

Chapter 3

The Action: Advocating for a National Justice Plan

GETTING CLEAR: WHAT POLICY REFORMS SHOULD YOU BE ADVOCATING FOR?

Before you begin your advocacy, take a step back and actively reflect on your country's justice issues. It is important to spend time analysing what, why and how these and other justice issues, exist in your country. This will allow other individuals and groups to voice their priorities and provide valuable insight into the status of access to justice in your country.

To begin, you need to conduct a baseline assessment of the status of access to justice in your country. This will better enable you to help your government understand: (1) why they should support a national justice plan, (2) why the issue(s) you work on should be prioritised in this plan and (3) how prioritising these issues will help fulfil their SDG commitments.

The assessment tools described in this chapter will help you to understand and reflect on the following:

- what the justice issues in your country are (access to justice assessment tool),
- what your government is currently doing to address these issues (gap analysis tool),
- what needs to happen to overcome these issues (solutions tree).

It is important to note that these tools do not have to be used in any particular order.

TIP

In most cases, a single organisation cannot carry out a baseline assessment for all of the justice issues in a particular country, alone. Bring in partners who work on other aspects of access to justice and legal empowerment issues to share the workload and allow for a range of perspectives to contribute to your country's national justice plan. Use any existing baseline assessments on access to justice to prevent duplication of effort and resources.

TIP

Ask a trained facilitator to support you and your partners as you work to conduct your baseline assessments, which should be carried out with a wide range of stakeholders. Plan your sessions thoroughly to make sure your participants have sufficient time to engage in constructive dialogue. Before beginning, make participants aware of the SDGs and their justice rights.

ASSESSING THE JUSTICE ISSUES IN YOUR COUNTRY

Baseline assessments are comprised of data collected before or at the start of a project.²⁴ They provide a basis for planning a project, measuring progress towards achieving the project's objectives and gauging the project's ultimate impact. From an advocacy perspective, a baseline assessment can help you assess where policy reforms are needed.²⁵

A baseline access to justice assessment helps you assess the extent

²⁴ You can use ABA ROLI's Access to justice assessment tool to learn more about how baseline data can be collected through affordable, feasible, and targeted data-gathering exercises that are designed to help you engage with the people who are in the most need of legal empowerment. By using baseline assessments, you create a "culture of learning" that will enable you to use your limited resources more effectively in future projects. The data you collect may also be used to help your national government monitor progress towards achieving the SDGs as will be described in fuller detail later in this toolkit. For more information about conducting baseline assessments, contact the ABA for a hard copy of the *Access to Justice Assessment Tool: A Guide to Analyzing Access to Justice for CSOs*, (ABA: 2012) or access it online here: http://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_access_to_justice_assessment_manual_2012.authcheckdam.pdf.

²⁵ You can also use the findings to support your programs and improve your research capacity.

to which ordinary people are able to access and enforce their rights and use the law, and the justice institutions that apply it, to improve their daily lives. Obtaining baseline data will help you assess whether your government's current justice efforts satisfy the justice commitments in the SDGs. It will also help you identify and plan for the reforms that should be included in your national justice plan to ensure that your country's justice issues are adequately addressed.

It is likely that you will only have the resources and the means to conduct an assessment with the members of the communities in which you work. You may also decide to narrow the focus of your assessment to access to justice in a particular sector or to a particular justice issue.

While narrowing your scope and focus is acceptable, it is important that you still strive to get a full understanding of your country's justice needs. Too often, access to justice assessments only consider whether justice institutions are effective for the users who already operate in or access them. This approach excludes the experiences of a huge percentage of the population who do not or cannot access these institutions. This is not in line with the SDGs' commitment to "leave no one behind." In narrowing the scope and focus of your assessment, you should aim to target populations whose justice needs have traditionally been ignored.²⁶

ABA ROLI's access to justice assessment tool can help you design a questionnaire framed around "six elements of access to justice." Once designed, your questionnaire will guide your consultations with community members. The results will then help you assess whether the government and other justice service providers are currently providing ordinary people with adequate access to justice in your country.

These six elements are not meant to be viewed as comprehensive. They are just one way to illustrate the efforts a person may take to obtain access to justice—from the identification of a justice problem to the enforcement of a proposed solution.²⁷ By understanding the path a person may follow to obtain justice, you can reflect on the places where breakdowns in justice are most prevalent. By discussing each of the six elements of access to justice separately, you can identify possible reforms that could address the justice gaps.

For each element, you will find a few sample questions that you

²⁶ Participatory research can help communities obtain ownership over how the SDGs are implemented. This is in line with the SDGs' commitment to be "people led." Although you will be using this information to push for policy reforms, community members can also use this information to make an action plan that is aimed at resolving the issue at a local level. This promotes legal empowerment by giving communities an opportunity to articulate how national-level interventions should address their needs. It also helps communities articulate the actions it can take to respond to justice challenges itself.

²⁷ For more information please refer to the ABA's *Access to Justice Assessment Tool: A Guide to Analyzing Access to Justice for CSOs*.

may want to use in your own questionnaire. You can find a complete sample questionnaire in Annex 1.

You should also check to see if your government is party to any international treaties.²⁸ In your assessment, you may want to explicitly reference the numerous recommendations related to access to justice that your government has received through the Universal Periodic Review (UPR) and recommendations from UN human rights treaty bodies, other experts and from regional bodies.

Explicitly referencing these recommendations will serve two purposes. First, it will help your government report on its progress towards achieving Goal 16 in a way that is consistent with, and supportive of, its human rights commitments. It will also give your government, civil society and other stakeholders an opportunity to use data collected to implement Goal 16 to shape further assessments of your country's access to justice situation.

TIP

Consult ABA ROLI's justice assessment tool for more detailed information on how to plan and conduct your own national or sub-national access to justice assessment.

TIP

National and community level CSOs are well placed to support communities while they undertake access to justice assessments because their independence from the government and international institutions can give them credibility and greater access.

TIP

Help ensure objective research by purposefully considering the access to justice issues you are examining from many different angles. Use your justice assessment to draw out the opinions of decision-makers and other relevant stakeholders. Analysing your identified justice issues from multiple points of view will help improve the accuracy of your research.

²⁸ For guidance on how to assess this, you may want to refer to this guide: *Sustainable Development Goals: A Practical Guide for National Action and Accountability* (Amnesty International: 2016), p. 17, <https://www.amnesty.org/en/documents/act10/4699/2016/en/>.

Box 11: Case Study: Assessing women's rights in Guinea using ABA ROLI's access to justice assessment tool

ABA ROLI's civil society partner, La Rencontre Africaine pour la Defense des Droits de l'Homme (RADDHO), used ABA ROLI's access to justice assessment tool to establish a baseline of access to justice in Guinea, with a particular focus on women's rights. RADDHO interviewed more than 150 key stakeholders, from officials at the Ministry of Justice to victims of gender-based violence, to determine the most significant obstacles to accessing justice.

RADDHO's findings revealed that most complaints relating to domestic violence and unfair inheritance are brought before informal justice actors and that these informal processes often fail to respect the legal rights of victims.

As a result of these findings RADDHO designed and implemented a program to improve the capacity of administrative authorities to adopt a rights-based approach to cases of domestic violence.

Using the ‘Six Elements’ of Access to Justice to carry out a justice assessment

Six Elements	Rationale for asking questions	Using answers from your consultations	Example questions
Legal Framework: The existence of a set of written or unwritten laws lays the foundation on which people can be empowered to solve their justice problems.	Questions should help you assess whether there are clear rules and standards, in addition to a non-discriminatory legal framework, that people understand and use to exercise their basic rights. In your discussions on legal frameworks, you should learn about the traditional and indigenous legal systems people use to exercise their rights.	Use the answers to help decide what policies or laws will need to be revised or added into a National Justice Plan. Researching laws early in the process will help guide you in thinking about what reforms could realistically be achieved and recommended later.	<ul style="list-style-type: none"> • What laws, if any, has your government put into place to protect your right to access your justice system? • Are they simple and easy to understand?
Legal Knowledge: To be empowered, people must be aware of their rights and duties, and the available mechanisms to defend their rights and duties.	Questions should help you understand if people recognize, in very general terms, that they have been wronged in some way or that they are not receiving something to which they are entitled. Factors influencing whether people are aware of their legal rights include education and available information from government and non-state institutions. With SDG target 16.10 recognizing the need for public access to information and the protection of fundamental freedoms, there is an even greater basis for why people should know their rights.	Use the answers to help you develop reforms that relate to freedom of information laws. Such strategies will also assist your government’s efforts to achieve SDG 16.10.	<ul style="list-style-type: none"> • How would you rate your familiarity with how to access legal information? • Which of the following is closest to your understanding of what a lawyer is? Select one: (1) A person who provides legal advice and representation in court; (2) A person who provides traditional dispute resolution instead of going to court; (3) A person who costs you a lot of money but does not help you.
Advice and Representation: To have a fair shot when they approach the dispute mechanisms available to them, people need access to effective and affordable legal aid services.	Questions should assess the quality of legal services in your country, and examine the role played by civil society in providing them. Accessibility in remote areas, the cost of lawyers, and the public trust of lawyers all affect people’s access to legal advice and representation.	Use the answers to shape policies in your National Justice Plan that promote community-based paralegal programs and bring lawyers to rural areas through mobile clinics and other programs that make legal aid more available.	<ul style="list-style-type: none"> • What roles do paralegals play in resolving justice problems? • Who was the first person you sought help from to resolve your dispute? Select one: (1) Family member/friend/neighbor; (2) Imam; (3) Paralegal; (4) Legal aid group/NGO; (5) Bar association; (6) Police; (7) Local government official; (8) Court official; (9) Other
Access to a Dispute Resolution Mechanism: People must be able to afford and access dispute resolution mechanisms and disputes or complaints must be processed in a timely manner.	<p>Questions should assess both formal and informal justice, state and non-state institutions. Remember, formal state institutions outside of the justice sector usually have dispute resolution mechanisms (e.g. people with environmental justice disputes should be able to access an environmental agency and have their dispute processed in a timely way). These mechanisms must also be accessible.</p> <p>Your questions should focus on the factors that affect access these mechanisms. These factors include the affordability of using the mechanism, accessibility—including the number and distribution of dispute resolution mechanisms and the quality of the transportation infrastructure in the country—and the timeliness of processing a dispute, including the mechanism’s caseload and case management procedures.</p>	Use the answers to develop strategies that combine long-term reforms with short-term measures to make the justice mechanism available. For example, where permitted by local legislation, strategies that involve making small grants or loans available to people seeking to bring a claim or diverting appropriate cases to more accessible justice mechanisms may be useful. You can also ensure that your National Justice Plan supports civic education programs to promote confidence in and positive attitudes towards justice institutions.	<ul style="list-style-type: none"> • How much time did it take to travel to and from the justice institution (in days)? • How much money did it cost, if anything? (Do not include money paid as restitution to the other party.)

Six Elements	Rationale for asking questions	Using answers from your consultations	Example questions
<p>Fair Procedure: People must have the opportunity to present their case in justice or other administrative forums. Disputes and complaints must be resolved impartially and without improper influence. People should be able to make voluntary and informed decisions to settle when they use mediation.</p>	<p>The questions should explore language difficulties and procedure because both influence whether people have the opportunity to effectively present their case. A mediator or decision-maker should not be biased in relation to any of the issues or parties involved in a dispute.</p>	<p>Use the answers you gain to promote legislative reforms to correct the rules of procedure. Consider having your national justice plan commit to building the capacity of mediators and other decision-makers to improve their practices. Your national justice plan should also consider which institutional guarantees—including independence, transparent appointment processes, protection from dismissal and fair salaries, as well as protections such as oversight and requirements for stating reasons for decisions—can help eliminate partiality and undue influence in justice institutions.</p>	<ul style="list-style-type: none"> • Has your problem been resolved at this time? • Who was finally able to resolve the problem? Select one: (1) Family member/friend/neighbour; (2) Religious leader; (3) Paralegal; (4) Legal aid group/NGO; (5) Bar association; (6) Police; (7) Local government official; (8) Court official; (9) Other, specify. • How satisfied were you with the process? Select one: (1) Very satisfied; (2) Somewhat satisfied; (3) Neither satisfied nor unsatisfied; (4) Somewhat unsatisfied; (5) Very unsatisfied
<p>Enforceable Solutions: In order for a remedy to be meaningful, people must be able to enforce it, including through the use of sanctions against individuals who refuse to comply.</p>	<p>The questions should help you determine whether justice and other administrative institutions are able to enforce their decisions. This may include analysing the effectiveness of using sanctions against individuals who refuse to comply with a decision.</p>	<p>Use the answers you gain to ensure that your national justice plan considers how both non-state justice institutions and can help citizens achieve enforceable solutions.</p>	<ul style="list-style-type: none"> • Were you awarded compensation? • As of today's date, have you been able to collect this compensation?

Box 12: Case Study: assessing women’s rights in Mali using ABA ROLI’s access to justice assessment tool

In Mali, where ABA ROLI’s local partner conducted an access to justice assessment, heads of family, religious leaders and village chiefs are frequently involved in mediating community-level conflicts, such as domestic violence. They found that these informal institutions were far more accessible than the formal system but, because of their traditional or religious character, often permitted discrimination against women. As a result, ongoing reforms of Mali’s formal justice system, while vital, must be combined with engagement with informal institutions and efforts to increase their respect for women’s rights.

Box 13: Case Study: using stakeholder data to advocate for judicial reform in the Philippines

To improve case management in the Philippine judiciary, ABA ROLI asked judges to iterate the kinds of data they required to make improvements. Through this baseline assessment, the courts identified the following challenges: (1) delays in serving notices; (2) non-compliance with procedural time limits and (3) other trial postponements.

By using the data gathered during their assessment, ABA ROLI convinced judges in Quezon City to pilot an automated case management system. As a result the city experienced a 29% reduction in case backlog. ABA ROLI’s reputation for using good data has led to further requests for analysis by the Supreme Court of the Philippines, along with a growing relationship of trust and confidence with the government.

Box 14: Case Study: civil society assessments of access to criminal legal aid in Nepal

Civil society organisations can play a pivotal role in assessing the systems they work within, particularly when they are instrumental in providing legal representation themselves.

In Nepal, legal aid services are provided by the Supreme Court’s Baitanik Wakil program, the Nepal Bar Association’s District Legal Aid Committees, and a number of civil society organisations.

The International Legal Foundation’s country program conducted a baseline assessment of criminal legal aid services in six Nepal districts in 2014, finding that the vast majority of the accused did not have legal representation at any point and the majority of those who did have representation were represented by a civil society attorney.

Using the findings of this assessment, ILF-Nepal engaged the government and other civil society organisations in detailed discussions about the state of access to counsel in Nepal and practical means of addressing challenges in the short- and long-term.