



CODIFICATION OF CASE STUDIES

Access to Justice Case Studies from the Asia-Pacific Region

August 2004

Table of Contents

The Initiative	3
Learning from Doing: Case Studies and a Bottom-up Approach	3
<i>The Process</i>	3
<i>The Obstacles</i>	4
Time Constraint and Limited Human Resource	
Problem of Objectivity	
Unavailability of Early Projects for Study	
Timing for the Development of the A2J Model	
Inadequate Development of Transferable Knowledge Products	
The Framework and Lessons from the Studies	5
<i>Substantive Lessons</i>	6
Legal Protection	
Legal Awareness	
Legal Aid and Counsel	
Adjudication	
Enforcement	
Civil Society and Parliamentary Oversight	
<i>Process Lessons</i>	14
Assessment and Design	
Implementation and Management	
Monitoring and Evaluation	
Annex 1: Process Lessons Learned from the A2J Case Studies	17

The Initiative

Since mid-2002, a regional community of practitioners made up largely of UNDP programme officers has organised itself as the **Asia Pacific Rights and Justice Initiative** (AP-A2J). The exercise attempted to develop organisational capacities in the area of access to justice programming by developing relevant knowledge, tools, and networks. The AP-A2J, supported by an electronic network of more than eighty members globally, primarily comprised of UNDP staff from seventeen country offices and the two Sub-regional Resource Facilities (SURFs) in the region.

The Initiative has applied a bottom-up methodology to practice development that is based on the production, codification and dissemination of knowledge by UNDP practitioners. The bottom-up approach attempts to build on existing strengths of the organisation and relies on external expertise only where such knowledge and capacities were not already available within UNDP. The methodology begins with facilitating policy dialogue and generating awareness among key stakeholders in the programme. These key stakeholders include 1) claim holders from poor and disadvantaged groups and 2) duty bearers from the government and public sectors. These stakeholders would claim their rights to equal access to justice and fulfil their obligations in relation to them, thus increasing the participation and decision-making capacities of disadvantaged groups in the justice system.

Learning from Doing: Case Studies and a Bottom-up Approach

The Process

After having agreed on the scope of the access to justice initiative, the practitioners undertook a brief stocktaking of UNDP's experiences on access to justice in the region and the subsequent extraction of case studies and lessons learnt. The extraction of lessons learnt not only helped develop the Initiative's products but also enhanced individual practitioners' capacities through knowledge codification.

Accordingly, from April to October 2003, using guidelines and formats¹ developed by the Initiative for the extraction of case studies, UNDP country office practitioners collected internal knowledge and codified it with SURF facilitation. Twelve country offices² and a regional programme³ have contributed fourteen case studies with specific lessons and recommendations for access to justice programming. This document is a consolidation of those case studies.⁴

The case studies were based on projects and programmes supported by UNDP mostly within the last five years and all within the last ten years. They provided some background information, list findings, and conclusions in terms of transferable lessons on the achievement of outcomes/outputs and process and operational lessons. Finally, they provided useful recommendations that could assist practitioners in the design and implementation of future programmes on access to justice.

¹ See Annex 2 for the case study guidelines and format.

² Bangladesh, Cambodia, China, Fiji, Timor-Leste, India, Indonesia, Iran, Nepal, Philippines, Sri Lanka, and Vietnam.

³ RRRT

⁴ The Initiative has also engaged external partners and undertaken internal research at the SURFs to obtain lessons in areas where UNDP's experience was deemed inadequate.

The process of collecting and drafting the case studies has been fairly innovative for UNDP. For one, following the stocktaking, the identification of case studies was done mostly as a collective exercise by the practitioners. Secondly, guidelines were prepared for the case studies in an attempt to align the lessons with a framework on access to justice developed by the practitioners and to ensure uniformity in presentation. Thirdly, a concerted attempt was made to promote mutual team support in the preparation of case studies by encouraging peer review of the case studies through the community of practice and by bringing together some of the practitioners during the final stages of drafting. Finally, the SURFs helped to codify the knowledge extracted through the case studies and ensured a degree of alignment to further the transferability of lessons learnt.

The Obstacles

Time Constraint and Limited Human Resource

While the practitioners were enthusiastically immersed in this fairly involved and hitherto untested process, and while the Initiative could claim a degree of success in using the bottom-up approach, some constraints have hindered the achievement of ideal results. For instance, the systematic extraction of lessons required both time and objectivity. With regard to the former, UNDP has continued to struggle with providing its practitioners with the time and space to develop knowledge products. Almost all of the case studies were drafted by the programme officers, in addition to other inputs they were providing to the Initiative and over and above their routine tasks of meeting the demands of their respective country offices. In those rare instances where the authors were able to dedicate a reasonable amount of time to the exercise or where they benefited from some external support, a significant qualitative difference was apparent. The human resource constrictions also meant that only a very limited number of UNDP-supported projects in the region could be studied through this Initiative. This exercise did not cover the full range of lessons on access to justice generated through UNDP initiatives in the Asia-Pacific region.

Problem of Objectivity

As for objectivity, the success or failure of a UNDP-supported project may be perceived partly as a reflection of the input provided during the various stages of the programme cycle by the relevant UNDP programme officer. Several of the projects considered through this Initiative were ones over which the authors of the case studies exercised responsibility. It can be a daunting task indeed to objectively evaluate and critique a project that is or has been designed and implemented under one's own watch.

Unavailability of Early Projects for Study

Moreover, UNDP's forays into the area of access to justice have been a fairly recent phenomenon. Thus, many of the projects available for study and reviewed here were launched recently. In these cases, it is almost impossible to extract substantive lessons on such things as the achievement of outcomes and outputs, the relevance and suitability of policies and strategies applied and the utility of the entry points used since the impact of the project on the target groups cannot be conclusively measured so early into the project cycle. As such, many of the cases studied here tend to focus mainly on process and operational lessons. Interestingly however, many of the process and operational lessons learnt have a propensity to be broadly similar despite the country context.

Timing for the Development of the A2J Model

Another impediment to the process of extracting lessons in such a manner that it contributed significantly to the development of access to justice policy and programming tools has been the evolutionary nature of the access to justice framework developed by the Initiative.⁵ The initial model was identified during a “Visioning Workshop” in April 2003. The process of writing case studies commenced soon thereafter. However, as the internal and external research gathered momentum, the access to justice framework advanced in tandem and was finalized only at a second workshop of practitioners in November 2003. All of the case studies were drafted by this time. The absence of the final model during the identification and drafting of case studies meant that several UNDP-supported projects in the region that have clearly generated useful lessons for the Initiative were excluded inadvertently from this exercise.⁶

Inadequate Development of Transferable Knowledge Products

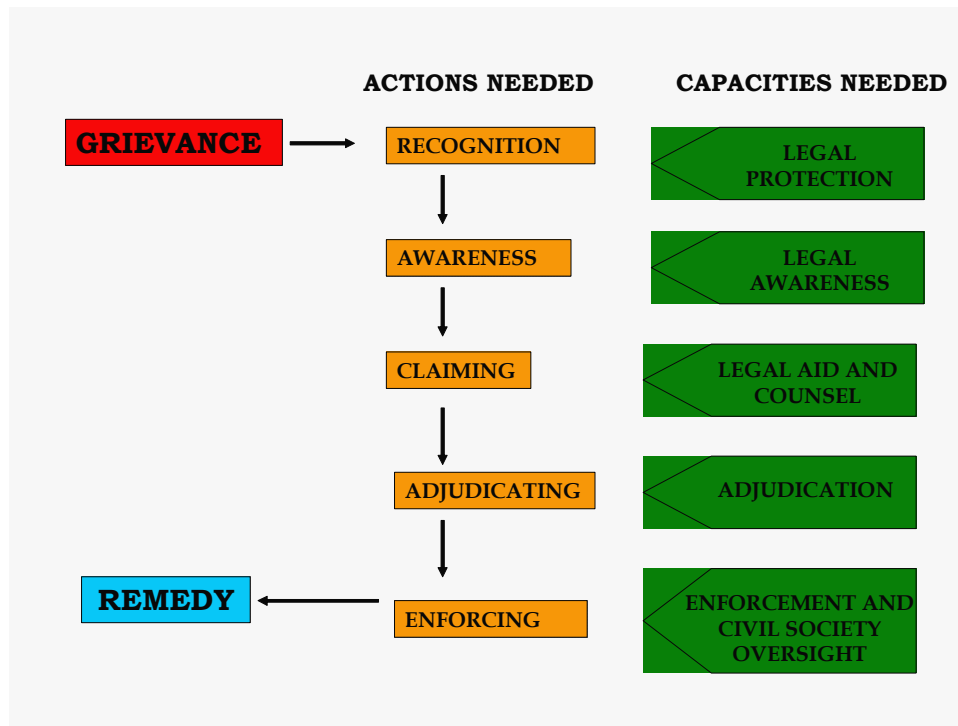
Finally, although some guidelines on drafting case studies were prepared, this exercise clearly demonstrated the need to strengthen in-house capacity for developing transferable knowledge products. The tendency has been to produce descriptive and informative pieces. By delving more deeply into the analysis, these products would have been even more useful in developing programming tools for the community of practice and in defining policy for UNDP. Indeed, for those who work in the field, the reality of their development work is ever present on the ground and the success or failure of their efforts is inherently tied to the country context in which they work. As such, it can naturally be difficult to study a situation somewhat dispassionately and extract lessons that can guide the programming of another country that is often completely alien. Additional SURF guidance and facilitation may have mitigated this problem, but time and financial resource limitations have prevented such intensive engagement between SURF staff and the country office practitioners.

The Framework and Lessons from the Studies

The access to justice framework incorporates a rights-based approach and attempts to identify the various capacities needed by the claim-holders and duty-bearers. It begins with the recognition of a grievance and ends with the enforcement of a remedy. To that end, the capacities below are categorized according to the different stages of seeking and providing a remedy and the corresponding actions required in the access to justice process. The capacities are: 1) legal protection, 2) legal awareness, 3) legal aid and counsel, 4) adjudication, and 5) enforcement and civil society and parliamentary oversight.

⁵ See below

⁶ For example, projects relating to parliaments, line ministries, legal drafters, and the establishment of legal protection and parliamentary and civil society oversight of the justice system are conspicuously absent from this study.



The projects studied through this exercise were designed and implemented long before this framework was prepared. As noted earlier, the case studies were drafted before the framework was finalized. Therefore, many lessons extracted from the case studies do not fall neatly into the categories above, and even when they do, they tend to be disconnected from each other since they relate to different types of institutions in different countries. Nonetheless, they do provide some useful illustrations for the framework and may help to guide future programming that uses the framework as a point of departure. Since the next section on *Key Process and Operational Lessons* is sorted according to the different stages of the programming cycle common to all UNDP projects, the process and operational lessons are more coherent and easier to digest.

Substantive Lessons

Legal Protection

Legal protection relates to the provision of legal standing in formal and/or traditional law and involves the development of capacities to ensure that disadvantaged people's rights are *recognized* within the scope of justice systems, thus giving entitlement to remedies through formal or traditional mechanisms. Legal protection of disadvantaged groups can be enhanced through: a) treaty ratification and implementation in the domestic law, b) constitutional law, c) national legislation, d) implementing rules and regulations and administrative orders, and e) traditional and customary law.

The case studies on legal protection are somewhat meager and do not represent much of UNDP's work with parliaments, legal drafters, ministries of constitutional affairs, line ministries and local government.⁷ The relevant studies here are **India's** access to

⁷ For example, Solomon Islands, Sri Lanka, Pakistan, Indonesia, Cambodia, Timor-Leste, Vietnam, Fiji, Marshall Islands, Bhutan, Afghanistan, and Laos. Some of the relevant lessons from these projects should be extracted and appended to this document in the future.

information initiatives, **Fiji's** work on the ratification and implementation of international human rights instruments, and **Bangladesh's** participatory rural assessments aimed at supporting the adoption of legislation for a national human rights commission. Some of the key substantive lessons learnt through these projects are:

❖ Framing rules to implement legislation offers a valuable window to implement change.

The passage of a national right to information law in India created a unique opportunity to enhance access to information. The formulation of myriad subsidiary rules and regulations often dictates how the legislation will operate, but these important, behind-the-scenes tasks are frequently given to low-level bureaucrats. The result can be shoddy, ill-conceived rules that undermine the original scope and purpose of the law. The participation of academics, policy experts, and civil society in drafting a set of model rules for the government represents a crucial input at a critical time.

❖ The call for ratification must have strong local ownership and support of key stakeholders, including politicians, policy makers at the highest level, representatives from civil society and disadvantaged groups, the judiciary, and lawmakers. Targeting a single category of stakeholders does not work.

Efforts to install a proper human rights legal framework first requires the generation of political will and awareness amongst leaders and policy makers and the simultaneous mobilization of the public behind the cause of human rights standards. Small countries should have access to special assistance, e.g., legal expertise for drafting of legislation, in complying with and reporting on human rights instruments.

❖ Duty-bearers and rights-holders should identify factors constraining ratification and implementation.

Any strategy to encourage ratification should focus on raising awareness at all levels to generate local support and advocacy for ratification, at the political level if there is inadequate buy-in by politicians or at the community level if concerns relate to customary values.

❖ Assistance for compliance and implementation of human rights instruments must include interventions at the country level with an appropriate legal reform agency for reviewing and amending existing legislation.

❖ The timing of support to legislative changes can be critical.

Political wrangling often deters sensitive pieces of legislation. Successive governments of Bangladesh frequently changed policies on national human rights institutions during the UNDP project cycle. The present government led by the Bangladesh Nationalist Party, which came to power in 2001, initially decided to continue the process but later restarted the drafting. As of August 2003, the bill to establish a national human rights commission was still pending with the Cabinet for a decision. To avoid problems as such, it is important to work with major political parties to get their buy-ins so the drafting of legislations can continue smoothly despite political turnovers.

Legal Awareness

Increasing legal awareness entails capacity development so that disadvantaged people know about the possibility of seeking redress through the justice system, whom to demand it from, and how to initiate a formal or traditional justice process. UNDP's access to information service line develops capacities for legal awareness by involving ministries of

justice, schools and universities, national human rights institutions, legal aid providers, quasi-judicial bodies (human rights, anti-corruption, and electoral commissions), local government bodies, non-governmental institutions (e.g. NGOs and bar associations), and labor unions.

UNDP **India's** Access to Information Initiative has produced lessons related to increasing legal awareness within communities and bolstering communication with state officials through public hearings.

❖ Training government officials on access to information is important for imparting knowledge, overcoming resistance to new duties, and addressing resource deficiencies.

Less than five percent of India's local government officials were aware of the Right to Information Act, and several officials used the Act's secrecy exemptions as an excuse for not supplying requested information. This reflected the need for institutional and cultural changes in order for the legislation to operate effectively.

❖ Public hearings are an effective means of demanding accountability, and the involvement of government officials is the key to their success.

Participation of government officials in public hearings created a genuinely interactive atmosphere and allowed the public to learn about promised government services. Public hearings provided a forum for members of the community to expose government fraud and failed promises and to confront government officials. They could also be adapted to address inequities in the justice system and to effectively mobilise community members to demand accountability.

❖ Public hearings demand a high level of preparation and technical expertise, and careful monitoring and conflict management is important.

Although preparation can often be time-consuming, intensive preparation and pre-hearing community awareness campaigns are critical for success.

❖ Under the rights-based approach, conflicts in public hearings are managed toward productive ends.

Measures must be taken to ensure healthy dialogues while maintaining decorum and public safety. Moderators should try to defuse any antagonism that may alienate government officials and the community.

❖ Public hearings are valuable learning experiences for Government officials from outside communities.

Officials from Karnataka and other Indian states were invited to attend a public hearing in Rajasthan as observers. Karnataka officials then responded to complaints of Rajasthani citizens by streamlining the public distribution system in their own state.

❖ Access to information initiatives should be more demand-driven and focus on the citizens' information needs, taking into consideration the specific needs and obstacles of marginalized subgroups.

For instance, certain ICT centres could be earmarked solely for women or special timings adopted when only women could use the equipment. ICT initiatives could also better accommodate individuals of limited literacy through the use of graphic and audio interfaces.

The RRRT project in the **Solomon Islands** provided two case studies involving the provision of human rights information for the empowerment of the disadvantaged to overcome abuse and access to appropriate services.

❖ A multi-tiered approach to addressing justice and human rights can be more effective in harnessing immediate results.

RRRT worked with policymakers (macro level), enforcement agents (mezzo level), and community groups and individuals (micro level). It not only dealt with those at the community level by building capacities to spot legal issues and to seek remedies but also with the media to disseminate legal information to the public in obtaining remedies for grievances.

UNDP **Iran** has embarked on a project with the Faculty of Law and Political Science of the University of Tehran to establish an M.A. and Ph.D. programme in human rights.

❖ Creating a core group of knowledgeable people can help the culture of human rights to take root and sustain it through the established institutional arrangements.

Establishment of the master's degree programme at the University of Tehran is directly related to gaining greater access to justice in Iran. With the formation of a core group of knowledgeable people who practice what they have learned, the culture of human rights can take root in society.

Legal Aid and Counsel

Initiatives addressing this aspect of access to justice contribute to the development of capacities (from technical expertise to representation) that people need to initiate and pursue justice procedures. Legal aid and counsel here includes not only formal legal aid in the justice system but also informal justice support provided by paralegals. Legal aid and counsel can involve professional lawyers (e.g., in the case of public defence systems and *pro bono* lawyering), laypersons with legal knowledge (paralegals) or both (as in "alternative lawyering" and "developmental legal aid").

A case study on a legal aid project in **China** reveals that developing a legal aid system is a core entry point for UNDP, as legal aid empowers disadvantaged people to claim and exercise their rights.

❖ UNDP should help build capacities of both duty-bearers and rights holders so that there is a balance between expectations and delivery.

Creating capacities to demand without creating capacities to provide could result in frustration, disillusionment, and conflict.

In **Solomon Islands**, RRRT-trained paralegals have used their legal knowledge and skills learned from workshops to educate the community and to mobilize public support against human rights violation.

Adjudication

Adjudication focuses on the development of capacities to determine the most adequate type of redress or compensation. Adjudication can be regulated by formal law (i.e., courts and other quasi-judicial and administrative bodies) or by traditional legal systems. Entry points may include courts, national human rights institutions (e.g., human rights commissions and ombudsman offices), alternative dispute resolution mechanisms, and administrative institutions (e.g., land/labor boards and traditional/indigenous bodies).

In the **Philippines**, a project on gender sensitization of the judiciary reveals that:

❖ Even when legal frameworks formally recognize women's rights, their access to justice may be impeded by the existence of gender biases in the court system.

The main manifestations of gender bias against women in the court system are: a) negative attitudes toward female victims and offenders; b) trivialisation of sexual and domestic violence; c) gender-insensitive court procedures; d) gender stereotypes affecting court actions; and e) underrepresentation of women in courts. Impunity and abuses against women persist either because cases are dismissed or women feel reluctant to go through the intimidating trial process.

❖ The design of gender sensitivity training should involve both gender experts and judges so that it is responsive to the needs of court personnel.

Effectiveness of gender sensitivity training depends on the participants being open-minded towards gender sensitization. Sole reliance on gender training may be insufficient to induce attitudinal changes. The training design should not only involve gender experts and judges but also respond specifically to the needs of court personnel.

❖ In order to mainstream gender in the judiciary: 1) create awareness; 2) follow up with gender sensitivity training (e.g., include gender issues in law curricula); 3) strengthen ethical guidelines and "engender" court processes; 4) establish adequate structures to formulate and implement a results-oriented plan geared toward eliminating biases; and 5) allocate internal resources.

Cambodia and **Timor-Leste** learnt similar lessons on judicial mentoring. Mentors were assigned to a court to monitor and to provide overall guidance and advisory support to judges, prosecutors, and clerks. The key observations are:

❖ A clear definition and framework of mentoring position is essential for the development of strong trusting mentor-mentee relationships.

❖ Design and explain clearly the methodology, aims, and evaluation system at the beginning of the programme.

❖ A team of highly experienced, qualified mentors should be recruited under good contract conditions, with the mentees participating in the process of establishing mentor-selection criteria.

❖ Practical experiences and communications skills are required to enable the development of a professional functioning office, with sufficient skills transfer.

- ❖ Provide short-term interpreters and language courses to mentors. Invest time and resources in the induction and introduction of mentors into the Timorese system.
- ❖ Depending on the capacity gap and the availability of human resources, facilities, and utilities in the justice system, the impact of the mentoring programme in each court varies dramatically.
- ❖ Defining the mandate of judicial mentoring is most crucial to the achievement of the programme's outputs and contribution to reach the outcomes. Some envisaged tasks in defining the mentor's mandate include:
 - Providing advisory support on legal substantive and procedural matters
 - Sharing comparative experiences from similar legal systems or reform processes
 - Sharing necessary knowledge on the implementation and application of international legal standards regarding the administration of justice in the creation of amendment of domestic legislation
 - Supporting the establishment of mechanisms that ensure coordination of institutions charged with the administration of justice
 - Identifying constraints and challenges faced by justice providers or recipients in the administration of justice for state policymaking
 - Providing training for judges, prosecutors, court clerks, prison authorities, judicial police, human rights NGOs on identified critical legal matters
- ❖ The responsibilities of national counterparts should be clearly outlined to ensure accountability of results.

In **Bangladesh** and the **Philippines**, institutions and committees were formed to offer possibilities of access to justice that go beyond the restraints imposed by the formal judicial system government. These groups helped to fill in gaps in the government-initiated initiatives and integrated inputs from the grassroots level through a participatory process.

Enforcement

This involves the development of capacities for enforcing orders, decisions, and settlements emerging from formal or traditional adjudication. In comparison to other capacities, there is limited information that emerged through the Initiative in this area because UNDP usually considers police reform as a security sector matter rather than a justice sector one. Accordingly, the units and staff members that manage police reform projects are quite different to those that manage justice and legal reform initiatives.⁸ An effort should be made in the future to ensure that police reform projects are designed and implemented as part of justice reforms rather than as stand-alone security sector programmes. As an immediate follow-up to this series of case studies, lessons from police reform projects in the region should be extracted and codified as a supplement to this document.

Relevant institutions in this area include the public prosecutors' offices, police, prisons, administrative enforcement agencies, and traditional systems of enforcement.

- ❖ Police infrastructure and resources, or lack thereof, can play a key role in influencing police morale and effectiveness.

⁸ Afghanistan and Timor-Leste are clear examples of this type of polarization in this region.

This initiative addresses the poor working and living conditions faced by police. The poor attitudes that many police had towards their jobs and community residents pose a challenge to effective police-community relations. To promote positive police attitudes, the initiative calls for the establishment of minimal living and working conditions for different categories of police stations.

- ❖ Infrastructure improvements at police stations can also play a large role in improving police-community relations.

Many citizens do not feel welcome at police stations and feel discouraged from filing reports. The infrastructure review recommended the establishment of pleasant reception rooms where police personnel would meet and interact with the public.

- ❖ Community policing initiatives with strong official support can be successful, but monitoring is important, and empowerment and accountability are important for both citizens and police.

Studies of UNDP **India** revealed that community members are often eager to assist police, but certain checks are necessary to prevent abuses and bribes. Innovative community policing efforts, such as joint patrolling with police at night and women's neighbourhood watch, facilitate communication and interaction between police and the community. Success of the programmes depends largely on the selection and monitoring of participants for community policing.

- ❖ Careful composition of community liaison groups is critical for success.

Community liaison groups (CLGs), with a diverse representation (e.g., sex, caste, religious and linguistic groups, etc.) from a cross-section of the community and with frequent representative turnovers, can encourage good police-public relations. CLGs should take on more roles and responsibilities, such as sensitising police executives to the CLGs, ensuring their support for the initiative, and promoting inclusive participation from all segments of the community. Additionally, the work of CLGs must be documented and evaluated according to pre-determined guidelines throughout operation.

The case study on promoting gender sensitivity in the **Philippines** observed the formulation of a Committee on Gender Responsiveness in the Judiciary with representation from agencies of the judiciary to provide effective, gender-responsive policies and remedies.

- ❖ The Philippine Supreme Court has created mechanisms to improve the quality of judicial services and access to justice by all, regardless of gender.

These mechanisms engendered court processes, allocated resources to sustain the gender mainstreaming action plan, and established clear accountabilities of the judiciary.

The **Timor-Leste** case study on judicial mentoring programme advised against hasty expansion of the programme. Without enhancing the capacity of the original trained staff, there will be no effective transfer of knowledge and technical expertise to the judicial officials. Moreover, mentors should have work plans and conceptualized goals that guide their efforts.

Civil Society and Parliamentary Oversight

Oversight of the justice sector includes the development of watchdog and monitoring capacities of civil society and parliament to strengthen overall accountability within the justice system.

UNDP has implemented a number of projects to strengthen parliaments in several countries in the Asia-Pacific region. Many of these projects have significant components on enhancing parliament's oversight of the Executive, including the justice sector. For instance, special committees have been strengthened to review the implementation of laws and the performance of justice sector institutions. However, given the time and resource constraints of this Initiative, it was not possible to examine these projects to extract pertinent lessons.

Mechanisms such as the media and NGOs working on monitoring and advocacy provide adequate remedies to investigate official misconduct and gather important information to alert senior officials on how to curb corrupt, discriminatory or abusive practices.

The public hearings in **India** mentioned above not only increase legal awareness, they are also critical in empowering civil society.

❖ Public hearings are an effective means of demanding accountability.

Public hearings are an effective means of learning about governmental projects, demanding accountability, and confronting the government with its failed promises.

UNDP **India** has implemented projects to sensitise police personnel to community needs and to increase public awareness on capacity building and civil society oversight.

❖ Community policing and CLGs are effective springboards for empowerment and teaching human rights.

Citizens participate frequently in community policing and in the neighbourhood watch programmes. Moreover, CLGs have been very successful in facilitating the police-public interaction by establishing linkages with NGOs and other community organisations and sensitising police personnel to the concept of community involvement in policing. To further familiarise government officials with human rights issues, CLGs need to play a more diverse role in resolving disputes and defusing tensions between government agencies and the community.

From the **Solomon Islands**, the RRRT project provided a case study involving the provision of human rights information for the empowerment of the community to foster social justice by lobbying against a potential serious human rights violation by the government.

❖ An inclusive and interactive training approach ensures that the participants fully understand the issues and would apply relevant concepts in their daily lives.

The RRRT project mobilised civil society through a multi-layered approach. First, individuals were empowered through the human rights training and networking with other members of the community. They then educated themselves and met with other stakeholders, e.g., the heads of the provincial departments, the chair of the provincial civil society, environment organisation representatives, and community leaders, to discuss the potential human rights

violation. A press release was also distributed to media outlets to alert the nation on the potential human rights violation and to generate public debate and discussion.

Process Lessons

Assessment and Design

- ❖ Encompass diverse viewpoints and raise public awareness before putting institutional arrangements into the national discourse
- ❖ Establish baselines for adequate design, monitoring, and evaluation of access to justice strategies
- ❖ Baselines should be comprehensive. They should not be limited to the judiciary
- ❖ Bring results of all baseline studies together to obtain a holistic picture and to establish a coordinated reform agenda
- ❖ Do not substitute surveys for participation.
- ❖ Surveys should include clients to get an understanding of the services they receive
- ❖ Linkages to access to justice by the poor and disadvantaged should be explicit in designing the scope of the baselines and in conducting institutional assessments
- ❖ Subject baseline results to a “stakeholder validation” before finalization to ensure ownership
- ❖ Use multidisciplinary teams in designing and undertaking the surveys and in analysing results
- ❖ Facilitate the building of constituencies among other actors by extensive consultations on designing the indicator and assessment framework and in the conducting of surveys and studies
- ❖ Use alternative assessment techniques, e.g., focus group discussions, in times of insufficient data
- ❖ Avoid inter-country comparative aspirations by focusing indicator setting on specific access to justice obstacles in the country
- ❖ Facilitate UN technical expertise for rights-based indicator setting at low cost and high quality by OHCHR
- ❖ Participatory Rural Assessments can be valuable for developing human rights baselines prior to programme formulation, but overall detailed guidance must be provided to national partner organizations to ensure meaningful participation of disadvantaged groups
- ❖ Identifying a clear and detailed scope of an assessment is important for realizing outcomes
- ❖ National ownership of an assessment helps to ensure that the government would support the achievement of outcomes
- ❖ Limited involvement of local counterparts in preparing the programme affects the sustainability of results. Involve beneficiary institutions in the preparatory phase regarding the selection of candidates, needs assessments, and work planning
- ❖ In cases that involve several UN agencies, design clearly the programme’s institutional setup to avoid misinterpretations on the role and responsibilities of each agency. Include necessary revisions of the intended outputs and indicative targets to ensure the complementarity of involvement of each agency in the programme. The main operational issues to be addressed are:
 - (1) Design strategies (e.g., mandate, reporting lines, approach, profile of mentors, etc.) for judicial mentoring
 - (2) Identify the targeted beneficiaries, more specifically the disadvantaged groups

(3) Prepare detailed and flexible terms of reference that provides the overall framework and specifies the profile needed (including languages, legal education and practice in different legal systems, previous experiences working with developing countries, etc.

Implementation and Management

- ❖ Human rights and justice messages to “multipliers” like religious leaders, teachers and community workers. Use existing social networks to mobilise community members around access to legal information initiatives. The high levels of trust and familiarity associated with community groups made an ideal entry point for larger community mobilization and active participation
- ❖ High political commitment and strong, involved leadership in the lead government agency are prerequisites for coordination of agencies
- ❖ The government should oversee and coordinate the assessment exercises
- ❖ Use the government’s clear identification of UNDP as a key counterpart to facilitate donor coordination
- ❖ Proactive backstopping by UNDP is crucial in maintaining an open, interactive coordination mechanism between government and donors
- ❖ The government’s request for UNDP signifies to the donor community the government’s trust in UNDP
- ❖ Accurate, thorough, and standardized gender assessments are critical for donor coordination
- ❖ Democratic Governance Thematic Trust Funds are extremely flexible and useful for the multidimensional nature of access to justice initiatives
- ❖ Familiarize international experts/consultants with the political and legal systems of the country and involve them throughout the process
- ❖ Beneficiaries need to be willing to be mentored in order for the mentoring exercise to succeed. The objectives of the mentoring programme and the mentors’ TORS need to be transparent and clear
- ❖ An advisor/coordinator/task manager should support the work of the mentors by providing them with overall direction and guidance in the postings based on previous judicial mentoring experiences at the court and country specifics regarding the judicial practice and legal tradition
- ❖ Compile or record systematically the practices, experiences, and lessons learnt by each judicial mentor to adjust the programme accordingly over the years
- ❖ Need timely selection of mentors, deployment, and team building
- ❖ Ensure continuity and timely disbursement of funds from donors in order to avoid discontinuities in implementing programme activities
- ❖ Set up adequate coordination mechanisms among implementing and executing agents to ensure efficiency and efficacy in implementing the judicial mentoring programme
- ❖ Management of human resources is critical for ensuring quality of results, common understanding of approaches, and actions in the judicial mentoring practice. Success of a judicial mentoring programme depends largely on team building, minimal turnover of mentors, and results-oriented mentoring
- ❖ Identify the right profile of the judicial mentor to ensure adequate intervention with minimal interference in the fragile local legal system
- ❖ Properly equip work stations before the deployment of judicial mentors to facilitate their liaising with counterparts, clarification of roles and responsibilities, timely commencement of the assignment, and provision of necessary advisory support to the counterparts

- ❖ Consider the issue of security when implementing a judicial mentoring programme. Do not involve judicial mentors in the presentation and investigation of cases nor pronouncement of judicial decisions. Mentors are to provide advice on the legal substantive analysis and procedures based on comparative practices in other judicial systems

Monitoring and Evaluation

- ❖ Before starting, programme personnel must define objective and quantitative metrics to measure success
- ❖ To determine effectiveness, all initiatives should include extensive pre- and post-intervention evaluations according to predefined metrics
- ❖ Identify specific mechanisms of data gathering to further sustainability in monitoring and evaluation
- ❖ Monitor and evaluate the performance of mentors at all stages, taking into consideration inputs provided by national counterparts
- ❖ Programs should develop institutional capacities to monitor impacts on access to justice on a sustainable basis and to make the situation of disadvantaged groups more visible in official data (inclusion of follow-up mechanisms and fall-back strategies)
- ❖ Establish disaggregated baselines that reflect situation of specific vulnerable groups
- ❖ Establish accountabilities for reporting on indicators related to outcomes, outputs, process, completion of activities, and financial reporting
- ❖ Design mechanisms to ensure transparency and participation of claim-holders and duty-bearers in monitoring
- ❖ Create a core group of knowledgeable people to help the culture of human rights to take root and to sustain it through the institutional arrangements established

Annex 1: Process Lessons Learned from the A2J Case Studies

<u>Case Study</u>	<u>General Lessons</u>	<u>RBA PARAMETERS</u>			
		<u>Participation</u>	<u>Accountability</u>	<u>Non-Discrimination and Targeting</u>	<u>Empowerment</u>
<p>1. BANGLADESH Initiative to Establish a National Human Rights Commission</p> <p>GOAL: Support the creation of a strong, independent national human rights institution to provide accessible remedies, particularly to those who are most vulnerable and disadvantaged</p>	<p><i>An inclusive, wide-ranging and rational approach is required in working with NGOs, human rights groups and the media.</i></p> <p><i>Close partnership with political leaders/national government might have an impact on the relationship with civil society partners.</i></p>	<p>A Human Rights Participatory Rural Assessment (HRPRA) identified the initial demand for centrally-organised human rights protection. However, claim holders and duty bearers were adequately involved in designing and implementing the project.</p> <p>Participation of disadvantaged groups was seen more as one of the programme activities rather than a continued process and an end in itself.</p> <p>During implementation, dialogues with policymakers, professions, NGOs and civil society were limited to seminars and symposiums.</p> <p>The precise obstacles</p>	<p>The project became an institution in its own right. It was responsible for filling a wide gap in the government’s capacity to promote human rights. This also had implications for government accountability.</p> <p>Distinction between sustainability of impact and organizational sustainability should be explored.</p> <p>Mainstream legal and human rights NGOs were left out of the planning process. The inability to establish and create sustained links with civil society has reduced the scope of accountability mechanisms.</p>	<p>Programmes to generate awareness and interest on the proposed human rights commission did not attain much success due to the lack of meaningful and adequate participation. This suggested that key groups might have been excluded from the process, undermining targeting and non-discrimination.</p> <p>Multipliers (e.g., religious leaders, teachers, community workers, etc.) should be targeted for outreach purpose.</p>	<p>Participation of disadvantaged groups was seen as a programme activity rather than a continued process necessary for the empowerment of groups.</p> <p>The degree of decision-making capacity in claim holders and duty bearers was low. In order for the process and outcomes to be empowering, inclusive participation was needed.</p>

Annex 1: Process Lessons Learned from the A2J Case Studies

		to transforming participatory assessment into other forms of participation during project implementation were not identified due to political sensitivity.			
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<u>Case Study</u>	<u>General Lessons</u>	RBA PARAMETERS			
		Participation	Accountability	Non-Discrimination and Targeting	Empowerment
<p>2. PHILIPPINES Establishing Baselines on Access to Justice by Poor and Disadvantaged People</p> <p>GOAL: Establish baselines on access to justice by poor and disadvantaged people for the formulation, monitoring and evaluation of justice reform programmes</p>	<p><i>It is useful to establish an operational definition of A2J.</i></p> <p><i>Political sensitivity can undermine the possibilities for creating strong ties with civil society and NGOs.</i></p> <p><i>Transparency and clarity about specific objectives of baseline studies are necessary for overcoming political sensitivity. Strong political leadership is also</i></p>	<p>The management team was consisted of the Supreme Court, UNDP and OHCHR. Participation of other stakeholders was limited to "consultations," which was recognised by the management group and justified due to political constraints.</p> <p>Wider participation was limited to surveys or meetings that did not reflect effective participation of claim holders.</p> <p>A national survey on knowledge and perceptions of the</p>	<p>Programme outcomes helped to assess the actual impact of justice reform programmes on A2J by poor and disadvantaged groups.</p> <p>Indicator frameworks based on nationally- and internationally-recognized human rights principles should be developed by the management group.</p> <p>The sustainability of monitoring and evaluation of established baselines was unclear.</p>	<p>The programme has explicitly addressed the issue of adequate data disaggregation as a goal.</p> <p>Although the lack of active involvement by the target groups meant that non-discrimination can't be measured, the inclusion of a wide range of organizations helped to broaden the scope of the project and ensured a greater scope of the baseline indicators.</p>	<p>The process had triggered a series of institutional reforms beyond the judicature, although the empowerment of groups was unclear.</p> <p>The project did not seek to empower the poor or disadvantaged groups. It was unclear as to whether the process had increased the capacity to seek remedy.</p> <p>The baselines had</p>

Annex 1: Process Lessons Learned from the A2J Case Studies

	<p><i>helpful.</i></p> <p><i>Surveys cannot substitute for participation.</i></p> <p><i>Linkages to access to justice by poor and disadvantaged people should be explicit in designing the scope of the baselines and conducting institutional assessments.</i></p>	<p>judicial system should provide a picture of access to justice as perceived by the poor. Causes of impeding access and suggested strategies were identified although not through fully participatory processes.</p> <p>However, baseline studies were sensitive, and efforts were made to gather information from a wide range of sources.</p>	<p>The involvement of a range of organizations and their networks led to opportunities for a more coordinated reform agenda and a broader base for accountability and sustainability of impact.</p> <p>The scope of the baseline studies and institutional assessments was suggested by the management team rather than through consultations.</p>		<p>transformed the perceptions of lack of access into hard facts. They might be an effective way to trigger reform processes in the justice system in the interests of disadvantaged groups.</p> <p>Participants were consulted, and their views had influenced the project. However, the participants were unaware of the influences; therefore, they were not empowered through the process.</p>
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<u>Case Study</u>	<u>General Lessons</u>	<u>RBA PARAMETERS</u>			
		<u>Participation</u>	<u>Accountability</u>	<u>Non-Discrimination and Targeting</u>	<u>Empowerment</u>
3. PHILIPPINES Promoting Gender Sensitivity in the Philippine	<i>Increased awareness through the study was translated into action as a result of openness</i>	There was a lack of participation of civil society and community leaders in most of the project activities.	Since women's inputs were not ensured, the lack of participation had reduced the effectiveness of the	The project used several techniques to mainstream gender, e.g., training, reviewing curricula, producing guidance,	Socio-cultural and structural issues were examined. This was important for understanding the power

Annex 1: Process Lessons Learned from the A2J Case Studies

<p>Court System</p>	<p><i>and political will, the existence of champions in courts and the designation of a gender focal point in the programme management office.</i></p> <p><i>A programme to mainstream gender in the judiciary should not only be inward looking but should also analyse other causes that impede women's access to justice, which do not necessarily refer to the court system but also to other pillars of the justice system (e.g., informal systems) and to structural factors.</i></p>	<p>The focus was exclusively on members of the judiciary.</p> <p>The lack of engagement by the informal, traditional judicial systems has excluded important stakeholders from participating in the programme. The programme recognized that in order to fully address the issues of women's access to justice, the focus should not only be on formal remedies.</p>	<p>watchdog function. It also reduced the transparency of the gender mainstreaming process.</p> <p>The accountability of programme outcomes and their impact were unclear. The organisational sustainability of the outcomes was also unclear.</p> <p>Committees, rather than individual focal points, would help build accountability and sustainability.</p>	<p>reviewing court processes, and creating processes to ensure that gender issues are considered in operations and programmes. However, insufficient participation made it unclear as to whether or not certain women or vulnerable groups were excluded.</p>	<p>imbalances, but it was unclear as to whether this could translate into any action.</p> <p>Capacity building through access to information on the judicial system and legal literacy, as well as availability of legal counsel, were further needed. Trainings were insufficient for achieving attitudinal change.</p>
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<u>Case Study</u>	<u>General Lessons</u>	RBA PARAMETERS			
		Participation	Accountability	Non-Discrimination and Targeting	Empowerment
4. TIMOR-LESTE Mentoring	<i>It is unclear as to how mentoring programmes</i>	There was no participation from the mentees or the	The parameters and goals of mentoring were not	Different stakeholders were represented in the management	No consideration of empowerment was given in the

Annex 1: Process Lessons Learned from the A2J Case Studies

<p>Programme</p> <p>GOAL: Transfer knowledge and technical expertise to East Timorese judicial officials</p>	<p><i>could contribute to access to justice from a rights-based perspective without the support of other programmes.</i></p>	<p>mentors in designing the project. This had caused misunderstanding and undermined the impact of the project and the identification of necessary supplementary programme components in achieving access to justice by the poor.</p> <p>There was apparently no effort to engage mentors and mentees with other people for whom they are trying to provide services.</p>	<p>conceptualized in detail. There were difficulties in assessing the impact of work.</p> <p>Accountability in terms of contributions to access to justice by the poor was not a consideration.</p>	<p>committee, but the result was the marginalization of mentees' opinions. The people that judicial officials were meant to represent, i.e., the claim holders, were not represented.</p>	<p>project.</p>
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<u>Case Study</u>	<u>General Lessons</u>	RBA PARAMETERS			
		Participation	Accountability	Non-Discrimination and Targeting	Empowerment
<p>5. FIJI Strategy for Ratification and Implementation of International Human Rights Instruments for Government Accountability</p>	<p><i>A lack of participation and ownership of the project is likely to have been partly responsible for why the project didn't result in spin-off initiatives in the country.</i></p>	<p>Advocacy for ratification should have addressed the perceived/real conflicts in the traditional systems. This would require preparatory and participatory analysis. This approach would allow efforts to target appropriate</p>	<p>There is a widespread and strongly-held view that international human rights instruments would undermine the traditional value system. This concern lay with the duty bearers and claim holders.</p>	<p>Workshops involving different participants should be well armed with detailed status of the positions of key stakeholders (duty bearers and claim holders). This could ensure non-discrimination and was identified as such in the programme.</p>	<p>In order to demand a responsible government, people must know about their rights to timely and affordable justice and be able to fully benefit from the services and goods provided by the</p>

Annex 1: Process Lessons Learned from the A2J Case Studies

<p>and Access to Services by the People</p> <p>GOAL: Four initiatives: 1) accountability and transparency; 2) judicial training and reform; 3) parliamentary support and capacity building; 4) human rights advocacy and institutional support</p>		<p>stakeholders and to deal with specific concerns.</p> <p>Duty bearers and claim holders should be involved in identifying factors that constrain or facilitate the adoption, ratification and implementation of international standards.</p> <p>The programme was implemented mainly through a series of trainings. However, the scope of participants trained, the involvement of target groups in defining the content of trainings, follow-ups and supplementary activities were lacking.</p>	<p>Key constraints that hinder adoption and ratification were not identified in planning or implementation.</p>		<p>government. The lack of sufficient involvement by claim holders had made this difficult.</p>
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<u>Case Study</u>	<u>General Lessons</u>	<u>RBA PARAMETERS</u>			
		Participation	Accountability	Non-Discrimination and Targeting	Empowerment
<p>6. INDIA Community Policing in India</p>	<p><i>Sensitivity to the capacity needs of both claim holders and duty bearers contribute to the</i></p>	<p>PRIA (specialised participatory research institute) was used to conduct research on community liaison groups (CLGs).</p>	<p>The project showed that it was critical to maintain diverse representation from a cross section of the community in</p>	<p>The use of an experienced participatory monitoring organization with a broad network in the</p>	<p>Survey respondents had identified the process to be followed in developing project</p>

Annex 1: Process Lessons Learned from the A2J Case Studies

	<p><i>project's success.</i></p> <p><i>Strong linkages with NGOs and other CBOs that have developed programme components based on their organizational strength contribute to the project's success, accountability and sustainability.</i></p> <p><i>Target groups should participate actively in choosing the training methodology and the content that is important for attitudinal change.</i></p>	<p>Surveys of duty bearers (police and citizens) and claim holders (citizens) were taken.</p> <p>Survey respondents recommended on how project outputs (e.g., strengthening CLGs) should be developed and the process that should be followed.</p> <p>Participant-oriented and experimental trainings were most effective and necessary for attitudinal change.</p> <p>In terms of training programmes, non-traditional methodology was successful.</p> <p>The participants had not only contributed to the training agenda, they were also encouraged to share personal experiences and had control. The trainees were made part of the training team.</p>	<p>committees, e.g., CLGs, playing a facilitating and watchdog role.</p> <p>The process should be closely monitored through periodic evaluations measuring outcomes against predetermined indicators (determined during participatory analysis).</p> <p>It was important that informal structures like CLGs did not inappropriately substitute for official local governments and that CLG members were properly trained and monitored in their new roles and responsibilities.</p> <p>However, in terms of accountability of the project, monitoring and evaluation should not rely solely on anecdotal evidence. Time and</p>	<p>target areas was helpful.</p> <p>The advocacy of broad participation in the project helped ensure non-discrimination and targeting of vulnerable groups during the programme cycle.</p>	<p>activities. This would empower people through the establishment of CLGs without alienating the duty bearers (the police).</p> <p>This project recognized and addressed the need to empower police officers (as duty bearers and claim holders). By empowering the two groups simultaneously, possible conflicts resulting from power shifts could be alleviated. It was also essential to empower the police and to ensure accountability for citizens assuming new roles.</p> <p>Trainees should become part of the training team. Participants should have control and be empowered through the</p>
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Annex 1: Process Lessons Learned from the A2J Case Studies

			resources were needed for identifying qualitative indicators and quantitative data such as pre- and post-surveys.		programme process.
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<u>Case Study</u>	<u>General Lessons</u>	RBA PARAMETERS			
		Participation	Accountability	Non-Discrimination and Targeting	Empowerment
7. INDIA Access to Information Initiatives	<i>Future “access to information” initiatives should adopt a more</i>	Mobilisation around community-level information was far more challenging than	Information was a critical element in demanding public accountability.	The case study recognized that future access to information initiatives should take into	Indicators on empowerment were not developed.
GOAL: Support capacity building of community members and government officials to exercise their rights and fulfill their duties under the new information legislation	<i>demand-driven orientation and focus on the information needs of citizens.</i> <i>The needs could be identified through participatory processes.</i>	<p>mobilization around individual-level information.</p> <p>The specific informational needs of citizens should be ascertained in the planning phase.</p> <p>Existing social networks were needed for mobilizing community members around access to information.</p> <p>The use of existing social groups was essential and</p>	Public hearings were valuable tools for sharing information about the project and legal rights.	<p>consideration the specific needs and obstacles of marginalised subgroups.</p> <p>Men used the scheme more often than women did. Many marginalized groups were left out, and the project wasn't designed with the needs of the illiterate and the disabled in mind.</p> <p>Future initiatives should cater to the neediest in society.</p>	The distinction and linkages between individual and group empowerment should be addressed.

Annex 1: Process Lessons Learned from the A2J Case Studies

		important for fostering trust, targeting and reaching marginalised groups and maintaining sustainability.		Disseminating information to the most marginalised groups was recognised as a challenge.	
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		<u>Participation</u>	<u>Accountability</u>	<u>Non-Discrimination and Targeting</u>	<u>Empowerment</u>
8. MONGOLIA Learning Experience and Lessons from NHRAP Process in Mongolia in Mapping A2J Issues and Strengthening National Legal Frameworks	<i>The mapping exercise of rights and access to justice issues was useful for identifying target groups, accountability and capacity gaps, as well as providing an overview of how different stakeholders interact.</i>	Different stakeholders were represented at the NHR conference by national coordinating committee (NCC) members of disadvantaged groups. The office identified what the major/broad A2J concerns are, how the outcomes should be achieved, and what the participatory process should be like.	CSO and the national human rights institutions were included in NHRAP as the mechanism for ensuring accountability and establishing participatory monitoring and evaluation systems.	This project did not include mechanisms that ensure representation and targeting of disadvantaged groups. Legal literacy assessment among disadvantaged groups should form part of the baseline studies in order to address constraints and bottlenecks.	N/A

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9. NEPAL Formulation of NHRAP and Its Impact on A2J Issues	<i>The use of a rights-based approach, which focuses on participation as</i>	The project was facilitated by a steering committee made up of government and civil	The implementation of NHRAP was necessary so that the participants whose expectations	Many disadvantaged groups were represented, but "representation" did not necessarily mean	N/A

Annex 1: Process Lessons Learned from the A2J Case Studies

	<i>an end in itself, helps in institution building of the NHRAP.</i>	society members. Participatory consultative workshops in different parts of the country were used only during the formulation phase. A wide range of stakeholders participated. However, it was unclear as to how these mechanisms would sustain and give control over outcomes.	had been raised would not be disillusioned. Extensive media coverage was good for maintaining momentum and accountability.	non-discrimination.	
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<u>Case Study</u>	<u>General Lessons</u>	<u>RBA PARAMETERS</u>			
		<u>Participation</u>	<u>Accountability</u>	<u>Non-Discrimination and Targeting</u>	<u>Empowerment</u>
10. IRAN Human Rights Education and Partnership Building	<i>Constituency building involving a large and varied range of stakeholders is important.</i>	Participation was a form of engaging disadvantaged groups without explicitly referring to the sensitive issue of human rights.	Many human rights projects sought to see if any impact has resulted from actual improvement in the A2J indicators.	N/A	N/A

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Annex 1: Process Lessons Learned from the A2J Case Studies

<p>11. China Strengthening Legal Aid System in China to Improve Access to Justice for Disadvantaged Groups</p>	<p><i>Awareness of necessary financial and human resources is important.</i></p> <p><i>Capacity building to overcome regional disparities is necessary.</i></p> <p><i>It is important to get political support at the local and national level for implementation</i></p>	<p>Raising citizens' awareness on services that a programme is to provide was essential, especially for reaching those who were most in need of the services.</p>	<p>More attention should be given to monitoring and evaluating programme activities, to assessing the progress, to consolidating achievements, and to ensuring follow-ups.</p>	<p>N/A</p>	<p>Developing a legal aid system would help to empower the poor and disadvantaged by helping them to claim and exercise their rights. UNDP has a role in increasing the capacity of duty bearers and claim holders.</p>
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<p><u>Case Study</u></p>	<p><u>General Lessons</u></p>	<p><u>RBA PARAMETERS</u></p>			
		<p>Participation</p>	<p>Accountability</p>	<p>Non-Discrimination and Targeting</p>	<p>Empowerment</p>
<p>12. VIETNAM Legal Needs Assessment: Building Ownership and Partnership for Legal Reform</p>	<p><i>A high-level political commitment is important. A longer-term commitment is necessary. A clear identification of the scope and purpose is also needed.</i></p> <p><i>Coordination</i></p>	<p>Assessment was mainly based on a desk-review without a comprehensive survey and an analytical study on the perceptions of clients from the A2J viewpoint. A participatory analysis would have complemented the top-down approach.</p>	<p>National ownership would ensure the sustainability of assessment.</p> <p>Accountability by and of claim holders was not present because the assessment was desk-based.</p>	<p>Due to the desk-based nature of the programme, this project could not ensure non-discrimination and/or identify all vulnerable groups.</p>	<p>The project was not conducted from a rights-based approach, therefore any empowerment was not measured or identified.</p>

Annex 1: Process Lessons Learned from the A2J Case Studies

	<i>mechanisms among participating agencies and stakeholders are necessary, but they may be problematic.</i>				
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