

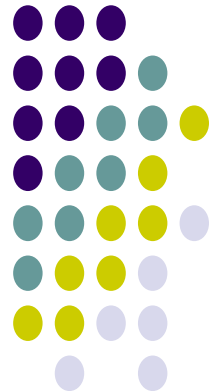
# Background Paper on Access to Justice Indicators in the Asia-Pacific Region



La Salle Institute of Governance

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## Executive Summary

This paper is an initial attempt to develop indicators that can be utilized for comparing access to justice in the Asia-Pacific region. These indicators were adopted and collated from an array of sources that include governmental, civil society, and international development organizations. The paper utilized the rights-based approach framework developed by the **UNDP Asia-Pacific Justice Initiative** as dimensions for the categorization of these indicators. These dimensions include:

- ❖ Existence of remedy
  - Normative protection by international and constitutional law
  - Normative protection by legal and regulatory framework
  - Normative protection by customary norms and jurisprudence
- ❖ Capacity to seek remedy
  - Capacity to seek remedy through legal awareness
  - Capacity to seek remedy through legal counsel
  - Capacity to seek remedy through access to formal and informal justice services
- ❖ Capacity to provide effective remedies
  - Capacity to provide an effective adjudication and due process
  - Capacity to provide effective remedy through enforcement

Furthermore, each of the indicators identified in the paper were described according to type and nature. The latter tells whether an indicator is *qualitative* or *quantitative*. The former entails a characterization of the type of indicators, based on the following scheme:

- Input – Indicators that measure the quantity/quality of resources provided for access to justice program activities
- Output – Indicators that measure the quantity/quality of outputs created through the use of inputs
- Outcome – Indicators that measure the quantity/quality of direct results achieved through outputs
- Impact – Indicators that measure the degree to which wider program goals are achieved through program outcomes.

The indicators were then assessed based on three perspectives: (a) *cost-effectiveness in data-gathering*; (b) *sustainability*, and; (c) *adequacy to assess access to justice by poor and disadvantaged group*.

In terms of cost-effectiveness, governmental agencies have the advantage given the amount of primary data it gathers everyday. These data are indeed useful in monitoring and evaluating the delivery of justice programs in the region. Civil society organizations, on the other hand, are also in a best position to gather primary information from the basic sectors, allowing them to ascertain the impact of access to justice by the poor and disadvantaged. Meanwhile, the baseline information generated through studies funded and proposed by international development organizations yield enough information in assessing both the delivery and access to justice in the region.

In terms of sustainability, the paper finds that various considerations of the different players affect the use of indicators in measuring access to justice initiatives in the region. The priority and availability of resources by government agencies affect the sustainability of legal and judicial reform programs in the region. On the other hand, civil society organizations are bound to be dependent on the assistance provided by various sources, particularly those of development agencies. Consequently, the donor-fatigue syndrome experienced by international development organizations affects the sustainability of baseline studies as regards justice and justice-related programs in the region.

Finally, in terms of adequacy, the orientation of institutional and non-institutional players affects the use and development of indicators. Those indicators used by government agencies are largely institutional and are used primarily in the evaluation of and planning for legal development and reform initiatives. The information obtained by civil society organizations are largely used for lobbying and advocacy. Meanwhile, baseline studies created by international development agencies are sufficient sources of information in developing judicial and legal institutions as well as in championing access to justice in the region.

Based on this assessment, several issues were identified in the study, namely: (a) cultural context of the provision of judicial services; (b) complex human and institutional process in the provision of justice, and (c) incremental (slow) process of developing access to justice indicators. Nonetheless, the paper was able to generate various recommendations to address the issues cited. These recommendations are as follows:

- The need to further identify access to justice areas and categories that can be subjected to quantitative and qualitative treatment with the rights-based approach.
- The use of participatory processes in assessing access to justice.
- Pre-testing parameters and benchmarks identified in the participatory processes employed in assessing access to justice in the region.
- Creation of a manual on access to justice indicators employed by numerous players in the Asia-Pacific region.

## **Background Paper on Access to Justice Indicators in the Asia-Pacific Region**

Julio C. Teehankee PhD\*  
Senior Fellow  
La Salle Institute of Governance

The lack of access to justice and a low degree of social welfare inhibit the capacity of individuals to combat poverty and underdevelopment. While institutional mechanisms that render justice, as a social good may be present, accessing justice beyond its legal character may not always be in place. In this regard, a myriad of institutions and organizations have endeavored to assess the degree and quality of access to justice in developing and underdeveloped societies. Their efforts include the assessment of access to justice with the use of clear-cut indicators as tools for evaluation.

This **Background Paper on Access to Justice Indicators in the Asia-Pacific Region** is an effort by the La Salle Institute of Governance (LSIG), with the support of the United Nations Development Programme (UNDP), to enhance contemporary approaches to justice, poverty alleviation and social development through good governance. This paper reviews the indicators used to measure impacts and processes of access to justice and justice-related programs across the Asia-Pacific region and their limitations to assess improvements on access to justice by poor and disadvantaged groups.

To this end the paper addresses the question: *how is access to justice evaluated by government agencies, civil society organizations, and development agencies in the Asia-Pacific Region?* In addition, the paper seeks to answer the following corollary questions:

- (a) What indicators do these institutions and organizations utilize?
- (b) What are the points of convergence and divergence of these indicators?
- (c) What are the strengths and weaknesses of these indicators?
- (d) What recommendations can be drawn from a comparative evaluation of these indicators?

Consequently, this paper aims to address several objectives, namely:

- (a) To identify the various indicators of access to justice in the Asia-Pacific region, and;
- (b) To categorize and compare these indicators amongst the various players/providers of justice provision and distribution.

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\* The author deeply acknowledges the invaluable assistance of V. Jose P. Roxas in the conduct and preparation of this research.

This paper relies primarily on the existing literature of indicators and measurements of access to justice in Asia and the Pacific. Hence, this paper shall employ secondary research methods and documentary analysis in data-gathering activities.

### **Access to Justice and the Asia-Pacific Region**

Through the years, access to justice advocacy has resonated in several parts of the world. The advocacy has been successful in raising the demands of substantive justice into deliberations that revolve around the legal system. Access to justice advocacy has covered a wide range of issues. Parker (1999) enumerates the issues to include the following:

- Accessibility of court processes for resolving disputes over mutual rights and responsibilities;
- Availability of adequate legal representation in criminal trials;
- Access to more informal legal processes such as small claims courts and administrative tribunals;
- Availability of legal advice;
- Public legal education

A broad reform movement that shares a common interest in making their national legal systems more accessible has adopted access to justice advocacy. In their view, existing legal processes do not necessarily lead to outcomes that are individually or socially just. Advocates of access to justice have struggled for substantive reforms of law and legal procedures to guarantee that the interests of the poor, minorities and diffuse public interests are articulated and recognized. In addition, the access to justice movement has diligently worked to promote alternative dispute resolution methods to avert legal processes altogether. The worldwide access to justice movement has grown into a collection of multinational, reform-oriented associations of legal workers, government reformers, and law and society scholars (Parker, 1999).

Diversity best characterizes the Asia-Pacific region. The diversity of the region elicits not only differences in cultural and political institutional arrangements but also in the incidence of development and poverty. Thus, there is an imperative to draw similarities in the strengths and weaknesses, the gains and challenges that permeate the region as regards the indicators of access to justice.

### **Rights-based Approach to Access to Justice**

Access to justice advocates has underscored the need to make legal and quasi-legal justice institutions accessible to all. From this perspective, legal institutions are fundamental to the practice of justice. Thus, some access to justice advocates have often *“concentrated on the citizen’s use of institutions of*

*law as deliberative fora in which private and public dominations can be contested and debated.*” (Parker, 1999, p. 47) This institutional view of access to justice is premised on legal justice, which in turn, is “concerned with the way in which law distributes penalties for wrongdoing, or allocates compensation in the case of injury or damage.” (Heywood, 1999, p. 176) Hence, legal justice necessitates the creation and enforcement of a public set of rules – the law. From an institutional view, law is oftentimes defined as “the administration of justice.” (Pollock, 1998)

However, law should not be equated with justice, since laws may be just or unjust, as well as the court system through which they are administered. The ends of law and justice may be different, oftentimes contradictory. There are also critical limitations on the role that law can play in realizing justice (Heywood, 2000; Parker, 1999; Pollock, 1998). These limitations of the institutional perspective have resulted in the emergence of an alternative rights-based access to justice.

Access to justice, from a rights-based perspective, refers to “*the ability of people from disadvantaged groups to prevent and overcome human poverty by seeking and obtaining a remedy, through formal and informal justice systems, for grievances in accordance with human rights principles and standards.*” (UNDP, 2002, p. 8) This perception goes beyond the administrative character of justice, i.e. justice as a social good. It delves on the capacity of the poor and marginalized to address their grievances by obtaining effective remedies through the existing modes of justice systems. Justice here, therefore, is taken from the “access” perspective and not solely from the “distribution” perspective.

Using the rights-based approach to justice therefore requires an assessment of both claimholder and duty-bearer on three particular aspects, namely: *capacity, accountability* and *empowerment*. Capacity refers to the ability of both stakeholders to solve problems, perform functions and set and achieve objectives. Consequently, capacity development requires both the accountability and empowerment of both stakeholders. Claimholders need to strengthen their capacities to become accountable in the exercise of rights; duty-bearers often need to be empowered to be able to fulfill their obligations more effectively.

### **Assessing Access to Justice Indicators**

In assessing indicators of access to justice, two perspectives are deemed to be significant: those of the claimholders and the duty-bearers. Both stakeholders ultimately affect the level of access to justice. Furthermore, a rights-based approach to justice is also used in the assessment of access to justice indicators. Wanting levels of access to justice is a definitive aspect of poverty. Depriving citizens of access to information and awareness of mechanisms to provide remedies their grievances inhibit their capacities to develop, relegating them in a state of destitution. The lack of access to justice, therefore, serves as a

major impediment to poverty eradication. Hence, there is a need to explicate the synergies between access to justice, poverty reduction and human development from a rights-based perspective.

Indicators are important as markers for evaluating results. It is primarily an instrument for determining how a project or program is proceeding. As a yardstick for measurement, it provides for monitoring desired levels of performance (e.g. success or failure) on a regular and sustainable basis. Indicators serve to identify problems, resolve and learn from them. In this regard, indicators monitor change on an ongoing basis (Kapoor, 1996). Indicators can set targets, projecting results based on specific objectives that are defined by a project document. They can also be utilized to ascertain the situation of an ongoing project or program (Sudarshan, 2003). Table 1 shows the various types of indicators that address different aspects of evaluation.

**Table 1**  
**Types of Indicators**

Indicators	Focus
Input	<ul style="list-style-type: none"> <li>○ Measures the quantity/quality of resources provided for access to justice program activities</li> </ul>
Output	<ul style="list-style-type: none"> <li>○ Measures the quantity/quality of outputs created through the use of inputs</li> </ul>
Outcome	<ul style="list-style-type: none"> <li>○ Measures the quantity/quality of direct results achieved through outputs</li> </ul>
Impact	<ul style="list-style-type: none"> <li>○ Measures the degree to which wider program goals are achieved through program outcomes</li> </ul>

Source: Adapted from Kapoor, 1996, p. 5.

The provision of justice to citizens is an integral aspect of institutionalizing good governance, human rights and political development. Nonetheless, measuring justice performance may initially prove to be a difficult undertaking (Sudarshan, 2003). Despite the burgeoning literature on socio-economic indicators, the development of performance indicators for human rights and democratic development, in general, and access to justice, in particular, are at an incipient stage. This is drawn out of the essentially qualitative nature of human rights; democratic development and justice provision that “has tended to make analysts shy away from attempts to measure or quantify it.” (Kapoor, 1996, p. 1) *This study asserts that qualitative and quantitative measurements are far from being incompatible, and are in fact complementary in assessing access to justice.*

## ACCESS TO JUSTICE INDICATORS IN ASIA AND THE PACIFIC

Various institutional players employ some form of indicators to assess the level of access to justice in the Asia-Pacific region. They include *governmental agencies*, *civil society organizations* and *international development agencies*. Aside from presenting the indicators used by these players, the following discussion will include the nature of these organizations as it has some bearing on their measurement of access to justice.

### Governmental Agencies

Governmental agencies employ indicators that help augment adjudication practices as well as access to due process by poor and disadvantaged groups. Law enforcement, i.e. police and prison systems, is also another aspect that is crucial in enhancing justice delivery. These measurements of access to justice by governmental agencies are crucial since government functions as a purveyor of formal justice systems.

Both formal and informal institutional interrelated mechanisms serve to translate social preferences into public policies. Formal mechanisms revolve around the legal system as the “arena in which people can hold political leaders and public officials to account, protect themselves from exploitation by those with more power, and resolve conflicts that are individual or collective (Anderson, 2002, p.1).” On the other hand, improving the effectiveness of dispute resolution mechanisms is a means by which social policies can be addressed through public policies within the judicial domain (Buscaglia, 2001). Beyond institutional effectiveness, access to justice is integral not only in upholding constitutionally guaranteed rights, but also in addressing the broader goal of development and poverty reduction (Anderson, 2003). Hence, there is a marked distinction between “delivery of justice mechanisms” and “access to justice mechanisms.” The former refers to the institutional and administrative character of justice, while the latter pertains to the modalities by which the poor and marginalized can obtain effective remedies within the justice system.

While most societies in the Asia-Pacific have institutionalized delivery of justice mechanisms in their judicial and legal systems, access to justice mechanisms have been unevenly distributed in the region. Apparently, access to justice has not featured prominently in the good governance agenda of some countries (Anderson, 2003). In other instances, most access to justice initiatives is subsumed under an integrated approach towards justice reform (UNDP, 2003).

The UNDP is most active in supporting and monitoring access to justice initiatives in the Asia-Pacific region. However, even majority of the UNDP’s activities tend to concentrate on the institutional and formal levels (See Figure 1). There is significant support for legal awareness, but there is a weaker

involvement in the areas of customary norms, informal and traditional systems, enforcement and civil society oversight (UNDP, 2003).

**Figure 1**  
**Scope of UNDP Access to Justice Initiatives in Asia and the Pacific**

NORMATIVE PROTECTION OF RIGHTS	LEGAL EMPOWERMENT	CAPACITY TO PROVIDE EFFECTIVE REMEDIES																																	
<p style="text-align: center;"><b>By International and Constitutional Law</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">FIJI</td> <td style="width: 50%;">SRI LANKA</td> </tr> <tr> <td>INDONESIA</td> <td>CHINA</td> </tr> <tr> <td>NEPAL</td> <td>MONGOLIA</td> </tr> <tr> <td>IRAN</td> <td>PRAJA</td> </tr> </table>	FIJI	SRI LANKA	INDONESIA	CHINA	NEPAL	MONGOLIA	IRAN	PRAJA	<p style="text-align: center;"><b>Legal awareness</b></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">BANGLADESH</td> <td style="width: 50%;">FIJI</td> </tr> <tr> <td>NEPAL</td> <td>IRAN</td> </tr> <tr> <td>PHILIPPINES</td> <td>INDIA</td> </tr> <tr> <td>MONGOLIA</td> <td>PRAJA</td> </tr> <tr> <td>INDONESIA</td> <td>YEMEN</td> </tr> </table>	BANGLADESH	FIJI	NEPAL	IRAN	PHILIPPINES	INDIA	MONGOLIA	PRAJA	INDONESIA	YEMEN	<p style="text-align: center;"><b>Accessible adjudication</b></p> <p style="text-align: center;"><u>Judicial System</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">CAMBODIA</td> <td style="width: 33%;">NEPAL</td> <td style="width: 33%;">FIJI</td> </tr> <tr> <td>IRAN</td> <td>INDONESIA</td> <td>PRAJA</td> </tr> <tr> <td>YEMEN</td> <td>PHILIPPINES</td> <td></td> </tr> </table> <p style="text-align: center;"><u>Quasi-judicial bodies</u></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">NEPAL</td> <td style="width: 33%;">INDONESIA</td> <td style="width: 33%;">BANGLADESH</td> </tr> <tr> <td>MONGOLIA</td> <td>SRI LANKA</td> <td>PHILIPPINES</td> </tr> </table> <p style="text-align: center;"><u>Indigenous/ traditional systems</u></p> <p style="text-align: center;">INDIA</p>	CAMBODIA	NEPAL	FIJI	IRAN	INDONESIA	PRAJA	YEMEN	PHILIPPINES		NEPAL	INDONESIA	BANGLADESH	MONGOLIA	SRI LANKA	PHILIPPINES
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Source: UNDP, 2003, p. 10.

### Civil Society Organizations

The indicators employed by civil society organizations are critical for effective accountability, prevention of impunity and abuse of power by governmental agencies. Acting as watchdogs, civil society organizations enhances the accountability of duty-bearers at the same enhancing the participation of claimholders in formulating, implementing and enforcing laws and policies. Civil society organizations generate informal and alternative systems of justice. They also foment alternative means of access to justice.

Civil Society Organizations, in the form of non-governmental organizations, people’s organization, trade unions, professional associations, and other associations, have been in the forefront of the advocacy for access to justice in the region. Their initiatives are oftentimes related with the broader reform agenda of good governance, democratization and human rights. Indeed, the good

governance agenda links democracy and human rights with responsive judicial processes as interlocking and mutually supporting phenomena. Substantive democracy includes some of the main prerequisites (separation of powers, judicial independence and effective access to justice) for the poor and marginalized to use judicial processes for protection and redress (Anderson, 2003).

In most cases, the incorporation of human rights concepts into law has increased the responsiveness of judicial system and enhanced the ability of litigants and courts to restrain abuses by public officials and political leaders. It is insufficient, however, for human rights to be bestowed “from above” by the state. *It is essential that human rights should be claimed “from below” by active individuals and civil society organizations.* Human rights discourse can be a very potent tool for political mobilization. The language of rights clearly crystallizes popular understanding, mobilizes political movements and brings forth a “rights revolution.” Rights revolution “refers to patterns of governance in which constitutional or human rights become an important vehicle for political struggle on the part of groups seeking more egalitarian outcomes (Anderson, 2003, p. 22).”

Compared to democratic development and access to justice, the development of performance indicators for human rights is far more advanced. The literature, however, is mostly restricted to monitoring national trends and human rights treaty violations, instead of monitoring project/program performance. Nonetheless, initial efforts to incorporate a rights-based approach with access to justice initiatives have been undertaken by several organizations.

The **UNDP Asia-Pacific Rights and Justice Initiative** reconfigures its definition of justice from the perspective of respect for fundamental human rights guarantee. It identifies human rights problems as immediate causes preventing access to justice by the poor and marginalized sectors of society. These problems include the “lack of normative protection guaranteeing the existence of a remedy for grievances, as well as the incapacity to seek such remedies even where they formally exist, or the incapacity to provide them when sought (UNDP, 2003, p. 7).”

Similarly, the **Asian Development Bank Law and Policy Reform** (ADB LPR) program has expanded its scope from the originally strong focus on training and retraining of legal professionals to support for legal and judicial reform in Asia using the concept of legal empowerment. The 2001 ADB LPR Report entitled “*Legal Empowerment: Advancing Good Governance and Poverty Reduction*” asserts “legal empowerment flourishes in a vibrant civil society environment (ADB LPR, 2001, p. 86).” The report also considers the length of time that development-oriented civil society groups have been allowed freely to address citizen rights and responsibilities as an important variable for

determining the effectiveness of civil society intervention on behalf of legal empowerment.

### **International Development Agencies**

In spheres of development cooperation, international development agencies are increasingly utilizing indicators of access to justice mainly to ascertain the link between justice and development. These agencies relate access to justice as an important factor to realize improvements in the quality of life of individuals. However, there are also differences as regards the practice of justice in relation to the pursuit of development. The World Bank (WB) and the United Nations Development Programme (UNDP), and the Asian Development Bank (ADB), three of the more prominent international development organizations, view the relationship between justice and development quite differently. The nature of these organizations affects their take on justice and its impact on development.

The World Bank sees justice and the access to a functioning justice sector as important factors in catalyzing economic growth. Much of the Bank's programs often cater to commercial and civil matters, indicating that its tendencies are geared more towards the institutional approach to justice. For instance, the Bank's on-line database<sup>1</sup> on justice and legal reform provides useful information on the institutional background of judicial systems of various countries around the world. Indeed, the main thrust of the Bank's justice and justice-related programs are directed to strengthening the capacities of legal and judicial institutions. If these institutions are able to absorb the demands of and render judicial services to their constituents, then improvements in the quality life can take place. Economic growth is therefore affected by a sound and functioning judicial system. In this regard, measuring access to justice is tantamount to measuring the capacity of institutions to render habitual judicial services as a means to spur economic growth.

On the other hand, UNDP views justice as closely related to poverty eradication. Poverty here is taken beyond mere insufficiencies in income, monetary or otherwise. Human poverty is brought about by inability to overcome an individual's state of destitution. Limitations in choices and access deter individuals to determine their path toward improvements in the quality of life. The lack of access to justice, therefore, is not only a defining feature of poverty, but is also an impediment to level-off power inequalities and prevent human poverty. UNDP takes a rights-based approach in order to address this problem. A rights-based approach involves the creation of an environment that is most conducive for any person to have enough choices and access to overcome poverty. The indicators of access to justice used in this perspective emphasize

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<sup>1</sup> This database on justice can be viewed by visiting their site: [www.worldbank.org/legal/database/Justice](http://www.worldbank.org/legal/database/Justice).

on the capacity of individuals to access justice and justice related-programs. Consequently, these indicators interpret justice as social (substantive) justice.

Meanwhile, ADB believes that the existence of a legal environment conducive to development is essential for all developing countries. Thus, the activities and programs that it implements in the field of legal and judicial reform promote the rule of law through a pro-poor legal and institutional framework for economic development. Legal reform as part of the development process means a great deal more than simply the drafting of laws that are accessible, comprehensible and usable. The legal system cannot operate without institutions that make these rules realized through effective and dynamic interpretation and enforcement. Similar to the previous two development agencies, ADB also makes a different interpretation as regards the link between justice and development. In order to establish the relationship between justice and development, there must be an adequate level of legal empowerment. Legal empowerment is defined both a process and a goal.<sup>2</sup> As a process, legal empowerment involves the use of law to increase disadvantaged population's control over their lives through a combination of both education and action. As a goal, legal empowerment refers to the actual achievement by the disadvantaged of increased control of their lives through the use of law. The difference between these two lies in the actual control of disadvantaged groups and peoples using the law. Legal empowerment therefore serves as an indicator of access to justice. Furthermore, legal empowerment acts as a link to realize the synergy between governance, justice and poverty eradication.

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<sup>2</sup> This definition of the legal empowerment was adapted from the definition of ADB. For a complete discussion, see ADB, 2001, p. 7.

## MAJOR SUB-AREAS OF ACCESS TO JUSTICE

The following provides an initial list of indicators that can be utilized for comparing access to justice in the Asia-Pacific region. They are culled and adopted from an array of sources that include governmental, civil society, and international development organizations. The indicators are by no means exhaustive, but can serve as an initial attempt to formulate a comprehensive tool for monitoring and evaluating access to justice initiatives.

The paper adopts the major sub-areas of access to justice identified by the **UNDP Asia-Pacific Rights and Justice Initiative** as dimensions for comparison.<sup>3</sup> Each dimension is further divided into major categories and subcategories that need to be monitored and evaluated. These areas are:

### 1) *Existence of remedy*

- Normative protection by international and constitutional law
- Normative protection by legal and regulatory framework
- Normative protection by customary norms and jurisprudence

### 2) *Capacity to seek remedy*

- Capacity to seek remedy through legal awareness
- Capacity to seek remedy through legal counsel
- Capacity to seek remedy through access to formal and informal justices services

### 3) *Capacity to provide effective remedies*

- Capacity to provide an effective adjudication and due process
- Capacity to provide effective remedy through enforcement

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<sup>3</sup> See **Asia-Pacific Rights and Justice Initiative**, pp.10-13 for a discussion of the major sub-areas of access to justice.

In order to set the scope of the indicators that will be applied, parameters are given in the form of evaluative questions. The questions are not intended to serve as mere illustrations of the meaning of the evaluation criterion; rather they address different constituent aspects of the over-all evaluation.

Benchmarks are also provided to identify specific data that needs to be identified, measured and compared.

The categories and subcategories are further elaborated by a series of tables that highlight the specific indicators to be utilized. The evaluative questions are explained by identifying the specific indicators that fall under each category. These indicators are further classified as follows:

*Type of Indicator*

- Input – measures the quantity/quality of resources provided for access to justice program activities.
- Output – measures the quantity/quality of outputs through the use of inputs.
- Outcome – measures the quantity/quality of direct results achieved through outputs.
- Impact – measures the degree to which wider program goals are achieved through proper outcomes.

*Nature of Indicator*

- Qualitative – aims at capturing people’s socio-economic and political beliefs, opinions, perceptions, and narratives.
- Quantitative – measures change by way of numerical or statistical facts or physical outputs.

Possible sources of data for monitoring and evaluation are also identified.

### **Existence of Remedy**

Normative protection pertains to the existence of remedies that address the justice demands and needs by claimholders as manifested through international or constitutional laws, legal regulatory frameworks and customary norms. Although these remedies may always be present, the capacity of claimholders to gain access to these remedies is something that needs to be ascertained. This area also includes a discussion of the differences between formal and informal means of delivery of and access to justice. One key issue that would mostly likely arise in this area would be that of discrimination (alienation) as reflected by the inability of marginalized groups to gain protection from formal justice systems.

<b>Dimensions</b>	<b>Categories</b>	<b>Sub-categories</b>	<b>Parameters</b>	<b>Benchmarks</b>
<b>Existence of Remedy</b>	<i>Normative Protection</i>	By International and Constitutional Law	<ul style="list-style-type: none"> <li>○ <i>Are human rights and civil liberties explicitly identified and guaranteed in the constitution?</i></li> <li>○ <i>What international human rights instruments are adhered to?</i></li> <li>○ <i>What international and constitutional human rights instruments are followed?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Constitutional guarantee of human rights and civil liberties</li> <li>● Adherence to principles and standards embodied in international instruments on human rights</li> </ul>

		<p>By Legal and Regulatory Framework</p>	<ul style="list-style-type: none"> <li>○ <i>What are the basic features of the legal and judicial system? What organizations and institutions are included in the legal and judicial system?</i></li> <li>○ <i>How large is the justice sector bureaucracy?</i></li> <li>○ <i>How much is the justice sector budget?</i></li> <li>○ <i>How efficient is the court system?</i></li> <li>○ <i>How independent is the judiciary?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Structure and function of legal and judicial institutions</li> <li>● Efficiency and effectiveness of the court system</li> <li>● Extent to which the rule of law applies</li> </ul>
		<p>By Customary Norms and Jurisprudence</p>	<ul style="list-style-type: none"> <li>○ <i>Are there existing customary and traditional law and practices?</i></li> <li>○ <i>What is the relationship between formal law and traditional values? Do customary and traditional law and practices mitigate or impede the delivery of justice?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Existence of customary and traditional law and practices</li> <li>● Relationship between formal law and traditional values</li> </ul>
		<p>Capacity to access formal and informal justice services</p>	<ul style="list-style-type: none"> <li>○ <i>What factors prevent people from accessing the judicial system?</i></li> <li>○ <i>What costs are incurred in accessing the judicial system?</i></li> <li>○ <i>Are there legal mechanisms for alternative dispute resolution?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Accessibility of formal justices services</li> <li>● Cost of justice services</li> <li>● Existence of alternative dispute resolution mechanisms</li> </ul>

➤ **Normative Protection by International and Constitutional Law**

General Indicators	Explanation	Specific Indicators
<p>a) <i>Are human rights and civil liberties explicitly identified and guaranteed in the constitution?</i></p>	<p>Type of indicators: Input</p> <p>Nature of Indicators: Qualitative</p> <p>Possible sources of data: Constitutions</p> <p><b>Description:</b> Human rights and civil liberties guarantee the freedom of individuals. The existence of the fundamental rights and freedoms of human individuals in a Constitution ensures the capacity of every individual to have some control over their lives, notwithstanding the stifling effect of state power. This capacity allows individuals to strengthen their ability to seek choices and obtain remedies for their grievances. The existence of rights therefore recognizes an individual's capacity to obtain a sense of human development. Thus, in the pursuit of human development, an individual finds accord with justice.</p> <p><b>Reference:</b> Office of the High Commissioner on Human Rights (OHCHR)</p>	<ul style="list-style-type: none"> <li>❑ Right to life, liberty and the security of person</li> <li>❑ No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms</li> <li>❑ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</li> <li>❑ The right to recognition everywhere as a person before the law</li> <li>❑ The right to equal protection before the law</li> <li>❑ The right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law</li> <li>❑ No one shall be subjected to arbitrary arrest, detention or exile</li> <li>❑ Right to full equality to a fair, and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him</li> <li>❑ The right to be presumed innocent until proved guilty according to law in a public trial</li> <li>❑ No one shall be held guilty of any penal offence on account of any act or omission that does not constitute a penal offence, under national or international law; no heavier penalty shall be imposed than the one that was applicable at the time the penal offence was committed</li> <li>❑ The right to the protection of the law against arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation</li> <li>❑ The right to freedom of movement and residence within the borders of each state; the right to leave any country, including his own, and to return to his</li> </ul>

		<p>country</p> <ul style="list-style-type: none"> <li>❑ The right to seek in other countries asylum from persecution</li> <li>❑ The right to a nationality; No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality</li> <li>❑ The right to marry and to found a family for men and women of full age</li> <li>❑ The right to own property alone as well as in association with others</li> <li>❑ The right to freedom of thought, conscience and religion</li> <li>❑ The right to freedom of opinion and expression</li> <li>❑ The right to freedom of peaceful assembly and association</li> <li>❑ The right of universal suffrage and participation in government</li> <li>❑ The right to social security</li> <li>❑ The right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment</li> <li>❑ The right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay</li> <li>❑ The right to a standard of living adequate for the health and well-being</li> <li>❑ The right to education</li> <li>❑ The right freely to participate in the cultural life of the community</li> <li>❑ Everyone is entitled to a social and international order in which human rights and freedoms can be fully realized</li> <li>❑ Everyone has duties to the community in which alone the free and full development of his personality is possible</li> <li>❑ No State, group or person has the right to engage in any activity or to perform any act aimed at the</li> </ul>
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<p><b>b) What international human rights instruments are adhered to?</b></p>	<p><b>Type of indicators:</b> Input <b>Nature of indicators:</b> Qualitative <b>Possible Sources of Data:</b> <i>UNHCR, International human rights documents, treaties and agreements</i></p> <p><b>Description:</b> <i>The existence of international human rights instruments recognizes the pursuit of human development and justice by all peoples of the world, regardless of race, sex, gender, religion, culture, language and class. These instruments demonstrate that the international community embraces a set of standards in the pursuit human freedom, dignity and justice.</i></p> <p><i>Reference: Office of the High Commissioner for Human Rights (OHCHR)</i></p>	<p>destruction of any human rights and freedoms</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Charter of the United Nations</li> <li><input type="checkbox"/> International Bill of Human Rights</li> <li><input type="checkbox"/> Human Rights Defenders</li> <li><input type="checkbox"/> Proclamation of Tehran</li> <li><input type="checkbox"/> Right of Self-determination</li> <li><input type="checkbox"/> Prevention of discrimination</li> <li><input type="checkbox"/> Rights of Women</li> <li><input type="checkbox"/> Rights of the Child</li> <li><input type="checkbox"/> Slavery, servitude, forced labor and similar institutions and practices</li> <li><input type="checkbox"/> Human rights in the administration of justice</li> <li><input type="checkbox"/> Freedom of Information</li> <li><input type="checkbox"/> Freedom of Association</li> <li><input type="checkbox"/> Employment</li> <li><input type="checkbox"/> Marriage, Family and Youth</li> <li><input type="checkbox"/> Social, welfare, progress and development</li> <li><input type="checkbox"/> Right to enjoy culture, international cultural development and cooperation</li> <li><input type="checkbox"/> Nationality, statelessness, asylum and refugees</li> <li><input type="checkbox"/> War crimes and crimes against humanity, including genocide</li> <li><input type="checkbox"/> Humanitarian law</li> </ul>
<p><b>c) Are these international and constitutional human rights instruments realized?</b></p>	<p><b>Type:</b> Impact <b>Nature:</b> Qualitative/Quantitative</p> <p><b>Possible sources:</b> Surveys, government statistics</p> <p><b>Description:</b> Apart from mere existence, adherence to a set of internationally recognized human rights instruments is highly essential if a rights-based approach to justice were to be realized. Institutional support mechanisms to</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Parliamentary support of universal human rights</li> <li><input type="checkbox"/> Existence of functioning government human rights institutions</li> <li><input type="checkbox"/> Increased investigation/prosecution of human rights violations</li> </ul>

	<p>human rights as well as the investigation and prosecution of the violations of these rights should be therefore ensured.</p> <p>Reference: Kapoor (1996)</p>	
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➤ **Normative Protection by Legal and Regulatory Framework**

General Indicators	Explanation	Specific Indicators
<p><i>a) What are the basic features of the legal and judicial system? What organizations and institutions are included in the legal and judicial system?</i></p>	<p>Type of indicators: Input</p> <p>Nature of indicators: Qualitative</p> <p>Possible sources of data: Constitutions, Administrative mandates</p> <p>Description: The existence of an independently functioning legal and judicial system assures the delivery of justice to the public. The presence of these institutions strengthens the capacity of the disadvantaged who seek redress for grievances.</p> <p>Reference: World Bank</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Presence of an independently functioning Supreme Court</li> <li><input type="checkbox"/> Presence of a Ministry/Department of Justice</li> <li><input type="checkbox"/> Selection mechanism for head of judicial institutions</li> <li><input type="checkbox"/> Jurisdiction of courts</li> <li><input type="checkbox"/> Legal Framework</li> <li><input type="checkbox"/> Legal Education and Legal Profession</li> <li><input type="checkbox"/> Attorney General's Office</li> </ul>
<p><i>b) How large is the justice sector bureaucracy?</i></p>	<p>Type of indicators: Output</p> <p>Nature of indicators: Quantitative</p> <p>Possible sources of data: Government statistics</p> <p>Description: The size of the justice sector bureaucracy influences the delivery of justice. This indicates the proximity of judicial</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Total Number of Judicial Sector Personnel</li> <li><input type="checkbox"/> Number of Judicial Sector Personnel per 100,000 inhabitants</li> <li><input type="checkbox"/> Distribution of judicial personnel across the jurisdictions/levels of court</li> <li><input type="checkbox"/> Number of Legal professionals produced annually</li> </ul>

	<p>institutions to the public. The difference between the number of legal and judicial officials and the general population indicates the capacity of legal and judicial institutions in rendering justice to the public. Smaller ratios between these two variables denote the ability of citizens to access justice and justice related-programs.</p> <p>Reference: World Bank</p>	
<p><i>c) How much is the justice sector budget?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Quantitative</p> <p><b>Possible sources of data:</b> Annual government appropriations, government statistics</p> <p><b>Description:</b> Allocations from the national budget or other funding mechanisms affect the institutional capacity of judicial and legal institutions. Sustaining operations require a continuous operations require a continuous flow of resources. Compensation packages assure civil servants that their work is properly remunerated. Sufficient compensation packages help keep judicial and legal officers within the purview of government thus augmenting human resources crucial in the delivery of justice.</p> <p>Reference: World Bank</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Total annual budget of the justice sector</li> <li><input type="checkbox"/> Total annual national budget</li> <li><input type="checkbox"/> Total percentage of the justice sector budget as part of national budget</li> <li><input type="checkbox"/> Justice sector budget per capita</li> <li><input type="checkbox"/> Distribution and breakdown of justice sector budget (Personnel expenses, capital outlays and maintenance operations and other expenditures)</li> <li><input type="checkbox"/> Salaries of judicial and legal officers</li> <li><input type="checkbox"/> Salaries of judicial and legal personnel</li> <li><input type="checkbox"/> Compression rate</li> </ul>
<p><i>d) How efficient is the court system?</i></p>	<p><b>Type of indicators:</b> Outcome</p> <p><b>Nature of indicators:</b> Quantitative</p> <p><b>Possible sources of data:</b> Government statistics Court records</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Caseload rates of courts at various levels</li> <li><input type="checkbox"/> Clearance rate of courts at various levels</li> <li><input type="checkbox"/> Annual inflow of newly filed cases in the lower courts</li> <li><input type="checkbox"/> Distribution of new case inflows in the lower courts</li> <li><input type="checkbox"/> Average productivity of justices and judges</li> </ul>

	<p><b>Description:</b> In measuring the efficiency of the court system, we need to look at ability of courts to manage its affairs. Court management refers to the utilization, mobilization and coordination of various inputs as they pass through the staged operating procedures with in a specified time frame, and within defined institutional structures. Inefficient court management contributes to congestion and delay and renders the judicial system extremely vulnerable corruption, ineptness and poverty.</p> <p><b>Reference:</b> World Bank SC Republic of the Philippines, Action Program for Judicial Reform 2001-2006</p>	<ul style="list-style-type: none"> <li>❑ Composition of judicial actions in various levels of court</li> </ul>
<p><i>e) How independent is the judiciary?</i></p>	<p><b>Types of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> Surveys</p> <p><b>Description:</b> The capacity of courts to create decisions ultimately affects the lives of individuals. Free from political interference, court decisions are deemed accepted by litigants thus weaving a system of trust to the judicial and legal system. However, if courts are marred with vicious politicking and overt acts of bigotry, individuals might loose confidence in the capacity of courts decide over their grievances. Trust is lost and judicial systems have failed in their function of rendering justice to the public.</p> <p><b>Reference:</b> Anderson (1999)</p>	<ul style="list-style-type: none"> <li>❑ Impartiality: pertains to dispassionate application of laws</li> <li>❑ Political insularity: pertains to non-subjection to removal from office or threats for reaching decisions unpopular with government</li> <li>❑ Institutional autonomy: refers to a self-governing judiciary, free from administrative interference</li> <li>❑ Legal authority: involves the capability of judicial institutions to determine questions of law and fact in all cases</li> <li>❑ Legitimacy: pertains to the acceptance and recognition of courts by other political branches and civil society</li> <li>❑ Probity: pertains to the immunity of courts and judges to bribery, favors, and other forms of influence</li> </ul>

➤ **Normative Protection by Customary Norms and Jurisprudence**

General Indicators	Explanation	Specific Indicators
<p>a) Are there existing customary and traditional law and practices?</p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> Policies and laws, Constitutions and administrative mandates</p> <p><b>Description:</b> Deeply ingrained attitudes further impede access to justice and participation in public decision-making, to the detriment of the poor, women, ethnic minorities and other disadvantaged groups. There existence of customary and traditional law and practices alleviates the barriers posed by the discriminatory effects of formal legal systems. Legal frameworks that cater to the grievances pursued by the poor and other disadvantaged groups ensure that their rights are recognized and protected.</p> <p>Reference: Sudarshan (2003) Law and Policy Reform, ADB (2001)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Presence or absence of legal frameworks for traditional and indigenous groups and communities, women and other disadvantaged groups</li> <li><input type="checkbox"/> Presence or absence of legal and judicial institutions and mechanisms for traditional and indigenous groups and communities, women and other disadvantaged groups</li> </ul>
<p>b) <i>What is the relationship between formal law and traditional values? Do customary and traditional law and practices mitigate or impede the delivery of justice?</i></p>	<p><b>Type of indicators:</b> Impact</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> Constitutions, policies and laws</p> <p><b>Description:</b> The existence of traditional and customary laws and practices may elicit three particular relationships vis-à-vis formal judicial and legal systems:</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Integration</li> <li><input type="checkbox"/> Non-integration</li> <li><input type="checkbox"/> Parallel</li> </ul>

	<p>Integration: Traditional and customary laws and practices are integral parts of the judicial system;</p> <p>Non-integration: Traditional and customary laws and practices function outside of the formal legal system;</p> <p>Parallel: Dual existence of traditional and customary laws and practices.</p> <p><b>References:</b> Sudarshan (2003) Law and Policy Reform, ADB (2001)</p>	
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**Capacity to Seek Remedy**

Disadvantaged groups are often unaware of potential remedies and how to claim them or have inadequate access to such mechanisms. The capacity of marginalized groups is influenced by their *legal awareness* (basic knowledge of the justice system), *legal counsel* (access to legal counsel services government and non-government institutions, availability of formal and informal mechanisms) and *capacity to access justice services* (judicial and quasi-judicial services). When individuals gain knowledge of the justice system, they are able to prevent and overcome poverty. Thus, knowledgeable individuals are able to weave their own pursuit of development.

Dimensions	Categories	Sub-categories	Parameters	Benchmarks
<p><b>Capacity to seek Remedy</b></p>	<p><i>Legal Empowerment</i></p>	<p>Legal Awareness</p>	<ul style="list-style-type: none"> <li>○ <i>Are the citizens aware of their fundamental rights, the law and the legal system?</i></li> <li>○ <i>What are the sources of public information on law?</i></li> <li>○ <i>What factors contribute to the level of legal awareness of the public?</i></li> <li>○ <i>Is there an existing public legal education and awareness program?</i></li> <li>○ <i>Do government officials possess a level of awareness of the law and the legal system?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Public knowledge of law and legal rights</li> <li>● Legal awareness among government officials</li> </ul>

		Legal Counsel	<ul style="list-style-type: none"> <li>○ <i>Is there an existing public defenders' office? What kinds of legal services do they offer?</i></li> <li>○ <i>How effective are public defenders in serving their client?</i></li> <li>○ <i>Are there paralegals and non-lawyers available to assist indigent and marginal clients?</i></li> <li>○ <i>What is the capacity of CSOs to provide legal support services?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Availability of legal counsel to indigent and marginal sector of society</li> <li>● Standards of legal education and profession</li> </ul>
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➤ **Capacity to Seek Remedy through Legal Awareness**

Parameters	Explanation	Specific Indicators
<p><i>a) Are the citizens aware of their fundamental rights, the law and the legal system?</i></p>	<p>Type of indicators: Input</p> <p>Nature of indicators: Qualitative</p> <p>Possible sources of data: Surveys, government statistics</p> <p>Description: This question focuses on the awareness of citizens of their fundamental rights and their state's legal system. A crucial component of access to justice includes the extent of knowledge of citizens about the legal and judicial system.</p> <p>The indicators used to measure this parameter are largely qualitative in character. Through surveys and governmental statistics, the overall legal awareness level of citizens can be further measured by assessing the knowledge/familiarity of citizens as regards their</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Knowledge of fundamental rights</li> <li><input type="checkbox"/> Knowledge of justiciable disputes</li> <li><input type="checkbox"/> Familiarity with legal institutions</li> <li><input type="checkbox"/> Familiarity with institutional procedures</li> </ul>

	<p><i>fundamental rights and freedoms, criminal matters that can brought to court, legal institutions that can handle justiciable cases, as well as court and legal procedures.</i></p> <p>Reference: Asia Foundation-AC Nielsen Survey</p>	
<p><b>b) What are the sources of public information on law?</b></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative/ Quantitative</p> <p><b>Possible sources of data:</b> Survey, government statistics</p> <p><b>Description:</b> This question ascertains the key sources of information on public law as well as the governing judicial regimes of a state. These sources of public legal information are vital in effective access and delivery of justice to citizens. The presence or absence of these sources indicates extent of legal empowerment in a state. A preponderance and combination of use of these sources strengthen the dissemination of legal information thus engendering higher levels of legal awareness of the public.</p> <p>Surveys and government statistics can be used to measure the existence of the sources of public legal information. Consequently, surveys and statistics can help identify which sources of public legal information are most likely to be accessed by the citizens.</p> <p>Reference: Law and Policy Reform, ADB</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Print media</li> <li><input type="checkbox"/> Television and radio</li> <li><input type="checkbox"/> Performing arts and popular entertainment</li> <li><input type="checkbox"/> Internet</li> <li><input type="checkbox"/> Community law libraries</li> <li><input type="checkbox"/> Paralegals</li> </ul>
<p><b>c) What factors contribute to the level of legal awareness of the public?</b></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative/ Quantitative</p> <p><b>Possible sources of data:</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Public knowledge of the law and rights</li> <li><input type="checkbox"/> Literacy and education levels</li> <li><input type="checkbox"/> Literal language of the law</li> <li><input type="checkbox"/> Adequacy of dissemination of legal information</li> </ul>

	<p>Survey, Government statistics</p> <p><b>Description:</b>          This question pertains to factors that promote or impede the legal awareness of the public. A common trend observed in Asian countries is a lack of fundamental legal knowledge, including the rights of individuals. Consequently, low levels of literacy and education are significant factors that affect the awareness of the legal system of citizens. A lack of general legal awareness occurs when people are unaware that laws and rights exists, or have no sense that such remote constructs have any relevance to their lives.</p> <p>Furthermore, the language used to construct laws as well as the specific knowledge of the law of citizens are also factors that can inhibit or promote the awareness of judicial and legal systems. Finally, adequacy of distribution of legal information proves to be vital in determining the legal awareness of the citizens.</p> <p><b>Reference:</b> Law and Policy Reform, ADB</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Specific knowledge of prescription or enforcement of rights</li> </ul>
<p><i>d) Is there an existing public legal education and awareness program?</i></p>	<p><b>Type of indicators:</b>          Input</p> <p><b>Nature of indicators:</b>          Qualitative/ Quantitative</p> <p><b>Possible sources of data:</b>          Government statistics, surveys and government policies</p> <p><b>Description:</b>          This question focuses on the efforts of duty-bearers in providing legal education and awareness programs. The existence of these programs ensures that citizens are bequeathed with sufficient legal knowledge enabling them to have better control over their lives under the rule of law. Conversely, the absence of these programs stifles</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Distance education programs</li> <li><input type="checkbox"/> Youth education programs</li> <li><input type="checkbox"/> Community-based training</li> <li><input type="checkbox"/> Training of trainers</li> <li><input type="checkbox"/> Alternative dispute resolution</li> <li><input type="checkbox"/> Legal aid</li> <li><input type="checkbox"/> Public interest litigation</li> <li><input type="checkbox"/> Administrative advocacy</li> <li><input type="checkbox"/> Educating and training of government officials</li> </ul>

	<p>the pursuit of human development and justice.</p> <p><b>Reference:</b> Law and Policy Reform, ADB</p>	
<p><i>e) Do government officials possess a level of awareness of the law and the legal system?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> Government statistics, annual government appropriations and administrative mandates</p> <p><b>Description:</b> This question gives emphasis on the legal awareness of government officials of the law and the legal system. The awareness of the law need not always be taken from the citizens' (claimholders) perspective. The burden of inadequate resources and legal knowledge is not borne solely by ordinary citizens. Duty-bearers must be equally aware of the legal system if they were to fulfill their obligations more effectively. The awareness of the legal system of government officials ultimately affects the lives of citizens and the latter's pursuit of development.</p> <p>The indicators used to measure this parameter surveys the factors that influence the legal awareness of government officials. The adequacy and existence of these indicators affects the legal knowledge of government officials.</p> <p><b>Reference:</b> Law and Policy Reform, ADB</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Adequacy of training and skills-development activities</li> <li><input type="checkbox"/> Resources</li> <li><input type="checkbox"/> Career advancement</li> </ul>

➤ **Capacity to Seek Remedy through Legal Counsel**

Parameters	Explanation	Specific Indicators
<p>a) <i>Is there an existing public defenders' office? What kinds of legal services do they offer?</i></p>	<p><b>Type of indicators:</b> Output</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> Administrative mandates</p> <p><b>Description:</b> Having a public defender's office putatively assures that citizens are being provided with a myriad of legal services that in turn guarantees the delivery of justice. This also ensures that citizens are able to seek remedy for justiciable disputes they bear.</p> <p>The indicators identified to address this parameter focus on the services offered by an existing public defender's office. These services, aside from validating the existence of a public defender's office, further indicates the delivery of justice as rendered by the state to the disadvantaged and marginalized.</p> <p><b>Reference:</b> 2003 Public Attorney's Office Study, LSIG-UNDP</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Judicial services</li> <li><input type="checkbox"/> Quasi-judicial services</li> <li><input type="checkbox"/> Limited services</li> <li><input type="checkbox"/> Non-judicial services</li> <li><input type="checkbox"/> Outreach activities</li> <li><input type="checkbox"/> Jail visitations</li> </ul>
<p>b) <i>How effective are public defenders in serving their client?</i></p>	<p><b>Type of indicators:</b> Outcome</p> <p><b>Nature of indicators:</b> Quantitative</p> <p><b>Possible sources of data:</b> Court records, government statistics</p> <p><b>Description:</b> The existence of a public defender's office often</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Average number of pending cases on trial</li> <li><input type="checkbox"/> Average number of cases terminated</li> <li><input type="checkbox"/> Range of number of cases won</li> <li><input type="checkbox"/> Regular cases pending and terminated</li> <li><input type="checkbox"/> Total number of instant services rendered</li> <li><input type="checkbox"/> Number of clients with criminal cases assisted during Custodial Interrogation</li> <li><input type="checkbox"/> Total number of prisoners provided with legal</li> </ul>

	<p>guarantees that the state provides legal aid and administrative justice to the citizenry. However, the adequacy of this provision of justice needs to be fully ascertained. The delivery of justice to general citizenry is one thing; but the capacity of public defender's offices to effectively and efficiently deliver justice is another.</p> <p>These indicators measure the performance of public defender's offices in rendering justice to the general public, particularly the disadvantaged and the marginalized.</p> <p><b>Reference:</b> 2003 Public Attorney's Office Study, LSIG-UNDP</p>	<p>assistance and representation</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Total number of prisoners interviewed</li> <li><input type="checkbox"/> Total number of women cases handled</li> <li><input type="checkbox"/> Total number of youth cases handled</li> </ul>
<p><i>c) Are there paralegals and non-lawyers available to assist indigent and marginal clients?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> Alternative law networks, administrative mandates</p> <p><b>Description:</b> This question provides an inquiry into the existence of paralegal and non-lawyers' organization in assisting indigent and marginal clients. Access to justice is further constrained by the shortage of free or subsidized legal services. As professional legal services tend to be expensive and costly in some countries in Asia, the access to justice of citizens is therefore undermined.</p> <p>The existence of paralegal organizations and alternative law networks foster greater chances for the poor and marginalized to access justice. Aside from public defenders' offices, these organizations enable citizens to obtain free effective legal services.</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Existence of paralegal organizations/alternative law groups</li> <li><input type="checkbox"/> Existence of paralegal desks in prisons and detention facilities</li> </ul>

	<p>Reference: Law and Policy Reform, ADB</p>	
<p><i>d) What is the capacity of CSOs to provide legal support services?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative/ Quantitative</p> <p><b>Possible sources of data:</b> Profile of CSOs</p> <p><b>Description:</b> This question examines the capacity of civil society organizations in providing alternative legal services to the poor and marginalized sectors. While CSOs perform a crucial role of rendering free and alternative legal services, the capability of these organizations have to be measured if effective access to justice by citizens are to be ensured.</p> <p>The indicators used in to address this parameter examine the capacity of CSOs in their effort of offering alternative legal services to the poor.</p> <p>Reference: Law and Policy Reform, ADB</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Stewardship</li> <li><input type="checkbox"/> Resource capacity</li> <li><input type="checkbox"/> Organizational capacity</li> <li><input type="checkbox"/> Institutional stability</li> <li><input type="checkbox"/> Programmatic capacity</li> </ul>

➤ **Capacity to Seek Remedy through Access to Formal and Informal Justices Services**

Parameters	Explanation	Specific Indicators
<p><i>a) What factors prevent people from accessing the judicial system?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative/ Quantitative</p> <p><b>Possible sources of data:</b> Surveys, court records</p> <p><b>Description:</b> This question gives emphasis on factors that prevent people from seeking remedy by accessing the judicial system. The indicators used to measure this parameter consider both the capacity of legal and judicial institutions on the one hand and public perceptions on the other.</p> <p><b>Reference:</b> Supreme Court, Republic of the Philippines-UNDP</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Delays in judicial proceedings</li> <li><input type="checkbox"/> Legitimate perception of court decisions</li> <li><input type="checkbox"/> Cost of litigation</li> <li><input type="checkbox"/> Adequacy of information</li> <li><input type="checkbox"/> Number of lawyers</li> </ul>
<p><i>b) What costs are incurred in accessing the judicial system?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Quantitative/ Qualitative</p> <p><b>Possible sources of data:</b> Surveys, government statistics</p> <p><b>Description:</b> Accessing justice can sometimes be costly. Although in some countries legal counsel is often free, court battles that enter into a drag often incur opportunity costs that further aggravate poor. It is important that costs incurred by litigants, especially those of the indigent and marginalized should be kept at minimum levels, if justice were to be accessed effectively.</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Public expenditure</li> <li><input type="checkbox"/> Direct private costs</li> <li><input type="checkbox"/> Costs of judicial mistakes</li> <li><input type="checkbox"/> Opportunity costs of time and money</li> </ul>

	Reference: Vargas, 2002	
<p><i>c) Are there legal mechanisms for alternative dispute resolution?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Quantitative</p> <p><b>Possible sources of data:</b> Government statistics, Court records</p> <p><b>Description:</b> The existence of alternative dispute resolution (ADR) mechanisms creates arenas of dispute settlement without necessarily going into courts. ADR mechanisms provide timely, cost effective and in some instances, participatory and community sanctioned alternative to the formal court system.</p> <p><b>Reference:</b> World Bank Law and Policy Reform, ADB</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Number of disputes referred to ADR mechanisms</li> <li><input type="checkbox"/> Number of issues resolved using ADR mechanisms</li> </ul>

**Capacity to provide effective remedies**

The provision of effective remedies warrants the capacity of formal and informal justice systems to address the issue of access to justice by the disadvantaged and marginalized. Effectiveness is demonstrated through a multistakeholder approach to the delivery of and access to justice. Accountable justice delivery through formal and informal justice systems coupled with participation and oversight from civil society organizations foster effective and sustainable access to justice.

Dimensions	Categories	Sub-categories	Parameters	Benchmarks
<p><b>Capacity to Provide an Effective Remedy</b></p>	<p><i>Adjudication Enforcement Oversight</i></p>	<p>Effective adjudication and due process: judicial, quasi-judicial, informal and traditional systems</p>	<ul style="list-style-type: none"> <li>○ <i>What are the time and costs involved in resolving disputes?</i></li> <li>○ <i>Are there litigations filed in court of law for the protection of public interests?</i></li> <li>○ <i>Do politicians, legislators, and officials have immunity? Are they subject to all normal civil and criminal law? Can citizens bring charges against politicians and officials?</i></li> <li>○ <i>Are there remedies available for citizens affected by misadministration? Is there an ombudsman or equivalent?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Consistency, predictability, and equality in the application of the law</li> </ul>

		Enforcement: Police and Prisons	<ul style="list-style-type: none"> <li>○ <i>What mechanisms are available to citizens to make the police and prison officials accountable?</i></li> <li>○ <i>Is there an effort to introduce human rights awareness into the police force and prison system?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Accountability in police and prison system</li> <li>● Police and prison reforms</li> </ul>
		Civil Society Oversight	<ul style="list-style-type: none"> <li>○ <i>Are CSOs capable of fulfilling oversight functions?</i></li> </ul>	<ul style="list-style-type: none"> <li>● Capacity to effectively monitor judicial accountability and prevent impunity</li> </ul>

➤ **Capacity to Provide an Effective Adjudication and Due Process**

Parameters	Explanation	Specific Indicators
<p><i>a) What are the time and costs involved in resolving disputes?</i></p>	<p>Type of indicators: Input</p> <p>Nature of indicators: Quantitative</p> <p>Possible source of data: Prison records and government statistics</p> <p>Description: The lengths of period of stay of litigants in courts and costs incurred in the resolution of disputes are significant indicators in measuring the effectiveness of adjudication and due processes. Inadequate implementation of judicial and legal services and related programs can</p>	<ul style="list-style-type: none"> <li>❑ Congestion rate</li> <li>❑ Cost elasticity</li> <li>❑ Number of detainees overstaying in prison</li> <li>❑ Number of detainees with no access to legal counsel while in detention</li> </ul>

	<p>hamper the effective delivery of and access to justice.</p> <p><b>References:</b> World Bank Law and Policy Reform, ADB 2003 PAO Study, LSIG-UNDP</p>	
<p><i>b) Are there litigations filed in court of law for the protection of public interests?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative/ Quantitative</p> <p><b>Possible sources of data:</b> Court records</p> <p><b>Description:</b> Public interest litigation (PIL) aims to serve or represent large categories of persons to the benefit of society as a whole. Threats of litigation often compel obstinate government agencies or private party to agree to amicably settle disputes. Although, PIL is not defined in any statute, judges interpret them as intents of the public at large. The indicators presented here are pertinent to the various areas where a PIL can be filed.</p> <p><b>Reference:</b> www.helplinlaw.com</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Cases involving violation of basic human rights</li> <li><input type="checkbox"/> Cases involving content or conduct of government policy</li> <li><input type="checkbox"/> Cases that compel public officials to perform a public duty</li> <li><input type="checkbox"/> Cases involving violations of cultural, religious rights and other basic human rights</li> <li><input type="checkbox"/> Cases involving violations against the rights of women</li> <li><input type="checkbox"/> Cases involving violations against the environment</li> </ul>
<p><i>c) Can citizens bring charges against politicians and officials?</i></p>	<p><b>Type of indicators:</b> Impact</p> <p><b>Nature of indicators:</b> Qualitative/ Quantitative</p> <p><b>Possible sources of data:</b> CSO initiatives</p> <p><b>Description:</b> Misdemeanors and misadministration of government officials and politicians ultimately affect the lives of citizens. As officials and politicians are held accountable to the public, citizen-led cases filed against public</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Availability of citizen's charters</li> <li><input type="checkbox"/> Report card systems</li> <li><input type="checkbox"/> Existence of anti-corruption legislative agenda</li> <li><input type="checkbox"/> Lifestyle checks on public officials</li> <li><input type="checkbox"/> Disclosure of public documents</li> <li><input type="checkbox"/> Mobilization of investigative and prosecutorial resources for pursuing graft and corruption cases</li> </ul>

	<p>authorities are means of securing the latter's accountability. Particularly, the existence of these incidents and other citizen-led initiatives to secure and enhance government accountability realizes good governance institutions and mechanisms.</p> <p>Reference: Romero, 2000</p>	
<p><i>d) Are there remedies available for citizens affected by misadministration?</i></p>	<p><b>Type of indicators:</b> Input</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> Records of cases at Ombudsman office, national human rights office, anti-corruption commissions</p> <p><b>Description:</b> This question examines the availability of judicial and legal remedies for misadministration cases filed by citizens. Two institutions are identified as primary agencies that should be addressing misadministration redresses of citizens, namely: the Office of the Ombudsman and the National Human Rights Office. The existence of these offices ensures the availability of institutional mechanisms for addressing the cases filed by citizens against public officials.</p> <p>Reference: Romero, 2000</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Corruption cases filed in the Ombudsman's office or administrative tribunals</li> <li><input type="checkbox"/> Cases handled by Human Rights Offices</li> <li><input type="checkbox"/> Existence of Anti-Corruption agencies</li> </ul>

➤ **Capacity to Provide Effective Remedy through Enforcement**

Parameters	Explanation	Specific Indicators
<p>a) <i>What mechanisms are available to citizens to make the police and prison officials accountable?</i></p>	<p>Type of indicators: Input</p> <p>Nature of indicators: Qualitative</p> <p>Possible sources of data: Police and prison records, Ministry/ Department of Justice</p> <p>Description: Enforcement is a crucial component in promoting the rule of law. It is also important especially for duty bearers since effective enforcement, as part of public administration, help protect and promote rights and, ultimately, justice.</p> <p>Relevant enforcement systems and processes (police and prisons) should include those for economic, social and cultural rights in addition to those of civil and political rights. In some countries in Asia, support for enforcement systems and process are rather weak because of several factors. The indicators used in measuring this parameter help identify these factors.</p> <p>Reference: <a href="http://www.homeoffice.gov.uk">www.homeoffice.gov.uk</a></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Citizen focus</li> <li><input type="checkbox"/> Reducing crime</li> <li><input type="checkbox"/> Investigating crime</li> <li><input type="checkbox"/> Resource usage</li> <li><input type="checkbox"/> Promoting public safety</li> </ul>
<p>b) <i>Is there an effort to introduce human rights awareness into the police force and prison system?</i></p>	<p>Type of indicators: Impact</p> <p>Nature of indicators: Qualitative</p> <p>Possible sources of data: Court procedures, Constitutions</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Availability of human rights awareness programs in police and prisons</li> <li><input type="checkbox"/> Availability of complaints and redress mechanisms</li> <li><input type="checkbox"/> Incidents of human rights violations</li> </ul>

	<p><b>Description:</b> Police and prisons are law enforcers mandated to ensure that the rule of law is implemented in letter and spirit equally for all citizens. However, in many countries these institutions are perceived as violators of the law. They perpetrate serious human rights violations in various ways: from practicing discrimination, to negligence of duty, to inflicting excessive use of force.</p> <p>The availability of human rights awareness programs, complaints and redress mechanisms and a record of cases and incidents of human rights violations indicate if there are concrete attempts to induce human rights awareness in police and penal institutions.</p> <p><b>Reference:</b> Commonwealth Human Rights Initiative (CHRI)</p>	
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➤ **Capacity to Provide Effective Remedy through Civil Society Oversight**

<b>Parameters</b>	<b>Explanation</b>	<b>Specific Indicators</b>
<p><i>a) Are CSOs capable of fulfilling oversight functions?</i></p>	<p><b>Type of indicators:</b> Impact</p> <p><b>Nature of indicators:</b> Qualitative</p> <p><b>Possible sources of data:</b> CSO profiles</p> <p><b>Description:</b> Reinforcing civil society oversight is critical for effective accountability and prevention of impunity. Assuming there is access to free flowing information; civil society fulfills its watchdog functions that enhance accountability and participation.</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Independent investigative capacity</li> <li><input type="checkbox"/> Sufficiency of resources</li> <li><input type="checkbox"/> Flexibility</li> <li><input type="checkbox"/> Direct communication between oversight body and government</li> <li><input type="checkbox"/> Budgetary independence</li> </ul>

	<p>However, civil society organizations must maintain a degree of relative autonomy from government institutions if it were to effectively realize its oversight function. The indicators used to examine this parameter measure the independence and capacity of civil society organizations in relation to their oversight functions.</p> <p><b>Reference:</b> Commonwealth Human Rights Initiative (CHRI), 2003</p>	
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## **ASSESSMENT OF ACCESS TO JUSTICE INDICATORS**

This paper presented various efforts of several formal and informal players to measure the level of access to justice. These players include governmental agencies, civil society organizations and international development agencies. This study collated these indicators using the rights-based framework of the UNDP. The following will assess these indicators in terms of: (a) cost effectiveness in data gathering, (b) sustainability, and (c) adequacy to assess access to justice by the poor and disadvantaged groups.

### **Cost-effectiveness**

Given limited available resources, there is a need to maximize the utilization of funds for assessing access to justice programs in the region. The quantity and quality of data often determines the scope and impact of access to justice evaluations. The institutional and non-institutional players must recognize the data-gathering advantages inherent in their access to justice activities.

Government agencies, in this regard, have the advantage given the vast amount of primary data and statistics it gathers everyday. These data are useful in monitoring and evaluating “delivery of justice” programs in the region. Government agencies must invest on a well-organized system that can maximize the collection and evaluation of institutional information.

Civil Society Organizations are in the best position to gather primary information from the basic sectors themselves. In dealing with the poor and the marginalized sectors, the CSOs can ascertain the impact of “access to justice” programs and mechanisms. Just like government agencies, CSOs should also take effort in developing systems that will properly collate, evaluate and maintain the important data gathered from the field.

International Development Agencies have invested much in its various legal and judicial reform projects in the region. Through its vast resources and wide network, it has generated baseline data from the region. Information emanating from its development assistance is useful for evaluating “delivery of justice” and “access to justice” programs in the region.

### **Sustainability**

The continuous monitoring and evaluation of access to justice initiatives is important to assure its successful implementation. However, several factors hinder the sustainability of the efforts undertaken by access to justice advocates in the region. Greater efforts must be made to address such obstacles in order to assure the continuity of reform efforts.

The sustainability of legal and judicial reforms efforts, including application of access to justice performance indicators, of governmental agencies is highly contingent on the priority of government and the availability of funds. Given the multitude of problems facing governments in the region, particularly those in the developing countries, efforts at monitoring performance indicators of access to justice are often compromised.

Most CSOs are hampered by its inability to generate internal and domestic funding for its access to justice initiatives. Hence, there is a tendency for most CSOs to become “donor-driven” or dependent on the funding of external international development agencies. Given the realities in underdeveloped and developing countries, it would be difficult to expect most CSOs to immediately transform themselves into financially self-supporting organizations. Thus, it would be more appropriate to measure the sustainability of the impact of access to justice initiatives, rather than expect the sustainability of the organizations advocating judicial reforms.

In the same light, international development agencies are prone to “donor-fatigue” due to diminishing financial and logistic sources. Ford Foundation, for example, has closed some of its offices in the region in order to cut back on operational expenses. International Development Agencies are more circumspect in the types of projects it would extend financial support. This will definitely have some impact on access to justice initiatives in the region.

### **Adequacy**

The efforts by government agencies, civil society organizations and international development agencies to develop performance indicators to assess and measure the degree of access to justice in the region and the world are commendable. The fruits of their initiatives have, thus far, been adequate in generating primary information. However, these indicators reflect particular orientations based on how the institutional and non-institutional players intend to utilize them.

Indicators mostly used by government agencies are oriented toward institutional approaches. The utility of these types of indicators lie in the evaluation and planning for legal development and institution-building. The information culled by civil society organizations, on the other hand, are very useful for issue advocacy and lobbying. The information that emerged from the various studies supported by international development agencies is adequate as baseline data for enhancing institutional development of access to justice mechanisms. These data can also prove helpful in the issue advocacy of civil society organizations in their respective countries and in the region.

## **SUMMARY AND RECOMMENDATIONS**

The provision of justice is an important prerequisite for enhancing the protection of human rights and the institutionalization of good governance. In recent years, access to justice initiatives has been undertaken by governmental, non-governmental and international development organizations. There is a need to track the progress of these initiatives through the application of access to justice indicators to draw important lessons in the delivery of justice in the Asia-Pacific region.

Indicators are important social scientific tools to measure and monitor desired levels of performance of a project or program. Indicators may ascertain quantitative and qualitative changes that contribute to success or failure of a particular initiative. However, in the development of indicators to measure the performance of access to justice initiatives, the following issues should be taken into account:

- The cultural context of the provision of justice services. There is no holistic objective theory or model for assessing access to justice in the Asia-Pacific region. Caution should be taken in appropriating theories or models that emerged out of the historical experiences of the West.
- The provision of justice services involves complex human and institutional processes that may be difficult to be captured by a handful of indicators.
- The development of political institutions takes a long incremental process. This makes the formulation of indicators more difficult, since it is easier and expedient to assess performance in the short term.

The aforementioned issues underscore the challenges involve in the development of access to justice indicators. Nonetheless, these issues can be addressed by undertaking the following:

- Indicators should be adapted according to appropriate levels of institutional and political development.
- Recognizing that various cultures may share common ethical standards that may allow for a common understanding of the principles of justice. This may be reflected in the international treaties and instruments that are signed by the countries in the Asia-Pacific region.

- Providing indirect or proxy indicators if direct results are difficult or too costly to measure.

This paper is an initial attempt to develop indicators that can be utilized for comparing access to justice in the Asia-Pacific region. These indicators were adopted and collated from an array of sources that include governmental, civil society, and international development organizations. The paper utilized the rights-based approach framework developed by the **UNDP Asia-Pacific Justice Initiative** as dimensions for the categorization of these indicators. These dimensions include: 1) existence of remedy; 2) capacity to seek remedy; and, 3) capacity to seek effective remedy.

The specific indicators identified in this paper are by no means exhaustive, but are illustrative in its attempt to formulate a comprehensive tool for monitoring and evaluating access to justice initiatives. In developing and enhancing access to justice indicators, this paper recommends the following:

- Qualitative and quantitative measurements, utilized in tandem, are important tools in assessing access to justice. There is a need to further identify access to justice areas and categories that can be subjected to quantitative and qualitative treatment within the rights-based framework of the UNDP. This background paper can serve as a jump-off point for a larger study with the objective of developing an access to justice index.
- Assessing access to justice is best accomplished through participatory processes that bring together all stakeholders. The parameters, benchmarks and indicators identified in this paper can be enhanced by the participatory development of access to justice indicators through a series of workshops.
- Undertake a field study of selected case countries in the Asia-Pacific region to pretest the parameters, benchmarks and indicators identified in this background paper.
- Based on the knowledge and experience identified from quantitative, qualitative, and participatory measurements, a manual of access to justice indicators should be finalized and disseminated.

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## ANNEX

### INDICATORS UTILIZED BY INTERNATIONAL DEVELOPMENT ORGANIZATIONS

The following describes the indicators employed by the three major international development organizations – the World Bank, UNDP and ADB. The indicators presented in this paper are common among the countries pre-identified for the study. In the course of describing the indicators, it is apparent that the organizational nature of these agencies affect the kind of indicators of access to justice they use.

#### **World Bank Indicators**

There are eight indicators used by the Bank to measure access to justice in the region and that are common among the countries used the study, namely: (a) *structure and function of judicial institutions*; (b) *selection mechanism for head of judicial institution*; (c) *jurisdiction*; (d) *legal framework*; (e) *personnel and salaries*; (f) *alternative dispute resolution (ADR) mechanisms*, and; (g) *public legal education*.

- **Structure and function of judicial institutions**

In all of the countries examined, the Bank identifies two institutions that determine the access to justice: presence of a Supreme Court and a Ministry/Department of Justice. The type of government employed by states in the region largely influences the structures and functions of these two crucial judicial institutions.

In states that operate based on the principle of separation of powers, supreme courts are essentially equipped with rule-making capabilities. They stand as independent bodies capable of checking the powers manifested by the other branches of government namely, the Executive and Legislature. Supreme courts in Japan and the Philippines are two exemplary cases of this function.

Federated states have a more complex and sometimes overlapping judicial structure. Some countries of the same form of government, India and Pakistan for instance, both federated and influenced by English common law, have supreme courts with limited judicial review and authority over legislative and executive acts. Supreme courts in these states are greatly influenced by and sometimes subjected to the executive branch and other outside influences.

Consequently, in states with quasi-democratic and overtly non-democratic structures, supreme courts are subdued to the powers of executive councils and legislative assemblies. Courts are merely relegated as extensions of power by the ruling council, party or elite.

However, in the entire Asia-Pacific region, supreme courts function largely as the highest judicial administration body. Since courts exercise administrative functions, they employ top-down practices in rendering judicial, quasi-judicial and non-judicial services.

Meanwhile, ministries of justice are equally important in indicating the access to justice in the Asia-Pacific region. They serve as the administrative counterpart of courts in the executive branch of government. Ministries of justice across the region also take an active part in the creation of rules, policies and decisions that may or may not be pertinent to the judiciary. The appointment of legal advisers and other legal officers such as attorney generals, state prosecutors and public attorneys are also performed by Ministries.

Since ministries are part of the executive branch of government, its administrative structure follows a top-down organizational structure. Ministries of justice in the entire region manage both the affairs of the State and the Courts, even in federated states such as those of India and Pakistan, at the national, regional and local levels.

- **Selection mechanism for head of judicial institutions**

The selection of heads of judicial institutions, namely that of courts and ministries of justice, also affects the access to justice of the populace. In almost all of the countries examined in the study, the highest official of government (either President or Prime Minister) appoints the Chief Justices, which then acts as heads of Supreme Courts. Japan, has a unique selection mechanism as the Chief Justice is appointed by the Emperor but upon the designation of the Prime Minister. In Vietnam, however, the National Assembly elects the Chief Justice of the Supreme People's court.

Meanwhile, the highest official of government, i.e. the President or Prime Minister, appoints ministers of justice departments in the entire Asia-Pacific region. Even in Vietnam, where the head of the Supreme (People's) Court is elected by the National Assembly, ministers of justice are still appointed by the National Assembly upon recommendation of the President.

The mechanism employed in the selection of the heads of these judicial institutions determines the patterns of accountability of legal and judicial officials. This serves useful in evaluating the performance of officials that render judicial services to the public.

- **Jurisdiction**

The jurisdiction of courts and ministries of justice can be further measured by two sub-indicators, namely: *levels of court* and *caseload*. The former pertains to the penetration of courts in society while the latter refers to the capacity of

judicial institutions to accommodate the demands of the general public. Nonetheless, both sub-indicators provide necessary information as regards the jurisdiction of judicial institutions.

Meanwhile, indicators on caseloads further examine the capacity of courts by looking at their specialized functions. For instance, while Japan may seem to have a good level of court penetration, there are no specialized courts for civil cases. All civil, criminal and commercial cases are referred to ordinary courts, where they encounter specialized proceedings. The Philippines also has no specialized civil jurisdiction, although it boasts of special administrative courts. Special proceedings and conditions are employed for such kinds of cases. Vietnam and India, on the other hand, both have highly specialized civil jurisdiction found in their second tier and first tier levels of court, respectively.

Consequently, performance in caseloads indicates the efficiency of courts in addressing the judicial demands of the public. Efficiency of courts is determined by measuring the difference between the number of cases received and the number of cases disposed. Smaller ratios indicate higher levels of efficiency. Bigger differences between cases received and cases disposed suggest a lag in the processing of cases, hence a delay in the delivery of justice.

- **Legal Framework**

Another indicator used by the World Bank is the legal framework employed by states. The legal framework indicates the presence of a constitution, hence denoting the constitutionality of the functions of all the judicial institutions. All of the sample countries have adopted a legal framework that governs the functioning of their judicial systems.

- **Personnel and Salaries**

The Bank further measures the institutional capacity of judicial institutions by evaluating existing institutions in three sub-areas, namely: *size of institutions*, *budget allocation* and *compensation packages*. The size of institutions influences the extent of delivery of judicial services. The difference between number of legal and judicial officers and the general population indicate the capacity of legal institutions to deliver justice. Smaller ratios between these two variables indicate the level of access to justice by the public.

The allocation of resources from the national budget or other funding mechanisms also affects the institutional capacity of judicial institutions. Sustaining operations require a continuous flow of resources either within or outside governmental sources. Finally, compensation packages (salaries, benefits, allowances, etc.) assure civil servants that their work is properly remunerated. Sufficient compensation packages help keeps judicial and legal

officers within the purview of government thus augmenting human resources crucial in the delivery of justice.

- **Alternative Dispute Resolution (ADR) Mechanisms**

ADR mechanisms refer to several formal or informal processes for settlement of conflicts, outside of or in the periphery of institutional judicial processes. They are alternative to the structured adversarial approach of court litigation. The Bank also uses the laws governing the employment and regulation of ADR mechanisms. ADR mechanisms create avenues that facilitate better access to justice by the public.

- **Public Defenders' Office**

State-issued lawyers ensure the delivery of access to justice by providing free legal assistance to clients. Public defenders' offices serve as counsel for indigents in civil, criminal, administrative or labor cases. They provide non-judicial legal services, such as legal counseling, documentation and mediation. The major thrust of public defenders' offices in the region is the provision of immediate, responsive, free and competent legal services.

- **Legal Education and Program**

The existence of legal education and legal programs is essential to the establishment of an independent judicial system. Judicial independence involves two functions: one is to limit government and the other is to protect the rights of individuals.<sup>4</sup> Institutions and programs that bequeath legal knowledge to individuals do not only create experts in the practice of law. These mechanisms are also capable of changing attitudes of legal professionals toward impartiality, integrity and potential bias. Education and training is needed especially in dealing with sensitive cases such as liberty, property, the assertion of rights, etc. Judicial independence therefore presupposes a judiciary that is well trained and educated in law. After all, the rule of law rests on the cornerstone of an efficient, effective and educated judicial system.

## **United Nations Development Programme (UNDP) Indicators**

A rights-based approach to justice focuses on enhancing the people's own capabilities, existing strengths and capitalizing on these strengths. UNDP's set of indicators is based on the idea that the poor and disadvantaged people have the capacity to increase their legal awareness and self-reliance, and to deal with justice issues through informal and traditional systems. The challenge for them is determine their strengths and overcome obstacles in protecting and promoting

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<sup>4</sup> See Legal Vice-Presidency, The World Bank, **Legal and Judicial Reform: Strategic Directions**, January 2003, p. 3.

their rights to justice and justice-related programs. This entails developing the capacity of both duty-bearers and claimholders by making them empowered in the exercise of their functions and accountable in the exercise of their rights. Capacity development requires strengthening of existing strengths and abilities rather than substituting them. Consequently, the set of indicators used by UNDP aims to build strategies that will refine the synergies between access to justice, poverty reduction and human development. In order to overcome human poverty, therefore, it is necessary to develop the capacities not only of people, but also of institutions.

The indicators employed by UNDP in measuring access to justice are placed into three categories, namely: (a) *existence of remedy*; (b) *legal empowerment*; and (c) *capacity to provide effective remedies*.

- **Existence of remedies**

This indicator measures the existence of legal, normative mechanisms that protect fundamental human rights, such as access to information and counsel, effective adjudication and due process, and effective enforcement and redress for grievances. The presence of any or all of the following may denote the existence of such remedies, as follows: by *international and constitutional law*, by *legal and regulatory frameworks*, and by *customary norms and jurisprudence*.

- **Legal Empowerment**

To be informed is to be empowered, and to be empowered to make choices to prevent and mitigate poverty. Legal and judicial processes tend to be complex, formalistic and onerous for the poor to mentally digest. Effective access to justice, therefore, requires that the disadvantaged groups are aware of potential remedies for their grievances as well as to a multitude of legal and judicial services rendered by the State.

This indicator is further divided into three sub-areas, namely: (a) *legal awareness*; (b) *legal counsel* and; (c) *capacity to access to formal and informal justice services*. The existence of free legal aid institutions as well as alternative law groups implies that a country ranks high in terms of legal awareness. Counseling, mediation and arbitration are three of the more common types of legal and quasi-legal services to the indigent, disadvantaged and largely poor.

- **Capacity to provide effective remedies**

From the perspective of duty-bearers, they must be accountable and responsible for providing effective adjudication and due processes in judicial, quasi-judicial, informal and traditional justice systems. The role of prisons, correctional facilities and police enforcers are necessary in providing effective remedies for citizens.

Another important dimension is the oversight role of civil society organizations. Reinforcing civil society oversight is crucial for effective accountability and prevention of impunity.

### **Asian Development Bank (ADB) Indicators**

ADB uses *legal empowerment* as key indicator of access to justice. It aims to overcome the combination of constraints that prevent the disadvantaged from accessing the legal system and participating in governance, thus limiting the success of poverty reduction efforts. It involves the explicit or implicit use of the law through training, counseling, litigation, and representation in administrative procedures, advocacy before bureaucratic agencies, or other interventions.<sup>5</sup>

Since the law is used to impart knowledge to individuals and allow them to participate in governance mechanisms, ultimately, legal empowerment equips the disadvantaged to more effectively advance their interests through engagements with the legal and judicial systems, as well as civil societies, private parties and law reform efforts. The use of media is one means to legally empower an individual.

### **Other International Development Agencies**

Various international development agencies have also taken interest in implementing programs pertinent to justice. Most notable of these agencies are the Ford Foundation, The Asia Foundation and the Canadian International Development Agency (CIDA). These organizations speak of very long traditions of supporting countries in the Asia-Pacific tradition as regards their efforts develop their judicial systems.

- **Ford Foundation**

The bulk of support made by the Ford Foundation goes to non-governmental organizations (NGOs). NGOs build individual's legal awareness and train paralegals to use the law individually and collectively. Most notable of these interventions is one of its recent works in the field of legal reform and development. *Many Roads to Justice: The law-related work of Ford Foundation grantees around the world* (McClymont and Golub, 2000) provides an exemplary case of Ford Foundation's contribution in developing legal and judicial systems, both in the formal and non-formal purviews of government. This research is replete with case studies involving the outcome of funding interventions made by the Foundation through NGOs.

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<sup>5</sup> See ADB, 2001 p.8.

The second section of this compendium of cases identifies the various thematic perspectives that best contribute in the development of legal and judicial institutions. These perspectives can work as indicators in ascertaining the thrust of the Foundation as regards their intervention in the legal and judicial affairs of beneficiary organizations. These indicators are: (a) *presence of university legal aid clinics*; (b) *public interest litigation*; (c) *paralegals and non-lawyers*; (d) *policy research*, and; (e) *NGO adaptations to major political transitions*.

The presence of university legal aid clinics indicates the existence of normative protection of individual rights in a state. Legal aid clinics provide legal assistance to the poor in a state. They also generate means for students to practice public service opportunities as well as practical legal skills. Consequently, most grantees have expanded access in courts and used litigation as a means to document injustice and expose inequities of repressive regimes.

Another major promising innovation in the field of law-related work is the widespread participation of non-lawyers (also known as paralegals) in ensuring government accountability, effective implementation of policies and equitable and sustainable realization of development.

Another indicator is the pervasiveness of research initiatives as means to policy support and as a tool for social change. Legal and policy research enabled NGOs and other grantees to galvanize public support for policy reform.

Finally, the ability of NGOs to adapt to major political transitions allow them to re-evaluate their tools and strategies and take advantage of new opportunities in further championing human rights and social justice.

- **The Asia Foundation**

The Asia Foundation has a long history of providing grants and technical assistance to legal and judicial institutions as well as to civil society organizations. This forms part of the Foundation's efforts to advance the rule of law, enforce legal rights and strengthen dispute resolution processes in the Asian region.<sup>6</sup> The programs that it implements build the capacity of government institutions and non-governmental organizations to meet the challenges of legal reform, emphasizing public information and advocacy from within and outside of government.

In Pakistan, the Foundation's Access to Justice Program, under a technical assistance grant from the Asian Development Bank, made significant contributions in crafting policies in judicial reform. The program aimed to safeguard legal rights by improving *institutional efficiency*; reducing the *time and costs involved in resolving disputes*; *promoting consistency, predictability, and*

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<sup>6</sup> See The Asia Foundation website at [www.asiafoundation.org/Governance/legalreform.html](http://www.asiafoundation.org/Governance/legalreform.html).

*equality in the application of the law; and ensuring the transparency and accountability of the justice system through reformed incentive structures and reporting requirements.* The Foundation's three-pronged strategy strengthens the capacity of public institutions, promotes increased access to information, and helps to build constituencies for legal reform and counter-corruption initiatives.

Meanwhile, in Indonesia, the Foundation spearheaded a governance audit of the Supreme Court. As part of its intervention, the Foundation launched a judicial reform program that introduced pilot mechanisms for court-administered mediation; provided key technical assistance in the drafting of a milestone regulation on class action litigation; and facilitated dialogue between the Supreme Court and counterpart institutions in other Asian countries.

○ **Canadian International Development Agency (CIDA)**

CIDA has yet to give the final approval with a multi-million dollar project grant to the government of Cambodia. The proposed project will focus on strengthening the delivery of legal and judicial services to Cambodians, including the disadvantaged and women. The project is expected to achieve or contribute to achieving two or more of the following outcome results: *Organization, management and transparency of the courts improved; Capacity of judges, prosecutors, clerks, and court staff to deliver justice services strengthened; Legal information available to judges, prosecutors, clerks and court staff; Service delivery capacity of the Ministry of Justice strengthened; Viable legal aid and paralegal services established for the poor and disadvantaged, including women; Capacity of lawyers and paralegals to assert legal rights of individuals and groups enhanced; Legal literacy and awareness of the public about the law, the legal system and legal rights raised; Access to the legal and judicial system facilitated, notably for the disadvantaged, including women; Appropriate mechanisms for alternative dispute resolution services established.*<sup>7</sup>

**Table**

**Access to Justice Initiatives of International Development Agencies**

Agency	Categories
WORLD BANK	<ul style="list-style-type: none"> <li>● structure and function of judicial institutions</li> <li>● selection mechanism for head of judicial institution</li> <li>● jurisdiction</li> <li>● legal framework</li> <li>● personnel and salaries</li> <li>● alternative dispute resolution (ADR)</li> </ul>

<sup>7</sup> For a detailed description of project specifications, visit the SIDA website at [www.sida.org](http://www.sida.org).

	<ul style="list-style-type: none"> <li>mechanisms</li> <li>• legal education and program</li> </ul>
<p>UNITED NATIONS DEVELOPMENT PROGRAMME</p>	<ul style="list-style-type: none"> <li>• Normative Protection (existence of remedy)</li> <li>• Capacity to seek a remedy (legal empowerment)</li> <li>• capacity to provide effective remedies (adjudication, enforcement &amp; oversight)</li> </ul>
<p>ASIAN DEVELOPMENT BANK</p>	<ul style="list-style-type: none"> <li>• legal empowerment</li> </ul>
<p>FORD FOUNDATION</p>	<ul style="list-style-type: none"> <li>• presence of university legal aid clinics</li> <li>• public interest litigation</li> <li>• paralegals and non-lawyers</li> <li>• policy research</li> <li>• NGO adaptations to major political transitions</li> </ul>
<p>THE ASIAN FOUNDATION</p>	<ul style="list-style-type: none"> <li>• institutional efficiency</li> <li>• time and costs involved in resolving disputes</li> <li>• promoting consistency, predictability, and equality in the application of the law</li> <li>• transparency and accountability of the justice system</li> </ul>
<p>CANADIAN INTERNATIONAL DEVELOPMENT AGENCY</p>	<ul style="list-style-type: none"> <li>• organization</li> <li>• capacity of court personnel</li> <li>• availability of legal information</li> <li>• service capacity</li> <li>• legal aid and Paralegal services</li> <li>• capacity of lawyers and paralegals</li> <li>• legal literacy and awareness</li> <li>• access to legal and judicial system by disadvantaged and women</li> <li>• appropriate ADR mechanisms</li> </ul>

