



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

Initiative to Establish a National Human Rights Commission in Bangladesh

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SUMMARY BOX

Categorization of lesson:

Initiative to establish a National Human Rights Commission in Bangladesh. Lessons learned on Human Rights Participatory Rural Assessment.

Critical lessons for the sub-practice:

1. PRAs can be valuable for developing baselines, but overall detailed guidance also must be provided to national partner organisations so that quality control is ensured.
2. Outputs and activities must remain closely linked to the expected outcome.
3. Meaningful and adequate participation by all stakeholders on human rights, especially civil society and the most disadvantaged, must be ensured, and “multipliers” should be targeted.
4. A prolonged political process is disadvantageous to achieving results.
5. Expansion of the Paris Principles should be pursued so that they become comprehensive enough to deal with critical challenges that NHRIs face.

Recommendations:

- ❖ Identify best practices during project document preparations so that a right-based approach is employed.
- ❖ Use a more inclusive and rational approach to reach full potential in connecting with human rights groups, NGOs and media.
- ❖ Develop a relationship of trust with the primary Government partner but ensure autonomy in operations.
- ❖ Spot “change agents” within the relevant Government and non-Government agencies. They can make a substantial difference in implementing and sustaining critical projects and attaining

CATEGORISATION OF LESSON

Initiative to establish a National Human Rights Commission in Bangladesh. Lessons learned on Human Rights Participatory Rural Assessment.

BACKGROUND

National human rights institutions, or NHRIs, are a relatively recent development among mechanisms that promote and protect human rights. Most have developed as a means where states can more effectively work to guarantee human rights within their own jurisdictions. They do not, however, replace the role of the courts and judiciary, legislative bodies, relevant Government agencies, parliamentary committees, political parties, or religious or non-Governmental organisations.

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In October 1991, the United Nations convened an international workshop in Paris to explore ways of increasing the effectiveness of national institutions. A detailed set of guiding principles was developed, adopted by the United Nations Commission on Human Rights in 1992 and endorsed by the General Assembly in 1993. These internationally acclaimed benchmarks provide that a national institution must be independent; have as broad a mandate as possible; be characterised by regular and effective functioning, pluralistic and representative composition, and adequate funding; and be easily accessible to the public.

By being flexible, NHRIs offer possibilities of access to justice that go beyond the restraints imposed by the formal judicial system. Where basic justice system problems exist, the task of national institutions must be, first of all, to assist the Government in putting its justice system in order. This can be done by using the investigatory, advisory, educational and other functions of a national human rights commission to analyse fundamental flaws of the justice system and to recommend corrections.

It is precisely their capacity to contribute substantially to the realisation of individual human rights that makes independent institutions so significant. UNDP Bangladesh has become increasingly convinced of the necessity to focus on preventive strategies with regard to human rights, including the creation of a strong, independent NHRI to provide accessible remedies, particularly for the most vulnerable and disadvantaged. Frequently these institutions are human rights commissions, but in many countries, drawing on traditions, they are identified as a human rights ombudsperson. In Bangladesh, UNDP decided to pursue the cause of an independent human rights commission.

Existing remedies for addressing grievances, even for legal protection of human rights, especially of the poor, are not sufficient in Bangladesh. Courts are very expensive, time-consuming, and largely inaccessible. An absence of NHRIs does not encourage people to speak out on human rights violations. To fill a wide gap in Government-initiated initiatives, to promote human rights, the project Action Research Study on Institutional Development of Human Rights in Bangladesh (IDHRB) was begun in March 1996 with the financial assistance of UNDP and other donor agencies/countries. It was intended to promote as well as institutionalise human rights at the state level until the project ended in January 2003. The executing agency was the Ministry of Law, Justice and Parliamentary Affairs (MOLJPA), but consistent emphasis was placed on partnership and network building with selected civil society, Government and non-Government stakeholders. The national human rights protection system was strengthened by initiating inputs from the grassroots level through a participatory process. This included the enactment of relevant legislation, establishment of an effective system of redress, and improvement of information, including awareness raising campaigns.

The inception report of the project specified that protecting human rights at the grassroots level could be achieved through different mechanisms, not necessarily through a national human rights commission. Nevertheless, it appears the project did not explore enough alternative strategies for protecting human rights at the grassroots level. In the absence of any framework and consistent outputs, the overall objective was not achieved. It should, however, be noted that some objectives were successfully accomplished during the project cycle.

The project attempted to respond to the demands of the community through a Human Rights Participatory Rural Assessment (HRPRA), which showed that people felt the necessity of creating a central organisation for human rights protection. The PRA identified some basic problems, including: dowry demands; domestic violence; lack of access to state-owned health services; inappropriate and sexual teasing of schoolgirls; polygamy; discrimination against girls and women; human rights abuses by police; non-registration of marriage; and other abuses (theft, house burning, high interest on loans). It recommended that small claims cases, such as land dispute and family affairs, be addressed in pre-trial advisory councils before proceeding to courts. These pre-trial councils should be situated within each locality, it advised, to provide quick legal remedies and reduce unnecessary and costly litigation. This recommendation prompted the MOLJPA to

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initiate a Grameen Court, or village court, project, fulfilling the 1976 Grameen Court Ordinance that mandated establishment of such councils.

Vigorous efforts could have been made to strengthen constituency building so that advocacy efforts by the public could have helped in passing a draft bill on a national human rights commission into law. Apparently, an inability to establish and pursue a rights-based approach and to create a sustained, vibrant link with civil society and human rights groups contributed to this shortcoming. Close partnership with the political leadership also might have indirectly affected the nature of the relationship the project could establish with its civil society partners. Part of the difficulty in appraising IDHRB as a project is that, after seven years of operation, it had effectively become an institution itself, undertaking a variety of activities relating to preparations for the establishment of a national human rights commission, and education, training and public awareness.

FINDINGS AND CONCLUSIONS

Lessons on Output/Outcome

PRA's can be valuable for developing baselines, but overall detailed guidance also must be provided to national partner organisations so that quality control is ensured

Although the justice system is the backbone of the Bangladeshi human rights protection system, it requires quasi-judicial bodies/national institutions to strengthen the national protection system. But from the beginning, the Government bureaucracy appeared to see the initiative with skepticism and suspicion and actively tried to make a national human rights commission into a “toothless institution.” Nevertheless, the IDHRB was the first project of the Government in the field of human rights and performed a pioneering role in making segments of Government agencies aware of human rights.

In addition, to the extent that PRA findings were translated into concrete actions, such as the case with the pre-trial advisory councils, this shows that important development results come from participation. PRA methodology is particularly valuable as a means for developing a baseline report on the human rights situation in the country and for determining the priorities of ordinary citizens for actions to bring about changes in institutional protection of human rights.

However, linkages to human rights standards were not comprehensive in the Project Support Document, and elements of a rights-based approach were inadequate, except for the PRA. UNDP should provide detailed guidance and practical advice to national partner organisations or consultants charged with preparing a Project Support Document so that overall quality control is assured throughout. Formulating a project on the assumption of favourable political will might result in setting outcomes that are too ambitious.

Outputs and activities must remain closely linked to the expected outcome

Gradually, the project leadership expanded the number of outputs and activities unrelated to the outcome, and appeared more interested in arranging high-profile events rather than working for long-term impacts. Often the project seemed to have moved on from one activity to another without providing fully for necessary follow-up. Sporadic interventions do not yield results.

Lessons on Process

Meaningful and adequate participation by all stakeholders on human rights, especially civil society and the most disadvantaged, must be ensured, and “multipliers” should be targeted

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The project arranged a number of public programmes to generate awareness and interest in the proposed human rights commission in different segments of civil society. Unfortunately, success was minimal because of lack of meaningful and adequate participation by all stakeholders on human rights. Some mainstream legal and human rights NGOs allegedly were left out of the process and expressed concerns. Expanded partnerships could have enabled the project to work more effectively in analysing complex human rights issues in urban and rural settings and have assisted it in gaining a better appreciation of the human rights concerns of ordinary citizens, thereby building constituencies for a national human rights institution.

In addition, claim holders and duty bearers were not adequately involved in design and implementation of the project overall, despite the fact that PRA studies ensured some civil society participation. Participation of the most disadvantaged groups was seen as an activity, rather than as a continual process. It is very important to build rapport across the board, creating linkages among United Nations Agencies to avoid duplication, especially on such a sensitive issue. To this end and to reach the maximum number of people, human rights/justice messages should be targeted to “multipliers” like religious leaders, teachers and community workers, among others.

A prolonged political process is disadvantageous to achieving results

Successive Governments frequently changed their policies on national human rights institutions during the project cycle. The work of drafting a law from 1996 to 2001 was conducted under the Awami League Government, which nevertheless did not establish a human rights commission due to lack of political commitment. The present four-party Government led by the Bangladesh Nationalist Party (BNP), which came to power in 2001, initially decided to continue the process and then restarted the drafting all over again. As of August 2003, the bill to establish a national human rights commission was still pending with the Cabinet for a decision and has not been sent to parliament.

Expansion of the Paris Principles should be pursued so that they become comprehensive enough to deal with critical challenges that NHRIs face

The Paris Principles constitute the basic minimum guidelines for the establishment of a national human rights commission. However, they consider the power of investigation to be an optional function, which is a severe limitation to the guidelines. They also do not adequately address the nature of appointing an authority for a commission. Thus, they are not comprehensive enough to deal with critical challenges that NHRIs face in their day-to-day work. Advocacy for expansion of the Principles should be pursued so that they are modified and updated to reflect changed human rights realities.

RECOMMENDATIONS

- ❖ Identify best practices during project document preparations so that a right-based approach is employed.
- ❖ Use a more inclusive and rational approach to reach full potential in connecting with human rights groups, NGOs and media.
- ❖ Develop a relationship of trust with the primary Government partner but ensure autonomy in operations.
- ❖ Spot “change agents” within the relevant Government and non-Government agencies. They can make a substantial difference in implementing and sustaining critical projects and attaining outcomes.