

Access to Justice as Enabling Framework for Legal Empowerment



**Regional Dialogue on LEP
Bangkok, 3-5 March 2009**

Presentation Overview

- Clarify A2J as framework for legal empowerment
 - Importance of Rights Based Approach
 - Key A2J challenges (example)
 - Legal Empowerment for the Poor in this framework (incl. example)
 - Benefit of regional approach – lessons from AP-A2J



CONTEXT

Conclusions from regional CoP (AP-A2J)

- Starting point: Justice sector reform projects not sufficiently linked to reduction of human poverty
- **Rights-based approach:** Human rights standards and principles as guidance
- Methodology: Knowledge codification – “by practitioners for practitioners” after screening of “what works, what does not and why”

What can be built upon:

- What? Rights based conceptual framework of A2J
- How? Rights based step-by-step guide to develop A2J programmes (assessment, planning, prioritization)
- What works in a given situation? Array of options to address A2J problems – no one size fits all

Rights-based definition

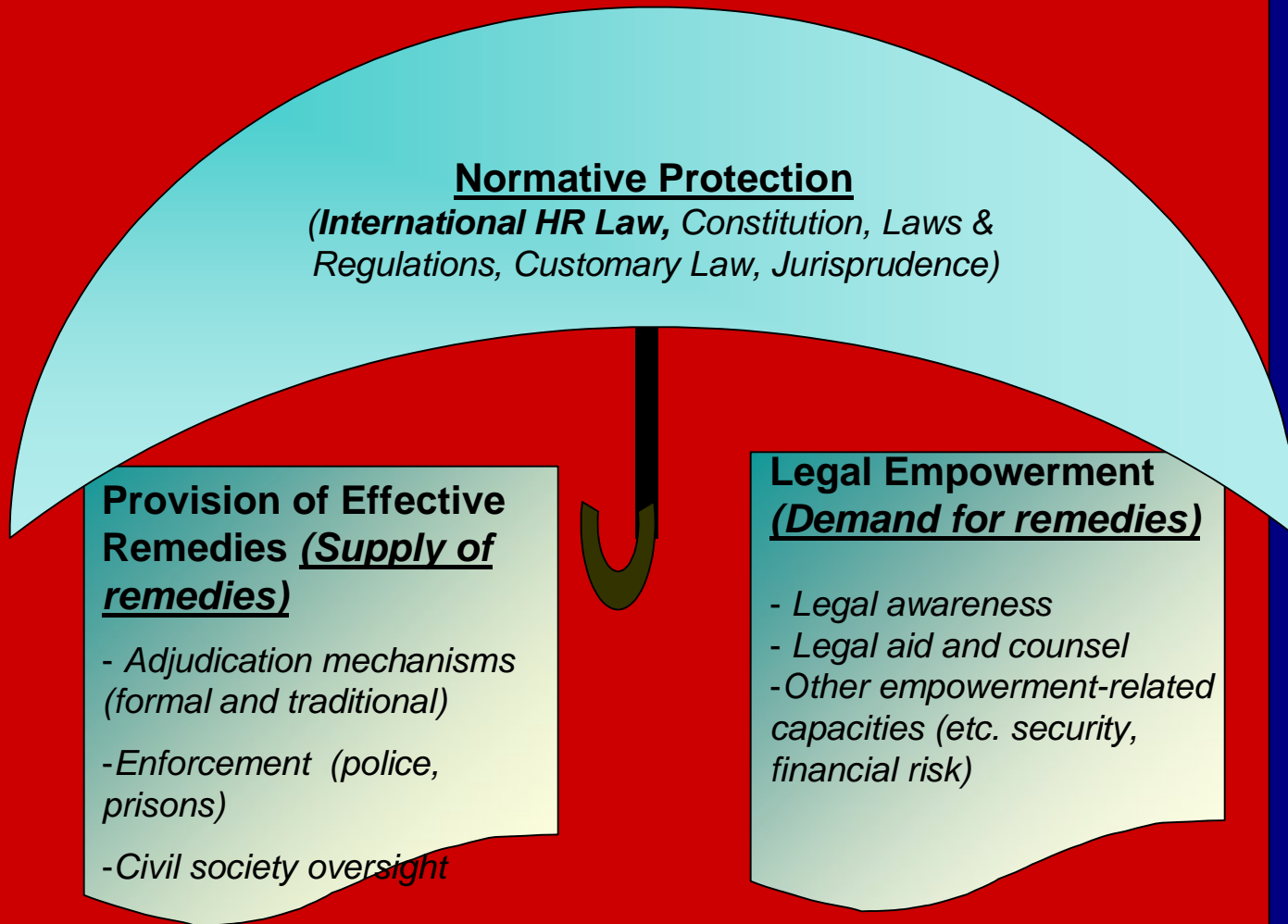
Access to justice = Ability of people to seek and obtain a remedy respectful of basic human rights

- “Remedy” at the center
- “seek” and “obtain”
- “respectful to human rights” a lot of institutional and other capacities need to be in place
- Justice as sector to realize “right to effective remedy” analogous to other classical sectors

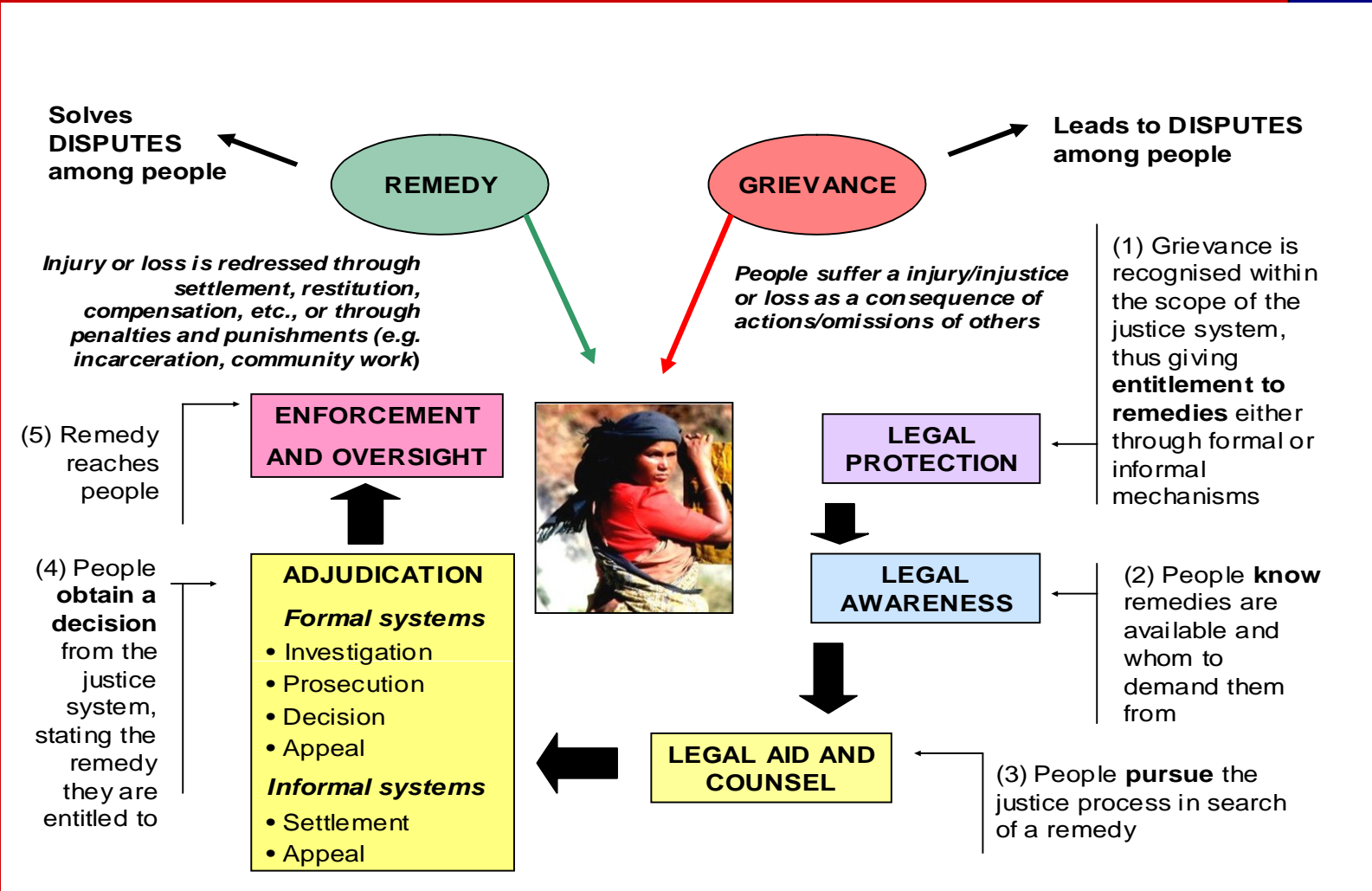
A2J – The value added of RBA

MARKET-CENTERED APPROACH (RoL)	ACCESS TO JUSTICE (people-centered, rights-based)
<ul style="list-style-type: none"> •RoL is necessary for economic growth (reduces risks, cuts down transaction costs) 	<ul style="list-style-type: none"> •A2J is necessary for people to realize minimum standards defined by human rights/protect themselves against abuse of power
<ul style="list-style-type: none"> •Impact on poverty indirect 	<ul style="list-style-type: none"> •Impact on poverty direct
<ul style="list-style-type: none"> •Laws and institutions are neutral 	<ul style="list-style-type: none"> •Laws and institutions are reflection of political/ social processes
<ul style="list-style-type: none"> •Primarily support to institutions 	<ul style="list-style-type: none"> •Capacity development perspective – empowerment important
<ul style="list-style-type: none"> • Emphasis on formal systems 	<ul style="list-style-type: none"> •Formal and informal systems important
<ul style="list-style-type: none"> •Tendency to export models 	<ul style="list-style-type: none"> •Homegrown solutions are more effective

The Justice Sector from a Rights-based Perspective



Access to Justice from a Rights-based Perspective



Example: Access to legal services – typical challenges and solutions

Challenges:

- Access is physically difficult
- Lack of case-specific support
- Strict eligibility criteria to access legal services
- Unaffordable legal counsel for civil cases - aid services obligatory only for criminal cases
- Complexity of legal system and intimidation of legal counsel

Capacity development strategies:

- Improving professional education while expanding services for the poor
- Strengthening public defense systems
- Promoting pro bono lawyering
- Expanding paralegal activities
- Supporting alternative lawyering and developmental legal aid

A2J – PROCESS APPLYING THE RBA

- Human rights as guidance for development objectives (standards in e.g. judicial process, law enforcement, deprivation of liberty)
- Root causes of exclusion and poverty (not only economic)
- Special attention to those who may suffer discrimination (hearing their voice, focusing action)
- Double capacity building strategies – for rights holders and duty bearers

Focus on the
PROCESS of
development

Ensure the
process
empowers the
disadvantaged



Linking Access to Justice (A2J) and Legal Empowerment for the Poor (LEP)

- Framework is there!
- A2J did not look into segments of rights effecting poverty, assuming that they are multi-sectoral (economic, social security, family, criminal, etc.)
- LEP as “sectoral” core priorities, linking A2J to poverty reduction
- Rights-based approach and economic analysis as (in principle) complementary
- Use conceptual framework, assessment & programming methodology to identify specific obstacles and capacity building solutions of legal identity, property rights, labour rights and business rights
- Focus on solutions for disadvantaged – rural and urban poor, women, migrants and IDPs, indigenous groups and minorities, etc. (e.g. licenses for rikshaw pullers, legal identity for migrants)

Case study: Land right related A2J issues in Dhaka Korail slum

– Legal protection:

- Lack of formal land title leaves residual insecurity as well as an inability to access basic services such as water, sewerage, electricity, education, jobs, pensions and postage – due to a lack of a recognised formal address.
- What rights do individual residents have to access/use communal facilities? Who has responsibility for providing and maintaining such facilities?

– Capacity of informal adjudication:

- Boundary disputes outside the formal legal system – reliance on Slum Residents Committees and NGOs to resolve dispute - How efficient, effective and fair are these mechanisms?
- Disputes between dwelling owner (proxy owner that rents dwelling) and residents – most residents of Dhaka slums pay rent. Is this contract enforceable given that there is no lease agreement? What are the tenant's rights? How can disputes be resolved?

Some lessons from AP-A2J process

- Value added of regional approach
 - Facilitation of transfer of good practice/lessons learnt
- Regional/global programmes should be always supportive of CO level (“one UNDP”)
- Engagement of CO practitioners key

NORMATIVE PROTECTION OF RIGHTS

By International and Constitutional Law

FIJI SRI LANKA
INDONESIA CHINA
NEPAL MONGOLIA
IRAN RRRT

By legal and regulatory frameworks

INDONESIA BANGLADESH
CHINA VIETNAM
NEPAL RRRT
CAMBODIA

By Customary Law

INDIA PHILIPPINES

LEGAL EMPOWERMENT

Legal awareness

BANGLADESH FIJI
NEPAL IRAN
PHILIPPINES INDIA
MONGOLIA RRRT
INDONESIA

Legal counsel

BANGLADESH
IRAN
CHINA

Other empowerment-related capacities

INDIA
INDONESIA
SRI LANKA

CAPACITY TO PROVIDE EFFECTIVE REMEDIES

Accessible adjudication

Judicial System

CAMBODIA NEPAL FIJI
IRAN INDONESIA RRRT
 PHILIPPINES

Quasi-judicial bodies

NEPAL INDONESIA BANGLADESH
MONGOLIA SRI LANKA PHILIPPINES

Indigenous/ traditional systems

INDIA
NEPAL, EAST
TIMOR,
PHILIPPINES

Police

INDIA
RRRT

Enforcement

Prison System

BANGLADESH
PHILIPPINES

Civil Society Oversight

SRI LANKA INDIA
PHILIPPINES INDONESIA