



ASIA-PACIFIC RIGHTS AND JUSTICE INITIATIVE

“PRACTICE IN ACTION” WORKSHOP REPORT

Ahungalla, Sri Lanka, 19 – 21 November 2003

***Consolidated by
Kathmandu and Bangkok SURFs***

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EXECUTIVE SUMMARY

Access to justice is critical for poverty reduction, and a major area of UNDP's Democratic Governance practice. Since 2002 a regional "**Community of Practitioners**" (CoP), **UNDP's Asia-Pacific Rights and Justice Network (AP-A2J)**, has been contributing to expand organizational capacities to promote access to justice, particularly in Asia and the Pacific.

The Network's **vision is centred on people**, particularly on the poorest and most disadvantaged, to achieve the goals of reducing poverty and violent conflict in the region, and contributing towards the achievement of the Millennium Development Goals (MDGs). The community of practitioners is currently elaborating **tools to transform that vision into practice**, through an innovative process that uses a **bottom-up approach to practice development**.

This report is part of the CoP's **policy and tool development process**. It refers to its recent **regional workshop in Ahungalla, Sri Lanka, in November 2003**. The workshop sought to strengthen and expand the regional community of practitioners on access to justice, to enhance knowledge development, and to finalize on-going tools. As these tools will soon be available (estimated by March 2004), **the report does not include comprehensive lessons from specific workshop sessions**.

The report is structured into five main parts: **Part 1** provides a **general overview of workshop proceedings**. **Part 2** gives a summary of **substantive and process elements of a people-centred approach to access to justice**. This approach has emerged from practitioner's inputs over the past months, and it was consolidated and validated during the workshop. A people-centred approach is grounded in UNDP's human development framework. It represents a strategic niche for UNDP, and it is different from the more traditional approaches to justice programmes, based on the "rule of law" model.

The "access to justice" approach puts poor and disadvantaged people at the centre of the analysis. Through this perspective, **access to justice is a means to prevent and overcome human poverty, by allowing disadvantaged people to have access to remedies** for grievances they suffer. Thus an "access to justice" perspective concentrates in (a) availability of remedies for grievances to poor and disadvantaged people, (b) their capacity to demand such remedies through formal and informal justice systems, and (c) the capacity of institutions to deliver on them. Further, the approach views programme results as the consequence of processes that also involve people, and which affect development effectiveness. Achieving **poverty reduction and other MDGs requires empowering processes**, which enhance disadvantaged people's capacities to have a greater control of the development process itself. Programmes can seek empowering processes by using **rights-based parameters** as a guidance.

Part 3 of the report includes a section on **immediate steps for the Network after the finalization of tools, strategies for sustainability and linkages to regional programming**. The CoP's has identified two priority tasks for the AP-A2J Network in the immediate future: (a) to act as a *Gateway of resources to country offices* on access to justice, and (b) the need for a *dissemination strategy* to promote the recognition of access to justice in poverty eradication, and UNDP's comparative advantage to support governments and other development actors in this area. Results on the workshop's inputs to regional programming are provided in a separate report¹.

Part 4 gives an overview of **participants' feedback** on the workshop. **Finally**, the report's last section reflects some specific **lessons extracted on the workshop process, and on practice development more generally**.

¹ "Linking the AP-A2J process to regional programming: Added Value", December 2003.

1. BACKGROUND: The UNDP Asia-Pacific Rights and Justice Initiative

Access to justice is critical for poverty reduction, and a major area of UNDP's Democratic Governance practice. Since 2002 a regional "**community of practitioners**", UNDP's Asia-Pacific Rights and Justice Network (AP-A2J), has been contributing to expanding the organisation's capacities to promote access to justice, particularly in Asia and the Pacific.

A UNDP "community" of practitioners is mainly composed of field officers, who engage with each other, the UN and other partners, to enhance their knowledge towards a common goal. **The goal of UNDP's community of practice in Asia and the Pacific is to enhance access to justice**, and justice-related development policies and programmes, **for poor and disadvantaged people**.

AP-A2J is a **results-oriented community of practitioners (CoP)**, involving approximately 30 UNDP staff from 17 Country Offices in the region, and supported by an electronic network of more than 80 members globally. The community has used a **bottom-up process** (the **Asia Pacific Rights and Justice Initiative**) to achieve **two major results**:

- **Policy and tool development.** Over the past year, practitioners have developed substantial knowledge on access to justice, and instruments to apply it in policy and programme development. The CoP's access to justice framework represents a sound niche for UNDP. It is guided by UNDP's human development paradigm and centred on people, particularly on those who are poor and disadvantaged. The framework has been defined for the purposes of poverty eradication and the achievement of the MDGs. It is supported by a series of tools for its implementation, especially by a Practitioner's Guide to Access to Justice, currently being finalized. The Guide represents one of the most comprehensive collection of lessons for access to justice programmes available, covering both results and how to achieve them. The Practitioner's Guide distils lesson from successes and failures coming from UNDP's experience, the CoP's external partners, and other national, bilateral and multilateral actors.
- **Individual and organisational capacities to transform knowledge into practice.** The use of a bottom-up approach to practice development has allowed for (a) better *relevance* of resulting knowledge for the practitioners' work, and (b) stronger *capacities* to transform knowledge into action. AP-A2J is a motivated, dynamic network of UNDP staff able to perform effective roles in pursuing justice for development. They have developed knowledge, created tools, and strengthened networks with partners, particularly in areas where UNDP expertise is lacking.

The Asia Pacific Rights and Justice Initiative is part of the Bureau for Development Policy's (BDP) efforts on practice development and is supported by the Regional Bureau for Asia and the Pacific (RBAP), and the UNDP-OHCHR HURIST programme.

In terms of process, the initiative has two major characteristics:

- (1) It applies a bottom-up approach to practice development - based on the production, codification and dissemination of knowledge by practitioners themselves, for the purposes of (a) mutual learning, (b) production of tools, and (c) regional and global policy development. This requires minimising excessive reliance on outside experts, and

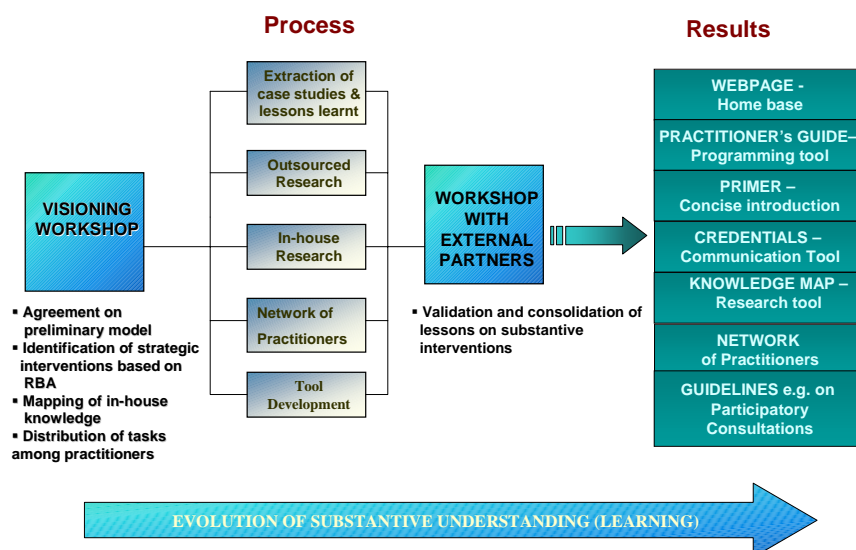
building on existing strengths within the organisation, rather than substituting them. This is a key condition for “capacity development”².

- (2) The initiative’s process also attempts to apply a rights-based approach to development to crystallize UNDP’s niche, by (a) using UN standards in policy guidance, (b) trying to bring in the voice of disadvantaged people as *legitimate*, (c) establishing a clear framework for accountability in development, and (c) analysing the influence of conflict risks and power inequalities in development efforts. Section 3 in this report (People-Centred access to justice) provides further insights of substantive and process aspects of UNDP’s niche in the justice sector.

Recapitulation of the AP-A2J Initiative

After a process of internal consultations within the Network, in April 2003 a “Visioning workshop” was held in Kathmandu, Nepal, that set the substantive scope of the access to justice practice and established a work plan for practice development. With the facilitation of the Kathmandu and Bangkok SURFs, practitioners from a core group of 11 country offices defined knowledge needs to promote people-centred justice programmes, mapped UNDP’s activities in this regard, and committed to provide specific lessons depending on each country’s experience. From April to October 2003, UNDP internal knowledge was collected by field practitioners, and codified with SURF facilitation. So far 12 country offices³ have contributed 17 case studies with specific lessons and recommendations for access to justice programming. The Network has also engaged with external partners to obtain lessons in areas where UNDP’s experience is insufficient. Simultaneously, internal research at the regional SURFs is taking place to screen additional lessons and to distil the various inputs for the final tools. In November 2003 these processes converged at a regional workshop, attended by 15 COs and opened to selected external partners (see Figure 1).

Figure 1: Process and Products in the Asia Pacific Rights and Justice Initiative



² Capacity is understood as “the ability to perform functions, solve problems, and set and achieve objectives”. See “Capacity for Development: New Solutions to Old Problems”, Ed.: S. Fukuda-Parr, C. Lopes and K. Malik, UNDP 2002

³ Including Bangladesh, Cambodia, China, Fiji, East Timor, India, Indonesia, Iran, Mongolia, Nepal, the Philippines, and Vietnam.

2. OVERVIEW OF WORKSHOP PROCEEDINGS

The AP-A2J Network’s workshop that took place in Ahungalla, Sri Lanka, from 19 to 21 November 2003 was attended by 44 participants, including 18 practitioners from 15 UNDP country offices in Asia and the Pacific, together with representatives from BDP, RBAP, BCPR, HURIST and 15 external partners. A list of participants is included in Annex 1.

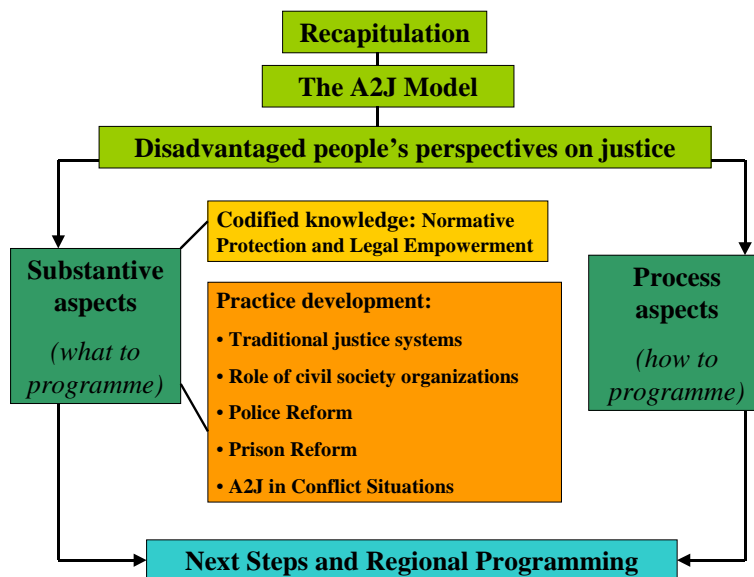
The workshop had the following objectives:

- 1) In terms of **substance**:
 - a) To **strengthen a people-centered view of access to justice**
 - b) To **enhance substantive practice knowledge** on access to justice, particularly in areas where internal knowledge is most lacking and most urgently needed – (i) police and prison reform; (ii) informal and traditional systems; (iii) role of NGOs, community-based organizations and other civil society actors; and (iv) access to justice in conflict and post-conflict contexts.

- 2) In terms of **process**:
 - a) To **strengthen and expand the Community of Practitioners**
 - b) To **finalize on-going tools** and identify needs for further tool development
 - c) To establish **strategies for sustainability** of the initiative and its results

Figure 1 presents an overview of the workshop flow:

Figure 1: “Practice in Action” Workshop Flow



Overall the workshop consisted in five main parts:

Consolidation of the access to justice model

After welcoming remarks by Ms. Christine Spoerel, Deputy Resident Representative of the host country office, UNDP Sri Lanka, there was a recapitulation of major activities and results of the AP-A2J community of practice over the past months. This was followed by the **first substantive part** of the workshop: a discussion on the **access to justice model** emerging from CO practitioners' inputs. This conceptual model clearly defines UNDP's niche in the justice sector as being centred on people, in contrast with more "traditional" approaches that are usually centred on market and economic efficiency.

Under an "access to justice" approach, justice is seen as a source of remedies for grievances that disadvantaged people suffer. Remedies against injustices, particularly those resulting from discrimination, can help disadvantaged people prevent and overcome human poverty. Section 3 in this report (People-Centred access to justice) provides further insights of substantive and process aspects of UNDP's niche in the justice sector.

Review of strategic knowledge topics

Discussions on substantive issues began with a session on **disadvantaged people's perspectives on justice**, in which preliminary results from a participatory research study conducted in India were presented⁴. In this study, disadvantaged people were asked for their perceptions on justice, what obstacles they faced and how they handled them. Their perspectives highlighted a number of strategies and obstacles to access justice, which confirmed the relevance of the "access to justice" conceptual model defined by practitioners, as well as the limitations of traditional approaches to justice in development. (See more at next section in the report: "People-centred access to justice").

Later workshop sessions examined some **strategic access to justice topics**. First, results were presented from knowledge codified so far in two important areas of the access to justice sub-practice (Normative Protection and Legal Empowerment), and preliminary findings discussed in the plenary. The workshop later examined some key issues that the previous "Visioning" workshop (April 2003) had identified areas where UNDP lacked sufficient experience:

- (a) interfaces between formal and informal systems of justice,
- (b) the role of civil society in strengthening access to justice by disadvantaged people,
- (c) people-centred strategies in processes of police and prison reform, and
- (d) access to justice in conflict situations.

External partners⁵ with whom the Network had interacted in previous months, in line with its established work plan for outreach, were invited to present lessons on these issues. In the session of access to justice in conflict situations, representatives from UNDP's Regional Bureau for Conflict Prevention and Recovery (BCPR), together with external partners (ICTJ), provided

⁴ Undertaken by PRIA (Society for Participatory Research in Asia) in response to the CoP's Terms of reference and supported by HURIST.

⁵ Partners included the Commonwealth Human Rights Initiative (India), Penal Reform International (Nepal), La Salle University (Philippines), and the Regional Rights Resource Team (RRRT) (Fiji). They has previously compiled lessons following the CoP' terms of reference and with HURIST support. Other partners provided their lessons at the workshop, such as the University of Dhaka (Bangladesh), Tabang Mindanaw and Bantay Katarungan (Philippines), and the International Center for Transitional Justice (New York). The Law and Society Trust (Sri Lanka) and the University of South Pacific (Fiji) did not attend the workshop but who also have provided lessons to the AP-A2J initiative.

the basis for discussions. Throughout these sessions, participants came up with some specific lessons and recommendations for further practice development in each of these areas.

Process considerations for access to justice

The **third part** of the workshop focused on **process issues**. This division between substantive aspects (what to programme) and process aspects (how to programme) reflects the structure of the initiative's tools (particularly the Practitioner's Guide to Access to Justice). It also reflects the double dimension of the paradigm shift emerging from the CoP's inputs. An access to justice perspective looks not only at what type of justice UNDP programmes pursue and for whom, but also at how they do it. This is fundamental for development effectiveness.

The section on process issues commenced recognising that "processes" fundamentally influence development "results". Development "paths" are created by "walking", there are no templates. A rights based approach to programming is applied to allow for (a) **a better focus on the process of development**, and (b) **ensuring it is empowering for disadvantaged people**. Empowering processes are not only important for poverty eradication and the achievement of the MDGs, but also strategic development results themselves – as they enhance disadvantaged people's control over the development process, and this is likely to impact positively other development results.

During the workshop, participants identified process lessons through a case study, where an indigenous woman explained to them her own ordeal in seeking justice. An NGO working closely with indigenous people supported the case with additional data. Participants then sketched programmes that could address the type of problems revealed in the case study, while ensuring basic **rights-based parameters** are observed in the process. Particularly useful was the feedback on the suggested programmes by the indigenous woman.

Tool development

The **fourth part** of the workshop gave a brief **overview of the current state in tool development**, and an introduction to the new AP-A2J's website which will include the Network's tools by March 2004.

Next steps and regional programming

Finally, participants reflected on the **next steps for the AP-A2J Network and on issues for regional programming**. Workshop participants discussed immediate goals for the Network after the finalisation of tools, provided inputs to make future regional programmes more relevant to Country Offices, and suggested substantive areas for regional programming that could address transboundary justice issues, or strengthen national initiatives on access to justice - such as gathering best practices on police and prison reform, continuing research on disadvantaged people's perspectives on justice, analyse traditional justice systems in the region, etc⁶.

⁶ For an overview of AP-A2J's inputs to regional programming see report "Linking the AP-A2J process to regional programming: Added Value", December 2003, available through the AP-A2J Network (ap-a2j@groups.undp.org)

3. PEOPLE-CENTRED ACCESS TO JUSTICE

Seeking to understand perspectives from disadvantaged people

One of the most important values of a rights-based approach to development is that it brings disadvantaged people's perspectives on justice as *legitimate* (because it is *their right*). A capacity development perspective also takes people's strengths and solutions as an starting point. This has led the Network to try to develop knowledge and tools to capture disadvantaged people's views on justice.

In setting strategies to strengthen access to justice, a critical question is how disadvantaged people perceive justice, what obstacles they face and how they handle them. The AP-A2J Network supported a participatory research on these issues in India. Preliminary results point at important inconsistencies between common assumptions of "rule of law" approaches, and the realities experienced by disadvantaged people (See **Box1**).

Box 1: Why disadvantaged people cannot seek remedies through the justice system?

The Society for Participatory Research in Asia (PRIA) conducted a study for the AP-A2J initiative among various disadvantaged groups in India - indigenous minorities, women, pavement dwellers, Dalits, people living with HIV/AIDs, and people with disabilities⁷. The study was conducted between October and December 2003 with HURIST support. Preliminary results show that for disadvantaged people "justice is more felt than understood". **Justice is experienced as a feeling, not as a concept.** Disadvantaged people's perceptions on justice are strongly related to perceived obstacles in their way out of poverty. Thus different groups prioritise social justice (e.g. Dalits), political justice (indigenous minorities), or economic justice (pavement dwellers).

The study looked at what obstacles people find when seeking remedies to those grievances through justice systems. A glimpse of disadvantaged people's perceptions reveals some important issues for justice reform:

- There is a substantial difference between what law establishes and what happens *de facto*. Similarly, disadvantaged people often have grievances (e.g. forced eviction, rape, torture) that are not reflected by the legal system.
- Formal justice systems have generally not reached out to most disadvantaged people, who are generally not able to access those systems.
- Although formal legal spaces to access justice may exist, these are usually not utilised by disadvantaged people partly because of lack of knowledge, alienation and distrust. Formal systems are considered as dilatory, expensive and unresponsive. Disadvantaged people often feel more comfortable staying away from them, particularly from the police.
- Informal or traditional systems may also be discriminatory to disadvantaged people, and interfaces with formal systems where they exist are too often weak.
- Even when people have used their own strategies to overcome obstacles to access justice, there is generally a lack of recognition of their initiatives. This ranges from deliberate non-recognition to mere apathy. People's own solutions include collective organization, social integration, strengthening of collective institutions, and economic emancipation, among others.

Access to justice programmes should build on people's capacities, while developing other necessary capacities (e.g. legal awareness) that may be lacking. Despite the study was too limited in scope to extract definitive conclusions, preliminary findings support the idea that reaching out to disadvantaged people's perspectives is necessary to obtain an adequate picture of access to justice capacity needs. Further research at larger scale is a critical challenge for practice development.

⁷. The report is available through ap-a2j@groups.undp.org

The Access to Justice model

The workshop examined the access to justice model that the Community of Practitioners' has developed over the past year. It was again stated that **access to justice** is necessary for 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 (see case example). These capacities are necessary for poverty eradication and the achievement of the MDGs.

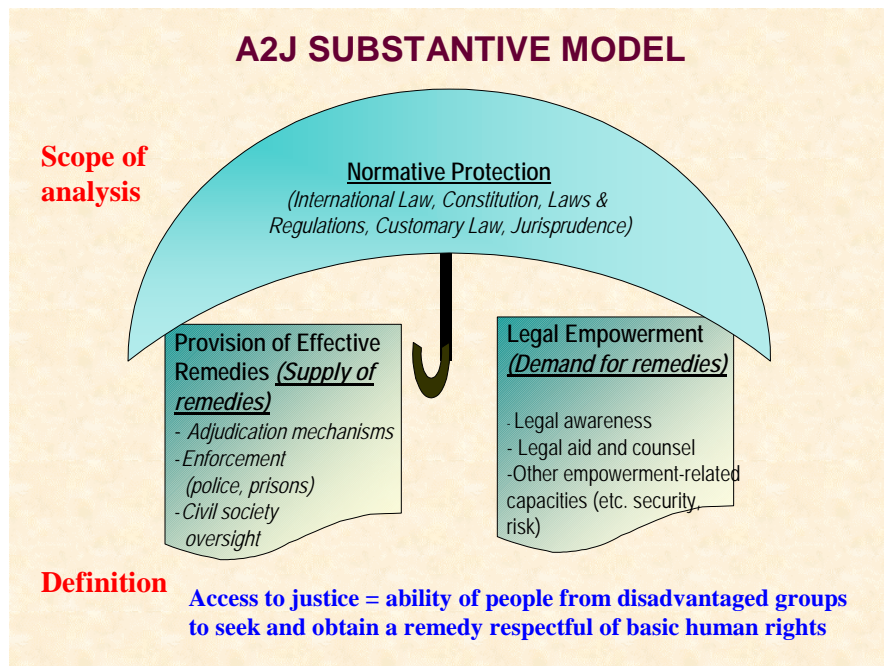
Case example: Lack of access to justice causes poverty, and poverty is an obstacle to access justice

A landowner sells a piece of land to a poor person, who uses his life savings to buy the land. It turns out that the transaction was fraudulent - the same plot of land has already been sold to another person, so the buyer cannot acquire a valid land title. If the buyer has access to a remedy (through formal or informal adjudication), he can at least get the money back. If not, he will be impoverished for the rest of his life. And the seller lives in impunity.

Workshop discussions recognized that in many contexts, justice exists for those who can afford it. Many poor and disadvantaged people have no access to remedies when they suffer grievances (e.g. fraud, theft of cattle, illegal arrest), and many of them live in situations of permanent "illegality" (e.g. informal labour), which cause their reluctance to use justice systems. This contributes to their further alienation and marginalization. Laws are not necessarily neutral, they can be biased against the poor and disadvantaged. Legal reform encounters resistance by those whose power and privileges are protected by the legal system. However, transforming this process is critical for reducing poverty and violent conflict, and the overall achievement of the Millennium Development Goals (MDGs).

The access to justice model emerging from the AP-A2J Network (Figure 2) delineates a series of **capacities (individual, collective and institutional)** that are needed **to enhance poor and disadvantaged people's access to remedies**. Access to remedies for grievances forms the scope of the "access to justice" sub-practice, as different from other governance sub-practices, and from justice as equivalent to the cross-cutting principle of *equity* in human development.

Figure 2: Access to Justice substantive model



The model defines **access to justice** as “*the ability of people from disadvantaged groups to seek and obtain a remedy, through formal and informal justice systems, and in conformity with human rights principles and standards*”. This definition has three major characteristics:

- (a) It is clear in its relationship between means and ends, putting *disadvantaged people and the grievances they suffer at the centre of development efforts*, in line with the concept of human development
- (b) It focuses on *people’s abilities to access remedies*, which *require individual, collective and institutional capacities* to be realised,
- (c) It takes into account *both formal and informal mechanisms* to access justice remedies, including traditional justice systems, and
- (d) It specifies a minimum *quality of justice* that development activities pursue – one in conformity with basic human rights standards.

The access to justice model consists of three **major areas (Figure 2)**:

- (1) **Normative protection**, as the overarching framework in which remedies are formally or informally recognized as legitimate to disadvantaged people,
- (2) the **capacity of people to demand such remedies** (seek justice) through legal empowerment, including legal awareness, legal aid and other capacities, and
- (3) the **capacity of institutions to supply justice remedies**, including formal and informal adjudication mechanisms, enforcement systems and civil society oversight.

The AP-A2J Network has identified **priority disadvantaged groups** in the region to focus practice development: *urban and rural poor, ethnic and indigenous minorities, women, migrants and internally displaced persons, persons living with HIV/AIDs, and persons with*

physical/mental impairment. Children and minors are not dealt with to avoid unnecessary overlapping with UNICEF's important activities in the field of juvenile justice.

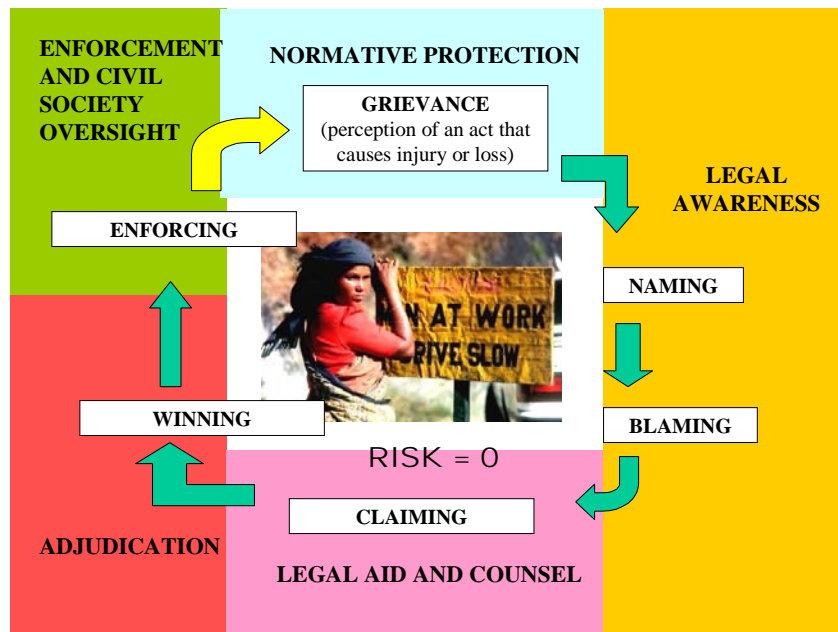
The AP-A2J access to justice conceptual model has **operational purposes**. It was initially outlined at the April 2003 "Visioning Workshop", and it is being continuously developed and refined through the work of the AP-A2J's Network. The following sections describe how it is applied in the analysis and assessment of justice problems and in the identification of capacity development strategies. The framework also serves to systematize the collection and codification of information, facilitating the generation of further knowledge.

Developing capacities to enhance access justice

Lack of access to justice accentuates poverty; access to justice may be an effective means to eradicate it. While recognizing there are multiple factors preventing access to justice by disadvantaged people, **UNDP's approach focuses on developing capacities at different levels, and takes other factors into consideration in the analysis of feasibility and risks.**

Workshop discussions highlighted that **the process of seeking and obtaining a remedy requires capacities at multiple levels** (individual, collective and institutional), as shown by **Figure 3**⁸. This figure reflects critical capacities that people need to perform certain actions in a situation of "zero risk" – that is, one in which they face no risks of significant economic, physical or emotional injury when seeking justice.

Figure 3: Process of justice and corresponding capacities in the absence of risks



⁸ This model builds on Michael Anderson's categorization of the stages by which grievances become court cases, but goes further by taking into consideration the need for adequate normative protection and the inclusion of risks factors. See Anderson, Michael M. (2003) "Access to Justice and Legal Process: Making legal institutions responsive to poor people in LDCs", IDS Working Paper n. 178, page 17.

In a situation of no significant risks, the first capacity disadvantaged people need is **normative protection** – that is, a legal or customary basis that *recognizes* particular grievances as being within the scope of justice systems (thus giving entitlement to remedies). Disadvantaged people also need **legal awareness**, so that they know it is indeed possible to seek redress through the justice system (naming), and who to demand it from (blaming). Initiating justice procedures (claiming) often requires **legal aid and counsel**, especially in criminal matters and complex judicial processes. Capacities for **adjudication** and **enforcement** are further needed to have specific remedies determined and enforced. **Civil society oversight** can play a critical role in strengthening institutional accountability for the provision of remedies. The final stage of the justice process is the enforcement of orders, decisions and settlements emerging from formal or traditional adjudication. As such, the functioning of enforcement mechanisms is key to access to justice and a precondition for the elimination of impunity. All these basic capacities are structured into three major areas within the access to justice sub-practice (see Figure 2).

UNDP's programming in the sub-practice has traditionally focused on formal adjudication aspects, but traditional systems seem to be equally important to improve access to justice for the disadvantaged. Workshop discussions highlighted that in many countries in the region customary norms and traditional justice systems (e.g. a Council of Chiefs) are generally more accessible to disadvantaged groups – physically, culturally, socially and economically. In some societies, traditional systems account for more than 90% of the total cases. Disadvantaged people often prefer this type of justice, which is largely conciliatory, as it helps to preserve social cohesion. On the other hand, traditional systems are not always consistent with basic human rights norms, e.g. in terms of access by specific groups (women), due process or punishments. Discussions at the workshop on this issue concluded that there seems to be a need to develop minimum standards for traditional systems, which could guide UNDP's support in this area. Strengthening linkages between formal and traditional systems (e.g. through appeal to and oversight of the judiciary) can enhance due process and reduce the likelihood of impunity.

Workshop discussions revealed that the access to justice sub-practice has important cross-practice implications, for two reasons: First, access to justice contributes to overall accountability and empowers disadvantaged groups, and therefore it can impact on other development activities at large. Secondly, risk factors play a fundamental role in seeking justice (e.g. a person may suffer threats if deciding to file a claim). This requires careful attention to risk analysis and management when implementing the access to justice model. But it also requires further strategies to protect people from economic uncertainty, social ostracism, or risks of physical injury or death, in the process of seeking justice remedies. These are too often major barriers for poor and disadvantaged people, due to the situations of high insecurity in which they usually live.

Cross-practice dimensions of access to justice therefore imply that:

- (a) **Effective access to justice programming can strongly benefit from development activities in other areas** – e.g. livelihoods or environmental protection. Such development activities can help to minimize the insecurity in which disadvantaged people live, thus facilitating their capacity to access justice.
- (b) In turn, research shows that **access to justice-related activities can strengthen the impact of other development programmes** – as they contribute to enhance overall programme accountability, (e.g. legal awareness activities of farmers in the context of land reform strategies).

In short, access justice programming may be mainstreamed within the context of other development activities without necessarily constituting stand-alone, comprehensive “access to justice” programmes⁹. This requires coordination within UNDP and with other UN agencies, such as UNICEF and OHCHR.

Justice for poverty eradication and the achievement of the MDGs: a paradigm shift

The AP-A2J’s vision on justice is the result of practitioners’ lessons and inputs coming from the analysis of UNDP’s experience in the region, through the application of a rights-based approach and a capacity development perspective. This vision is centred on people, particularly on those who are poorest and most disadvantaged, to achieve the goals of reducing poverty and violent conflict in the region, thus contributing towards the achievement of the Millennium Development Goals (MDGs). People-centred access to justice is founded on UNDP’s human development framework. The challenge for the Network is to transform that vision into practice, and the tools being developed contain lessons on strategic entry points for each of the sub-practice areas (e.g. on legal reform, strengthening of public defence systems, support to national human rights institutions, etc.)

The Network’s vision differs from traditional approaches to justice sector reform, which generally followed the “rule of law” model. The “rule of law” approach was a first attempt to address law and justice in the pursuit of “development” goals. Most goals of rule of law programmes were ultimately directed to improve economic growth. However, new development thinking is increasingly departing from the rule of law model for a number of reasons: (a) Lack of evidence on the nexus between the “rule of law” approach and poverty eradication¹⁰, (b) new evidence on the role of access to justice in the production and reproduction of poverty¹¹, and (c) insufficiency of “economic growth” alone to “trickle down” to most disadvantaged people. Indeed, even “rule of law” approaches are moving away from a rationale based on economic growth, towards conflict prevention and dispute resolution.

Table 1 presents a comparison between “traditional” and “new” approaches to justice in development.

⁹ Evidence shows development activities can strongly benefit from the inclusion of “legal empowerment” components. See Golub 2003

¹⁰ See particularly the “Rule of Law” series of the Carnegie Endowment for International Peace, and its papers F. Upham 2002, “Mythmaking in the rule of law orthodoxy” (2002), T. Carrothers 2003, “Promoting the Rule of Law abroad: the problem of knowledge”, S. Golub 2003, “Beyond Rule of Law Orthodoxy: the Legal Empowerment Alternative”.

¹¹ As highlighted by UNDP (Human Development Report Office) in its *Human Development Report 2002: Deepening Democracy in a Fragmented World* (2002) and the World Bank’s study “Voices of the Poor” (Narayan, D. and Petesch, P. (eds.), *Voices of the Poor: From Many Lands* (2000); Narayan, D., Chambers, R., Shah, M. and Petesch, P. (eds.) *Voices of the Poor: Crying Out for Change* (2002); and Patel, R., Schafft, K., Rademacher, A. and Koch-Schulte, S. (eds.), *Voices of the Poor: Can Anyone Hear Us?* (2002).

Table 1: Comparison between “Rule of Law” and “Access to Justice” models

Traditional Rule of Law Approach MARKET-CENTRED	Access to Justice PEOPLE-CENTRED
<ul style="list-style-type: none"> • Assumption: For the effective functioning of markets that leads to economic growth, the rule of law is necessary – it reduces political risks to investors and cuts down transaction costs, promoting businesses and investments and therefore alleviating poverty. • Focus on markets: Impact on poverty indirect (through economic efficiency) • Supports predominantly state institutions, particularly judiciary. Civil society support a means towards institutional development (consultation, advocacy) • Overemphasis on formal systems • Poor people's obstacles to access justice defined in terms of transaction costs, esp. affordability. • Laws are neutral. If the poor feel alienated by them, it is because the predominance of top-down approaches in law making. 	<ul style="list-style-type: none"> • Assumption: In a context of growing inequalities and power imbalances, Access to justice is necessary for people to protect themselves against abuses from those with more power, hold political leaders accountable, and resolve conflicts that are individual or collective without restoring to violence. • Focus on people: Impact on poverty and other MDGs direct – increases cost effectiveness in development activities. • Capacity development perspective – institutions are insufficient if people are not empowered to use them. Direct support to the disadvantaged and civil society necessary to develop people's capacities. • Formal and informal systems are both important. In many societies traditional and customary systems account for 98% of total cases, whereas 80% of development funding in the justice sector goes to formal systems¹². Greater access to justice sometimes requires “informalizing” formal systems, but also strengthening informal ones • Obstacles include structural and institutional obstacles, and others internal to disadvantaged groups. The most important obstacle to access justice is the insecurity in which disadvantaged people live – they may not be able to afford risks involved in seeking justice (of abuse, of loss of income, etc.) • Laws are a reflection of political and social processes, and can be biased against the poor and disadvantaged. This causes their reluctance to use the system. Legal reform encounters resistance by those whose power and privileges are protected by the legal system.

¹² See the background paper prepared by Sinclair Dinnen, professor at the Australian National University, on “Interfaces between formal and informal systems to strengthen access to justice by disadvantaged people” (available through the AP-A2J Network (ap-a2j@groups.undp.org) . Further, some research shows that formal systems may become a regressive tax on the poorest of the poor – who may be economically worse off after using them (see E. Buscaglia, “Justice and the Poor: Formal vs. Informal mechanism for dispute resolution: a Governance-based approach”, prepared for a World Bank's conference on “Empowerment, Security and Opportunity through Law and Justice”, July 2001).

<ul style="list-style-type: none"> • Tendency to export models (particularly from “free market” societies), and over reliance on foreign experts, who often draft developing countries’ legislation themselves. • Predominance of lawyers, and tendency to define the problems narrowly (in terms of courts, prosecutors, and other institutions in which lawyers play central roles) 	<ul style="list-style-type: none"> • “Imported” models are unlikely to work because institutions always operate in unique contexts (political, social, cultural, etc.) – the same laws/institutions may produce different results in different contexts. • Recognizes lawyers are sometimes part of the problem and not always part of the solution. Promotes the use of non-lawyers (e.g. paralegals) in access to justice efforts. Explores the use of non-formal mechanisms in obtaining justice.
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A rights-based approach to the development process

Guiding development programmes towards poor and disadvantaged people

Lack of access to justice is a defining attribute of poverty¹³, and an impediment to poverty eradication. The AP-A2J Network has used **a rights-based approach in defining the scope of the sub-practice** with four major objectives¹⁴:

- 1) To strategically *focus the problem on the immediate causes impeding access* (lack of safeguards to access or insufficient performance of them);
- 2) To define *who are those most affected* (the poor and other people who are disadvantaged) – claim holders,
- 3) To define *who is in the position to ensure performance* (institutions, groups and individuals) – duty bearers;
- 4) To focus capacity development analysis on the *capacities of both of them to address the problem*.

The workshop observed that a rights-based approach **brings the relationship between process and results to the forefront of development programmes**. Development is by definition a process itself. Thus strengthening disadvantaged people’s degree of control (empowerment) in that process, can be an important development result – and a critical one for poverty reduction and other MDGs..

While UNDP field officers perform a number of different functions relating to development, from policy advice, to advocacy and coordination, the most important part of their work is focused around development programmes. Thus the discussions on **applying rights-based parameters to the development “process”** that took place at the workshop were based **in the context of access to justice programming**.

Scope of RBA analysis

The CoP’s approach to justice programmes uses a rights-based perspective in **both substantive and process considerations**. Substantive implications have just been explained

¹³ As shown by studies such as the “Voices of the Poor” series, the poor perceive themselves as lacking access and they also consider lack of access to justice an obstacle to overcome their situation.

¹⁴ For an overview of how a rights-based approach was utilised in defining the substantive scope of the practice, see the AP-A2J CoP’s “Visioning Workshop Report” (April 2003), available through ap-a2j@groups.undp.org

in the previous sections. **RBA process considerations are oriented to (a) ensure programmes systematically focus on the process of development, so that they can achieve results, and (b) ensure the process empowers the disadvantaged.**

A rights-based approach aims to maximise the impact of process on results and on development effectiveness. Development effectiveness is measured by sustainable results on people's lives, such as the Millennium Development Goals (MDGs). But what actually gets done depends on *how* is done. Process considerations are critical for development results, as evidenced by the case studies coming from the AP-A2J Network (see Annex 3: Process lessons from UNDP's access to justice programmes). For this reason, the Network's tools contain lessons and recommendations on both substantive aspects (What to Programme), and process aspects (How to Programme).

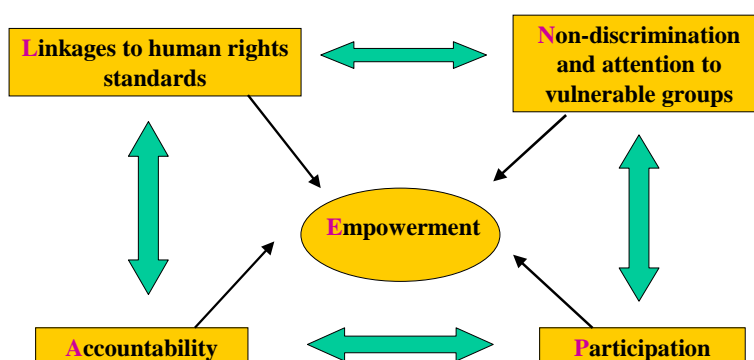
Applying RBA parameters

The AP-A2J Network applies a rights-based approach **to guide substantive and process changes in the direction of empowering disadvantaged people.** In programming terms, RBA implies the application of certain **parameters (see Figure 4)**. These can be grouped into five categories comprising the acronym "**PANEL**" – which stands for **Participation, Accountability, Non-discrimination, Empowerment and Linkages to Human Rights standards**. These principles merely attempt to operationalize the approach, and should not be viewed as "prescriptive".

Operationally, RBA parameters seek to:

- (a) Guide capacity development strategies to focus on disadvantaged people; and
- (b) Prevent negative impact of existing power inequalities on human development, e.g. through elite capture¹⁵. Operating within a framework that contains explicit guarantees against discrimination and is equally legitimate to all is critical for disadvantaged people, as they are generally voiceless in the development process, and too often "invisible".

Figure 4: RBA Principles in development programming



¹⁵ Elite capture is defined as the process by which elites skim development results intended for poor and disadvantaged people, or establish biased policies that protect their own interests. 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

Figure 4 reflects how RBA parameters are interrelated. **Human rights** bring cross-cutting principles of non-discrimination and accountability, as they define different grounds of discrimination, as well as specific duties and obligations. **Accountability** is further strengthened through participation, and **participation** itself brings accountabilities with it. A rights-based approach demands the participation of **disadvantaged people (non-discrimination)**. The ultimate objective of these parameters is **empowerment**.

RBA parameters are tools for programming. Although some of these parameters (such as participation and accountability) are also characteristic of “good programming”, a rights-based approach gives them additional dimensions. Workshop discussions highlighted a series of practical lessons and recommendations on each of them. Together with other results from the initiative’s research, these lessons will be incorporated into the final tools.

Annex 3 provides a generic overview of RBA parameters that formed the basis for discussions at the workshop¹⁶.

4. NEXT STEPS

The workshop included a session on next steps for the AP-A2J Network that was strongly linked to discussions on regional programming.

Regarding the future of the AP-A2J Network, the workshop discussed possible strategies for sustainability once the production of tools is finished and the present SURF facilitation support ends.

1. Using the **Network as Gateway of resources for country offices**, keeping knowledge updated through (a) constantly examining lessons from experience and sharing them, (b) analyse how the existing tools are utilized and how they are applied in each country office with a view to continuously enhancing such tools, and (c) continue with knowledge development on strategic issues, through targeted meetings and further outreach to other actors in UNDP, and to external partners.
2. The Asia-Pacific Rights and Justice Initiative is a contribution to the understanding of justice programmes from a people-centred perspective, and it demonstrates UNDP has good and relevant knowledge to support national development. Nevertheless, perceptions are sometimes sceptical of UNDP’s expertise in the justice sector. There is an urgent need for a **dissemination strategy to promote the recognition of access to justice in poverty eradication, and show UNDP’s comparative advantage** to support governments and other development actors in this area. The Network is updating a public website where the initiative’s tools will be made accessible by March 2004, but strategic dissemination to relevant stakeholders is necessary.
3. **Linking the AP-A2J Initiative’s process to regional programming.** The AP-A2J network can contribute to regional programming with important capacities and knowledge, and benefit from regional programmes through further capacity and knowledge development. A regional community of practitioners can strengthen the engine of regional programmes and therefore their relevance and impact at regional and country levels. Regional programming brings unique opportunities for sustaining the

¹⁶ See Annex 3 to this report: “RBA Parameters in the development process”.

results achieved by the Network, particularly on policy and tool development, and developing UNDP's organisational capacities. Regional programmes can be also effective means for the Network to be able to perform the tasks described in points 1) and 2) above.

5. WORKSHOP FEEDBACK

Participants were asked to provide immediate feedback on the workshop through a questionnaire. Workshop feedback showed a deeper understanding of the implications of the access to justice model in both substantive and process aspects as a major learning. The session on traditional justice systems was particularly highlighted as revealing by most participants, as well as the practical case on indigenous people around which process lessons were examined. Participants appreciated an operational approach to knowledge and critical perspectives on both substance and processes of justice programmes. This approach substantively enhanced their learning.

Overall, participants ranked the workshop as 8 (out of 10), in being able to achieve its stated objectives. Participants declared being strongly convinced (8 out of 10) that their participation at the workshop was likely to influence the results of their work. They also stated a high conviction (7 as an average) that such participation would further influence how they conducted their work. All participants were planning to use the network in order to transform their knowledge into action by exchanging information and perspectives on programme design, seeking and providing advice and networking. Some participants highlighted the community of practitioners as a "humanized" Network that can also serve as an additional programming tool.

6. LESSONS LEARNED

Lessons on the workshop

- The limitations of a workshop timeframe prevented many important issues for access to justice to be adequately examined in three days. Even the issues presented at the workshop were dealt with in generic terms, although they managed to fill some important knowledge gaps with lessons and recommendations, as they had been strategically set.
- Mix between internal and external people proved very beneficial for knowledge development. It gave the Network the opportunity to validate its own framework with external perspectives, and to obtain new insights on issues where UNDP's experience is lacking.
- The workshop tried to ensure an informal atmosphere throughout the discussions, and provided for adequate time outside the workshop sessions to strengthen personal contacts, on the premise that a community of practitioners is first about connecting people and then about collecting knowledge. This sometimes prevented adequate time-management during the workshop. However, these considerations are also integral to building an effective "community of practitioners"; that is, a network of people that largely functions electronically, but has a human face.

Lessons on practice development

- The specificity of country contexts implies that the nature of knowledge that can be *shared* is likely to be generic, but also substantial and useful. Knowledge development is a slow, continuous process. Setting strategic choices seeks to complete an increasingly clearer picture of extremely complex problems.
- Any practice scope needs to be clearly delimited so that programmes can be “targeted” and impact of development activities can be measured. This improves efficiency and accountability in UNDP’s action. Conceptual frameworks help to define practices’ scope, but also serve to systematize the collection and codification of information, contributing to the production and exchange of knowledge.
- A bottom-up approach can be critical to ensure that the knowledge produced is “shared” rather than simply “shelved”. When practitioners lead knowledge development and perform its major tasks themselves, it is likely to improve the relevance of resulting knowledge for the practitioners’ work. It is also likely to remain within the organisation. The impact of staff turnover can be minimized through knowledge codification. Furthermore, knowledge for development is of little value in the absence of capacities to apply it. A bottom-up approach not only develops relevant knowledge, but also (and simultaneously) the necessary organisational capacities to transform it into practice.
- The mix between internal and external knowledge is necessary for practice development. External knowledge should be approached strategically as UNDP’s needs are very specific and cannot be easily substituted by external lessons. UNDP’s knowledge demands are largely determined by (a) its relationship with government partners, and (b) its role as a UN organization. This implies that external knowledge needs should be set by those who are to use such knowledge (that is, practitioners), and knowledge development guided by them.

LIST OF ACRONYMS

AP-A2J Network:	Asia Pacific Rights and Justice Network
BCPR:	Bureau for Crisis Prevention and Recovery
BDP:	Bureau for Development Policy
CoP:	Community of Practitioners
HURIST:	Human Rights Strengthening (joint UNDP-OHCHR Programme)
OHCHR:	Office of the UN High Commissioner for Human Rights
RBAP:	Regional Bureau for Asia and the Pacific
UNICEF:	United Nations Children’s Fund
UNDP:	United Nations Development Programme