach to ensure that people have better access to justice. The AP-A2J Initiative grounded UNDP's justice related work firmly within the framework of the *human rights-based approach (*HRBA*)*. By adopting the human rights-based approach to access to justice, practitioners found a framework for the process of human development that is normatively based on, and operationally directed to, developing capacities for the realization of human rights.

HRBA seeks to address and correct existing power imbalances in development processes. It recognizes human beings as rights-holders and establishes obligations for duty-bearers (accountability/empowerment). It targets efforts pro-actively towards groups suffering discrimination and marginalisation and focuses on the processes used in programming for human development. The foundation of the HRBA lies in principles of *non-discrimination, participation,* and *accountability.*

HRBA is critical in terms of both the what and the how of development processes. The substantive value (what) of adopting HRBA includes:

- Focuses on most disadvantaged groups and their entitlements as human beings
- Strengthens Human Development and Capacity Development perspectives
- Brings process of development to the forefront

The process value (how) of using HRBA includes:

- Improves assessment and analysis – holistic, systematic, results-oriented
- Actively seeks inclusion of most disadvantaged people
- Improves accountability systems
- Expands partnerships and strengthens communication flows

> *With HRBA as the starting point for the analysis, practitioners involved in the AP-A2J Initiative adopted a definition of access to justice which focused people being able to obtain redress for grievances:*
>
> *"The ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards."*

This definition focuses on the experience of the claim holders, not simply with services or institutions. It focuses on capacities and distinguishes between the supply and demand side of justice (different capacities but *both* needed). It also explicitly notes the quality of justice that is required (respectful of human rights) and recognizes both formal and traditional justice mechanisms.

As a result of the AP-A2J Initiative, there have been many UNDP access to justice programmes in the region that have undertaken assessments. The assessments have been used as the starting point for justice policy and programming as it provides necessary information as to who has access to justice remedies and who does not and why. Further, these assessments:

- Address a specific access to justice issue rather than an institution;
- Build knowledge of the problem to better address the problems;
- Analyse perceptions on the meaning of 'justice' and 'access to justice';
- Provide a space for dialogue among duty bearers and rights holders that can influence policy making; and
- Serve as a vehicle for empowerment and accountability.

UNDP have started or completed access to justice assessments in several countries including Cambodia, Indonesia, Lao PDR, the Maldives, Nepal, Sri Lanka, Timor-Leste, and Viet Nam. These assessments have been designed and implemented independently of each other and methodologies and scope have varied. Some countries chose to pursue a nationwide assessment while others focused on certain groups or issues, such as access to justice for women, indigenous peoples, and conflict-affected populations. Some assessments were conducted with a limited geographic scope, targeting specific districts or provinces.

These assessments have also served various purposes. In Cambodia, the assessment provided the basis for designing UNDP programmes on access to justice. In Viet Nam, the assessment served as a baseline measure for impact from the access to justice. In Indonesia, the assessment initiated and informed a national strategy on access to justice. In Sri Lanka and Nepal, the assessments were intended to facilitate a dialogue with the government on justice and human rights issues during the conflict, but they could not be completed due to political sensitivities. Here, there are some important lessons about conducting assessments in conflict or post-conflict environments, which will be detailed later in this report.

Mapping and Review of Access to Justice Assessments in the Region – Draft Paper

In 2010, UNDP APRC commissioned a paper to review the different tools, processes and methodologies used as access to justice assessments in the region. The paper reviewed seventeen access to justice assessments conducted both by UNDP and other development agencies. The presentation underlined aspects of the design, the analysis of the findings, the impact of the assessments, as well as mainstreaming of sensitivities within the assessment, and identifying particular special situations that affect the assessment including conflict situations.

Some preliminary findings from the review include the following points:

- **Use of different methods.** Assessments have developed and refined research designs, methods and tools to suit specific contexts. Often, despite different methods findings and conclusions will be similar in broad areas, however certain methods can reveal more specific findings in target areas.
- **Defining Access to justice.** A clear definition of access to justice can usefully guide assessments. However, some leave the definition vague and open to probing by the target communities thus establishing a definition based on community understanding. Some definitions have included overarching issues of rights protection, as well as rights enhancement in positive enabling environments. Some have defined access to justice in legal empowerment terms; as a combination of individual awareness, access, and confidence. Some assessments focused on access to social justice or access to resources and others focused on both supply and demand side understandings.
- **Approaches to assessments.** Some assessments start with a clear acceptance that the human rights based approach will be followed, while some assessments merely imply it.
- **Rationales and Assumptions.** Some assessments are conducted with prior understanding of access to justice issues within a country or community group and follow on from such. Others are conducted in order to develop an understanding about potential issues, or more generally to provide baselines for assessing changes in access to justice for selected groups.
- **Methodologies and tools.** The majority of assessments follow time tested research methods to examine and understand phenomena and perceptions. A few assessments go beyond exploration and understanding, and work action research into methodologies aimed at empowering the people who participate in the research process.
- **Assessment design.** Explicit objectives influence the assessment design. Detailed terms of reference provide clear guidelines for those undertaking the

assessment but also in ensuring a focused approach to the assessment. There is no uniform method for sample selection. Prior knowledge about groups of people who are likely to face difficulties in accessing justice is noted. The selection criteria can also be based on qualitative data gathered through socio-economic mappings of sites. Assessments should attempt to ensure samples that are representative of populations in terms of geographical distribution, ethnicity, age, sex, professions, income levels, and education. The actual sample sizes vary in assessments. Clearly defined timeframes and implementation plans are important as assessments can range from three weeks to two years. Constraints and unforeseen problems have delayed assessments; and yet assessment designs typically do not have strategic plans to mitigate such risks. Furthermore, there is no established methodology for rapid assessments.

- **Data collection methods.** Assessments often use both quantitative and qualitative data collected through both primary and secondary sources. Primary data, both qualitative and quantitative is collected through surveys, focus group discussions (FGDs), in-depth interviews, and information gathering and sharing workshops. Secondary data is collected from case studies, literature and desk reviews from various sources.
- **Research design.** Most assessments outline a series of research questions that guide the assessment. Research questions must be specifically formulated in culturally familiar and acceptable ways in different assessments. Often direct questions need to be complemented with hypothetical problems posed for the participant to respond to more comfortably. Some are probing questions which look at wide conceptual issues together with direct practical issues.
- **Innovative methods and tools.** Some assessments involve additional objectives and have included capacity building efforts for people conducting or participating in assessments. Others have considered strategic training of researchers, quality control systems, process-monitoring frameworks and development of a "Do no harm" note.
- **Partnering for Research.** Partnerships add strategic value to the assessments and many are jointly conceptualized and implemented. Past partnerships include those between governments, UN agencies, donors, non-government organisations, research institutions and academic institutions with diverse levels of decision making placed on each partner. There is value in 'outsourcing' research to national research institutions too.
- **Teams and Experts.** The team arrangements for assessments vary. Some rely heavily on national partners and include local and international experts from various thematic and methodological expertise to provide technical assistance. Some also invite an external review of findings and conclusions. The involvement of wider audiences at local and national forums is critical for results dissemination and awareness-raising.
- **Arriving at Findings, Conclusions and Recommendations.** Assessments can provide extensive and comprehensive findings. It is difficult to arrive at a uniform system of data analysis and distilling conclusions from the vast amount of information gathered. Some use a collection of analysis tools-conflict analysis, institutional analysis, service analysis, dispute resolution analysis, perceptions analysis, needs analysis to identify conclusive statements.
- **Results of Assessments.** How do these assessments impact on the lives of the people who they aim to serve? To date, many assessments do not include follow up for monitoring and evaluating projects and programmes that are conceptualised and implemented as a result of these assessments. This is an area that requires discussion.
- **Mainstreaming Focus on Disadvantaged Groups.** How do you ensure mainstreaming of gender, ethnicity, class, caste and other sensitivities to access to justice assessments? Does the human rights based approach ensure this?
- **Special Situations.** Assessing access to justice in specific situations need clear guidelines. Specific situations could include conflict situations, post conflict situations, and situations where access to justice for poor and marginalized populations is not a national priority, or where certain groups are oppressed by the government.

Where do we start: Designing the Research Framework

Discussions in this session were informed by presentations by the following:

Emilia Mugnai, UNDP APRC Justice and Human Rights Programme Specialist. *Moderator.*

Chris Morris, formerly with UNDP Indonesia. *UNDP access to justice assessment in Indonesia.*

Sharmeela Rassoul, UNDP Sri Lanka. *Challenges of conducting an access to justice assessment during the conflict in Sri Lanka.*

Aishath Rizna, Senior registrar at the Maldives Supreme Court. *Access to justice assessment in the Maldives.*

Barkhas Losolsuren, UNDP Mongolia. *Designing an assessment for Mongolia.*

Tiernan Mennen, Open Society Institute. *Conducting assessments using paralegals.*

The session was dedicated to identifying challenges, opportunities and lessons from experiences in the region in initiating access to justice assessments and designing the research framework and methodology.

Design and Implementation of the Access to Justice Assessment in Indonesia

The UNDP Access to Justice Assessment in Indonesia (2005–06) was implemented in partnership with the Indonesian Ministry of Development Planning (BAPPENAS). It focused on:

1. Identifying the key justice-related issues facing the poor and disadvantaged
2. Identifying and assessing key factors obstructing or enabling access to justice for the poor and disadvantaged (as claim-holders)
3. Identifying and assessing key factors influencing the capacity of formal and informal justice actors (duty-bearers) to fulfill their obligation to ensure that claim-holders can enjoy their rights

The assessment was carried out in 5 provinces: West Kalimantan, Maluku, North Maluku, Central Sulawesi and Southeast Sulawesi. In each province, two districts were targeted with two sub-districts within the districts and two villages per sub-district, to a total of 40 villages. These villages were selected due to specific characteristics including intensity of conflict, ethnic/religious composition, strength of traditional governance, distance from the capital and the level of poverty/development.

The research framework examined the following issues:

- Citizen's trust in the justice system
- Legal and normative protection of rights and remedies
- Legal awareness
- Legal aid and counsel
- Investigation
- Detention
- Prosecution
- Judicial adjudication
- Administrative dispute resolution
- Informal and traditional dispute resolution
- Enforcement
- Civil society and parliamentary oversight

Adopting a human rights-based approach (HRBA) for the research framework meant that there was an overt focus on the perspectives of the poor and disadvantaged, and that the issues were framed in terms of duty bearers and claim holders. These perspectives allowed 'justice' to be framed more widely than it might have been. However, there were challenges posed by using HRBA since it was less helpful in aiding identification of priority issues.

> *"HRBA encourages a strong focus on participation at all levels, but greater participation can involve trade-offs including a large investment of time and money"*

In terms of conducting the assessment, the assessment was managed by UNDP and BAPPENAS, the National Development Planning Agency of the Government of Indonesia, and implemented by Peace and Security Studies at the University of Gajah Mada (PSKP-UGM) with five research teams and five NGOs conducting the surveys. Secondary research was conducted for preliminary site selection. After selecting the sites, 200 focus group discussions were conducted followed up with 700 in-depth interviews and a quantitative survey of 4500 respondents.

Some key issues and lessons that emerged from the assessment highlight some of the challenges in applying HRBA in the research framework and implementation. The focus on disadvantaged groups, for example, is easier said than done as identifying and obtaining access can take time and finding 'the most' disadvantaged may not always be strictly necessary, as often in poorer areas, the difference between 'average' and disadvantaged may be marginal. Additionally, HRBA encourages a strong focus on participation at all levels, but greater participation can involve trade-offs including a large investment of time and money. In many cases, additional investments much be made in the capacities of those taking part in order to ensure meaningful participation. Finally, a strict adherence to HRBA has the potential to undermine true 'partnerships' where the approach is unfamiliar to the implementing partners.

For more details see Assessment publication, *Justice for All*, available at: http://www.undp.or.id/programme/governance/

Equal Access to Justice Survey in Sri Lanka

The access to justice assessment was aimed at providing a baseline for the UNDP justice project as well as other national actors in the sector to enable better targeting and monitoring of the impact of their intervention. It was also an effort by the UNDP Equal Access to Justice Project to identify areas of intervention for their programme as they moved from the first phase (2004–2009) to the second phase (2009–2012). However, due to the sensitive context in which it took place, the assessment was halted upon request by the Ministry of Defence, citing security reasons.

In any assessment, the context that the assessment takes place is very important. In Sri Lanka this was critical in

determining the outcome of the assessment. Planning for the assessment began in 2008 in a context where the conflict was escalating. There was a lack of data on the justice sector. In the north of the country, there was no access to two districts and Jaffna was extremely costly to get to. In the east, the provinces had just been brought under government control. The assessment, in trying to determine the access to justice for the most vulnerable, sought to focus on the north and east conflict affected areas.

UNDP provided technical support to conceptualise the assessment based on lessons learned from previous assessments in Cambodia and Nepal. After reviewing the comparative examples from other countries, a dual approach to the assessment was identified where information would be collected from both the service providers and the beneficiaries of the justice system. The assessment would focus on what the service providers understand as their strengths and challenges they face in doing their work (including lawyers, judges, legal aid, police, mediation boards, local government officials, prisons, registrar general, etc.), and compare against beneficiaries' knowledge about the justice system and their experiences when seeking remedy.

The questionnaires sought to specifically identify access to justice issues for women, internally displaced people and returnees and estate sector workers. It also included sections on documentation and sexual violence. The questionnaires also attempted to draw out people's perception of the justice system and how much they had used the system.

The assessment was developed in consultation with the Ministry of Justice and Ministry of Constitutional Affairs. It was important to hold consultation and a regional inception workshop with government partners in several areas: Colombo, Kandy (to target the Estate Sector), the Vavuniya (to target the north), and Kalmunai (in the east).

The assessment fieldwork was conducted from August 2008 until November 2009 where fourteen out of the twenty-two districts were surveyed by UNOPS. Of the eight remaining district, five are partially completed (Mannar, Batticaloa, Trincomalee, Badulla, and Anuradhapura). UNOPS led the quantitative part of the survey which included the household survey. Based on key issues raised from these surveys, FGDs were held on particular subjects and led by the local NGO Center for Policy Alternatives' Social Indicators. Social Indicators also conducted focus group discussions with service providers.

UNOPS' quantitative results were analysed by the UNDP Access to Justice Project and Social Indicator to identify key trends. The FGDs were then held to try to understand the reason behind the numbers and trends. For example, the quantitative survey posed the question: "Q. In the event that your husband ill treats you, where would you go first for advice? a) Mediation Board, b) Legal Aid Provider, c) Religious Leader, d) GN or DS, e) Police, f) School principal, g) Other". The qualitative part of the survey would follow up to try to answer why the answers were given. In this case, if 84% of people say religious leader or school principal, the FGD would try to identify the reasons such as a lack of knowledge about the importance of reporting to the police, lack of awareness that domestic violence is a crime, or there is no legal aid clinic in easy reach.

The access to justice survey would be a key tool in developing project interventions. Using the above example possible interventions could include:

- Awareness raising and training for religious leaders and school principals, so that they come to recognise that domestic violence is a crime and can provide appropriate support to people in the community.
- Legal awareness campaign in the assessment target area and mobile legal aid services in remote villages.

Some responses from the districts included:

- Puttalum – where competition over fishing grounds, thuggary and work-related disputes were identified as the top disputes, potential responses were identified as: consultative forums between the different fishing associations; training for mediation boards to handle work related disputes; or sharing results with the police and discuss best ways of addressing thuggary.
- Ampara – where lack of legal documentation, land disputes and alcohol use were identified as key issues, interventions could include mobile documentation clinics; training for legal aid providers to advice on land related cases; or highlighting dangers of alcohol abuse with local schools, religious leaders and community organisations who are better placed to assist.

Some key lessons from the assessment include the following:

- The framework for the assessment needs to be clear and it is necessary that there is an agreement among the implementing partners on a common approach to the assessment.
- In this case, it was critical that the national stakeholders (especially the government) have ownership of the data.
- Context is critical in determining the success/outcomes of the survey and it is important to be sensitive to the environment in which the survey is being conducted. During times of insecurity, participants in the assessment may be suspicious of how their contributions will be used.

As a result of the survey being stopped, alternative means of acquiring information was used to inform Phase II of the UNDP justice project including feedback from the project

field presence, responses from local government officials on priority areas of intervention, data from legal aid clinics, survey reports from other partners and consultation with provincial and national government stakeholders.

Access to Justice Survey in the Maldives

It is always important to understand the context in which the assessment is being conducted. The Maldives is undergoing democratic reform under their 2008 constitution; a process which includes an overhaul of the justice sector. Within the reform process, there are ongoing efforts to increase individuals' ability to know and claim their rights and access remedy for their grievances as well as aiming to strengthen the institutional capacities of the justice sector to better address the needs of people, notably the marginalized and disadvantaged. Through the Protecting Human Rights and Promoting Access to Justice Project signed in 2008, UNDP is supporting the Government to provide critical preparatory assistance and support for the production of baseline data needed to create the foundation for applying the human rights based approach to strengthening the justice sector. The survey will also identify interventions necessary to address the gaps identified in the system. This includes obstacles for citizens to access to justice and the capacity of service providers to deliver justice. The findings of the survey will provide policy recommendations to guide the justice sector and broader democratic reforms.

> *"In the assessment processes, often the best results could be the unanticipated ones"*

The study considers the following objectives:

- Provide baseline information on public confidence in the justice system;
- Provide insights into citizen's awareness of the justice system and to access to justice;
- Identify types of grievances faced by people and the obstacles in seeking redress;
- Identify the knowledge base of duty bearers;
- Identify the challenges and obstacles faced by duty bearers;
- Provide information related to legal and rights awareness to survey communities; and
- Provide avenues for policy discussions, sensitization and recommendations for informing policy, access to justice and justice sector reforms.

Involving all project partners is critical to the success of the survey. Through every stage there was consultation with all the project partners which includes the Attorney General's Office, the Prosecutor General's Office, Home Affairs and the Judiciary (including the High Court and the subordinate courts). The inputs from all the institutions which worked as a team helped to localize the survey. Also it was seen that feedback at every stage is essential with regard to all aspects of the survey.

Prior to commencing the assessment, a human rights-based approach to access to justice workshop was held with support from the UNDP Asia Pacific Regional Centre which helped in bringing all the partners together in understanding and agreeing on the aim and objectives of the survey. The inputs from this workshop were also used to inform the survey and the Indonesia assessment experience was used as the framework which was modified to fit into the local context.

The survey was conducted using a mix of qualitative and quantitative methods which provided for an extensive in-depth analysis of access to justice and related issues. Questionnaires were administered by enumerators (employed by a survey firm) to a randomly selected sample of around 2000 citizens. The enumerators were also trained by an international consultant as to the objective and purpose of the access to justice.

Some key points in conducting the survey are as follows:

- Although the sample was randomly selected, the importance of a gender balance in the sample was thought and those polled were selected to ensure that there was gender balance;
- Maldives was divided into four strata according to the distance from Male' as distance was an important factor influencing access to justice;
- The court system is structured in a way that all the courts of first instance with full jurisdiction along with the tribunals are situated in Male'; and
- Samples were taken from all the atolls and one island was randomly selected for the survey- this was done to strengthen the legitimacy of the survey among the population.

The questionnaires to ascertain information on public perception consisted of:

- Small Questionnaire – designed to measure general perceptions on law and specific perceptions of the justice system (sample size of 2,000); and
- Large Questionnaire – designed to measure more in-depth information about the respondents attitude towards the justice system, their knowledge of law, as well as their experiences in relation to the justice system (sample size of 150).

Questionnaires were specially tailored for:

- Migrant workers;
- Prisoners;
- Court users; and
- Professionals from within the judicial system, including judges, court staff, police, state attorneys, state prosecutors and private lawyers (questionnaires for these groups were self-administered).

Additionally, case studies were developed on criminal, civil and family cases from the courts.

Some lessons from the assessment include the following:

- It was useful in designing questionnaires to give careful consideration to ensure that language issues and wordings of all questionnaires were consistent and accessible.
- Professional questionnaires – were self-administered and the sample size was lower than anticipated because of limited capacity – there are currently no research institutes in the country.
- The period during which the survey was administered coincided with the end of the transition period as stipulated in the Constitution. As a result, it was a challenging context for conducting the A2J assessment, yet also provided opportunities for transformative results since the survey would provide a baseline for the government to see the picture of the justice situation on the ground.

Access to Justice Assessments: Designing the Research Framework – Mongolia

The Access to Justice Needs Assessment conducted in 2005 was based on a very broad terms of reference that examined the capacity needs of duty-bearers and rights-holders. The assessment was conducted by a local consultant and one of the key challenges was in translating the terminology into the Mongolian language and context. The assessment contributed to the programming decision to focus on the establishment of Legal Aid Centres (LAC).

The current access to justice project in Mongolia seeks to build on the Legal Aid Centres with the intention to expand the national legal aid system (including legal clinics, paralegals, etc.). Other interventions include:

- Draft Gender Equality Law and activities on gender based violence including a one stop service centre, men's counselling and behaviour change sessions;
- Draft Victims and Witness Protection Law;
- Promoting rights of people with disabilities; and
- Support to the Universal Period Review.

For Mongolia, it is important to explore the linkages between the access to justice work with the legal empowerment of the poor (LEP) work and the work on human rights and the Universal Periodic Review. Some questions raised during the discussions included the following: Is "Legal Empowerment of the Poor" part of "Access to Justice", or is "Access to Justice" part of "Legal Empowerment of the Poor"? Or are they just different approaches to the same problem and can sometimes overlap?

> *"Assessments can have a larger effect of influencing policies or stimulating change and empowering communities by providing a platform for people voice their opinions"*

Legal Empowerment Perspectives

Assessments conducted at the ground level can incorporate a legal empowerment component whereby participants in the assessment are encouraged to use the opportunity to deliberate on justice and to use the results of the assessment to advocate for better service provision. The example of participatory action research conducted by the Open Society Institute in Sudan, where assessments are done also to stimulate action is one such example. Participatory action research can have the effect of being catalytic in terms of mobilizing communities by bringing them together to present the findings of the data and initiating a dialogue on the critical access to justice issues raised by the research. By engaging in dialogue with the community it is possible to ensure that the final product of the research contains both the objectives of the project but also the objectives of the community. Participatory action research approaches have also been used with paralegals in Sierra Leone. It should be remembered that often times in the assessment processes, the best results could be the unanticipated ones.

In conclusion, assessments, while useful for UNDP programmes, can also have a larger effect of influencing policies or stimulating change and empowering communities by providing a platform for people voice their opinions. In certain cases, there may be trade-offs involved between methodology and results. Finally, it is critical to ensure ownership of the assessment by national stakeholders, particularly the government.

How to make it Happen: Conducting the Assessment

Discussions in this session were informed by presentations by the following:

Laurent Pouget, UNDP Lao PDR. *Moderator.*

Raquel Yrioyen Fajardo, Independent Consultant from Peru. *Research and consultation in the context of legal pluralism: the case of Cambodia and Timor-Leste.*

Krishna Vellupillai, UNOPS Sri Lanka. *Challenges of implementation in a conflict environment.*

Nguyen Tien Lap, Senior partner at NHQuang and Associates Law Firm, *Access to Justice Assessments in Viet Nam*

Ingvild Oia, UNDP Oslo Governance Centre. *Governance Assessments.*

Swati Mehta, UNDP Project of Access to Justice for Marginalized People in India. *Conducting an assessment in India.*

Research and Consultation in the Context of Legal Pluralism: the Case of Cambodia and Timor-Leste

The assessments in Cambodia and in Timor-Leste was initiated to support ongoing policy reform on justice. In Cambodia, there was a requirement from the Council for Legal and Judicial Reform for a 'survey' for policy development on alternative dispute resolutsion (ADR). In Timor-Leste, support was needed to draft legislation on 'traditional justice'. Rationales guiding the assessment were based on prior knowledge of lack of legal awareness and the weaknesses of the formal justice system in Timor Leste. This section examines some of the lessons from both the assessments.

Before conducting the assessment, it was critical to ensure that all partners understood and agreed on the processes and objectives of the assessment. This includes the type of expertise required from the assessment team, the methodology for the assessment, consensus around the idea of a process of research-action/ consultation process, ensuring that there is political will and national ownership over the process, ensuring adequate people's participation in order to define the problem as well as find and implement solutions, identify how to address and overcome time constraints and organize necessary material and human resources.

> *"It is essential to remember that an assessment and consultation process can be a political process – a means of giving voice to people who may otherwise be marginalized, a means of participating in decisions that will affect their lives"*

It is essential to remember that an assessment and consultation process can be a political process – a means of giving voice to people who may otherwise be marginalized, a means of participating in decisions that will affect their lives. There has to be political ownership (political condition) where there is buy in from the national body in charge and social networks. Allies such as the UN and donors can support this political process and consultation. The assessment also provides an opportunity for systemization through national awareness-raising on the issue. It is expected that the final outcome will be that policy development and drafting of legislation regarding justice reforms will be done drawing on the results of the assessment.

The key objectives of the consultations include:
- To **collect information** from supply and demand sides and on specific human rights issues;
- To **inform people** about the legal framework and their rights;
- To **empower disadvantaged people** in order to participate; and
- To **create room for discussion** around common values and alternative solutions.

Societal demand for justice is comprised of social needs related to conflicts, human rights violations and abuses of power. It is important to capture the actual demand for justice (current problems and conflicts filed to authorities) and the potential demand, i.e. problems that people have not filed to any authority due to lack of awareness or lack of institutional availability.

The methodology adopted in both the Timor-Leste and Cambodia assessments included:
- Desk Study;
- Secondary Data collection;
- In depth interviews;
- Surveys;
- Focus group discussions; and
- Workshops at the local as well as national level, including validation workshops with the participation of all the actors including women, justice operators, human rights organisations, minorities, indigenous peoples, etc.

The steps in the assessment process include:
1. Establishing a political agreement to undertake an assessment;

2. Designing the assessment;
3. First phase of visits;
4. Workshops ;
5. Systematization/ validation;
6. General Proposals and consensus-making;
7. Further development (policy development and legislation drafting); and
8. Consultation.

In Timor-Leste, given the weak penetration of the formal justice system, the Government approached UNDP for support in drafting legislation that would recognise non-state justice systems. The UNDP Justice System Programme and the Traditional Justice Sub-working group of UNMIT proposed a process of consultation on access to justice, customary law and local justice in order to elaborate guidelines for policy development and draft legislation.

A process of consultation is critical in order ensure that the legislation responds to the reality of the country and the needs and demands of the population.

The consultation process included:
1. Field trips and interviews (October 2008);
2. Decentralised workshops;
3. Focus/Group consultation (with women, justice actors, Human rights organizations); and
4. National consultation.

The consultations focused on providing people information on their rights. It then sought to identify the main social problems and conflicts (the **demand of justice**) and the main responses available (the **supply**). It also gathered perceptions on the responses by the justice system (customary authorities, police, Directorate of lands and property, mediators, courts). The consultation also facilitated a discussion on customary law in relation to human rights and encouraged participants to suggest proposals for the recognition of customary law and the establishment of local justice.

"A process of consultation is critical in order ensure that the legislation responds to the reality of the country and the needs and demands of the population."

The main proposals related to customary justice that emerged from the consultations included the following:
1. Formal recognition of customary mechanisms for conflict resolution as non-jurisdictional mechanisms
2. Recognition of customary law with limitations to accommodate human rights, based on consultation
3. Based on consultation, Timorese people have proposed to establish some limits to customary practices related to:
   a) Women's rights including inheritance, forced marriages, obligation to tolerate a second wife and domestic violence
   b) The nomination of customary authorities to eliminate the caste system

Key findings from the assessment in Timor-Leste:

Main social problems	Main conflicts	People seek out the following authorities in case of conflict
Lack of economic means for families, food, water	Domestic violence	Families
Lack of education opportunities	Land conflicts	Customary authorities (*lia nain, at aldeia* level)
Lack of health services	Juvenile gangs, local conflict	Community authorities (*chefe de aldeia, suco, conselho*)
Lack of roads, infrastructure	HR violations: unresolved from the past (displaced people, etc.)	Local authorities (sub-district, district level)
	Issues related to abuse of power & corruption	Police (each district. informal ways to respond)
		District Courts (4/13 districts) (in a building process)
		Directorate of land and property (for mediation)

c) The system of prohibitions and fines (*tara-bandu* and *multa*)
4. Establishment of a commission for victims support at community level
5. Capacity support to customary systems such as:
   a) Training to refer cases to corresponding authorities
   b) Provision of advice to customary and community judicial authorities in relation to women's and children's rights
   c) Awareness-raising on rights at the local level
6. Establishment of community judicial tribunals
7. Competency to decide and enforce agreements or decisions
8. Application of simplified proceedings and delivery in local languages

Including the perspectives of the poor and disadvantaged in Access to Justice Assessments – What can country-led governance assessments offer?

The Governance Assessment programme is a 5 year programme (2008–2012) which includes country, regional and global activities. There is a programme budget of $9.75 million (60% of budget to fund country level activities: LDCs are priority beneficiaries) and is executed by the UNDP Oslo Governance Centre and overseen by a UNDP *programme management board* and an *external advisory committee*.

Country-led governance assessments are initiated, implemented and sustained by national actors. Key factors are:
- National ownership
- National capacity development
- Alignment to national policy

In the Asia Pacific region, support has been provided to Bhutan via the Support the Gross National Happiness Commission in applying the Gross National Happiness Index in the planning exercise; in Indonesia by assisting local authorities to monitor progress in 33 provinces using the nationally developed Indonesian Democracy Index; and in Mongolia through promoting democratic governance and human rights by assisting parliament in gauging progress on Millennium Development Goal 9.

The governance assessments seek to incorporate the perspectives of the poor and disadvantaged through the process (who is included in conducting the assessment) and the methodology (gender-sensitive and pro-poor governance indicators).

One of the goals of the process is to strengthen accountability. Prerequisites for accountability include:

1. Answerability – require someone to justify what they are doing
2. Enforceability – something must be present to enforce the relationship
3. Transparency – access to information

It is important to consider how the assessment can strengthen this at the country level. In terms of access to justice, governance assessments can be seen as a means of oversight.

Do you start at the political or technical issues?
- Technical issues can include:
  - How big should the sample size be?
  - Should we use both de jure and de facto indicators?
  - Which normative principles should we select?
- Political questions can include:
  - Who are the change agents on the ground?
  - What are the formal and informal incentive structures for reform?
  - Which actors have self-interest in pushing this agenda?

Some issues to keep in mind include:
- Civil society may be overrepresented in urban areas, and dominated by men
- Parliaments may be weak

It may be necessary to adapt the research methodology to address these constraints.

The indicators identified for governance assessments can be revealing about access to justice issues. The following are examples of indicators that have been used in governance assessments that could usefully inform justice programming in a particular context.

Gender-sensitive indicators:
- Disaggregated by sex – Are men and women equally aware of their rights to seek redress through the justice system?
- Specific to or targeted toward female or male sex – What legal aid is specifically made available to women?
- "Implicitly gendered" – No reference to sex, however an issue that is of particular relevance to females or males, i.e. the number of reported domestic violence cases prosecuted in courts

Pro-poor Indicators:
- Disaggregated by poverty status – Ratio of use of legal aid among people of low income compared to people of medium or high income
- Specific to the poor – Number of cases brought to trial that are initiated by poor households
- Implicitly pro-poor – Coverage of local courts in rural areas
- Chosen by the poor – Availability of free legal aid

It can be revealing to combine disaggregate indicators to make it more pro-poor and gender-sensitive. For instance, indicators can be the percentage of domestic violence cases reported from poorer districts that are prosecuted, compared with the percentage of domestic violence cases reported from wealthier districts that are prosecuted.

Access to Justice Assessment in Vietnam

The 2003 baseline survey entitled 'Access to Justice in Vietnam from People's Perspective' included 98 questions related to, variously, *awareness* of legal rights and knowledge of where to claim them; *access* to legal information and institutions to protect their rights; and *confidence* and trust in the legal system – that it will be fair and effective.

One thousand direct interviews were carried out in six provinces (urban, rural and mountainous) with the survey results disaggregated by compulsory criteria (occupation, gender and ethnicity) and non-compulsory criteria (income, education and age).

In 2010, the survey was conducted again in the same location with the same questionnaire and methodology except for 14 extra questions added relating to changes of interviewee's perception in the last five years, and additional considerations for vulnerable groups.

The methodology of the survey was primarily focused on the quantitative, gathering data on numbers of people with particular opinions. The survey was focused on disadvantageous groups while still surveying 'professional', urban perspectives.

- 65% interviewees were from the "working class" (farmers, workers and those without permanent jobs); and
- 35% interviewees are civil servants, businessmen and professionals.

This methodology was used for several reasons:

- The same methodology needed to be used to monitor the progress from the 2003 baseline.
- The survey was already lengthy at 98 questions and it was thought that this was sufficient to measure potential changes the way people access justice and their perceptions of the process.
- Perception based assessments are rare in Viet Nam and this method of conducting access to justice assessments was the first of its kind in the country.

Advantages of using this methodology include:

- Direct interviews help secure the independence and privacy of the survey while still facilitating open discussions between surveyors and individual interviewees.

> *"Governance assessments can be seen as a means of oversight"*

- Broad coverage of the questionnaire helps provide comparative assessments of access to justice regarding: different legal institutions, different geographical areas, different social groups, and differences in people's perception over the years.
- Update surveys help determine a linkage between socio-economic changes and those in access to justice.
- Interviewing "users" (but not "service providers") helps identify differences between the Government's assessment and people's perception of operations of individual legal institutions.
- Survey results help identify issues and areas of concern for further exploration in other projects.

Although at this stage the results of the assessment have not been used by the government, the media published them and was able to generate the attention of the public on key justice issues. The new public administration index being developed in Vietnam also includes justice components.

Access to Justice Assessment, Sri Lanka 2008, UNOPS

The access to justice assessment in Sri Lanka was not able to be successfully completed. The challenges of working in a conflict environment, particularly when asking seemingly sensitive questions about justice and human rights, are significant.

Primary objectives of the survey in Sri Lanka included:

- To understand which officials / agencies people approach to find remedies for their legal problems;
- Document alternative or more informal structures and systems that individuals invoke to redress their problems;
- To understand people's perceptions and understanding of the institutions of the formal legal system (i.e. legal aid, courts and mediation boards);
- To identify legal problems commonly faced by people at the local level;
- To identify legal problems commonly faced by the more vulnerable persons in society; and
- Identify particular problems and discriminatory practices that individuals face as they attempt to obtain assistance from institutions within the formal justice system.

The assessment included both qualitative and quantitative components. The quantitative portion included a structured questionnaire and the qualitative portion used open-ended interviews and FGDs. While quantitative data

has the advantage of making statistically significant and reliable generalizations, however, it is limited in so far as it is not able to capture individual voices and the context of the individual experience.

UNDP requested a special focus of the assessment in the north, east and estate areas and on particular vulnerable groups, namely female headed households, internally displaced persons (IDPs), and minority groups such as Veddahs, Kuravars, Burghers) in order to ensure that data was collected among these particularly disadvantaged groups. Strategic sampling was also conducted focusing on families with members in remand, families with members abducted, persons born in India. The assessment was also attentive to multiple identities, for example: widow, IDP, Tamil, who has a son in remand.

In terms of the research design, a review was conducted of secondary literature produced by scholars and activists on legal problems faced by minority communities and IDPs in Sri Lanka. Regional experiences were also examined and interview protocols from the experiences in Nepal and Cambodia were also drawn on. Several consultations were held with UNDP staff and inter-agency meetings to discuss the draft questionnaire and to incorporate further information requirements. The refined draft of the questionnaire was presented to Ministry of Constitutional Affairs and Ministry of Legal Affairs for review. The questionnaire was then presented and discussed at four regional inception workshops in order to get feedback and comments from human rights activists, lawyers, government officials were incorporated.

The overall sample was done in 22 of 25 Districts (excluding Jaffna, Kilinochchi, Mullaitivu). 3,858 households island wide (2470 completed) were sampled including 68% in the North and East and Estate Sector and 32% elsewhere.

Questionnaire sections

- General warm up questions that present infractions / scenarios (everyone answers)
- Section for women only
- Separate sections for IDPs & Returnees
- Section for estate sector workers
- Section for landowners
- Sections on documentation, sexual violence and child rights (everyone answers)
- Sections on perceptions and use of legal aid, court system, mediation boards (general and personal experience)
- Demographics

"Appropriate technologies can be very useful in conducting assessments: by directly downloading the data into laptops for processing, practitioners can reduce data entry errors and ensure timely data input"

Proportional sampling by ethnicity in all 22 districts (9.5% Indian/Estate Tamils, 25% Sinhalese, 26% Muslim, 30% Sri Lankan Tamil, 9.5% 'vulnerable'. As much as possible, the sample was split 50% men/women. At least 33% of all of the DS Divisions in every district targeted (based on secondary data on demographics, income levels and poverty, conflict and displacement history).

District Level sample sizes included 225 interviews in each district in the North and East and estate sector, 200 interviews in border districts (Anuradhapura and Polonnaruwa), and 100–150 in other districts.

The sample sizes were based primarily on the 2007 census data on ethnicity (proportional sampling by district) E.g. Ampara (70 Sinhala; 40 Tamils; 95 Muslim; 20 other); Batticaloa (160 Tamils; 50 Muslims; 15 other); Vavuniya (16 Sinhala, 193 Tamil; 16 Muslims)

Households were found through "purposive random" sampling targeting low income to low-middle income areas/households (proxy indicators).

Over-sampling took place in the North, East and Estate Sector as the access to justice project wanted a strategic focus on minority groups and on conflict-affected areas, including areas recently-recaptured from the LTTE by Sri Lankan Armed Forces.

In terms of implementing the survey, the first step was to translate the questionnaires and train the enumerators (12 enumerators were chosen, both male and female and from all the main ethnic groups). Pre-tests were conducted in three districts over the course of four days and included all the main ethnic groups as well as estate workers. The questionnaire was then modified based on pre-test findings and a second round of training for the enumerators was held on the final questionnaire. Work plans were finalized for the field work and training was done on how to select households for the field interviews. Data Collection was done on Personal Digital Assistants (PDAs), which are small hand-held computers. Appropriate technologies can be very useful in conducting assessments: by directly downloading the data into laptops for processing practitioners can reduce data entry errors and ensure timely data input.

Access to Justice for Marginalized People in India

India is the largest democracy with a federal structure. India's judicial and legal system has many strengths including its constitutional and legal safeguards, its well-established institutions, a relatively independent and activist judiciary, a vibrant NGO sector and an independent media, and progressive laws, including recognition of historical injustices, recognition of group rights, positive discrimination for marginalized groups including women, and right to information. However, judicial backlog leading to delays and limited access to justice for people is a challenge and it is necessary to strengthen Legal Services Authorities and work closely with government and civil society partners. Judicial reform is a national priority.

Access to Justice by Poor and Disadvantaged People was an assessment supported by a partnership between National Judicial Academy (NJA), Department of Justice and UNDP. The objective, among other things, was to get reliable data on disadvantaged people's access to justice through formal courts, to be used in policy development and corrective action. The assessment was focused on women, children, elderly, disabled persons and tribal people. Research Methods and questions to be addressed were developed through workshops conducted by NJA.

The UNDP Pilot Project – Strengthened Access to Justice in India (SAJI) was established to carry out a justice sector diagnosis, identify entry points and support innovative small pilots to identify good initiatives for replication.

The Access to Justice Practitioner's Guide can be useful in setting some of the parameters for developing an access to justice assessment. In particular:

- People's trust in the justice System
- Legal Protection of rights and remedies
- Legal awareness
- Legal aid
- Investigation
- Detention
- Prosecution
- Judicial Adjudication
- Administrative Dispute Resolution
- Informal and traditional dispute resolution
- Enforcement
- Civil Society and Parliamentary Oversight

> *"There is need to focus in a much sharper way on the mechanisms and processes of exclusion operating at all stages within the justice system"*

Through this project a mapping of the informal and criminal justice systems was conducted.

The mapping of the informal justice system was undertaken by the Kurukshetra University, National Centre for Advocacy Studies along with Institute for Para-Legal Studies, and National Law University, Bhopal. The mapping of the criminal justice system was conducted by Multiple Action Research Group, Public Concern for Governance Trust, and Mahila Chetna Manch.

Some key findings include:
- Severe lack of legal knowledge;
- Limited access to legal services available;
- Physical access to justice sector institutions, especially formal justice systems (police, prisons, prosecution and courts) is limited due to distance and costs; and
- Vulnerable groups are reluctant to access the formal system (particularly women) as the procedures to access them are too complex and are not comprehensible for those who are illiterate.

The assessment focussed on both the supply and demand side and worked at the local level. It sought to build on and strengthen partnerships with state actors and civil society for improved access to justice. The assessments reviewed the mandate of the justice institutions/stakeholders vis-à-vis the marginalized people and tried to bring out the gaps and needs so that the project can better target capacity development interventions.

In terms of scope, the assessment reviewed:
- State Legal Services Authorities;
- State Judicial Academies;
- Marginalized People;
- Civil Society Organisations and other Intermediaries;
- Existing legal awareness and empowerment material; and
- Laws, policies and institutional structures informed through action research and studies.

In terms of methodology, secondary literature survey, surveys, interviews, FGDs (formal and semi-formal), case studies, review meetings and experience sharing workshops were used. The survey was meant to be a baseline survey targeting people belonging to the marginalized sections of the society, CSOs and other intermediaries, Duty bearers. National and state level consultations to assess priorities of the stakeholders were

also held as part of the assessment. Some aspects of the methodology included:

- Needs assessment of State and District Legal Services Authorities – FGDs, interviews, secondary sources;
- Research Study on law school based legal aid clinics – survey, FGDs, interviews, secondary sources;
- Support Action Research – survey, FGDs, interviews, secondary sources; and
- Support to Innovative Projects to see what works and what does not – baseline and endline surveys by project partners.

The assessment can have an impact on many levels. By involving the justice institutions in the assessment and trying to capture their perspective, there is an increased ownership over the results of the assessment. Interventions such as capacity development strategies suggested to the Legal Services Authorities or training for judges through State Judicial Academies on laws and issues relating to marginalized people are more likely to be adopted. The assessment also helps identify innovative and replicable projects on legal aid, empowerment and awareness. It also helps to bring to the notice of the government, lacunae within legislations and legal provisions which are adversely affecting the rights and entitlements of the vulnerable sections.

Bringing together different stakeholders – judiciary, government departments and civil society – on the complex issues of access to justice is a challenging task. Also, not many CSOs work in the area of access to justice, especially at local levels. It is necessary to build mechanisms for replication of successful interventions especially in order to upscale and increase state ownership.

A key lesson from the assessment includes the need to focus in a much sharper way on the mechanisms and processes of exclusion operating at all stages within the justice system from filing of complaints and recording of statements to investigation, court proceedings, delivery of judgements and implementation of court orders. Documenting these processes can be a first step to advocacy for understanding and sensitisation of personnel at all levels of the justice system. It is very important to learn from the experiences of the Global South and to document and share information on processes so that we can learn from each other (e.g. process of engagement with national institutions of justice that are not open to review).

Identifying Recommendations and Guidelines on Developing Access to Justice Assessments

Discussions were held in three working groups which sought to identify some general guidelines and recommendations on designing and conducting access to justice assessments.

Some Considerations for future assessments

1. Guidelines and scope of assessment

- Start with realistic objectives that are commensurate with resources;
- Think through and remind oneself of the reasons and the target beneficiary (i.e. why and for whom the assessment is being done);
- Be sensitive to the internal political context

Scope of assessments	Who conducts assessments	Conducting assessments
What do we explore?	External Consultants	Constraints and gaps in capturing realities
What does the HRBA offer to conduct assessments?	Local and external teams together	Qualitative and quantitative methods
Whose access to justice? Selecting groups to serve	Involving the community-community researchers, paralegals (issues of neutrality, limitations on probing, investment of time and money)	Different tools
Aims of assessments – programs, projects, policy formulation and reform, to ensure State accountability	Time needed for assessment	Taking findings back to sites for validations
Different types of designs for different aims and objectives		Selecting categories of people to ensure inclusion
Layers of partnerships		Participatory approach
Government Involvement – too little? Too much		

- Choose and clarify objectives based on people's priorities as identified by NGOs, government or public survey and feasibility upon given time-frame; and
- Recognise that assessments can be incredibly important as an indication that the project responds to the community needs rather than donor priorities. In many cases people consider it wrong that projects are developed according to availability of funds determined by donors.

2. Maximize partnership with government to minimize consequences, while considering:

- Country's specific context;
- Governments endorsement as a way to ensure use of data;
- Identification of a partner/champion in the government that can implement results; and
- Participatory approach as key principle: building local capacities while doing the assessment.

3. Use of methodology to capture realities by following a general rule – involve local people

- Ensure a good translator for a successful involvement of the community in the assessment process; and
- Engage additional actors in the assessment who can assist with more effective dissemination of assessment results, such as journalists and documentary filmmakers.

4. Focus on the quality rather than the quantity of the research sample

5. Avoid making generalisations and ensure that the assessment is developed and designed based on local realities

- Avoid using the term toolkit in developing a guide to access to justice assessments. The attempt to capture a set of best practices can obscure specificities. It will also be difficult to develop a universal approach and guideline.
- Instead, review assessments in the region with specific case studies of various assessments. The case studies can provide a rich and contextual discussion of key issues such as how to define objectives, ensure ownership, develop appropriate targets, tailor to the local context, analyse pros and cons of particular approaches, and engage in partnership building.

6. Use creative and innovative tools and channels

- For example, the use of PDAs for data collection, or Oral Wiki to access information. It would be useful to identify innovative tools and feature them for future assessments.
- Media can be strong partners in sharing the results of the assessment. In some cases partnership with the media may be frowned upon by the government, while in others, sharing information on the results of the assessment with the media may be a means of encouraging public pressure on critical issues
- Storytelling and conversational approach to talking about experiences when interviewing people and feeding them into the findings can be useful than going through a survey. This was the case in Sri Lanka where people felt uncomfortable with structured questions.
- Including people like journalists in the assessment team can be useful to highlighting stories in the media on particular issues. The Nepal assessment sought to bring out stories on access to justice during the conflict by also including a journalist as part of the assessment team.

Developing Partnerships

Discussions in this session were informed by presentations by the following:

Nicholas Booth, UNDP Vietnam. *Moderator.*

Kim McQuay, Regional Director for Law and Governance. *Strategic Partnership Considerations in Access to Justice.*

Taufik Rinaldi, Justice for the Poor Indonesia, World Bank. *Developing Partnerships – Experiences from the Justice for the Poor Program, World Bank, Indonesia*

Gemma Archer, UNDP Global Programme on Accelerating Access to Justice for Human Development. *UNDP Global Partnerships on Access to Justice.*

Strategic Partnership Considerations in Access to Justice Assessment: The Asia Foundation's Experience

The Asia Foundation is committed to supporting access to justice assessments as they are seen as a strategic program planning tools. The Asia Foundation often uses a combination of qualitative and quantitative methodologies and emphasizes robust empirical research – with a particular focus on refining understanding of the connection between access to justice, governance reform, poverty reduction: legal empowerment. A critical element of the assessments is also local capacity development. It is also important to not just think about how an assessment is conducted but also to place findings and recommendations in the public domain

wherever possible. In terms of approach, it is useful to use a combination of approaches in developing an assessment – human rights-based and others. Some examples of assessments conducted by TAF include:

- Formal access to justice assessment combining quantitative and qualitative components
  - Indonesia (2001)
  - Bangladesh (2007)
- Specialty access to justice assessments
  - Bangladesh community-police relations (2004)
  - ADB Legal Empowerment for Women and Disadvantaged Groups (2006–08)
- Access to justice considerations as component of broader national perception surveys
  - Bangladesh national public perception surveys (2007–08)
  - Thailand (2009–10)

Some initial reflections on partnerships indicate different types of partners, and core partners can include:

- Development partners – individually or in partnership with other international organizations (pool resources, avoid duplication of effort, greater policy leverage through strength and influence in number)
- Host governments – critical buy-in, facilitation, and follow-up
- Technical partners – lessons learned from experience in:
  - defining technical support needs
  - selecting technical partners
  - accommodating the strengths and weaknesses of technical partners
- Civil Society Organizations
  - Principal providers of community legal services and other mechanisms that facilitate improved access to justice by vulnerable populations
  - Facilitate access to key informants

These core relationships are especially important, as underlined in previous sessions, but there are also broader complex of potential strategic partnerships that figure in planning, executing, and following up on access to justice assessments.

We conduct access to justice assessments for many reasons:

- **Development of program strategy** – of benefit to multiple stakeholders and prospective partners
- **Baseline** for measuring positive or regressive changes over time – multiple stakeholders and prospective partners
- **Key stakeholder engagement and ownership** – host governments, practitioners (those who address access to justice constraints)
- **Local capacity development** – government, civil society/academic institutions, technical specialists
- **Education and advocacy** – key stakeholders and communities whose access to justice is at greatest risk

Important factors to consider:

- *Political environment*
- *Time constraints*
- *Resource constraints*
- *Scale and geographic scope and depth of reach*
- *Quality and precision*
- *Local partner capacity*
- *Ownership and follow-up*

- **Political leverage/policy reform** – government, political actors, civil society
- **Practical comparisons** among countries that face like challenges and constraints and have good practices to share – development partners, government, civil society
- **Raise confidence and expectations** among individuals and communities that are denied equal access to justice – absent which, positive changes may go unnoticed or fall short of full potential

Assessment Steps can include:

- **Framing the parameters –** practical choices among a variety of options; taking account of political context, security constraints, and other considerations
- **Design** – methodology, quantitative instruments, qualitative elements
- **Facilitation** – practical access to key informants
- **Implementation**
- **Compilation, review, and analysis of results**
- **Reporting and recommendations**
- **Dissemination of findings and recommendations**
- **Creation of value-added** – broader reflection and knowledge exchange and sharing the country experience regionally and internationally
- **Follow-up** – program activities, advocacy, monitoring change and strategic impact over time

Some important factors to consider are:

- **Political environment** – core partnerships, facilitation, ownership, follow up
- **Time constraints** – at what point do valuable but complex partnership arrangements become overly cumbersome?
- **Resource constraints** – how much partnership can we afford?
- **Scale and geographic scope and depth of reach** – partnership may be essential (civil society)
- **Quality and precision** – partnership may add value
- **Local partner capacity building** – weighing time, cost, and other considerations against positive impact
- **Ownership and follow-up** – essential partnerships (government, political actors, civil society)

Partnership strategies can successfully bring together government and non-government actors to address particular issues and can be used to affect policy. Developing partnerships is part of the access to justice assessment process. Civil society is also an important partner as they offer a valuable access to local networks. Below is a table that proposes some areas of consideration in developing partnerships for access to justice assessments. Finally, it is important to ensure that non-polished, accessible language is used to disseminate the findings of the assessment to the grassroots level.

Strategic Options and Considerations

STEPS IN A2J ASSESMENT	PROSPECTIVE CORE PARTNERS	PROSPECTIVE ASSOCIATE PARTNERS	COMMENTS AND CONSIDERATIONS
Preliminary Planning (Framing the A2J assessment)	• Development Partner(s) • Government Agencies • Civil Society/Academic Institutions	• Government Agencies • Civil Society/ Academic Institutions • Select Private Sector Informants (?)	• Government participation and ownership from the outset of A2J assessment planning reduces the risk of government agencies distancing themselves from the findings and recommendations at a later point. • Civil society participation from the outset of the planning stage adds greater depth of knowledge, understanding, and nuance. • Examples of local A2J assessment initiatives.
Technical Design (methodology)	• Development Partner(s) (operational initiative) • Technical Specialists (survey research specialists, other) • Government Agencies • Civil Society/Academic Institutions	• Government Agencies • Civil Society/ Academic Institutions	• Time, cost, and other efficiency considerations tend to place development partners and technical specialists in lead role. • To what extent should capacity development considerations weigh in strategic partnership considerations?
Facilitation	• Government Agencies • Civil Society	• Civil Society	• Government concurrence and facilitation is critical in certain working environments – for example, letters of introduction to local authorities; instruct public officials and agencies to cooperate as facilitators and informants. • Community legal service NGOs and other civil society organizations can play a key role in reaching key informant populations at the grassroots – drawing on trust relations, convening capacity.
Implementation	• Development Partner(s) • Technical Specialists • Government Agencies • Civil Society/Academic Institutions	• Technical Specialists • Government Agencies • Civil Society/ Academic Institutions	• Time and cost considerations tend to place development partners and technical specialists in lead role. • Again, to what extent should capacity development considerations figure in strategic partnership decisions, or weigh against downside risks?

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STEPS IN A2J ASSESMENT	PROSPECTIVE CORE PARTNERS	PROSPECTIVE ASSOCIATE PARTNERS	COMMENTS AND CONSIDERATIONS
Compilation, Review, and Analysis (Quality Control)	• Development Partner(s) • Technical Specialists • Government Agencies • Civil Society/Academic Institutions	• Government Agencies • Civil Society/ Academic Institutions	• As above. • Civil society/academic institutions may make significant contributions in interpreting striking results. • Development partners and technical partners tend to take the lead. • Efficiency and time and cost considerations versus capacity development
Dissemination	• Development Partner(s) • Government Agencies • Civil Society/ • Academic Institutions • Local Media	• Government Agencies • Civil Society/ Academic Institutions • Local Media	• To the extent possible, assessment findings and recommendations should be placed in the public domain • Partnership arrangements, political environment, sensitivity of results, and other factors weigh in determining lead and secondary roles in disseminating findings and recommendations of the A2J assessment. • Role of civil society in sharing findings and recommendations with vulnerable communities, and articulating their implications at the grassroots. Ensure that the findings and recommendations are shared in lay terms • Untapped potential of the print and broadcast media
Value Added (Sharing knowledge and experience more broadly, comparing county contexts)	• Development Partner(s)	• Government Agencies • Civil Society/ Academic Institutions	• Development partners have traditionally assumed the role of refining A2J assessments as knowledge products of relevance beyond focal countries. • Long-term capacity development, incentive recognition, and future resource considerations encourage broader government and civil society roles and contributions.
Follow-up (Program Strategy, Advocacy, Implementation, Monitoring)	• Development Partner(s) • Government Agencies • Civil Society/Academic Institutions	• Government Agencies • Civil Society/ Academic Institutions	• Development partners and civil society have tended to be most active in follow-up initiatives and post-assessment monitoring. • Encouraging examples of government role.

Developing Partnerships –Experiences from the Justice for the Poor Program, World Bank, Indonesia

In 2006, the World Bank in Indonesia conducted a local government corruption study of 2006 and then the research on non-state justice systems.

Corruption Research Study – The research objectives of the Local Government Corruption Study were to document the dynamics of the local players in promoting the settlement of corruption allegation; to identify the modus operandi of corruption as well as action and strategy of the promoting actors in settling corruption cases, and to identify the opportunity for success and failure in handling corruption cases at local level.

> *In order to have a real impact at the local level, it is important to take on a longer time framework or the programme/ assessment, so that it can establish a network and offer support to the network.*

In terms of methodology, qualitative research was conducted on 10 cases of corruption allegations in 5 provinces in Indonesia. Case studies were conducted by carrying out interviews with more than 200 respondents and 13 Focus Group Discussions engaging more or less 150 participants comprising of: community members, law enforcers, corruption suspects and their legal advisors, promoting actors and mass media. The data collection was conducted through the following methods: a) review on related documents such as media coverage, NGO documentation and legal documents; b) in-depth interview and Focus Group Discussion.

Partners for the study included 'Local Players' (NGOs, local anti-corruption coalition) in terms of designing, field work, analytical step, dissemination and the Attorney General Office for the data analysis and dissemination.

Study on Non-State Justice Systems – The 2004–2008 Study on Non-State Justice systems aimed to document the working of non-state justice at the village level, with a particular focus on social inclusion and the perspective of the marginalized to understand the dynamics of change and how to translate them into a framework that embraces the strengths and addresses some of the shortcomings of non-state justice mechanism.

It drew on 34 ethnographic case studies collected from 5 provinces over an 18 months period and survey data from Governance and Decentralization Survey. In addition, the data sources included comparative studies to research informal justice in Bangladesh and the Philippines. Data collected from the research locations by the J4P team in cooperation with researchers from local NGOs and universities. In total, 452 people were interviewed and 343 attended verification workshops across the five provinces.

There were 2 key partners for this research: Supreme Court and Local NGO/Universities. The Supreme Court participated in almost all stages of the research including field works and analytical works. The partnership with local NGOs/Universities was developed mainly during the field work and dissemination.

Partnerships matter because they:

- Maximize the impact – the aim of developing partnership for the research with government and civil society organization is to have a better access of influencing the policy;
- Create a network in carried out the recommendation and follow up action;
- Increase research capacity of local actors; and
- Ensure the do-able recommendation and follow up action.

The local government corruption study was successful in impacting at the national level and contributed to the development of i) Anti-corruption strategy for National Community Empowerment Program (2007); ii) 'Zero tolerance for corruption' (2010); iii) National Strategy of Access to Justice (2009); iv) Government program of Mediation and Community Legal Empowerment (2008) in disadvantaged and conflict areas. However, the impact at the local level was insignificant.

The Non-State Justice System study contributed to the development of joint programs of Non-State Justice Systems in 5 provinces and the National Strategy of Access to Justice (2009). At the local level, Non-State Justice Systems working groups were established in 5 provinces.

There are several reasons to engage with others stakeholders in conducting an access to justice research. The reasons will provide guidance the 'how' and 'when' questions in developing partnerships.

Partnerships need to be developed for practical reasons – to inform project design, to set an operational platform, increasing research capacities, and to build networks. Involving a wide range of partners also help make sure the sustainability or resources to carried out the findings/ recommendation forward.

Methodological reasons for developing partnerships include to develop a new methodology/analytical framework. It's worthwhile to engage with the 'real players' while dealing with 'objectivity' issue carefully. It can also be time and cost consuming.

In terms of impact on policy, it is important develop partnerships to make sure that the research/findings in line with government's short term agendas as well as engage partners in all stages of the research for analytical and dissemination steps.

Accelerating Access to Justice for Human Development – UNDP Global Partnerships on Access to Justice

The UNDP Global Access to Justice Project to seeks to foster global partnerships to promote access to justice. In order to maximize the impact of the assessments, partnerships can play a critical role. It is important to first clarify the following:

- ***What* is the impact you are seeking?** (I.e. purpose of the assessment – what will happen with the findings – broad/specific/programme /policy)
- ***Who* needs to be involved** to achieve that impact? – ensure findings are nationally owned & recommendations can be implemented in a meaningful & sustainable way (mapping exercise) i.e. government, UN Agencies, dev. partners (including the donors), CSOs, research institutions, reform 'champions', community
- ***How* to convene & coordinate** partnerships?– engage at the outset, working groups (formal & informal), trainings, workshops

Partnerships should be structured around the objective of the assessment and part of the partnership process may include developing national/local capacity (especially government) to coordinate & partner. It is important to consider partnerships for the whole programming cycle through to M&E while being aware of challenges in developing & coordinating partnerships.

> *"How information is disseminated – the process – is important and can provide additional information to feed into the analysis."*

Partnerships to support *impact* of assessments are being developed at the global level, including work on developing tools/guidance to assist UNDP country offices & national partners to carry out access to justice assessments. Local engagement is fundamental but also look to regional & global opportunities to maximize impact – draw on best practices, technical assistance, email networks – how can global supplement?

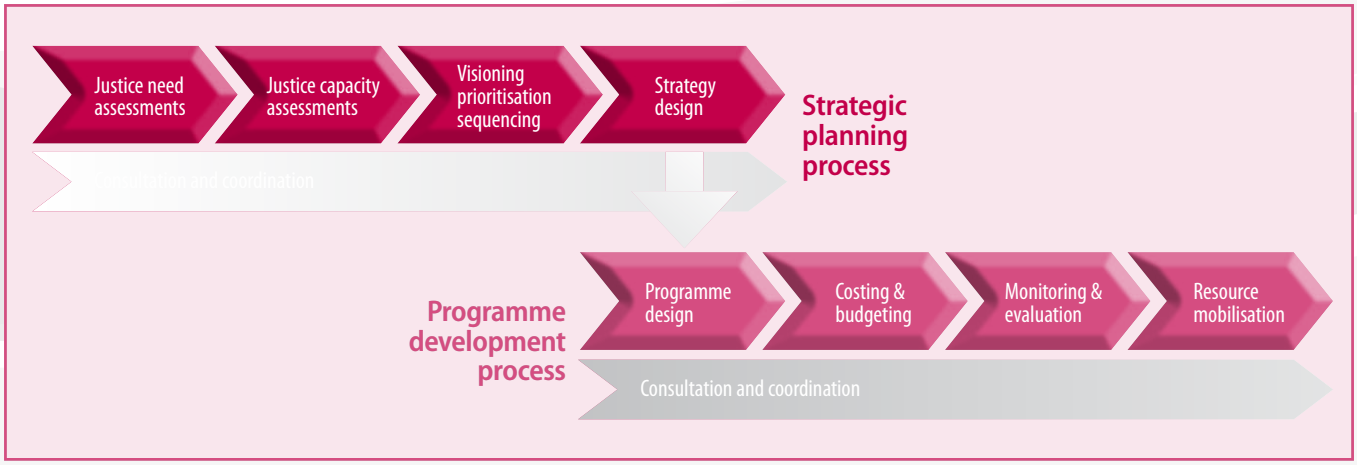
Some findings related to partnerships from the UNDP Justice global mapping/needs 2006–07 include the need for:

- Dialogue building with stakeholders critical to ensure a comprehensive approach to justice programming;
- Coordination among donors & UN agencies;
- Civil society groups critical for successful implementation;
- Capacity development on advocacy & coordination for legal reform; and
- Solid understanding of local political dynamics.

Global Thematic Programme for Accelerating Access to Justice for Human Development seeks to address current deficiencies in country justice reform programming by linking formal legal sector reform initiatives with bottom up demand side initiatives. It supports partner countries in designing and conducting justice needs assessments that truly reflect the voice of poor and marginalized people and builds on their rights and needs in order to develop strategic plans and justice system reform programmes that are capable of providing access to justice for human development.

Support to access to justice assessments include capacity development for UNDP personnel & national partners to engage meaningfully with assessments (guidance, trainings, etc. including capacity development for governments to coordinate & manage assessments); support for access to justice communities of practice for UN, member states, dev partners, donors for balanced approach to justice reform grounded on human rights and findings from an assessment of needs and priorities.

Justice needs assessment are the entry point for holistic justice sector reform based on people's needs – the human rights-based approach to access to justice:



What does it all Mean: Analysis of Data and Findings

Discussions in this session were informed by presentations by the following:

Maria Bermudez, UNDP Timor Leste. *Moderator.*

Ramani Jayasundere, UNDP APRC Access to Justice Assessments Consultant. *Analysis of Data and Findings- Some notes from the mapping of assessments.*

Krishna Vellupillai, UNOPS Sri Lanka. *Lessons from Implementing the Access to Justice Assessment in Sri Lanka – Data Collection and Findings.*

Chris Morris, formerly with UNDP Indonesia. *Dealing with the Data: Indonesia Access to Justice Assessment.*

Raquel Yrioyen Fajardo, Independent Consultant from Peru. *Analysis and Impact of Participatory Action-Research Process.*

Raza Ahmad, Independent Research and Policy Advisor from Pakistan. *From Crisis to Crisis Governance and Rule of Law Assessments, Pakistan*

Analysis of Data and Findings – Some notes from the mapping of assessments

The review of 17 assessments as part of the draft paper all arrive at comprehensive findings and conclusions. It is difficult to derive at a uniform system of data analysis and distilling of specific findings and conclusions from the vast amount of information gathered.

There were several different tools used in some of the assessments including conflict analysis, institutional analysis, service analysis, dispute resolution analysis, perception analysis, needs analysis.

In analysis of data and information, the value of assessments is in the linking of such analysis to the rationale and background of each assessment, thereby providing direct links to questions, issues, challenges and obstacles identified in the background of and rationale for each individual assessment.

In some assessments, findings are general with little conceptual analysis. Recommendations are obvious without offering much guidance to implementers of projects/policy makers. In others, the findings impact on theoretical thinking and conceptual approaches and add value to discourse on concepts and approaches while providing practical recommendations to further access to justice and rights enhancement.

> *"Lack of clear rational at the beginning of the assessment can result in some conclusions and recommendations that are more 'generic'. This can also be due to insufficiently formulated background or weakness in the analytical framework in the design or the analysis of the findings."*

While mention is made of computer systems and indicators, it becomes difficult to capture the human worth each assessment brings in terms of knowledge, experience, insights and 'gut feelings' that are brought into the analysis by team members and stakeholders. Assessments follow complex systems of data analysis and it is difficult to capture that.

Can assessment reports capture the complexities of data analysis and provide guidelines or tools for future assessments? If so, how?

Lessons from Implementing the Access to Justice Assessment in Sri Lanka – Data Collection and Findings

The implementation challenges facing the access to justice assessment in Sri Lanka need to be contextualized. It was conducted in an ethnically-charged civil war environment with a militarized government regime. Given the environment there was a high degree of suspicion and caution about strangers and the safety of the assessment team, particularly the Tamil enumerators, needed to be considered. In some cases, the assessment raised expectations from the UN and in others there was a complete ignorance of the UN. The complexity and length of the questionnaire as well as the complex sampling also posed significant challenges and the absence of reliable census data/secondary data during research design didn't make the process easier. Survey fatigue where the people may have undergone sampling in other surveys was also a challenge that needed to be dealt with.

Access to justice must be considered relationally – in terms of one's physical location (e.g. living in the capital Colombo versus the conflict-affected district), gender, social status (e.g. married versus being widowed or being displaced by the conflict), political party affiliation, ethnicity, and income. All of these factors can influence the extent to which a citizen can obtain the assistance that s/he is due from the country's formal justice institutions.

Notions and understandings of what is just and who defines what is just is a sensitive issue in a politicised environment, therefore, the research method and methodology must allow people to speak about their experiences in a safe environment and with confidence that their testimonies will be kept confidential.

Additional factors that affected the findings of the assessment were the use of the 'do not wish to answer' option and confusion over what is the law and what was thought ought to be the law.

Given the conflict context, fear also played a large role on what and how much people were willing to say. They were often afraid to state negative aspects of people in power, e.g. the police, which raises questions on the reliability of some of the responses.

The use of purposive sampling (forgoing the ability to be random, in the pursuit of analytical depth and logistical considerations) may have influenced the outcome and findings of the study significantly. For example, there is an artificial increase of certain numbers of people of a particular ethnicity within DS divisions for analytical and logistical reasons.

It should also be noted that while the study was conducted at a household-level, they were essentially the views of the particularly person spoken to within the household, therefore it may have differed from others in the family.

Regarding the data collected, it was disaggregated by sex, ethnicity, DS Division, status such as an internally displaced person (IDP), returnee, estate workers, landowners, and education level of respondent. Cross tabulations were done where necessary or seemingly interesting to establish correlations.

Dealing with the Data: Indonesia Access to Justice Assessment

Three key issues come up when analyzing the data. First of all it is important to check and understand the reliability and limitations of data (both quantitative and qualitative). Secondly, it is necessary to figure out how to structure the analysis given the vast amounts of data and also deal with the gaps in the data. Finally, drawing on the data and analysis, realistic and relevant recommendations need to be crafted.

In order to check the reliability and limitations of the quantitative data collection, as part of this assessment, there was an effort to back check the survey data – 10 randomly selected respondents per village by independent monitors (roughly 8 percent of the village sample) were done. However, there were still several challenges in analyzing the data and identifying findings. For example, while open-ended questions can be useful, it becomes challenging to codify them. Also, the quantitative data needs to be interpreted in light of the qualitative data and vice-versa in order to have a holistic understanding of the situation. In addition, age and language may have influenced the findings: 1) Since Bahasa Indonesia was not the first language for most of the respondents (only for 22% of the respondents), misunderstandings could have been made in data collection; 2) As young people under the age of 16 were excluded from the sample, their views were not captured in the assessment.

> *"Access to justice must be considered relationally. Factors such as physical location, gender, social status, political party affiliation, ethnicity, and income all influence the extent to which a citizen can obtain the assistance that s/he deserves from the country's formal justice institutions."*

In terms of verification of qualitative data, it is important to conduct monitoring visits throughout the field research. For this assessment, verification missions were conducted to randomly selected villages in each province upon completion of research, provincial seminars with key stakeholders and a peer review was completed.

It is quite a challenge to structure the analysis when there is over 2000 pages of qualitative data from provincial reports, plus survey data. There is always a tension between depth and breadth, and the need for follow-up research. Also, it is a challenge to figure out how to disaggregate the survey data – By province, by district, by gender, but not by 'disadvantaged' or 'non-disadvantaged'. There is also the difficulty of assessing real capacity gaps of formal justice actors (e.g. courts, police). A key question is – if the final report can't effectively make use of all of the data, how can it safely be made available to others?

Finally, in crafting realistic recommendations it is important get input from the field and the provincial teams while dealing with resource shortages. At the end, are recommendations really that important or is the data the most important part.

Analysis and Impact of Participatory Action-Research Process: Lessons from Timor-Leste and Cambodia

Participatory action-research is part of a political process that lets people arrive at a common understanding of the situation including the needs, rights and the social changes that are necessary in order to achieve social justice

by improving access to justice. It involves political actors (State, customary, indigenous authorities, communities), social actors (NGOs, social organizations), technical actors (UN, academic/ experts), allies: donors, sponsors, etc.

The process includes multiple objectives including to:

- ***Conduct Research*** **–** to obtain information to base proposals for policy development and draft legislation;
- ***Provide information*** – to inform people about the reform process & their rights;
- ***Provide opportunities to participate*** – to empower disadvantage sectors to participate meaningfully and to promote interaction between actors; and
- ***Gather Feedback*** **–** to consult about needs and proposals for further policy development, draft legislation, etc.

Tools & Analysis

Tools	What	Who	When	Why for
National & international normative framework	Legal framework	Researchers- shared with actors	At the beginning	To identify what it is necessary to change in the legal arena
Desk review/ • Statistic info • Institutional information • Judgements	All available information	Researchers – shared with actors	At the beginning	To establish the level of institutional implementation & law enforcement
Preliminary visits/ in depth interview	• Local situation • Perceptions	Research team	At the beginning	To set up the process of consultation
Survey	• Social demand for justice • Supply	Researchers / experts Shared with actors	Along the process	To identify tendencies, validate qualitative data and to support proposed changes
Field study & Case-study and observation	Situations & Cases (in depth)	Research team	Along the process	To identify specific issues, contrast other sources
Consultative workshops: • Local • Sector • National • Validation	• Social demand for justice • Supply of justice services • Proposals	Different Actors	Along the process	• To be aware of the situation; • To identify needs; • To negotiate values & priorities; and • To discuss proposals.
Institutional consultation	Proposals related to institutional changes	Institutions involved	After consultative workshops	To analyse institutional behaviours and to make recomendations
Expert consultation	• General/ specific proposals	• Experts of different areas	Along the process/ by the end	To provide specific inputs, validate proposals (considering best practices, comparative experiences, etc.)
International workshops	Findings Comparative experiences	Actors	By the middle/ end of the process /	To validate findings To encourage reforms

From Crisis to Crisis – Governance and Rule of Law Assessments, Pakistan

Assessments are often used as policy instruments, and this session will look at a few of the assessments in Pakistan including:

- 2009 Government's CERINA – Rehabilitation of Conflict-Affected IDPs;
- 2010 Malakand Rule of Law (baseline) – Stabilization of a Crisis Zone;
- 2009–10 Government PCNA – Larger Recovery and Stability; and
- 2010 Government Post Floods Damage Needs and Recovery of the Marginalised Poor.

The 2009 Government's Conflict Early Recovery Initial Needs Assessment (CERINA) – Rehabilitation of Conflict-Affected IDPs used several means for data collection including:

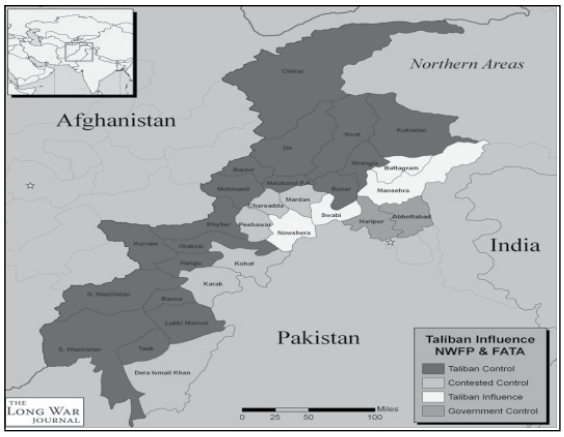
- Data collected data from primary sources through a survey of 500 households;
- Qualitative data gathered through interviews and several FGDs in IDP camps;
- key informant interviews; and
- Secondary data.

The 2010 Stabilization of a Crisis Zone baseline study focused on Assessing Rule of Law, Peace and Security in Malakand, NWFP. The study examined the state of the infrastructure, level of training of justice sector staff, quality of judicial decisions, quality of evidence collected by the Police, timelines to gather and analyse evidence, capacity analysis of personnel (including gender related data), citizen-law enforcement relations, state of the jirga system, and the state of legal services available.

The study identified a significant public trust deficit where – 90% paid bribes; in legal procedures involving judicial authorities, 78% paid bribes; in land administration 92%. It also found only 24% percent of respondents said that they "Completely agree" or "Agree"; whereas 55% stated that they "Mostly disagree" or "Completely disagree" to the statement "Civil servants take into consideration the opinion of people like me when deciding." Another finding was that there is popular support in pockets of Malakand division for the Taliban since they promise quick justice.

The baseline study helped in identifying critical priority areas for Rule of Law support such as:

- Capacity of courts to provide effective and timely justice services;
- Access to justice, legal aid and representation;
- Public safety and security;
- Formal – Informal justice debate;
- Policy shifts required; and
- Non-court grievance redress – Legal aid.



The 2009–10 Government Post-Conflict Needs Assessment comprised of four phases: (a) Pre-Assessment, (b) Assessment, (c) Finalisation and (d) Validation.

The Pre-Assessment Phase focused on capturing the voices of affected communities through consultations that a) sought the opinions of a wide range of interlocutors affected by the crisis on the reasons that it developed and on the potential solutions for resolving it; and b) sought wider views across civil society and the Pakistani Administration on the drivers and solutions of the crisis.

The Strategic Objectives of the PCNA were to:

- Enhance responsiveness and effectiveness of the State to restore citizen trust;
- Stimulate Employment and Livelihood Opportunities;
- Ensure Provision of Basic Services; and
- Foster Reconciliation and Counter Extremism.

The process ensured that mixed sector teams that included government and multilateral agency were mobilised to undertake assessments in nine sectors (including governance and security). These teams assessed the main issues that drive crisis within each sector, and identified peace building measures

In finalizing the assessment, findings were shared with the affected population, opinion-making stakeholders, *Jirga* members and parliamentarians to validate the findings.

This study faced many challenges since many areas were still in active crisis. It was also important to keep in mind that the PCNA is a peace building strategy, not

> *"International development agencies often conduct assessments for their own programming. Ownership, being cyclical and fluid, depends on the individuals and those in power and that's why the principle for the national and sub-national ownership as gateway is valid."*

as a development plan. Peace building is transformative and the ability of the government and communities to engage in behaviour change is a significant challenge. Other challenges identified by the study include lack of opportunities and the situation of women.

This study was conducted in a complex environment which compounded the challenges in implementing the study. Some reasons for the added complexity of the assessment included the following: a) four systems of governance, b) the social contract had broken down, c) there were competing ideologies, d) physical visits were limited and e) the surveys were 'questionable'.

2010 Government Assessment on Post-Floods Damage Needs and Recovery of the Marginalised Poor sought to identify the physical damages to Governance Infrastructure as well as 'indirect losses' such as state capacities and citizen entitlements.

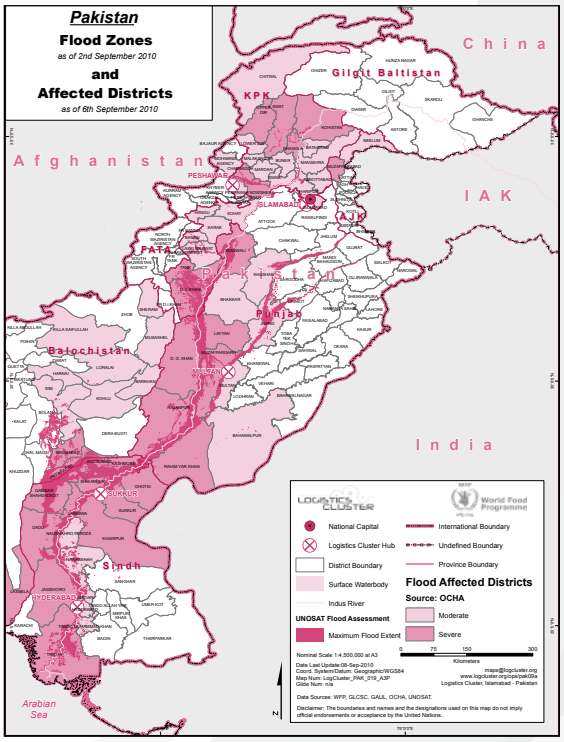
The assessment adopted a citizen focus looking at issues such as land rights (e.g. of tenants and sharecroppers), dispute resolution, identity and legal rights, voices of the marginalised (e.g. communities living in riverbeds). It also sought to examine citizen-state engagement looking at issues around formal dispute resolution, grievance redress, transparency in reconstruction, law enforcement, and public safety.

Based on the assessment, a recovery framework was developed which included:

1. Building sub-national capacities;
2. Ensuring that public safety;
3. Securing citizen entitlements and rights; and
4. Enhancing transparency & community oversight.

> *Exclusive government ownership could weaken power of local customary authority. Ownership depends on the change that is aimed for as the objective of the assessment. If the goal is to have the government or any other stakeholder committed to a certain objective, then they have to be on aboard.*

From all these assessments, some critical lessons can be drawn. First, it is crucial to have national and sub-national ownership of the assessment not only in conducting the assessment but also take forward the findings and recommendations. Timeliness is another issue, including unrealistic deadlines for conducting assessments which may compromise on the quality. When conducting assessments, particularly in difficult and complex situations such as conflict, it is important to have a flexible approach and tools as well as inventive methodologies. It is



essential to link the assessment to policy in order to ensure that policies are developed based on the realities and findings from the assessments. Finally, one of the biggest challenges is donor coordination – which is very necessary in conducting assessments and developing policies.

How can it make a difference: Advocacy and Impact on Policy and Programming

Discussions in this session were informed by presentations by the following:

R. Sudarshan, UNDP Asia Pacific Regional Centre. Moderator.

Ahjung Lee, Acting Programme Manager, UNDP Indonesia. *Life after the Access to Justice Assessment: Outcomes of the UNDP Access to Justice assessment on programming, national policy, and development aid in Indonesia.*

Aisha Shujune Muhammad, Judge at the Civil Court Maldives. *The Way Forward: Access to Justice Assessment in Maldives.*

Eric Lampertz, UNDP Cambodia. *Access to Justice Assessments and the Reality of Programming in Cambodia'.*

Marlon Manuel, Alternative Law Groups Inc. *Assessments as Advocacy.*

Life after the Access to Justice Assessment: Outcomes of the UNDP Access to Justice assessment on programming, national policy, and development aid in Indonesia'

Assessment to Justice Assessment in 5 Provinces (2004–5)

Between 2004 and 2005, UNDP Indonesia and BAPPENAS undertook an extensive and participatory needs assessment on access to justice in the five post-conflict Indonesian provinces of North Maluku, Maluku, Central Sulawesi, Southeast Sulawesi and West Kalimantan. This assessment was born out of the increasing recognition that access to justice was a necessary condition for peace and development, especially in poor and post-conflict settings, and was specifically aimed to inform the design of future projects on access to justice to be implemented by UNDP-BAPPENAS.

The assessment consisted of over 700 interviews, 200 focus group discussions (FGDs) and surveys of nearly 5,000 vulnerable and marginalized persons. It included an examination of the difficulties they experienced in accessing justice; a review of the justice-oriented services available to them; and their justice-related priorities. The Assessment Report identified a list of priority justice issues (e.g. access to government services and assistance; ownership and management of land and natural resources; gender violence and discrimination, etc.), the challenges impeding access to justice in the context of these issues, as well as recommended methodologies to address them.

Out of the findings of this assessment, the Legal Empowerment and Assistance for the Disadvantaged (LEAD) Project (2007–11) was launched by UNDP-BAPPENAS, with the overall aim to increase access to justice, especially with regard to the most vulnerable and marginalized groups, through the combination of a civil society grant-making system and policy advocacy. Findings of the assessment informed the objectives, priorities, strategies and architecture of the LEAD Project, and also shaped its four thematic sectors: (1) Land and Natural Resources, (2) Justice and Gender, (3) Local Governance (e.g. minimum service standards for health and education), and (4) Legal Aid Services. Due to limited availability of funding, the project was implemented in three of the five assessment provinces, namely North Maluku, Central Sulawesi and Southeast Sulawesi. Having the extensive assessment underlying the LEAD Project design assisted in the promotion of and resource mobilization for the LEAD project from the donors, UNDP, as well as the government and the civil society.

Based on the assessment finding that community legal awareness remained low in target areas, the LEAD Project at the grassroots level was designed to raise legal/human rights awareness and empower people/communities to demand their rights realization from responsible authorities. Furthermore, in line with the recommendation of the assessment to provide community-based legal aid and other legal services through the civil society, the Project funded and strengthened civil society organizations (CSOs) and community paralegals so that the vulnerable and marginalized would be able to obtain legal assistance when they needed it. The LEAD Project also supported the provision of pro-bono legal services. At the macro level, the LEAD Project supported national and subnational justice sector reform efforts dedicated to improving access to justice, in line with the assessment's recommendation.

> *"Access to justice assessments require considerable resources in terms of time, money, and human resources. However, in the Indonesia experience, these assessments are worth the costs and can make lasting contributions when supported by the host government and directly linked to the programme/project development."*

With this design, the LEAD Project has successfully increased access to justice in Indonesia over the past four years. At the local level, LEAD's interventions, particularly through grant-making to CSOs, have made it possible to mobilize community-based paralegals to assist the poor; increase the legal awareness and legal capacity of marginalized and disadvantaged communities; improve local government services through the development of minimum service standards; enhance the system of Integrated Services for Women and Children; and establish joint complaint handling mechanisms for land and natural resource disputes and grievances.

At the national level, the LEAD Project provided policy advice and technical support to the Government of Indonesia in the participatory development of the National Strategy on Access to Justice, which involved consultations with over 600 stakeholders from all 33 provinces. The Strategy was launched in 2009, and has been integrated into the National Mid-Term Development Plan for 2010–2014 as well as Presidential Instruction No. 3/2010 on Equitable Development. During the development of the National Strategy, the findings of the initial Access to Justice Assessment were also used to inform the analyses and recommendations. The implementation of the National Strategy is expected to strengthen access to justice in a comprehensive way, thereby contributing to bottom-up economic development, strengthened rule of law, and empowerment of poor, disadvantaged, vulnerable, and marginalized people in Indonesia. With this development of the National Strategy, many

donor-supported programmes and projects have been also developed and launched in recent years. As a result, "access to justice" became a mainstreamed language and became the subject of large-scale development cooperation as well in the spirit of national ownership and support to national priorities and policies.

Access to Justice Assessment in Aceh (2006–7)

The people of Aceh suffered a 30-year-long conflict and the 2004 tsunami, which together killed more than 200,000 people and devastated the lives of another million. In response, UNDP Indonesia with BAPPENAS conducted a comprehensive Access to Justice Assessment in Aceh between 2006 and 2007 and found a range of challenges that constrained the ability of formal and informal justice providers to handle grievances effectively. According to the assessment, a majority of Acehnese preferred the informal justice mechanisms available in their communities over the formal justice system to resolve their disputes. At the same time, the informal justice system had various challenges, such as lack of knowledge and capacity of the informal justice leaders, absence of guidelines and common standards, discrimination against women and other vulnerable groups, ambiguity in jurisdictional divisions with the formal system, and insufficient accountability safeguards. Therefore, the assessment recommended engaging with the informal justice system in Aceh to improve the quality of justice delivered to people in the communities.

Based on these findings, UNDP Indonesia implemented the "*Adat* (customary or informal) Justice Enhancement Component" as part of the Aceh Justice Project (2007–11) in partnership with the Aceh Customary Council (MAA). The project developed and distributed the Informal Justice Guidelines, and trained thousands of informal justice practitioners (including some 500 female leaders) on these guidelines and case management. The Guidelines and trainings have clarified the jurisdiction, processes, and actors of the informal justice system while fostering respect for human rights principles in culturally sensitive ways. For UNDP and BAPPENAS, working to improve the informal justice systems is not intended to diminish the importance of the formal justice systems. Rather, it has been carried out based on recognition – as confirmed by the assessment – that most people in Aceh preferred and used this system, and thus we could not increase access to justice in the target areas without improving the informal justice system. Indeed, the Access to Justice Assessment in Aceh played a critical role in developing an innovative and successful programme on informal justice in Aceh that was supported by strong ownership from the local institutions and communities.

> *Advocacy and ownership is critical for the assessments to have an impact and it is important to explore innovative ways to advocate for change – one page summaries, documentaries, photographs and other forms can be used as advocacy tools to move beyond reports and statistics of assessments to capture the stories not just for the development agencies but to empower the communities.*

Conclusion and Recommendations

Access to justice assessments require considerable resources in terms of time, money, and human resources. However, in the Indonesia experience, *these assessments are worth the costs and can make lasting contributions when supported by the host government and directly linked to the programme/project development.*

It has been almost 7 years since the initial assessment, and impressive, country-wide progress with regards to access to justice has been made. There is now a National Strategy on Access to Justice and many other similar programmes sponsored not only by UNDP but other development agencies. Based on the experiences, best practices, and lessons learned from the LEAD Project and the Aceh Justice Project, UNDP and BAPPENAS are currently preparing to launch a new umbrella project on access to justice under the name of Strengthening Access to Justice in Indonesia (SAJI). During the development of this new project, the final reports of the two initial access to justice assessments were revisited, and new staff in the UNDP offices continue to refer to these initial studies for contextual understanding of the situation in Indonesia. The findings from these assessments continue to contribute to UNDP's knowledge sharing and project development.

At the same time, it is regrettable that the incredible amount of qualitative data and real life stories that emerged during the research processes were merely reduced to a paper-form final report which faced the inevitable constraints of editing and simplification. Had there been alternative forms of capturing the knowledge and data – e.g. documentary, picture-story books, journalistic articles, topical publications, etc. – the assessment findings could have been better utilized for public education on access to justice issues. Thus, it is recommended recommend that creative approaches and greater efforts be undertaken to capture and utilize the real life stories and rich data from the research processes in forms beyond a printed final report.

The Way Forward: Access to Justice Assessment in Maldives

The Access to Justice Assessment in the Maldives is being undertaken during a unique period in the Maldives, where the country has recently adopted a new Constitution in August 2008, which stipulates a two-year transition period. This transition period poses challenges for all branches of the government.

The Access to Justice Assessment in Maldives is expected to:

- Provide baseline information on public confidence in the justice system;
- Provide insights into citizen's awareness of the justice system and to access to justice;
- Identify the knowledge base of duty bearers;
- Identify the challenges and obstacles faced by duty bearers;
- Provide information related to legal and rights awareness to survey communities;
- Serve as an avenue for policy discussions, sensitization and recommendations for informing policy, access to justice and justice sector reform.

Preliminary results of the assessment will be available shortly. In the meantime, experiences in conducting the survey have shown that there is a need for:

- Increased understanding and involvement of government actors in the assessment;
- Awareness-raising programme for the public;
- Capacity development of institutions to design appropriate modalities of service provision for rights-holders; to pay a greater attention to women's issues; and to establish new programmes such as legal aid;
- Training of duty-bearers; and
- Increased coordination among various institutions involved in the assessment.

Furthermore, the experiences thus far in the Maldives shows that future planning and implementation of an access to justice assessment should not comprise the principles of equality and non-discrimination and should further incorporate experiences of people from various socio-economic backgrounds and seek greater public outreach as well as better coordination and cooperation among the actors.

The experience from the assessment demonstrates the importance of government's role in enhancing access to justice and points to the need for greater government involvement in the access to justice assessment, so that the programme that results from the assessment can go beyond UNDP and donor organizations, and be mainstreamed into a national plan of action.

Access to Justice Assessments and the Reality of Programming in Cambodia

After the access to justice assessment in Cambodia, the initial access to justice programme was supposed to involve:

1. Human rights database development;
2. Support to Official Gazette;
3. Publication of Judicial Decisions; and
4. Promoting alternative dispute resolution.

> *"The experience from the assessment demonstrates the importance of national partners to be involved in the assessment so that results from the assessment can go beyond UNDP and donor organizations, and be mainstreamed into a national plan of action."*

Initial implementation design was as shown on the top of the next page.

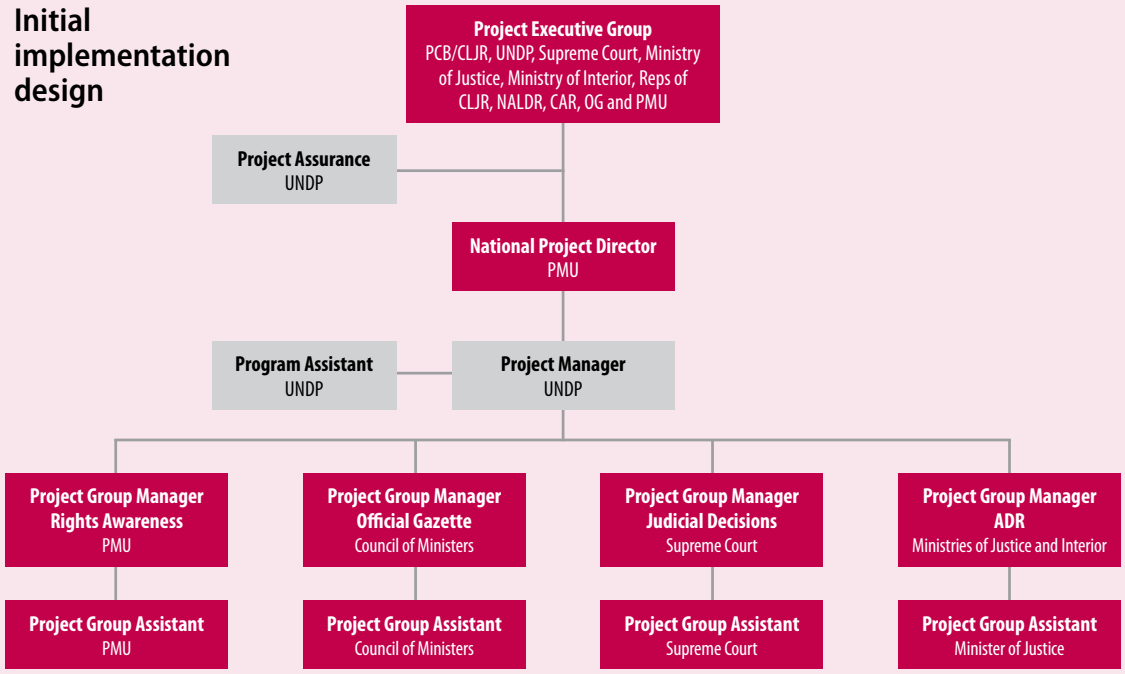
However, due to various challenges including the lack of ownership and commitment from the government, the programme ended up being able to undertake only the last component, namely "promoting alternative dispute resolution." As a result, programme for the period of 2007 to 2010 had to be re-formulated to implement the following activities:

- Establishment and capacity development of "Commune Dispute Resolution Committees";
- Establishment of legal resources centres;
- Legal aid and representation, with a focus on women and indigenous people;
- Village discussions on domestic violence issues;
- Advocacy for the recognition of indigenous people's rights and customary law; and
- Convening of "Peace Table Forums", which is a dialogue between traditional leaders and local government authorities on matters of community access to justice

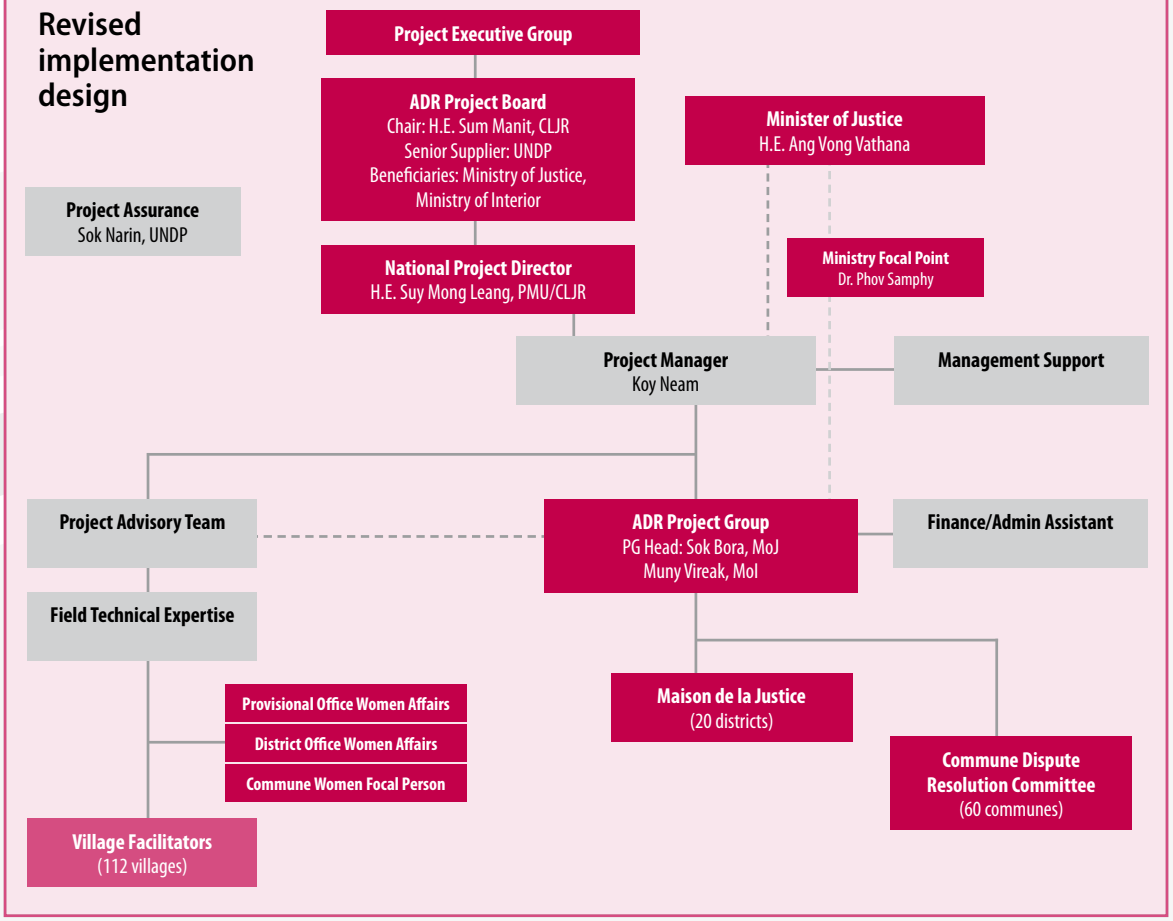
With this new design, the programme implementation structure also had to be revised as shown opposite.

The project made good results on the ground for the beneficiaries. Nonetheless, it suffered from various challenges such as government ownership, conflicting interests of implementing partners, high staff turnover, power dynamics among stakeholders, differences between the objectives of the government and those of development partner, as well as sustainability of results. It shows that while access to justice assessments can provide a good basis of programming, the realities of programming and implementation are inevitably influenced by the local dynamics.

Initial implementation design



Revised implementation design



Assessments as Advocacy Tool in the Philippines

Alternative Law Groups (ALG) is a coalition of twenty legal resource organizations operating nationwide providing developmental legal support to poor and marginalized groups and communities in the Philippines. It uses the law and legal resources to protect and assert rights and undertakes advocacy for policy reforms. ALG members' operations cover a wide area of concerns involving justice issues of the marginalized sectors of the Filipino society, including:

- Women;
- Workers (domestic and migrant);
- Farmers;
- Fishermen;
- Children;
- Urban Poor (informal settlers);
- Indigenous Peoples;
- Muslim communities;
- Persons Living with HIV/AIDS; and
- Persons with Disabilities.

For these target groups, the ALG members undertake various activities such as:

- Legal education &paralegal development;
- Advocacy for policy reform;
- Direct legal services and test case litigation; and
- Research and publications.

The Access to Justice Assessment in the Philippines (2007–2008) was undertaken as part of the Justice Reform Initiatives Support Project (2003–2008) in partnership between the ALG and the Philippine Supreme Court. With funding support provided by the Canadian International Development Agency (CIDA) through the National Judicial Institute (NJI) of Canada, the study was conducted by the Social Weather Stations (SWS), which is Philippine's leading research institute on subjects of quality of life, public opinion, and governance.

Findings of the access to justice assessment in the Philippines were presented to various forums including:

- JURIS Research and Technical Studies Committee;
- ALG General Assembly;
- JURIS Project Steering Committee, chaired by the Chief Justice; and
- Donors' Forum on the Impact of Social Justice and Human Rights Legal Programs on Poverty Alleviation, Good Governance and other Development Goals.

> *"The access to justice study showed capacity gaps, rather than just problems and needs, and confirmed the value of legal education programs and litigation support to strategic cases for the poor and the marginalized."*

The study was also published and widely disseminated in hard copies, CD format, as well as through the ALG website.

The access to justice study showed capacity gaps, rather than just problems and needs, and confirmed the value of legal education programs and litigation support to strategic cases for the poor and the marginalized. As such, the access to justice study has contributed to ALG's endeavors on a number of issues, such as: 1) Identification of justice problems, not only in terms of court systems and judicial processes, but also real cost issues and lack of capacities of the poor; 2) Legal empowerment and paralegal development activities; and 3) Capacity development for access to justice.

Furthermore, the access to justice study contributed to ALG's programming in the upcoming years. For example, ALG now manages the Environmental Defense Program (EnDefense), which provides funding support to community-led litigation activities for the protection of the environment. Overall, the assessment has contributed not only to the work of ALG in the Philippines but also to similar organisations working on the access to justice issues in other parts of the world as well.

Closing of Access to Justice Week

In conclusion to the last working day of the regional consultation, Ms. Pauline Tamesis, the Practice Team Leader for Democratic Governance and Coordinator for Asia Regional Governance Programme, thanked all the participants for their contributions to a successful Access to Justice Week in Bangkok, Thailand. All participants shared their commitment to access to justice, and looked forward to sharing more of their experiences in the future.

Annex 1:
Access to Justice Week Part I – Non-State Justice Systems: Principles and Practices Symposium – Agenda

Day 1 –Monday 4 October, 2010	
8:30–9:20	**Session I – Introduction** Welcome: Pauline Tamesis, Governance Practice Leader, UNDP Asia-Pacific Regional Centre Keynote Speaker: Marc Galanter –Professor of Law Emeritus, University of Wisconsin
09:20–9:40	**Session II – Engaging with Non-State Justice Systems: A Conceptual Framework** Erica Harper, Senior Rule of Law Officer, International Development Law Organisation
9:40–10:10	**Session III: Human Rights Issues and Reflections on Research –** Vijay Nagaraj, Research Director, International Council on Human Rights Policy *Discussion*
10:10–10:30	*Break*
10:30–11:30	**Session IV – Risks** 'The National Institutionalisation of a Local Justice System: A failed experience from Burundi' Dominik Kohlhagen – Institute of Development Policy and Management, Univesity of Antwerp, Belgium *Discussion* 'Quasi-formal justice forums in India: Issues of Gram Nyayalayas' MenakaGuruswamy – Attorney, Supreme Court of India. *Discussion*
11:30–12:45	**Session V – Gender** Lead Discussant: Usha Ramanathan, Independent Law Researcher 'Increasing Gender Justice through non-state means in Pakistan: The Gender Justice Through Musalihat Anjuman Project' Hamid Afridi, National Project Manager, GJTMA Project *Discussion* 'CEDAW Permeation in Mahila Panchayats and Nari Adalats' Tamara Relis, Research Fellow, London School of Economics and Assistant Professor at Touro Law School, New York *Discussion*

12:45- 13:30	*Lunch*
13:30–15:45	**Session VI: Indigenous Peoples** Lead Discussant: Chandra Roy, Regional Indigenous Peoples' Programme 'Customary Practices of Indigenous Peoples in Northeast Cambodia: Working with Peace Tables and documenting customary practices' Sopheap Yin, Programme Advisor, Cambodian Indigenous Youth Association *Discussion* 'Melding Indigenous Methods and Mediation In Melanesia: Lessons from a customary justice intervention in Bougainville' Naomi Johnstone, Research Counsel, Chief Judge's Chambers Waitangi Tribunal, Māori Land Court *Discussion*
15:45–16:00	*Break*
16:00–17:00	**Session VII: Non-State Justice Systems in Contexts of Socialist Legality** Chair: Chandra Roy 'Rethinking the Role of Customary Law in Dispute Resolution among Highland Communities in Viet Nam' Trong Dam Tuan, Social Policy Ecology Research Institute *Discussion* 'Mapping Customary Practices: UNDP Experience in Lao PDR' Laurent Pouget, Legal Programme Specialist, UNDP Lao PDR *Discussion*
17:00–17:30	'Oral Wiki: A Phone Archive for recording case decisions in Informal Justice Systems' Cindy Jeffers, Oral Wiki *Demonstration and Discussion*
17:30–17:40	Overview of key issues Facilitator: Erica Harper
Day 2 –Tuesday 5 October, 2010	
8:30–8:35	Brief welcome back – Facilitator
8:35–9:15	**Session VIII: Designing Strategies** 'Designing Engagement Strategies: Lessons from Seven Countries' Deborah Isser, Senior Rule of Law Advisor, United States Institute of Peace *Discussion*
9:15–9:45	**Session IX: Traditional Actors in New Councils** 'Developing a Code of Conduct with the Aceh Adat Council: Lessons from the Aceh Justice Project' Ahjung Lee, Acting Programme Manager, UNDP Indonesia *Discussion*
9:45–10:00	*Break*

10:00–11:30	**Session X: Practices in the Interface of State and Non-State Justice Systems** 'State Recognition of Traditional Justice Systems' Devasish Roy, Chakma Raja and chief of the Chakma Circle, Chittigong Hill Tracts; Advocate at the Supreme Court of Bangladesh; Indigenous Expert Member to the UN Permanent Forum for Indigenous Issues (2011–2013) *Discussion* 'The Role of Paralegals in Developing the Interface Between State and Non-State Justice' Tiernan Mennon, Senior Project Manager, Legal Empowerment of the Poor, Open Society Institute *Discussion* 'Participatory Consultations for Constitutional Recognition of Non-State Justice Systems in Timor Leste: Involving non-state actors in drafting procedures' Raquel Yrigoyen Fajardo, International Institute of Law and Society *Discussion*
11:30–12:00	**Session XI: Multiple State and Local Justice Hybrids in 'Special Areas' of Pakistan** 'Multiple State Systems and the Case for Non-State Justice Solutions in Pakistan' Osama Siddique, Department of Law and Policy, Lahore University of Management Sciences *Discussion*
12:00–13:00	*Lunch*
13:00–13:30	**Session XII: The Role of Non-state Justice Systems in Afghanistan: Challenges and Opportunities in Context** Chair: Sudarshan Abdul Majid Ghanizada, Head of Civil Law Unit, Ministry of Justice of Afghanistan Laila Langari, Programme Officer, Education and Training Centre for Poor Women and Girls of Afghanistan (EWC) *Discussion*
13:30–15:45	**Session XIIb: The Role of Non-state Justice Systems in Afghanistan: Challenges and Opportunities in Context – Cont.** Chair: Sudarshan 'Understanding the Political Economy of Customary Organisation to Better Inform Interventions for Local Self-Provision' Jennifer Brick Murtazashvili, Assistant Professor, Graduate School of Public and International Affairs, University of Wisconsin *Discussion* 'Raising Awareness of Community and Religious Leaders in Human Rights: Experiences from Afghanistan' Taguhi Dallakyan, Consultant and Analyst, former UNDP Afghanistan *Discussion* ' Legal Pragmatism and Rights Protection in Customary Legal Mechanisms in Afghanistan' Jasteena Dhillon, Visiting Scholar, Harvard University *Discussion* -Plenary-

15:45–16:00	*Break*
16:00–17:30	**Session XIII:** *4 Break*out Groups – Defining Principles. *Based on discussion*s of the last two days, groups will discuss and nominate 6 principles of engagement from their own experiences and what we have heard. Group Rapporteurs – • Allison Moore, Open Society Institute • Jennifer Brick Murtazashvili, University of Pittsburg • Dominik Kohlhagen, University of Antwerp • Tamara Relis, London School of Economics

Day 3 – Wednesday 6 October
Working Group Session on Afghanistan

09:00–10:00	**Session XIV: Rapporteurs present back to the group** Each rapporteur has 10 minutes to report back from their group *Brief discussion*
10:00–10:40	**Session XV: Reflection on Proposed Principles (40 mins)** Chair: Oliver Mendelsohn, Emeritus Scholar, La Trobe University • Marc Galanter • Erica Harper • Vijay Nagaraj • Deborah Isser
10:40–11:00	*Break*
11:00–11:45	**Session XVI: Plenary Response to Panel** Facilitator: Oliver Mendelsohn *Plenary Discussion*
11:45–12:00	**Session XVII: Next Steps**
12:00–13:00	*Lunch*
After 13:00	Participants fly from Bangkok Afternoon free for bilateral meetings and enjoying Bangkok

Annex 2:
Access to Justice Week Part I – Non-State Justice Systems: Principles and Practices Symposium – Participants List – 4–6 October, 2010

Non-State Justice Systems: Principles and Practices Symposium			
	Name	**Organisation**	**Contact**
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Annex 3:
Access to Justice Week Part II – Regional Consultation on Access to Justice Assessments – Agenda – 7–8 October, 2010

Day 1: Thursday, 7 October 2010	
8:30–9:00	*Registration*
Introduction and Overview	
9:00–9:30	*Introductory Remarks* R. Sudarshan, Justice and Legal Reform Advisor, UNDP APRC
Session I: UNDP and Access to Justice Assessments in the Asia Pacific Region	
9:30–10:30	*Session Objective:* Background and Review of Access to Justice Assessments in the Asia Pacific Region Presentations: • Emilia Mugnai, Programme Specialist – Justice and Human Rights, UNDP APRC • Ramani Jayasundre, A2J Assessment Consultant, UNDP APRC Moderator: Aparna Basnyat, UNDP APRC
10:30–10:45	*Coffee Break*
Session II: Where do we start – Designing the Research Framework	
10:45–13:00	*Session Objective:* To identify challenges, opportunities and lessons from experiences in the region in initiating access to justice assessments and designing the research framework and methodology. *Panel:* • Chris Morris, Policy Officer, National Reform Branch, Department of Premier and Cabinet, Victoria, Australia • SharmeelaRassoul, Project Manager, Equal Access to Justice Project, UNDP Sri Lanka • Aishath Rizna, Senior Registrar, Supreme Court, Maldives • Barkhas Losolsuren, UNDP Mongolia • Tiernan Mennen, Legal Empowerment of the Poor, Open Society Justice Initiative *Moderator:* Emilia Mugnai, UNDP APRC
13:00–14:00	*Lunch*

Session III: How do we make it happen – Conducting the Assessment

14:00–16:00 *Session Objective:*

To identify key factors in conducting access to justice assessments particularly in ensuring that the perspectives of the poor and disadvantaged are documented.

Panel:

- Raquel YrigoyenFajardo, Independent Consultant, Peru
- Krishna Vellupillai, UNOPS Sri Lanka
- Nguyen Tien Lap, Seinor Partner, NH Quang and Associates Law Firm, Vietnam
- IngvlidOia, UNDP Oslo Governance Centre
- Swati Mehta, GoI-UNDP Project of Access to Justice for Marginalized People, India

Moderator: Laurent Pouget, UNDP Laos

16:00–16:15 *Coffee Break*

Session IV: Working Group I

16:15–17:15 *Session Objective:*

To identify recommendations on developing guidelines for starting access to justice assessments including designing and conducting the assessments.

Break into working groups:

In each working group identify a facilitator and a rapporteur. Based on the sessions today identify recommendations and lessons that should be included as part of the guidelines and tools being developed for access to justice assessments for designing and conducting assessments.

Some Considerations:

1. What does it mean to take a Human Rights-Based Approach to Access to Justice Assessments?
2. How can we use the HRBA principles of participation and inclusion, equality and non-discrimination, accountability in designing and implementing the A2J assessments?
3. How do we ensure that the A2J assessment captures the challenges facing the poor and disadvantaged in accessing justice – women, children, minority groups, and other marginalized populations?
4. What are some of the critical elements to consider in designing the assessment and developing the methodology – e.g. user voices and perceptions rather than an institutional approach?
5. What are critical factors to keep in mind when implementing the questionnaires/focus group discussions i.e. research team, target groups, language, etc.?
6. Which institutions need to be involved in A2J assessments? Are local capacities being built through the assessment?

17:15–17:30 End of Day 1

Day 2: Friday, 8 October 2010

8:30–9:00 *Registration*

Session IV: Working Group I

9:00–10:15 *Session Objective:*

To identify recommendations on developing guidelines for access to justice assessments.

Break into 3 working groups:

In each working group identify a facilitator and a rapporteur.

Identify some recommendations and lessons that should be included as part of the guidelines and tools being developed for access to justice assessments. (45 mins)

Presentation in Plenary (30 mins)

10:15–10:30 *Break*

Session V: Who do we work with – Developing Partnerships

10:30–11:30 *Session Objectives:*

To identify strategies for partnership building in conducting and assessments on Access to Justice in order to maximize impact of the findings.

Panel:

- Kim McQuay, Regional Director for Law and Governance, The Asia Foundation
- TaufikRinaldi, Justice for the Poor, World Bank Indonesia
- Gemma Archer, Global Access to Justice Project, UNDP New York

Moderator: Nicholas Booth, UNDP Vietnam

Session VI: What does it all mean – Analysis of data and findings

11:30–13:30 *Session Objective:*

To identify factors that need to be considered in analysing the data and findings and to highlight challenges and lessons from regional experiences.

Ramani Jayasundere, Access to Justice Assessments Consultant

Raza Ahmad, Independent Researcher and Policy Advisor, Pakistan

Chris Morris, Policy Officer, National Reform Branch, Department of Premier and Cabinet, Victoria, Australia

Krishna Velluplai, UNOPS Sri Lanka

Raquel YirogenFajardo, Independent Consultatn, Peru

Moderator: Maria Bermudez, UNDP Timor Leste

13:30–14:30 *Lunch*

Session VII: How can it make a difference–Advocacy and Impact on policy and programming

14:30–16:00 *Session Objective:*

To identify the impact of assessments in developing policies and programmes and how assessments can be used to advocate for strengthening access to justice for the poor and disadvantaged.

Panel:

- Ahjung Lee, UNDP Indonesia
- Aisha Shujune Muhammad, Judge Civil Court, Maldives
- Eric Lampertz, UNDP Cambodia
- Marlon Manuel, Alternative Law Groups, Inc., the Philippines

Moderator: R. Sudarshan, UNDP APRC

16:00–16:15 *Coffee Break*

Session VIII: Next Steps

16:15–17:15 *Session Objective:*

To identify possible areas of engagement on Access to Justice assessments in the region.

In plenary, discuss some initiatives that can be undertaken in the region on Access to Justice Assessments.

Discussion in Plenary

17:15–17:30 Workshop Closing

Annex 4:
Access to Justice Week Part II – Regional Consultation on Access to Justice Assessments – Participants List – 7–8 October, 2010

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