



LESSONS ON APPLYING A HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT PROGRAMMING

Case Study from the UNDP Asia Pacific Rights and Justice Initiative

April 2004

Contents

- **Background: UNDP Asia Pacific Rights and Justice Initiative (AP-A2J)**
 - **Some preliminary clarifications on a Human Rights-based approach to development (HRBA)**
 - **Rationale for applying a HRBA in AP-A2J**
 - **Substantive and process value of applying a HRBA to development programming**
 - **Lessons learned**
 - **Summary**
-

Description: *This case study explores lessons learned from using a human rights-based approach (HRBA) to development programming, in the light of a UNDP's pilot initiative on knowledge development in the justice sector. The paper examines value of using a HRBA at two levels: 1) at the level of guiding what justice programmes do, and (2) at the level of guiding how programmes are made and implemented. A one-page summary of the contents of the case study is provided at the end of this document.*

Background: UNDP Asia Pacific Rights and Justice Initiative (AP-A2J)

The **Asia Pacific Rights and Justice initiative**¹ is an exercise in the development of UNDP's "communities of practice" at the regional level. It seeks to strengthen **UNDP's regional niche, knowledge and capacities** on access to justice in Asia and the Pacific, and to contribute to UNDP's global policy on access to justice.

The initiative responds to a major "knowledge problem" facing development practice today: while the vital importance of the justice sector for peace and development is increasingly recognized, there is an urgent need to strengthen the impact of justice programmes on conflict, poverty reduction and other Millennium Development Goals (MDGs). Improved knowledge is one of the necessary factors.

The initiative's strategy has been the development of a regional "community of practitioners" on access to justice (AP-A2J). The community is producing a number of tools for access to justice programming, and establishing means for continuous knowledge development in that field. The community is formed by UNDP practitioners in 17 country offices in Asia and the Pacific, who are supported by a network of more than 80 UN staff globally. AP-A2J pursues knowledge development through a "bottom-up" approach, working as a facilitated team and outreaching to strategic external partners.

The process has consciously attempted to **apply a human rights-based approach in defining the scope for action on "access to justice", and in elaborating programming tools**. An increasing number of UNDP country offices in the region is applying the resulting framework and tools in new programmes, although the finalisation of tools is still on-going.

It is too early to assess whether the use of a human rights-based approach (HRBA) has resulted in a greater or lesser impact of UNDP programmes on access to justice by disadvantaged people, let alone on poverty eradication. However, it is possible to determine to what extent the UNDP's programming framework has changed as a consequence of applying a human rights perspective. It is also possible to

¹ The Asia Pacific Rights and Justice Initiative started in the year 2003 and it is supported by the UNDP/OHCHR HURIST programme and the Democratic Governance Global trust Fund (DGGTF). The initiative is being facilitated by UNDP Sub-Regional Resource Facilities (SURFs) in Asia and the Pacific, based in Bangkok and in Kathmandu.

extract some lessons on whether such an impact goes in the direction of targeting poverty eradication and other development goals, and what are some of the obstacles encountered when trying to adopt a “human rights” approach – some of whose practical implications are at best a work in progress.

The case study will therefore try to respond to the following questions:

- (1) To what extent the use of a HRBA influenced UNDP’s framework for action on “access to justice”?
- (2) What is the specific added value of using a HRBA?
- (3) What are the limitations?

Some preliminary clarifications on a Human rights- based approach (HRBA)

1) Differentiating “Human Development” from “Human Rights”.

Human Rights and Human Development relate to different concepts. Human rights are legal norms, whereas development is a process. Sustainable human development (SHD) has a greater scope than the existing human rights legal framework. Human rights are not a different name for traditional development objectives, but it is true that some SHD objectives are defined more clearly by human rights norms (see box below).

Value and limitations of international human rights norms in clarifying the goal of “access to justice”

“Access to justice” is a goal of human development that may be better understood through a number of fundamental human rights. Human rights norms include standards that are useful to define the *quality* of “justice” development efforts should strive for, as defined by the international community under the auspices of the United Nations. Standards include a fair and impartial trial, due process, prohibition of torture, prohibition of illegal arrest and detention, and access to legal counsel, among others. They are found in national constitutions and international instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and other treaties, principles and guidelines. Standards seek to provide minimum guarantees for access to justice, and therefore for human development. But there may be situations in which international human rights standards do not provide sufficient guarantees for access to justice. In such situations, national standards on access to justice can help to fill important gaps. For instance, the human rights obligation to provide free legal counsel only covers criminal cases, whereas the reality of poor disadvantaged people requires that it be expanded *as a matter of right* for civil cases too (e.g. family and property law).

2) Differentiating “HRBA” and “Human Rights”:

“Human rights” are ends in themselves, a “human rights approach” is not an end but a framework for human development. A HRBA uses categories such as “rights” and “obligations”, “claim-holders” and “duty-bearers”, etc. in examining development problems and dealing with them. A HRBA is a perspective that can be applied to any development programme; it does not necessarily equal “human rights” projects (e.g. support to human rights training or to National Human Rights Plans of action). Furthermore, “human rights” programmes may not be necessarily rights-based.

3) A HRBA complements existing approaches:

The framework of human development and a focus on capacity development are basic premises for UNDP's action. They set the larger context that is being "approached" from a rights-based perspective (see Box 2). Putting people at the centre is a human development requirement, a HRBA helps to set the target on the most poor and disadvantaged and their entitlements as human beings. Capacity development defines the "how" of human development; a HRBA helps to find strategic entry points.

Box 2: Definition of a Human Rights approach to development (HRBA)

A human rights approach may be defined as *a framework for pursuing human development that is normatively based on, and operationally directed to, the development of capacities to realise human rights.*

Using a HRBA in AP-A2J: Normative and Instrumental rationales

The adoption of a human rights approach in AP-A2J responds to both normative and instrumental reasons:

Normative: A human rights approach is in line with the UNDP policy on "integrating human rights with sustainable human development"². Such a policy is partly a response to the UN Secretary General's call to "mainstream human rights" in all UN activities, a key pillar of the UN Reform³. The promotion of human rights is a major goal of the United Nations, as per its foundational Charter. On the other hand, the Millennium Declaration restated the need to promote and respect human rights for the achievement of development objectives, including the Millennium Development Goals (MDGs)⁴.

Instrumental: the AP-A2J initiative opted for using a HRBA because it could help to strengthen development effectiveness, that is, "processes that are pro-poor and promote equity"⁵. More specifically, a HRBA was applied because of its focus on accountability and non-discrimination.

Power inequalities have a bear on who decides and who gets what in the development process. Disadvantaged groups suffering different forms of discrimination (e.g. women, indigenous people and ethnic minorities, urban and rural poor, etc.) have greater difficulties to get out of poverty, or a greater likelihood to fall into it, because of their powerlessness and invisibility in decision-making processes. This limits their ability to contest "elite capture"; that is, the process by which powerful groups skim development resources intended for the disadvantaged, or establish biased policies that protect their own interests⁶. Elite capture prevents "pro-poor and equitable results", posing barriers to development effectiveness. Risks of elite capture constitute a fundamental obstacle to poverty eradication and the achievement of other Millennium Development Goals (MDGs), and they are at the root of many violent conflicts.

Human Rights are mechanisms to deal with power inequalities and prevent elite capture because they are "universal" – that is, they cover minimum guarantees of human dignity that apply to all human beings, including the most disadvantaged, and that must be respected by all, including the most powerful. A

² UNDP, *Integrating Human Rights with Sustainable Human Development* (1998).

³ UN Doc. A/51/950 (1997).

⁴ UN Doc. A/Res/55/2 (2000), containing explicit human rights commitments and objectives (paras 11 and 24-26)

⁵ UNDP Development Effectiveness Report (DER) 2003: Partnerships for Results, UNDP Evaluation Office, 2003, page 6

⁶ See Johnson, C. and Start, D., 'Rights, Claims and Capture: Understanding the Politics of Pro-Poor Policy,' Working Paper 145, Overseas Development Institute (ODI), May 2001. The HDR 2003 stresses that widening gaps are likely to have negative effects on the pace of poverty reduction and the achievement of the MDGs, 'with powerful people securing more of the benefits of development' (HDR 2003, page 47).

human rights approach brings human rights as a universal and normative guidance for human development processes and results. The approach clarifies specific accountabilities, and establishes explicit guarantees for non-discrimination in development policies and programmes, so as to protect a minimum wellbeing of most vulnerable groups

Whereas a HRBA suggests responses to the influence of power inequalities in development, and related problems that previous approaches (e.g. basic needs, sustainable livelihoods) did not sufficiently address, the question of whether such responses are the adequate ones is beyond the scope of this case study. It would require assessing the actual impact of human rights-based policies and programmes on the lives of disadvantaged people, and this is too early to determine given the nature and number of experiences at hand. This case study merely focuses on whether a HRBA offers any kind of technical value added in the programming process.

Added value of a human rights approach to access to justice programming

Applying a HRBA to development programming brings technical added value at two levels:

- (1) at the level of guiding what programmes do (“substantive” value), and
- (2) at the level of guiding how programming is done (“process” value). The table below provides a summary of HRBA’s added value in the two areas, on the basis of AP-A2J’s experience.

HRBA’s added value to development programming

| Substantive value WHAT | Process value HOW |
|--|---|
| <ul style="list-style-type: none"> • Focuses on most disadvantaged groups and their entitlements as human beings • Strengthens Human Development and Capacity Development perspectives • Brings process of development to the forefront | <ul style="list-style-type: none"> • Improves assessment and analysis – holistic, systematic, results-oriented • Actively seeks inclusion of most disadvantaged people • Improves accountability systems • Expands partnerships and strengthens communication flows |

Added value of applying a HRBA to guide what justice programmes do

- *A human rights approach focuses on most disadvantaged people and their entitlements as human beings*

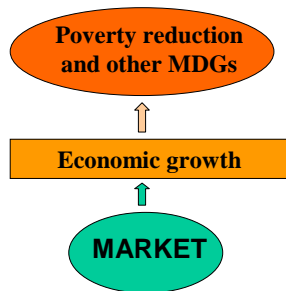
Non-discrimination requires paying special attention to those who are in a disadvantaged position due to differences of sex, socio economic status, ethnic origin, religious beliefs, etc. People suffering from discrimination are more vulnerable to experience human rights violations and other injustices. Consequently, they are more vulnerable to fall into poverty, or to be literally trapped into it. Eliminating discrimination is a human rights priority. Thus under a human rights approach the focus is disadvantaged groups, rather than the general population or simply “the poor”, as treating equally what are unequal situations may perpetuate existing marginalization.

In the AP-A2J experience, applying a human rights approach helped to define a framework for UNDP’s action on access to justice that was centred on disadvantaged people and their rights. Whereas previous approaches to justice programmes had largely put markets at the centre of the analysis, highlighting the

strong links between rule of law and economic growth, the starting point for AP-A2J became disadvantaged people, rather than markets, viewing rule of law in wider terms - as a means for people to protect themselves from abuses of power. A focus on disadvantaged people seeks a more direct impact on poverty eradication and other Millennium Development Goals (MDGs), as illustrated by figure below.

Putting disadvantaged people at the centre

Prior to applying a HRBA:



Rule of Law: Reduces political risks to investors and cuts down transaction costs, promoting businesses and investments and therefore alleviating poverty

When applying a HRBA:



Access to justice: helps people to protect themselves against abuses from those with more power, hold political leaders accountable, and resolve conflicts that are individual or collective without resorting to violence

- *A human rights approach strengthens Human Development and Capacity Development perspectives*

Development is about people, and so are human rights. In the AP-A2J context, putting disadvantaged people and their rights at the centre provided a framework for action on access to justice that, in comparison with previous frameworks, was easier to apply within a human development perspective.

More specifically, using a human rights approach helped to enhance an operational definition on access to justice:

Definition of "Access to Justice"

| Prior to applying a HRBA | When applying a HRBA |
|---|---|
| <i>Access to justice is people's ability to use public and private justice services</i> | <i>Access to justice is people's ability to seek and obtain justice remedies respectful of basic human rights, using formal or traditional justice systems.</i> |

A rights-based definition has the following advantages:

1. It identifies justice with remedies, not simply with services.
2. As human rights imply claims and obligations, the definition distinguishes demand and supply sides of justice.
3. The definition is explicit about the quality of justice that programmes pursue (respectful of human rights)
4. It recognizes the importance of both formal and traditional justice mechanisms.

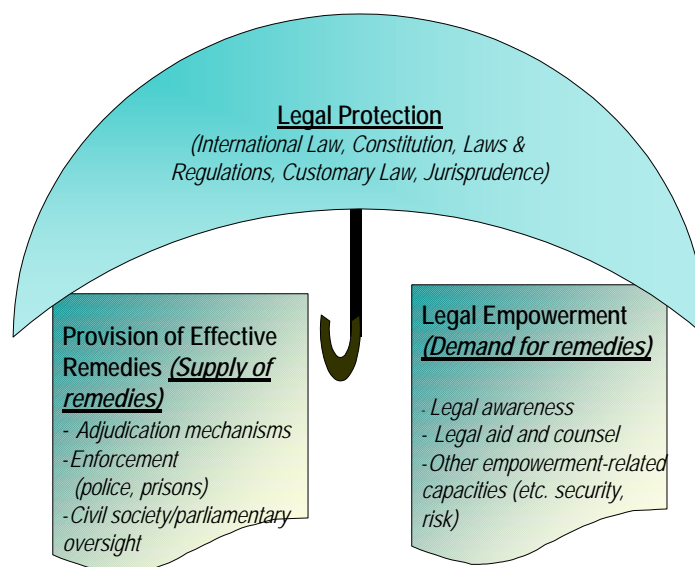
Similarly, applying a human rights approach in the AP-A2J's context provided a clear framework for UNDP's action on capacity development. Human rights imply human obligations; claiming rights and fulfilling obligations require different capacities. Both types of capacities are equally needed, and they reinforce each other. Strategies to develop capacities on access to justice need to improve both the supply and the demand sides of justice (claiming rights and fulfilling obligations), as well as the legal framework governing them.

In summary, with respect to capacity development, using a human rights approach helped to:

- (a) focus UNDP's principal areas for action around key capacities to ensure justice remedies to disadvantaged people, and
- (b) provide a means to assess their qualitative performance with respect to access to justice.

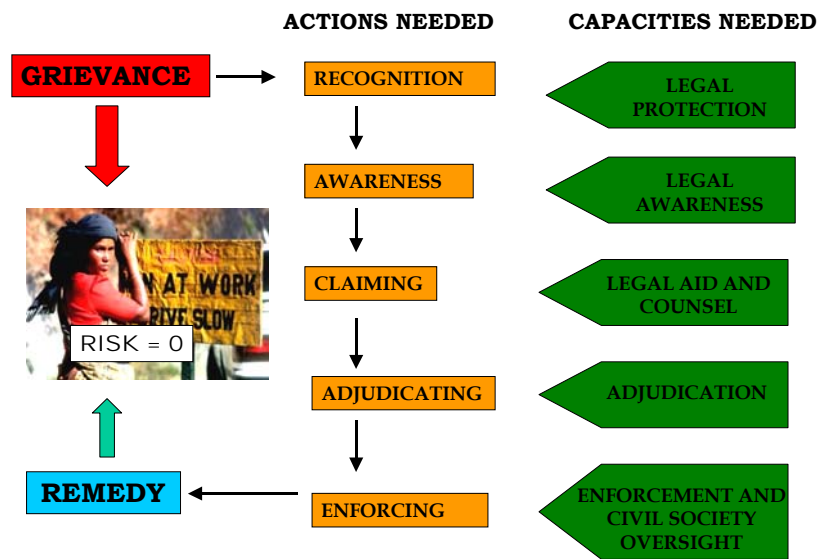
The figure below illustrates such a strategic framework to develop capacities for greater access to justice.

Strategic framework for action on access to justice



More specifically, effective access to justice implies (i) that people's rights and entitlements are recognized within the scope of formal or traditional justice systems (legal protection); (ii) that people are capable of demanding justice when they need its protection, and (iii) that institutions are able to provide fair remedies when these are sought. Within these three general categories, more specific capacities to pursue the justice process (e.g. legal awareness, legal aid, adjudication, etc.) can be specified as shown by figure below. Human rights standards help to assess how such capacities perform with respect to access to justice (e.g. the extent to which quality legal counsel is accessible to persons in detention, even when they cannot pay for it; or how impartial dispute resolution mechanisms are).

Process of justice and corresponding capacities in the absence of risks



- *A human rights approach brings the process of development to the forefront*

A HRBA helps to bring the process of development to the forefront, thereby clarifying the relationship between outcomes and the processes by which outcomes come about. A HRBA stresses the importance of the development process and recognizes development is in many ways a process itself. Human rights standards become a means to assess what is being attained in such a process, although specific development "paths" are unique to each context.

The process of development largely determines its results, therefore the need to empower poor and disadvantaged groups so that they are able to decide on their own path out of poverty. An "empowering process" is closely related to developing disadvantaged people's capacities for meaningful participation. Trying to implement such processes would require developing adequate process indicators, and a better understanding of concepts such as "ownership" and "partnerships" in development activities, in order to include ownership by, and partnership with, disadvantaged people themselves.

Conclusion: Added value of applying a human rights approach to what justice programmes do

Using a human rights approach in defining a substantive framework for action on "access to justice" helped to culminate a paradigm shift towards a better grounding of justice programmes in human development. A HRBA brought a change in the assumptions underlying justice programmes – i.e. what is "access to justice" and its role in poverty eradication and human development. A change in the underlying assumptions of justice programmes impacts on their resulting scope.

More specifically, the adoption of a HRBA in analysing justice for poverty eradication improved problem identification, identification of target groups, scope of assessment and identification of entry points for capacity development. The table below summarizes added value in each of these areas.

Added value of using a HRBA to determine the scope of justice programmes

| | Prior to applying a HRBA | When applying a HRBA | Added Value |
|--|---|---|--|
| Problem identification | Access to justice is people's ability to use public and private justice services | Access to justice is people's ability to seek and obtain a remedy for grievances, through formal or informal justice mechanisms, and in conformity with basic human rights principles and standards | Identifies justice with remedies, not simply with services It is clearer on the quality of both remedies and services (respectful of basic human rights) Includes formal and traditional mechanisms of justice |
| Identification of focus groups | General population The Poor | Urban and rural poor Indigenous people Women Ethnic minorities Migrants IDPs People with physical/mental impairment People living with HIV/AIDs | Recognises different situations among the poor Addresses discrimination as a root cause of poverty and it is pro-active in targeting groups who suffer discrimination |
| Scope of assessment | Institutions, especially the judiciary | Includes three major areas: (i) recognition of remedies by formal or traditional law (ii) capacity of people to demand remedies, and (iii) capacity of institutions (formal and traditional) to provide remedies | Differentiates claim-holders and duty-bearers, and specifies the type of capacities each of them need to claim their rights/ fulfil their obligations – Improves stakeholder and capacity assessment |
| Entry points for Capacity Development | Institutional capacity development, particularly on court management, infrastructure, legal drafting and judicial expertise | Institutional capacity development a means to remove people's obstacles to access justice, not an end in itself – entry points also at the level of disadvantaged people and civil society capacities Recognizes access to justice has cross-cutting implications for development activities | Includes institutional, individual and societal capacity development Access to justice programmes contribute to other development goals, and entry points to develop capacities to access to justice can be found in other development activities |

Thus using a HRBA helped strategically diversified the type of programme outcomes and outputs that could be relevant for poverty eradication purposes. For instance, country programmes are moving from more traditional outcome formulations, such as “*strengthened administration of justice*”, towards others that include disadvantaged people more explicitly – e.g. “*Legal empowerment of, and increased access to justice for the disadvantaged*”⁷.

HRBA’s more holistic perspective expanded assessment to new areas in which previous UNDP justice programming had been scarce, such as perceived obstacles of disadvantaged people to seek justice, legal empowerment strategies, traditional justice mechanisms, police and prisons and civil society oversight. The figure below illustrates how some of the most recent UNDP supported justice programmes in Asia and the Pacific (captured in red boxes) are moving into these new areas, thereby strengthening UNDP’s action on access to justice for poverty eradication.

UNDP’s support to access to justice for poverty eradication in Asia and the Pacific*

| NORMATIVE PROTECTION OF RIGHTS | LEGAL EMPOWERMENT | CAPACITY TO PROVIDE EFFECTIVE REMEDIES |
|--|---|--|
| <p>By International and Constitutional Law</p> <p>FIJI SRI LANKA INDONESIA CHINA NEPAL MONGOLIA IRAN RRRT</p> | <p>Legal awareness</p> <p>BANGLADESH FIJI NEPAL IRAN PHILIPPINES INDIA MONGOLIA RRRT INDONESIA</p> | <p>Accessible adjudication</p> <p><i>Judicial System</i></p> <p>CAMBODIA NEPAL FIJI IRAN INDONESIA RRRT PHILIPPINES</p> <p><i>Quasi-judicial bodies</i></p> <p>NEPAL INDONESIA BANGLADESH MONGOLIA SRI LANKA PHILIPPINES</p> <p><i>Indigenous/ traditional systems</i></p> <p>INDIA</p> |
| <p>By legal and regulatory frameworks</p> <p>INDONESIA BANGLADESH CHINA VIETNAM NEPAL RRRT CAMBODIA</p> | <p>Legal counsel</p> <p>BANGLADESH IRAN CHINA</p> | <p>Enforcement</p> <p><i>Police</i> INDIA RRRT</p> <p style="background-color: #ff0000; color: white;">NEPAL, EAST TIMOR, PHILIPPINES, CAMBODIA</p> <p style="background-color: #ff0000; color: white;">BANGLADESH PHILIPPINES</p> |
| <p>By Customary Law</p> <p>INDIA PHILIPPINES CAMBODIA</p> | <p>Other empowerment-related capacities</p> <p style="background-color: #ff0000; color: white;">INDIA INDONESIA SRI LANKA</p> | <p>Civil Society Oversight</p> <p>SRI LANKA INDIA PHILIPPINES INDONESIA</p> |

*This table does not entirely represent the scope of UNDP’s support to access to justice in Asia and the Pacific. Only some Country Offices are included for illustrative purposes

⁷ As illustrated by most recent UNDP programming in Bangladesh, India, Indonesia, Sri Lanka and the Philippines

Added value of applying a HRBA to guide how programming is done (process value)

Applying a HRBA to the “how” of development seeks to improve the effectiveness of policies and programmes. For UNDP, development effectiveness “is about processes that produce results, especially results that are pro-poor and promote equity”⁸. In short, development effectiveness is about the how of development⁹.

In the words of the UNDP Development Effectiveness Report (DER) 2003,

Understanding development effectiveness has been refined by the articulation of poverty as a denial of human rights. In the rights framework there are stakeholders in development. Each citizen is a duty-bearer with a set of responsibilities. Establishing accountability therefore has to become a central consideration for ensuring development effectiveness. It is not enough to find fault or pass the buck when some policy or programme fails. It is critical to understand why the intervention failed, who is responsible and what actions need to be taken collectively to meet the commitments. Only by identifying and establishing accountability for failures (or development ineffectiveness) can meaningful solutions be found. And a rights-based approach to development effectiveness brings out the importance not just of outcomes but also of the processes bringing these outcomes about¹⁰.

More specifically, using a HRBA can help to strengthen development effectiveness for the following reasons:

- 1) Applying a HRBA improves assessment and analysis
 - 2) A HRBA actively seeks perspectives from poor and disadvantaged people
 - 3) A HRBA helps to improve accountability systems
 - 4) A HRBA expands partnerships and strengthens communication flows
- *A human rights approach improves assessment and analysis*

In the AP-A2J context, a HRBA provided a framework of assessment for capacity development that is *more holistic*, thereby allowing for a *more strategic* identification of entry points

To find programme entry points, a HRBA brings a series of human rights concepts (such as “rights” and “obligations”, “claim-holders” and “duty bearers”) to the assessment and analysis of development problems. The box below explains the steps that AP-A2J applied for assessment and analysis of access to justice.

Steps in human rights-based assessment and analysis of access to justice

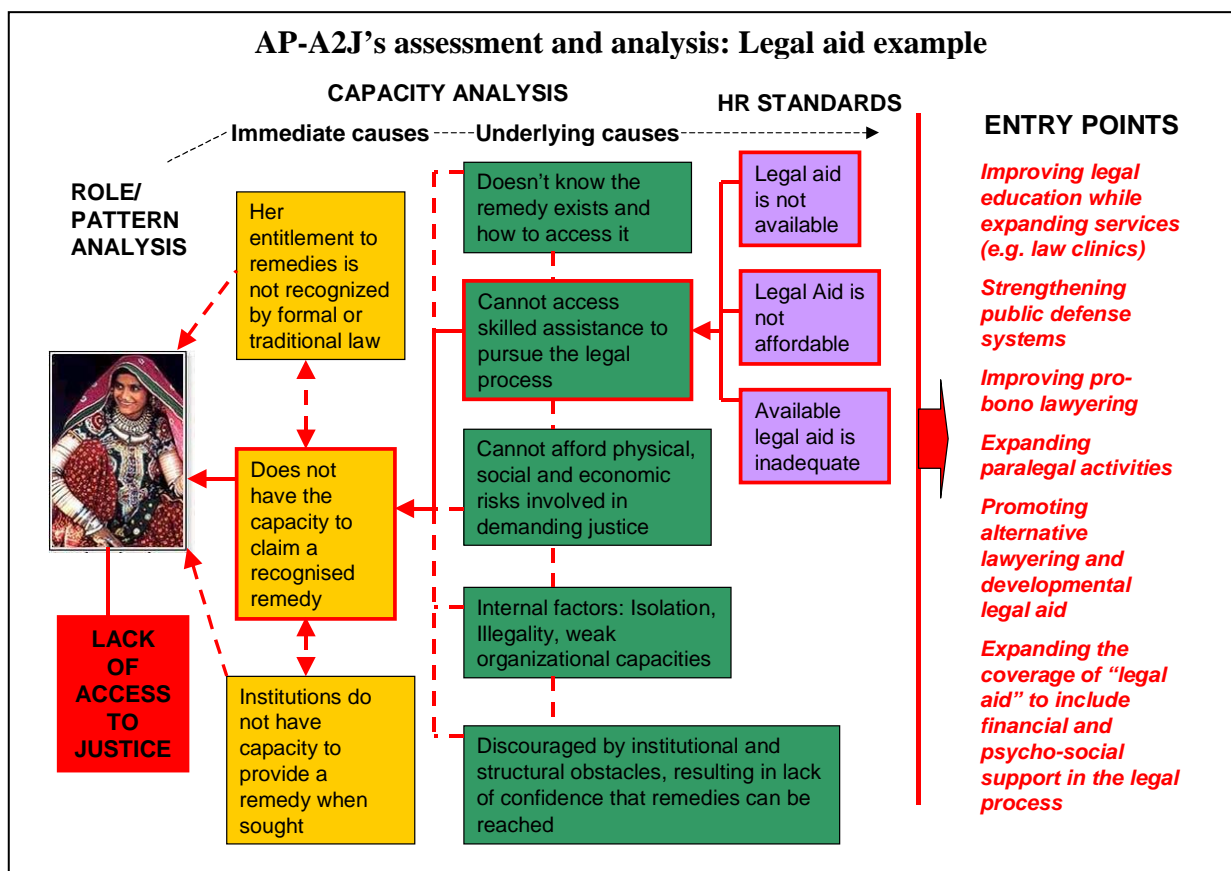
- 1) **Problem identification (Immediate causes):** What types of human rights safeguards for poor and other disadvantaged people are not performing and impeding their access to justice.
- 2) **Role/pattern and capacity analysis (Underlying causes):**
 - a. **Accountability Analysis:** Identification of who are duty-bearers in those areas, and what type of capacity problems they have to perform their duties effectively.
 - b. **Empowerment analysis:** Identification of the capacity problems that the poor and other disadvantaged people have to claim and exercise those safeguards.

⁸ UNDP Development Effectiveness Report (DER) 2003: Partnerships for Results, UNDP Evaluation Office, 2003, page 6.

⁹ Ibid

¹⁰ UNDP DER 2003, page 7

Applying a HRBA helped to provide a clearer picture of the interrelated causes of the problem – Once “access to justice” was understood as “people’s ability to obtain a remedy for grievances through the justice system”, a HRBA helped to cluster the “access to Justice” service line around key capacities needed to access justice: (a) recognition of disadvantaged people’s entitlement to remedies, (b) capacity of people to claim such remedies where they formally exist, and (c) capacity of institutions to provide them when sought. This way, human rights-based analysis helped to obtain an increasingly clearer picture of the access to justice problem. The box below provides an illustration of how the analysis of the underlying causes of problems becomes increasingly concrete. The figure shows how strengthening capacities for legal aid can impact on access to justice by disadvantaged people, and possible entry points in that respect.



Using a HRBA improved traditional stakeholder analysis by applying a role/pattern perspective. In the AP-A2J context, applying a human rights perspective helped to identify the most critical capacities of disadvantaged people to claim their rights, together with those of institutions to fulfil their essential duties. Access to justice involves a range of stakeholders at different levels, who need to perform specific functions. They may find obstacles to do so, and to overcome such obstacles they need particular capacities. A role/pattern analysis of stakeholders differentiates between claim-holders and duty-bearers for a particular situation and the actions/ functions they are expected to perform. Human rights protect basic capabilities in that respect – such as access to legal assistance and independence of the judiciary.

A HRBA allowed to identify entry points in a more systematic manner: Using a human rights approach to the analysis of capacity problems gives an increasingly clearer picture of the interrelated causes of a problem, and therefore entry points can be set more strategically (see figure above). For instance, under the generic area of “capacity to demand justice remedies”, a key entry point lies is strengthening legal aid. Applying again a causality, role-pattern and capacity analysis to “legal aid”, the analysis reveals problems

of availability, affordability and adequacy. More concrete entry points for UNDP's action focus on some strategic capacities needed to strengthen disadvantaged people's access to legal aid services.

In short, a HRBA demands to make strategic choices, but it also provides a useful framework for making those choices, at both programme and policy levels. When applying a HRBA within actual financial, political and time constraints, the issue is not to so much whether to select one particular right instead of another, but rather to be selective on what type of capacities to develop, and at what levels. One particular capacity can serve for the realisation of a number of rights, or foster other capacities – e.g. it is likely that police who do not rely on torture to obtain a confession have better capacities for criminal investigation, thus being better able to reduce crime incidence.

- *A human rights approach actively seeks the inclusion of most disadvantaged people*

In the experience of the AP-A2J initiative, putting disadvantaged people and their problems at the centre cannot be simply achieved by using participatory processes. People's participation in taking decisions on their own development is an entitlement (as expressed in the UN Declaration on the Right to Development, 1986), but a HRBA brings critical insights into the requirements of "meaningful" participation and the obstacles to it. The reality of development is that existing power inequalities may render "participatory processes" vulnerable to elite capture (e.g. when it is the most powerful members (e.g. men of a particular ethnic group) who define "community" needs). In other words, participatory approaches may sometimes risk becoming a means to legitimate pre-existing decisions, rather than influencing the final outcome of decision-making.

A HRBA stresses that disadvantaged people's perspectives are fundamental for identifying the problem and its possible solutions. Thus there is a need to seek them actively when analysing the scope of access to justice problems, what are the obstacles that disadvantaged people face and how they handle them. In some contexts it will be possible that people are not only "consulted" on their views, but also meaningfully included in decision-making. In other contexts, even non-binding consultations with disadvantaged people may be politically difficult.

Even when meaningful participatory mechanisms cannot be adopted in decision-making, development programmes adopting a HRBA should at the minimum strive to

- a) Ensure poor and disadvantaged people become the centre of development analysis and their perspectives are taken into account,
- b) Create/ strengthen channels of communication between claim-holders and duty-bearers, so that disadvantaged people's voices reach those who are in the position to respond, and
- c) Develop disadvantaged people's capacities for "active, free and meaningful" participation (e.g. information, organisational resources, etc.)

The box below explains how AP-A2J tried to bring disadvantaged people's perspectives to define the scope of access to justice and to elaborate programming tools.

Seeking the inclusion of most disadvantaged people

Given that discrimination often causes poverty (and vice-versa), AP-A2J used **potential grounds of discrimination to define target groups** where to target poverty eradication efforts. These included urban and rural poor, women, indigenous peoples and ethnic minorities, migrants, internally displaced persons (IDPs), people living with HIV/AIDs, and people with physical/mental impairment. Specific obstacles to access justice in each of these groups are being assessed to map potential programme entry points. Children are not included as a target group, despite their disadvantaged position, to avoid overlapping with UNICEF's important activities in the field of juvenile justice.

Through a **participatory research study** in India, AP-A2J sought perspectives from poor and disadvantaged people to understand how they perceive justice, what obstacles they face and how they handle them. AP-A2J incorporated these perspectives into the elaboration of the A2J model. Despite the study can not be considered representative of marginalized populations in Asia and the Pacific, seeking disadvantaged people's perspectives occupied a central role in the analysis.

AP-A2J also drafted **Guidelines for Participatory Consultations** on Access to Justice, a tool that seeks to facilitate the involvement of both claim-holders and duty-bearers in understanding the access to justice problem and designing development strategies to deal with it. The guidelines are to be tested in a number of countries before their finalization.

- *A human rights approach improves accountability systems*

Together with non-discrimination, the major value of a human rights framework is that it provides a concrete basis for accountability. Applying a HRBA can help to improve accountability systems in the following ways:

Improving risk management - A HRBA highlights some risks and conflict factors that are too often overlooked. A human rights lens sheds light on the conflictive dimensions of development and empowering processes more generally, but it also provides a concrete guidance to deal with them. Managing risks and overcoming resistance are critical factors if access to justice programmes are to be effective. A human rights approach can improve risk management in the following ways:

- a) A HRBA stresses capacities to claim rights and to fulfil obligations complement each other – developing capacities to claim rights without institutional capacities to respond may create social frustration. On the other hand, for accountability to be effective it needs to be demanded.
- b) A HRBA demands assessing the impact of programmes on the most disadvantaged people among the target groups, and on other disadvantaged groups who may be indirectly affected by policies and programmes.
- c) A HRBA reveals that demanding justice (claiming their right to justice) involves more often than not a high degree of risk for poor and disadvantaged people. Programmes should identify not only potential benefits for target groups, but also potential risks they may face as a consequence of the programme (e.g. when women become more assertive in claiming their rights, they may also expose themselves to a higher level of domestic violence). Strategies to minimize such risks should be ensured within the scope of the programme if necessary. On the other hand, non-justice related programmes (e.g. micro-credit schemes, environmental protection) can impact on disadvantaged people's capacities to access

justice, by minimizing some of the physical, economic, social and emotional risks they face when they seek remedies to their grievances. Therefore, access to justice policies and programmes need to be closely coordinated with other development activities. This calls for strengthened coordination within programme units at the UNDP country office level, within the UN Resident Coordinator system and with other development actors.

- d) Access to justice by disadvantaged people may encounter resistance by those favoured by the status quo, or by those who perceive empowering processes as threatening. A HRBA highlights the importance of providing for mediation avenues and mechanisms, and confidence building measures.

Strengthening a results-orientation: A HRBA helps to focus accountability on specific conducts/results according to a clear framework on entitlements and obligations. This facilitates not only more strategic entry points for capacity development; it is also a clearer guide for the establishment of Monitoring and Evaluation (M&E) systems. The table below provides an illustration.

Sample outcome indicators for justice programmes

| Prior to applying a HRBA | When applying a HRBA |
|---|---|
| Sample outcome: " <i>Strengthened administration of justice</i> " | Sample outcome: " <i>Strengthened access to justice by disadvantaged women</i> " |
| <ul style="list-style-type: none"> • Increase in available legal and judicial information for lawyers, judges, prosecutors and public defenders • Number of judges, prosecutors and public defenders capable of managing court cases • Number of judicial premises per capita • Court caseload • Number of staff from national human rights commission trained in investigation skills | <ul style="list-style-type: none"> • Increase (to 100% over X time) in percentage of disadvantaged women receiving quality legal services (disaggregated by income, caste, urban/rural divide, single/double headed households) • Decrease (to 0 over X time) in number of overstaying detainees who are women, number of women detainees/prisoners not separated from men • Average time for disposition of cases in court as compared with legal time limits • Functionality and coverage of paralegal services for women in prison facilities • Number of cases where a woman was a victim investigated by the national human rights commission, percentage of such cases ultimately prosecuted |

Systematic inclusion of civil society oversight and strengthening of communication flows: A human rights approach calls for the systematic inclusion of oversight elements in development activities, and for developing capacities of non-government actors and oversight institutions to demand accountability with respect to access to justice outcomes. On the other hand, strengthening communication between claim holders and duty-bearers is necessary to set targets and benchmarks. Disseminating information on the programme among disadvantaged groups can help to improve the programme's impact and accountability.

However, it should be noted that, despite a HRBA has an important potential to improve accountability systems, realising such a potential would require to improve existing programming tools and other capacities at the UNDP country office level – particularly the ability to reach disadvantaged people and communicating with them in an effective manner.

LESSONS LEARNED

From a technical point of view, a human rights approach can help to do “better development” (that is, coherent and results-oriented policies and programmes) that are firmly grounded on human development, but:

A HRBA is still an approach in the making, although increasingly concrete – The methodology explained in this case study should not be viewed as prescriptive. A human rights approach is very recent in development and therefore it should allow for experimentation and learning. UN agencies agreed on a Common Understanding for the implementation of a human rights approach in 2003¹¹, which provides a basic framework for the implementation of a human rights approach within the UN system.

The impact of a HRBA on poverty eradication remains to be assessed – A HRBA should not be presented as a development “panacea”. HRBA’s technical added value to development programming may improve the potential for development effectiveness, but the extent to which such a potential is materialised remains to be assessed.

A HRBA does not guarantee the realisation of human rights – Realising human rights requires both willingness and capacity, and the UN system performs different functions in this regard. A HRBA seeks to develop capacities (e.g. UNDP), human rights monitoring to promote willingness (e.g. Human Rights Committee, Office of the High Commissioner for Human Rights). UNDP’s support needs to take into account the existing political context, as in many situations political willingness is absolutely critical to make capacities meaningful.

Applying a HRBA requires improving capabilities in UNDP staff and its partners – More specifically, the implementation of a HRBA requires practitioners’ deeper understanding of (a) impact of inequalities on development, (b) human rights norms, and (c) conflict management. It also calls for developing UNDP practitioners mediation and communication skills, particularly with most disadvantaged groups. These type of capacities are too often lacking, although they can be strengthened through targeted training programmes.

The implementation of a HRBA demands improving existing programming tools - Existing tools (e.g. logical frameworks) need to be improved to capture adequately the process of development (e.g. through the inclusion of process indicators). Similarly, there is a need to improve risk analysis and identify better mechanisms for programme accountability, as well as innovative ways to ensure disadvantaged people’s voices are heard and responded to. This requires substantive changes in UNDP’s assessment processes, monitoring and evaluation systems, partnership and networking strategies.

External obstacles to the implementation of a HRBA

Lessons from AP-A2J’s experience point at other important challenges for the full implementation of a HRBA that derive from the external environment affecting development cooperation. Some key obstacles include:

Sensitivity of human rights and questioning of power relationships - In the light of existing inequalities and the political sensitivity of human rights, it is a formidable challenge to ensure that both claim-holders and

¹¹ The final report of the Stamford Inter-Agency Workshop on a Human Rights approach to development is available on the website of the UN Resident Coordinator System Network - RC Net - <http://www.dgo.org/index.cfm>,

duty-bearers jointly take decisions to guide the development process, and that they use human rights as a framework.

Barriers to active, free and meaningful participation of most disadvantaged groups - A human rights approach considers disadvantaged people's right to take decisions on their way out of poverty is not rhetoric but a programmatic guidance. This guidance finds obvious resistance at national and international levels, particularly from those who benefit the most from disadvantaged people's lack of participation. Furthermore, disadvantaged people generally lack the capacities to participate meaningful through existing channels.

Financial and time constraints to ensure development results – A HRBA gives a fundamental value to the “process” of development. Some key development results naturally take time, but development cooperation functions under growing financial and time constraints to produce concrete “results”. A focus on the process should not be done at the expense of results, but sidelining the process given very limited time and resources can lead to overestimating a programme's potential. It is worth noting that it is precisely these issues where less progress has been made so far in the application of the access to justice framework to actual programming. Despite the need for empowering processes is clear, it is not so obvious what specific mechanisms in programme design and implementation could be used, particularly in difficult political contexts.

Need to strengthen the existing human rights framework – The human rights framework, including civil and political rights, and economic, social and cultural rights, reflects humankind's fundamental achievement in protecting human dignity through legal norms, although it is not a completed framework. It can be rendered more concrete through further legal norms at national and international levels. Furthermore, the existing legal framework should be more actively protected, as human rights are invariably threatened by situations of violent conflict, and a context of national and international insecurity risks deteriorating existing human rights safeguards.

Summary

The Asia Pacific Rights and Justice initiative is an exercise in the development of UNDP's "communities of practice" at the regional level. It seeks to strengthen UNDP's regional niche, knowledge and capacities on access to justice in Asia and the Pacific, and to contribute to UNDP's global policy on access to justice. The process has consciously attempted to apply a human rights-based approach in defining the scope for action on "access to justice", and in elaborating programming tools. The rationale for using a human rights approach is both normative and instrumental: normatively, it responds to the UN Secretary General's call to mainstream human rights in the work on the UN system, and UNDP's policy on integrating human rights with sustainable human development. Instrumentally, a HRBA tries to deal with the impact of growing inequalities on development efforts.

HRBA's major value lies in bringing accountability and non-discrimination as key parameters in the development process. Accountability and non-discrimination seek to ensure "development effectiveness", that is, processes and results that are pro-poor and promote equity. Given the nature and number of experiences at hand, it is too early to determine the actual impact of human rights-based policies and programmes on the lives of disadvantaged people. Therefore, this case study merely focuses on whether a HRBA offers any kind of technical value added in the programming process.

Added value of applying a HRBA to access to justice programming

The experience of the Asia Pacific Rights and Justice initiative shows that using a HRBA can bring technical added value at two levels: (1) at the level of guiding what programmes do ("substantive" value), and (2) at the level of guiding how programming is done ("process" value). The table below provides a summary of HRBA's added value in the two areas.

HRBA's added value to development programming

| Substantive value WHAT | Process value HOW |
|--|---|
| <ul style="list-style-type: none"> • Focuses on most disadvantaged groups and their entitlements as human beings • Strengthens Human Development and Capacity Development perspectives • Brings process of development to the forefront | <ul style="list-style-type: none"> • Improves assessment and analysis – holistic, systematic, results-oriented • Actively seeks inclusion of most disadvantaged people • Improves accountability systems • Expands partnerships and strengthens communication flows |

A human rights approach has a potential to strengthen development effectiveness, but its implementation needs to take into account the following considerations:

- a) A HRBA is still an approach in the making, although increasingly concrete
- b) The impact of a HRBA on poverty eradication remains to be assessed
- c) A HRBA does not guarantee the realisation of human rights.
- d) Applying a HRBA requires improving capabilities in UNDP staff and its partners
- e) The implementation of a HRBA demands improving existing programming tools

External obstacles to the implementation of a HRBA

Lessons from AP-A2J's experience point at other important challenges for the full implementation of a HRBA that derive from the external environment affecting development cooperation. Some key obstacles include:

- a) Sensitivity of human rights and questioning of power relationships
- b) Barriers to *active, free and meaningful* participation of most disadvantaged groups
- c) Financial and time constraints to ensure development results
- d) Need to strengthen the existing human rights framework