

ANNEX 5

RESULTS OF EMPOWERMENT ANALYSIS

GROUP 1: URBAN/RURAL POOR

Identification of most disadvantaged groups among the poor

- Low caste
- Bonded labourers
- Women/youth/orphans/beggars
- Ethnic minorities
- Squatters/ landless/ homeless
- Poor/ working poor
- Aged (elders)
- Migrant workers
- People with temporary jobs/unemployed/jobless
- People living in remote areas
- Illiterate
- Sex workers

Major obstacles in accessing justice

- 1) Lack of awareness, lack of legal knowledge, alienation (structural and personal)
- 2) Lack of access to public services (expensive, no resources, no facilities, cumbersome), e.g. police station/post; courts. Lack of personnel in public services (e.g. legal representation: high legal fees, high fines); lack of access to quasi-judicial mechanisms
- 3) Lack of organized civil society. Reasons: government restrictions, lack of expertise, lack of resources, lack of capacity to organize, lack of commitment)
- 4) Lack of legal backing (the poor are in a permanent “illegal” status): poor education, illiteracy, provisions, policies
- 5) Procedural discrimination (economics)
- 6) Lack of voice, participation, inclusion in process (policy, lawmaking): a) cultural, political, religious, legal; b) drafting, consultation, arbitration, access to media.
- 7) Exclusion from the mainstream (lack of legal recognition, no reservation)
- 8) Corruption (cultural- individual; structural – institutional).

Analysis of poor people’s strengths and weaknesses to claim and exercise rights

Strengths	Weaknesses
Recognition under international treaties and constitutions	No money/ sufficient financial resources
Commitment to movement	No internal facilitator
Vibrant civil society	Illiteracy
Strong moral ground	Lack of commitment by donors/ NGOs/ government
Indigenous systems	Traditional systems/institutions
Leaders/informal	Limited reference materials or no materials
Community solidarity	Language (accessibility)
Group identity	Conflicting discourse

Suggested issues where lessons need be collected

Legal provisions	Lobbying/Advocacy	Government Policies/Practices	ADR
<ul style="list-style-type: none"> • Pro-poor legislation • Transparency/ Participation • Inclusion/ • Accountability • Non-discriminatory procedures • International laws/ • Domestic enforcement 	<ul style="list-style-type: none"> • Public Campaigns • Capacity Building CSOs • Networking media, etc. • International standards 	<ul style="list-style-type: none"> • Recognition of International laws • Inclusion of A2J in Government programmes • Political will 	<ul style="list-style-type: none"> • Strengthening existing systems • Promote ADR where doesn't exist

GROUP 2: WOMEN

OBSTACLES IN ACCESSING JUSTICE (Structural (S) and Individual (I))	STRENGTHS
<ul style="list-style-type: none"> • Poor (S) • Illiteracy/ lack of education (S) and (I) • Lack of awareness (I) • Powerlessness (S) and (I) • Traditional role (patriarchal society) (S) and (I) • Lower wages (S) and (I) • Economic status (S) and (I) • Lack of representation (S) • Lack of participation in decision making (S) • No access to economic resources (e.g. credits) (S) • Customary practice (S) and (I) • Lack of mobility • Language barriers (for indigenous and ethnic minorities) 	<ul style="list-style-type: none"> • Peer support • Formal/ informal networking (incl. CBOs) • Communication • Problem articulation capacity • Ability to influence the future generation • Socially pro-active • Fighting and lobbying – and as a consequence, existence of special legal provisions.

Suggested issues where lessons need be collected

- Institutional reform (parliaments, ministry)
- NHRAP
- Law reform:
 - i. Gender equality
 - ii. Adequate representation
 - iii. Special Articles
 - iv. Court access
- Sensitization of law-enforcement officers (judges/court staff)

- ADR
- Strengthening of civil society (NGOs, CBOs) on gender issues:
- Sensitization at:
 - a. Community Level
 - b. Government Level
- Special microfinance schemas for women
- Legal aid/for women awareness
- Engendering budget process
- Literacy/education promotion/ incentive schemas
- Legal literacy included in school curriculum

SUGGESTED CLUSTERING OF LESSONS NEEDED ON A2J BY WOMEN
1) Legal and institutional reform 2) Capacity development of law enforcement agencies 3) Awareness and advocacy (thru. NGOs and CBOs) 4) Legal literacy and education 5) Economic reform (budgeting) 6) ADR 7) Legal counsel and legal aid

GROUP 3: INDIGENOUS PEOPLES AND ETHNIC MINORITIES, MIGRANTS AND INTERNALLY DISPLACED PEOPLE

Identification of obstacles and strengths to claim and exercise rights

	Indigenous Peoples and Ethnic minorities		Migrants and IDPs
	From attributes of minorities	System features	
OBSTACLES	<ul style="list-style-type: none"> • Ghetto mentality • Lack of awareness of system • Lack of literacy • Low self-esteem 	<ul style="list-style-type: none"> • Outsider perception • Distinct customary practice: find legal system alien • Biases in legal framework and justice system • Susceptibility to abuse by law enforcement • Historical practice 	<ul style="list-style-type: none"> • Lack of legal rights/ no legal recognition of refugee status (“alien”)/ IDPs vs. refugees • Mental disorientation/ dislocation • Hostility of host population • No groups/ organizational capacity
STRENGTHS	<ul style="list-style-type: none"> • Group cohesion, ethnic identity, rich cultural background • Traditional justice institutions 		

Suggested issues where lessons need be collected

- Legal framework for IDPs
- Legal aid mechanisms for ethnic minorities
- Mobile legal Aid for IDPs
- Awareness - legal literacy (exp. of Nepal, Bar Association)
- Legal recognition of indigenous people
- Mobilize indigenous NGOs for legal aid

Cross fertilization of traditional institutions and HR Values :

- Build on traditional institutions, but instill HR values
- Work with religious leaders (E.G. Bangladesh, Iran, India, Yemen)
- Identify "insiders" (Gatekeepers, Persons with authority, Tribal Elders/Chiefs)
- Identify Major Shortcomings of traditional institutions
- Strengthening linkages between informal and formal system
- Define mandate of informal system for minor crimes/sentences
- Appeal to formal system

GROUP 4: PERSONS LIVING WITH HIV/AIDS AND PERSONS WITH PHYSICAL/ MENTAL IMPAIRMENT

Identification of obstacles and strengths to claim and exercise rights

	Persons living with HIV/AIDS	Persons with physical/mental impairment
OBSTACLES	<ul style="list-style-type: none"> • Stigma • Feeling of shame • Family and community impact (in case of ADR also) • Economic hardship • Criminalization of HIV/AIDS • Institutional and social apathy • Discrimination in workplace • Weak prevention system 	<ul style="list-style-type: none"> • Ostracism • Weak due process in categorizing/determining existence of mental impairment • Susceptible of abuse in criminal activities • Inadequacy of justice services (including lack of skills of judges, police, etc.) • Inadequate infrastructure and physical access, especially of those living in remote areas • Lack of access to information (more obstacles) • Few NGOs working in the field of physical/ mental impairment
STRENGTHS	<ul style="list-style-type: none"> • Good HIV/AIDS related NGOs, with access to funding • Strong willingness by people from those groups to overcome obstacles • Progress in the legal framework 	

Strategies and research agenda

STRATEGIES	RESEARCH AGENDA
<ul style="list-style-type: none"> • Enactment of laws to prevent the existence and spread of the causes of discrimination (e.g. spread of HIV, work-related disability) and allow differential treatment • Enforcement of laws and regulations • In-camera proceedings for HIV/AIDS • Option to fast-track cases for persons living with HIV/AIDS – so they can see the end of the case during their lifetimes and there’s no impunity for discrimination • Sensitive judges, judicial staff and police on HIV/AIDS and physical/mental impairment • Stronger penalties for discriminatory practices • Promote role of media in a) Protecting victims and b) revealing discriminatory practices • Support NGOs in bringing high-profile cases • Legal information and legal aid efforts specifically targeted to these groups • Training medical staff on legal aspects of HIV/AIDS and discrimination (medical ethics) • Prison reform for adequate treatment, equal rights and prevention of spread of HIV/AIDS 	<ul style="list-style-type: none"> • Existing judicial perception and practices on HIV/AIDS and disability • Existing medical perception (codes of conduct, charters) • Collect projects where HIV/AIDS and disability component is included • Comparative studies of legal frameworks incorporating HIV/AIDS and disability issues • Compilation of ground-breaking jurisprudence (especially when the State was condemned, and jurisprudence resulting from public interest litigation) • Comparative experiences on codes of conduct of judges, etc. • Study on “sensitive” judicial procedures (eg. fast track, in-camera proceedings) and effective redress • Initiatives taken on decriminalization of the victim • Study on: double-jeopardy (HIV/AIDS and disability in the context of other disadvantaged groups (prostitutes, migrants) as compared to HIV/AIDS and disability in privileged groups • Map NGO and government work in targeted legal aid/ information • Map networks of HIV/AIDS and disabled people groups to get to know what are their legal needs • Explore role of quasi-judicial (ombudsman, human rights commissions) in dealing with cases – to avoid publicity of courts • Innovative prison reforms • Media practices