



The Asia-Pacific Rights and Justice Initiative

Sri Lanka

Country Assessment

The DGTTF Lessons Learned Series

United Nations Development Programme

The Asia-Pacific Rights and Justice Initiative

Sri Lanka

Country Assessment

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Abbreviations¹

A2J	Access to Justice
ADR	Alternative Dispute Resolution
AP-A2J	Asia-Pacific Rights and Justice Initiative
BCPR	Bureau for Crisis Prevention and Recovery
CBO	community-based organization
CPAP	Country Programme Action Plan
CPD	Country Programme Document
DGTTF	Democratic Governance Thematic Trust Fund
EA2J	Equal Access to Justice Project
GoSL	Government of Sri Lanka
HRBA	Human Rights-Based Approach
HURIST	Human Rights Strengthening Programme
ICCPR	International Covenant on Civil and Political Rights
IDP	Internally Displaced Person
LAC	Legal Aid Commission
LAF	Legal Aid Foundation
LTTE	Liberation Tigers of Tamil Eelam
MDG	Millennium Development Goal
MIC	middle income country
MoCA	Ministry of Constitutional Affairs and National Integration
MoJ	Ministry of Justice
NEX	national execution
NGO	non-governmental organization
OIC	Officer In Charge
PSO	Project Support Office
RCB	Regional Centre in Bangkok
RG	Registrar General
ROP	Registration of Persons
SIDA	Swedish International Development Cooperation Agency
SLSM	Sarvodaya Legal Services Movement
TRAC	Target Resource Allocation from Core
TUGI	The Urban Governance Initiative
UN	United Nations
UNDAF	United Nations Development Assistance Framework

¹ The abbreviations and acronyms relate to those used in the main text, not those that are found only in the Annexes.

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Preface

The Millennium Declaration from the Millennium Summit in 2000 emphasizes the centrality of democratic governance for the achievement of the Millennium Development Goals (MDGs). World leaders agreed that improving the quality of democratic institutions and processes, and managing the changing roles of the state and civil society in an increasingly globalized world, should underpin national efforts to reduce poverty, sustain the environment, and promote human development.

The Democratic Governance Thematic Trust Fund (DGTTF) was created in 2001 to enable UNDP Country Offices to explore innovative and catalytic approaches to supporting democratic governance on the ground. The DGTTF Lessons Learned Series represents a collective effort to capture lessons learned and best practices in a systematic manner, to be shared with all stakeholders, to serve as an input to organizational learning, and to inform future UNDP policy and programming processes.

Executive summary

This assessment was conducted in April 2009 to identify and document the results and impact of the Sri Lanka Equal Access to Justice Project (EA2J). Although EA2J has not received direct DGTTF support, it still benefited from the broader regional A2J DGTTF project and as such was considered relevant for this country case study exercise.

The assessment reviewed several project related documents, annual progress reports and evaluation reports, and held interviews with UNDP country office staff, partners, national state institutions, NGOs, civil society organizations and CBOs, universities, donors and other indirect beneficiaries.

EA2J had two main phases and an intermediate transition phase that took place in 2008. The first phase, from 2004 to December 2007, addressed legal empowerment and A2J for the disadvantaged using a human rights-based approach. The project was extensively evaluated, revised and extended through 2008. Phase II began in 2009 to build on the lessons of Phase I and to reorient activities toward conflict prevention, while shifting the focus primarily to the East and North and to the estate sector. This phase sought to build trust and faith in the justice system by addressing gender equity, peaceful conflict resolution and mediation through the rule of law and A2J.

This assessment will focus on Phase I (considered for this purpose until the end of 2008) and review Phase II progress, providing an overview of results, strategies and lessons learned.

The country study assessed results based on the criteria of **effectiveness, sustainability, relevance and strategic positioning, efficiency, political economy, and codification of lessons learned and tools.**

Main findings and lessons learned

EA2J was significantly influenced by the regional initiative. In the words of one interviewee, “we wanted to follow the human rights-based approach programming guide blindly...” However, in Sri Lanka, project formulation and implementation fell short of successes in other countries, notably Indonesia. Nevertheless, the seeds have been planted, and the country office succeeds in attracting more partners² for longer-term intervention; the impact on targeted communities could be very positive.

Phase I achieved some significant results in terms of dispensing responses to the grievances of disadvantaged groups and raising awareness among claim holders at the community level as well as duty bearers. The project used innovative strategies, such as mobile clinics that provided identification and legal documents to internally displaced persons in the East and estate region. It was catalytic in securing a broad coalition of partners from state institutions, civil society and academia.

However, the project had serious shortcomings,³ starting with the way outputs were formulated. There was a lack of baselines and data to effectively target core issues and groups. The project also failed to incorporate the voices of claim holders in designing and implementing the project, and had limited engagement with the Ministry of Justice and limited guidance or accountability.

These shortcomings affected overall project implementation, as the project was spread thin in an attempt to cover a multitude of activities, overwhelming the field operation and yielding little macro impact.

It is important to note at the outset that the UNDP EA2J Project was initially conceived in 2004, when the ceasefire agreement was in place and the country was assumed to be moving towards peace. Since then, the situation has changed dramatically, with the December 2004 tsunami and periods of escalating conflict in areas of the North and East. These events have contributed to numerous grievances as large numbers of people have been displaced (some repeatedly), livelihoods have been compromised and people have faced

² The II phase of the project 2009-2013 is budgeted at approximately USD 8 million and so far secured budget is of 3 million from the Bureau for Crisis Prevention and Recovery (BCPR)

³ These shortcomings are well documented in the Annual Project Review (April 2007), the mid-term evaluation (December 2006) and the HURIST review (September 2004) and will not be analysed in detail in this report.

ongoing security concerns and threats from various armed groups. The project did not anticipate such events, and tried to rise to the occasion – especially with respect to the tsunami. This responsiveness, though highly commended, has cost the project some focus in its initial purpose.

Despite these setbacks, the project is now on course to achieve good results. It has undertaken a number of assessments and studies to serve as baseline and guiding tool for a more policy-oriented impact; it is adopting innovative, bottom-up strategies likely to impact the regulatory framework and boost policy development; it has achieved a better balance of focus between claim holders and duty bearers; and it has been catalytic in assembling a broad coalition of partners from all segments of the justice system while building on regional and provincial coordination mechanisms launched in Phase I.

The main accomplishments so far result from a shift of focus from geographical regions to specific disadvantaged groups, to redress ongoing disparities and contribute to conflict mitigation. As a result, the project is channelling its resources to the North and East, the plantation sector and selected prisons.

Key strategic interventions include supporting the main legal aid providers, training paralegals and state institutions such as the police and prison officers on the human rights-based approach, and fostering university legal aid clinics. The project has also supported a baseline survey and participatory consultations on A2J to generate data needed to ensure that its interventions respond to current needs.

The project was able to balance its grassroots work with overarching sector strategic interventions, such as the Legal Aid Assessment and the Evaluation Study on the Legal Aid Foundation and the ongoing national baseline survey on A2J. Recommendations from these interventions are now being discussed and are expected to pave way to a National Action Plan on A2J and a Legal Aid Policy.

Introduction

Purpose, objective and scope of the assessment

This assessment was conducted in April 2009 and examined the results of EA2J in Sri Lanka. It measured innovation and catalytic ability in supporting breakthroughs in sensitive democratic governance issues and in scaling up activities.

This assessment is not a project evaluation. Rather than an evaluation of progress, it provides an overall analytic review of results. It aims mostly to internalize and collect valuable information, and to analyze and document country office experiences with a view to strengthening knowledge management.

Methodology

The assessment analyzed relevant documentation, project reports, case studies, and conducted interviews with a wide range of stakeholders from donors, government institutions, academics and civil society. The primary beneficiaries could unfortunately not be visited during this assessment.

The main criteria were effectiveness, sustainability, relevance and strategic positioning, efficiency, political economy and codification of lessons learned and tools.

The assessment examined whether project results had been achieved or advanced. It identified external factors that influenced the result, and assessed the contribution of DGTTF and AP-A2J to national capacity development and participatory processes. It looked at the effectiveness of the partnership strategy, and whether innovative approaches had been found to key development issues. It examined the perceptions of indirect beneficiaries on DGTTF assistance.

For this purpose the assessment examined Phase I of the EA2J as well as progress on Phase II.

One international consultant conducted the assessment from 26 April to 1 May 2009.

The mission met with UNDP programme staff and EA2J project staff from both phases, the national counterpart Secretary of Ministry of Constitutional Affairs (MoCA), Police Attorney General, Prison Director, the implementing partners from Sarvodya, Institute for Human Rights, Centre for Human Rights Studies, Faculty of Law, Legal Aid Commission (LAC), Legal Aid Foundation (LAF) and other civil society organizations, Asia Foundation and donors. The mission also observed a human rights-based approach training workshop conducted by the project targeting the GramaNiladares and held a group discussion with participants.

The mission was able to obtain relevant information on project results, ownership issues and national partnerships, sustainability of interventions, and the UNDP role of supporting A2J in the national agenda and its implications for UNDP strategic positioning.

Time was the main constraint: the mission did not have time to visit project sites nor to speak with direct beneficiaries.

Another constraint derived from the fact that the project has generated little qualitative or quantitative data, and few tools or instruments. Still, the mission was able to collect some relevant tools used for the surveys and assessments with the support of the project team and the country office.

Country context, project background and strategy

Country Context

Sri Lanka has recently emerged as a middle income country (MIC) with a growth rate averaging 5-6% over the past few years. Despite its MIC status and the impressive gains made towards achieving several of the MDGs, significant challenges remain with regard to poverty, income disparity and social inequality. The ethno-political conflict that endured over three decades continues to hinder the country's growth and development. This is particularly true of the Northern, Eastern and border districts, which because of decades of violent conflict suffer developmental lags due to inadequate infrastructure, limited economic opportunities, weak public institutions and scarce access to public services.

The populations of the North and East have withstood the worst of the country's three-decade long ethno-political conflict. The war interrupted productive activities there, pervasively damaged the economic and social infrastructure,

deterred private sector investment, discouraged tourism and contributed to an exodus of qualified professionals.

The Sri Lanka conflict is widely attributed to a crisis of governance, whereby representative and parliamentary institutions have failed to peacefully resolve conflicting interests. Consequently, the marginalized minority has resorted to violence to defend their interests.

As is often the case, the conflict and its consequences have taken their heaviest tolls on the more vulnerable groups in society, including women, children, the economically disadvantaged and minority groups. Conflict and conflict-related displacement in particular halts productive economic activity and places a heavier socioeconomic burden on communities already facing enormous personal and social challenges.

Several districts in the North and East were further devastated by the 2004 tsunami. Internally displaced women typically find it harder to recover their socioeconomic capacities, given pre-existing vulnerabilities, additional security challenges during the transition, and diminished access to financial and training resources and opportunities to participate in decision-making.

The ceasefire agreement brokered in 2002 between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) provided a window of opportunity for donor and development support. Beginning in 2006, GoSL renewed military offensives against LTTE to regain control over Northern and Eastern Sri Lanka. The ceasefire agreement was officially abrogated in January 2008.

Once the GoSL had regained full control of the Eastern Province in July 2007, elections to provincial councils and local authorities were held in 2008, resulting in the establishment of a representative body for the first time since 1988 and in the re-establishment of local-level elected bodies for the first time in 14 years.

Most of those elected are relatively inexperienced in governance (many of them former paramilitaries), accountable to a constituency that itself has little experience of being governed. One of the fundamental challenges in the Eastern Province is to develop trust in the new sub-national democratic institutions. For this to occur, these institutions and newly elected members need to deliver and improve administrative services, pursue recovery and development priorities yielding genuine peace dividends, and remain accountable.

At the time of the writing of this report, military operations were squarely focused on the North and heavy fighting resulted in the massive displacement of civilians, particularly those fleeing the conflict zones of Killinochchi and Mullaitivu into government-controlled areas. At the time of the publication of this report, the GoSL had defeated the LTTE and UNHCR estimated the number of IDPs to be more than 260,000.

Project background and strategy

To understand the complexity of bringing a human rights-based approach to A2J project implementation in a country context like Sri Lanka, some important factors should be considered.

A human rights-based approach demands that events be examined through the prism of human rights. For instance, when government increases spending on conflict issues, spending on healthcare, education and other basic public amenities is reduced, with long-term detrimental effects.

In Sri Lanka, human rights have become mainly a matter of legal justice. However, the ratification of treaties does not make the rights within those treaties automatically enforceable: GoSL has to incorporate them into domestic law by passing legislation.

The Sri Lankan Constitution has a chapter on human rights, which defines certain civil and political rights as fundamental. These are legally enforceable. Economic, social and cultural rights, however, fall under the Directive Principles of State Policy and are not enforceable. Most international human rights have still not been codified into law, such as the right to life. However, Sri Lanka does have most other basic rights such as the principle of being innocent until proven guilty, freedom of movement, and so on.

There are some important restrictions on the available rights: they will not be enforceable if they go against or disrupt the interest of national security, racial and religious harmony, the national economy, public order or public health, or morality.

The Prevention of Terrorism Act has further attenuated some of these fundamental rights and is a good example of local legislation misaligning with international human rights standards. Detainees are provided only limited access to lawyers, as they are allowed to meet only in the presence of an officer. The detention is usually under a detention order rather than a judicial order, meaning that the detention can last for however long it takes for the detainee to be

charged. If a detainee charged under this act is unable to obtain bail, the burden of proof falls to the detainee. There is also no provision for a suspended sentence on a guilty plea.

Sri Lanka has an independent human rights commission, but new appointments have lagged following expiration of the first term of the constitutional council, casting doubt on the legitimacy and capacity of the commission.

Changing laws in Sri Lanka is a difficult process, as a culture of secrecy prevails over law-making. A bill that is to be passed is not presented to civil society until it has been passed, and there are only two weeks to challenge it once approved. There is no system of judicial review. Laws such as the ICCPR Act, Domestic Violence Act and Witness Protection Act have actually done a disservice to the public with weak public scrutiny. These laws are widely seen as token gestures to appease the international community.

Though it has been greatly criticized, the GoSL has improved in such areas as the right to due process and free legal assistance.

EA2J was designed in 2003 through a working group established by UNDP and comprised of stakeholders from state institutions, academia and civil society. This group examined the root causes of A2J challenges in Sri Lanka and devised a plan to overcome obstacles faced by the poor and disadvantaged.

The project was initially conceived to increase A2J for disadvantaged persons using a human rights-based approach. Phase I was funded by UNDP, SIDA and the Government of the Netherlands, and was nationally executed through the Ministry of Constitutional Affairs and National Integration (MoCA).

The project had five key objectives:

1. To increase the number and diversity of persons receiving effective legal services
2. To increase the number and diversity of persons receiving information on their rights
3. To decrease barriers to accessing the legal system
4. To increase the number and diversity of persons receiving community-level ADR services
5. To better promote and protect human rights

The project envisaged a number of innovative efforts to bring legal services to the people using a three-pronged approach:

- ✓ Training and incentivizing lawyers and other service providers;
- ✓ Increasing awareness of legal rights among beneficiaries; and
- ✓ Increasing the efficiency of the courts.

The project strategy was grounded in a human rights-based approach, and integrated relevant actors in the justice sector. Its top-down, bottom-up management style prioritized flexibility in responding to transitions in the country, and sustainability through changes in policy and practice.

A high-level steering committee expected to meet quarterly ended up meeting rarely because of the high level of its members. In Phase II a smaller and more effective project board replaced this steering committee.

The project also had a working group tasked with coordinating key justice sector actors in the development, implementation, monitoring and evaluation of project activities. It included representatives of the Judicial Services Commission; Ministry of Justice/Legal Aid Commission; Bar Association of Sri Lanka/Legal Aid Foundation; Selected Non-Governmental Organizations; Human Rights Commission; Centre for the Study of Human Rights; The Faculty of Law of the University of Colombo; Department of Law, Open University; and Sri Lanka Law College. The working group continues to function well.

The project established regional committees at the local level, comprised of representatives of many of the agencies listed above, to ensure effective coordination and implementation. The committee expected to play an important role in monitoring and evaluation.⁴

This project has taken specific and targeted measures to address certain pressing national challenges in providing legal aid services for vulnerable groups. These included raising awareness of available rights among vulnerable people and promoting the concept of human rights.

⁴ This group was supposed to be introduced to the The Urban Governance Initiative (TUGI) Good Governance Report Card System, a tool for self-monitoring and corrective action. However, this has not happened.

Phase I identified 20 locations from the North and East (Mannar Town, Chavakachcheri, etc.), the estate sector (Hatton, Ambagamuwa, Kolonna, etc.) and others such as Rasnayakapura, Katuwana and Siyamblanduwa. In 2007, the project was reformulated to concentrate on the North & East and the estate sector, and although some of the groups and areas were somewhat broadened, the activities were limited to some extent.

After a major evaluation in 2006 and a revision process in 2007, the project further streamlined activities to reduce objectives in Phase II (2009-2012). Over 2008 the project focused on addressing pressing national A2J challenges facing disadvantaged groups, including those living in the targeted areas, internally displaced persons, conflict-affected families and those of missing or abducted persons, criminal detainees and estate sector workers. It also supported the provision of legal aid services to disadvantaged groups, and promoted human rights and human rights-based approaches.

The revised objectives for 2008 were as follows:

1. Internally displaced and conflict-affected populations increasingly able to obtain civic documentation (birth certificates, identity cards etc.) and access rights to land and remedies
2. Increased knowledge of rights and better access to legal aid among disadvantaged groups, especially in the conflict-affected districts and the estate sector
3. Better protections against delays and better access to legal aid for pre-trial detainees in Welikada prison
4. Increased capacity of projects partners and staff to understand and apply a human rights-based approach, and of claim holders to understand their rights and address complaints
5. Lessons learned by project staff, partners and the public from implementing the project
6. Effective project administration, documentation and monitoring

To strengthen the capacity of duty bearers and claim holders to ensure better A2J, a baseline survey and comprehensive assessment were undertaken by UNDP and other UN partners to uncover capacity gaps among duty bearers and claim holders and identify the main A2J issues facing the poor and disadvantaged.

Phase II builds on the lessons and partnerships of Phase I to deepen its focus on priority right holders (internally displaced persons, estate workers, conflict-affected persons, especially women and children, and victims of gender-based violence) and strengthen the project staff component, particularly by supporting and developing capacities at field offices.

The six key results targeted by Phase II reflect the lessons of the first phase by adopting a more qualitative approach to project formulation.⁵ The results are:

- ✓ Progress in achieving A2J for all, particularly priority right holders, measured and monitored
- ✓ Detainees, particularly pre-trial detainees, informed of their legal rights, with better access to legal aid services and improved prison standards and conditions
- ✓ Duty bearers within formal and quasi-formal justice institutions better able to deal with grievances, specifically with regard to priority right holders
- ✓ Priority rights holders more aware of their rights and have increased access to legal services
- ✓ Priority rights holders better able to obtain civic documentation (birth certificates, identity cards, citizenship certificates, etc.) and access legal services
- ✓ Effective project administration, documentation and monitoring for project staff, partners and the public

⁵ Phase I project objectives were formulated purely in a quantitative manner, without baseline data.

Findings and lessons learned

Effectiveness

The assessment reviewed the project for overall objectives and results, innovative ability, catalytic capacity, and its impact on cross-cutting issues. It focused on the first phase, including the 2008 results, and on how lessons from Phase I were integrated into Phase II.

The quantitative nature of the output formulation, failure to identify target groups and lack of a baseline and project indicators made it difficult to assess progress qualitatively.⁶ Nevertheless, the project succeeded in contributing to increased A2J, supporting such activities as the provision of legal services, dissemination of information on rights and duties and the promotion of human rights.

As noted earlier, the project benefited from a sharpened focus beginning in 2007.⁷ During this year the project achieved significant results and laid a solid foundation for ongoing work.

Objectives, results and overall framework

Objective 1: An increase in the number and diversity of persons receiving effective legal services

The project has supported a number of activities that extend the geographical reach of services such as legal advice, litigation, referrals, mediation and information on legal services in remote areas. At the same time the project has ensured that services are provided through mechanisms that enable the poorest and most vulnerable groups to have access. The project has also provided training for relevant service providers. Specific interventions have included the following:

Nineteen regional legal aid desks have been established through the LAF of the Bar Association. The coordinators of these desks are lawyers who, in addition to providing legal advice and litigation services, offer court representation to clients with incomes below 6,500 rupees. In 2007, among the 10 desks that reported information, there were 1,697 cases of representation.

In 2008, the project conducted an evaluation of these legal aid desks to gauge the productivity and capacity of LAF over the four years of UNDP support. As a result, in 2009 the project reduced support to the 10 desks considered most effective.

To extend the reach of legal services beyond the towns to the grassroots level the project has also supported the activities of partners such as Sarvodaya, a community-based organization that supports mediation, legal service provision and awareness-raising at the rural community level.

The capacities of service providers to address the most common grievances of clients have also been strengthened through training and legal awareness on topics such as public interest litigation, domestic violence, and women's rights.

Objective 2: Increase in number and diversity of persons receiving information on their rights and duties

The project supported the following activities to raise awareness of rights, remedies and duties among claim holders and duty bearers:

- ✓ Printing and distributing literature on the most common grievances encountered by the legal aid desks and on issues identified as priorities for action (including domestic violence, public interest litigation, child rights)
- ✓ Producing a booklet to demystify the court system. It describes the various courts that operate in Sri Lanka, their hierarchy and procedures. This booklet is used all awareness programmes for duty bearers and claim holders
- ✓ Funding development of a supplement on human rights for civics and governance targeting Grades 10 and 11, to place human rights onto the school curriculum.

⁶ See Evaluation Final Mission Report, December 2006, pp. 29-31.

⁷ See Mugnai, Emilia and Aparna Basnyat, 'Reformulation of the UNDP Equal Access to Justice Project, Report and Recommendations', September 2007.

✓ Supporting the LAC to provide tailored awareness programmes including:

- Two workshops for elders in Matale and Nuweraeliya on their rights and the institutions and organizations dedicated to them
- Awareness programmes for women in villages in Kurunagala. These literacy programmes included group discussions to identify problems and discuss legal aid options.
- Workshops with government officials on the rights and entitlements of the internally displaced, and the obligations of the state to protect them

Objective 3: A decrease in barriers to accessing the legal system

One of the major activities of the project has been support for mobile documentation clinics to provide disadvantaged groups with legal documentation such as birth, marriage and death certificates, national identity cards, citizenship certificates (to estate populations), drivers' licenses and passports. The lack of legal documentation registered as a priority concern in almost all areas and as a general problem for the country as a whole. Because of language differences, high transport costs, lack of information and the prevalence of bribes, the most vulnerable groups face significant barriers in accessing these documents through regular channels. The clinics address each of these issues – providing information through the GramaNiladaris (the lowest state administration presence at the community level) in advance of the clinic to allow people time to prepare their papers, providing free photograph services for ID cards, ensuring the presence of Tamil and Sinhala speakers, and staying vigilant to abuses of power (e.g., demands for bribes).

In 2007 the project provided documentation services to 14,000 people in the estates sector through four mobiles, and served a further 113,000 in the East through 36 mobiles, organized under a GoSL '180 days plan' to accelerate development in the East. However, the project failed to enhance the capacity of the Register Departments to address the root causes of state inefficiency in providing legal documentation.

Together with Asia Foundation and UNHCR, the project produced an assessment of the legal aid sector. This was a comprehensive exercise of mapping legal aid services to identify strengths and weaknesses, explore

options for ensuring sustainability and making long-term recommendations. The report was a significant breakthrough for A2J at the policy level, since it is expected to lead to a National Policy for Legal Aid and a National Action Plan. This achievement will be further discussed in the section dedicated to sustainability.

Objective 4: Increase in number and diversity of persons receiving community level Alternative Dispute Resolution services

The project contributes directly to this objective through support to Sarvodaya and the legal aid desks.

The project supports the 20 village committees that have been established across the island as part of Sarvodaya's grassroots legal empowerment project. These committees provide alternative dispute resolution (ADR) mechanisms for village communities. Village committees maintain a good relationship with local authorities such as the police, divisional secretary's office, zonal education office, labour office, child care and probation office, and local lawyers to coordinate resolutions for minor disputes, thereby reducing litigation.

The legal aid desks have provided another avenue for alternative dispute resolution services. In many cases the legal coordinator is able to facilitate mediation between parties, especially on family matters. Some examples of interesting case studies have been included in the 2007 Annual Project Report.

Objective 5: Human rights better promoted and effectively protected

A key intervention under this objective is support for the promotion and protection of prisoners' rights. The project has supported the following interventions:

- ✓ Provision of legal advice to prisoners through visiting legal aid providers including LAF and LAC. For example, through the LAF desk in Monaragala the project organized a legal aid clinic for prison inmates at the Monaragala Remand Prison, providing over 50 inmates with legal aid services including filing bail applications or revisions in court. Results of this intervention are still inconclusive but the practice seems worth pursuing. With 13,500 prisoners currently in remand, legal aid works to ensure that inmates are not in jail more than two years before trial (anecdotes exist of inmates being kept in remand for 10 years without a lawyer). More than 228 officers have also been trained.

- ✓ Development of a pilot computerized tracking system of prison inmates and remands in Welikada Prison. The database will collect health, family and skills information to allow prisoner welfare to be monitored, and will provide prison officials with the names of prisoners due to appear in court each day, thus ensuring that trials are not missed. If successful, the pilot can be expanded to other prisons.
- ✓ Establishment of a prison sub-committee on the A2J project, bringing together people involved in prison reform to contribute to the A2J agenda and help individual organizations to improve legal aid to vulnerable groups. The sub-committee exemplifies the participatory aspect of the human rights-based approach.
- ✓ Commission of a nationwide A2J assessment. The data collected will be used by UNDP, for the Ministry of Constitutional Affairs and the Ministry of Justice. The survey was put on hold in December 2008 by the Ministry of Defense (allegedly for security reasons), after collecting data from 13 districts.

From these myriad interventions, three main results emerge as key to project continuity and impact:

- ✓ The **nationwide survey** commissioned by EA2J, examining the capacity of vulnerable groups to access justice and of service providers to deliver it. The survey will take a comprehensive view of the justice process, from the occurrence of a grievance to the provision of remedies. The findings and the process itself will be used to support national partners in the design of a national action plan for providing equal A2J. Quantitative data generated through the survey will provide a much-needed baseline to allow for effective monitoring and evaluation of national and UN/UNDP interventions. The results of the assessment also fed directly into the design of a new UNDP A2J project to begin in 2009. To support EA2J to conduct this assessment, the project has partnered with UNOPS to conduct a household survey of approximately 4,000 vulnerable people. Local NGOs were conducting focus groups after to understand the 'whys' of the baseline data. Unfortunately, the research started in June 2008 but had to stop in December as decreed by the Ministry of Defence, due to security reasons. However, the survey was able to collect data from 13 districts and conversations are ongoing between MoCA and Ministry of Defence to resume it.

- ✓ The **legal aid assessment** that led to the publishing of the report **The Legal Aid Sector in Sri Lanka: Searching for Sustainable Solutions - A Mapping of Legal Aid Services in Sri Lanka**, initiated by UNDP and UNHCR, and carried out by a team of sector specialists led by The Asia Foundation. Its goal is to contribute to a national solution for systematic provision of legal aid. The research served as an advocacy tool at the policy level, and the Bar Association of Sri Lanka and the Ministry of Justice (MoJ) are now more committed to unite efforts for increasing the legal aid budget.
- ✓ **Mobile legal aid clinics providing documentation for internally displaced persons** and for other disadvantaged groups. The mobile clinics not only provided legal documentation quickly, but they now also have a comprehensive database of document-holders that is currently being used in monitoring and evaluation efforts.

This last result merits closer analysis and appraisal, for in addition to the four mobile clinics in the estate area, the project contributed to a government initiative to accelerate development in the Eastern Province through a 180 day plan under the theme 'Nagenahira Navodaya':⁸

The MOCA in collaboration with the Ministry of Public Administration and relevant district secretaries were involved in organizing mobile documentation clinics for each divisional secretariat division in the three districts. The Project assisted the MOCA in organizing and funding 11 mobile documentation clinics held in 11 divisional secretary divisions in the Trincomalee district. In addition the Project co-funded and supported the mobile clinics held in Batticaloa and Ampara districts.

The purpose of these mobile service camps was to issue legal documentation such as birth certificates, marriage certificates, death certificates, national identity cards, etc, and provide other necessary services to disadvantaged and vulnerable persons, including internally displaced persons and resettled families. Organizations that participated at the mobiles included Registration of Persons department, Registrar General's department, Police Department, Immigration and Emigration department, Social Service and Social Welfare department, Registration of Motor Vehicles department, Land department, Youth Affairs department, Sarvodaya Legal Services Movement, Legal Aid Foundation and Legal Aid Commission. Moreover

⁸ Sri Lanka 2007 Annual Progress Report, pages 30-31.

officers from the respective divisional secretariats, gramaniladari officers, JP's and students from local schools participated at the mobiles. Moreover, Ministry of Youth Affairs and Vocational Training provided valuable information for youth and the Ministry of Women's Empowerment was also present.

A total of 113261 persons attended the mobile clinics held in the three districts. 36 mobile clinics were held to cover the 36 Divisional Secretary divisions in the three districts. In the Trincomalee district out of the 11 divisions more than 25,000 people participated at the clinics. Out of 2763 applications received by the RG's department for issuance of birth, marriage or death certificates 978 were issued. Out of 5410 applications received by the ROP's department for issuance of a national identity card 4619 applications were attended to.

In the Ampara district more than 35,000 people participated at the clinics. Out of 5134 applications received by the RG's department for issuance of birth, marriage or death certificates 4291 were issued. Out of 8948 applications received by the ROP's department for issuance of a national identity card 7679 applications were attended to.

In the Batticaloe district more than 45,000 people participated at the clinics. Out of 9024 applications received by the RG's department for issuance of birth, marriage or death certificates 4144 were issued. Out of 12164 applications received by the ROP's department for issuance of a national identity card 11744 applications were attended to.

Apart from the services provided by these two departments numerous other services such as free distribution of spectacles by the Social Services Department, dental clinics and health clinics, legal aid services by LAF, LAC and SLSM, vocational training services, driving licenses by the Motor Traffic department, passport services by the Immigration department, etc were provided at the clinics.

This was the first time in more than 20 years the government initiated mobile documentation clinics to provide an opportunity for people in the East to obtain lost legal documents. Many local organizations sent letters to the MOCA in appreciation of the work done by them.

Innovation

Despite initial shortcomings, the project has been clearly innovative in terms of results and strategies.

The project has been critical for promoting A2J at the community level and, through its working group, among

national state partners in the justice sector. It facilitated networking among partners in the formal and informal sector – an innovative approach as the government had been concentrating on organizational structures but was seeking other approaches.

The project succeeded in introducing the human rights-based approach, a new concept for Sri Lanka. The approach is still a foreign concept to Sri Lankan civil society and government partners and needs to be tailored to local context, a task that the project is now trying to address through development of a manual with local case studies and partner training. UNDP Sri Lanka has taken the lead on promoting human rights-based approaches, and is focusing these efforts on promoting and protecting the rights of disadvantaged groups. Though many challenges lie ahead, there is now a strong foundation for advancing the approach.

Another innovation for potential policy change is legal aid representation for criminal cases. Despite being implicit in the law there is no legal representation at Magistrates Court (the lower instance). Suspects are placed in remand almost automatically. Only after an indictment from the High Court can they access legal representation, but very few lawyers are willing to work pro bono. UNDP efforts to introduce legal aid for suspects are facing some resistance from the Bar Association. UNDP seeks to draw attention to the fact that pre-trial practices are overwhelming the prisons. The LAC has started to advocate this view in its five pilot centres.

UNDP is also planning to work with the centres to promote a programme for reinstalling the rarely practiced option of alternative sentencing.

Another innovative strategy has been the use of legal aid clinics promoted by the law faculty with support of EA2J. The dean of the faculty has been a consistent member of the working group for three years, and the faculty has been working with A2J in the areas of legal aid for vulnerable groups, legal literacy and counselling. The clinics place committed graduate students in remote areas to provide legal advice. Around 40 students were sent off together with 10 teachers to these areas for legal aid clinics. Regional coordinators of the Human Rights Commission were invited to assist in cases of human rights violations, such as complaints against public administration. The law faculty is now trying to revise its curriculum to make legal aid clinics compulsory. UNDP has funded three programmes; based on their positive experiences, the faculty has promoted a fourth one at its own expense.

Catalytic capacity

The project has not been catalytic financially. Its main donor, SIDA, was not satisfied with project results in Phase I, and the second phase is being funded only by BCPR. Donors such as SIDA and the Netherlands are phasing out support for Sri Lanka. Most are not keen to continue support for human rights strategies with the government given its perceived lack of commitment to human rights. Recent 2009 events have reinforced this perception. Meanwhile, Sri Lanka's designation as a MIC has further reduced aid support. Against this backdrop, Phase II is encountering serious problems in mobilizing resources.

It is hoped that the government will adopt the recommendations of the legal aid assessment and begin to prepare a Legal Aid Policy and National Action Plan for A2J. A strong vision for legal aid could bridge the somewhat different orientations of the LAC (service delivery) and NGO service providers (promotion of justice, equality and equity for all) and better respond to the communities' real needs.

This development may also lead to the establishment of an independent body to administer the legal aid scheme, a global trend among legal aid systems. Such an intermediary body would be responsible for monitoring legal aid activities and priority needs in the country.

Through its working group and regional committees, the project has been catalytic in strengthening partnerships at national and local levels. A prisons sub-group has also been established among the partners to find solutions to identified needs in the prison. The project has to date served as secretariat for the sub-working group, but many of the agreed interventions are conducted by partners directly and do not require project funding. In this regard, the legal aid assessment was catalytic in securing the buy-in of the Ministry of Justice, which has accepted the recommendations and is now moving forward on a national policy and action plan.

Finally, the project strengthened ties within the UN family, drawing UNOPS and UNHCR into assessments. UNDP Sri Lanka continues to seek synergies among local government, A2J, human rights and transition and recovery programmes – all solid entry points for the East at district level. A BCPR mission is assessing the possibility of joint programming.

Further detail on partnerships will be provided in the section on sustainability.

Cross-cutting issues

There is clear evidence that EA2J has contributed to enhancing gender integration and human rights-based approaches. The AP-A2J Initiative and the UNDP HRBA Programming Guide influenced project design and revision. The project has helped increase A2J, although the impact of such access cannot be so clearly ascertained.

The project sought to move away from the traditional definition of A2J, which generally meant access to lawyers and courts, and offer alternate dispute resolution and solid partnerships with community-based legal empowerment organizations and state stakeholders (prison, police, community-level administration bodies, and academia). The working group adopted a broader, integrated approach defining access by the elements of normative protection, effective remedies including implementation and enforcement, and empowerment to seek a remedy. Justice was defined to encompass treaties, constitution, laws and regulations, and customary law; the judiciary, police, prisons, and Human Rights Commissions; and lawyers, civil society and law students.

The project supported 19 desks established in collaboration with the Legal Aid Foundation to mediate family and minor disputes. The major clients for legal aid are women: more than half the clients in all 19 areas were women. Most cases involved maintenance, divorce, land issues and accident claims. In areas such as Anamaduwa and Uhana, Hatton, Hingurakgoda, Siyambalanduwa and Kolonna, more than 60% of the cases filed in 2007 were related to maintenance or divorce. Additionally, the project developed and conducted training for judges to adjudicate human rights cases, especially as related to women and children.

Following is an illustrative example of conjunction of efforts:

CASE EXAMPLE⁹

HINGURAKGODA

The case related to a woman with three children whose eldest child was allegedly sexually abused by the husband. The police arrested the husband on a complaint made by the woman through the GramaNiladaris. While the criminal proceedings were pending, the woman and children were left without any income as the husband was the sole breadwinner for the family. Therefore, the Crime OIC who is a committee member of the A2J project in Hingurakgoda referred the matter to the legal coordinator, who in turn filed a maintenance case against the husband. The woman now receives maintenance of Rs. 4000/- per month.

In the same case, the husband who was released on bail tried to threaten the woman to settle the matter amicably. The woman informed the legal coordinator, who filed a motion in the Magistrates court. As a result the Magistrate summoned the husband to court and issued an open warning not to threaten the woman.

Sustainability

The sustainability of A2J interventions in Sri Lanka is a major concern. Several measures have been introduced to promote sustainability, with apparent success:

- ✓ An evaluation of LAF was done to focus support on the best legal aid desks, reducing the number from 19 to nine
- ✓ The legal aid assessment was completed to launch the debate at policy level for more sustainable solutions for legal aid and advocate for more policy changes
- ✓ Legal aid clinics with the law faculty expand access to free legal assistance and raise awareness
- ✓ UNDP focuses its legal aid efforts on pre-trial detainees, freeing resources for legal aid if advocacy efforts with the Ministry of Justice prove fruitful
- ✓ Efforts to streamline and institutionalize the human rights-based approach gain traction at the local level

There is also growing state interest in sustainable solutions, such as the expansion of LAC services over the past several years and a recent increase in the government budgetary allocation for LAC.¹⁰ As a group, the NGO legal aid providers appear strongly motivated by a sense of social responsibility, service and social empowerment. All legal aid service providers operate independently of the government, including LAC (despite state funding). Nevertheless, sustainability of A2J interventions remains a concern.

Ownership

There is excellent indication of ownership from the national counterpart MoCA. The nationally executed project has been commended for its lack of management problems and spurred increased ownership by MoCA. The project established two district project offices with staff originally from the North and East regions. The project coordinator stated that

"...when the project started working for A2J it was quite donor driven but now it is strong in the national agenda. There is more participation and more transparency. Ten years ago the state would not invite partners for planning processes and now they always do. This approach has sort of been replicated by the state from learning with the donors. The project document was revised in a very participative manner and now MoCA is doing the same for their planning. Also the Ministry for Human Rights is using this approach for the national strategy for ex combatants. The A2J project has contributed much to this. A2J is also part of the working group for the combatants' strategy as well as other similar working groups. The clear ownership of the project and MoCA's leadership, in particular the Secretary, has enabled the project participation in different policy level forums for A2J with other ministries."

⁹ Taken from the 2007 Annual Project Report.

¹⁰ For fiscal 2007-2008, GoSL has provided LAC with almost USD 500,000.

The MoCA Secretary shared this view:

"The plus of the project is that it has never left a syndrome of dependency as it was very nationally implemented and owned. Now the second phase will be even better with more focus on areas and targets."

Ownership is also evident among other partners that have been implementing the project for some years and have been members of the working group since inception – such as the Prison Directorate, the LAC, civil society organization Sarvodya, and notably the law faculty. Unfortunately, the Ministry of Justice has been the weak link of the project, although the relationship has improved following their participation in the legal aid assessment.

There is also good appropriation of the project at the local level thanks to the involvement and role of the regional committees.

Capacity development

The limited time frame made it difficult to assess the capacity development impact of the project. However, project staff was found to have improved in the human rights-based approach, and focused capacity development initiatives with key stakeholders, such as the GramaNiladari Services, have helped sustainability for the A2J agenda.

Project officers received little initial training in the human rights-based approach and A2J. With direct hands-on experience, they have come to be considered the best resource for stakeholder training, but would have benefited from exposure to other experiences and better knowledge exchange. They found the Programming Guide technical and not user-friendly, but appreciated the RCB training on A2J and the human rights-based approach.

This initial lack of exposure contributed to the attempt to follow the guide to the letter, a rigid approach that hampered project formulation and initial implementation with fragmented strategies. A 2006 evaluation to this effect led to increased training from RCB.

Still, more knowledge-sharing is recommended between country offices in the region with similar experiences and more regional exposure, since Phase II has a strong emphasis on training and capacity development.

Since 2007 the project has been focusing on institutionalized capacity development for different types of duty bearers. The project is also starting a capacity assessment of the LAC to provide more strategic training.

The team is targeting CBO and NGO capacity development to foster legal empowerment. The project has issued a call for proposals for 15 to 20 CBOs to develop capacity among paralegals and referral systems. It is also seeking model communities to demonstrate how awareness can lead to empowerment.

One of the recommendations of the legal aid survey was to support capacity development for the GramaNiladari, by promoting legal awareness and operating through the secretary divisions to target the lower level of village-based local government village, the GramaNiladari Services. This group has been identified as a viable local entry point with direct access to the communities. Consequently, the project has been implementing an extensive training programme for them, with the cooperation of the Ministry of Public Administration.

The GramaNiladari Service was created in 1963. Its 14,016 divisions are recognized as the backbone of the village-based administrative system. GramaNiladari Services act as peace officers to settle village disputes, and are the first contact point of state administration in issues related to mediation, land, wildlife, personal documents, nuisances, and elections. Naturally, perceptions vary on their effectiveness and capacity to perform their role. The project will now embark on a long-term GramaNiladari training programme through the Alternative Dispute Resolution Institute, an NGO recognized for paralegal training, in collaboration with LAC from 2009-2012.

At the time of the assessment, the project was training 48 newly recruited National Integration Officers for the GramaNiladari Services. In the words of one recruit:

"... this was the first contact we are having with legal issues and A2J concepts as well as human rights. Some of us had previous experiences working with mobile clinics for documentation in isolated islands and felt it was a very good experience as they were targeting very remote isolated population with no access to the mainland and providing documents free of charge."

We have now been recruited by the Division of Secretary to work with Muslim and Tamil communities to advice and assist communities with awareness programmes and cultural programmes to attempt to bring people more together through national integration."

This type of training is important to open more thinking and to give us tools to work in villages where there is no legal aid or even if there is people are not aware of it. We need to know how

to provide information and serve as referrals and for that we must receive more training to be able to then raise awareness."

Partners such as the Asia Foundation and the Centre for Human Rights Studies have recognized the importance of the GramaNiladari Services to resolving disputes and supporting referrals at the local level. As a first point of contact, they – as well as mediation boards – may be more effective than the LAC, as only a minor percentage of cases go to court and legal aid services.

The UN system is also working with the Human Rights Office to develop a syllabus for officer training by the Police Training Institute.

The second phase of the project also targets capacity development for attitude changes among duty bearers. Strengthening institutions entails more than providing training. Solving problems such as prison overcrowding requires changes in attitude, knowledge and skills among the various stakeholders. The project and its partners are working to rise to the challenge.

Partnerships and synergies

The broad partnership strategy appears to have brought good results in terms of sustainability. Initially the project was to be developed with MoJ but a shift in government structure made it move towards MoCA. The partnership with MoCA has been fruitful in gaining support for the project and promoting A2J. Meanwhile, the initially strained relations with MoJ are now improving.

The project's working group, comprised of almost all key stakeholders with an important role to play in A2J, is considered best equipped to provide management and orientation to the project. The group meets regularly and is committed to work without incentive. It has enabled strong partnerships and active participation throughout the project.

The Regional Committees (local working groups) are a crucial component of the project structure, providing a vehicle for decentralized decision-making and for local contextualization.

The project has established solid partnerships with many state institutions, NGOs, CBOs, and academia. The Asia Foundation hailed the legal aid assessment as a truly effective partnership, with everyone, including MoJ, united in purpose.

Unfortunately, the partnerships with donors have not adequately supported A2J and legal aid work. There has been no attempt by the main donors interested in supporting legal aid to coordinate and rationalize the process of grantee selection and funding allocations, resulting in a situation where donor resources fall short in impacting A2J for marginalized and vulnerable groups. Donors must coordinate their efforts and achieve consensus on funding transparency and expenditure of legal aid. Donors such as SIDA and the Netherlands are phasing out their support, partly for corporate strategic reasons and partly because of a perceived lack of government commitment to the human rights agenda.

The project is now trying to engage private sector on legal aid. The banking sector has expressed interest in making awareness-raising activities part of their social corporate responsibility. Discussions are ongoing with one bank on a proposed job bank for young offenders.

Partnerships also extended beyond government-based partnerships to civil society organizations such as Sarvodya. Some donors still feel that the project should seek more conflict-sensitive, outspoken and rights-based partners. Sarvodya was the first civil society organization to be involved in the project and is the oldest partner in the working group. It was involved during the planning phase and has been active since 2002. It recognizes the project as a good avenue for networking with other partners. In the first phase, Sarvodya had district coordinators working in all 14 project areas. The organization's good relations with its partners, including state institutions, are due to its extensive community presence, which also reduces programme implementation costs. Everything is done at local level, involving the community. Even the networks of paralegals working on legal empowerment are volunteers.

Relevance and strategic positioning

The project has become one of the flagship projects for the country office. It grew from a USD 2 million project in 2004 - 2008 to USD 8 million for the period 2009 - 2012. The total budget for the project is USD 8,281,800, out of which the country office, in line with the Country Programme Action Plan (CPAP) commitments, has allocated USD 550,000 TRAC resources and BCPR/UNDP has funded USD 3,000,000. So far the project has not been able to mobilize external donor funds, most likely because of its shortcomings in the first phase in addressing critical policy issues concerning human rights and conflict.

Two of the four CPAP outcomes apply to A2J: Outputs 13 (duty bearers better able to deal with grievances experienced by disadvantaged groups) and 14 (disadvantaged groups have increased knowledge of their rights and are able to access and benefit from legal services).

The project was relevant to position UNDP within the realm of national stakeholder partnerships. National partners, both state and civil society organizations, now see UNDP as a main A2J partner.

In the view of MoCA, A2J is the domain of UNDP and the Asia Foundation. UNDP has further room for expansion in addressing serious vulnerability issues. MoCA has a good working relationship with the UNDP team and encourages its interventions.

For the United Nations Country Team, transitional recovery is a bigger programme. However, A2J has fostered partnerships with UNICEF and UNHCR and is considered to be the project that best targets gender issues.

Efficiency

The overall conclusion on efficiency is quite positive. In the first phase the policy-making body, the Steering Committee, demonstrated a good grasp of relevant issues as well as coherent and decisive direction. However the committee met very few times over the course of the Project and has left several policy issues unaddressed. A new Project Board remedied this situation in the 2008 revision.

The PSO is responsible for the daily management, implementation and monitoring of the project. It is placed in the MoCA and is fully nationally staffed. Its high efficiency has improved further with the project refocus in 2008. Other management structures (the project working group and regional committees analysed in the partnership section) are considered adequate for their purposes.

Harmonizing partner vision and strategy was identified as a challenge. However, as the assessment revealed no major issues of lack of coordination, the project may be considered successful in this respect.

As previously discussed, the project was seriously hampered in monitoring and evaluation by the lack of indicators as well as the lack of a baseline study.¹¹ Although this situation has improved, with a set of indicators now part of Phase II and a more prominent monitoring and evaluation role for district

offices, the project still needs to strengthen its monitoring and evaluation framework to optimize the tools available to assess impact.

Initially the project was perceived to have a 'Colombo Orientation', but a stronger focus on the North and the estate sector and the establishment of two district offices covering those regions have improved coordination and monitoring.

It was the President who approved the project, and under the NEX modality the Ministry of Finance and Treasury have been cooperative in expediting disbursements. MoCA and other partners have expressed appreciation for their interactions with UNDP, particularly with current management. Response time is swift, audits have been positive and funds well utilized. On the whole, NEX has been a good experience.

Political economy

The 2006 evaluation report characterized EA2J as 'a made-in-Sri Lanka response to a made-in-Sri Lanka problem'. The project was prompted by the perception that, 'Sri Lanka is now in a transition stage moving towards the achievement of permanent peace... This state of hope for the future needs to be further strengthened by providing vulnerable groups with avenues of access to justice and peaceful dispute resolution leading to their legal empowerment'.

With high ambitions of contributing significantly to the peace process in Sri Lanka the project initially asserted that 'the environment of peace and reconciliation emerging throughout the country has held without any permanent damage'. As such, the assumption was that improved A2J and peaceful dispute resolution for vulnerable groups could contribute 'towards the achievement of permanent peace'. In 2004 and 2005 the project focused on strengthening rule of law, even during periods of ongoing conflict, to counter heightened tensions marked by an increase in defence spending, armed conflict, and the introduction of the Prevention of Terrorism Act (granting sweeping powers to the police to conduct warrantless arrests and hold people in custody without charge for up to three months on suspicion of involvement in terrorist activity).

Against this backdrop, the project was conceived as a means to support the transition to peace and was well received as such by national partners.

¹¹ The TUGI Report Card System, although referred to in the Project Document Phase I as a key element in project monitoring and evaluation, has never been implemented.

However, in 2006 these fundamental assumptions crumbled. As Human Rights Watch noted: 'Sri Lanka is in the midst of a human rights crisis. The ceasefire between the government and the armed secessionist Liberation Tigers of Tamil Eelam exists only in name. Since mid-2006, when major military operations resumed, civilians have paid a heavy price, both directly in the fighting and in the dramatic increase in abductions, killings, and 'disappearances.' The return to war has brought serious violations of international human rights and humanitarian law.'¹²

The situation has changed drastically since the EA2J project was conceived. Events in 2007 and again in 2009 have plunged the North and East into conflict, displacing thousands of people. For this reason, the project has had to shift focus to address the most pressing justice and human rights issues currently facing people in those areas.

Meanwhile, the tsunami has had its most acute and enduring impact on the East, with multiple displacements and numerous unresolved grievances. It was an unprecedented disaster that called to action every Sri Lankan, individuals and institutions alike. The project rose to the occasion during this time, working through mobile clinics to assist affected populations.

The United Nations Development Assistance Framework (UNDAF) for Sri Lanka for the period 2008-2012 has identified 'effective and efficient structures and mechanisms in place and operational to provide access to justice and redress mechanisms' as one of its outputs. UNDP has committed to working on A2J in its Country Programme Document (CPD) where it seeks to strengthen the capacity of duty bearers and claim holders to ensure better A2J.

The UNDAF and the CPD have targeted certain particularly disadvantaged specific groups for intervention: the conflict-affected and internally displaced persons, the estate sector workers, and survivors of gender-based violence. The alarming increase in the scale of human rights violations in Sri Lanka correlates directly with the heightened difficulty of channelling grievances through any justice mechanism. EA2J shifted its approach to prioritize the lack of redress of these grievances. This has been the difficult context in which the project has been operating – constantly shifting and readjusting in response to changing circumstances.

¹² Extracted from the Human Rights Watch Sri Lanka Report, September 2007.

Codification of tools and lessons learned

The assessment attempted to codify the tools and instruments (training manuals, laws, survey questionnaires, regulations, etc) used to achieve project results for potential further use and adaptation by other UNDP country offices and counterparts.

Some of the most relevant lessons learned are also presented below.

Codification of tools

There is an urgent need for the project to better document its work. As is all too typical in UNDP-implemented projects, little has been documented whether in the form of case studies, success stories, or manuals.

In terms of the human rights-based approach the project has not developed any particular tools, although it has developed presentations for human rights-based trainings tailored to various target groups. It also produced a pre-workshop questionnaire to assess participants' main A2J issues, perceptions and awareness.

Several tools were developed for the legal aid assessments and A2J survey. Some of the most relevant are:

✓ Legal Aid Assessment

- Questionnaire for Legal Aid Service Providers in Sri Lanka
- Questionnaire for Beneficiaries of Legal Aid Services
- Guide Questions for Focus Group Discussions
- Guide Questions for Policy Makers

✓ A2J Survey

- Request for Proposal for undertaking the Qualitative Component of an Access to Justice Survey and ToR for A2J Assessment (qualitative component)
- Sample questionnaire for field research (qualitative)
- Draft Statistic Results from District Putalam Survey

Lessons learned

Listed below are the most relevant lessons regarding effectiveness, the human rights-based approach and overall sense of purpose.

- ✓ As a basic rule of results-based management all programmes must have a **solid baseline reflecting the point of departure and an adequate monitoring and evaluation framework**. This is especially vital to a human rights-based approach for A2J project given its **participatory, accountability and rights-based** nature. The Sri Lanka project and other experiences in Asia illustrate that A2J justice assessments and surveys are critical to better A2J programming and essential to accountability. EA2J is the best example of this assertion: although it has done a great deal of work to increase A2J, without baseline indicators, accurate data on target groups and adequate monitoring and evaluation, its impact is difficult to ascertain. Fortunately, these lessons have been applied in the design of Phase II.
- ✓ A2J interventions must strive to maintain a **balance between grassroots work** (legal awareness and empowerment, provision of free legal aid and dispute resolution) **and overarching policy impact** to advance the issue in the national agenda and improve sustainability while providing immediate responses to grievances at the community level.
- ✓ While dedicated and targeted training for various stakeholders on the human rights-based approach for A2J is important for advocacy and buy-in, A2J interventions must work to enhance the **capacity of existing structures** to provide services responding adequately to the increase in demand from claim holders. Training must therefore be complemented with more **targeted institutional capacity development**.

✓ Projects must capitalize on **synergies** with other UNDP and UN projects and avoid functioning in silos. Working in joint programmes can ensure that an A2J component is built into other relevant projects.

✓ **Documentation** is critical to support the claim for results, especially in pioneer projects applying the human rights-based approach to A2J. Case studies, relevant publications and success stories that reflect the impact on people's lives are essential ingredients in a global movement for human rights-based A2J or legal empowerment. EA2J should make more of an effort to document the following:

- Case studies on different legal aid cases
- Lessons from establishing legal aid desks in rural/remote areas
- Lessons on applying the human rights-based approach
- Information booklets on legal aid services available in Sri Lanka
- Information booklets on services provided to internally displaced persons and other conflict-affected populations through mobile clinics
- Study on promoting A2J in conflict situations
- Lessons from the A2J assessment exercises

Forward-looking recommendations

- ✓ UNDP and human rights-based approach advocates in general should give due consideration to the fact that in many places, the **human rights-based approach is still a very foreign concept** to civil society and government partners. Messages need to be better tailored to local context. Local case studies and references to national law resonate better with national partners, and **committed, passionate staff** can be effective advocates.
- ✓ To make effective advocates of staff as recommended above, adequate time and attention should be given to **capacity development and exposure to comparative experiences**.
- ✓ A **human rights-based approach to legal aid requires the participation of, and accountability to, the poor and disadvantaged**. The development of legal aid services should therefore be informed by an assessment of the needs, grievances, and perspectives of the population, particularly those who are most at risk of rights violations. Evaluations of legal aid schemes also need to take into account the views of the most disadvantaged users.
- ✓ Experience grounded in adequate assessments (as the legal aid assessment in Sri Lanka) demonstrate that both service providers and beneficiaries prefer to resolve disputes outside the court system. **A2J interventions should try to foster more work with ADR systems**.
- ✓ Some A2J projects tend to focus much on legal aid for fundamental rights issues, consequently focusing more **on individual rights than on group rights** and public interest litigation to achieve policy change. Individual cases have limited ability to empower and secure justice for larger groups of marginalized and vulnerable communities. In conflict contexts like Sri Lanka, this limits the power of a human rights-based approach to A2J.
- ✓ In order to promote equal access for all, UNDP must find a niche where it can support the justice system in **combating the culture of impunity for perpetrators of human rights violations**. UNDP Sri Lanka can seek to enhance the justice system to better protect and promote human rights by explicitly focusing on protecting fundamental rights and providing the means of redress when these rights are violated. EA2J, for example, has not specifically targeted serious violations of rights such as 'disappearances' and abduction, illegal detention, torture, extra-judicial executions and gender-based violence.

Annex I – List of persons interviewed

Gamini Dissanayake, Attorney at Law, Police Legal Division

Shevon Gooneratne, Sarvodya Legal Services Movement

Ajantha Ismail, Institute of Human Rights

Zoe Keeler, Assistant Resident Representative, UNDP Sri Lanka

Melonie Lindberg and Ramanie, Asia Foundation

Nawaaz Mohamed, SIDA

M.A.M Navas, Assistant Superintendent of Police, Police Legal Division

Sharmeela Rassool, Equal Access to Justice National Project Coordinator

Sharya Scharenguivel, Centre for the Study of Human Rights

N. Selvakkumaran, Dean Faculty of Law

Menaka Shanmuggalingham, Institute of Human Rights

Sunara Sumsudeen, Equal Access to Justice National Project Officer

W. Wickramesinghe, Secretary of Ministry of Constitutional Affairs

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