



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

Case Studies on Access to Justice by the Poor and Disadvantaged

**Establishing Baselines on Access to Justice by Poor and Disadvantaged
People in the Philippines**

July 2003

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SUMMARY BOX

Categorization of lesson:

Establishing baselines on access to justice by poor and disadvantaged people for the formulation, monitoring and evaluation of justice reform programmes

Critical lessons for the sub-practice:

1. Establishing baselines is critical for adequate design, monitoring and evaluation of access to justice strategies.
2. Baselines should be comprehensive, not limited to the judiciary.
3. A need exists to bring results of all baseline studies together, in order to obtain a holistic picture and establish a co-ordinated reform agenda.
4. Surveys should include clients themselves in order to get a sense of feelings about the services they receive.
5. Surveys are not substitutes for participation.
6. In designing the scope of the baselines and conducting institutional assessments, linkages to access to justice by the poor and disadvantaged should be explicit, and a human rights approach ensures focus will be maintained.
7. Specific mechanisms of data gathering to further sustainability in monitoring and evaluation must be identified.
8. Building constituencies among other actors can be facilitated by extensive consultations on designing the indicator and assessment framework, and in the conducting of surveys and studies themselves.
9. Alternative assessment techniques such as focus group discussions can be useful if available data are insufficient.
10. Strong political leadership at the highest level also facilitates ownership of the process.

Recommendations:

- ❖ 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.
- ❖ Subject baseline results to a “stakeholder validation” before finalisation in order to ensure ownership.
- ❖ Use multidisciplinary teams both in designing and undertaking the surveys and in analysing results.
- ❖ Ensure there is one focal person to guarantee technical consistency and co-ordination throughout the process.
- ❖ Adequate representation from poor and disadvantaged groups (women, minors, ethnic minorities) should be ensured in the samples

CATEGORISATION OF LESSON

Establishing baselines on access to justice by poor and disadvantaged people for the formulation, monitoring and evaluation of justice reform programmes.

BACKGROUND

The Philippines provides an illustrative example on the need for adequate baselines on access to justice by the poor and disadvantaged, and of strategies to obtain them. The Philippine Supreme Court's Action Programme for Judicial Reform (APJR) 2001-2006 stems from an institutional assessment, supported by UNDP, that recognised access to justice by the poor as a major concern. Following the assessment the Supreme Court established a six-year judicial reform plan, which stated that such access is one of its major reform objectives, and which obtained substantial support from donors and financial institutions. Because baselines on access to justice were lacking, the outcome indicator included in this regard was "improved satisfaction rate with the judiciary."

Given the potential of human rights as a useful tool for assessment and indicator setting, and in line with a right-based approach to development, a mission comprising members of the Philippine Supreme Court, UNDP and the Office of the High Commissioner for Human Rights (OHCHR) was tasked to suggest an indicator framework for access to justice. Such a framework would be based on nationally and internationally recognised human rights standards, and it was agreed that it should go beyond the judiciary itself. Together with specific indicators, the framework should include the type of information to be collected and the corresponding surveys and institutional diagnosis studies needed. The joint team consulted a wide number of stakeholders.

The team defined access to justice as the "ability of persons from disadvantaged groups to seek and obtain a legal remedy in conformity with relevant international human rights standards." This definition formed the basis of the Philippine Supreme Court's work on access to justice, and was later recommended by UNDP globally¹ and operationalised by the Asia Pacific Rights and Justice Network.²

Baseline studies and institutional assessments suggested by the team were: (a) national survey on knowledge and perceptions of the justice system; (b) national survey of inmates and institutional assessment of the Bureau of Jail Management and Penology; (c) national survey of legal practitioners – Integrated Bar of the Philippines and Alternative Law Groups; (d) survey and institutional assessment of the Public Attorney's Office; (e) diagnostic study of the Department of Justice, including the Prosecutions Service, the Public Attorney's Office, the Bureau of Immigration, the Bureau of Corrections, National Bureau of Investigation and the Parole and Probation Administration; (f) expanded caseload survey of caseloads in courts that aims to assess the nature of cases, average time for resolution of cases and so forth [it is "expanded" because it widens an ongoing caseload survey supported by World Bank]. Suggested indicators were designed for the Philippine situation and were not for inter-country comparative purposes.

¹ UNDP Practice Note on Access to Justice

² Asia Pacific Rights and Justice Initiative: Visioning Workshop Report, May 2003

FINDINGS AND CONCLUSIONS

Lessons on Output/Outcome

Establishing baselines is critical for adequate design, monitoring and evaluation of access to justice strategies.

Although recognition is widespread that the poor and disadvantaged face significant obstacles in accessing justice, adequate data generally are lacking on the actual extent of the problem and on specific underlying causes. This creates difficulties for designing targeted strategies for access to justice, which require an accurate picture of existing obstacles, including an adequate level of disaggregation. It also makes it difficult to assess the impact of justice reform programmes on access to justice by the poor and disadvantaged, as well as to set realistic, results-oriented targets. Consequently, lack of adequate baselines may result in inefficient use of time and resources.

Baselines should be comprehensive, not limited to the judiciary.

Improving access to justice requires strategies not only within the judiciary, but also within other pillars of the justice system. This implies that access to justice baselines and strategies cannot be reduced to the court system only, but also should include legal counsel, prosecution, police and prison officials. Reforms can be facilitated by external factors such as (a) ownership and participation of major stakeholders concerned; (b) political willingness; (c) the example given by previous reform initiatives in the justice sector; (d) existence of champions at the highest level; (e) lodging the establishment of baselines in an executive agency, such as a PMO, with a solid reputation and able to provide capable, proactive support; and (f) using organisations with “social conscience” and strong networks in both Government and civil society for conducting surveys.

A need exists to bring results of all baseline studies together, in order to obtain a holistic picture and establish a co-ordinated reform agenda.

Designing and conducting the various surveys, institutional assessments and diagnostic studies proved challenging, particularly at the operational level. The process of establishing baselines is ongoing, although it has already achieved significant results in obtaining a picture of access to justice by the disadvantaged, causes impeding access and suggested strategies to address them. Furthermore, the process itself has managed to trigger a series of institutional reforms beyond the judicature; for example, the Department of Justice is in the process of establishing a comprehensive reform agenda, and the Philippine National Police have requested to be part of the reform process.

Surveys should include clients themselves in order to get a sense of feelings about the services they receive.

In the survey of the Public Attorney’s Office, services were assessed from the point of view of adequacy, affordability, capability and coherence; as a consequence, the Office modified its usual reporting systems to make them more responsive (e.g., level of data disaggregation). The study also identified institutional strengths and weaknesses and recommended strategies for further organisational development. However, clients were not surveyed, and thus their feelings about the services they receive were not taken into account. However, this type of information was partially obtained through a separate survey of inmates, although there was a need to focus certain questions only on those who can be considered legitimate rights holders on particular issues (such as women and minors on the adequacy of their legal protection).

Lessons on Process

Surveys are not substitutes for participation.

A survey or a meeting does not reflect effective participation of claim holders, but reflects only consultation. Participation was in fact limited to the PMO, although it is true that many different stakeholders were consulted and their views influenced the project – but they were not aware that their views could be influential and that decisions would be taken, nor what those decisions were and how to contest them.

In designing the scope of the baselines and conducting institutional assessments, linkages to access to justice by the poor and disadvantaged should be explicit, and a human rights approach ensures focus will be maintained.

Establishing an operative definition on access to justice helped provide conceptual clarity. In addition, not just any kind of indicators or institutional assessments of the justice system will necessarily trigger pro-poor reforms, unless such an objective is clearly stated as a reform principle and consciously pursued in assessment and planning. Using specific human rights standards facilitated indicator setting. Given the political sensitivity of human rights, risks of rejection and misunderstanding were minimised by clarifying that indicators were aiming to respond to specific access to justice problems and were not intended for “finger pointing.” The fact that the Philippines has ratified all major international human rights conventions was a very favourable factor.

Specific mechanisms of data gathering to further sustainability in monitoring and evaluation must be identified.

A challenge ahead is to identify which mechanisms of data gathering in courts and different Government agencies can be modified in order to achieve sustainability in monitoring and evaluation. This will allow ensuring progress in access to justice and minimising the risk of setbacks. Identifying such mechanisms is part of the ongoing process.

Operational Lessons

Building constituencies among other actors can be facilitated by extensive consultations on designing the indicator and assessment framework, and in the conducting of surveys and studies themselves.

Despite the fact that access to justice and human rights are particularly sensitive issues, the baseline studies managed to gather support of both Government and non-Government actors. In order to ensure ownership, all studies were subject to a “stakeholders validation” – both Governmental and non-Governmental – before their finalisation. The complexity of the access to justice issue required multidisciplinary teams to conduct the studies; organisations were preferred to individuals as consultant for this reason, as well as for networking purposes. Co-ordination also was facilitated through the hiring of a full-time technical advisor within the Supreme Court’s PMO.

Alternative assessment techniques such as focus group discussions can be useful if available data are insufficient.

To the extent it was possible, the choice of indicators was made on the basis of the available data that could be obtained within the usual official reporting mechanisms. However, in some cases these data were outdated, which required the use of alternative assessment techniques such as focus group discussions instead of surveys. At least two focus group discussions were utilised as feedback.

Strong political leadership at the highest level also facilitates ownership of the process.

The Supreme Court had full ownership of the project and was involved in all stages of project design and implementation through its PMO. The PMO consulted all institutions and actors that were to be surveyed and ensured their acceptance and collaboration before studies were undertaken. Some institutions even mobilized their own resources in support of the surveys. The political leadership of the Chief Justice himself in advocating for human rights, access to justice and reforms in the justice system largely facilitated this process.

RECOMMENDATIONS

- ❖ 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.
- ❖ Subject baseline results to a “stakeholder validation” before finalisation in order to ensure ownership.
- ❖ Use multidisciplinary teams both in designing and undertaking the surveys and in analysing results.
- ❖ Ensure there is one focal person to guarantee technical consistency and co-ordination throughout the process.
- ❖ Adequate representation from poor and disadvantaged groups (women, minors, ethnic minorities) should be ensured in the samples.