

## ANNEX 4: RESULTS OF ACCOUNTABILITY ANALYSIS

### GROUP 1: NORMATIVE PROTECTION

#### Identification of duty bearers

Examples of Duty Bearers in the area of normative protection of rights			
HR treaties/ Constitution	Subordinate legislation	Customary norms	Jurisprudence
<ul style="list-style-type: none"> <li>MOFA, MOLJ</li> <li>Law commission</li> <li>Legal advisor of government</li> <li>NHRC</li> <li>HR NGOs, civil society, representatives of minority groups</li> <li>Parliament, including legal drafter's department</li> <li>Academia</li> <li>Media institutions</li> </ul>	<ul style="list-style-type: none"> <li>Local government</li> <li>Legal drafting departments in ministries</li> <li>Bar</li> <li>Community groups</li> </ul>	<ul style="list-style-type: none"> <li>Community leaders</li> <li>ADR/ mediators</li> <li>Indigenous people's systems</li> <li>Academia/ NGOs</li> </ul>	<ul style="list-style-type: none"> <li>Judges</li> <li>Lawyers</li> <li>Academia</li> </ul>

#### Analysis of strengths and weaknesses to fulfill obligations

	STRENGTHS	WEAKNESSES
<b>MINISTRY OF LAW AND JUSTICE</b>	<ul style="list-style-type: none"> <li>Technical capacity</li> <li>HR awareness</li> </ul>	<ul style="list-style-type: none"> <li>Inertia</li> <li>Under funded</li> <li>(Mongolia: conflict of institutions (justice and police))</li> </ul>
<b>PARLIAMENT</b> (including drafting committees)	<ul style="list-style-type: none"> <li>Final decision-making authority</li> <li>Subcommittee structure (eg. on human rights)</li> </ul>	<ul style="list-style-type: none"> <li>No technical capacity</li> <li>Very political</li> <li>Insensitive to human rights</li> </ul>
<b>NATIONAL HUMAN RIGHTS COMMISSIONS</b>	<ul style="list-style-type: none"> <li>Contains champions</li> <li>Clear mandate for championing HR</li> <li>(?) Independence (partly)</li> <li>Huge potential</li> </ul>	<ul style="list-style-type: none"> <li>Under funded, understaffed – lack of credibility</li> <li>Recommendatory body (except Sri Lanka)</li> <li>Only monitoring/ reviewing body</li> <li>Less visibility</li> </ul>
<b>MINISTRY OF FOREIGN</b>	<ul style="list-style-type: none"> <li>Mandate for coordinating treaty monitoring</li> </ul>	<ul style="list-style-type: none"> <li>Most prone to political influence, not at all prone to</li> </ul>

<b>AFFAIRS</b>	<ul style="list-style-type: none"> <li>• Aware of international priorities/ international obligations</li> </ul>	CSO influence
<b>JUDICIARY</b>	<ul style="list-style-type: none"> <li>• Independence</li> <li>• Powers vested by constitution</li> <li>• Judicial activism</li> <li>• Adjudication of cases, including international law</li> </ul>	<ul style="list-style-type: none"> <li>• Propensity to political influence</li> <li>• Conservative</li> <li>• Corruption</li> <li>• Lack of knowledge of international law (new areas)</li> <li>• Gender insensitivity</li> </ul>
<b>CIVIL SOCIETY</b>	<ul style="list-style-type: none"> <li>• Independence</li> <li>• Champions</li> <li>• Technical capacity</li> <li>• Role of “parallel reporting” to treaty bodies</li> </ul>	<ul style="list-style-type: none"> <li>• Political influence</li> <li>• Limited outreach: lack of coordination/ organizational capacity</li> <li>• Confrontational attitude</li> </ul>

**Suggested issues where lessons need be collected**

<b>KNOWLEDGE DEVELOPMENT ON NORMATIVE PROTECTION</b>
<ul style="list-style-type: none"> <li>• Parliament: Enact enabling legislation based on treaties</li> </ul>
<ul style="list-style-type: none"> <li>• Review of existing legislation’s compliance with human rights treaties</li> </ul>
<ul style="list-style-type: none"> <li>• Inclusive legislative drafting process <ul style="list-style-type: none"> <li>○ <i>Public hearings</i></li> <li>○ <i>Consultation with civil society stakeholders</i></li> <li>○ <i>Legal guarantees for inclusive processes</i></li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Judicial activism in promoting human rights jurisprudence</li> </ul>
<ul style="list-style-type: none"> <li>• Role and capacities of NHRCs in promoting legal change/ratification</li> </ul>
<ul style="list-style-type: none"> <li>• Capacity development on HR sensitive legal drafting of Parliament and legal cells in ministries</li> </ul>
<ul style="list-style-type: none"> <li>• Consortium/platform NGOs successfully advocating for legal change</li> </ul>
<ul style="list-style-type: none"> <li>• Establishment of Ministry of HR</li> </ul>

**GROUP 2: LEGAL EMPOWERMENT**

**Identification of duty bearers**

<b>Duty bearer</b>	<b>Nature of Duty</b>
<b>Law Commissions</b>	<ul style="list-style-type: none"> <li>• Publicity of legislative proposals</li> </ul>
<b>Ministry of Justice /line ministries/ local government</b>	<p>Legal literacy , publicity of laws, policies, services, (general &amp; specific) (domestic &amp; international laws)</p> <ul style="list-style-type: none"> <li>• Access to information (availability, affordable, effective, simplified)</li> <li>• To legal documentation</li> </ul>

<p><b>Bar association, law societies, court, Public Prosecutor, Prosecutor, Ombudsman, Police, law enforcement agencies, National HR commission, Parliament, Judiciary</b></p>	<ul style="list-style-type: none"> <li>• <u>Courts</u>: Access to legal forms and assistance, access to decisions, schedules, notices</li> <li>• <u>Bar</u>: Continuing legal educational updating lawyers with information &amp; skills, legal awareness camps</li> <li>• <u>Prison</u>: Registry of inmates rights (updated &amp; available)</li> <li>• <u>Police</u>: Informing, victims &amp; suspect offenders of right</li> </ul>
<p><b>UN Bureaucracy</b></p>	<ul style="list-style-type: none"> <li>• International conventions in vernacular/local languages</li> <li>• Lobbying</li> </ul>

**Analysis of strengths and weaknesses to fulfill obligations**

	STRENGTHS	WEAKNESSES
<p><b>Legal counsel/information institutions</b> (Bar, NHRC, Media, legal aid services)</p>	<ul style="list-style-type: none"> <li>• Legal Skills</li> </ul>	<ul style="list-style-type: none"> <li>• Limited resources &amp; inability to influence</li> </ul>
<p><b>Executive</b> (Ministry of Justice, line ministries, local government)</p>	<ul style="list-style-type: none"> <li>• Legitimacy</li> <li>• Resources</li> <li>• Authority &amp; networks</li> <li>• Legal framework</li> </ul>	<ul style="list-style-type: none"> <li>• Bureaucratic &amp; overstretched, unimaginative</li> <li>• Lack of political will &amp; commitment</li> <li>• Lack of awareness of rights and duties</li> <li>• Insufficient capacity</li> <li>• Risk averse</li> </ul>
<p><b>Bar and Law Societies</b></p>	<ul style="list-style-type: none"> <li>• Skills and knowledge</li> <li>• Organization, human resources</li> <li>• Influential</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of commitment &amp; motivation</li> <li>• Introverted</li> <li>• Politicized financial resources</li> </ul>
<p><b>NHRC/ Ombudsperson</b></p>	<ul style="list-style-type: none"> <li>• Commitment, mandate</li> <li>• Knowledge, networks</li> <li>• Legitimacy, recognition</li> <li>• Ability to name/shame/blame (influence)</li> </ul>	<ul style="list-style-type: none"> <li>• Lack resources</li> <li>• Lack of political will,</li> <li>• Lack of legal provisions</li> </ul>
<p><b>Police and Prisons</b></p>	<ul style="list-style-type: none"> <li>• Authority &amp; legitimacy</li> <li>• Presence,</li> <li>• Human and financial resources</li> </ul>	<ul style="list-style-type: none"> <li>• Resources</li> <li>• Poor image</li> <li>• Lack of knowledge</li> <li>• Abuse</li> </ul>
<p><b>NGO community</b></p>	<ul style="list-style-type: none"> <li>• Acceptability, moral authority, reputation</li> <li>• Presence, network, proximity</li> <li>• Commitment &amp; influence</li> </ul>	<ul style="list-style-type: none"> <li>• Lack of resource</li> <li>• Competition</li> <li>• Lack of legal &amp; political authority</li> <li>• Narrow focus</li> </ul>

	–both people & policy makers	<ul style="list-style-type: none"> <li>• Conflict with govt., courts</li> </ul>
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**GROUP 3: CAPACITY TO PROVIDE EFFECTIVE REMEDIES:  
Effective Adjudication and Due Process**

**Identification of duty bearers**

Duty bearer	Nature of Duty
<b>Courts and Court administration</b>	Facilitate access and priority setting
<b>Courts (judges)</b>	Adequate, human rights-sensitive judgments
<b>Attorney general</b>	Counsel, legal aid
<b>Lawyers</b>	Counsel, legal aid
<b>Lawyers</b>	Counsel, legal aid
<b>Prosecutors</b>	Due process in prosecution
<b>Parliamentarians</b>	Judicial appointments, impeachment, oversight
<b>Ministry of Finance</b>	Budget, resources)
<b>Ministry of Justice/Human Rights</b>	Setting agenda, policies
<b>NHRC</b>	Investigation, monitoring
<b>Ombudsman</b>	Complaints, recommendations
<b>Commissions of Truth, Enquiry, etc</b>	Redress, reform
<b>ADR institutions</b>	Awareness raising, facilitate access, adequate and human rights sensitive judgments, dispute settlements
<b>State auditory body</b>	Investigation, monitoring, policy recommendations
<b>Prison and police authorities</b>	Detention system
<b>NGOs</b>	Public interest litigation
<b>Community/religious leaders</b>	Set standards, arbitration
<b>Ministry of Planning</b>	Pro-poor policies, allocate ODA

**Analysis of strengths and weaknesses to fulfill obligations**

	STRENGTHS	WEAKNESSES
<b>Formal systems</b> (judicial systems, including judges, prosecutors, lawyers, etc.)	<ul style="list-style-type: none"> <li>• Committed to reform</li> <li>• Independence judiciary guaranteed by constitution</li> <li>• Support by donors to legal aid</li> <li>• Potential power of change/innovation by justice sector</li> <li>• Ratification of treaties</li> </ul>	<ul style="list-style-type: none"> <li>• Don't know how to do reform</li> <li>• Insensitivity of judges</li> <li>• Slowness (procedures, bureaucracy) and complexity of procedures</li> <li>• Lack of independence/corruption</li> <li>• Lack of information and access</li> <li>• Lack of coordination among institutions</li> <li>• Conflict of interests/ values among institutions</li> <li>• Human resource capacity</li> </ul>

<b>ADR, Informal systems</b>	<ul style="list-style-type: none"> <li>• Perceived as more accessible</li> <li>• Faster</li> </ul>	<ul style="list-style-type: none"> <li>• No autonomous</li> <li>• No independent</li> <li>• Lack of resources</li> </ul>
<b>Quasi judicial bodies</b> (NHRCs, labour boards, etc.)	<ul style="list-style-type: none"> <li>• Trustable by public</li> </ul>	<ul style="list-style-type: none"> <li>• No autonomous</li> <li>• No independent</li> <li>• Lack of resources</li> </ul>

**Suggested issues where lessons need be collected**

<b>KNOWLEDGE DEVELOPMENT ON NORMATIVE PROTECTION</b>
• Simplified procedures/fast track
• Promote judicial activism
• Promote code of conduct among professionals
• Mobile courts, justice in remote areas
• Access to ICT
• Interface formal and informal systems
• Develop capacities of informal and ADR institutions
• Promote financial and political independence of quasi judicial bodies

**GROUP 4: CAPACITY TO PROVIDE EFFECTIVE REMEDIES: Enforcement and civil society oversight**

**Suggestions from group work**

- A higher priority should be given to enforcement in programming. If existing laws were enforced and existing institutions functioned many human rights and access to justice problems would be largely solved.
- Systems and the processes that take place within them should be the unit of analysis and action. For example, the criminal justice system consists of police, prosecutors, courts, and prisons, among other possible elements as well (public defenders, alternative dispute resolution mechanisms, etc.) Entry points can be identified within the systems but because they have high leverage impact on the system as well as synergies with other elements of the system.
- Relevant enforcement systems and processes should include those for economic, social, and cultural rights, in addition to those for civil and political rights. This implies duty bearer roles for the public administration in enforcing these rights.
- Transparency can produce cascading results that facilitate accountability and participation. For example, disclosure of information on police detentions, timeframe of pending court cases, judgments, among others, as well as localized social indicators, can strengthen accountability and facilitate civil society participation.
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- Accountability should recognize the rights and responsibilities of both claim holders and duty bearers. It is counterproductive to posit that claim holders have all the rights and duty bearers all the responsibilities. There are no rights without responsibilities. Accountability can be strengthened if not only the state is viewed as the duty bearer but also individual officials.
- Participation should be through civil society and the media fulfilling watchdog functions. This is enhanced by access and free flow of information and by effective accountability. Building up pressure groups to a critical mass (defined by social or political relevance) can make this a powerful force for enforcement.
- All of the above also requires a clear understanding of what are the existing incentive structures, including perverse incentives such as capture of power structures, rent seeking, social and political contacts, etc. The reforms themselves need to put into place virtuous incentives that can modify the overall incentive structure. This includes civil service salaries to a livable level, as well as merit based recruitment and promotions.