



Asian Consortium for Human Rights-based Access to Justice (HRBA2J-Asia)

HRBA2J-Asia is a regional initiative towards promoting a human rights-based approach to access to justice. Consisting of various national judicial and human rights institutions, civil society organizations and academic institutions in Asia, the Consortium seeks to promote the application of human rights-based approach in the design and implementation of access to justice programs by building a community of practice through capacity development and advocacy activities.

The main objectives of HRBA2J-Asia are to share knowledge, distill best practices and model reform experiences from the Asian region, as well as globally, into appropriate demand-driven knowledge resources that apply human rights standards and principles to facilitate access to justice. HRBA2J-Asia seeks to develop the capacities of various institutions in Asia on an expanded notion of “access to justice”—one founded on inclusion, participation and transparency, and is not limited to judicial institutions as the sole actors. These institutions will then comprise the community of practitioners that will hopefully work towards the application of human rights-based approach in access to justice initiatives for claimholders and duty bearers at the grassroots level around the region.



United Nations Democracy Fund (UNDEF)

UNDEF was established by the UN Secretary-General in 2005 as a United Nations General Trust Fund to support democratization efforts around the world. UNDEF supports projects that strengthen the voice of civil society, promote human rights, and encourage the participation of all groups in democratic processes. The large majority of UNDEF funds go to local civil society organizations—both in the transition and consolidation phases of democratization. In this way, UNDEF plays a novel and unique role in complementing the UN’s traditional work—the work with Governments—to strengthen democratic governance around the world. UNDEF subsidizes entirely on voluntary contributions from Governments. In 2010, it surpassed US\$110 million in contributions and now counts 39 countries as donors, including many middle- and low-income States in Africa, Asia and Latin America.

In four rounds of funding so far, UNDEF has supported a total of more than 330 projects in more than 110 countries.

United Nations Development Programme Asia-Pacific Regional Centre (UNDP APRC)



The Asia-Pacific Regional Centre (APRC) is an out posted unit within the Regional Bureau of Asia and the Pacific (RBAP) and an integral part of UNDP’s global infrastructure and knowledge networks. UNDP has established the Asia-Pacific Regional Centre (located in Bangkok with a multidisciplinary office in Suva, Fiji) with the main priority to provide the 24 UNDP Country Offices in the region with reliable and easy access to quality advisory services and technical support based on global applied research and UNDP lessons learned.

The Asia Pacific Regional Centre works in partnership with a plethora of development stakeholders and promotes regional capacity development initiatives related to regional public goods. These joint efforts allow UNDP Country offices, governments, regional intergovernmental organizations, bilateral and multilateral donors, UN agencies and international financial institutions, civil society, academic and other development partners to identify, create and share knowledge relevant to solving emerging regional development challenges.

United Nations Development Programme Philippines (UNDP Philippines)

UNDP is the UN’s global development network, advocating for change and connecting countries to knowledge, experience and resources to help people build a better life. We are on the ground in 172 countries, working with them on their own solutions to global and national development challenges. As they develop local capacity, they draw on the people of UNDP and our wide range of partners.

In the Philippines, UNDP fosters human development for peace and prosperity. Working with central and local governments as well as civil society, and building on global best practices, UNDP strengthens capacities of women, men and institutions to empower them to achieve the Millennium Development Goals and the objectives of the Philippine Middle-term Development Plan. Through advocacy and development projects, with a special focus on vulnerable groups, UNDP works to ensure a better life for the people of the Philippines.



Economic, Social and Cultural Rights-Asia (ESCR-Asia, Inc)

As the current, Secretariat of the Asian Consortium for Human Rights-based Access to Justice (HRBA2J-Asia), ESCR-Asia is a Philippine-based regional human rights organization engaged in advocacy and training toward the full realization of economic, social and cultural rights in the Asian region. It commits to contributing to the increased understanding and articulation of Asian perspectives on human rights in general and economic, social and cultural rights in particular, and also in developing agreement on these principles, and strengthening commitment to promote ESCRs, specifically in Southeast Asia and other Asian countries.

A MANUAL ON HUMAN RIGHTS-BASED APPROACH TO REALIZING EQUAL ACCESS TO JUSTICE

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Asian Consortium for Human Rights-based Access to Justice



A Manual on Human Rights-based Approach to Realizing Equal Access to Justice

Asian Consortium for
Human Rights-based Access to Justice



*Empowered lives.
Resilient nations.*

The Pilot Training Workshop was made possible by the financial support from The United Nations Democracy Fund (UNDEF), United Nations Development Programme Asia-Pacific Regional Centre (UNDP APRC) and the United Nations Development Programme Philippines (UNDP Philippines). Views expressed during the workshop and in this Manual do not necessarily present the official views of UNDEF, UNDP APRC and UNDP Philippines.

A Manual on Human Rights-based Approach to Realizing Equal Access to Justice

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COVER PHOTO:

In one of the winding alleys of Kathmandu, a Nepalese family sits and watches the hustle and bustle of the city, as locals and tourists converge for a brief exchange of culture and history.

Photo by MIA AUREUS

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Message

ASIA IS the largest continent and is home to approximately 60 percent of the world's population. In recent decades, this region bore witness to transitions to democracy. Ailed by the evils of poverty and despotism, the increase in social awareness and advocacy for the poor masses gained ground and toppled dictatorships that obscured human rights. This has made Asia significant in the continued push for democratization and for the protection of every basic right—civil, economic, social, cultural, and political rights—entitled to a person.

The United Nations Democracy Fund (UNDEF) is proud to support the Asian Consortium for Human Rights-based Access to Justice (HRBA2J-Asia) for its implementation of the UNDEF project (**UDF-RAP-09-313**), under which, this manual was published. This manual addresses the need and demand for capacity building on human rights-based access to justice. In the world's struggle to achieve a sense of peace and stability in every aspect of living, nothing is more important than the protection and preservation of human life and dignity.

Hence, this manual is significant as it provides a paradigm shift to access to justice. In this framework, the rights of the human person rise to paramount importance. The human person is placed at the heart of every effort to address social issues and grievances.

UNDEF is pleased to note the passion of the two manual writer-trainers, Maria Socorro Diokno and Maria Victoria Diokno, as well as of the Steering Committee, the Secretariat, members of the HRBA2J-Asia, the UNDP Asia-Pacific Regional Centre (UNDP APCR), and the UNDP Philippines to defend human rights. They are the driving force that made this publication possible. UNDEF believes that, despite the abuses in human rights we see, as well as the hindrances to human rights, we are, nonetheless, not left feeling hopeless, as we have such individuals and institutions that tirelessly work to guard against transgressions to human rights. This publication is truly a gift as it ultimately inspires more people to become defenders of human rights and empowers them with the right understanding and approach.

With much gratitude, UNDEF applauds the HRBA2J-Asia for this “feat.” While this manual was made with the practitioners in Asia in mind, the rest of the world can learn and benefit from this as well.

United Nations Democracy Fund

Message

AS DEVELOPMENT programs are increasingly considering human rights concerns and adopting human rights-based principles in their work, development interventions in the justice sector have also aimed to further the realization of human rights by focusing on promoting access to justice and legal empowerment for the poor and disadvantaged.

The focus on empowering people to be able to protect themselves (e.g. in cases of abuse such as abuse of authority or when they face disputes/conflicts) shifts the attention away from just looking at the justice sector from an institutional standpoint. Priority is given to enabling people to seek redress for their grievances and to access a remedy, or in other words, for people to have access to justice. In the Asia-Pacific region, practitioners have sought ways through which justice can be accessible to the poorest and most marginalized. They have worked to build capacities of rights-holders to seek and access remedies for their grievances and to build capacities of duty bearers to fulfill their obligations and be able to provide remedies for those who have grievances.

The Asian Consortium for Human Rights-based Access to Justice was envisaged as a means to connect these practitioners working to promote the realization of human rights and enhance access to justice for the poor and disadvantaged. It was developed as a forum where critical achievements and experiences can be shared, and members are enabled to learn from each other about what works and how to bring about change at the regional, national and local levels to safeguard justice and human rights. The UNDP Asia-Pacific Regional Centre (UNDP APRC), with the support from the UNDP Global Human Rights Strengthening Programme and the UNDP Global Accelerating Access to Justice Programme, has been a strong proponent of the Consortium since its initiation. It recognizes the link between human rights and development and the need to promote a human rights-based approach to access to justice, as well as the need to link practitioners in the region working on these issues.

This publication is an example of the work of the Consortium, which builds on the knowledge, experience and skill of its members—government, non-government organizations, the academe, and national human rights institutions—to develop a tool that can serve as a foundational module on applying the human rights-based approach to access to justice. This tool, developed and piloted in the region, is tailored to the realities facing the Asia region. It aims to enable the Consortium members to further their work on linking human rights and justice to ensure equitable and sustainable development.

UNDP APRC welcomes the publication of this manual and looks forward to the Consortium's initiatives in strengthening advocacy, networking and capacity development to promote human rights-based access to justice in the Asia region.

Acknowledgments

Maria Socorro (Cookie) I. Diokno and **Maria Victoria (Maia) I. Diokno** developed the Pilot Training Workshop, designed the structured learning exercises and researched and wrote the reference sheets. **Maria Victoria (Maia) I. Diokno** designed the workshop logo.

While the Manual reflects the views of the authors, revisions were inspired by the critique and comments of:

- The Steering Committee of the Asian Consortium for Human Rights-based Access to Justice:
 - Atty. **Pillkyu Hwang**, Chairperson (Director, Korean Public Interest Lawyers Group GONGGAM);
 - Atty. **Marlon Manuel**, Alternative Law Group (Head, Networking Program Committee);
 - Atty. **Jeremiah Ryan Quan**, Ateneo Human Rights Center (Head, Advocacy Committee);
 - Mr. **Marc Cebreros**, Commission on Human Rights-Philippines (Head, Membership Committee);
 - Justice **Marina Buzon/Joan Tejada**, Atty.

Introduction

This Manual is a result of the Pilot Training Workshop on the Human Rights Approach to Realizing Equal Access to Justice (EA2J) held on April 4-6, 2011 in Manila. It was a three-day live-in workshop that explored the links between human rights and EA2J. It primarily aimed to strengthen the institutional and individual capacities of members of the Asian Consortium for Human Rights-based Access to Justice to apply human rights norms, standards and principles to realize EA2J. At the end of the pilot training workshop, participants were able to:

- 1) Arrive at a common understanding of EA2J;
- 2) Justify the human rights approach to realizing EA2J; and
- 3) Integrate human rights norms, principles and standards in the design and development of EA2J interventions.

The pilot training workshop addressed the Consortium members' training needs identified by the training needs assessment conducted in November 2010.

Participants

Thirty participants, all Consortium members and members of the Consortium's Steering Committee, participated in the Pilot Training Workshop. Every effort was taken to ensure that neither sex constituted less than 40 percent of the participants to the Pilot Training Workshop, in accordance to the recommendation of the United Nations Committee on the Elimination of Discrimination against Women.¹

Methodology

The Pilot Training Workshop applied the principles of human rights by adopting participant-oriented (not instructor-centered) methodology. The workshop recognized that Consortium members are sources of knowledge, insights and experiences (*human dignity*), who learn best when they are in control of the learning process (*empowerment*), and who should take responsibility for their own learning (*accountability*). The workshop built critical analysis and invited creative thinking. Consortium members were enabled to apply what they had learned (*participation and transparency*) through *practical exercises* in smaller groups. The completion of a series of exercises hoped to assist

¹ General Recommendation 23, "Political and public life," adopted by the United Nations Committee on Discrimination against Women at its sixteenth session, 1997, U N Doc. A/52/38.

Consortium members to apply the human rights approach to realizing EA2J.

At the onset of the workshop, participants were invited to organize themselves into three Host Teams (corresponding to the three days of the Workshop). Each Host Team was responsible for managing the conduct of the workshop for the day; as “workshop day manager,” the Host Team was responsible for:

- all the break activities (group dynamics, team building activities, ice breakers, etc.) in between sessions;
- introducing each session and lead facilitator;
- distributing additional materials, if any;
- providing a synthesis of the day’s activities;
- opening and closing each day;
- ensuring the presence of the participants at the workshop; and
- time management.

The host team for the first day consisted of Sam Onn Kong, Joseph Torafing, Sanaiyya Ansari, Patricia Cervantes, Ricardo Sunga, Debendra Adhikari, Wei Gao and Geetha Pathak-Sangroula. Day 2’s host team had Mutmainah Korona, Yanuar Sumarlan, Angie Umbac, Marc Cebrenros, Elmer Eleria, Shreddhar Sapkota, Baigaliman Nyandavaa, April Mabanos and Arefeen Ahmed as its members. The host team for Day 3 included Santi Latifi, Ria Ablan, Rosario Garcia, Edilberto Davis, Pillkyu Hwang, Pradeep Pathak, Zia Ahmed Awan, Sri Suparyati, Karen Dumpit, Marieper Mapanao and Donghwa Lee.

Manual

The Manual reflects the flow of discussion and session activities of the Pilot Training Workshop. The format, objectives, session activities, structured learning exercises and reference sheets were integrated in the following modules:

Module 1: Equal Access to Justice: Situational Context and Framework looks at the different perspectives towards EA2J and examines the prevailing situation of EA2J in the region.

Module 2: Human Rights Approach to Realizing Equal Access to Justice provides a guiding framework based on human rights norms, standards and principles that enables practitioners to apply human rights to realize EA2J. It relates human rights directly to EA2J, defines

the human rights approach, and presents the four elements of the approach: the centrality of the human person, the multiple dimensions of equal access, the nature and scope of formal and non-formal institutions of remedy, and the human rights functions of justice.

Module 3: Developing Human Rights-based EA2J Interventions applies human rights norms, standards and principles to the design and development of EA2J projects.

The modules will be delivered in a seamless and sequential manner, with each topic building upon the previous one. Each topic incorporates specially designed exercises, which enable the participants to better learn the human rights approach by actually applying its principles, norms and standards.

Schedule

The Pilot Training Workshop started on Monday, April 4, 2011. Participants were expected to arrive and register before 5:00 o'clock in the afternoon.

The Pilot Training Workshop began with ceremonies led by the Consortium's Steering Committee, and included: Opening Remarks, Introduction of Participants and Training Team, Welcome Message, Solidarity Messages, Intermission, Introduction of Keynote Speaker, Keynote Address, and Orientation to Pilot Training Workshop. A dinner to welcome participants followed.

“Justice as Fairness”

John Rawls disputes both utilitarianism and libertarianism. According to Rawls, “justice denies that the loss of freedom for some is made right by a greater good shared by others.”⁷ Equating justice with fairness, Rawls proposes two principles of justice:⁸

“First: each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.”

“Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”

Comparative Justice

Amartya Sen challenges Rawls’ theory of justice by maintaining there are no “perfectly just institutions.” Sen distinguishes between what he calls “arrangement-focused justice,” which upholds right behavior by all, and “realization-focused justice,” which addresses actual behavior and actual outcomes. Sen notes: “justice cannot be indifferent to the lives that people can actually live.”⁹

Sen recognizes that justice entails choices based on public reason from which may arise alternative or competing arguments. Rather than make a choice based upon a single theory of justice, Sen proposes the construction of a pluralistic notion of justice with multiple dimensions closely linked to actual behavior and actual outcomes.

Models of Practice

Gender Justice

There is no universally accepted definition of gender justice. It is “often used interchangeably with notions of gender equality, gender equity, women’s empowerment, and women’s rights.”¹⁰ Anne Marie Goetz presents and critiques three prevailing concepts of gender justice:¹¹

- “Gender justice as entitlements and choice,” which reflects Martha Nussbaum’s “minimum capabilities approach” outlining the minimum requirements necessary for human life;
- “Gender justice as absence of discrimination,” which is based primarily on CEDAW; and

⁷ John Rawls. 2007. *A Theory of Justice*, in Michael J. Sandel (ed.), *Justice: A Reader*, Oxford University Press. Page 203.

⁸ John Rawls. 2007. *A Theory of Justice*, in Michael J. Sandel (ed.), *Justice: A Reader*, Oxford University Press. Page 214.

⁹ Amartya Sen. 2009. *The Idea of Justice*, The Belknap Press of Harvard University Press, Cambridge, Massachusetts. Page 18.

¹⁰ Anne Marie Goetz. 2007. *Gender Justice, Citizenship and Entitlements: Core Concepts, Central Debates and New Directions for Research*, in Maitrayee Mukhopadhyay and Navsharan Singh (eds.), *Gender Justice, Citizenship and Development*, Zubaan, New Delhi, India and International Development Research Center, Ottawa, Canada.

¹¹ *Ibid.*

- “Gender justice as positive rights,” which is closely allied with the human rights-based approach.

Building upon the human rights-based definition, Goetz then defines gender justice as the “ending of... and if necessary, the provision of redress for... inequalities between women and men that result in women’s subordination to men.” Goetz stresses the essential elements of gender justice: accountability, redress and restitution.¹²

In her survey of laws and jurisprudence in South Asia, Ratna Kapur distilled three perspectives of gender justice “as understood in law” among countries of the region:¹³

- Protectionism, which “accepts traditional and patriarchal discourses that construct women as weak, biologically inferior, modest and incapable of decision-making,” and therefore locates gender justice “exclusively within a protectionist framework, whereby laws are enacted in order to protect women as they are unable to decide and act for themselves;”
- Equality, which recognizes the vital role the law plays to advance women’s equality “by removing the legal obstacles that have limited women’s full and equal participation.” However, gender justice, from this perspective, is often guided by the assumption that equality can be achieved “through mere reform of the law and enforcement;”
- Patriarchy, which views law as “an instrument of patriarchal oppression,” and gender justice as a vehicle to “challenge the patriarchal assumptions upon which law is based.”

Restorative Justice

Restorative justice is internationally understood as a “process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.”¹⁴ Restorative justice is pursued largely within the context of crime prevention. The United Nations *Basic Principles on the Use of Restorative Justice Programs in Criminal Matters* lists the following essential principles of restorative justice:¹⁵

- Restorative justice should be “generally available at all stages of the criminal justice process.”
- Restorative justice should be “used only with the free and voluntary consent of the parties,” who “should be able to withdraw such consent at any time during the process. Agreements should be arrived at voluntarily by the parties and contain only reasonable and proportionate obligations.”

¹² Ibid.

¹³ Ratna Kapur. 2007. *Challenging the Liberal Subject: Law and Gender Justice in South Asia*, in Maitrayee Mukhopadhyay and Navsharan Singh (eds.), *Gender Justice, Citizenship and Development*, Zubaan, New Delhi, India and International Development Research Center, Ottawa, Canada.

¹⁴ Tony F. Marshall. 1999. *Restorative Justice: An Overview*, Home Office, Information and Publications Group, Research Development and Statistics Directorate, London, United Kingdom. Page 5.

¹⁵ ECOSOC Res. 2000/14, U.N. Doc. E/2000/INF/2/Add.2 at 35, 2000.

- “Where restorative processes and/or outcomes are not possible, criminal justice officials should do all they can to encourage the offender to take responsibility vis-à-vis the victim and affected communities, and reintegration of the victim and/or offender into the community.”
- Guidelines and fundamental procedural safeguards should be established and applied to restorative justice programs.

Indigenous Justice Systems

ILO Convention 169, *Indigenous and Tribal Peoples Convention*, 1989, explicitly recognizes indigenous peoples’ justice systems, based on their customs or customary laws.¹⁶ Yet, of the countries in Asia and the Pacific, only Nepal ratified this Convention.¹⁷

Article 34 of the *Declaration on the Rights of Indigenous Peoples* guarantees the right of indigenous peoples “to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.”

The nature of indigenous justice systems is best described by indigenous peoples themselves; the following paragraphs are excerpts from the submission of the Asian Indigenous Peoples’ Pact (AIPP) Foundation to the study by the Expert Mechanism on the Rights of Indigenous Peoples:¹⁸

“Indigenous juridical systems include judicial, legislative and procedural aspects. The judicial aspects would include rulings of courts by indigenous chiefs, headmen, elders, councilors etc., when administering customary law and resolving disputes. The concept of indigenous juridical system is to maintain harmony among members of the community, and is based on the principles of collective indemnity and communal solidarity. Fines and compensations are meted out to provide wrongdoers an opportunity to ask forgiveness from the aggrieved party and the whole community and to redress part of the injury suffered by the aggrieved party.

“Indigenous justice systems are seldom adversarial, unlike some mainstream systems, wherein the adjudicators are meant to act as neutral umpires in a dispute between two protagonists and decide which of the two is at fault. In contrast, indigenous systems seek not so much to identify the defaulter and punish him or her (unless where deemed necessary), but to reconcile the disputing parties with each other and with the rest of society. Various elements of indigenous justice resolution mechanisms may be found in mainstream practices of arbitration and alternative dispute resolution mechanisms.

x x x

¹⁶ See Articles 8, 9 and 10 of the Convention.

¹⁷ Ratified on September 14, 2007.

¹⁸ Asian Indigenous Peoples’ Pact Foundation. 21 April 2010. “Indigenous Governance Systems in Asia.”

“Indigenous juridical systems are also linked to indigenous political administrative structures that are based on leadership and decision-making by consensus. The preferred model for decision-making is one that is effective and participatory, and allowing equal opportunity through two modes: firstly, through a general meeting that includes all level of the community, and secondly, through a process involving just the leaders. Fully indigenous courts were generally preferred over state courts, such as in Northeast India, Chittagong Hill Tracts, Bangladesh and Jharkhand, India. Hybrid organizations between community leaders and the government were found to be unfavorable in some places (e.g., Sabah, Malaysia and Jharkhand, India), as they are deemed to be government tools to dominate indigenous peoples.”

Suggested Readings

Sandel, Michael J. (ed.). 2007. *Justice: A Reader*. Oxford University Press.

Sen, Amartya. 2009. *The Idea of Justice*. The Belknap Press of Harvard University Press. Cambridge, Massachusetts.

Mukhopadhyay, Maitrayee and Singh, Navsharan (eds.). 2007. *Gender Justice, Citizenship and Development*. Zubaan, New Delhi, India and International Development Research Center, Ottawa, Canada.

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United Nations. 2000. *Basic principles on the use of restorative justice programmes in criminal matters*. ECOSOC Res. 2000/14. U.N. Doc. E/2000/INF/2/Add.2 at 35.

Asian Indigenous Peoples' Pact Foundation. No date. *“Indigenous Governance Systems in Asia.”*

**Article
1**

End Impunity!
Make
Human Rights
Our Way
Of Life

**All people
are born
free and equal
in dignity
and rights**

**UNIVERSAL DECLARATION
OF HUMAN RIGHTS**

le

End Impunity!
Make
Human Rights
Our Way
Of Life

**Equality
and non-
discrimination
for all**

**UNIVERSAL DECLARATION
OF HUMAN RIGHTS**

**Article
3**

End Impunity!
Make
Human Rights
Our Way
Of Life

**Right to
life, liberty
and
security
of person**

**UNIVERSAL DECLARATION
OF HUMAN RIGHTS**



Equal Access to Justice: **SITUATIONAL CONTEXT AND FRAMEWORK**

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Sample Answers to the Exercise

Reference Sheet 2: Perspectives on EA2J

Session 2: EA2J in the Region

Exercise 3: EA2J in the Region

Sample Answers to the Exercise

Reference Sheet 3: The State of the Rule of Law in Selected Countries

Note to Trainers:

- 1 Before using this module, trainers are urged to conduct a training needs assessment (TNA) of prospective participants.
 - a. The TNA instrument should be designed to extract prospective participants' knowledge of, attitudes to, and skills in, the human rights approach to realizing equal access to justice.
 - b. A reliable TNA is based on the accomplished instruments submitted by at least 60 percent of prospective participants.
 - c. TNA results should provide sufficient guidance for trainers to choose, adapt and modify those sessions, exercises and reference sheets most appropriate to the prospective participants' levels of knowledge, attitudes and skills.
 - d. It is important that those who submitted TNA instruments actually attend and participate in the training activity.
- 2 The Pilot Training Workshop was conducted for three (3) days. Depending on the TNA results and the session activities to be conducted, trainers may adjust the time allotted for each session.
- 3 Session activities should be carefully planned.
 - a. Trainers are free to use the exercises in this module or to adapt or modify them to suit participants' training needs.
 - b. Facts that participants can relate to and that are relevant to the topic discussed should be chosen for every exercise.
 - c. Facts may be augmented by photographs; as much or as little detail may be provided, as warranted.
 - d. A video or short documentary may be used instead of a fact sheet.

- 4 Trainers are encouraged to consciously apply the human rights PANTHER principles throughout the training activity.
- **Participation:** Trainers should provide ample opportunities for participants to actively and meaningfully participate in the training activity.
 - **Accountability:** Trainers should take full responsibility for the learning design, environment and process; trainers should prepare well before the training activity by updating themselves on the latest developments and conducting a trial run of the training activity a few days before it actually starts.
 - **Nondiscrimination:** Trainers should ensure that each participant (especially the quieter ones) is involved in all session activities.
 - **Transparency:** Trainers should create an open, respectful and comfortable learning environment.
 - **Human Dignity:** Trainers should respect participants' knowledge, attitudes and skills, and elicit from them their insights and experiences throughout the training activity.
 - **Empowerment:** Trainers should ensure that participants control the pace of learning and the learning process.
 - **Rule of Law:** In responding to participants' questions and concerns, and in commenting on participants' individual or group outputs, trainers should be critical, but fair.

MODULE 1

Equal Access to Justice: Situational Context and Framework

THIS MODULE looks at the different perspectives towards EA2J (the capacity perspective, the instrumental approach, the human rights definition and the combined approach), and examines the prevailing situation of equal access to justice (EA2J) in the region.

This module is divided into two sessions:

- **Session 1: Equal Access to Justice** scrutinizes the different definitions and approaches towards equal access to justice.
- **Session 2: EA2J in the Region** examines the regional context of equal access to justice throughout Asia, paying special attention to principal barriers and issues related to equal access to justice.

Time

8:15 am – 12:30 noon

SESSION 1

Equal Access to Justice

Objectives

At the end of this session, participants should be able to:

- Compare and contrast the different approaches towards equal access to justice; and
- Define equal access to justice in the context of current approaches applied by various donors and agencies.

Time

8:15 am – 10:15 am

Session Guide

This session scrutinizes the different definitions and approaches toward equal access to justice. This session is divided into four activities:

- The session begins with a group game, **Exercise 1: Justice Breaking Down**, which allows participants to appreciate the value of equal access to justice and understand the concepts of *inclusion* and *exclusion* (15 minutes).
- Taking off from Exercise 1, the lead facilitator will discuss the different definitions and approaches to equal access to justice. The lead facilitator shall respond to questions, comments and concerns raised by participants (25 minutes).
- Following the discussion, participants, working in small groups, shall apply the different approaches towards EA2J to a case study, by accomplishing **Exercise 2: Viewing EA2J Using Different Lenses** (50 minutes).
- Thereafter, all small groups shall convene in plenary, where each small group shall present their discussions and the approach that best addresses the case study. Comments shall be solicited from other small groups and the lead facilitator (30 minutes).

Exercises

Exercise 1: Justice Breaking Down

Exercise 2: Viewing EA2J Using Different Lenses

Reference Sheet

Reference Sheet 2: Perspectives on Equal Access to Justice

EXERCISE 1

Justice Breaking Down

TRAINERS SHOULD read the Note to Trainers at the beginning of the module.

This exercise allows participants to appreciate the value of equal access to justice and understand the concepts of *inclusion* and *exclusion*. The exercise recognizes that, while many have legal problems and may or may not wish to seek redress from institutions of remedy, not everyone has the resources (financial, capacities, etc.) to seek redress, and not all institutions of remedy have the capacity to provide redress.

Trainers should first prepare meta cards, which contain the identities of persons likely to be most vulnerable, or most at risk in failing to obtain equal access to justice (e.g. trafficking victim, tenant farmer, undocumented migrant worker, indigenous person).

- a. The number of meta cards depends on the total number of participants; there should be enough for one-third of the participants.
- b. Each meta card should have double-sided tape at the back, so that the cards can be easily attached to a participant's clothing.
- c. The cards should be kept face down, so the participants cannot see them.

Taking into account the number of participants, trainers should ask participants to form groups of a certain number. The number suggested should result in one to three participants left out, or excluded. The persons excluded should be asked to choose a meta card (without seeing what is written on it), and to keep that card. They should then be told that they are now excluded and are no longer part of the game, but must stand in the corners.

The participants should then be asked to continue to form groups, until one-third of the participants are excluded and have meta cards. At this point, all the participants should be asked to sit down, and the excluded group will be requested to come to the front of the room. They should be asked to attach the meta card to their clothing.

They should then be asked to internalize the identity written on the meta card, and explain why they would be excluded from obtaining equal access to justice and how they feel about being excluded (e.g. indigenous person will say they are excluded because they have a different language, they are a minority, they are never even consulted, etc.). The rest of the participants can then be asked to contribute more reasons why the particular person is excluded.

EXERCISE **2**

Viewing EA2J Using Different Lenses

THIS EXERCISE allows participants to apply the different perspectives towards EA2J to a particular set of circumstances, compare and contrast the different perspectives and determine which perspective best addresses the circumstances at hand.

Instructions:

- (1) Read the facts below¹⁹

A deaf person who could not read and write and who could not use the Indian sign language was a witness in a court case in India. She was asked to identify the last will and testament of her late husband. Before the interpreter could sign to her the judge's question, the woman saw the photo of her late husband on the will, and grabbed it. The judge thought this meant she recognized the document, and was validating it and her late husband's signature. Despite the interpreter's intervention, the judge continued the proceedings, assuming that the woman had validated the document. Later, during a break, the interpreter told the judge the woman had not certified the document. The judge agreed to have the document verified, and found the document had been forged. Other members of the deaf community face similar issues in the courts.

- (2) Together with the members of the group, discuss how you would address the situation using the different approaches. What specific action(s) best represent the approach and best address the situation? Record your group's answers onto the column entitled "Application."
- (3) Compare and contrast the different perspectives towards EA2J by considering the strengths and weaknesses of each of the perspectives. Record the strengths of the perspective onto the column entitled "Strengths" and the weaknesses of the perspective onto the column entitled "Weaknesses."
- (4) Assess each perspective by answering the questions in the row entitled "Analysis;" record your group's responses after the questions.

¹⁹ Arun C. Rao. Undated. blog entitled Deaf in India. See: <http://deafinindia.blogspot.com/>

PERSPECTIVE	APPLICATION	STRENGTH	WEAKNESS
Capacity Approach			
Instrumental Approach			
Human Rights Approach			

Analysis: Which perspective addresses the situation in the best, most comprehensive and most effective manner? Which perspective focuses on the persons most affected by the situation?

Sample Answers to the Exercise:

Table 1. Members: Sam Onn Kong, Joseph Torafing, Sanaiyya Ansari, Patricia Cervantes, Ricardo Sunga, Debendra Adhikari, Wei Gao

PERSPECTIVE	Application	Strengths	Weaknesses
Capacity Approach	<ul style="list-style-type: none"> Deaf person can learn how to use sign language (capacity building); can present self better Judge can learn sign language to understand the witness 	<ul style="list-style-type: none"> Capacity of both parties are enhanced; process becomes more effective and just 	<ul style="list-style-type: none"> Might be difficult for the witness to learn sign language (cannot read or write) Not convenient for the judge to learn; there may be problems with attitude, there are already assumptions or stereotypes Only building capacity in terms of sign language (only a particular issue or disability); need also to build capacity in terms of legal knowledge
Instrumental Approach	<ul style="list-style-type: none"> Examine Rules of Court & court processes 	<ul style="list-style-type: none"> Improves function of the society; quality of life 	<ul style="list-style-type: none"> Judge might tend to end the case as quickly as possible because the focus is only on the economic aspect or achieving harmony at once Question of effective implementation (there is still a problem with attitude) Prescription; does not involve the human person, overlooks perspectives of the person
Human Rights Approach	<ul style="list-style-type: none"> Awareness and acceptance of diversity and corresponding temporary special measures to allow all human persons to access justice Take into consideration whether or not the deaf person is sufficiently capacitated to identify the document (the person can see, but can the person understand what the document is about?) Develop appropriate court proceedings; examine existing Rules of Court Empower the interpreter to bring up matters/errors immediately Change attitude of judge to take sufficient care or be more sensitive in understanding witnesses 	<ul style="list-style-type: none"> Addresses underlying problems Enhances fundamental assumptions/frameworks (lasting change; does not just focus on a single issue or problem) All stakeholders are capacitated 	<ul style="list-style-type: none"> Judges/ government might be reluctant to take a human rights approach; might take long before it is accepted and implemented It is always about 'claiming' rights, might destroy relationships or balance between parties; not based on negotiations Cannot address everything at the same time; must prioritize certain issues (target most vulnerable people first)

Analysis: Which perspective addresses the situation in the best, most comprehensive and most effective manner? Which perspective focuses on the persons most affected by the situation? The human rights approach is vast; all the other approaches can be implemented by taking a rights-based approach.

Table 2. Members: Mutmainah Korona, Yanuar Sumarlan, Angie Umbac, Krizna Gomez, Elmer Eleria, Shreedhar Sapkota, Arefeen Ahmed

PERSPECTIVE	Application	Strengths	Weaknesses
Capacity Approach	<p>Identify the incapacities and fill the gaps in capacity and sensitivity towards disability rights, literacy, and women's rights through trainings and other education efforts. In this case, there are three: (in)capacity of the woman, judge, and interpreter. Even if she had an interpreter, it does not seem as if the interpreter is also sufficiently equipped to assert the rights and special situation of the deaf in such a judicial proceeding. The trainings should not only focus on capacity, but also on social attitudes toward persons in her situation.</p>	<p>It is direct- both in its solution and effect.</p>	<p>The solutions are mere stop-gap. Only the symptoms are addressed but not the root cause of why persons with illiteracy or disability problems become this vulnerable in legal proceedings. Social ills such as poverty, equality in asserting property rights and literacy must be looked at.</p> <p>It is heavily dependent on funds for capacity-building. And this obviously involves a larger cultural problem for a woman with disability which cannot be addressed by money or short-term solutions that will not end recurring problems. With recurrence, vulnerable persons who become victims lose their faith in the justice system.</p>
Instrumental Approach	<p>External assistants who are more sensitized and carefully trained can be deputized to take the place of less trained government personnel.</p> <p>The deaf community can be brought in to the courts if the government is not sufficiently trained to undertake the task.</p> <p>Domestication of international instruments can also be done to protect the rights of persons with disability.</p> <p>Access to courts, though existing, must be enhanced to become "meaningful" or "proper" access. There should be special communication assistance that considers the vulnerability of the woman.</p> <p>The client should be educated sufficiently as to how the court works and how the process will unfold so as to guide her as she accesses it.</p>	<p>It addresses root causes. With all the right actors in place, it can be done.</p>	<p>It addresses root causes, but it will take too long. If poverty elimination is the goal, then the process is long and may be drawn-out.</p>
Human Rights Approach	<p>It does not seem that she had access to a lawyer; only an interpreter who intervened during the break and not even during the course of the proceeding. The court should provide for a court-paid lawyer to ensure adequate legal assistance. The interpreter cannot protect her legal rights.</p> <p>Property rights of the woman should be protected as they were threatened, considering that a forged will could have been enforced.</p>	<p>It is holistic and it seeks to address the root cause and different aspects of a persons' vulnerability.</p> <p>It is a pathway to empowerment of the vulnerable people who themselves can't seek justice.</p>	<p>It requires a massive perspective and awareness change, because you seek to enforce a seemingly bigger solution to a situation that would traditionally be looked at in a very narrow or functional way.</p>

PERSPECTIVE	Application	Strengths	Weaknesses
	<p>She should be meaningfully informed of her rights.</p> <p>Address the issue of literacy and disability of court litigants through long-term efforts: law reform and amendment of rules of court that will specially take into consideration the cultural, social, economic and emotional situations of the person.</p> <p>Take into consideration broader social concerns of a woman in her situation: i.e., safety and shelter that she may perhaps need as her husband's will is threatened by competing interests.</p>	<p>It requires a tie-up between the government and non-government groups for it to work; it gets everyone on board.</p>	<p>It requires a tie-up between the government and non-government groups for it to work, so it is a challenge.</p>

Analysis: Which perspective addresses the situation in the best, most comprehensive and most effective manner? Which perspective focuses on the persons most affected by the situation? The human rights approach.

Table 3. Members: Santi Latifi, Ria Ablan, Rosario Garcia, Edliberto Davis, Pillkyu Hwang, Pradeep Pathak, Zia Ahmed Awan, Marieper Mapanao

PERSPECTIVE	Application	Strengths	Weaknesses
Capacity Approach	Capacity of the judge, deaf person, interpreter, and the lawyer	<p>Instruments were present:</p> <ul style="list-style-type: none"> • Court system works; • Presence of interpreter 	<ul style="list-style-type: none"> • Limited capacity of the judge to understand • Judge was not properly trained or did not follow training • There is doubt in collection of evidence • Lack of lawyer who could have intervened • Lack of capacity building for the deaf person (differently-abled) as he/she could not even use the Indian sign language. • Need to improve the program for Indian sign language to reach differently-abled persons
Instrumental Approach	<ul style="list-style-type: none"> • Legal process to transfer rights and properties. • Court proceedings 	<p>There is a way to transfer rights and properties to differently-abled persons</p>	<ul style="list-style-type: none"> • Need for lawyer to help certify document to transfer rights and properties stated in the will • Judge should have other courses to understand differently-abled persons • Judge did not refer the case to any authority to trace the truth/verify the document • Rules of Procedure needs to be improved
Human Rights Approach	Rule of Law and sensitivity to human beings.	Judicial system works, but with gaps	<ul style="list-style-type: none"> • Judge/Interpreter just used presumptions and assumptions • Lack of proper environment to understand differently-abled persons • Witness herself was not the center of the concern.

Analysis: Which perspective addresses the situation in the best, most comprehensive and most effective manner? Which perspective focuses on the persons most affected by the situation? The combination approach is the best, most comprehensive, and effective manner to address the situation. First two approaches have limits; human rights approach completes the limitation of the two and has a more comprehensive view.

Table 4. Members: Geetha Pathak-Sangroula, Sri Suparyati, Baigalimaa Nyandavaa, Karen Dumpit, April Mabanés, Myrfi Gonzalez, Donghwa Lee

PERSPECTIVE	Application	Strengths	Weaknesses
<p>Capacity Approach</p> <p>Ability of duty bearer to deliver</p> <p>Ability of right holder</p>	<p>2 perspectives:</p> <p>From the Indian woman deaf person's capacity:</p> <ul style="list-style-type: none"> functional limitation and patriarchal community was not able to claim the justice that she deserves <p>From the Court perspective:</p> <ul style="list-style-type: none"> the fact that it was able to determine that the document was forged but there was no sensitivity attitude problem of the i.e., interpreter who tried to intervene but the judge went on. <p>How do we address this:</p> <ul style="list-style-type: none"> Training education for the Courts Internalizing the values Training Education for the PWD 	<ul style="list-style-type: none"> Interpreter showed some semblance of sensitivity looks at the environment condition in the institution Results-based Develops opportunities to enhance capacity so that person can demand 	<ul style="list-style-type: none"> Does not necessarily translate to 'compliance' (rhetoric vs. reality, theory vs. practice, going through the motions, empty delivery of justice)
<p>Instrumental Approach</p> <p>Means to achieve</p>	<ul style="list-style-type: none"> She was not able to attain the justice she seeks because of her disability but training/education for the PWD may enable her to access justice How do we capacitate? Ask PWDs what their problems are in A2J Special legal measures should be applied: legal assistance/mechanism to facilitate access 	<ul style="list-style-type: none"> Formal recognition of entitlement enables justiciability (i.e., through law) 	<p>Too legalistic/narrow, technical/robotic—no heart; contextual/socio legal structure</p> <p>We look at the means and sometimes lose sight of the end goal—to be able to alleviate the condition of the person</p>
<p>Human Rights Approach</p>	<ul style="list-style-type: none"> Developing capacity of consumers (justice seekers) and sensitizing to the duty bearers Internalization, attitudinal change, mindset changing, paradigm shift How do we capacitate? Ask PWDs what their problems are in A2J—participation 	<ul style="list-style-type: none"> Bridging tool Empowerment Holistic Combines both approach 	<ul style="list-style-type: none"> Vague Lacking sanction Relativity

Analysis: What perspective addresses the situation in the best, most comprehensive and most effective manner? Which perspective focuses on the persons most affected by the situation?

REFERENCE SHEET **2**

Perspectives on Equal Access to Justice

THERE ARE three perspectives on equal access to justice that various donors and agencies have used over the years: capacity, instrumental and the human rights-based approach to equal access to justice. These three approaches are not mutually exclusive, and have often been used in combination. Many agencies and organizations now attempt to use the human rights-based approach. This reference sheet discusses the different perspectives, and provides the definitions that different agencies/donors have used, as well as examples of their projects.

Capacity perspective

Like the name suggests, the capacity perspective focuses on the capacity or ability of duty bearers (government, e.g. courts and law enforcement officials) to provide justice to the citizens of a country and the capacity of the claim holders (persons, communities, vulnerable groups) to demand their rights. Based on how they have defined access to justice, the American Bar Association (ABA) and the Danish Institute for Human Rights (DIHR) appear to use the capacity approach.

The ABA²⁰ defines access to justice as the ability to approach and influence decisions of organs that exercise the authority of the state to make laws and to adjudicate rights and obligations. It also covers the ways in which the law and its machinery are mobilized, and by whom or on whose behalf. Since justice is value laden, these projects also focus on the content of the law and the ways in which it can be reformed to reflect the concerns of the groups in whose name the projects are undertaken: those living in poverty, the disadvantaged and the marginalized. The ABA has a project in Cambodia that examines the constitutional and legal protection of rights to land; the focus is legal aid, independence of the judiciary, existence and enforcement of legislation.

The DIHR²¹ looks at the capacity to provide equal access to effective, contextually appropriate and meaningful avenues of dispute and conflict adjudication in conformity with human rights standards. DIHR conceptualizes 'access' as involving measures on the 'supply' and 'demand' side of justice. Thus, DIHR engages in partnerships both with the adjudicating bodies, i.e., the providers of justice, and with organizations acting as intermediaries between individual members of society and these bodies. Typically, the adjudicators are courts, whereas the intermediaries are legal aid providers. In Nepal, DIHR supports an NGO, which has won Supreme Court cases involving provision of legal aid and other aspects of the protection of liberty and security of the person.

²⁰ Yash Ghai and Jill Cottrell. July 2008. The Rule of Law and Access to Justice: Findings of an ABA Project on Access to Justice, draft paper prepared for the ABA World Forum on Justice, Vienna 2-5 July 2008.

²¹ <http://www.humanrights.dk/themes/access+to+justice>

Instrumental Perspective

In this perspective, EA2J is viewed as a means to achieve economic and social development, improved quality of life and a healthy functioning of society. The World Bank, the Asian Development Bank (ADB) and the United Kingdom's Department for International Development (DFID) use this approach; their goal is to eliminate poverty and meet the Millennium Development Goals. EA2J is seen as one way to achieve these objectives.

The World Bank²² says that improving, facilitating and expanding individual and collective access to law and justice supports economic and social development. Legal reforms give persons living in poverty the opportunity to assert their individual and property rights; improved access to justice empowers persons living in poverty to enforce those rights. Increasing accessibility to courts lessens and overcomes the economic, psychological, informational and physical barriers faced by women, indigenous populations, and other individuals who need its services. New legislation, subsidized legal services, alternative dispute resolution, citizen education programs, court fee waivers and information technology, are other means to improve access. In the Philippines, the World Bank supports a judicial reform project, which aims to establish an accessible judicial system that would foster public trust and confidence.

ADB's²³ earlier definitions of access to justice included a narrow and mostly formal set of institutions and activities. Research on legal empowerment supported by ADB demonstrated the need to expand the boundaries of what is meant by access to justice and the institutions involved in enhancing it. In this context, legal empowerment is defined as "the use of law to increase the control that disadvantaged populations exercise over their lives." Thus, the law becomes a key instrument in the empowerment of people. ADB's project in Pakistan aims to influence the exercise of political, administrative and judicial power to improve the accessibility of public entitlements for all citizens.

DFID²⁴ notes that ensuring justice is delivered allows victims of crime to move on with their lives, deters criminals, and is essential to the healthy functioning of society. Insecurity has a direct impact on the lives of persons living in poverty, with the effects of lawlessness overshadowing their daily lives. Its project in Malawi supports a programme to improve community-level justice.

The Philippine Supreme Court²⁵ looks at access to justice as the foundation of effective delivery of justice to the people.

²² <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20745998~menuPK:1990386~pagePK:210058~piPK:210062~theSitePK:1974062,00.html>

²³ ADB Annual Report. 2003. Law and Institutional Reform: Catalysts for Inclusive Development in the Asia Pacific Region. See also ADB Special Evaluation Study. August 2009. ADB Technical Assistance for Justice Reform in Developing Member Countries.

²⁴ <http://www.dfid.gov.uk/Global-Issues/How-we-fight-Poverty/Conflict-and-Security/security-and-justice/>

²⁵ Supreme Court of the Philippines. August 2001, Action Program for Judicial Reform 2001-2006 (with Supplement). Paragraph (b) under Judicial Systems Reengineering Principles. Page 13.

Human Rights Approach to Equal Access to Justice

The human rights perspective to EA2J is a more holistic perspective. It looks at EA2J as: a right (or package of rights) centered on the human person; an obligation; and an instrument to realize and enjoy all human rights.

Human rights look at EA2J in all its dimensions (physical, linguistic, cultural, political, access to justice, etc.) so that it prevents human rights violations, provides reparation and redistributes and creates opportunities for nondiscriminatory and equal enjoyment of all human rights with full compliance with human rights obligations.

While the Asian Consortium for Human Rights-based Access to Justice does not yet have a common, unified definition of the human rights-based approach to EA2J, several members of the Consortium defined it as follows:²⁶

- *“Human rights-based approach to realizing EA2J focuses on establishing and/or strengthening access to justice programs that incorporate a rights-based methodology. They are often guided by frameworks of human rights instruments under domestic, regional and international law. This methodology should result in the empowerment of individuals and communities as well as leading to a more transparent, fair, and accountable formal and non-formal societal systems.”*
- *“...The purpose of EA2J is the realization of human rights. With this awareness, there should be analysis on the situation of human rights enjoyment and how the situation interacts with access to justice, namely, how unequal access to justice renders the human rights situation even worse and how to address the deficiencies in the current justice system. In this process, it is important to enable/empower the targeted groups to assert their own rights with legal tools, since this is central in realizing human rights.”*
- *“The human rights approach focuses on the underlying causes of the problem and factors impeding justice; identifies affected persons or community; identifies duty bearers or those responsible for change; and assesses and analyses the capacity gaps of affected persons to be able to claim their rights and of duty bearers to be able to meet their obligations. Analysis is also used to focus on capacity development strategies. The human rights approach strengthens the integration of the formal mechanisms of justice with non-formal or traditional mechanisms, which are more accessible to marginalized sections. It also strengthens the understanding that law or justice is not neutral but influenced by the socio-cultural, economic and political milieu. Therefore, equal access to justice does not only address gaps within the formal legal institution but also addresses social mores and discriminatory practices that lie outside of it.*

²⁶ TNA Report submitted by the consultants to the Steering Committee of the Asian Consortium for Human Rights-based Access to Justice. Note that a “blind” analysis of the submitted questionnaires was done, meaning that the consultants removed the names of the Consortium members from each questionnaire before analyzing the responses.

ESCR-Asia, a Consortium member, undertook a project, “Legal Empowerment of the Poor in the Philippines,” where it applied the “grassroots-experts (bottom-up) approach and participatory processes” to develop research and training materials, conduct social dialogues, implement capacity building activities, propose policies, develop monitoring/documentation templates, advocate curriculum reform, file test cases, and develop a case study.²⁷

Combined Approach

The three approaches described above are not mutually exclusive and can be (and in fact have been) used in combination. UNDP provides a concrete example of how the three perspectives on access to justice can be combined.

UNDP defines equal access to justice as the ability of people to seek and obtain remedy through formal or informal institutions of justice, in conformity with human rights standards.²⁸ It does not only focus on the supply side, but seeks to strengthen people’s capacities to seek out and demand justice remedies.²⁹ When it identifies the fundamental elements to access to justice, it looks at grievances, remedies, actions needed, and capacities needed.³⁰ An example of this approach is seen in the LEAD project in Indonesia, which focuses on “building the capacity of civil society and communities to understand and demand their rights.”³¹ These definitions seem to fit with the capacity perspective on EA2J.

However, UNDP also notes that access to justice is essential for poverty eradication and human development, which is more in line with the instrumental perspective. It explains that vulnerable groups are more likely to be victims of criminal and illegal acts, including human rights violations. Crime and illegality have a greater impact on those who live in poverty and are disadvantaged, as they generally have a harder time obtaining redress, which could result in their becoming even poorer. Also, “justice mechanisms can be used as tools to overcome deprivation” and are “the best way to reduce the risks associated with violent conflict.”³²

Moreover, UNDP uses human rights standards and norms in its programming and planning, which is indicative of the human rights-based approach. It points out that “access to justice is, therefore, much more than improving an individual’s access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.”³³

An example of the human rights approach is the resettlement of communities affected by the 2004 tsunami, reflected in UNDP’s April 2009 Report “The Tsunami Legacy: Innovation, Breakthroughs and Change.” Initial responses to the tsunami (especially in terms of resettlement of affected communities) were not rights-based. The 2009 report reflects the lessons learned, which include ensuring the communities are at the centre of all projects, and are involved from the planning stage until implementation.

²⁷ Resurreccion T. Lao and Rosario K. Garcia. 8 January 2011. Human Rights-based Approaches to Access to Justice in Asia and Legal Empowerment of the Poor in the Philippines.

²⁸ UNDP. 2005. Programming for Justice: Access for All, Practitioner’s Guide on Human Rights-based Access to Justice. Page 5.

²⁹ UNDP. 2005. Programming for Justice: Access for All, Practitioner’s Guide on Human Rights-based Access to Justice, Page 136.

³⁰ UNDP. 2004. Practice Note on Access to Justice, 9/3/2004. Page 6, Figure 1, Fundamental Elements of Access to Justice.

³¹ http://www.undp.org/legalempowerment/projects_indonesia.shtml

³² UNDP. 2005. Programming for Justice: Access for All, Practitioner’s Guide on Human Rights-based Access to Justice. Page 3.

³³ UNDP. 2004. Practice Note on Access to Justice, 9/3/2004, p. 6.

The matrix below compares the different perspectives towards equal access to justice.

PERSPECTIVES ON EQUAL ACCESS TO JUSTICE

PERSPECTIVE	Agency	Definition	Examples
CAPACITY–Focus is on the capacity or ability of government (courts and law enforcement) to provide justice and on the capacity or ability of claim holders to demand justice	American Bar Association ³⁴	Access to justice means the ability to approach and influence decisions of those organs which exercise the authority of the state to make laws and to adjudicate on rights and obligations. It also covers the ways in which the law and its machinery are mobilized, and by whom or on whose behalf. Since justice is value laden, these projects also focus on the content of the law and the ways in which it can be reformed to reflect the concerns of the groups in whose name the projects are undertaken—those living in poverty, the disadvantaged and the marginalized.	Cambodia–examines the constitutional and legal protection of rights in land; the focus is legal aid, independence of the judiciary, existence and enforcement of legislation
	Danish Institute for Human Rights ³⁵	Capacity to provide equal access to effective, contextually appropriate and meaningful avenues of dispute and conflict adjudication in conformity with human rights standards. DIHR conceptualizes ‘access’ as involving measures on the ‘supply’ and ‘demand’ side of justice. Thus, DIHR engages in partnerships both with the adjudicating bodies, i.e., the providers of justice, and with organizations acting as intermediaries between individual members of society and these bodies. Typically, the adjudicators are courts, whereas the intermediaries are legal aid providers.	Nepal–supports NGO, which won Supreme Court cases involving provision of legal aid and other aspects of the protection of liberty and security of persons
INSTRUMENTAL–EA2J is viewed as a means to achieve economic and social development, improved quality of life and a healthy functioning of society	World Bank ³⁶	Improving, facilitating and expanding individual and collective access to law and justice supports economic and social development. Legal reforms give persons living in poverty the opportunity to assert their individual and property rights; improved access to justice empowers persons living in poverty to enforce those rights. Increasing accessibility to courts lessens and overcomes the economic, psychological, informational and physical barriers faced by women, indigenous populations, and other individuals who need its services. New legislation, subsidized legal services, alternative dispute resolution, citizen education programs, court fee waivers and information technology, are other means to improve access.	Cambodia–examines the constitutional and legal protection of rights in land; the focus is legal aid, independence of the judiciary, existence and enforcement of legislation

³⁴ Yash Ghai and Jill Cottrell. 2008. The Rule of Law and Access to Justice: Findings of an ABA Project on Access to Justice, draft paper prepared for the ABA World Forum on Justice, Vienna 2-5 July 2008.

³⁵ <http://www.humanrights.dk/themes/access+to+justice>

³⁶ <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20745998~menuPK:1990386~pagePK:210058~piPK:210062~theSitePK:1974062,00.html>

PERSPECTIVE	Agency	Definition	Examples
	ADB ³⁷	Earlier definitions of access to justice included a narrow and mostly formal set of institutions and activities. Research on legal empowerment supported by ADB demonstrated the need to expand the boundaries of what is meant by access to justice and the institutions involved in enhancing it. In this context, legal empowerment is defined as, "The use of law to increase the control that disadvantaged populations exercise over their lives." Thus, the law becomes a key instrument in the empowerment of people.	Pakistan—influences the exercise of political, administrative and judicial power to improve the accessibility of public entitlements for all citizens
	DFID ³⁸	Ensuring justice is delivered allows victims of crime to move on with their lives, deters criminals, and is essential to the healthy functioning of society. Insecurity has a direct impact on the lives of those living in poverty, the effects of lawlessness overshadowing their daily lives.	Malawi—programme to improve community-level justice
	Philippine Supreme Court ³⁹	Foundation of effective delivery of justice to the people.	Malawi—programme to improve community-level justice
<p>HUMAN RIGHTS APPROACH—views EA2J as: a right (or package of rights) centered on the human person; an obligation; and an instrument to realize and enjoy all human rights; looks at EA2J in all its dimensions (physical, linguistic, cultural, political, access to justice, etc.) so that it:</p> <ul style="list-style-type: none"> prevents human rights violations; provides reparation; and redistributes and creates opportunities for nondiscriminatory and equal enjoyment of all human rights with full compliance with human rights obligations 	Members of the Asian Consortium for Human Rights-based Access to Justice	<p>Focuses on establishing and/or strengthening access to justice programs that incorporate a rights-based methodology. They are often guided by frameworks of human rights instruments under domestic, regional and international law. This methodology should result in the empowerment of individuals and communities as well as lead to a more transparent, fair, and accountable formal and non-formal societal systems.</p> <p>The purpose of EA2J is the realization of human rights. With this awareness, there should be analysis on the situation of human rights enjoyment and how the situation interacts with access to justice, namely, how unequal access to justice renders the human rights situation even worse and how to address the deficiencies in the current justice system. In this process, it is important to enable/empower the targeted groups to assert their own rights with legal tools, since this is central in realizing human rights.</p> <p>Focuses on the underlying causes of the problem and factors impeding justice; identifies those affected; identifies duty bearers; and assesses and analyses the capacity gaps of affected persons to be able to claim their rights and of duty bearers to be able to meet their obligations. It strengthens the integration of formal mechanisms of justice with non-formal or traditional mechanisms, which are more accessible to marginalized sections. It does not only address gaps within the formal legal institution but also addresses social mores and discriminatory practices that lie outside of it.⁴⁰</p>	Philippines—applied the "grassroots-experts (bottom-up) approach and participatory processes" to develop research and training materials, conduct social dialogues, implement capacity building activities, propose policies, develop monitoring/documentation templates, advocate curriculum reform, file test cases, and develop a case study.

³⁷ ADB Annual Report. 2003. Law and Institutional Reform: Catalysts for Inclusive Development in the Asia Pacific Region. See also ADB Special Evaluation Study. 2009. ADB Technical Assistance for Justice Reform in Developing Member Countries.

³⁸ <http://www.dfid.gov.uk/Global-Issues/How-we-fight-Poverty/Conflict-and-Security/security-and-justice/>

³⁹ Supreme Court of the Philippines. August 2001. Action Program for Judicial Reform 2001-2006 (with Supplement). Paragraph (b) under Judicial Systems Reengineering Principles, page 13.

⁴⁰ TNA Report submitted by the consultants to the Steering Committee of the Asian Consortium for Human Rights Based Access to Justice.

PERSPECTIVE	Agency	Definition	Examples
<p>COMBINED APPROACH -all three perspectives are used in combination</p>	<p>UNDP⁴¹</p>	<p>The ability of people to seek and obtain remedy through formal or informal institutions of justice, and in conformity with human rights standards.⁴²</p> <p>Strengthens people's capacities to seek out and demand justice remedies.⁴³</p> <p>Access to justice is essential for poverty eradication and human development.⁴⁴</p> <p>Access to justice is, therefore, much more than improving an individual's access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.⁴⁵ See also Figure 1 titled Fundamental Elements of Access to Justice, which focuses on grievances, remedies, actions needed, and capacities needed.⁴⁶</p>	<p>Indonesia-LEAD project focuses on building the capacity of civil society and communities to understand and demand their rights and then opens up channels of constructive engagement between government and civil society</p> <p>Thailand, Indonesia, Sri Lanka, etc. - "The Tsunami Legacy: Innovation, Breakthroughs and Change." provides an example of how UNDP used the rights-based approach in working with the survivors of the 2004 tsunami.</p>

⁴¹ UNDP. 2004. Practice Note on Access to Justice, 9/3/2004 and Programming for Justice: Access for All, Practitioner's Guide on Human Rights-Based Access to Justice, 2005.

⁴² UNDP. 2005. Programming for Justice: Access for All, Practitioner's Guide on Human Rights-based Access to Justice. Page 5.

⁴³ UNDP. 2005. Programming for Justice: Access for All, Practitioner's Guide on Human Rights-based Access to Justice. Page 136.

⁴⁴ UNDP. 2005. Programming for Justice: Access for All, Practitioner's Guide on Human Rights-based Access to Justice. Page 3.

⁴⁵ UNDP. 2004. Practice Note on Access to Justice, 9/3/2004, p.6.

⁴⁶ Ibid.

SESSION **2**

EA2J in the Region

Objectives

At the end of this session, participants should be able to:

- Describe the regional context of equal access to justice; and
- Identify equal access to justice barriers, issues and concerns.

Time

10:30 am – 12:30 noon

Session Guide

This session examines the regional context of equal access to justice. It also identifies the principal barriers and issues related to equal access to justice. This session is divided in two activities:

- The session begins with participants, working in small groups, describing the principal barriers and issues related to equal access to justice in their sub-region. They then formulate a group definition of equal access to justice by accomplishing **Exercise 3: EA2J in the Region** (1 hour).
- Thereafter, all small groups shall convene in plenary, where each small group shall present the regional situation and its definition of equal access to justice. Comments shall be solicited from other small groups and the lead facilitator. (1 hour)

Exercise

Exercise 3: EA2J in the Region

Reference Sheet

Reference Sheet 3: The State of the Rule of Law in Selected Countries

EXERCISE 3

EA2J in the Region

THIS EXERCISE provides participants with the opportunity to examine the status of equal access to justice in their region. Participants will be divided into four small groups. Each group represents a sub-region of Asia. As a group, they will use the matrix below. Participants shall identify the principal barriers to, and major issues of, equal access to justice in their respective countries. They will consider the underlying causes of these barriers and issues, determine who are most affected and how they are affected. They will also describe the situation of equal access to justice prevailing in the sub-region, and define equal access to justice.

Instructions:

Begin by identifying specific examples detailing incidents where EA2J was not available in your country. Then use these examples to draw out the answers to the questions in the table below.

What are specific examples where EA2J was not available in your country?

What are the principal barriers to EA2J in your region? What are the major EA2J issues and concerns?	What are some underlying causes that obstruct EA2J?	Who are most affected by the principal barriers and major issues? How are they affected?	What are the wider repercussions of the principal barriers and major issues at a societal level? At a sub-regional level?

How does your group define equal access to justice?

Sample Answers to the Exercise:

WHAT ARE SPECIFIC EXAMPLES WHERE EA2J WAS NOT AVAILABLE IN YOUR COUNTRY?

What are specific examples where EA2J was not available in your country?

Migrant workers (Korea–international migrant workers; China–domestic migrant workers) are not properly protected in the sense that:

- Their identity/membership in society is not fully recognized;
- They lack capacity to seek for remedies;
- There are proper regulating mechanisms for the strong corporations

What are the principal barriers to EA2J in your region? What are the major EA2J issues and concerns?	What are some underlying causes that obstruct EA2J?	Who are most affected by the principal barriers and major issues? How are they affected?	What are the wider repercussions of the principal barriers and major issues at a societal level? At a sub-regional level?
<p>Strong governments: China–ruling of Communist Party; no independence of judiciary; no application of Constitution; no direct incorporation of international human rights standards</p> <p>Korea–Constitutional Court is thought as politicized; attitude of judges (viewing migrant workers as impeding national interests)</p>	<p>Institutional discrimination: identity/membership</p> <p>China–household registration system</p> <p>Korea–migrant workers are called industrial trainees</p>	<ul style="list-style-type: none"> • The disadvantaged • The whole society 	<p>Political stability; slows down social development towards human rights and equal access to justice</p>
<p>Weak governance</p>			

How does your group define equal access to justice?

- Precondition: Human rights should be recognized and respected;
- Capacity of both rights-holders and duty bearers to ensure equal access to justice;
- Institutional framework (substantial and procedural/legal and non-legal/social);
- Cultural tolerance and diversity

SOUTHEAST ASIA 1

What are specific examples where EA2J was not available in your country?

- Unrest situation in the southern most province of Thailand (torture, enforced disappearance affecting Muslim minorities in the area)
- The PWD’s lack of physical accessibility to government buildings and absence of education in universal sign language in the Philippines
- In the Philippines, artisanal fisherfolk area of livelihood (15 km sea) are accessed by commercial fisherfolk, *kuliglig** banned in Manila streets, *padyak*’s or cycle rickshaw’s lack of access to roads, and street vendors’ livelihood are threatened.
- Freedom of religion in Indonesia—Christians cannot pray in church in west Java; the local government did not give permission despite court intervention—one of the ways to address this is to educate in terms of elections

What are the principal barriers to EA2J in your region? What are the major EA2J issues and concerns?	What are some underlying causes that obstruct EA2J?	Who are most affected by the principal barriers and major issues? How are they affected?	What are the wider repercussions of the principal barriers and major issues at a societal level? At a sub-regional level?
Financial resources; lack of optimization of resources Discrimination of marginalized groups, especially informal sector; subsistence fisher folk Corruption Endemic poverty Lack of education Language (e.g. English laws, legal technicalities, formal requirements) Lack of knowledge of remedies and whom to go to for access	Corruption Poverty Lack of sensitivity of duty bearers, attitudes, values Lack of awareness Maltreatment of/abuse of authority; local authorities Mistrust between civil society and government Impunity	Vulnerable, marginalized, disadvantaged Women, IPs, PWDs, fisherfolks, migrants, religious minorities, refugees, ‘nomads,’ stateless people, etc. Experience direct and indirect discrimination (e.g. physical, geographic, economic access)	Contributes to the political unrest/instability (including maintaining peace and order) It can bring about conflict between states. On the positive side, common issues can bring about cooperation and dialogue through peoples and government (constructive communication), e.g. access to justice dimension of the hostage taking in Manila.

How does your group define equal access to justice?

Enabling everyone, especially the vulnerable, marginalized and disadvantaged to have equal access to justice (without discrimination), in all its aspects (formal, informal justice systems) as a right. Importance must be given to ‘substantive equality’—the quality of the equality for each person, not just an avenue to access justice.

* *Kuliglig* is a vehicle composed of a two-wheeled trailer pulled by a two-wheeled tractor similar to a rotary tiller. It is powered by multi-purpose diesel or gasoline engine, commonly used in the provinces of the Philippines.

SOUTHEAST ASIA 2

What are specific examples where EA2J was not available in your country?

PHILIPPINES

- Severe case of impunity; cases take long to finish
- Poverty hinders access to courts, justice; lack of awareness
- Indigenous peoples – neglected person in society; deprived of right to land due to entry of development projects by private companies and government agencies; clash of interest; also experience extrajudicial killings (EJKs) and enforced disappearances (EDs); obtained writ of amparo was not very helpful to the case of a missing IP researcher.
- Obstruction: Elite/multinational corporations have superior rights to access courts and remedies
Recourse: Find other remedies
- Concept of accountability of public officers (institutional problem)
- Insufficient government services

CAMBODIA

- Independence of the judiciary hindered by political pressures
- Media/publicity and not based on merits
- Land issue – land grabbing, e.g. natural lake sold by government to one company, which affected people living around the area
- Improper eviction and compensation
- Land concession (free land without investigation on prior rights attached thereon)

INDONESIA

- Religion
- Land complications – no law; fundamentalism
- Corruption
- Sexual abuse cases on the rise
- Law does not guarantee women rights; no human rights courts
- Military court has rigid jurisdiction; cannot try certain cases based on certain ranks

What are some underlying causes that obstruct EA2J?	Who are most affected by the principal barriers and major issues? How are they affected?	What are the wider repercussions of the principal barriers and major issues at a societal level? At a sub-regional level?
<ul style="list-style-type: none"> • Impunity: a cause and a barrier • Accountability • Antiquated laws and institutions; not hinged on or does not address human rights • Application of laws hindered by societal/popular views • Economic/political interests of the government/business 	<p>Vulnerable sector – IPs, women, the marginalized.</p>	<p>Migration – thought of better opportunities even if in reality, migrants are treated badly.</p> <p>Human trafficking</p> <p>Environmental degradation</p> <p>Terrorism – easier to recruit terrorists</p>

How does your group define equal access to justice?

Access to justice

- in court
- non-traditional
- can be obtained meaningfully by anyone

Not limited to judiciary

SOUTH ASIA

What are specific examples where EA2J was not available in your country?

Nepal

- Lack of legal provision prohibits human rights violators from being prosecuted, e.g. NHRC recommendation to book human rights violators
- Internally displaced people don't have EA2J, e.g. issue of compensation, reparation and reintegration into society is lacking
- Access to legal aid, e.g. survey on 20 conflict-affected districts, not applicable to non-citizens

Bangladesh

- Discriminatory laws and policies against women
- discriminatory attitude towards the poor

Pakistan

- Rular-urban divide, poverty, lack of education, absence of legal aid, discriminatory laws, non-implementation of court judgements, existence of tribal and feudal system, and the deterioration of the human rights situation

What are the principal barriers to EA2J in your region? What are the major EA2J issues and concerns?	What are some underlying causes that obstruct EA2J?	Who are most affected by the principal barriers and major issues? How are they affected?	What are the wider repercussions of the principal barriers and major issues at a societal level? At a sub-regional level?
<ul style="list-style-type: none"> • Political instability and post-conflict situation • Lack of legal professionalism • Lack of rights-based social reform approach • Insensitivity of judicial actors/justice administrators to the needs of the disenfranchised and marginalized communities 	<ul style="list-style-type: none"> • Systemic and systematic discrimination • Poverty • Exclusion 	<ul style="list-style-type: none"> • Dalit and marginalized people • Internally displaced persons • Women and children 	<ul style="list-style-type: none"> • Compelled to revolution and rebellion • Rapid migration • Large amount of spending is done on security
<ul style="list-style-type: none"> • Fundamentalism • Social perception • Male dominance • Lack of political will • Attitude • Lack of political will 	<ul style="list-style-type: none"> • Poor literacy level • Lack of awareness of rights • Acceptance of women as human • Gender insensitive • Corruption • Poverty • Lack of decentralization of power structure 	<ul style="list-style-type: none"> • Women, because they are left out • The poor, because they are left out 	<ul style="list-style-type: none"> • Deeply rooted traditional beliefs prevail in society • The poor become poorer; women are especially vulnerable
<ul style="list-style-type: none"> • Long process and expensive court proceedings • absence of the rule of law 	<ul style="list-style-type: none"> • Systemic and systematic discrimination • Poverty • Exclusion 	<ul style="list-style-type: none"> • Women • Children • Minorities • Labour • Peasants • Trans-gender • Poorest of the poor 	<ul style="list-style-type: none"> • Lawlessness • Terrorism • Parallel judicial system strengthened • Ethnic and religious intolerance increased • Institutions are weakening • Economic growth is stopped or slowed • Health and education are denied • Extra-judicial killings • Disappearances • Trafficking • Migration • Gender intolerance

How does your group define equal access to justice?

Equal access to justice is the freedom or ability to fairly and equitably engage in any system of jurisprudence regardless of a person's ability to pay. It means that everyone, regardless of social status and position in society, obtains the same treatment in the eye of justice.

REFERENCE SHEET **3**

The State of the Rule of Law in Selected Countries

THE *WORLD Justice Report 2010* of the World Justice Project (WJP)⁴⁷ describes the state of the rule of law in 35 countries measured through the *WJP Rule of Law Index*TM. The Index is “a new quantitative assessment tool designed to offer a comprehensive picture of the extent to which countries adhere to the rule of law in practice.”⁴⁸

The Index, which consists of “a comprehensive set of new indicators on the rule of law from the perspective of the ordinary person,”⁴⁹ looks at over 700 different variables organized into 10 dimensions of the rule of law. These dimensions are derived from WJP’s “four principles or bands” constituting its definition of the rule of law:⁵⁰

- *Limited government powers* considers whether government powers are “effectively limited by fundamental law, legislature, judiciary, independent auditing and review,” “whether government officials are sanctioned for misconduct,” the extent of enjoyment of freedom of opinion and expression, whether government “complies with international law” and whether “transition of power occurs in accordance with law;”
- *Absence of corruption* looks at whether government officials “do not request or receive bribes,” “exercise their functions without improper influence,” and “do not misappropriate public funds of other resources;”
- *Clear, published and stable laws* looks into whether laws are “comprehensible to the public,” “publicized and widely accessible,” and “stable;”
- *Order and security* considers whether “crime is effectively controlled,” “civil conflict is effectively limited” and “people do not resort to violence to redress personal grievances;”

⁴⁷ The World Justice Project describes itself as “a multinational and multidisciplinary effort to strengthen the rule of law throughout the world.” For more information on the World Justice Project, visit www.worldjusticeproject.org.

⁴⁸ Mark David Agrast, Juan Carlos Botero and Alejandro Ponce with the collaboration of Chantal V. Bright, Joel Martinez and Christine S. Pratt. 2010. *The World Justice Project Rule of Law Index*TM 2010. Page 1.

⁴⁹ *Ibid.*

⁵⁰ WJP defines rule of law as a set of the following four principles or bands: “(1) The government and its officials and agents are accountable under the law; (2) The laws are clear, publicized, stable and fair and protect fundamental rights, including the security of persons and property; (3) The process by which laws are enacted, administered and enforced is accessible, fair and efficient; (4) Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve.” Mark David Agrast, Juan Carlos Botero and Alejandro Ponce with the collaboration of Chantal V. Bright, Joel Martinez and Christine S. Pratt, *The World Justice Project Rule of Law Index*TM 2010, 2010, page 2.

- *Fundamental rights* look at whether equal treatment and nondiscrimination, the right to life and security of the person, due process of law and rights of the accused, freedom of opinion, freedom of belief and religion, freedom from arbitrary interference with privacy, freedom of assembly and association and fundamental labor rights are “effectively guaranteed;”
- *Open government* reviews whether “administrative proceedings are open to public participation,” “official drafts of laws and regulations are available to the public,” and whether “official information is reasonably available;”
- *Regulatory enforcement* looks at whether government regulations are “effectively enforced” and “applied and enforced without improper influence,” whether “due process is respected in administrative proceedings,” and whether “government does not expropriate private property without adequate compensation;”
- *Access to civil justice* considers whether people “are aware of available remedies,” “can access and afford legal counsel in civil disputes,” and “can access and afford civil courts,” and whether civil justice is “impartial,” “free of improper influence,” “free of unreasonable delays” and “effectively enforced,” and whether “Alternative Dispute Resolution (ADR) systems are accessible, impartial and effective;”
- *Effective criminal justice* looks at whether “criminal investigation is effective,” “correctional system is effective in reducing criminal behavior,” criminal justice system is “impartial” and “free of improper influence” and whether “due process of law and rights of the accused are effectively protected;” and
- *Informal justice* considers whether informal justice systems are “timely and effective,” “impartial and free of improper influence,” and “respect and protect fundamental rights.”

The Index was administered in 2009 to 35 countries, through a poll of 1,000 respondents from three selected cities of every country in the Index, followed by validation and field-work conducted by independent local consultants. Among the countries measured were India,⁵¹ Indonesia,⁵² Japan,⁵³ Pakistan,⁵⁴ the Philippines,⁵⁵ South Korea⁵⁶ and Thailand.⁵⁷ Index scores range from zero (0) to one (1) and scores are compared across countries, which are then ranked. The closer the score to 1 indicates that a country better adheres to the rule of law.

The following tables present the index scores received by selected countries, and country global, regional and income rankings.

⁵¹ 1,000 respondents in Mumbai, Delhi and Kolkata.

⁵² 1,000 respondents in Jakarta, Surabaya and Bandung.

⁵³ 1,000 respondents in Tokyo, Yokohama and Osaka.

⁵⁴ 1,000 respondents in Karachi, Lahore and Faisalabad.

⁵⁵ 1,000 respondents in Manila, Davao and Cebu.

⁵⁶ 1,000 respondents in Seoul, Busan and Incheon.

⁵⁷ 1,000 respondents in Bangkok, Nonthaburi and Pak Kret.

TABLE 4. REGIONAL RANKING OF SELECTED COUNTRIES IN EAST ASIA AND THE PACIFIC (OUT OF 7 COUNTRIES MEASURED BY THE INDEX)

	Limited government powers	Absence of corruption	Clear, published and stable laws	Order and security	Fundamental rights	Open government	Regulatory enforcement	Access to civil justice	Effective criminal justice
Indonesia	7	7	5	6	6	4	7	7	6
Japan	2	3	1	2	3	3	1	4	1
Philippines	6	6	6	7	7	5	6	6	7
South Korea	4	4	4	4	2	1	4	2	4
Thailand	5	5	7	5	5	7	5	5	5

TABLE 5. RANKING OF SELECTED COUNTRIES WITH LOW INCOME (OUT OF 5 COUNTRIES MEASURED BY THE INDEX)

	Limited government powers	Absence of corruption	Clear, published and stable laws	Order and security	Fundamental rights	Open government	Regulatory enforcement	Access to civil justice	Effective criminal justice
Pakistan	4	5	4	1	5	5	3	5	4

TABLE 6. RANKING OF SELECTED COUNTRIES WITH MIDDLE INCOME (OUT OF 12 COUNTRIES MEASURED BY THE INDEX)

	Limited government powers	Absence of corruption	Clear, published and stable laws	Order and security	Fundamental rights	Open government	Regulatory enforcement	Access to civil justice	Effective criminal justice
India	1	7	1	8	4	1	9	8	7
Indonesia	4	9	4	4	7	3	8	12	4
Philippines	3	8	8	5	8	4	7	9	5
Thailand	2	2	11	3	1	6	6	2	1

TABLE 7. RANKING OF SELECTED COUNTRIES WITH MIDDLE INCOME (OUT OF 12 COUNTRIES MEASURED BY THE INDEX)

	Limited government powers	Absence of corruption	Clear, published and stable laws	Order and security	Fundamental rights	Open government	Regulatory enforcement	Access to civil justice	Effective criminal justice
Japan	5	8	3	2	8	8	4	10	2
South Korea	11	11	10	11	7	5	10	5	11





HUMAN RIGHTS APPROACH TO REALIZING EQUAL ACCESS TO JUSTICE

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Sample Answers to the Exercise

Reference Sheet 6: Equal Access

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Sample Answers to the Exercise

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Session 5: Human Rights and Justice

Exercise 11: The Art of Justice

Sample Answers to the Exercise

Reference Sheet 8: Justice

Note to Trainers:

- 1 Before using this module, trainers are urged to conduct a training needs assessment (TNA) of prospective participants.
 - a. The TNA instrument should be designed to extract prospective participants' knowledge of, attitudes to, and skills in, the human rights approach to realizing equal access to justice.
 - b. A reliable TNA is based on the accomplished instruments submitted by at least 60 percent of prospective participants.
 - c. TNA results should provide sufficient guidance for trainers to choose, adapt and modify those sessions, exercises and reference sheets most appropriate to the prospective participants' levels of knowledge, attitudes and skills.
 - d. It is important that those who submitted TNA instruments actually attend and participate in the training activity.
- 2 The Pilot Training Workshop was conducted for three (3) days. Depending on the TNA results and the session activities to be conducted, trainers may adjust the time allotted for each session.
- 3 Session activities should be carefully planned.
 - a. Trainers are free to use the exercises in this module or to adapt or modify them to suit participants' training needs.
 - b. Facts that participants can relate to and that are relevant to the topic discussed should be chosen for every exercise.
 - c. Facts may be augmented by photographs; as much or as little detail may be provided, as warranted.
 - d. A video or short documentary may be used instead of a fact sheet.

- 4 Trainers are encouraged to consciously apply the human rights PANTHER principles throughout the training activity.
- **Participation:** Trainers should provide ample opportunities for participants to actively and meaningfully participate in the training activity.
 - **Accountability:** Trainers should take full responsibility for the learning design, environment and process; trainers should prepare well before the training activity by updating themselves on the latest developments and conducting a trial run of the training activity a few days before it actually starts.
 - **Nondiscrimination:** Trainers should ensure that each participant (especially the quieter ones) is involved in all session activities.
 - **Transparency:** Trainers should create an open, respectful and comfortable learning environment.
 - **Human Dignity:** Trainers should respect participants' knowledge, attitudes and skills, and elicit from them their insights and experiences throughout the training activity.
 - **Empowerment:** Trainers should ensure that participants control the pace of learning and the learning process.
 - **Rule of Law:** In responding to participants' questions and concerns, and in commenting on participants' individual or group outputs, trainers should be critical, but fair.

MODULE **2**

Human Rights Approach to Realizing Equal Access to Justice

THIS MODULE provides a guiding framework based on human rights norms, standards and principles. It seeks to build a perspective that enables practitioners to apply human rights norms, standards and principles to realize EA2J. It relates human rights directly to EA2J, defines the human rights approach, and presents the four elements of the approach.

The module is divided into five sessions:

- **Session 1: Human Rights Approach to Equal Access to Justice** introduces the human rights framework to realizing equal access to justice.
- **Session 2: Centrality of the Human Person** emphasizes that EA2J actions should focus on the human person. It introduces the notion of *claimholders*, *duty bearers* and *other actors*. It discusses the relevant human rights instruments as well as the standards, norms and principles of *human dignity*, *respect for human rights*, *responsible exercise of human rights*, *nondiscrimination*, *equality*, *participation*, *empowerment* and *attention to the most vulnerable*.
- **Session 3: Human Rights Dimensions of Equal Access** discusses the multiple dimensions of equal access (*physical access*, *economic access*, *linguistic access* and *information access*). The discussion is in the context of human rights norms, standards and principles of *equal access to a court or tribunal*, *equality before the law*, *equal protection of the law*, *nondiscrimination*, and *obligations of conduct and obligations of result*, based on relevant human rights instruments.
- **Session 4: Human Rights and Formal and Non-Formal Institutions of Remedy** defines institutions of remedy. It discusses the different roles these institutions play, and presents relevant human rights instruments. It also presents the norms, standards and principles of the *right of reparation*, *obligations of conduct and of result*, *equity*, *independence*, *accountability*, *transparency*, *responsiveness*, *procedural rights and guarantees*, *rule of law*, *participation*, *proportionality*, *command responsibility*, *availability*, *cultural acceptability* and *quality*, which guide the structure and functioning of institutions of remedy.
- **Session 5: Human Rights and Justice** emphasizes justice towards the *full realization and enjoyment of all human rights* and compliance with *obligations of conduct and of result*, under the human rights principles of *accountability*, *transparency* and *independence*. It discusses relevant human rights instruments and presents various recommendations by some human rights treaty monitoring bodies.

Time

2:00 pm – 6:00 pm (Day 1)

8:15 am – 12:30 pm (Day 2)

SESSION 1

Human Rights Approach to Equal Access to Justice

Objectives

At the end of this session, participants should be able to:

- Articulate the importance of applying human rights to EA2J;
- Justify the human rights approach to realizing EA2J; and
- Demonstrate the links between human rights and EA2J.

Time

2:00 pm – 3:15 pm

Session Guide

This session introduces the human rights approach to realizing equal access to justice. It is divided into two activities:

- The session begins with a group game, **Exercise 4: Zoom into Human Rights Approach to Realizing EA2J**, where participants are asked to link human rights to equal access to justice by recreating a story from a set of pictures randomly distributed among them (30 minutes).
- Taking off from Exercise 4, the lead facilitator shall present the human rights approach towards realizing EA2J and describe each of its elements: centrality of human person; multiple dimensions of equal access; and formal and non-formal institutions of remedy and justice. The lead facilitator shall respond to questions, comments and concerns raised by participants (45 minutes).

Exercise

Exercise 4: Zoom into Human Rights Approach to Realizing EA2J

Reference Sheet

Reference Sheet 4: Human Rights Approach to Realizing Equal Access to Justice

EXERCISE 4

Zoom into Human Rights Approach to Realizing EA2J

TRAINERS SHOULD read the Note to Trainers at the beginning of the module.

This exercise allows participants to link human rights to EA2J by creating a unified story about the human rights approach to EA2J from a set of sequential pictures.

The trainer should think of a storyline (a sample storyline is included below) that represents a situation that happens in their country or region. The trainer should then look for photographs that illustrate the various parts of the story. Each photo should be printed on separate meta cards (photos that illustrate the sample storyline are shown below). The number of photographs should correspond to the number of participants in the training.

The pictures are randomly handed out to each participant who may look at the picture but cannot show it to others. Participants are asked to study the picture, since it contains important information about the human rights approach to EA2J. Participants must then discuss among themselves how to sequence the pictures in correct order without looking at each other's pictures. Participants then place the pictures faced down on the floor. Once all pictures are placed, they are turned over for everyone to see and determine whether the pictures, taken together in sequence, correctly reflect the linkages between human rights and EA2J.

Storyline: This is a story of indigenous community which, one day, finds that its land is being claimed by a mining company. This is the first time the community members heard of this. So they meet, discuss the implications, and decide to oppose the mining company's claim on their land. They choose leaders to represent them. Their leaders approach an NGO for assistance. The NGO representative listens carefully and takes notes; the NGO representative interviews the affected indigenous peoples, undertakes fact-finding, takes photographs and conducts research. The NGO facilitates a meeting among the indigenous community and the company and government. No agreement was reached. The indigenous community brings its plight to the public through press and media conferences. The company and government remain steadfast. It holds a series of mass actions and demonstrations. These actions do not yield positive results. The members of the indigenous community meets again, with the NGO, and finally decides to file a case in court. During the court proceedings, the company offers the judge money, and the indigenous community loses their case. The company then offers the indigenous community money for the land; the community refuses to accept the money, and the indigenous people continue with their struggle for their land.

Correct sequence of photographs







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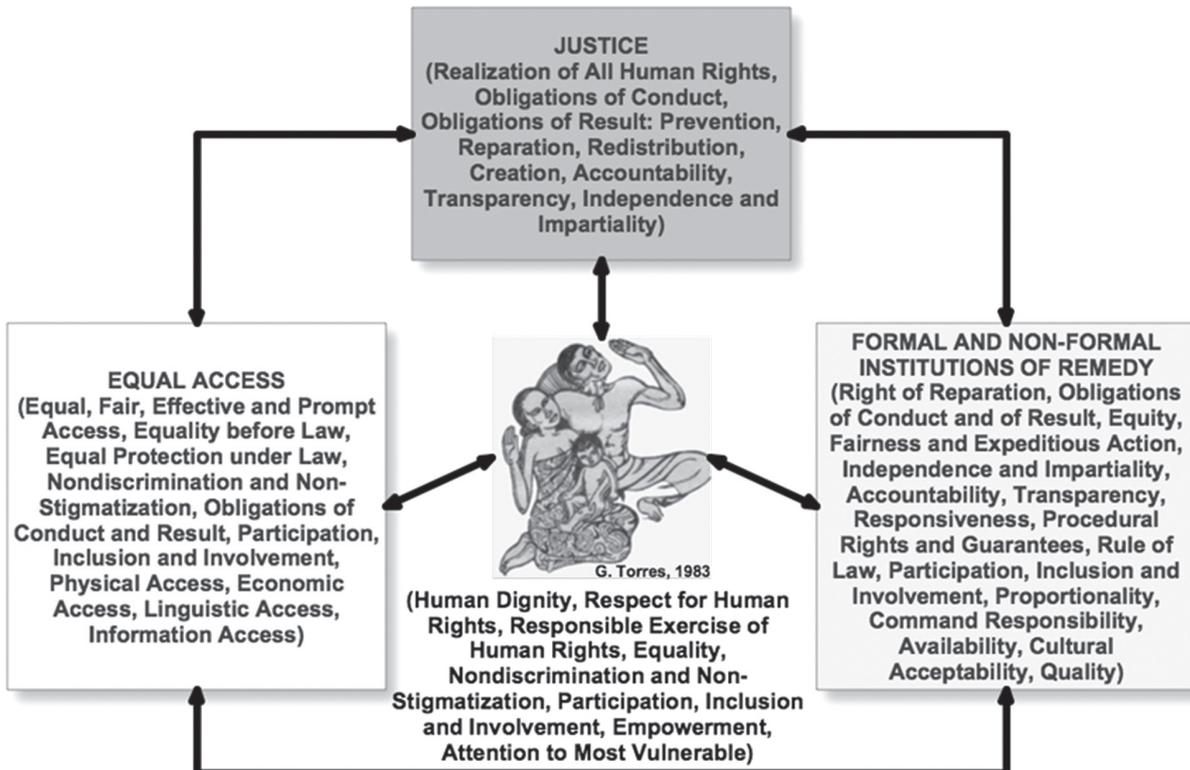


REFERENCE SHEET **4**

Human Rights Approach to Realizing Equal Access to Justice

THE HUMAN rights approach to realizing equal access to justice (EA2J) is a framework *centered on the human person*. It is based on international human rights norms, standards and principles. The framework seeks to guarantee *equal access in all its dimensions to justice that prevents human rights violations and provides reparation, and redistributes and creates opportunities for nondiscriminatory and equal enjoyment of all human rights with full compliance with human rights obligations*.

Human Rights Approach to Realizing Equal Access to Justice



Foundations of the Human Rights Approach to Realizing EA2J

The human rights approach to realizing EA2J is drawn from international human rights conventions signed and ratified by states and from general norms of international human rights law principles and practice written in declarations, standard rules, guidelines and principles. These instruments view EA2J as a *human right or a package of human rights* **and** as an *essential catalyst towards the full enjoyment and realization of all human rights*.

There are eight major human rights treaties:

- International Covenant on Civil and Political Rights (ICCPR),
- International Covenant on Economic, Social and Cultural Rights (ICESCR),
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD),
- Convention on the Rights of the Child (CRC),
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
- Convention on the Rights of Persons with Disabilities (CPD),
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and
- International Convention on the Rights of All Migrant Workers and Members of their Families (CMW).

Of the eight major human rights treaties, only the *Convention on the Rights of Persons with Disabilities* explicitly recognizes *the right to equal access to justice*. The other major human rights treaties guarantee a package of substantive and procedural human rights that together constitute, or may be enjoyed through, EA2J. Because human rights treaties are legally binding on those who sign and ratify them by virtue of *pacta sunt servanda* (literally, “agreements must be kept”), treaties impose legal duties and obligations with which states must comply.

Reflecting the worldwide trend towards recognizing EA2J as a human right, a number of international human rights declarations, rules, guidelines and principles⁵⁸ recognize EA2J as a fundamental human right. While these declarations, rules, guidelines and principles are not legally binding upon states, they nonetheless represent the recognition and acceptance by a large number of states that EA2J is a human right or a vehicle to realize human rights. The declarations, rules, guidelines and principles relevant to EA2J are:

⁵⁸ Draft Guiding Principles: “Extreme poverty and human rights: the rights of the poor;” Declaration on the Rights of Indigenous Peoples; Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power; Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Declarations	<ul style="list-style-type: none"> • Universal Declaration of Human Rights (UDHR) • Declaration on the Right to Development (DRTD) • Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms • Declaration on the Rights of Indigenous Peoples • Declaration on the Elimination of Violence against Women • Declaration on the Protection of All Persons from Enforced Disappearance • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power
Principles	<ul style="list-style-type: none"> • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law • Basic Principles for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment • Basic Principles on the Independence of the Judiciary • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Code of Conduct for Law Enforcement Officials • Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials • Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment • Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment • Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
Guidelines	<ul style="list-style-type: none"> • Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) • Guidelines on the Role of Prosecutors
Rules	<ul style="list-style-type: none"> • Standard Minimum Rules for the Treatment of Prisoners • Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners • Rules for the Protection of Juveniles Deprived of their Liberty • Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) • Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)

Most human rights treaties and instruments require states to incorporate them into domestic law. However, not all states actually comply with this requirement. The domestic application of international human rights instruments varies by country. It depends largely on the Constitution, law and procedures of each country. In the Philippines, for example, international human rights instruments form part of Philippine law through two constitutional processes: *incorporation*⁵⁹ and *transformation*.⁶⁰ The Philippine Supreme Court has also enforced international human rights instruments in a number of decisions.

⁵⁹ The process of incorporation arises from Section 2, Article II of the 1987 Constitution, which mandates: “The Philippines ... adopts the generally accepted principles of international law as part of the law of the land...”

⁶⁰ The process of transformation arises from Section 21, Article VII of the 1987 Constitution, which requires Senate ratification of all treaties or international agreements.

Elements of the Human Rights Approach to Realizing EA2J

The human rights approach towards realizing EA2J comprises four indispensable elements, all of which are derived from human rights standards, norms and principles: the **centrality of the human person**, the **multiple dimensions of equal access, formal and non-formal 'institutions of remedy'**,⁶¹ and **justice**.

The centrality of the human person

At the heart of the approach is the human person (*claimholder*), whose intrinsic value and worth are emphasized by the non-negotiable and irreversible principle of **human dignity**. The principle of human dignity recognizes the individuality and integrity of every human being. It implies *humane treatment* for all and *individualized assistance, measures and treatment* when dealing with EA2J issues and concerns of different individuals and groups. Some examples are in promoting the *best interests of the child* and adopting a *child-centered approach* when addressing EA2J issues and concerns of children; respecting indigenous peoples' *free, prior and informed consent* over all matters relating to them including EA2J issues and concerns; and preferentially using *non-custodial measures* for offenders in EA2J.

The centrality of the human person also rests upon the principle of **respect for all human rights**, which recognizes and promotes the *universal application, indivisibility and interdependence* of all human rights.

Placing the individual at the center of all EA2J actions reinforces the principle of **responsible exercise of human rights**, which requires all persons to exercise their human rights without prejudicing, threatening or nullifying the human rights of others.

Focusing on the human person requires the application of the principles of **nondiscrimination and equality**, which assure the enjoyment and realization of all human rights of all women and men regardless of their economic, social, political, religious, and cultural backgrounds, or age, disability or other circumstances. The principle of nondiscrimination carries with it the requirement of *non-stigmatization*, which prohibits attaching any taint of shame, disgrace, dishonor or social unacceptability upon any individual or group.

The centrality of the human person is guided by the human rights principles of **participation**, which requires *active inclusion and involvement* of all EA2J actors especially those whose human rights are most at risk. It is also guided by **empowerment**, where the pursuit of justice respects *people's capacity to think and act freely for themselves* or for others to create solutions to address their EA2J-related problems. It must also give **attention to those most vulnerable**, which requires justice actors to concentrate on those *disadvantaged and excluded* from enjoying and realizing their human rights, including persons living in poverty, indigenous peoples, children, women, persons with disabilities, victims, offenders and migrant workers.

⁶¹ "Institutions of remedy" is a phrase taken from Rebecca L. Sandefur, *The Fulcrum Point of Equal Access to Justice: Legal and Non Legal Institutions of Remedy*, *Loyola of Los Angeles Law Review*, Volume 42, pages 949-978, 2009, and refers to "public responses to civil justice programs." Sandefur defines equal access to justice thus: "different groups in a society would have similar chances of obtaining similar resolutions to similar kinds of civil justice problems." page 951.

Multiple dimensions of equal access

The human rights approach to realizing EA2J promotes *fair, effective* and *prompt* outcomes through **equality of access** to formal and non-formal “institutions of remedy.” Equal access is derived from five key human rights norms: **equal access to a court or tribunal**; **equality before the law**; and **equal protection of law**, which enshrine equality of opportunity and equality of arms for all to obtain justice and refers to both *substantive (de facto) equality*⁶² and *formal (de jure) equality*;⁶³ **nondiscrimination**, which *prohibits exclusion, restriction, treatment or preference* by formal and non-formal justice “institutions of remedy” based on race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residency, economic and social situation, and membership in groups; and **participation** in seeking and obtaining justice *freely, voluntarily, actively* and *without undue interference or threat*.

The human rights approach to realizing EA2J promotes strict adherence to **human rights obligations of conduct and of result**. Human rights impose upon states (*duty bearers*⁶⁴) obligations to act towards (i.e., *obligations of conduct*) and to cause (i.e., *obligations of result*) the enforcement, promotion and guarantee of all human rights. This is because human rights regulate relations between states and peoples, thus placing upon the state the primary responsibility to guarantee all human rights. Human rights obligations consist of a set of norms, standards and principles of permissible conduct and limits and checks on state action. Human rights obligations are of varying levels and include core obligations, obligations of progressive realization, obligations of equality, obligations of nondiscrimination, obligations of international cooperation and assistance, and obligations to respect, protect and fulfill (facilitate and provide) human rights.

Ensuring equal access is a **core (non-derogable) human rights obligation** with multiple dimensions. The obligation to ensure equal access includes ensuring **nondiscrimination** and **physical, economic, linguistic** and **information accessibility** of formal and non-formal justice modalities, actors and “institutions of remedy.”

Formal and non-formal ‘institutions of remedy’

“Institutions of remedy” is a phrase coined by Sandefur (2009) that refers to public responses to justice problems. In the context of this framework, the phrase “institutions of remedy” refers to both *formal justice institutions* (such as courts, tribunals, quasi-judicial bodies, administrative bodies, ombudsmen, national human rights institutions, public corporations, etc.) and *non-formal justice*

⁶² Substantive or de facto equality refers to equality achieved when the effects of laws, policies and practices diminish the inherent disadvantages that women experience; see General Comment No. 16, “The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-fourth session, 2005, UN Doc. E/C.12/2005/4.

⁶³ Formal or de jure equality refers to equality achieved when laws or policies treat women and men in a neutral manner; see General Comment No. 16, “The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its thirty-fourth session, 2005, UN Doc. E/C.12/2005/4.

⁶⁴ Duty bearers are primarily state actors and institutions at various levels of government, and non-state actors who are in a position to influence the enjoyment or non-enjoyment of the human rights of claimholders.

institutions (such as indigenous justice systems, restorative justice systems, informal grievance mechanisms, alternative dispute resolution, social mediation, media action lines, advice or helpline agencies, and non-governmental, community, trade and professional organizations promoting the enjoyment and realization of human rights). Both formal and non-formal justice institutions address people's problems that span the full range of human rights (civil, cultural, economic, political and social rights).

Formal and non-formal institutions of remedy are necessary to realize the **right of reparation**. The right of reparation is the right to seek redress for any human rights violation; from this right arises the obligations to prevent and investigate violations, take appropriate action against violators, and afford victims redress. The right of reparation has four essential forms: restitution, compensation, rehabilitation and satisfaction and guarantee of non-repetition.

Formal and non-formal institutions of remedy are guided by **obligations of conduct** and **obligations of result** and address human rights violations. It is important to note that not all instances of non-compliance with obligations constitute human rights violations:

"As a general rule, when a state fails to comply with its obligations of *conduct*, such failure constitutes a human rights violation.

x x x

On the other hand, when a state fails to achieve a *result* it is under an obligation to achieve, the state would need to show that it was unable to achieve that result *for reasons reasonably beyond its control*.

x x x

One must distinguish the inability of a state from the state's unwillingness to comply with treaty obligations."⁶⁵

Realizing the right of reparation through formal and non-formal institutions of remedy entails: formal legal protection; equitable delivery of justice; legal advice, assistance and other related services; law and justice policy reform; reform of justice institutions of remedy; alternative dispute resolution; social mediation; indigenous justice systems; restorative justice systems; advocacy and social mobilization; and capacity development.

The **independence of the judiciary, judges, lawyers and prosecutors** is a key human rights standard essential to institutions of remedy. Independence of the judiciary mandates *impartiality, fairness, competence and integrity* of judges, lawyers, prosecutors and other justice actors; it requires actions and decisions based on fact, in accord with law, and arrived at without improper influence or pressure. Independence of the judiciary is guided by the human rights principle of **equity**, which consists of *fairness and expeditious action*.

⁶⁵ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines

Independence of the judiciary is accompanied by several key human rights principles:

- **Accountability**, which reposes responsiveness, responsibility, competency, effectiveness, efficiency and professionalism upon all justice actors and institutions of remedy;
- **Transparency**, which mandates clear rules and procedures, availability and direct accessibility to high quality, complete and timely information about justice remedies, processes, actors, institutions and modalities, timeliness of action by justice actors and institutions, and absence of corruption;
- **Responsiveness** of institutions of remedy to those whose human rights are most at risk;
- **Rule of law**, which entails more than a mechanical or rigid application of laws but is equated with the principles of *supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of power, participation, legal certainty, avoidance of arbitrariness and procedural and legal transparency*,⁶⁶
- **Participation**;
- **Proportionality**, which requires the adoption and implementation of *balanced and fair* EA2J means, measures and responses that are *in proportion* to EA2J ends or outcomes pursued; and
- **Command responsibility**, which holds public officials in superior positions responsible for breaches of human rights committed by persons or groups under their authority, supervision or direction, if public officials holding superior positions had reasonable opportunity to prevent such acts but failed to do so.

Realizing EA2J pre-supposes that formal and non-formal justice modalities, actors and institutions of remedy uphold **procedural rights and guarantees** such as *due process, presumption of innocence, fair, public and speedy hearing*, etc. and are **available, culturally acceptable** and of **high quality**.

Justice

Justice is guided by two crucial norms: **full respect for human rights**, and **indivisibility and inter-relatedness of human rights**, which require justice to guarantee full enjoyment of all human rights by all with full compliance with **obligations of conduct and of result**. From the perspective of human rights, justice must *prevent human rights violations, provide reparation for violations of human rights, and redistribute and create opportunities for equal and nondiscriminatory enjoyment of all human rights*. Justice is guided by the human rights principles of **independence, accountability and transparency**.

⁶⁶ United Nations Secretary General. 2004. Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies.

Human Rights Approach to Realizing Equal Access to Justice

Human Rights Approach to Equal Access to Justice	Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
<p>Centrality of Human Person</p>	<ul style="list-style-type: none"> ☞ Human Dignity <ul style="list-style-type: none"> • Humane Treatment • Individualized assistance, measures, treatment • Best interest of child, child-centered approach • Free, prior informed consent • Non-custodial measures ☞ Respect for Human Rights <ul style="list-style-type: none"> • Universality • Indivisibility and inter-dependence ☞ Responsible Exercise of Human Rights ☞ Nondiscrimination <ul style="list-style-type: none"> • Non-stigmatization ☞ Equality ☞ Participation <ul style="list-style-type: none"> • Inclusion • Involvement ☞ Empowerment ☞ Attention to Most Vulnerable <ul style="list-style-type: none"> • Persons living in poverty • Indigenous peoples • Children • Women • Persons with disabilities • Victims • Offenders • Migrant workers 	<ul style="list-style-type: none"> • Universal Declaration of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • International Covenant on Economic, Social and Cultural Rights (ICESCR) • Declaration on the Right to Development (DRTD) • Guidelines on the Role of Lawyers • Guidelines on the Role of Prosecutors • Code of Conduct for Law Enforcement Officials • Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms <p>Persons Living in Poverty</p> <ul style="list-style-type: none"> • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” <p>Indigenous Peoples</p> <ul style="list-style-type: none"> • International Convention on the Elimination of All Forms of Racial Discrimination (CERD) • Declaration on the Rights of Indigenous Peoples • Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) <p>Children</p> <ul style="list-style-type: none"> • Convention on the Rights of the Child (CRC) • Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) • Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) • Rules for the Protection of Juveniles Deprived of their Liberty <p>Women</p> <ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Declaration on the Elimination of Violence against Women • Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice <p>Persons with Disabilities</p> <ul style="list-style-type: none"> • Convention on the Rights of Persons with Disabilities (CPD) <p>Victims</p> <ul style="list-style-type: none"> • Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials • Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Human Rights Approach to Equal Access to Justice	Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
Equal Access	<ul style="list-style-type: none"> ☞ Equal Access <ul style="list-style-type: none"> • Fair • Effective • Prompt ☞ Equal Access to Court or Tribunal ☞ Equality before the Law ☞ Equal Protection of the Law ☞ Nondiscrimination <ul style="list-style-type: none"> • Non-stigmatization ☞ Obligations of Conduct ☞ Obligations of Result ☞ Participation <ul style="list-style-type: none"> • Inclusion • Involvement ☞ Physical Access ☞ Economic Access ☞ Linguistic Access ☞ Information Access 	<ul style="list-style-type: none"> • Universal Declaration of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • International Covenant on Economic, Social and Cultural Rights (ICESCR) • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Declaration on the Elimination of Violence against Women • Convention on the Rights of Persons with Disabilities (CPD) • Convention on the Rights of the Child (CRC) • International Convention on the Elimination of All Forms of Racial Discrimination (CERD) • Declaration on the Rights of Indigenous Peoples • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power • Basic Principles on the Independence of the Judiciary • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials • Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
Formal and Non-formal Institutions of Remedy	<ul style="list-style-type: none"> ☞ Right of Reparation ☞ Obligations of Conduct ☞ Obligations of Result ☞ Equity <ul style="list-style-type: none"> • Fairness • Expeditious Action ☞ Independence <ul style="list-style-type: none"> • Impartiality ☞ Accountability ☞ Transparency ☞ Responsiveness ☞ Procedural Rights and Guarantees ☞ Rule of Law ☞ Participation <ul style="list-style-type: none"> • Inclusion • Involvement ☞ Proportionality ☞ Command Responsibility ☞ Availability ☞ Cultural Acceptability ☞ Quality 	<ul style="list-style-type: none"> • Universal Declaration of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Declaration on the Elimination of Violence against Women • Convention on the Rights of Persons with Disabilities (CPD) • Convention on the Rights of the Child (CRC) • Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) • Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) • Rules for the Protection of Juveniles Deprived of their Liberty • International Convention on the Elimination of All Forms of Racial Discrimination (CERD) • Declaration on the Rights of Indigenous Peoples

Human Rights Approach to Equal Access to Justice	Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
Formal and Non-formal Institutions of Remedy (continued)		<ul style="list-style-type: none"> • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) • International Convention for the Protection of All Persons from Enforced Disappearance • Declaration on the Protection of All Persons from Enforced Disappearance • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law • Standard Minimum Rules for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment • Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules) • Basic Principles on the Independence of the Judiciary • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Guidelines on the Role of Prosecutors • Code of Conduct for Law Enforcement Officials • Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials • Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment • Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment • Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law
Justice	<ul style="list-style-type: none"> ☞ Full realization and enjoyment of all human rights ☞ Obligations of Conduct ☞ Obligations of Result <ul style="list-style-type: none"> • Prevention of human rights violations • Reparation for human rights violations • Redistribution of opportunities for equal and nondiscriminatory enjoyment of all human rights • Creation of opportunities for equal and nondiscriminatory enjoyment of all human rights • Accountability • Transparency 	<ul style="list-style-type: none"> • Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) • Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) • Rules for the Protection of Juveniles Deprived of their Liberty • Convention on the Rights of Persons with Disabilities (CPD) • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • Declaration on the Protection of All Persons from Enforced Disappearance • International Convention for the Protection of All Persons from Enforced Disappearance

Human Rights Approach to Equal Access to Justice	Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
Justice (continued)	<ul style="list-style-type: none"> • Independence • Impartiality 	<ul style="list-style-type: none"> • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) • Standard Minimum Rules for the Treatment of Prisoners • Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners • Basic Principles for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment • Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Declaration on the Elimination of Violence against Women • Basic Principles on the Independence of the Judiciary • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Guidelines on the Role of Prosecutors

SESSION **2**

Centrality of the Human Person

Objectives

At the end of this session, participants should be able to:

- Recognize the actors in the human rights approach to realizing EA2J;
- Describe the human rights standards that govern the different actors in the human rights approach to realizing EA2J; and
- Apply human rights standards to equal access to justice.

Time

3:30 pm – 5:00 pm

Session Guide

This session emphasizes that EA2J actions should focus on the human person, and discusses the relevant human rights instruments as well as the standards, norms and principles arising from these instruments. This session is divided into four activities:

- The session begins with a review of the human rights standards, norms and principles of *human dignity, respect for human rights, responsible exercise of human rights, nondiscrimination, equality, participation, empowerment and attention to most vulnerable* (victims, offenders, persons living in poverty, children, women, indigenous peoples, persons with disabilities, migrant workers). The lead facilitator shall elicit from participants concrete examples and experiences (30 minutes).
- Following the review, participants, divided into two groups, shall be asked to identify the correct human rights standard that should be applied to a specific situation for a specific vulnerable group, through **Exercise 5: Human Word Scrabble** (10 minutes).
- Participants, divided into small groups and playing the roles of *claimholders, duty bearers* and *other actors* based on a situation, shall be asked to identify and describe EA2J actors, paying special attention to rights, disadvantages and vulnerabilities of claimholders, obligations and capacities of duty bearers, and interests and responsibilities of other actors, through **Exercise 6: Portraying EA2J Actors** (45 minutes).

- This session ends with a synthesis where the lead facilitator shall summarize relevant human rights concepts (5 minutes).

Exercises

Exercise 5: Human Word Scrabble

Exercise 6: Portraying EA2J Actors

Reference Sheet

Reference Sheet 5: The Centrality of the Human Person

EXERCISE 5

Human Word Scrabble

TRAINERS HAVE to decide which human rights standards they wish to highlight. They will then research and describe particular situations (based on case studies or newspaper articles) that best illustrate this standard. The various human rights standards are then printed, one word per meta card. An example of possible situations and their corresponding human rights standards is located below. Trainers are free to use these examples, or think of their own, based on the country context and that of the participants they are training.

During the exercise, words are randomly strewn on the floor. Participants will be divided into two groups with 15 members per group. The lead facilitator will describe a situation for EVERY class of vulnerable group (victims, offenders, persons living in poverty, children, women, indigenous peoples, persons with disabilities, migrant workers). He or she asks participants to identify the correct human rights standard that is or should be applied to the situation; participants then grab a word and form the correct human rights standard. The group that correctly answers the most number of standards wins a prize (10 minutes).

Situation	Answer/Human Rights Standard
<p>Victims: Many businesses in South Korea are hiring temporary workers, who work full-time but on short-term contracts; temporary workers earn less, roughly 60 percent of what regular workers earn. They receive fewer health care benefits and less unemployment insurance, and they rarely have the shield of a union.⁶⁷</p>	Right of Reparation
<p>Offenders: Many prisons and detention facilities in Mongolia do not provide sufficient and adequate food, heat, potable water, and medical care for inmates; detention centers are overcrowded, with cells holding up to 8 inmates in cells intended for 2 or 3 inmates. Many inmates are sick with tuberculosis (TB). Independent monitors have limited access to prisons and detention centers, and inmates are not allowed to speak privately with independent monitors to air their grievances.⁶⁸</p>	Procedural rights and guarantees
<p>Persons living in poverty: In Laos, persons who live in poverty are generally located in areas vulnerable to natural disasters. They are geographically and institutionally isolated, with little or no access to basic education, health care services, and the benefits of social security. They have large numbers of dependents and their households are often headed by women. They depend on agriculture for food and income, mostly using traditional farming methods, but agricultural conditions are often unfavorable and productivity is low. They lack knowledge of new technologies and skills to improve yields. They have few inputs and limited access to irrigation, and their landholdings tend to be too small for paddy cultivation or production of other crops.⁶⁹</p>	Redistribution of opportunities

⁶⁷ The New York Times. 2009. "In South Korea, a New Workers' Grievance," http://www.nytimes.com/2009/07/23/business/global/23temps.html?_r=2

⁶⁸ US Department of State. 2009. "2008 Human Rights Report: Mongolia," 25 February 2009, <http://www.state.gov/g/drl/rls/hrrpt/2008/eap/119049.htm>

⁶⁹ IFAD. 2011. "Rural poverty in Lao People's Democratic Republic," <http://www.ruralpovertyportal.org/web/guest/country/home/tags/laos>

Situation	Answer/human rights standard
<p>Children: In Cambodia, children as young as 5 years old are sold as slaves for sex. Nearly a third of Cambodia's commercial sex workers are between 12 and 17 years old. Some children are sold by their own parents; others are lured by what they think are legitimate job offers like waitressing but then are forced into prostitution. In one instance, an American was arrested for having sex with a minor girl. After spending seven months in a Cambodian prison, he was released without charge. The court decided that because his alleged victim says she was drugged, her evidence could not be relied on.⁷⁰</p>	Best interest of the child
<p>Women: In most communities in Nepal, women's position is governed by patriarchal traditions and conventional assumptions of women's role in society. In general, it is believed that a woman's place is in the home, where her main duties include childrearing and household chores. Nepalese women have limited access to education; as a result, they have very few opportunities to engage in economic activities. Women account for only 6 percent of total landowners and hold a combined share of only 4 percent of arable land. Domestic violence is common and the custom of dowry is the cause of many incidents. The country's population sex ratio is high, reflecting preferences for sons that lead to sex-selective abortions, relative neglect of girls compared to boys in early childhood, and high maternal mortality ratios. Nepal is one of the few countries in the world in which the life expectancy of women is lower than that of men.⁷¹</p>	Nondiscrimination
<p>Indigenous peoples: According to the Asian Indigenous People's Pact Foundation, "Hybrid institutions (such as indigenous-state hybrid courts) are different from the traditional institutions and they have strong support from the state. Often they bring conflict. We have to be careful about the hybrid institutions as they could play the role of 'divide and rule.'" ⁷²</p>	Free prior informed consent
<p>Persons with disabilities: In Java and Bali in Indonesia, a person with a disability is believed to be possessed by a supernatural spirit, which must be exorcised. This kind of judgment and stigma affect the lifestyles of persons with disabilities, who are generally not encouraged to develop their personality. They are not considered valuable members of the community and many remain housebound, uneducated and unskilled. They generally do not earn reliable incomes and depend on able-bodied family members to provide for their livelihood. In extreme cases, the person with disabilities is tied up at the back of the house, to keep them away from the outside world. This treatment is called <i>dipasung</i> – to be held in stocks—where persons with disabilities are confined to a small hut in the backyard, tied at the wrists and ankles to a tree or heavy log. Here, they eat, sleep and defecate.⁷³</p>	Human dignity
<p>Migrant workers: Almost 10 percent of the Philippine population (more than 8 million Filipinos) work abroad to earn enough to buy food, send their children to school, build decent homes, own farm lots or start small family businesses. Some succeed; others do not. A growing number of Filipino overseas workers, mostly women, are lured by international drug syndicates and offered US\$500 to \$5,000 to work as drug mules, to carry prohibited drugs, concealed in luggage, ingested or placed inside genitals, to China, Hong Kong and Macau. The Philippine Department of Foreign Affairs reports that 227 Filipinos, many of whom are women, were arrested, tried, and are now serving sentence or awaiting execution in China. On March 30, 2011, 3 Filipino "drug mules" were executed by lethal injection in China.⁷⁴</p>	Equality before the law

⁷⁰ BBC News. 30 January 2011. "The US agents tracking down sex tourists in Cambodia" in <http://www.bbc.co.uk/news/mobile/world-us-canada-12298870>; "Child sex booming in Cambodia... Is anybody listening?" 29 January 2007. <http://www.stolenchildhood.net/entry/child-sex-booming-in-cambodia-is-anybody-listening/>

⁷¹ OECD. Undated. "Gender Equality and Social Institutions in Nepal," <http://genderindex.org/country/nepal>

⁷² Asian Indigenous Peoples' Pact Foundation. Undated. "Indigenous Governance Systems in Asia,"

⁷³ Janene Byrne. Undated. "Disability in Indonesia," <http://www.insideindonesia.org/edition-75/disability-in-indonesia>

⁷⁴ Philippine Daily Inquirer. 21 February 2011. "Women Drug Mules Pay as Philippines Fails on Jobs."

EXERCISE

Portraying EA2J Actors

THIS EXERCISE allows participants to identify and describe the actors in equal access to justice. Participants shall be divided into five groups with six members per group. Three groups shall be assigned to play the role of claimholders, one group shall be assigned to play the role of duty bearers, and the last group shall be assigned to play the role of other actors.

Instructions:

- (1) Read the facts below.⁷⁵

Over 126,000 people in Indonesia died because of the 2004 tsunami. Aside from loss of their homes, over 600,000 women and men also lost their livelihoods because of the disaster. The infrastructure, which supported economic activity in the area, was destroyed, mostly affecting farmers and small traders. After the tsunami, the Indonesian Government, the Food and Agriculture Organization (FAO) and many aid organizations began to work to rehabilitate and reconstruct the devastated areas. FAO put together a multi-disciplinary team, which included FAO staff and consultants, provincial and national staff of the Indonesian Ministry of Agriculture, and some faculty members from the Syiah Kuala University to assess the affected areas. Other organizations, such as IOM, USAID, the UN Office for the Coordination of Humanitarian Affairs, and many NGOs also assisted in the rehabilitation efforts. However, the Indonesian Government decided to relocate many of the persons affected by the tsunami to emergency camps, despite their requests for permanent housing close to where they used to live. Very little assistance, in terms of rebuilding livelihoods, was being given to the survivors.

Organizations like Human Rights Watch have pointed out that these emergency camps also serve to confine the Acehnese to limited areas, possibly in support of the military's campaign against the Acehnese insurgency movement. The Indonesian Minister of Social Welfare admitted that the Indonesian military approved the sites of the camps.

The survivors of the tsunami expressed concern about losing their land, if they have to stay in the barracks constructed for them. Because of the tsunami, they lost the documentation that proved they owned the land. Families who depend on fishing as their livelihood refused to relocate to the camps. Farmers whose lands were destroyed by the floods expressed concern that others would come take their land because documents about their

⁷⁵ Lukman Age. July 2005. IDPs confined to barracks in Aceh, in FMR Review Special Issue, and FAO. 22 April 2005. Indonesia Post-Tsunami Consolidated Assessment in <http://www.fao.org/ag/tsunami/assessment/indonesia-assess.html>

land were lost. Small traders complained that they were not being given support to rebuild their livelihood, and were only being offered relocation in places away from where they used to do business. The survivors said they would only agree to be permanently relocated if they would be guaranteed legal ownership of the land and house.

- (2) Based on the facts, and the role assigned to the group, discuss with group members the attributes of the actor and prepare the performance.
- a. Instructions for **claimholders**: One group shall be assigned to play the role of Acehese fisherfolk, the second group shall be assigned to play the role of Acehese farmers, and the third group shall be assigned to play the role of Acehese small traders. Based on the facts presented above, portray claimholders through action conveying:
 - i. **Who** claimholders are,
 - ii. **Who among claimholders are most vulnerable**,
 - iii. The **situation** of claimholders,
 - iv. Their **aspirations** and **value systems/beliefs**,
 - v. Their **vulnerabilities** and **disadvantages**,
 - vi. Their **capacities** as individuals and as members of organized (formal and/or informal) groups, and
 - vii. Whether they can **claim justice**.
 - b. Instructions for **duty bearers**: Based on the facts presented above, portray duty bearers through action showing:
 - i. **Who** duty bearers are,
 - ii. Their **capacities** as duty bearers,
 - iii. **Value systems** that govern their actions,
 - iv. **Formal and informal structures** (laws, policies, rules, etc.) within which they operate,
 - v. **Existing regulatory, protective, service-providing** and other **frameworks** used and how effective these are, and
 - vi. Whether they can **provide justice**.
 - c. Instructions for **other actors**: Based on the facts presented above, portray other actors through action presenting:
 - i. **Who** other actors are,
 - ii. Their **interests, demands** and **motives**,
 - iii. Whether these **interests compete with or complement** the interests of claimholders or duty bearers,
 - iv. Their **relationships** (formal and informal) with claimholders and duty bearers,

- v. Their **influence** (positive or negative) over claimholders and duty bearers and the **nature** and **extent** of that influence,
- vi. **Level of power** they exercise in relation to claimholders and duty bearers,
- vii. Whether they **facilitate** or **hamper** equal access to justice.

(3) The group must perform without speaking during the presentation.

After the group performance, the other groups will describe the actor's attributes, along the general guidelines provided in (2)(a), (b) and (c) above; the group presenting will confirm the actor's attributes.

5

REFERENCE SHEET

The Centrality of the Human Person

IN THE human rights approach to realizing EA2J, the human person is the central subject, active participant, owner, driver, director and beneficiary of all justice actions (*claimholder*). Particular focus is given to individuals and/or groups of individuals who are most at risk of human rights deprivations, who have little or no access to justice, who are without adequate protection, who are extremely susceptible to abuse, and whose human rights may be realized by attaining justice.

The following table shows that the centrality of the human person is upheld by the following human rights instrument, and is governed by human rights standards, norms and principles (For a detailed description of the International Human Rights Instruments related to the centrality of a person, refer to Annex 1):

Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
<ul style="list-style-type: none"> ☞ Human Dignity <ul style="list-style-type: none"> • Humane treatment • Individualized assistance, measures, treatment • Best interest of child, child-centered approach • Free, prior informed consent • Non-custodial measures ☞ Respect for Human Rights <ul style="list-style-type: none"> • Universality • Indivisibility and inter-dependence ☞ Responsible Exercise of Human Rights ☞ Nondiscrimination <ul style="list-style-type: none"> • Non-stigmatization ☞ Equality ☞ Participation <ul style="list-style-type: none"> • Inclusion • Involvement ☞ Empowerment ☞ Attention to Most Vulnerable <ul style="list-style-type: none"> • Persons living in poverty • Indigenous peoples • Children • Women • Persons with disabilities • Victims • Offenders • Migrant workers 	<ul style="list-style-type: none"> • Universal Declaration of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • International Covenant on Economic, Social and Cultural Rights (ICESCR) • Declaration on the Right to Development (DRTD) • Guidelines on the Role of Lawyers • Guidelines on the Role of Prosecutors • Code of Conduct for Law Enforcement Officials • Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms Persons Living in Poverty <ul style="list-style-type: none"> • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” Indigenous Peoples <ul style="list-style-type: none"> • International Convention on the Elimination of All Forms of Racial Discrimination (CERD) • Declaration on the Rights of Indigenous Peoples • Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) Children <ul style="list-style-type: none"> • Convention on the Rights of the Child (CRC) • Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) • Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) • Rules for the Protection of Juveniles Deprived of their Liberty Women <ul style="list-style-type: none"> • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
	<ul style="list-style-type: none"> • Declaration on the Elimination of Violence against Women • Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice Persons with Disabilities • Convention on the Rights of Persons with Disabilities (CPD) Victims • Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • International Convention for the Protection of All Persons from Enforced Disappearance • Declaration on the Protection of All Persons from Enforced Disappearance • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Offenders • Standard Minimum Rules for the Treatment of Prisoners • Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners • Basic Principles for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment • Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) Migrant Workers • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW)

From these instruments are derived general human rights standards, norms and principles that reinforce the centrality of the human person. These general standards, norms and principles are: *human dignity, respect for human rights, responsible exercise of human rights, nondiscrimination, equality, participation, empowerment and attention to the most vulnerable.*

Human Dignity

“Dignity is what it means to be human; it is an affirmation of the fundamental value of every human being that entitles all human persons to respect simply because of their inalienable humanity.”⁷⁶ Every human person possesses no more or no less dignity than another. One cannot lose dignity; neither can one acquire it: dignity resides in everyone.⁷⁷

⁷⁶ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines.

⁷⁷ Andorno distinguishes the principle of human dignity from what he calls “moral dignity,” which relates to conduct or behavior: “It can be said that we give to ourselves this second kind of dignity by making good moral choices. This is why, unlike inherent dignity, which is the same for all, moral dignity is not possessed by all individuals to the same degree. Indeed, we can say, for instance, that an honest man has “more dignity” than a thief.” Roberto Andorno. 2009. Human Dignity and Human Rights as a Common Ground for a Global Bioethics, Journal of Medicine and Philosophy.

The principle of human dignity is the foundation of human rights: “As dignity inheres in every human person, whether woman or man, living in wealth or in poverty, or child or adult, wherever in the world, human rights too are *universal* and belong to every human person. As dignity cannot be divided into bits and pieces, human rights are *indivisible* and must be taken as a whole: no one right is more important or less significant than the other. As dignity is the sum of all the facets of humanity, human rights are *interrelated* and *interdependent*: they interact with each other, depend upon each other and support each other to guarantee full human dignity. ‘One can no more lose these rights than one can stop being a human being.’”⁷⁸

The principle of human dignity recognizes the intrinsic value and worth of every human person whatever her/his station in life and so mandates that “people *never* be treated in a way that denies the distinct importance of their own lives.”⁷⁹ *Humane treatment* is a key component of the principle of human dignity; it rejects the commodification of the human person: the treatment of human persons as mere instruments or objects or means to attain objectives. Rather *humane treatment* requires respectful treatment of the human person as an end in and of her/himself.

The United Nations Committee on the Rights of the Child has said that the principle of human dignity requires that children be treated in a manner: (a) consistent with the child’s sense of dignity and worth, (b) that reinforces the child’s respect for human rights, (c) that takes into account the child’s age and promotes the child’s reintegration and assumption of a constructive role in society, and (d) that prohibits and prevents all forms of violence against children.⁸⁰

The principle of human dignity acknowledges that every human person is unique, endowed with innate and special talents and native intelligence even as they may be unschooled and unlettered, and so requires *individualized assistance, measures and treatment*. Individual rights, interests and wellbeing supersede societal or other interests. While a human person may experience problems that appear common or similar to others, s/he experiences these challenges in the context of her/his own special set of circumstances, interests and goals. Indeed, even “women cannot be identified as a coherent group along with other sets of disempowered people such as ethnic minorities or socially excluded immigrants. Gender cuts across these and all other social categories, producing differences of interests and conceptions of justice between women.”⁸¹ Thus, in the context of EA2J, individualized assistance, measures and treatment reveals itself in, among others, respect for indigenous peoples’ *free, prior and informed consent*, resort to *non-custodial measures* for offenders, and the pursuit of the *best interest of the child* through a child-centered approach.

The United Nations Committee on the Rights of the Child emphasized that “in all decisions taken within the context of the administration of juvenile justice, the best interests of the child should be

⁷⁸ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit, citing Bureau of International Information Programs, US Department of State. Undated. Human Rights in Brief.

⁷⁹ Ronald Dworkin, 2009, cited in Roberto Andorno, Human Dignity and Human Rights as a Common Ground for a Global Bioethics, *Journal of Medicine and Philosophy*.

⁸⁰ General comment No. 10, “Children’s rights in juvenile justice,” adopted by the United Nations Committee on the Rights of the Child at its forty-fourth session, 2007, U N Doc. A/50/18.

⁸¹ Anne Marie Goetz. 2007. “Gender Justice, Citizenship and Entitlements: Core Concepts, Central Debates and New Directions for Research,” in Maitrayee Mukhopadhyay and Navsharan Singh (eds.), *Gender Justice, Citizenship and Development*, Zubaan, New Delhi, India and International Development Research Center, Ottawa, Canada.

a primary consideration. ... The protection of the best interests of the child means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitation and restorative justice objectives in dealing with child offenders. This can be done in concert with attention to effective public safety.”⁸²

Respect for Human Rights

The principle of *respect for human rights* requires all to work towards the realization and enjoyment of human rights by all. It prohibits any action that may result in a violation or diminution of enjoyment of human rights.

The principle of respect for human rights preserves the essential features of human rights: *universality* (i.e., human rights belong to everyone, everywhere, and transcend cultural, historical and other particularities), *indivisibility* (i.e., “human rights are so inextricably intertwined that the absence of one negates the presence of the others”⁸³) and *interdependence and inter-relatedness* (e.g., the enjoyment and exercise of a particular human right are dependent on the enjoyment or non-enjoyment of other human rights).

Together universality, indivisibility, interdependence and inter-relatedness of human rights in the context of EA2J, recognize that, while a justice action may focus on a particular human right, it may impact on or affect the enjoyment of other human rights. It is also important to recognize that, in justice actions for persons living in poverty, “the restoration of a right in isolation is not enough to ensure that individuals, their families and their communities will emerge from the situation of extreme poverty.”⁸⁴

Responsible Exercise of Human Rights

Respect for human rights carries with it the responsible exercise of human rights: the duty to act responsibly so as not to exceed the limits of the right. For example, exercising the right of free speech does not allow a person to slander or libel someone else; realizing the right to equality cannot lead to someone else suffering inequality.

Independent of any particular human rights claim, human rights duties operate on a general level and human persons are directed to exercise human rights duties towards and within the community (not to the state). The general duties arising from human rights are the duty to:

- Promote and observe human rights;

- Promote and protect appropriate political, social and economic order for development; and

⁸² General comment No. 10, “Children’s rights in juvenile justice,” adopted by the United Nations Committee on the Rights of the Child at its forty-fourth session, 2007, U N Doc. A/50/18.

⁸³ Jose W. Diokno. 31 August 1981. Human Rights Make Man Human, Lecture delivered at a Convocation on Human Rights at Silliman University on its 80th Founder’s Day. In *A Nation for Our Children, Claretian Publications, Quezon City, 1987, at pages 1-6.*

⁸⁴ Paragraph 14, Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor,” UN Doc. A/HRC/Sub.1/58/36, 2006.

- Contribute, as appropriate, to a social and international order where human rights can be fully realized.

Nondiscrimination

Nondiscrimination is a human right, an immediate and cross-cutting human rights obligation, and a guiding human rights principle, expressly recognized in the major human rights instruments. Discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on prohibited grounds and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise on equal footing of human rights.⁸⁵ Discrimination is not only unjustifiable distinction, exclusion or restriction but also unjustifiable preference.⁸⁶ Discrimination also includes incitement to discriminate and harassment.⁸⁷

Discrimination reveals itself in what the United Nations Committee on Economic, Social and Cultural Rights calls “entrenched historical and contemporary forms,” which include:⁸⁸

- *Formal discrimination*, where a State’s constitution, laws or policies discriminate on prohibited grounds;
- *Substantive discrimination*, where discrimination is experienced in practice;
- *Direct discrimination*, where a person “is treated less favorably than another in a similar situation for reasons related to prohibited grounds,” and also “includes detrimental acts or omissions based on prohibited grounds where there is no comparable or similar situation;”
- *Indirect discrimination*, where “laws, policies or practices appear neutral at face value, but have a disproportionate impact” on the exercise and enjoyment of human rights by those distinguished by prohibited grounds;
- *Systemic discrimination*, where “legal rules, policies, practices or predominant cultural attitudes in either the public or private sector ... create relative disadvantages for some groups, and privileges for other groups;”

⁸⁵ General Comment No. 20, “Nondiscrimination in Economic, Social and Cultural Rights (Art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 42nd session, 2009, U N Doc. E/C.12/GC/20.

⁸⁶ General Recommendation XXXII, “The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 75th session, August 2009.

⁸⁷ Paragraph 7, General Comment No. 20, “Nondiscrimination in Economic, Social and Cultural Rights (Art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its forty-second session, 2009, U N Doc. E/C.12/GC/20.

⁸⁸ Paragraphs 8, 10, 11 and 12, General Comment No. 20, “Nondiscrimination in Economic, Social and Cultural Rights (Art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 42nd session, 2009, U N Doc. E/C.12/GC/20. Phrases in the bullets, which are enclosed in quotation marks are copied from the relevant paragraphs of General Comment No. 20.

- *Multiple or cumulative or intersectional*⁸⁹ discrimination, where “individuals or groups of individuals face discrimination on more than one of the prohibited grounds.” Intersectional discrimination against women constitutes the intersection of sex with other prohibited grounds, resulting in compounded disadvantage.⁹⁰

Two other major forms of discrimination are prohibited under the International Convention on the Elimination of All Forms of Racial Discrimination:

- *Racial discrimination*, or “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”⁹¹ The United Nations Committee on the Elimination of Racial Discrimination acknowledged that women and men do not experience racial discrimination in the same way and that some forms of racial discrimination have unique and specific impact on women. The Committee thus recommends a full analysis of the relationship between gender and racial discrimination;⁹² and
- *Racial segregation and apartheid*,⁹³ which may be complete or partial, and may arise from direct actions or tolerance of public authorities, or “as an unintended by-product of the actions of private persons. In many cities residential patterns are influenced by group differences in income, which are sometimes combined with differences of race, color, descent and national or ethnic origin, so that inhabitants can be stigmatized and individuals suffer a form of discrimination in which racial grounds are mixed with other grounds.”⁹⁴

Prohibited grounds of discrimination are explicitly mentioned in the major human rights instruments, and include race, color, sex, language, religion, political or other opinion, national or social origin, property, and birth. The express prohibited grounds of discrimination have been further clarified, thus: “race and color” are today understood to include ethnic origin; “sex” is understood to include gender stereotypes, prejudices and expected roles; “national or social origin” is understood to include inherited social status and descent-based discrimination or birth; “property” is understood to include both real and personal property; and “birth” is understood to include descent especially based on social stratification such as caste or analogous systems of inherited status.⁹⁵

⁸⁹ General Recommendation XXXII, “The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 75th session, August 2009.

⁹⁰ Paragraph 5, General Comment No. 16, “The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 34th session, 2005, UN Doc. E/C.12/2005/4.

⁹¹ Article 1(1), International Convention on the Elimination of All Forms of Racial Discrimination.

⁹² General Recommendation XIV, “On gender-related dimensions of racial discrimination,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 56th session, 2000, UN Doc. HRI/GEN/1/Rev.9 (Vol. II), 27 May 2008.

⁹³ Article 3, International Convention on the Elimination of All Forms of Racial Discrimination.

⁹⁴ General Recommendation XIX, “On Article 1, paragraphs 3 of the Convention,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 47th session, 1995, UN Doc. A/50/18.

⁹⁵ Section III, Paragraphs 15 to 35, General Comment No. 20, “Nondiscrimination in Economic, Social and Cultural Rights (Art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 42nd session, 2009, UN Doc. E/C.12/GC/20.

The major human rights instruments also include the prohibited ground of “other status,” but do not prescribe exactly what this ground includes. The United Nations Committee on Economic, Social and Cultural Rights adopted a “flexible approach” to describe the prohibited ground of “other status” and presented a non-exhaustive list of prohibited grounds constituting “other status.” This includes disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residency, economic and social situation, and membership-in-group based on self-identification, including association by consanguinity and/or affinity.⁹⁶

Stigmatization often accompanies discrimination:⁹⁷ those discriminated against are often regarded in negative terms (e.g., “they are dangerous,” “they are violent,” “they are stupid,” “they are useless,” etc.) and consequently those discriminated against are often jeered at, made fun of, treated as inconsequential, or simply dismissed. Addressing discrimination means also addressing stigmatization by promoting a balanced and fair image of persons often subjected to stigmatization, including, among others, persons who live in poverty, women, persons living with HIV, and indigenous peoples.

To address discrimination in any form, human rights allow the adoption of special measures,⁹⁸ so long as these are “reasonable, objective and proportional ... and are discontinued when substantive equality has been sustainably achieved.”⁹⁹ This is because nondiscrimination does not mean uniform treatment when there are significant differences in the situation between one person or group and another, or in other words, if there is an objective and reasonable justification for differential treatment.¹⁰⁰ Special measures may include affirmative or positive action, special and concrete measures by legislative, executive, administrative, budgetary and regulatory instruments at every level of government and preferential regimes.¹⁰¹

⁹⁶ Section III, Paragraphs 15 to 35, General Comment No. 20, “Nondiscrimination in Economic, Social and Cultural Rights (Art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 42nd session, 2009, UN Doc. E/C.12/GC/20.

⁹⁷ Paragraphs 11-13, Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor,” UN Doc. A/HRC/Sub.1/58/36, 2006.

⁹⁸ Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination, for instance, specifically authorizes the adoption and implementation of special measures: “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary, in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms, shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.” In General Comment 11, the United Nations Committee on the Rights of the Child recommended the adoption and implementation of special measures for indigenous children who face multiple forms of discrimination. See General Comment 11, “Indigenous children and their rights under the Convention,” adopted by the United Nations Committee on the Rights of the Child at its 50th session, 2009, U N Doc. CRC/C/GC/11.

⁹⁹ Paragraph 8(b), General Comment No. 20, “Nondiscrimination in Economic, Social and Cultural Rights (Art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 42nd session, 2009, U N Doc. E/C.12/GC/20.

¹⁰⁰ General Recommendation XXXII, “The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 75th session, August 2009.

¹⁰¹ General Recommendation XXXII, “The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 75th session, August 2009.

The United Nations Committee on the Elimination of Racial Discrimination distinguished special measures from human rights (or “permanent rights, recognized as such in human rights instruments”): “The distinction between special measures and permanent rights implies that those entitled to permanent rights may also enjoy the benefits of special measures.”¹⁰² The Committee reiterated that special measures may be adopted and implemented so long as these are:¹⁰³

- Appropriate to the situation to be remedied, e.g., grounded in realistic appraisal of the current situation and based on disaggregated accurate data incorporating a gender perspective;
- Legitimate, i.e., solely for the purpose of ensuring the equal enjoyment of human rights by all;
- Necessary in a democratic society;
- Undertaken with prior consultation and active participation of affected individuals, groups and communities;
- Fair and proportional; and
- Temporary, i.e., terminated once the objectives are sustainably achieved. In this regard, human rights consequences of termination, withdrawal or cessation of special measures must be carefully considered, especially if special measures have been in force for a long period of time.

Equality

Equality is a human right, a mandatory, non-derogable and immediate human rights obligation and a human rights principle. “Equality guarantees that women and men enjoy all human rights on an even, like or same basis. Equality, however, does not mean that women and men are treated in exactly the same way in every situation. Equality recognizes that certain conditions in society sometimes result in or maintain inequality. Hence, governments must take temporary special measures to remove those conditions that cause or perpetuate inequality. Equality allows government to extend preferential treatment to women who experience inequality or imbalance for a limited time in order to correct their situation. Equality requires that public decisions and actions target both women and men and address gender factors, issues and concerns that contribute to inequality.”¹⁰⁴

Equality is recognized in all major human rights instruments and generally refers to the equal rights of women and men. Equality, however, differs from nondiscrimination. The Convention on the Elim-

¹⁰² General Recommendation XXXII, “The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 75th session, August 2009.

¹⁰³ General Recommendation XXXII, “The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 75th session, August 2009.

¹⁰⁴ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines.

ination of All Forms of Discrimination Against Women defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”¹⁰⁵ Equality surpasses the prohibition of discrimination by expressly guaranteeing the same human rights for women and men, with suitable measures to ensure that women do exercise human rights.

The United Nations Committee on the Elimination of Discrimination against Women further noted: “The Convention goes beyond the concept of discrimination used in many national and international legal standards and norms. While such standards and norms prohibit discrimination on the grounds of sex and protect both men and women from treatment based on arbitrary, unfair and/or unjustifiable distinctions, the Convention focuses on discrimination against women, emphasizing that women have suffered, and continue to suffer from various forms of discrimination because they are women.”¹⁰⁶

Equality and nondiscrimination have been described as overlapping, mutually reinforcing corollary principles: the elimination of discrimination is integral to the enjoyment of equality, but equality should be read in conjunction with each specific right guaranteed by the major human rights instruments.¹⁰⁷

Equality is both *de jure* (formal) and *de facto* (substantive). *De jure* or formal equality is achieved when laws or policies treat women and men in a neutral manner, while *de facto* or substantive equality is achieved when the effects of laws, policies and practices do not maintain but alleviate the inherent disadvantages that women experience.¹⁰⁸

Recognizing that “a purely formal legal or programmatic approach is not sufficient to achieve women’s *de facto* equality with men,” the United Nations Committee on the Elimination of Discrimination against Women stresses the creation of an “enabling environment to achieve equality of results,” which is viewed as “the logical corollary of *de facto* or substantive equality.” The Committee stresses: “It is not enough to guarantee women treatment that is identical to that of men. Rather, biological as well as socially and culturally constructed differences between women and men must be taken into account. Under certain circumstances, non-identical treatment of women and men will be required in order to address such differences. Pursuit of the goal of substantive equality also calls for an effective strategy aimed at overcoming underrepresentation of women and a redistribution of resources and power between men and women.”¹⁰⁹

¹⁰⁵ Article 1, Convention on the Elimination of All Forms of Discrimination Against Women.

¹⁰⁶ Paragraph 5, General Recommendation 25, “Article 4, paragraph 1, of the Convention (temporary special measures),” adopted by the United Nations Committee on Discrimination against Women at its 30th session, 2004, U N Doc HRI/GEN/1/Rev.9 (Vol. II).

¹⁰⁷ Paragraph 2, General Comment No. 16, “The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 34th session, 2005, UN Doc. E/C.12/2005/4.

¹⁰⁸ General Comment No. 16, “The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 34th session, 2005, UN Doc. E/C.12/2005/4.

¹⁰⁹ Paragraphs 8 and 9, General Recommendation 25, “Article 4, paragraph 1, of the Convention (temporary special measures),” adopted by the United Nations Committee on Discrimination against Women at its 30th session, 2004, U N Doc HRI/GEN/1/Rev.9 (Vol. II).

Gender affects equality. Gender refers to “the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn, it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life. Despite variations across cultures and over time, gender relations throughout the world entail asymmetry of power between men and women as a pervasive trait. Thus, gender is a social stratifier, and, in this sense, it is similar to other stratifiers such as race, class, ethnicity, sexuality and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes.”¹¹⁰

Cultural expectations and assumptions about the behavior, attitudes, personality traits, and physical and intellectual capacities of men and women, based solely on their identity as men or women, generally place women at a disadvantage and preclude the sharing of responsibility between men and women in all spheres necessary to equality.¹¹¹

Equality requires states to: (a) eliminate direct or indirect discrimination against women in laws, (b) ensure that women are protected against discrimination, (c) improve the de facto position of women through concrete and effective policies and programs, and (d) address prevailing gender relations and the persistence of gender-based stereotypes that affect women, not only through individual acts by individuals, but, also in law, and legal and societal structures and institutions.¹¹²

The Convention on the Elimination of All Forms of Discrimination Against Women expressly allows the adoption and implementation of (a) temporary special measures aimed at accelerating de facto equality between women and men, and (b) special measures aimed at protecting maternity.¹¹³ The United Nations Committee on the Elimination of All Forms of Discrimination Against Women views the application of temporary special measures as “one of the means to realize de facto or substantive equality for women, rather than an exception to the norms of non-discrimination and equality.”¹¹⁴

¹¹⁰ Note 2 citing 1999 World Survey on the Role of Women in Development, United Nations, New York, 1999, page ix in General Recommendation 25, “Article 4, paragraph 1, of the Convention (temporary special measures),” adopted by the United Nations Committee on Discrimination against Women at its 30th session, 2004, UN Doc. HRI/GEN/1/Rev.9 (Vol. II).

¹¹¹ Paragraph 14, General Comment No. 16, “The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 34th session, 2005, UN Doc. E/C.12/2005/4.

¹¹² Paragraph 7, General Recommendation 25, “Article 4, paragraph 1, of the Convention (temporary special measures),” adopted by the United Nations Committee on Discrimination against Women at its 30th session, 2004, UN Doc. HRI/GEN/1/Rev.9 (Vol. II).

¹¹³ Article 4, paragraphs 1 and 2. The two types of measures are differentiated in terms of purpose and duration: the purpose of temporary special measures is to improve the position of women and undertake necessary structural, social and cultural changes to achieve substantive equality and is necessarily temporary in nature; while special measures are based on the biological differences between women and men, and is of a more permanent nature. See General Recommendation 25, “Article 4, paragraph 1, of the Convention (temporary special measures),” adopted by the United Nations Committee on Discrimination against Women at its 30th session, 2004, U N Doc. HRI/GEN/1/Rev.9 (Vol. II).

¹¹⁴ Paragraph 14, General Recommendation 25, “Article 4, paragraph 1, of the Convention (temporary special measures),” adopted by the United Nations Committee on Discrimination against Women at its 30th session, 2004, U N Doc. HRI/GEN/1/Rev.9 (Vol. II).

Temporary special measures are positive action, preferential treatment, and quota systems to address women's integration into education, economy, politics and employment.¹¹⁵ They constitute legitimate differentiation under human rights instruments intended to correct discrimination.¹¹⁶

The United Nations Committee on the Elimination of Discrimination against Women defined the key elements of temporary special measures:

- (a) Temporary special measures are part of a necessary strategy to achieve de facto or substantive equality of women with men in the enjoyment of human rights;
- (b) Temporary special measures should not discriminate against men;
- (c) The creation of general conditions to guarantee the human rights of women is an obligation, not a temporary special measure;
- (d) The duration of a temporary measure should be determined by its functional result in response to a concrete problem and not by a predetermined passage of time; temporary special measures must be discontinued when their desired results have been sustainably achieved;
- (e) Temporary special measures must be designed to serve a specific goal;
- (f) Temporary special measures include a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices (e.g. outreach or support programs; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems);
- (g) Where temporary special measures involve qualifications and merit for targeting purposes, questions of qualification and merit need to be carefully reviewed for gender bias.¹¹⁷

Participation

Participation is a human right guaranteed by the major human rights instruments. It is a guiding human rights principle for all justice actions. The Convention on the Rights of the Child links participation to the right of the child to express his/her views freely in all matters affecting the child, and the major human rights instruments recognize two general participation rights: the right to take part in

¹¹⁵ General Recommendation 5, "Temporary special measures," adopted by the United Nations Committee on Discrimination against Women at its 7th session, 1988, UN Doc. A/43/38.

¹¹⁶ General Comment 18, "Nondiscrimination," adopted by the United Nations Human Rights Committee at its 37th session, 1989, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008 and General Recommendation XIV, "On gender-related dimensions of racial discrimination," adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 56th session, 2000, UN Doc. HRI/GEN/1/Rev.9 (Vol. II), 27 May 2008.

¹¹⁷ General Recommendation 25, "Article 4, paragraph 1, of the Convention (temporary special measures)," adopted by the United Nations Committee on Discrimination against Women at its 30th session, 2004, UN Doc. HRI/GEN/1/Rev.9 (Vol. II).

the conduct of public affairs¹¹⁸ and the right to take part in cultural life.¹¹⁹

The right to take part in the conduct of public affairs is allied with the rights to vote and be elected, hold public office and perform public functions at all levels, equal access to public service, participate in the formulation and implementation of government policies and development plans, participate in all community activities, freedom of association, including the right to form and join non-governmental organizations and associations concerned with political and public affairs. For persons with disabilities,¹²⁰ migrant workers and members of their families,¹²¹ indigenous peoples¹²² and persons who live in poverty,¹²³ the right to take part in the conduct of public affairs includes the right to participate in decisions concerning and/or affecting them and to participate in the administration of their communities. For indigenous peoples, the right to take part in the conduct of public affairs includes the right to participate in establishing and implementing fair, independent, impartial, open and transparent processes for recognizing and adjudicating indigenous people's lands, territories and resources.¹²⁴ The feminization of poverty emphasizes the right of women to participate in the formulation and implementation of anti-poverty policies, plans, programs, strategies and activities that must take into consideration the different situations of women and men and rectify inequalities in the use of resources, enjoyment of rights, exercise of responsibilities and support for family life.¹²⁵

The right to take part in cultural life is closely allied to the right to benefit from the protection of moral and material interests resulting from any scientific, literary or artistic production of which they are the author. It is also closely linked to freedom indispensable for scientific research and creative activity, and the right to participate in recreational activities, sports, leisure, play, and all aspects of cultural life, and participate in all community activities.

From a human rights perspective, participation consists of the following indispensable elements:

- Direct involvement in the conduct of public affairs and in cultural life, by, among others, exercising power as members of legislative bodies, or holding executive office, or deciding public issues through a referendum or other electoral processes, or taking part in public hearings, popular assemblies, or other bodies or institutions created by government mandating citizen representation.¹²⁶

¹¹⁸ Article 21, UDHR; Article 25, ICCPR; Articles 7(b), 7(c), 14(2)(a), Article 14(2)(f), CEDAW; Article 5(c), CERD; Articles 3(c), 26 and 29, CPD; Articles 41(1) and 42(2) CMW; Articles 1, 2(3) and 8(2), Declaration on the Right to Development; Articles 5, 15 and 18, Declaration on the Rights of Indigenous Peoples; Paragraphs 7 and 8, Draft Guiding Principles "Extreme poverty and human rights: the rights of the poor."

¹¹⁹ Article 27, para. 1, UDHR; Article 8, Declaration on the Right to Development; Articles 17, 18, 19, 21 and 22, ICCPR; Article 15, ICESCR; General Comment No. 21, "Right of Everyone to Take Part in Cultural Life (Art. 15, para. 1(a) of the International Covenant on Economic, Social and Cultural Rights)," adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 43rd session, 2009, UN Doc. E/C.12/GC/21; Article 5 (e) (vi), CERD; Article 13 (c), CEDAW; Article 31, para. 2, CRC; Article 30, para. 1, CPD; Articles 43, para. 1(g), CMW.

¹²⁰ Article 26 CPD.

¹²¹ Article 42(2), CMW.

¹²² Article 18, Declaration on the Rights of Indigenous Peoples.

¹²³ Paragraph 7, Draft Guiding Principles "Extreme poverty and human rights: the rights of the poor."

¹²⁴ Article 27, Declaration on the Rights of Indigenous Peoples.

¹²⁵ Paragraph 9, Draft Guiding Principles "Extreme poverty and human rights: the rights of the poor."

¹²⁶ General Comment 25, "Article 25 (Participation in public affairs and the right to vote)," adopted by the United Nations Human Rights Committee at its 57th session, 1996, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

- Indirect involvement through freely chosen representatives, so long as (a) elected representatives actually exercise governmental power, are accountable through the electoral process for the exercise of that power, and exercise only those powers allocated to her/him in accordance with constitutional provisions,¹²⁷ and (b) representatives of indigenous peoples must be chosen by them in accord with their own procedures, without prejudice to their right to maintain and develop their own indigenous decision-making institutions.¹²⁸
- Free involvement in public and cultural life, without threat or sanction, and without unreasonable restrictions or conditions; any conditions imposed for participation must be based on objective and reasonable criteria.
- Voluntary involvement in public and cultural life, based on free choice and without compulsion.
- Involvement on equal basis as others.
- Inclusion in society without any form or taint of discrimination based on its prohibited grounds.
- Full, effective, active and meaningful involvement, by contributing to the definition, elaboration and implementation of all policies and decisions affecting public affairs and cultural life, engaging in public debate and dialogue, etc.
- Exercised alone or in association with others or as a community.

The following prerequisites must be in place for the enjoyment of the right to participate and the operationalization of the guiding human rights principle of participation:

- Equality of opportunity for involvement at any and all levels of public and cultural life;
- Full enjoyment of freedom of expression, assembly and association;
- Timely access to all relevant information, in language and media easily understood;
- Full access to all forms of expression and dissemination through any medium of information, including information technology;
- Free communication of information and ideas about public and political issues and culture and the arts;
- Free and responsible press, without censorship or restraint;

¹²⁷ General Comment 25, "Article 25 (Participation in public affairs and the right to vote)," adopted by the United Nations Human Rights Committee at its 57th session, 1996, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹²⁸ Article 18, Declaration on the Rights of Indigenous Peoples.

- Freedom to debate public affairs and cultural issues, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political and cultural material, to campaign and advertise political and cultural ideas;
- Freedom to organize and choose representatives;
- Freedom to seek, develop and share political and cultural knowledge and expressions; and
- Equality of outcome for enjoying the benefits relating to public and cultural life.

Participation has been described by various authors as consisting of many levels or degrees:¹²⁹

- Arnstein's *Ladder of Citizen Participation* features eight levels of participation ranging from manipulation and therapy (or non-participation) through information, consultation and placation (or tokenism) to partnership, delegated power and citizen control (or citizen power with increased degrees of decision-making clout).
- UNDP/Civil Society Organizations and Participation Programme's *Nine Degrees of Participation* presents nine levels of participation (manipulation, information, consultation, consensus-building, decision-making, risk-sharing, partnership, and self-management) ranging from manipulation (or non-participation) to self-management (highest level of participation).
- International Association for Public Participation's *Public Participation Spectrum* highlights five levels of participation (information, consultation, involvement, collaboration and empowerment) linked to the goals of participation and the promise to the public.
- Their *Levels of Children's Participation* portrays eight levels of children's participation (information, persuasion, education, input toward implementation, input toward decisions, implementation responsibility and decision-making authority), ranging from information (or passive participation) to full responsibility over all aspects of the situation (or active participation).

The human rights principle of participation requires a departure from the more conventional and most often applied consultative approaches towards more active involvement manifested by direct control, ownership and self-management.

Empowerment

"Empowerment acknowledges and respects the people's capacity to think and act freely for and on their own behalf to create solutions to address their own problems, control their own destinies and fulfill their potential. Empowerment emphasizes people's efforts to realize their human rights and bring about the necessary changes to address their situation. Empowerment encourages people to

¹²⁹ For a description of the different perspectives on the levels or degrees of participation briefly described here, see National Economic and Development Authority. Human Rights-based Approach to Development Planning Toolkit, 2011.

exercise choice in the face of power relations and structures in society. Empowerment builds the capacity of people to engage in the decision-making process.”¹³⁰

Empowerment is best understood through the prism of power. Power is generally thought of as a relational construct, with multidimensional facets: on the one hand, power may generate exclusion, discrimination and disadvantage; on the other hand, power may create change favorable to those disempowered. Power is dynamic and fluid and can co-exist and operate in diverse forms across times and places. Power may be covert or hidden, overt or visible, or even invisible; power is often shaped by laws or policies, and by socialization and social practices.¹³¹

Several models of power emerged over the years: Mosedale distinguishes between the “zero-sum model of power” where “one person’s gain is another’s loss,” and “non zero-sum models of power” where “one person’s gain is not necessarily another’s loss.”¹³² The “zero-sum model of power” generally refers to the notion of *power over*, or “the ability to influence and coerce, to force someone or some group to take actions against their will, or, positively stated, to resist force; it may include the ability to prevent certain people or issues from being heard and the ability to legitimize some voices and discredit or render others voiceless.”¹³³ While the “non zero-sum models of power” refer to the notions of *power to* (or “generative and productive capacity to take action, to organize and change existing hierarchies”¹³⁴), *power with* (or “collective action to solve problems and attain goals”¹³⁵), and *power within* (or “personal power, emanates from increased individual consciousness, self-confidence, self-esteem and self-respect and involves the development of abilities to overcome internalized control or oppression”¹³⁶).

Diokno emphasizes that because human rights address issues of power, equity and discrimination, they form valuable strategic entry points for addressing the ways by which power relations produce and reproduce deprivations of fundamental freedoms and entitlements.¹³⁷ These “strategic entry points” represent the different dimensions of empowerment: economic empowerment, human empowerment, social empowerment, political empowerment, legal empowerment and cultural empowerment.

¹³⁰ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit, Philippines

¹³¹ See Cecilia Luttrell and Sitna Quiroz with Claire Scrutton and Kate Bird. October 2007. Understanding and Operationalising Empowerment; Kwok-Fu Wong. Empowerment as a panacea for poverty—old wine in new bottles? Reflections on the World Bank’s conception of power, *Progress in Development Studies* 3,4 (2003) pp. 307-322; Sarah Mosedale. 2003. Towards A Framework For Assessing Empowerment, 2003; John Gaventa. 2005. Finding the Spaces for Change: A Power Analysis; and John Gaventa, 2007. Participation and Citizenship: Exploring Power for Change.

¹³² Sarah Mosedale. 2003. “Towards a Framework for Assessing Empowerment.”

¹³³ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. 2011, citing Cecilia Luttrell and Sitna Quiroz with Claire Scrutton and Kate Bird. October 2007. Understanding and Operationalising Empowerment; Kwok-Fu Wong. 2003. Empowerment as a panacea for poverty—old wine in new bottles? Reflections on the World Bank’s conception of power, *Progress in Development Studies* 3,4. Pages. 307-322; and Sarah Mosedale. 2003. Towards A Framework For Assessing Empowerment.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Diokno, Maria Socorro I. 2004. Human Rights-centered Development: Theory and Practice, Quezon City: The University of the Philippines Press. Page10.

“Luttrell and Quiroz describe the two general approaches currently applied to bring about empowerment: the agency approach, which seeks to build the capacity of individuals to act independently and to make their own free choices, and the structural approach, which seeks to change law, rules and social forces (e.g. social class, religion, gender, ethnicity, customs, etc.) that limit or influence the opportunities that determine the actions of individuals. The authors contend that these approaches are a product of debate over whether change ensues because of social structures or through individual and collective action.”¹³⁸

Attention to the Most Vulnerable

Human rights recognize that there are those persons who are *more vulnerable, more at risk of deprivation, who least enjoy and exercise their human rights, and are therefore deserving of special protection through special attention and special measures*. The principle of attention to the most vulnerable carries with it special or specific human rights standards that arise from relevant human rights instruments covering those most vulnerable.

Persons Living in Poverty

- The *Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor,”*¹³⁹ define poverty as a “human condition characterized by sustained or chronic deprivation of resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights.” The *Draft Guiding Principles* consider extreme poverty and exclusion as human rights violations. Section 11 (K) of the instrument enshrines the “right to justice;”

The *Draft Guiding Principles* also uphold the equal opportunity of persons living in poverty to enjoy all civil, cultural, economic, political and social rights and freedoms and to fully develop their human potential, recognizing these as indivisible and interdependent; the *Draft Guiding Principles* emphasize the rights to an adequate standard of living and the same right of access to justice as other citizens, the obligations of nondiscrimination (including non-stigmatization), equality, and the obligation to act immediately to end widespread poverty, starvation and hardship, specific duties and responsibilities of public and private entities to combat poverty as well as the human rights principles of participation and accountability.

Indigenous Peoples

- The *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD)¹⁴⁰ defines racial discrimination as any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin. It guarantees nondiscrimination

¹³⁸ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit, citing Cecilia Luttrell and Sitna Quiroz with Claire Scrutton and Kate Bird. October 2007. Understanding and Operationalising Empowerment.

¹³⁹ Adopted by the United Nations SubCommission on the Promotion and Protection of Human Rights on 24 August 2006; consists of a preamble and 48 guidelines with an introduction and 13 sections.

¹⁴⁰ Adopted on 21 December 1965; entry into force 4 January 1969; consists of a preamble and 3 parts with 25 articles.

and equality, and promotes understanding, tolerance, respect, friendship and positive lifestyles, as well as the human rights principle of rule of law. The United Nations Committee on the Elimination of Racial Discrimination, the body created by the Convention, reaffirmed that the provisions of the *Convention* apply to indigenous peoples, noting especially the guarantees under the *Convention* of “the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories.”¹⁴¹

- The *Declaration on the Rights of Indigenous Peoples*¹⁴² consists of a preamble and 46 Articles enshrining the rights of indigenous peoples, which “constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.” The *Declaration* does not imply “for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.” The *Declaration* imposes the obligations to obtain indigenous peoples’ free, prior and informed consent before any measures affecting them are adopted and implemented and to provide effective mechanisms for just and fair redress with appropriate measures to mitigate adverse environmental, economic, social, cultural or spiritual impact. The *Declaration* guarantees indigenous peoples’ rights to fully enjoy all human rights and freedoms individually and collectively. It also guarantees the right to equality, nondiscrimination and the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State. It further guarantees the dignity and diversity of their cultures, traditions, histories and aspirations. The *Declaration* promotes the human rights principle of empowerment, mandates particular attention to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities, and urges the adoption and implementation of *special measures* for indigenous peoples.
- The *Guidelines on the Role of Lawyers* require the adoption and implementation of special measures for indigenous peoples or victims of past discrimination to enter the legal profession.
- The *Convention concerning Indigenous and Tribal Peoples in Independent Countries* (ILO Convention No. 169)¹⁴³ sets forth fundamental rights, obligations and standards including due regard to customs or customary laws. It includes the right to retain customs and institutions when compatible with fundamental rights, respect for customary methods to deal with offenses committed by indigenous peoples if compatible with the national legal system and internationally recognized human rights. It also covers the obligation of authorities and courts to take into account indigenous peoples’ customs in regard to penal matters, obli-

¹⁴¹ Paragraphs 2 and 5, General Recommendation XXIII, “On the rights of indigenous peoples,” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 51st session, 1997, UN Doc. A/52/18, Annex V.

¹⁴² Adopted by the United Nations General Assembly Resolution 61/295, 13 September 2007.

¹⁴³ Adopted by the International Labor Organization on 27 June 1989; consists of a preamble with 9 parts and 44 articles.

gation of courts, in imposing penalties on indigenous peoples, to take into account their economic, social and cultural characteristics, preference for methods of punishment rather than imprisonment. The Convention also states the right to use legal proceedings, either individually or through representatives, for the effective protection of their rights, including access to interpreters. It also guarantees the requirement to obtain indigenous peoples' free, prior and informed consent before any decisions that may affect them are taken.

Children

- The *Convention on the Rights of the Child (CRC)*¹⁴⁴ defines a child as a person below 18 years of age, unless national law decrees an earlier age of majority. It upholds the best interests of the child as the primary consideration for all actions concerning children. It guarantees children's rights, including the rights against torture or other cruel, inhuman or degrading treatment or punishment; prompt access to legal and other appropriate assistance. It also sets forth the rights to challenge detention and against retroactive application of the law. It guarantees presumption of innocence, and procedural or due process rights. Moreover, for the Convention, imprisonment is a measure of last resort for the shortest appropriate time and requires special considerations for children while under detention (e.g., care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programs and other alternatives). It signifies that the purpose of detention is reintegration and that age should always be taken into consideration. It prohibits the imposition of capital punishment or life imprisonment without the possibility of release for persons below 18 years of age and the arbitrary detention of children.

The Convention is supplemented by two Optional Protocols: the *Optional Protocol on Involvement of Children in Armed Conflict*, which consists of a preamble and 13 Articles and prohibits compulsory recruitment of child soldiers; and the *Optional Protocol on Sale of Children, Child Prostitution and Child Pornography*, which consists of a preamble and 17 Articles and prohibits the sale of children, child prostitution and child pornography.

- The *International Covenant on Civil and Political Rights* mandate special protection for juveniles. In General Comment 32, the Human Rights Committee stressed that "in the case of juvenile persons, procedures should take account of their age and the desirability of promoting their rehabilitation. Juveniles are to enjoy at least the same guarantees and protection accorded to adults... In addition, juveniles need special protection... Detention before and during the trial should be avoided to the extent possible."¹⁴⁵ The Human Rights Committee stressed the obligation of states to establish an appropriate juvenile criminal justice system, in order to ensure that juveniles are treated in a manner commensurate with their age, and that age should take into account their physical and mental immaturity.¹⁴⁶ Finally, the Human Rights Committee recommended the adoption of measures such as mediation

¹⁴⁴ Adopted on 20 November 1989; entry into force 2 September 1990; consists of a preamble and 3 parts with 54 Articles.

¹⁴⁵ Paragraph 42, General Comment 32, "Right to equality before courts and tribunals and to a fair trial," adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁴⁶ Paragraph 43, General Comment 32, "Right to equality before courts and tribunals and to a fair trial," adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

between the perpetrator and the victim, conferences with the family of the perpetrator, counseling or community service or educational programs, rather than criminal proceedings, so long as these measures are compatible with the requirements of the Covenant and other relevant human rights standards.¹⁴⁷

- The *Standard Minimum Rules for the Administration of Juvenile Justice* (also known as the *Beijing Rules*)¹⁴⁸ views juvenile justice “as an integral part of the national development process... within a comprehensive framework of social justice for all juveniles,” with twin aims of protecting the young and maintaining peaceful order in society. The *Beijing Rules* require a constructive social policy to prevent juvenile crime and delinquency. It defines a juvenile as “a child or young person who, under the respective legal systems, may be dealt with for an offense in a manner different from an adult” and a juvenile offender as “a child or young person who is alleged to have committed or who has been found to have committed an offense.” The *Beijing Rules* set the aims of juvenile justice: emphasize wellbeing of the juvenile and ensure proportionality between the offender and the offense. It allows an appropriate scope for discretion with accountability in view of the varying special needs of juveniles and a variety of available measures. It guarantees nondiscrimination, and promotes the human rights principles of accountability and special attention to varying special needs of juveniles requiring a variety of available measures (e.g. care, protection and all necessary individual assistance including social, educational, vocational, psychological, medical and physical assistance). It sets the best interest of the juvenile as the primary standard.
- The *Guidelines for the Prevention of Juvenile Delinquency* (also known as *The Riyadh Guidelines*)¹⁴⁹ sets the fundamental principles, standards and guidelines to prevent juvenile delinquency. These include recognition of the active role and full and equal partnership within society of young persons who should not be considered mere objects of socialization or control. It also stipulates due respect for the proper personal development of children and young persons and for the child’s own cultural identity and patterns. It also includes safeguarding the well-being, development, rights and interests of all young persons. The Guidelines also stipulate respect for and promotion and development of the personality, talents and mental and physical abilities of young people to reach their fullest potential. According to the *Riyadh Guidelines*, the best interest of young persons is the focus of any preventive programme. The use of formal agencies of social control is only a means of last resort. Finally, the *Riyadh Guidelines* urge the adoption and implementation of a child-centered orientation. Such an approach necessitates close interdisciplinary cooperation between national, state, provincial and local governments, with the involvement of the youth, private sector, representative citizens of the community and labor, child-care, health, education, social, law enforcement and judicial agencies in taking concerted action to prevent juvenile delinquency and youth crime. It emphasizes progressive delinquency prevention policies such as avoiding the criminalization and penalization of the child for behavior that does not cause serious damage to the development of the child or harm to others. It requires specialized

¹⁴⁷ Paragraph 44, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁴⁸ Adopted by United Nations General Assembly Resolution 40/33, 29 November 1985; consists of a set of 30 rules divided into six parts.

¹⁴⁹ Adopted by United Nations General Assembly Resolution 45/112, 14 December 1990; consists of 66 paragraphs divided into 7 parts.

philosophies and approaches for delinquency prevention based on laws, processes, institutions, facilities and service delivery network aimed to reduce motivation, need and opportunity for, or conditions giving rise to the commission of infractions. It also stresses successful socialization and integration of all children and young persons through the family, the community, peer groups, schools, vocational training, through the world of work, and voluntary organizations.

- The *Rules for the Protection of Juveniles Deprived of their Liberty*¹⁵⁰ comprise minimum standards for juveniles deprived of liberty in all forms. It defines a juvenile as a person below 18 years of age and defines deprivation of liberty as any form of detention or imprisonment or placement of a juvenile in a public or private custodial setting where the juvenile is not permitted to leave at will, by judicial, administrative or other public order. The *Rules* uphold the rights and safety of juveniles and guarantees nondiscrimination. It sets the imprisonment of juveniles as a last resort, for a minimum necessary period, and limited to exceptional cases. It mandates full respect for religious, cultural beliefs, practices and moral concepts of juveniles. It recommends open detention facilities for juveniles (i.e. without or with minimum security measures), small-scale detention facilities integrated into the social, economic and cultural environment of the community, as well as individualized treatment of juveniles.
- The *Guidelines on the Role of Prosecutors* state that where prosecutors are vested with discretion whether to prosecute a juvenile, they must give special consideration to the nature and gravity of the offense, the protection of society and the personality and background of the juvenile; prosecutors must also consider available alternatives to prosecution under relevant juvenile justice laws and procedures; finally prosecutors must exert their best efforts to take action against juveniles only to the extent strictly necessary.

Women

- The *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*¹⁵¹ guarantees women's rights and freedoms, including equality before the law in both criminal and civil matters. The *Convention* guarantees nondiscrimination. It defines discrimination as any distinction, exclusion or restriction made on the basis of sex. The *Convention* encourages the adoption and implementation of *temporary special measures* to accelerate substantive equality between women and men. The *Convention* has an Optional Protocol, which recognizes the competence of the Committee on the Elimination of Discrimination against Women to receive and consider communications for violations of the *Convention*.
- The *Declaration on the Elimination of Violence against Women*¹⁵² defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." It includes: (a) physical, sexual and psychological violence occurring in the family (including battering, sexual abuse of female children in household, dowry-related violence, marital rape, female

¹⁵⁰ Adopted by United Nations General Assembly Resolution 45/113, 14 December 1990; consists of 86 rules divided into 4 parts.

¹⁵¹ Adopted on 18 December 1979; entry into force 3 September 1981; consists of a preamble and 6 parts with 30 articles.

¹⁵² Adopted by United Nations General Assembly Resolution 48/104, 20 December 1993; consists of a preamble and 6 Articles.

genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation); (b) physical, sexual and psychological violence occurring within the general community (including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution); and (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs. The *Declaration* upholds all human rights and fundamental freedoms (political, economic, social, cultural, civil rights and freedoms) of women, including their rights to equality and to be free from all forms of discrimination.

- The *Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*¹⁵³ are aimed at realizing de facto and de jure equality between women and men in achieving access to justice to redress acts of violence; the model strategies do not give preferential treatment to women. Examples of model strategies related to selected fields are presented in the matrix below:

Field	Sample Model Strategies
Criminal Procedure	<p>Review, evaluate and revise criminal procedure, as appropriate, to ensure:</p> <ul style="list-style-type: none"> • Primary responsibility for initiating prosecutions lies with prosecution authorities, not with women subjected to violence • Women subjected to violence have equal opportunity to testify in court proceedings and measures are available to facilitate testimony and protect privacy • Rules and principles of defense do not discriminate against women, and defenses like honor or provocation do not allow perpetrators to escape criminal responsibility • Evidence of prior acts of violence, abuse, stalking and exploitation by perpetrator are considered during court proceedings • Measures can be taken to ensure safety of victims and families and protect them from intimidation and retaliation • Safety risks are taken into account in decisions concerning non- or quasi-custodial sentences, granting of bail, conditional release, parole or probation
Police	<ul style="list-style-type: none"> • Develop investigative techniques that do not degrade women subjected to violence and minimize intrusion, while maintaining standards for collection of best evidence • Ensure that police procedures, including decisions on arrest, detention and terms of any form of release of perpetrator, take into account the need for safety of victim and others related through family, socially or otherwise, and that these procedures also prevent further acts of violence
Sentencing and Corrections	<ul style="list-style-type: none"> • Ensure that women subjected to violence is notified of any release of offender from detention or imprisonment where safety of victim in such disclosure outweighs invasion of offender's privacy • Take into account in sentencing process severity of physical and psychological harm and impact of victimization, including through victim impact statements where such practices are permitted by law
Victim Support and Assistance	<ul style="list-style-type: none"> • Make available to women subjected to violence information on rights and remedies and how to obtain them, and information about participating in criminal proceedings and scheduling, progress and ultimate disposition of the proceedings • Encourage and assist women subjected to violence in lodging and following through on formal complaints • Ensure that women subjected to violence receive, through formal and informal procedures, prompt and fair redress for harm suffered, including right to seek restitution or compensation from offenders or State

¹⁵³ Adopted by United Nations General Assembly Resolution 52/86, 1997; consists of a preamble and 18 paragraphs divided into 11 fields.

Field	Sample Model Strategies
Health and Social Services	<ul style="list-style-type: none"> • Establish, fund and coordinate sustainable network of accessible facilities and services for emergency and temporary residential accommodation for women and children at risk of becoming or who have been victims of violence • Establish, fund and coordinate services such as toll free information lines, professional multi disciplinary counseling and crisis intervention services and support groups to benefit women (and children) who are victims of violence
Crime Prevention Measures	<ul style="list-style-type: none"> • Set up outreach programs and offer information to women, including victims of violence, about gender roles, human rights and social, health, legal and economic aspects of violence against women • Support initiatives of organizations seeking women's equality and non-governmental organizations to raise public awareness of violence against women and contribute to its elimination

Persons with Disabilities

- The *Convention on the Rights of Persons with Disabilities (CPD)*¹⁵⁴ guarantees the rights of persons with disabilities including those with long-term physical, mental, intellectual or sensory impairments. It is governed by the principles of respect for dignity, individual autonomy and independence of persons, nondiscrimination, full and effective participation, inclusion in society, respect for difference, acceptance, equality, accessibility, and respect for evolving capacities. The Convention explicitly recognizes access to justice as a fundamental human right of persons with disabilities. It also guarantees the rights to liberty, security of person, equal recognition before the law, review, nondiscrimination, freedom from arbitrary detention and freedom from torture, cruel, inhuman or degrading treatment including a prohibition against scientific or medical experimentation, as well as procedural (or due process) rights. The Convention enshrines the principle of access to support in exercising legal capacity. It is accompanied by an Optional Protocol, recognizing the competence of Committee on Rights of Persons with Disabilities to receive and consider communications for violations.

Victims

- The *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*¹⁵⁵ guarantees the non-derogable right against torture. The *Convention* defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person to obtain information or confession; or to punish or intimidate or coerce him/her committed by or at the instigation of or with consent or acquiescence of a public official or a person acting in official capacity. It also has an Optional Protocol which recognizes the competence of the Committee against Torture to receive and consider communications for violations.

¹⁵⁴ Adopted on 13 December 2006; entry into force 3 May 2008; consists of a preamble and 50 Articles.

¹⁵⁵ Adopted on 10 December 1984; entry into force 26 June 1987; consists of a preamble and 3 parts with 33 articles.

- The *International Convention for the Protection of All Persons from Enforced Disappearance*,¹⁵⁶ states that no one shall be subjected to enforced disappearance or to secret detention, and that such enforced disappearances can never be justified by any exceptional circumstances (whether a state of war or a threat of war, internal political instability or any other public emergency). In Asia, the Convention is binding only in Japan, the sole Asian country that ratified it. Indonesia, the Lao People's Republic and Mongolia are signatories to the *Convention*, but have not yet taken steps to ratify or accede to it.

The Convention defines a victim of enforced disappearance as a disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance. It mandates that state parties must take necessary measures to ensure that enforced disappearances constitute a criminal offense in their national laws. The widespread use of enforced disappearance also constitutes a crime against humanity under international law. The Convention mandates that the statute of limitations for enforced disappearances is of long duration and is proportionate to the extreme seriousness of the offense. The statute of limitations begins from the time the disappearance ceases (taking into account its continuous nature) and that victims of enforced disappearance are guaranteed an effective remedy during the term of limitation. It allows for the creation of aggravating circumstances that will increase penalties in the event of the death of the disappeared person or the commission of an enforced disappearance in respect of pregnant women, children, persons with disabilities or other particularly vulnerable persons.

- The *Declaration on the Protection of All Persons from Enforced Disappearance*¹⁵⁷ represents a body of principles to protect all persons from enforced disappearances. It decrees that enforced disappearances constitute grave and flagrant violations of human rights and fundamental freedoms and rules of international law which guarantees, among others, the rights to recognition as a person before the law, life, liberty and security of person and freedom from torture and other cruel, inhuman or degrading treatment or punishment. The Declaration mandates full respect for the human rights of all. It mandates that the prohibition against enforced disappearances is non-derogable and that no circumstances whatsoever, whether threat of war, state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances. It also stipulates that enforced disappearance is a continuing offence as long as the perpetrators continue to conceal the fate and whereabouts of the disappeared persons and the facts remain un-clarified. The Declaration mandates that the statute of limitations relating to enforced disappearance should be suspended until remedies are re-established and any statutes of limitations must be substantial and commensurate with the extreme seriousness of the offense. It also prohibits the passage of any special amnesty law or similar measures that exempt perpetrators from any criminal proceedings or sanction and requires that, in the exercise of pardon, the extreme seriousness of enforced disappearances be taken into account.

¹⁵⁶ Adopted on 20 December 2006; entry into force 23 December 2010; consists of a preamble and 45 Articles.

¹⁵⁷ Adopted by United Nations General Assembly Resolution 47/133, 18 December 1992; consists of a preamble and 21 articles.

- The *Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power*¹⁵⁸ describes the principles of justice relating to victims of crime and abuse of power, access to justice and fair treatment, restitution, compensation and assistance. It defines victims as “persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws, including those laws proscribing criminal abuse of power.” It notes that persons may be considered victims whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of familial relationship between the perpetrator and the victim. Victims also include “the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.” The Declaration also defines abuse of power as “acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.” The Declaration guarantees respect for human dignity and nondiscrimination and requires special attention to victims with special needs because of the nature of harm inflicted.
- The *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* require victims to be treated with humanity and with respect for their dignity and human rights. It imposes the obligation to respect, ensure respect for and implement international human rights law and international humanitarian law.
- The *Guidelines on the Role of Prosecutors* require prosecutors to take proper account of the position of the suspect and victim, and to pay attention to all relevant circumstances, irrespective of whether they are advantageous or disadvantageous to the suspect. Prosecutors are also required to consider the views and concerns of victims when their personal interests are affected and ensure that they are informed of their rights. Prosecutors are duty-bound to give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, investigate such offenses.

Offenders

- The *Standard Minimum Rules for the Treatment of Prisoners*¹⁵⁹ set out generally accepted good principles and practice in the treatment of prisoners and management of institutions. The Rules are divided into 2 parts: part 1 deals with the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to “security measures” or corrective measures ordered by the judge; part II contains rules applicable only to special categories. However, rules under section A, applicable to prisoners under sentence, are equally applicable to other categories of prison-

¹⁵⁸ Adopted by United Nations General Assembly Resolution 40/34, 29 November 1985; consists of 21 paragraphs.

¹⁵⁹ Adopted by First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955; approved by United Nations Economic and Social Council Resolutions 663 C (XXIV), 31 July 1957 and 2076 (LXII), 13 May 1977; consists of 95 rules.

ers. The Rules guarantee nondiscrimination and respect for the prisoner's religious beliefs and moral precepts of the group to which the prisoner belongs. It mandates the separation of categories, i.e., the separation of men and women, the separation of untried from convicted prisoners, the separation of persons imprisoned for debt and other civil prisoners from persons imprisoned for criminal offense, and the separation of young prisoners from adults. The Rules require that special attention be given to special categories of prisoners. Prisoners under arrest or awaiting trial are presumed innocent and must be treated as such. Insane prisoners and those with mental disabilities, should not be detained in prisons but in mental institutions. Civil prisoners and persons arrested or detained without charge, should not be subjected to any greater restriction or severity than necessary to ensure safe custody and good order. They must be treated not less favorably than untried prisoners, but may possibly be required to work. The Rules also mandate individualization of treatment and a flexible system of classifying prisoners in groups distributed in separate institutions. These institutions should be suitable for the treatment of each group, with privileges appropriate for different classes of prisoners and different methods of treatment to encourage good conduct, develop sense of responsibility and secure interest and cooperation of prisoners in their treatment.

- The *Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners*¹⁶⁰ set forth a variety of measures to implement the *Rules*, including embodiment in domestic law, wide dissemination, periodic reporting, and research and technology.
- The *Basic Principles for the Treatment of Prisoners*¹⁶¹ consist of 11 principles. These include respect for human dignity and value as human person, nondiscrimination, respect for prisoners' religious beliefs and cultural precepts, access to health services without discrimination, abolition of solitary confinement as punishment or restriction of its use, and impartiality in the application of the principles. The *Basic Principles* reiterate that, except for limitations demonstrably necessitated by the fact of incarceration, all prisoners retain their human rights and fundamental freedoms, including their right to take part in cultural activities and education. The *Basic Principles* emphasize the role of prisons to protect society against crime and promote the wellbeing and development of all members of society.
- The *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment*¹⁶² protects the rights of all persons under any form of detention or imprisonment. This includes humane treatment with respect for the inherent dignity of the human person, nondiscrimination, and the requirement that arrest, detention or imprisonment is carried out strictly in accordance with law and by competent officials or authorized persons. The *Body of Principles* prohibits any restriction or derogation from any human rights on the pretext that it does not recognize such rights or recognizes them to a lesser extent.

¹⁶⁰ Adopted by United Nations Economic and Social Council Resolution 1984/47, of 25 May 1984; consists of 13 procedures.

¹⁶¹ Adopted by United Nations General Assembly on 14 December 1990.

¹⁶² Adopted by United Nations General Assembly Resolution 43/173, 9 December 1988; consists of 39 principles.

- The *Standard Minimum Rules for Non-custodial Measures* (also known as the *Tokyo Rules*)¹⁶³ promote the use of non-custodial measures and provide minimum safeguards for persons subject to alternatives to imprisonment. The *Tokyo Rules* promote humane treatment, protection of society and the interests of the victim, responsibility towards society and nondiscrimination. They are applicable to all persons subject to prosecution, trial or execution of sentence, at all stages of criminal justice. The *Tokyo Rules* recognize that the use of non-custodial measures is part of the movement towards depenalization and decriminalization. Examples of non-custodial measures are verbal sanctions (admonition, reprimand and warning), conditional discharge, status penalties, economic sanctions and monetary penalties (fines and day-fines). They also include confiscation or expropriation order, restitution to victim or a compensation order, suspended or deferred sentence, probation and judicial supervision, community service order, referral to attendance centre, house arrest, any other mode of non-institutional treatment, and some combination of the measures previously cited. Non-custodial measures also include a wide range of measures to avoid institutionalization and assist offenders in early reintegration, such as furlough and halfway houses, work or education release, various forms of parole, remission and pardon. The *Tokyo Rules* recommend consideration, at the earliest possible stage, of any form of release from an institution to a non-custodial program.
- The *Guidelines on the Role of Lawyers* set forth the obligations (a) to immediately inform all arrested or detained or charged persons of their right to be assisted by a lawyer of choice; (b) to assign a lawyer of experience and competence commensurate with the nature of the offense free of charge for those without sufficient means to pay for such services; (c) to ensure that arrested or detained persons have prompt access to a lawyer not later than forty-eight hours from the time of arrest or detention; and (d) to provide all arrested, detained or imprisoned persons with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality, requiring that such consultations may be within sight, but not within hearing, of law enforcement officials.
- The *Guidelines on the Role of Prosecutors* impose upon prosecutors the duty to refuse to use evidence against the suspect that they know or believe on reasonable grounds was obtained through unlawful methods (e.g. torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights). It also imposes the duty to take all necessary steps to ensure that those responsible for using such methods are brought to justice. The *Guidelines* also require prosecutors, in the exercise of their discretionary functions, to ensure fairness and consistency of approach in taking decisions in prosecution, including institution of alternatives to prosecution (e.g. waiver to prosecute, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system in accord with national law, with full respect for the rights of suspects and victims).
- The *Code of Conduct for Law Enforcement Officials* sets forth the obligations to ensure full protection of the health of persons in custody and to take immediate action to secure medi-

¹⁶³ Adopted by United Nations General Assembly Resolution 45/110, 14 December 1990; consists of a set of 23 basic principles divided into 8 parts.

cal attention whenever required. This includes securing medical attention for victims of violations of law or of accidents in the course of violations of law.

Migrant Workers

- The *International Convention on the Rights of All Migrant Workers and Members of their Families* (CMW)¹⁶⁴ applies to all migrant workers—those who are about to be engaged, are engaged, or have been engaged in paid activity in a country where they are not nationals, whether documented or undocumented. The *Convention* guarantees the rights of migrant workers and members of their families. It promotes sound, equitable, humane and lawful conditions covering international migration of workers and members of their families. It guarantees the rights to liberty, security of person, protection against violence, physical injury, threats and intimidation, and the rights against retroactive application of the law and against detention for failure to fulfill a contractual obligation. In cases of arrest and detention, the *Convention* guarantees procedural rights, which also include the rights to communicate with their embassy/consulate, to be informed about rights from relevant treaties, and to the assistance of an interpreter. It also reaffirms that the purpose of detention is reformation and social rehabilitation. It mandates that humanitarian considerations should be taken into account during sentencing, as well as special requirements for juveniles and special attention for families of migrant workers under detention. The *Convention* imposes the obligations to prevent and eliminate the illegal or clandestine movements and employment of migrant workers in irregular situations. It mandates that appropriate measures must be taken to ensure that irregular situations affecting migrant workers and members of their families do not persist.

Guidance Note: Tips to Translate Human Rights Standards, Norms and Principles into Practical Action

The following tips may facilitate the application of human rights standards, norms and principles of *human dignity, respect for human rights, responsible exercise of human rights, nondiscrimination, equality, participation, empowerment and attention to most vulnerable* into practical action to realize equal access to justice:

- 1 Claimholders must be treated with utmost respect.
- 2 The differential and special situations of claimholders should be recognized and issues of power addressed.
 - a. Justice should work for persons who live in poverty, without discrimination on grounds of physical appearance, residence or other considerations stemming from poverty.

¹⁶⁴ Adopted on 18 December 1990; entry into force 1 July 2003; consists of a Preamble and 9 Parts with 93 Articles.

- b. The free, prior and informed consent of indigenous peoples should be obtained before and during the institution of any justice action.
 - c. The best interest of the child should always be the standard for any justice action concerning children.
 - d. Gender issues and concerns should be addressed and temporary special measures should be adopted and implemented to achieve substantive equality.
 - e. Different types of disabilities require different and special forms of assistance and treatment. For example, statements and affidavits to be executed by persons with sight disabilities should be available in Braille to enable the person with disabilities to read and understand the statement s/he is executing. Translators should be available for persons with hearing and speech disabilities, including specialist translators familiar with the special language created by those unable to attend special language courses or unfamiliar with the conventionally used sign language. Mobility and accessibility aids such as ramps and special walkways should be available to persons with physical disabilities, etc.
 - f. Victims' rights should be respected, and their interests and concerns given due attention in all justice actions.
 - g. Offenders should be treated humanely with individualized measures and assistance.
 - h. Migrant workers should be protected from illegal or clandestine movements and employment, and provided special assistance with humanitarian treatment.
- 3 Decisions on whether to take justice actions, and on the nature and form of justice actions should be made by claimholders. They are in the best position to decide for themselves as they are the ones who suffer the deprivation of human rights and the indignities that go along with their suffering.
 - 4 Claimholder decisions should be respected, even if their decisions do not conform to recommended action.
 - 5 In order to make informed decisions, and to actively and freely participate in the pursuit of justice, claimholders must be provided with accurate, objective, complete, balanced and unbiased information about available remedies and processes.
 - a. Information should be simplified, without the use of jargon and any taint of condescension.
 - b. Remedies and processes should be explained in the language understood by claimholders.
 - c. Information should be provided in a timely manner to allow claimholders sufficient time to process the information and make informed decisions.

- d. Claimholders should be kept regularly informed about developments in the justice action taken on their behalf.
 - e. Only those promises that can and will be delivered should be made to claimholders.
- 6 Claimholders must be actively involved in all matters relating to the justice action and their views and opinions should guide the direction of the action.

SESSION 3

Human Rights Dimensions of Equal Access

Objectives

At the end of this session, participants should be able to:

- Discuss human rights norms governing equal access to justice;
- Distinguish obligations of conduct from obligations of result; and
- Explain the multiple dimensions of equal access.

Time

5:00 pm – 6:00 pm (Day 1)

8:15 am – 9:30 am (Day 2)

Session Guide

This session discusses the notion of equal access to justice from a human rights perspective. It focuses on the multiple dimensions of equal access in the context of human rights norms, standards and principles. This session is divided into three activities:

- The session begins with an interactive discussion. The lead facilitator will engage the participants in discussing the multiple dimensions of equal access (*physical access, economic access, linguistic access and information access*). They will also tackle human rights standards, norms and principles of *equal access to a court or tribunal, equality before the law, equal protection of the law, nondiscrimination, and obligations of conduct and obligations of result*, and the human rights instruments upon which these norms, standards and principles are based (20 minutes).
- Thereafter, participants will correlate human rights obligations with concrete examples by accomplishing **Exercise 7: Match My Obligation** (10 minutes).
- Participants, working in small groups, will then identify creative solutions to enhance equal access to justice in a particular situation, by focusing on its multiple dimensions under **Exercise 8: Bursting the Bubble: Enhancing Equal Access to Justice** (30 minutes).

- Thereafter, all small groups shall convene in plenary, where each small group shall present their creative solutions to enhance equal access to justice. Comments shall be solicited from other small groups and the lead facilitator (1 hour).

Exercises

Exercise 7: Match My Obligation

Exercise 8: Bursting the Bubble: Enhancing Equal Access to Justice

Reference Sheet

Reference Sheet 6: Equal Access

EXERCISE **7**

Match my Obligation

TRAINERS SHOULD read the Note to Trainers at the beginning of the module.

This exercise allows participants to concretize human rights obligations.

Trainers should first identify the human rights obligations they wish to highlight, and think of matching concrete examples of the obligation. They should print the obligations and their corresponding examples on separate meta cards.

During the exercise, participants shall be given meta cards; some cards list human rights obligations, while other cards list concrete examples. Participants must find their match.

Reflected below are the obligations and possible matches that were used in the pilot training. Trainers are free to use these, or come up with their own obligations and indicative examples, based on the country context and that of their participants.

Obligations	Indicative Examples/Match
Obligations of Conduct	<ul style="list-style-type: none"> • Deliver public goods • Do not impose capital punishment on children • No violence against women
Obligations of Result	<ul style="list-style-type: none"> • Guarantee human rights • Establishment of equitable formal institutions of remedy • Fair adjudication
Core	<ul style="list-style-type: none"> • Guarantee equal access to justice
Progressive Realization	<ul style="list-style-type: none"> • Provide effective remedies for violations of human rights
Equality	<ul style="list-style-type: none"> • Equality of arms
Nondiscrimination	<ul style="list-style-type: none"> • Collect appropriate disaggregated information, statistical and research data
International Cooperation and Assistance	<ul style="list-style-type: none"> • Provide technical assistance on equal access to justice
Respect	<ul style="list-style-type: none"> • Enforcement
Protect	<ul style="list-style-type: none"> • Investigation and prosecution
Fulfill (Facilitate)	<ul style="list-style-type: none"> • Systems, rules, structures
Fulfill (Provide)	<ul style="list-style-type: none"> • Free access to legal aid

EXERCISE 8

Bursting the Bubble: Enhancing Equal Access to Justice

THIS EXERCISE allows participants to identify creative solutions to enhance equal access to justice by focusing on its multiple dimensions, using the “Concept Fan.”¹⁶⁵

Instructions: Read the facts below. Together with the members of the group, use the concept fan (see diagrammatic example in the next page) tool to develop solutions to enhance the different dimensions of justice. Begin by drawing a circle in the middle of a large piece of paper. Write onto the circle the problem based on the facts presented. To the right of the circle, radiate lines representing the different dimensions of equal access, showing how you can enhance each dimension to solve the problem.

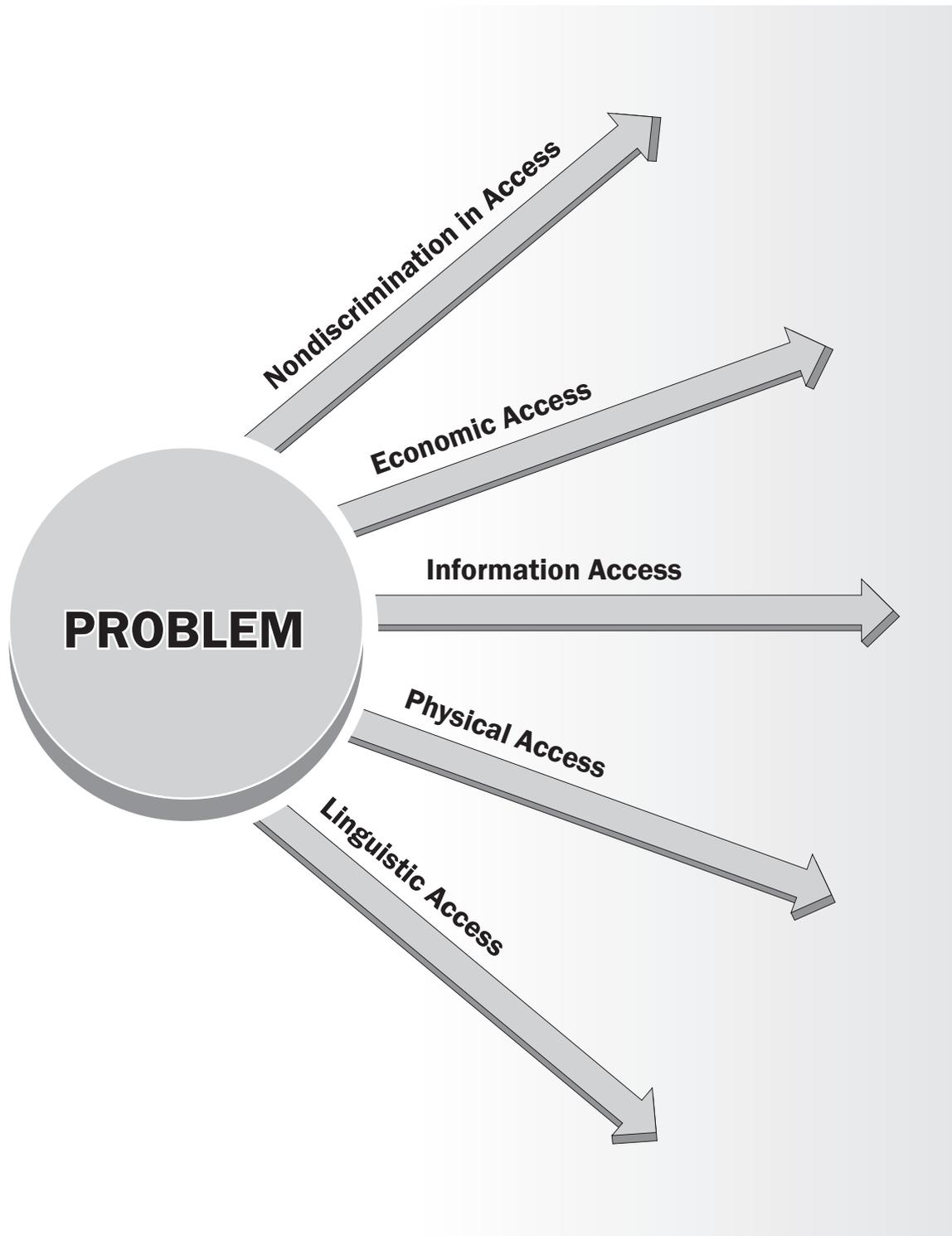
Facts:

In Phnom Penh, Cambodia in 2009, there was a community of persons living with HIV. They lived in an urban poor area, close to the medical center that was providing them with medical care. Most were only renting houses in the area, which the Government converted into low-cost housing. During initial meetings between the residents of the area (including the smaller community of persons living with HIV) and municipal officials, it was agreed that homeowners and persons renting in the area from the year 2000 would receive rights to apartments that were to be built onsite. Community members, the UN and municipal officials together will screen which of the residents would receive onsite relocation. However, the persons screened were mostly homeowners, all of whom either received or were guaranteed onsite relocation. The persons living with HIV were never screened. It was alleged that municipal officials stated that the NGOs would be responsible for them. They were moved into a corrugated iron shelter and were threatened with eviction with no clear resettlement, until NGOs pushed the municipal government to assist them. The NGOs asked that these families be screened, as some of them were also entitled to onsite relocation, based on the earlier agreement between community residents and the municipal government. Despite a number of meetings between the community, NGOs, the UN and the municipal government, no families with HIV were screened. Instead, the municipal government decided to move the remaining families with HIV to an area roughly 26 kilometers away from the city center. There were several issues with the proposed resettlement area. First, it was far away from medical care, and from the families’ livelihoods (healthy members of the family worked in construction or were food sellers). Second, the resettlement area had no running water or electricity. Third, when a medical group studied the housing plans, it noted that the plans did not meet international humanitarian standards. Despite all these objections, the families were still relocated to the area, although they would like and are entitled to receive housing in the city center.

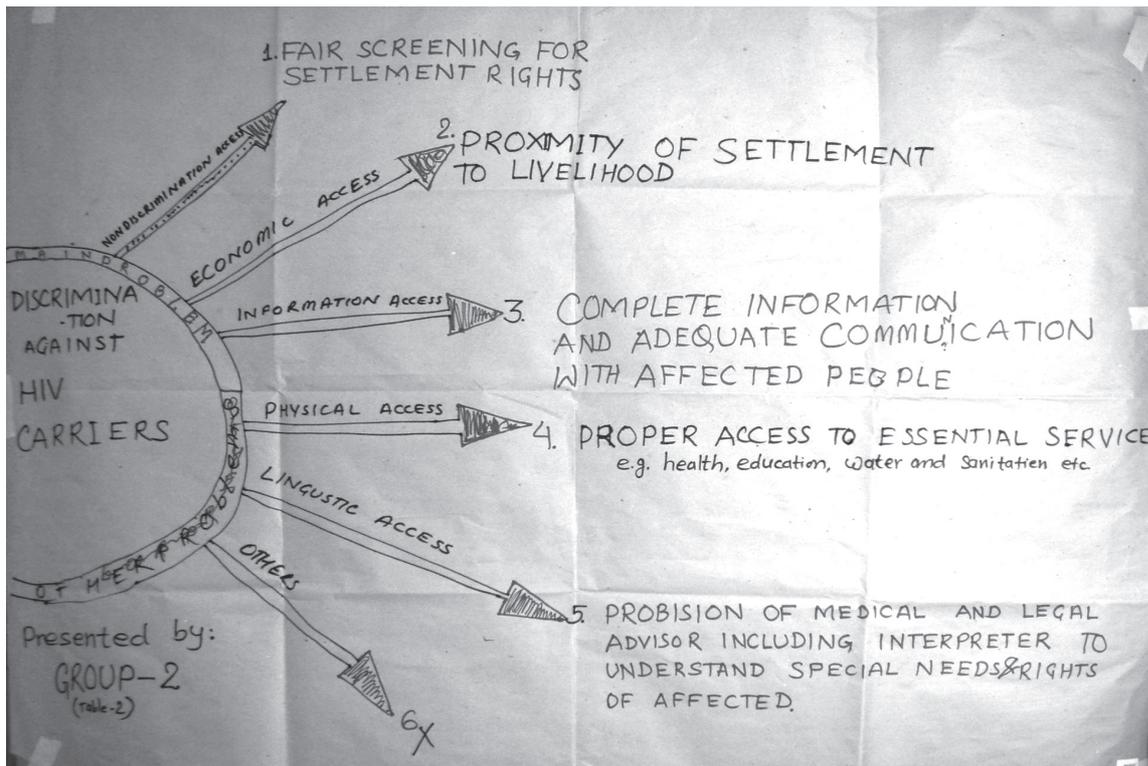
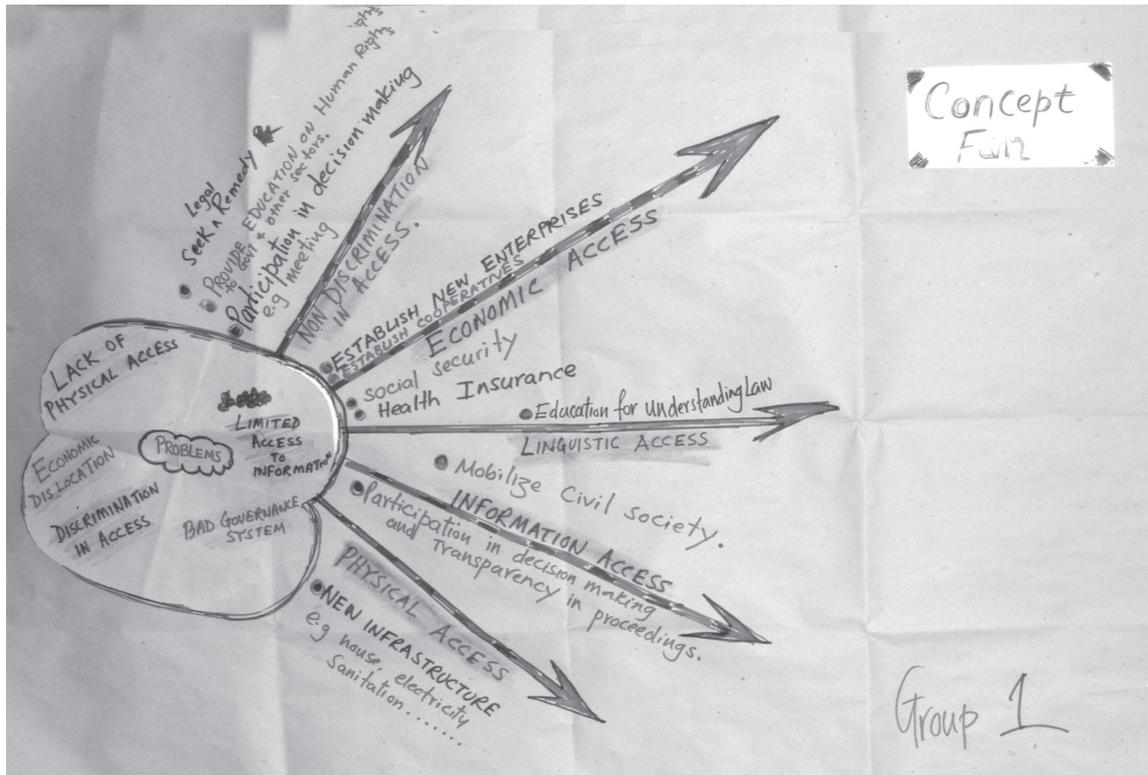
¹⁶⁵ A tool developed by Mind Tools (www.mindtools.com).

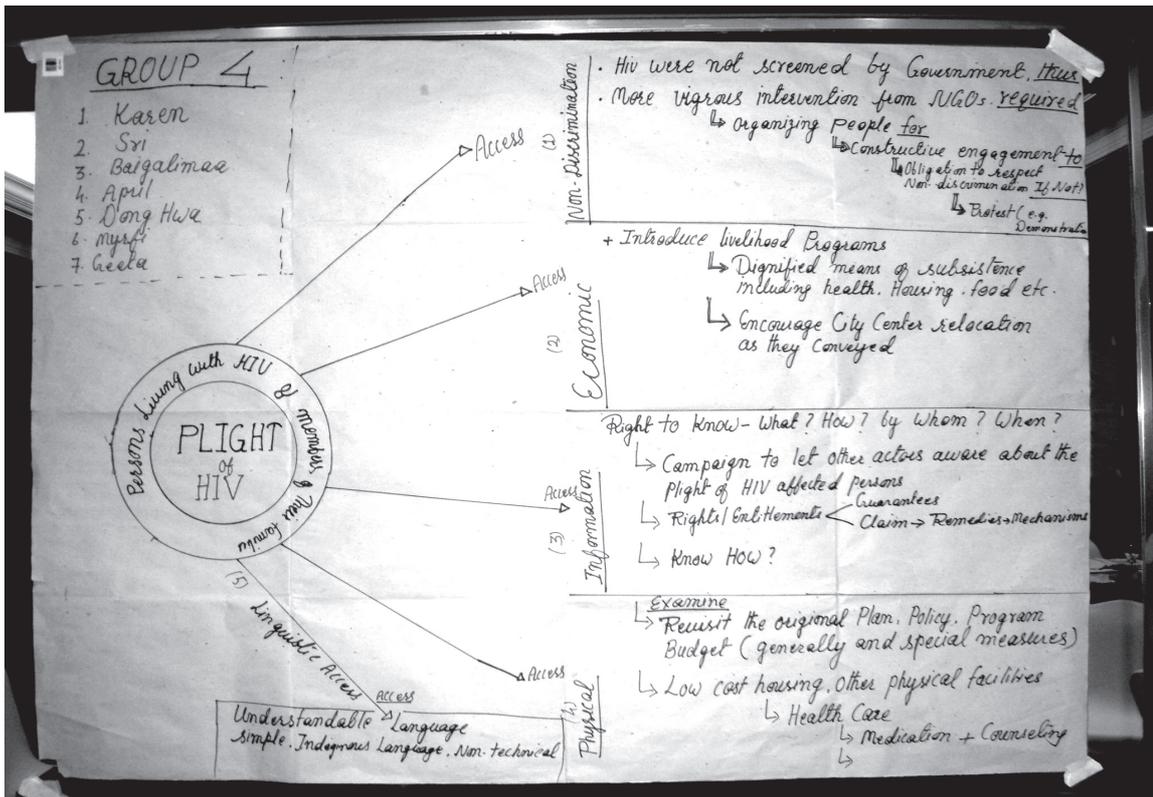
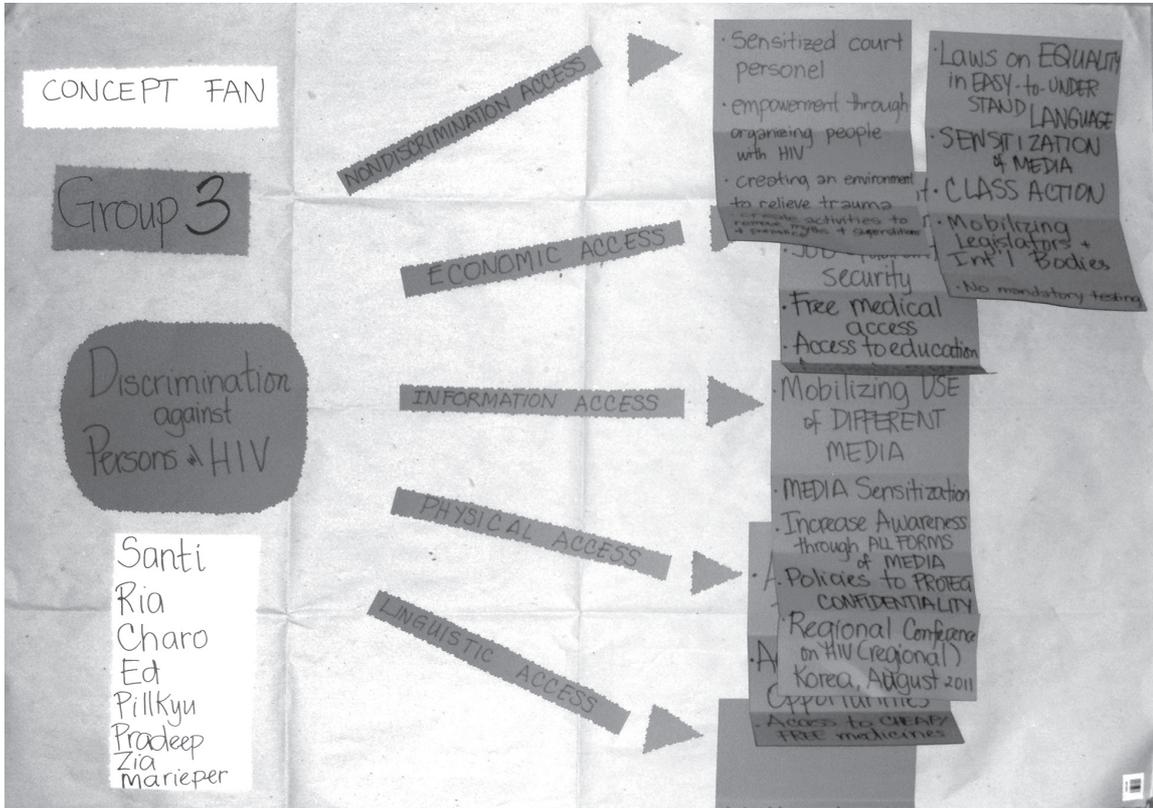
CONCEPT FAN

Adapted from Mind Tools. www.mindtools.com



Sample Answers to the Exercise





REFERENCE SHEET

Equal Access

EQUALITY OF access is the second key element of the human rights approach to realizing equal access to justice. Equality of access is derived from the following human rights instruments, with their accompanying human rights standards, norms and principle, as shown in the next table (for a detailed description of the instruments related to equal access, refer to Annex 2):

Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
<ul style="list-style-type: none"> ☞ Equal Access <ul style="list-style-type: none"> • Fair • Effective • Prompt ☞ Equal Access to Court or Tribunal ☞ Equality before the Law ☞ Equal Protection of the Law ☞ Nondiscrimination <ul style="list-style-type: none"> • Non-stigmatization ☞ Obligations of Conduct ☞ Obligations of Result ☞ Participation <ul style="list-style-type: none"> • Inclusion • Involvement ☞ Physical Access ☞ Economic Access ☞ Linguistic Access ☞ Information Access 	<ul style="list-style-type: none"> • International Convention for the Protection of All Persons from Enforced Disappearance • Declaration on the Protection of All Persons from Enforced Disappearance • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law <p>Offenders</p> <ul style="list-style-type: none"> • Standard Minimum Rules for the Treatment of Prisoners • Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners • Basic Principles for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment • Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) <p>Migrant Workers</p> <ul style="list-style-type: none"> • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) • Universal Declaration of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • International Covenant on Economic, Social and Cultural Rights (ICESCR) • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Declaration on the Elimination of Violence against Women • Convention on the Rights of Persons with Disabilities (CPD) • Convention on the Rights of the Child (CRC) • International Convention on the Elimination of All Forms of Racial Discrimination (CERD) • Declaration on the Rights of Indigenous Peoples • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power

Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
	<ul style="list-style-type: none"> • Basic Principles on the Independence of the Judiciary • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials • Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Based on these international human rights instruments, equal access is invariably described as a human right or a human rights obligation, with the concomitant norms of fairness, effectiveness and promptness. Equal access is also inextricably linked to the human rights standards and principles of *equal access to a court or tribunal, equality before the law, equal protection of the law, nondiscrimination, and obligations of conduct and obligations of result*. These standards reinforce the *multiple dimensions of equal access: physical access, economic access, linguistic access and information access*.

The Right of Equal Access to a Court or Tribunal

The right of equal access to a court or tribunal guarantees that no individual is deprived, in procedural terms, of his/her right to claim justice in criminal and civil matters. It is not limited to citizens. It is the right of all individuals, regardless of nationality or statelessness, or status, including asylum-seekers, refugees, migrant workers, unaccompanied children or other persons, who may find themselves in the territory or subject to the jurisdiction of the State. No distinctions regarding access based on the prohibited grounds of discrimination may be imposed.¹⁶⁶ The right of equal access to a court covers access to first instance procedures and is separate from the right to appeal or other remedies.¹⁶⁷

The right of equal access to a court carries with it the guarantee of legal assistance. The United Nations Human Rights Committee noted, “the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way.”¹⁶⁸ The Committee thus encourages states to provide free legal aid in cases other than criminal proceedings, for those without sufficient means to pay for it.

¹⁶⁶ Paragraph 9, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁶⁷ Paragraph 12, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁶⁸ Paragraph 10, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

Equality before the Law

Equality before the law applies regardless of the nature of proceedings.¹⁶⁹ Equality before the law guarantees equal access, equality of arms and nondiscrimination.

In General Comment No. 32, the United Nations Human Rights Committee discussed the notion of equality of arms:

“The right to equality before courts and tribunals also ensures equality of arms. This means that the same procedural rights are to be provided to all the parties unless distinctions are based on law and can be justified on objective and reasonable grounds, not entailing actual disadvantage or other unfairness to the defendant. There is no equality of arms if, for instance, only the prosecutor, but not the defendant, is allowed to appeal a certain decision. The principle of equality between parties applies also to civil proceedings, and demands, *inter alia*, that each side be given the opportunity to contest all the arguments and evidence adduced by the other party. In exceptional cases, it also might require that the free assistance of an interpreter be provided where otherwise an indigent party could not participate in the proceedings on equal terms or witnesses produced by it be examined.”¹⁷⁰

The Committee further said that equality before the law also requires that similar cases are dealt with in similar proceedings.¹⁷¹

In General Comment 16, the United Nations Committee on Economic, Social and Cultural Rights emphasized the obligation of states to “respect the principle of equality in and before the law. The principle of equality in the law must be respected by the legislature when adopting laws, by ensuring that those laws further equal enjoyment of economic, social and cultural rights by men and women. The principle of equality before the law must be respected by administrative agencies, and courts and tribunals, and implies that those authorities must apply the law equally to men and women.”¹⁷²

Equal Protection of the Law

Equal protection of the law has three distinct elements. *First*, it guarantees individuals the same access to law and courts as others. *Second*, it guarantees the same protection of laws enjoyed by others in similar circumstances. *Third*, it guarantees the same treatment by law and courts, i.e., persons similarly situated are treated similarly by the processes and substance of law.

¹⁶⁹ Paragraph 3, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁷⁰ Paragraph 13, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁷¹ Paragraph 14, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, UN Doc. Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁷² Paragraph 9, General Comment No. 16, “The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 34th session, 2005, UN Doc. E/C.12/2005/4.

Nondiscrimination (see Reference Sheet 5, *Centrality of the Human Person*)

The United Nations Committee on Economic, Social and Cultural Rights requires the adoption and implementation of effective “mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination” and are accessible to everyone without discrimination.¹⁷³

The United Nations Committee on the Elimination of Racial Discrimination urges states “to take the necessary steps to ensure equal access to the justice system for all members of descent-based communities, including provision of legal aid, facilitation of group claims and encouraging non-governmental organizations to defend community rights.” It also prompts states to “ensure, where relevant, that judicial decisions and official actions take the prohibition of descent-based discrimination fully into account.”¹⁷⁴

The *Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor”* require states and the judicial system to “ensure the administration of justice without discriminating on grounds of physical appearance, residence or any other consideration stemming from extreme poverty.”¹⁷⁵

Obligations of Conduct and Obligations of Result

Obligations of *conduct* stipulate what states should and should not do, and the specific course of state conduct or behavior by requiring states to perform or omit an action. Obligations of conduct prescribe operative actions and/or specific impermissible actions.”¹⁷⁶

Obligations of *result* stipulate the specific situation, social practice or result that the state must bring about, but they do not specify how to achieve the desired result. States are therefore free to choose all the appropriate means to realize the specific situation envisioned by human rights. Some human rights treaties suggest a particular means to achieve the desired result, but the suggestions are by no means compulsory. The state may adopt means other than what the treaties suggest so long as the means enable the state to concretely achieve the desired result.”¹⁷⁷ The elimination of all forms of discrimination is an example of an obligation of result.

Human rights obligations of conduct and of result operate on various levels, including:

- *Core obligations*, which require states to ensure the minimum essential level of every human right, including accessibility. Core obligations are *non-derogable*, and exist under all circumstances. Guaranteeing equal access to justice is a core obligation.

¹⁷³ General Comment No. 20, “Nondiscrimination in Economic, Social and Cultural Rights (Art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 42nd session, 2009, UN Doc. E/C.12/GC/20.

¹⁷⁴ Paragraphs 21 and 22, General Recommendation XXIX, “Article 1, Paragraph 1 of the Convention (Descent),” adopted by the United Nations Committee on the Elimination of Racial Discrimination at its 61st session, 11 January 2002.

¹⁷⁵ Paragraph 39.

¹⁷⁶ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines

¹⁷⁷ Ibid.

- *Obligation of progressive realization*, or the obligation “to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, to achieve progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures. This obligation is under Article 2.1 of the International Covenant on Economic, Social and Cultural Rights. The development and enforcement of the normative protection for human rights is an example of an obligation of progressive realization.
- *Obligations of equality* (see Reference Sheet 5, *Centrality of Human Person*). The repeal of laws and policies that discriminate against women is an example of an obligation of equality.
- *Obligations of nondiscrimination* (see Reference Sheet 5, *Centrality of Human Person*). The elimination of stigmatization and prejudice against those seeking justice is an example of the obligation of nondiscrimination.
- *Obligations of international cooperation and assistance*, or the obligation of states to conduct their activities with due regard for human rights of peoples of other states. It includes, among others, the obligation to ensure the application of human rights in all international agreements, trade agreements, lending policies, etc., and the obligation to refrain from imposing embargoes, the obligation to seek and provide disaster relief and humanitarian assistance, and the obligation to assist poorer developing states realize human rights. The provision and acceptance of technical assistance on equal access to justice is an example of the obligation of international cooperation and assistance.
- *Obligations to respect human rights*, or the obligation to abstain from doing anything that violates the integrity or infringes upon the freedom of the human person. Addressing the barriers to equal access to justice is an example of the obligation to respect.
- *Obligations to protect human rights*, or the obligation to take steps to prohibit others from violating human rights. Fair adjudication is an example of the obligation to protect.
- *Obligations to fulfill human rights in its twin dimensions: the obligation to facilitate human rights* or to actively create conditions to fully realize all human rights and *the obligation to provide human rights*, when persons are unable to realize and enjoy their human rights by their own means and for reasons beyond their control. Ensuring free access to the courts is an example of the obligation to fulfill in its twin dimensions.

Participation (see Reference Sheet 5, *Centrality of the Human Person*)

Multiple Dimensions of Equal Access: Physical Access, Economic Access, Linguistic Access and Information Access

Equal access to justice is multi-dimensional. It includes the following elements, the totality of which comprises equal access:

- *Physical access*, which means that formal and non-formal institutions of remedy must be located in geographical areas within safe physical reach of all. Physical access also includes mobility and accessibility aids (such as access ramps, elevators, escalators, etc.) for persons with disabilities and the elderly;
- *Economic access*, which means that the costs of seeking justice must be affordable to all. The United Nations Human Rights Committee noted that “the imposition of fees on the parties to proceedings that would de facto prevent their access to justice might give rise to issues under Article 14, paragraph 1. In particular, a rigid duty under law to award costs to a winning party without consideration of its implications or without providing legal aid may deter persons to pursue the vindication of their rights under the Covenant in proceedings available to them.”¹⁷⁸
- *Linguistic access*, which means that the language of laws, rules and formal and non-formal institutions of remedy must be known, understood and used by all actors, not only justice actors (e.g. judges, lawyers, prosecutors, paralegals, etc.). Linguistic access includes the assistance of specialist interpreters, as necessary, especially for persons who live in poverty, persons with disabilities and indigenous peoples whose language may be different from the language of the law or of formal and non-formal institutions of remedy; and
- *Information access*, which means that there must be complete, timely and necessary information on the availability, nature, rules, processes, mechanisms and measures of formal and non-formal institutions of remedy; information access also includes all pertinent information relating to the enjoyment and realization of human rights and justice in most-used media.

Guidance Note: Tips to Translate Human Rights Standards, Norms and Principles into Practical Action

The following tips may facilitate the application of human rights standards, norms and principles of *equal access to a court or tribunal, equality before the law, equal protection of the law, nondiscrimination, obligations of conduct, obligations of result* and the *multiple dimensions of equal access (physical access, economic access, linguistic access and information access)* into practical action to realize equal access to justice:

- 1 Factors that inhibit claimholders from seeking justice should be recognized and addressed; generally speaking, these factors include:

¹⁷⁸ Paragraph 11, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

- a. Financial difficulties, lack of financial resources and economic bargaining power,
 - b. Attitudes such as fear (of being disbelieved or not taken seriously, of discrimination, of retribution if complaints are made, of the legal system) and distrust (in government authorities, the police, complaint-handling bodies, the legal system, community organizations and some personal support networks),
 - c. Other negative perceptions, such as perceived bias, perceived low standards of service, perceived problematic attitude of justice actors, perceived reluctance by police to initiate investigation,
 - d. Sense of powerlessness, low self-esteem, diminished self-confidence resulting in a sense of futility of purpose and passivity,
 - e. Lack of autonomy to make own decisions, combined with dependency on others,
 - f. Communication barriers and inability to access information, and
 - g. Capacity gaps, such as lack of awareness of human rights, conflict resolution services, sources of legal information, availability of legal assistance and related service providers, complaints systems and complaint-handling bodies, inability to recognize a problem as a legal problem or to identify an issue as a legal issue or assess options, lower levels of literacy and numeracy.
- 2 Factors that prevent claimholders from seeking justice traceable to the inability of duty bearers to comply with their obligations should be recognized and addressed; generally speaking, these factors include:
- a. Formal restrictions on bringing actions or proceedings;
 - b. Granting immunities to certain groups or individuals;
 - c. Complicated and formalistic procedural requirements, intimidating courtroom atmosphere and delays and lengthy proceedings, inappropriateness of some alternative dispute resolution mechanisms, lack of non-adversarial conflict resolution services, processes of complaint-handling bodies, which require written complaints, applications and correspondence;
 - d. Inadequacies of laws and rules to effectively protect women, children, persons living in poverty, persons with disabilities, indigenous peoples, victims, and others most vulnerable;
 - e. Limited available formal and non-formal remedies and/or lack of preventive, timely, nondiscriminatory, adequate and just remedies, lack of non-custodial measures;
 - f. Financial restrictions, including the costs of fees, experts, translators, court fees, transcript costs, documentary stamps;

- g. Discrimination exhibited through bias, gender bias, stereotypes, prejudice;
 - h. Discrimination exhibited through lack of awareness and sensitivity to diverse cultures;
 - i. Restricted physical accessibility, such as geographical location, distance, lack of transport services;
 - j. Limited linguistic accessibility, such as lack of available interpreters and translated information, use of formalized language in institutions of remedy and documents needed to seek justice;
 - k. Power imbalances in many formal and non-formal institutions of remedy;
 - l. Limited information accessibility, such as lack of available information on human rights, remedies, processes, rules, etc., difficulties in accessing information, lack of information in accessible formats for different groups of those most vulnerable, lack of targeted information strategies, lack of translated information;
 - m. Lack of real protection and limited assistance for those seeking justice;
 - n. Capacity gaps of duty bearers, including lack of adequate legal aid systems and services for those seeking justice, restrictive funding policy for legal aid systems, restrictive legal aid eligibility guidelines, poor coordination of legal aid services, lack of reliable and affordable legal representation, lack of adequate consultation with indigenous peoples, lack of skills of justice actors to deal with those most vulnerable, weak enforcement of laws and implementation of orders and decrees, abuse of authority and powers, corruption, limited courts, poor audibility and courtroom environments, poorly resourced specialist and expert services; and
 - o. Limited public participation in reform programs and justice measures.
- 3 Factors that hinder claimholders' equal access to justice traceable to certain actions taken by other actors, including non-governmental and community organizations, legal practitioners, and paralegals, etc., should be recognized and addressed. Generally speaking, these factors include:
- a. Discriminatory practices, including bias, cultural inappropriateness, lack of cultural awareness, sensitivity and compassion;
 - b. Restricted linguistic access, including difficulty in communicating with practitioners and advocates;
 - c. Limited information access, including inaccessible formats of reports and discussion papers, lack of translated material, use of formalized language;

- d. Limited physical access due to remoteness of claimholders and physical distance from other actors;
 - e. Capacity gaps, including insufficient number of practitioners and advocates willing to provide assistance, intimidating and formal atmosphere of some organizations, inappropriate referrals, inadequate funding, emphasis of funding agencies on casework delivery, lack of adequate consultation with claimholders, lack of quality advice and advocacy services, lack of skills for grass roots advocacy, lack of specialist services and support services; and
 - f. Lack of understanding of the role of the media in framing public opinion.
- 4 Seeking justice carries hidden costs (e.g. loss of income, transportation and communication costs, etc.), which often represent an additional burden on claimholders. Costs may be relative (e.g., what one finds expensive, another may find reasonable), but claimholders may find the costs of seeking justice prohibitive, as these represent a sizeable chunk of what normally would be spent on every day living. Special care must be given to avoid imposing additional financial burdens on claimholders.
 - 5 Interventions relating to equal access often focus on mobility aids or measures to enhance physical access, but enhancing linguistic access may be forgotten.
 - a. Translating official documents into Braille, for example, provides persons with sight disabilities the opportunity to fully participate in seeking justice.
 - b. Not all persons with hearing disabilities have had the opportunity to learn sign language; those who have not learned sign language are likely to have created their own language and means of communicating through signs that may not be part of the official sign language. Specialist interpreters, or those proficient not only in sign language but also in created language, must be made available and accessible.
 - c. Information provided in formal language (or the language of the law) may not be understood by claimholders. Information should be translated into the language of claimholders.
 - 6 Information on human rights and justice remedies should be imparted through the use of practical examples or forms (sample forms of warrants of arrest, search warrants, affidavits, contracts, etc.) and legal terms and concepts should be translated into simplified and commonly used terms.
 - 7 Socialization issues and disempowerment should be recognized and addressed. Formalistic environments and requirements (such as dress codes, which are difficult for poor persons to comply with) should not result in any discrimination.
 - 8 Traffic and road safety issues should be addressed to ease physical access and architectural features for persons with disabilities should be included.

SESSION 4

Human Rights and Formal and Non-formal Institutions of Remedy

Objectives

At the end of this session, participants should be able to:

- Link human rights with formal and non-formal institutions of remedy;
- Define the right of reparation and other procedural rights;
- Integrate human rights norms, standards and principles into formal and non-formal institutions of remedy; and
- Identify violations.

Time

9:30 am – 11:30 am

Session Guide

This session focuses on institutions of remedy, their roles, and guiding human rights norms, standards and principles. This session is divided into four activities.

- The session begins with a review of the human rights norms, standards and principles of the *right of reparation, obligations of conduct and of result, equity, independence, accountability, transparency, responsiveness, procedural rights and guarantees, rule of law, participation, proportionality, command responsibility, availability, cultural acceptability and quality*, which guide the structure and functioning of institutions of remedy (30 minutes).
- Following the review, participants shall identify situations or events that constitute human rights violations through a group game, **Exercise 9: Violation, Not?** (10 minutes)
- Participants, working in small groups, shall evaluate the propriety and effectiveness of institutions of remedy from the perspectives of claimholders and duty bearers and consider the multiple dimensions of access, experiential and policy implications and risks and potential of institutions of remedy, by accomplishing **Exercise 10: Reframing Formal and Non-Formal Institutions of Remedy** (30 minutes).

- All small groups shall then convene in plenary, where each small group shall present their human rights-based assessment of the institution of remedy. Comments shall be solicited from other small groups and the lead facilitator (20 minutes).

Exercises

Exercise 9: Violation, Not?

Exercise 10: Reframing Formal and Non-formal Institutions of Remedy

Reference Sheet

Reference Sheet 7: Institutions of Remedy

EXERCISE

Violation, Not?

TRAINERS SHOULD read the Note to Trainers at the beginning of the module.

The trainer should research and come up with various situations (based on case studies or newspaper articles) that may or may not constitute a human rights violation (the statements used in the pilot training workshop are included below; trainers may use these situations or design their own, based on the country or regional context and that of their participants).

For the exercise, the trainer should set up two chairs at the end of the room. One chair is labeled “Violation,” the other is labeled “Not?”. Participants will be asked to stand at the other end of the room. The trainer shall read the series of statements. Participants shall determine whether the situation described constitutes a human rights violation by lining up behind either of the two chairs. Participants who identify the wrong answer are “penalized” (given a consequence: made to sing a folk song in their language and/or perform a folk dance from their country), after which, they are out of the game. The trainer may also decide to reward a “prize” to the participants who are left at the end of the game.

No.	Statement	Answer
1	An airline company in the Philippines set mandatory retirement age at 40 for women flight attendants hired after November 2000 and at 60 for male flight attendants regardless of when they were hired. ¹⁷⁹	Violation
2	Over 150 urban families living in poverty were forcibly evicted by Cambodian security forces in Phnom Penh and are now homeless. ¹⁸⁰	Violation
3	230 million people in India are undernourished. Malnutrition accounts for nearly 50% of child deaths in India. While general inflation declined from 12% in July 2008 to less than 5% by the end of January 2009, the inflation for food articles doubled from 5% to over 11% during the same period. Food grain harvest during 2008-09 was estimated to be a record 228 million tons. However, the requirement for the national population would exceed 250 million tons by 2015. ¹⁸¹	Not? India must prove that it has taken adequate compensatory measures despite having limited resources (including resources from international loans, grants, etc.)

¹⁷⁹ ABS-CBN News. 2010. “PAL flight attendants laud ‘historic victory’,” 12/24/2010 5:51 PM, Updated as of 12/26/2010 5:12 AM in <http://www.abs-cbnnews.com/business/12/24/10/pal-flight-attendants-laud-historic-victory>

¹⁸⁰ Amnesty International. January 2009. “Hundreds Left Homeless in Cambodia After Forced Eviction in <http://www.amnesty.org/en/news-and-updates/news/hundreds-left-homeless-cambodia-after-forced%20eviction-20090127>

¹⁸¹ Kounteya Sinha, 27 February 2009. The Times of India, “India tops world hunger chart,” in <http://timesofindia.indiatimes.com/india/India-tops-world-hunger-chart/articleshow/4197047.cms>

No.	Statement	Answer
4	China is now the world's second largest economy, but hundreds of millions of its people still rely on fouled water that will cost billions of dollars to clean. Growing cities, overuse of fertilizers, and factories that heedlessly dump wastewater have degraded China's water supplies to the extent that half the nation's rivers and lakes are severely polluted. The World Bank estimates that China needs \$20 billion to bring its urban water supplies up to standard. ¹⁸²	Not? China government must prove it is both willing and able to bring water supplies up to standard; if China is not willing but able to do so, China would then be in violation of the right to water.
5	Nepal's literacy is 45.2%. Nepal is the world's 15th illiterate country. More than half the total population of Nepal cannot read and write. Female literacy is less than half of male literacy (Female - 28%, Male - 65%) ¹⁸³	Violation
6	Thai troops in armored vehicles stormed the fortified encampment of anti-government protesters in central Bangkok in 2010, smashing through bamboo barricades in an assault that left at least three demonstrators and one journalist dead. Amid heavy fire from the troops, armored personnel carriers pushed into the barricades which protesters set on fire, sending plumes of black smoke into the sky. Soldiers fired at fleeing protesters and shouted: "Come out and surrender or we'll kill you." ¹⁸⁴	Violation

¹⁸² Lucy Hornby and Jane Lanhee Lee, Reuters. 16 Feb 2011. "ANALYSIS-Flood of money needed to fix China's water woes," in <http://www.trust.org/alertnet/news/analysis-flood-of-money-needed-to-fix-chinas-water-woes>

¹⁸³ Nepal Vista. Undated. "Real Nepal Literacy Facts," <http://www.nepalvista.com/realnepal/literacy.php>

¹⁸⁴ Guardian. 19 May 2010. "Thai troops storm redshirt protest camp," in <http://www.guardian.co.uk/world/2010/may/19/thailand-troops-storm-protest-camp>

EXERCISE 10

Reframing Formal and Non-formal Institutions of Remedy

THIS EXERCISE allows participants to determine the appropriateness and effectiveness of various institutions of remedy from the perspectives of claimholders and duty bearers. Participants shall also consider the multiple dimensions of equal access, the experiential and policy implications as well as the risks and potentials of institutions of remedy.

Instructions: Read the facts below.¹⁸⁵ Together with the members of your group, identify the problem that needs to be addressed. Choose one of the formal or non-formal institutions of remedy that you believe is most appropriate to address the problem. Consider the institution of remedy from the perspective of claimholders and the perspective of duty bearers. Identify risks to claimholders and potential of the institution of remedy. Validate your initial choice of institution of remedy by reviewing the group's answers to the previous questions. Record the group's responses onto the matrix below.

Facts:

Around 360,000 migrant workers (from the Philippines, Cambodia, Thailand, Indonesia, Vietnam and many other countries) are estimated to be in South Korea. In response to this situation, South Korea passed the 2003 Employment Permit for Migrant Workers Act. This law regulates and monitors the recruitment and situation of migrant workers in the country. It specifically prohibits discrimination against migrant workers, and gives them legal status in South Korea. It recognizes their right to redress against employers in cases of overdue wages and industrial accidents. It also provides migrant workers with national health insurance. South Korea is the first country in Asia to pass such a law.

Aside from this law, South Korea has acceded to or ratified a number of human rights conventions that protect migrant workers, such as the ICCPR, ICESCR, CAT, CERD, CEDAW and the CRC. It also ratified ILO Conventions on equal pay, nondiscrimination, minimum age for working and child labor.

Despite passing the EPS Act, and ratifying the above conventions, migrant workers in South Korea have reported that they still face discrimination in the work place. They often receive lower pay than Korean workers who perform similar jobs. They are made to work long hours, and don't always receive overtime pay. They often face delays in the payment of their wages. They are not allowed to form trade unions. They have complained about verbal and physical abuse from their employers. Women workers also tend to be subjected to sexual harassment. Last, those who are injured because of their work do not receive adequate medical treatment, and rarely get compensated for their injuries. They are sometimes stripped of their passports and work permits so they cannot leave their place of employment.

¹⁸⁵ Amnesty International. 15 August 2006. South Korea: Migrant Workers are also Human Beings.

Problem:**Institution of Remedy Under Scrutiny: Place ✓**

- | | |
|--|--|
| <input type="checkbox"/> Formal legal protection | <input type="checkbox"/> Equitable Delivery of Justice |
| <input type="checkbox"/> Legal advice, assistance and other related services | <input type="checkbox"/> Law and Justice Policy Reform |
| <input type="checkbox"/> Reform of (Formal) Justice Institutions | <input type="checkbox"/> Social Mediation |
| <input type="checkbox"/> Indigenous Justice Systems | <input type="checkbox"/> Restorative Justice Systems |
| <input type="checkbox"/> Alternative Dispute Resolution | <input type="checkbox"/> Capacity Development |
| <input type="checkbox"/> Advocacy and Social Mobilization | |

Claimholder's Perspective: Is the institution of remedy equally accessible?* Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Duty Bearer's Perspective: Is the institution of remedy equally accessible?* Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Experiential Perspective: Is the institution of remedy equally accessible?* Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Policy Perspective: Is the institution of remedy equally accessible?* Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Risks: What are the potential risks of accessing the institution of remedy? What would prevent claimholders from accessing the institution of remedy?

Potential: What are the strengths of the institution of remedy? What are the opportunities for redress from the institution of remedy?

Risks: What are the potential risks of accessing the institution of remedy? What would prevent claimholders from accessing the institution of remedy?

Potential: What are the strengths of the institution of remedy? What are the opportunities for redress from the institution of remedy?

Is the institution of remedy the most appropriate to address the problem? Why or why not?

* Recall the multiple dimensions of equal access.

Sample Answers to the Exercise:

Example 1

<p>Problem:</p> <ul style="list-style-type: none"> • Weak enforcement of the EPS Law • Companies are not complying with the requirements of the law 													
<p>Institution of Remedy Under Scrutiny: Place ✓</p> <table border="0"> <tr> <td><input type="checkbox"/> Formal legal protection</td> <td><input type="checkbox"/> Equitable Delivery of Justice</td> </tr> <tr> <td><input type="checkbox"/> Legal advice, assistance and other related services</td> <td><input type="checkbox"/> Law and Justice Policy Reform</td> </tr> <tr> <td><input type="checkbox"/> Reform of (Formal) Justice Institutions</td> <td><input type="checkbox"/> Social Mediation</td> </tr> <tr> <td><input type="checkbox"/> Indigenous Justice Systems</td> <td><input type="checkbox"/> Restorative Justice Systems</td> </tr> <tr> <td><input type="checkbox"/> Alternative Dispute Resolution</td> <td><input checked="" type="checkbox"/> Capacity Development</td> </tr> <tr> <td><input type="checkbox"/> Advocacy and Social Mobilization</td> <td></td> </tr> </table>		<input type="checkbox"/> Formal legal protection	<input type="checkbox"/> Equitable Delivery of Justice	<input type="checkbox"/> Legal advice, assistance and other related services	<input type="checkbox"/> Law and Justice Policy Reform	<input type="checkbox"/> Reform of (Formal) Justice Institutions	<input type="checkbox"/> Social Mediation	<input type="checkbox"/> Indigenous Justice Systems	<input type="checkbox"/> Restorative Justice Systems	<input type="checkbox"/> Alternative Dispute Resolution	<input checked="" type="checkbox"/> Capacity Development	<input type="checkbox"/> Advocacy and Social Mobilization	
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<input type="checkbox"/> Alternative Dispute Resolution	<input checked="" type="checkbox"/> Capacity Development												
<input type="checkbox"/> Advocacy and Social Mobilization													
<p>Claimholder's Perspective:</p> <p>Is the institution of remedy equally accessible? YES. Is the institution of remedy independent? YES. Is the institution of remedy accountable? YES. Is the institution of remedy transparent? YES. Is the institution of remedy responsive? YES. Is the institution of remedy guided by the rule of law? YES.</p>	<p>Duty Bearer's Perspective: Is the institution of remedy equally accessible? YES. Is the institution of remedy independent? YES. Is the institution of remedy accountable? YES. Is the institution of remedy transparent? YES. Is the institution of remedy responsive? YES. Is the institution of remedy guided by the rule of law? YES.</p>												
<p>Experiential Perspective:</p> <p>Is the institution of remedy equally accessible? There might be some difficulty accessing local NGOs willing to take up the cause of migrant workers; language barrier. Is the institution of remedy independent? It depends. Some sources of information are unduly slanted. Is the institution of remedy accountable? It depends. Is the institution of remedy transparent? It depends. Is the institution of remedy responsive? YES. Is the institution of remedy guided by the rule of law? YES.</p>	<p>Policy Perspective:</p> <p>Is the institution of remedy equally accessible? YES. Is the institution of remedy independent? YES. Is the institution of remedy accountable? YES. Is the institution of remedy transparent? YES. Is the institution of remedy responsive? YES. Is the institution of remedy guided by the rule of law? YES.</p>												
<p>Risks: What are the potential risks of accessing the institution of remedy? What would prevent claimholders from accessing the institution of remedy?</p> <ul style="list-style-type: none"> • Responsiveness is limited because, while capacity development is a crucial first step (claimholders to be aware of their rights under the law), it does not directly and efficiently address their immediate problems. • After the capacity building, migrant workers might be frustrated by the delay in justice. • Duty bearers might be reluctant to comply. <p>What would prevent access?</p> <ul style="list-style-type: none"> • Availability of local NGOs taking the cause of migrant workers • Language barrier; technicality of terms of international instruments 	<p>Potential: What are the strengths of the institution of remedy? What are the opportunities for redress from the institution of remedy?</p> <ul style="list-style-type: none"> • Workers are capacitated to identify the discrimination they are facing; they may be empowered to take action. <p>Opportunities for redress?</p> <ul style="list-style-type: none"> • Seek legal remedy on their own/decide which remedies to pursue on their own • Networking with persons who can eventually give legal assistance 												

Is the institution of remedy the most appropriate to address the problem? Why or why not?

Yes, when they are capacitated, they can seek the other institutions of remedy according to their own choices.

Example 2

Problem:

There are laws, but LACK PROPER IMPLEMENTATION

Institution of Remedy Under Scrutiny: Place ✓

- | | |
|---|--|
| <input type="checkbox"/> Formal legal protection | <input type="checkbox"/> Equitable Delivery of Justice |
| <input checked="" type="checkbox"/> Legal advice, assistance and other related services | <input type="checkbox"/> Law and Justice Policy Reform |
| <input type="checkbox"/> Reform of (Formal) Justice Institutions | <input type="checkbox"/> Social Mediation |
| <input type="checkbox"/> Indigenous Justice Systems | <input type="checkbox"/> Restorative Justice Systems |
| <input type="checkbox"/> Alternative Dispute Resolution | <input type="checkbox"/> Capacity Development |
| <input type="checkbox"/> Advocacy and Social Mobilization | |

Claimholder's Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Equally accessible – yes
Independent – yes
Accountable – yes
Transparent – yes
Responsive – yes
Guided by the rule of law – yes

Duty Bearer's Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

(duty bearer being the employer and government)
Equally accessible – no (it is a threat)
Independent – yes
Accountable – no
Transparent – no
Responsive – no (they might prefer negotiating it outside of court)
Guided by the rule of law – no

Experiential Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

(the here and now for the workers)

Equally accessible – yes
Independent – no
Accountable – yes
Transparent – yes
Responsive – yes
Guided by the rule of law – yes

Policy Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Equally accessible – should be
Independent – should not be for duty bearers
Accountable – should be
Transparent – should be
Responsive – should be
Guided by the rule of law – should be

Risks: What are the potential risks of accessing the institution of remedy? What would prevent claimholders from accessing the institution of remedy?

- Raising false hopes
- Antagonizing employers and related institutions
- disincentive for hiring foreign workers

Potential: What are the strengths of the institution of remedy? What are the opportunities for redress from the institution of remedy?

- Strengths and opportunities:
- Addresses immediate concerns (combined approach)
 - Doable/accessible because there is existing law
 - It could speed up access to justice

Is the institution of remedy the most appropriate to address the problem? Why or why not?

Yes, it is appropriate because it is complimentary to the existing legal system. It is effective, reliable, immediate and the law is already there. It is all encompassing. It considers all the multiple dimensions of equal access as shown in the Group 2 concept fan.

Example 3

Problem:

There are laws but LACK OF PROPER IMPLEMENTATION

Institution of Remedy Under Scrutiny: Place ✓

- | | |
|---|--|
| <input type="checkbox"/> Formal legal protection | <input type="checkbox"/> Equitable Delivery of Justice |
| <input checked="" type="checkbox"/> Legal advice, assistance and other related services | <input type="checkbox"/> Law and Justice Policy Reform |
| <input type="checkbox"/> Reform of (Formal) Justice Institutions | <input type="checkbox"/> Social Mediation |
| <input type="checkbox"/> Indigenous Justice Systems | <input type="checkbox"/> Restorative Justice Systems |
| <input type="checkbox"/> Alternative Dispute Resolution | <input type="checkbox"/> Capacity Development |
| <input type="checkbox"/> Advocacy and Social Mobilization | |

Claimholder's Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Equally accessible – yes
 Independent – yes
 Accountable – yes
 Transparent – yes
Responsive – yes
 Guided by the rule of law - yes

Duty Bearer's Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

(Duty bearer being the employer and government)

Equally accessible – no (it is a threat)
 Independent – yes
 Accountable – no
 Transparent – no
Responsive – no (they might prefer negotiating it outside of court)
 Guided by the rule of law - no

Experiential Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

(The here and now for the workers)

Equally accessible – yes
 Independent – no
 Accountable – yes
 Transparent – yes
Responsive – yes
 Guided by the rule of law - yes

Policy Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Equally accessible – should be
 Independent – should not be for duty bearers
 Accountable – should be
 Transparent – should be
Responsive – should be
 Guided by the rule of law – should be

Risks: What are the potential risks of accessing the institution of remedy? What would prevent claimholders from accessing the institution of remedy?

- Raising false hopes
- Antagonizing employers and related institutions
- Disincentive for hiring foreign workers

Potential: What are the strengths of the institution of remedy? What are the opportunities for redress from the institution of remedy?

- Strengths and opportunities:
- Addresses immediate concerns (combined approach)
 - Doable/accessible because there is existing law
 - It could speed up access to justice

Is the institution of remedy the most appropriate to address the problem? Why or why not?

Yes, it is appropriate because it is complementary to the existing legal system. It is effective, reliable, immediate and the law is already there. It is all encompassing. It considers all the multiple dimensions of equal access as shown in the Group 2 concept fan.

Example 4

Problem:

Discrimination of Migrant Workers in the workplace.

Institution of Remedy Under Scrutiny: Place ✓

- | | |
|--|--|
| <input type="checkbox"/> Formal legal protection | <input type="checkbox"/> Equitable Delivery of Justice |
| <input type="checkbox"/> Legal advice, assistance and other related services | <input type="checkbox"/> Law and Justice Policy Reform |
| <input type="checkbox"/> Reform of (Formal) Justice Institutions | <input type="checkbox"/> Social Mediation |
| <input type="checkbox"/> Indigenous Justice Systems | <input type="checkbox"/> Restorative Justice Systems |
| <input type="checkbox"/> Alternative Dispute Resolution | <input type="checkbox"/> Capacity Development |
| <input checked="" type="checkbox"/> Advocacy and Social Mobilization: Local NGO working for rights of migrant workers in Korea and international NGO working on migrant workers human rights | |

Claimholder’s Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Equally accessible?

Local NGO - yes, Trade Union – no, because they are prohibited from joining

International – not really

Independent? Some NGOs are donor-driven, “using us for your gain”

Transparency? Generally, yes towards claimholders

Responsive? Yes

Rule of Law? Yes

Duty Bearer’s Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Independent? Politically influenced

Transparency? Lack of confidence, trust

Responsive? Too responsive, too negative

Rule of Law? NO

Experiential Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Equally Accessible? Independent?

Yes

Accountable? Generally, not always/sometimes, yes

Transparent? Depends (if donor-driven, they follow requirements for reporting)

Responsive? Yes

Rule of Law? Yes, especially in advocating for amendments of law to have positive impact

Policy Perspective: Is the institution of remedy equally accessible? Is the institution of remedy independent? Is the institution of remedy accountable? Is the institution of remedy transparent? Is the institution of remedy responsive? Is the institution of remedy guided by the rule of law?

Equally Accessible? Independent?

Occasionally, yes

Accountable? No

Occasionally, yes

Transparent? No, they have hidden agenda

Responsive? Too responsive, too negative

Rule of Law? NO

Risks: What are the potential risks of accessing the institution of remedy? What would prevent claimholders from accessing the institution of remedy?

Sustainability, tendency to alienate formal, contradiction to legal and policy measures

Can’t directly access international NGO

No knowledge, awareness of the NGO

Potential: What are the strengths of the institution of remedy? What are the opportunities for redress from the institution of remedy?

Sensitivity to the plight of claimholders, use of HRBA and other innovative approaches

Is the institution of remedy the most appropriate to address the problem? Why or why not?

Not necessarily. A multi-pronged approach should be used to address the problem.

7

REFERENCE SHEET

Institutions of Remedy

FORMAL AND non-formal institutions of remedy represent the third leg of the human rights approach to realizing equal access to justice. They are guided by the following instruments, with their corresponding human rights standards, norms and principles (for a detailed description of the instruments related to institutions of remedy, refer to Annex 3):

Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
<ul style="list-style-type: none"> ☞ Right of Reparation ☞ Obligations of Conduct ☞ Obligations of Result ☞ Equity <ul style="list-style-type: none"> • Fairness • Expeditious Action ☞ Independence <ul style="list-style-type: none"> • Impartiality ☞ Accountability ☞ Transparency ☞ Responsiveness ☞ Procedural Rights and Guarantees ☞ Rule of Law ☞ Participation <ul style="list-style-type: none"> • Inclusion • Involvement ☞ Proportionality ☞ Command ☞ Responsibility ☞ Availability ☞ Cultural Acceptability ☞ Quality 	<ul style="list-style-type: none"> • Universal Declaration of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Declaration on the Elimination of Violence against Women • Convention on the Rights of Persons with Disabilities (CPD) • Convention on the Rights of the Child (CRC) • Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) • Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) • Rules for the Protection of Juveniles Deprived of their Liberty • International Convention on the Elimination of All Forms of Racial Discrimination (CERD) • Declaration on the Rights of Indigenous Peoples • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) • International Convention for the Protection of All Persons from Enforced Disappearance • Declaration on the Protection of All Persons from Enforced Disappearance • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law • Standard Minimum Rules for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment • Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) • Basic Principles on the Independence of the Judiciary • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Guidelines on the Role of Prosecutors

Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
	<ul style="list-style-type: none"> • Code of Conduct for Law Enforcement Officials • Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials • Basic Principles on the Use of Force and Firearms by Law Enforcement Officials • Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment • Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment • Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions • Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

These human rights instruments emphasize the *right of reparation, obligations of conduct and of result, equity, independence, accountability, transparency, responsiveness, procedural rights and guarantees, rule of law, participation, proportionality, command responsibility, availability, cultural acceptability and quality.*

Right of Reparation

The right of reparation is the right of every individual to seek redress for a violation of human rights. From this right arises the obligation to respect human rights by preventing violations, investigating violations, taking appropriate action against violators, and affording remedies to victims. It has four essential forms: restitution, or the re-establishment of the situation that existed before the violation took place; compensation, or monetary payment for any economically assessable damage resulting from human rights violations; rehabilitation or restoration of the dignity and reputation of the victim through legal, medical, psychological, care and other services; and satisfaction and guarantees of non-repetition, or the elimination of human rights violations through, among others, the investigation and prosecution of violators, full and public disclosure and acknowledgment of the violations, acceptance of responsibility for the violations, human rights teaching and education for all.

Reparation for indigenous peoples who have been deprived of their lands and territories without their free and informed consent involves restitution, or the return of their lands and territories. However, if, for factual reasons, states are not able to return the lands and territories, states must then provide just, fair and prompt compensation in the form of lands and territories.¹⁸⁶

It is important to understand the nature of human rights violations to fully grasp the right of reparation. “Violations language should only be utilized when there exists a legal basis to do so and where an identifiable corresponding legal obligation exists.”¹⁸⁷

¹⁸⁶ General Recommendation XXIII, “On the rights of indigenous peoples,” adopted by the United Nations Committee on Racial Discrimination at its 51st session, 1997, U N Doc. A/52/18, Annex V.

¹⁸⁷ Scott Leckie. 1998. Violation of Economic, Social and Cultural Rights. In Theo C. van Boven, Cees Flinterman and Ingrid Westendorp (eds.), *The Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, SIM Special No. 20, SIM, Utrecht 1998, at 7.

Human rights violations occur when states pursue, by action or omission, a policy or practice that deliberately contravenes or ignores human rights obligations. A state's failure to comply with its obligations of *conduct* constitutes a human rights violation.¹⁸⁸ However, a state's failure to comply with its obligations of *result* may not necessarily constitute a human rights violation. To determine whether a state's failure to comply with an obligation of result constitutes a human rights violation, one must distinguish the state's *inability* from its *unwillingness*. A state that is able, but not willing to carry out its obligations of result would be in violation of human rights; but a state that is willing, but not able to carry out its obligations for reasons beyond its control, may not be in violation of human rights.

The determination of violations of economic, social and cultural rights are governed by two instruments: the *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* and the *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*.

The *Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights* define an economic, social and cultural rights violation as the failure of states to comply with obligations in the International Covenant on Economic, Social and Cultural Rights. Violations include a state's failure to take a step it is required to take or to promptly remove obstacles it is under a duty to remove. Failure to implement a right without delay, which it is required to implement immediately, is also a violation. The state's willful failure to meet a generally accepted international minimum standard of achievement, which is within its powers to meet, is also against the Limburg Principles. States also violate the Principles when they apply limitations to a right not in accord with the Covenant and when they deliberately delay or halt the progressive realization of a right, unless it is acting within a permissible limitation or it does so because of lack of available resources or *force majeure*. They also violate the Principles when they fail to submit reports required by the Covenant.¹⁸⁹

The *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights* define an economic, social and cultural rights violation as an action or omission, policy or practice that deliberately contravenes or ignores human rights obligations, or fails to achieve the required standard of conduct or result, or amounts to discrimination on any ground with the purpose or effect of nullifying or impairing the equal enjoyment of human rights.¹⁹⁰

Acts of commission are direct actions of states or other entities not sufficiently regulated by states. These include repealing or suspending legislation necessary and indispensable to continuously enjoy a right and actively denying a right to particular individuals or groups. Actively supporting measures adopted by third parties that are inconsistent with human rights are also against the Guidelines. Adopting and implementing laws or policies that are incompatible with pre-existing obligations are also violations, unless these are done to increase equality and improve the realization of human rights for those most vulnerable. States which adopt any deliberately retrogressive measures or

¹⁸⁸ See Sixth Report on State Responsibility by Mr. Roberto Ago, Special Rapporteur – the internationally wrongful act of the State, source of international responsibility (continued), UN Doc. A/CN.4/302 and ADD.1, 2 & 3, in Yearbook of the International Law Commission, 1977, Vol. II(1).

¹⁸⁹ Principles 70, 71 and 72, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights.

¹⁹⁰ Paragraph 11, Part II, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, 1997.

obstruct/halt the progressive realization of a right, also violate the Guidelines, unless the state is acting within permissible limitations or does so because it lacks available resources or *force majeure*. Reducing or diverting specific public expenditures, which results in the non-enjoyment of human rights, are also acts of commission that go against the Maastricht Guidelines.¹⁹¹

Acts of omission are the failure or omission of a state to take all necessary measures it is required to take. These omissions include failing to take appropriate steps to fully realize human rights and failing to reform, failing to repeal laws or adopt policies to implement the provisions of the covenant and failing to enforce laws or policies to implement the provisions of the covenant.

States which fail to regulate individual or group activities to prevent them from violating the rights of others, and which fails to use the maximum of available resources towards the full realization of human rights also violate the Guidelines. Failing to monitor the realization of human rights or to promptly remove obstacles and failing to speedily implement a right, which it is required to implement immediately, are also acts of omission.

States which fail to meet a generally accepted international minimum standard of achievement within its powers to meet also commit acts of omission. If they fail to take into account its international legal human rights obligations in its bilateral or multilateral agreements with other states, international organizations and multinational corporations, they also go against the principles of the Guidelines.¹⁹²

Obligations of Conduct and Obligations of Result (see Reference Sheet 6, Equal Access)

Equity

The principle of equity derives from the right to a fair trial, which, according to the United Nations Human Rights Committee, is neither subject to general reservation nor to “measures of derogation that would circumvent the protection of non-derogable rights... Deviating from fundamental principles of fair trial, including the presumption of innocence, is prohibited at all times.”¹⁹³

The principle of equity is fairness. This entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive. The principle of equity also entails expeditiousness. Unjustified or undue delays detract from the principle of equity, even where delays are caused by lack of resources or chronic under-funding.

Independence

“The requirement of competence, independence and impartiality of a tribunal... is an absolute right that is not subject to any exception.”¹⁹⁴ The principle of independence refers to the procedures and

¹⁹¹ Paragraph 14, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

¹⁹² Paragraph 15, Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

¹⁹³ Paragraphs 5 and 6, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its ninetieth session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁹⁴ Paragraph 19, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

qualifications for the appointment of judges, guarantees relating to their security of tenure, conditions governing promotion, transfer, suspension and dismissal, and the actual independence of the judiciary from political interference by the executive branch and legislature.

The principle of independence requires states to take specific measures to: guarantee the independence of the judiciary, protect judges from any form of political influence in decision-making, establish clear procedures and objective criteria for the appointment, remuneration, tenure, promotion, suspension and dismissal of members of the judiciary. The principle of independence requires judges to be protected from conflicts of interest and intimidation, and to adequately secure by law the status of judges, their terms of office, independence, security, adequate remuneration, conditions of service, pensions and the age of retirement.¹⁹⁵

In disciplinary sanctions, the United Nations Human Rights Committee has said: “Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal, is incompatible with the independence of the judiciary. The same is true, for instance, for the dismissal by the executive of judges alleged to be corrupt, without following any of the procedures provided for by the law.”¹⁹⁶

The principle of independence carries with it impartiality, which may be understood through two aspects: “First, judges must not allow their judgment to be influenced by personal bias or prejudice, nor harbor preconceptions about the particular case before them, nor act in ways that improperly promote the interests of one of the parties to the detriment of the other. Second, the tribunal must also appear to a reasonable observer to be impartial.”¹⁹⁷

Accountability

Accountability has often been understood in two dimensions: answerability and meeting expectations. Answerability simply means that one must answer to rules, higher officials or external means of control, or else they face sanctions and penalties. Meeting expectations simply means exercising self-control, complying with professional ethics, and acting responsibly, and is based largely on social norms and expectations.

Human rights, however, view accountability not only in terms of answerability and meeting expectations, but in terms of obligations of conduct and of result. “The human rights principle of accountability is also *responsiveness* to those most affected by public decisions, actions and performance, *especially* those most vulnerable or most at risk of exclusion and discrimination. It is *fairness* in conduct, treatment and actions. It is the *achievement of human rights objectives and outcomes*. It

¹⁹⁵ Paragraph 19, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁹⁶ Paragraph 20, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

¹⁹⁷ Paragraph 21, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its ninetieth session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

is *responsibility* not only for policies, decisions, actions, services, goods and associated performance, but also for their consequences. It is *inclusiveness*; it is collaborative with defined processes of genuine, voluntary, active, free and full participation and involvement. The human rights principle of accountability is *competency, effectiveness, efficiency* and *professionalism* in actions and performance and *timely delivery* of resources, institutions, goods and services implicit in human rights.”¹⁹⁸

Accountability resides in all justice actors: claimholders must exercise their human rights responsibly; duty bearers must comply with their human rights obligations; and other actors must undertake their actions and decisions with due regard for claimholders’ human rights and duty bearer human rights obligations.

Transparency

“Transparency means that all public actions and decisions are visible, free from obscurity, unhidden, clear and distinct. Transparency requires that public documents, decisions, rules, regulations and processes are readily and freely accessible, contain complete information, are released on a timely basis, are written in easily understandable language and presented in people-friendly forms and media.

Transparency allows claimholders and other actors to see openly into all activities of duty bearers. Transparency is closely allied to the human rights principles of participation and accountability. Among the requisites for transparency are: clear rules and procedures, availability and direct accessibility to high quality and complete information, and timeliness of disclosure.”¹⁹⁹

Responsiveness

Responsiveness is ready and quick reaction to events and prevailing situations, in order to advance human rights and redress human rights violations. Responsiveness includes appropriateness and swiftness of response, as well as openness to new ideas, suggestions and opinions. Responsiveness requires institutions of remedy to be designed so that they appropriately address the rights of claimholders, particularly those most vulnerable. In the field of health care, the World Health Organization identified “eight domains of responsiveness: dignity, autonomy, confidentiality, communication, prompt attention, access to social support networks during care, quality of basic amenities, and choice of provider.”²⁰⁰ The “eight domains of responsiveness” could equally apply to justice.

Responsiveness is affected by political factors, economic conditions, institutional culture and social attitudes, and requires full consciousness of human rights and obligations.

The human rights principle of responsiveness addresses instances and issues of inequality and discrimination. It redefines policies and actions of both public and private institutions based on justice and human rights goals. It requires receptive policies, systems and processes, and integrates claim-

¹⁹⁸ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines.

¹⁹⁹ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit.

²⁰⁰ http://www.who.int/health-systems-performance/current_work/cw_responsiveness.htm

holder rights, concerns and interests as well as duty bearer obligations.

Responsiveness may be seen through the extent of satisfaction with the justice system, its services and the quality of its service delivery.

Procedural Rights and Guarantees

Procedural rights and guarantees incorporate notions of due process. These include the rights to public hearing, presumption of innocence, rights of the accused, right to review and right against double jeopardy.

The *right to public hearing* requires that all criminal or civil trials must be conducted orally and publicly. The media and the public, however, may be excluded from the hearings. Exclusion is done only “for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or where publicity would prejudice the interests of justice. However, any judgment rendered in a criminal case or in a suit shall be made public, except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”²⁰¹ However, even when the public is excluded from the hearings, the judgment, which should include the essential findings, evidence and legal reasoning, must be made public, except when not in the best interest of juveniles.

The right to public hearing includes the duties of courts and other tribunals to make information regarding the time and venue of the hearings available to the public and to provide adequate facilities for the attendance of the public. The right to public hearing does not always apply to appellate proceedings that are based on written presentations.

The *right to be presumed innocent*, “which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge. It guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt. It ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. It is a duty for all public authorities to refrain from prejudging the outcome of a trial by abstaining from making public statements affirming the guilt of the accused. Defendants should normally not be shackled or kept in cages during trials. They should not be presented to the court in a manner indicating that they may be dangerous criminals. The media should avoid news coverage undermining the presumption of innocence. Furthermore, the length of pretrial detention should never be taken as an indication of guilt and its degree. The denial of bail or findings of liability in civil proceedings do not affect the presumption of innocence.”²⁰²

The *rights of the accused* are the set of rights that guarantees that the accused will be informed promptly and in detail in a language s/he understands, the nature and cause of the charges against him/her. These rights allow the accused to have adequate time and facilities to prepare the defense and to communicate with counsel of choice. They stipulate that the accused should be tried without

²⁰¹ Article 14, Paragraph 1, International Covenant on Civil and Political Rights.

²⁰² Paragraph 30, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

undue delay, to be present during trial, to defend one's self in person or through counsel of choice, and to be informed of his/her rights. If the accused does not have legal representation, he or she also has the right to have free legal assistance if s/he cannot afford it.

The accused has the right to examine, or have examined, witnesses and obtain the attendance and examination of witnesses. He/she also has the right to free assistance of an interpreter if the accused cannot understand or speak the language of the court, and not to be compelled to testify against one's self or to confess guilt.

The right to have free legal assistance assigned for those without sufficient means to pay for legal assistance requires the assignment of competent and qualified counsel, who are able to fulfill their task effectively, without hindrance.

The *right to review* requires an expeditious substantive review of the facts, the sufficiency of the evidence and of the law. It also requires access to a duly reasoned written judgment, as well as to transcripts and other relevant documents.

The *right against double jeopardy* is the right against being tried twice for the same offense.

The United Nations Committee on the Rights of the Child reiterated procedural rights and guarantees to ensure that every child receives fair treatment and trial:²⁰³

- Right against being held guilty for an act or omission, which did not constitute an offense at the time it was committed; this right carries with it the prohibition against punishing a child with a heavier penalty than the one applicable at the time of his/her infringement of the penal law. If a change in the law provides a lighter penalty, the child should benefit from the change even if the change occurs after the child committed the offense;
- Right to be presumed innocent and to be treated in accordance with this presumption; "Due to the lack of understanding of the process, immaturity, fear or other reasons, the child may behave in a suspicious manner, but the authorities must not assume that the child is guilty without proof of guilt beyond any reasonable doubt;"
- Right to be heard in any judicial or administrative proceedings affecting the child, directly or through a representative; this means "the child must be given the opportunity to express his/her views freely, and those views should be given due weight in accordance with the age and maturity of the child... throughout the juvenile justice process." This requires the child to be informed not only of the charges but also of the juvenile justice process and possible alternative measures; "to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behavior;"
- Right to effectively participate in the proceedings, which "should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely"

²⁰³ General comment No. 10, "Children's rights in juvenile justice," adopted by the United Nations Committee on the Rights of the Child at its forty-fourth session, 2007, U N Doc. A/50/18.

and may require modified courtroom procedures and practices;

- Right to be promptly and directly informed of the charges, in a language s/he understands, translating legal jargon into simplified terms and media that the child can readily understand. When providing a child with an official document, it must be orally explained. The police, prosecutor, and judge must make sure that the child understands every charge brought against her/him; “The Committee is of the opinion that the provision of this information to the parents or legal guardians should not be an alternative to communicating this information to the child. It is most appropriate if both the child and the parents or legal guardians receive the information in such a way that they can understand the charge(s) and the possible consequences;”
- Right to legal or other appropriate assistance to prepare and present defense, free of charge, with adequate time and facilities to prepare the defense, with full confidentiality of oral and written communications between the child and his/her assistance (not necessarily a lawyer);
- Decisions must be rendered without delay and with the involvement of parents, which requires time limits, shorter than the time limits for adults, to be set and implemented for the period between the commission of the offense and completion of investigation. The decision to bring charges against the child and the final adjudication and decision by the court or other competent judicial body, require the presence of parents or legal guardians at all stages of the proceedings. However, parental presence “does not mean that parents can act in defense of the child or be involved in the decision-making process.” The judge or competent authority may decide, at the request of the child or of his/her legal or other appropriate assistance, or because it is not in the best interests of the child, “... to limit, restrict or exclude the presence of the parents from the proceedings.” “The Committee recommends that state parties explicitly provide by law the maximum possible involvement of parents or legal guardians in the proceedings against the child. This involvement shall in general contribute to an effective response to the child’s infringement of the penal law. To promote parental involvement, parents must be notified of the apprehension of their child as soon as possible. At the same time, the Committee regrets the trend in some countries to introduce the punishment of parents for the offenses committed by their children. Civil liability for the damage caused by the child’s act can, in some limited cases, be appropriate, in particular for the younger children (e.g. below 16 years of age). But criminalizing parents of children in conflict with the law will most likely not contribute to their becoming active partners in the social reintegration of their child;”
- Right against self-incrimination prohibits the use of torture, cruel, inhuman or degrading treatment, or other less violent ways, including promises or rewards, to extract an admission or confession. This requires full respect for the right of the child to legal or other appropriate representation during questioning, and also requires independent scrutiny of the methods of interrogation. It requires the court or other judicial body, when considering the voluntary nature and reliability of an admission or confession, to take into account the age of the child, the length of custody and interrogation, and the presence of legal or other counsel, parent(s), or independent representatives of the child, and to train police officers and other investigating authorities to avoid interrogation techniques and practices that result in coerced or unreliable confessions or testimonies;

- Right to the presence and examination of witnesses, where a lawyer or other representative informs the child of the possibility to examine witnesses and allows him/her to express his/her views. This should be given due weight in accordance with the age and maturity of the child;
- Right to appeal, which is not limited to the most serious offenses;
- Right to free assistance of an interpreter if the child cannot understand or speak the language of the juvenile justice system at all stages of the juvenile justice process. The interpreter must be trained to work with children and those with speech impairment or other disabilities. This right may require special protection measures, including adequate and effective assistance by well-trained professionals, e.g. in sign language, in case they are subject to the juvenile justice process; and
- Right to privacy, during all stages of the proceedings, from initial contact with law enforcement until the final decision or release. This requires the avoidance of harm arising from undue publicity or labeling of the child. This further prohibits the publication of any information that may lead to the identification of a child offender, and the imposition of sanctions, including penal sanctions, on journalists or media practitioners who violate the child's right to privacy. Juvenile justice hearings should be conducted behind closed doors with limited exceptions clearly defined. Decisions must be written in a way that the identity of the child is not revealed. All records of child offenders should be kept strictly confidential and closed to third parties except for those directly involved in the investigation, adjudication and ruling on the case. The name of the child who committed the offense should be automatically removed from criminal records when the child reaches the age of 18 or for certain limited, serious offenses where removal is possible at the request of the child, if necessary under certain conditions (e.g. not having committed an offense within two years after the last conviction).

Rule of Law

The rule of law is a complex concept dating back to antiquity. It is defined in multiple ways, as the sample definitions below illustrate:

- Worldwide Governance Indicators defines rule of law as "the extent to which agents have confidence and abide by the rules of society, and in particular the quality of contract enforcement, the police and the courts, as well as the likelihood of crime or violence."
- The Declaration of Delhi refers to the rule of law as a "dynamic concept for the expansion and fulfillment of which jurists are primarily responsible and which should be employed not only to safeguard and advance the civil and political rights of the individual in a free society, but also to establish social, economic, educational and cultural conditions under which his legitimate aspirations and dignity may be realized."²⁰⁴
- "For the United Nations, the rule of law refers to a principle of governance in which all per-

²⁰⁴ Adopted by International Congress of Jurists, 1959.

sons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency."²⁰⁵

- The World Justice Project defines rule of law as a set of four principles or bands: "(1) The government and its officials and agents are accountable under the law; (2) The laws are clear, publicized, stable and fair and protect fundamental rights, including the security of persons and property; (3) The process by which laws are enacted, administered and enforced is accessible, fair and efficient; (4) Access to justice is provided by competent, independent, and ethical adjudicators, attorneys or representatives, and judicial officers who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve."²⁰⁶
- Helen Yu and Alison Guernsey view rule of law as restraint: "Law restrains the government by promoting certain liberties and creating order and predictability regarding how a country functions. In the most basic sense, the rule of law is a system that attempts to protect the rights of citizens from arbitrary and abusive use of government power."²⁰⁷

From the multiple definitions of rule of law, one can deduce three distinct approaches: the formal approach, the substantive approach and the functional approach. The formal approach is more concerned with characteristics of law, i.e., that law must be prospective, of general application and predictable. The substantive approach looks at the substance or content of law, which should protect human rights. The functional approach stresses the rule **of** law, where law is above government, not the rule **by** law, where law is used as a tool by government to advance its power and authority.

Based on the United Nations definition, the rule of law carries nine essential attributes:

- **Supremacy of the law:** No one is above the law. Those who make and enforce the law are themselves bound to adhere to it;
- **Equality before the law:** All are equal in the eyes of the law. All enjoy equality in the law as well as before the law. All have the same rights without distinction. Law is equally enforced;
- **Accountability to the law:** Government and its officials and agents are accountable under the law. Official action should be consistent with declared rules;

²⁰⁵ United Nations Secretary General. 2004. Report of the Secretary-General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies.

²⁰⁶ Agrast, Mark David, Botero, Juan Carlos and Ponce, Alejandro with the collaboration of Bright, Chantal V., Martinez, Joel and Pratt, Christine S.. 2010. The World Justice Project Rule of Law Index™ 2010. Page 2.

²⁰⁷ Helen Yu and Alison Guernsey, World Bank. Undated. The Rule of Law as a Goal of Development Policy.

- **Fairness in the application of the law:** Disputes are resolved impartially, on the basis of fact, in accordance with law and without improper influence or pressure. Hearings must be fair and public, and the legal framework must be fair and just;
- **Separation of power:** Pre-established and knowable laws regulate the relationship between the state and individuals;
- **Participation in decision-making;**
- **Legal certainty:** The law should be such that people will be guided by it;
- **Avoidance of arbitrariness:** Law sets limits or restrictions on the exercise of discretionary powers; and
- **Procedural and legal transparency:** All are innocent until proven otherwise. Corruption is eliminated. Judges, lawyers and prosecutors must be competent and with integrity. Governmental authority is legitimately exercised only in accordance with written, publicly disclosed laws adopted and enforced in accordance with due process.

From a human rights perspective, the rule of law “is more than a mechanical or narrow or rigid application of laws and rules. It is *equity, fairness, justice* and *impartiality* in determining conflicting claims. It is a fair and just legal framework coupled with impartial and effective implementation. The principle of the rule of law requires: (a) that *conflicts be resolved impartially, on the basis of fact, in accordance with law, and without improper influence or pressure*; (b) the availability and accessibility of independent and impartial judicial or administrative forums to act on conflicts; (c) the provision of appropriate remedies and effective redress mechanisms, including appeals mechanisms; and (d) inclusion of efficient monitoring mechanisms to ensure impartial and just implementation of laws, rules and regulations.”²⁰⁸

Participation (see Reference Sheet 5, *Centrality of the Human Person*)

Proportionality

The human rights principle of proportionality provides that any restrictions or limitations to human rights, where these are allowed, must be strictly proportional to the legitimate objectives for which restrictions or limitations are imposed.

The United Nations Human Rights Committee stressed the principle of proportionality with respect to the right to fair trial, when it said: “States derogating from normal procedures, required under Article 14 in circumstances of a public emergency, should ensure that such derogations do not exceed those strictly required by the exigencies of the actual situation.”²⁰⁹

²⁰⁸ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines.

²⁰⁹ Paragraph 6, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

The principle of proportionality also extends to the use of force, restraints and firearms. The *Code of Conduct for Law Enforcement Officials* and the *Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials* allow law enforcement officials to use force only when strictly necessary and only to the extent required to perform their duty. The *Code* and its *Implementing Guidelines* stress that the use of force is exceptional and limited to such force reasonably necessary to prevent crime or effect or assist in the lawful arrest of offenders or suspected offenders.

Command Responsibility

The human rights principle of command responsibility provides that superiors, officers or other public officials may be held responsible for unlawful acts committed by officials under their authority if they had reasonable opportunity to prevent such unlawful acts, yet failed to do so.

The *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* views command responsibility as the obligation to ensure that superior officers are held responsible for unlawful acts committed by those under their command, if superior officers know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to unlawful acts, and superior officers did not take all measures in their power to prevent, suppress or report such unlawful acts.

Availability, Cultural Acceptability and Quality of Formal and Non-formal Institutions of Remedy

Institutions of remedy are both formal and non-formal mechanisms and institutions that effectively address the individual and structural nature of the harm caused by human rights violations.

Formal institutions of remedy generally refer to courts, tribunals, administrative authorities, national human rights institutions, ombudspersons, investigative bodies, prosecution service, and correctional services.

Non-formal institutions of remedy generally refer to indigenous justice systems, restorative justice systems, informal grievance mechanisms, alternative dispute resolution, social mediation, media action lines, advice or helpline agencies, and non-governmental, community, trade and professional organizations promoting the enjoyment and realization of human rights.

Formal and non-formal institutions of remedy are guided by human rights standards, norms and principles of *accountability, attention to most vulnerable, command responsibility, empowerment, equal access in all its dimensions, equal protection of the law, equality, equality before the law, equity, full realization and enjoyment of all human rights, human dignity, independence and, non-discrimination*. They are also guided by *obligations of conduct, obligations of result, participation, procedural rights and guarantees, proportionality, respect for human rights, responsible exercise of human rights, responsiveness, right of reparation, rule of law, and transparency* (see *Reference Sheets, 4, 5, 6 and 8 for descriptions*).

Formal and non-formal institutions of remedy incorporate any, or a combination of, the following programs and services:

- *Formal legal protection*, which refers to laws, policies, strategies and procedures that establish effective mechanisms for seeking and attaining justice;
- *Equitable delivery of justice*, which refers to the dispensation and administration of justice in line with human rights standards, norms and principles;
- *Legal advice, assistance and other related services*, which refers to the provision of legal and other related services to protect the rights and interests of claimholders, and assist them in the exercise of their right to justice;
- *Law and justice policy reform*, which refers to initiatives to change, amend or improve policies related to law and justice to make them conform to human rights standards, norms and principles;
- *Reform of institutions of remedy*, which refers to initiatives to change, amend or improve the functioning of formal and non-formal institutions of remedy by incorporating human rights norms, standards and principles;
- *Alternative dispute resolution*, which refers to processes and techniques to resolve disputes and come to an agreement without need to resort to courts. There are several types of alternative dispute resolution: negotiation, mediation, collaborative law, arbitration, and conciliation. Alternative dispute resolution may include formal and informal methods, and may take on other forms such as case evaluation, family or group conferences, neutral fact finding, among others. In the context of human rights, alternative dispute resolution does not recognize competing rights, but recognizes competing interests and seeks to resolve disputes in a manner respectful of the rights of the parties;
- *Social mediation*, which refers to mediation within multi-ethnic and multi-cultural communities, acknowledging the existence of social friction among and within groups in society and between claimholders and duty bearers. It seeks to prevent social tensions and social conflict, which can emerge in everyday life, and builds relationships based on human rights standards, norms and principles;
- *Indigenous justice systems*, which refers to a model of practice of indigenous peoples based on their customs or customary laws (*see Reference Sheet 1, Justice: Philosophical Perspectives, Models of Practice and Indigenous Systems*);
- *Restorative justice systems*, which refers to a model of practice where involved parties collectively resolve how to deal with the repercussions of the offense and its implications for the future (*see Reference Sheet 1, Justice: Philosophical Perspectives, Models of Practice and Indigenous Systems*);

- *Advocacy and social mobilization*, which refers to initiatives that aim to influence the formulation and implementation of public policy and resource allocations of political, economic and social systems and institutions in order to realize human rights. Advocacy can take a wide variety of forms, including media campaigns, public speaking, undertaking and disseminating research, conducting public polls, lobbying, budget advocacy, legislative advocacy, and other forms of peaceful assemblies. Social mobilization includes concerted and broadly participative efforts to achieve the realization of human rights. It involves all justice actors and institutions of remedy and is designed to facilitate change for human rights; and
- *Capacity development*, which refers to the enhancement of the capabilities of claimholders to exercise their human rights responsibly, duty bearers to faithfully adhere to their human rights obligations of conduct and of result, and other actors to undertake their activities with due regard for claimholders' human rights and duty bearers' human rights obligations.

Human rights require that formal and non-formal institutions of remedy are *available throughout the country*. This means there should be a sufficient number of functioning institutions of remedy rendering services and assistance to realize human rights, staffed by a sufficient number of qualified personnel earning competitive salaries and wages, supplied with functioning equipment and essential facilities, and provided with sufficient funds and budgetary resources.

Human rights also mandate that formal and non-formal institutions of remedy are *culturally acceptable*. This means that formal and non-formal institutions of remedy are respectful of cultural identity and diversity, culturally appropriate, sensitive to gender, relevant and aware of historical and contemporary issues, and designed to realize human rights.

Finally, human rights require *quality* from formal and non-formal institutions of remedy and from the services they render. This means the highest standard of professionalism and excellence in service.

Guidance Note: Tips to Translate Human Rights Standards, Norms and Principles into Practical Action

The following tips may facilitate the application of the human rights standards, norms and principles of *reparation, obligations of conduct and of result, equity, independence, accountability, transparency, responsiveness, procedural rights and guarantees, rule of law, participation, proportionality, command responsibility, availability, cultural acceptability* and *quality* into practical action to realize equal access to justice through formal and non-formal institutions of remedy:

- 1 *Formal legal protection*. Laws, policies, strategies and procedures must comply with obligations of conduct and of result and guarantee equality and nondiscrimination. Some laws and procedures may appear gender neutral. However, on closer examination, they may reveal inequality. The United Nations Committee on the Rights of the Child noted that criminal codes commonly “contain provisions criminalizing behavioral problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as Status Offenses, are not considered to be such if com-

mitted by adults. The Committee recommends that the States parties abolish the provisions on status offenses in order to establish an equal treatment under the law for children and adults. In addition, behavior such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents and/or other caregivers and measures, which address the root causes of this behavior.”²¹⁰

It thus becomes important to be alert to hidden forms of discrimination that may find expression in laws, policies, strategies and procedures. In formulating and analyzing laws, policies, strategies and procedures, the Human Rights Flowchart 1: Restrictions and Limitations Resulting from Planning Decisions, found in the Human Rights-based Approach to Development Planning Toolkit (2011), while written and designed for development planners, may be useful.²¹¹

- 2 *Equitable delivery of justice.* All institutions of remedy must actively promote the right of reparation. They must fully conform to procedural rights and guarantees, and incorporate the standards and principles of *accountability, attention to most vulnerable, command responsibility, empowerment, equal access in all its dimensions, equal protection of the law, equality, equality before the law, equity, full realization and enjoyment of all human rights, human dignity, independence, nondiscrimination, obligations of conduct, obligations of result, participation, proportionality, respect for human rights, responsiveness, rule of law, and transparency.* The United Nations Committee on Human Rights reiterated the application of human rights standards, norms and principles on military or special courts that try civilians, and on courts with “faceless” or anonymous judges.²¹² The Committee said:

“While the Covenant does not prohibit the trial of civilians in military or special courts, it requires that such trials are in full conformity with the requirements of Article 14 and that its guarantees cannot be limited or modified because of the military or special character of the court concerned. The Committee also notes that the trial of civilians in military or special courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned. Therefore, it is important to take all necessary measures to ensure that such trials take place under conditions, which genuinely afford the full guarantees stipulated in Article 14. Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and when regular civilian courts are unable to undertake the trials with regard to the specific class of individuals and offenses at issue.

Some countries have resorted to special tribunals of “faceless judges” composed of anonymous judges. Such courts, even if the identity and status of such judges have been verified by an independent authority, often suffer not only from the fact that the identity and status of the judges is not made known to the accused persons, but also from irregularities such as exclusion of the public or even the accused or their representatives from the proceedings.

²¹⁰ General comment No. 10, “Children’s rights in juvenile justice,” adopted by the United Nations Committee on the Rights of the Child at its 44th session, 2007, U N Doc. A/50/18.

²¹¹ National Economic and Development Authority, Human Rights-based Approach to Development Planning Toolkit, 2011. Philippines.

²¹² Paragraphs 22 and 23, General Comment 32, “Right to equality before courts and tribunals and to a fair trial,” adopted by the United Nations Human Rights Committee at its 90th session, 2007, U N Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

Tribunals with or without faceless judges, in circumstances where there are restrictions on the right to legal assistance and in defending oneself, do not satisfy the basic standards of fair trial and, in particular, the requirement that the tribunal must be independent and impartial.”

- 3 *Legal advice, assistance and other related services.* Some of the most vulnerable persons and groups face issues and concerns that require specialized legal assistance and expertise. Innovative techniques that combine a whole range of integrated and complementary services, within a focused holistic approach, may contribute to the realization and enjoyment of human rights. In addition, social, economic, educational, linguistic or identity gaps may exist between lawyers (and those who render services) and claimholders. It thus becomes important to take into account the rights and capabilities of claimholders in order to deliver services that result in their empowerment.
- 4 *Law and justice policy reform.* The human rights flowchart referred to in the previous page may facilitate human rights-based law and policy reform. Other specially designed human rights checklists and matrices, while also written for development planners, may be similarly useful. These may be found in the Human Rights-based Approach to Development Planning Toolkit of the National Economic and Development Authority, and include:
 - Human Rights Flowchart 2: Assessing Development Plans, Strategies, Projects and Actions in Relation to Normative Elements of Human Rights;
 - Human Rights Checklist 1: Compliance with Human Rights Obligation of Progressive Realization;
 - Human Rights Checklist 2: Compliance with Human Rights Core Obligations;
 - Human Rights Checklist 3: Compliance with Human Rights Obligation of Equality;
 - Human Rights Checklist 4: Compliance with Human Rights Obligation of Nondiscrimination;
 - Human Rights Checklist 5: Compliance with Human Rights Obligations of International Cooperation and Assistance;
 - Human Rights Checklist 6: Compliance with Human Rights Respect-bound Obligations;
 - Human Rights Checklist 7: Compliance with Human Rights Protection-bound Obligations; and
 - Human Rights Checklist 8: Compliance with Human Rights Fulfillment-bound Obligations.
- 5 *Reform of justice institutions of remedy.* The flowcharts and checklists listed above may facilitate a human rights-based approach towards reform of justice institutions of remedy.

- 6 *Alternative dispute resolution.* Wilson and Rasmussen (2001) stress the need to ensure that alternative dispute resolution does not reinforce existing inequalities and power imbalance: “Some caution must be observed in considering alternative dispute resolution as a panacea for the poor. There is some risk that those who are disadvantaged and marginalized in the dominant and formal legal system will be even more so in an alternative system where no human rights framework is applied. There is a significant risk that the poor will once again be left with a sense of ‘second class’ justice.”²¹³
- 7 *Social mediation.* Like alternative dispute resolution, care must be taken to ensure that social mediation does not result in further discrimination, does not widen the divide between and among claimholders, duty bearers and other actors, and does not disempower those most vulnerable.
- 8 *Indigenous justice systems.* Challenges faced by indigenous justice systems must be recognized and addressed, with the full and active participation of indigenous peoples, whose free and informed consent must be solicited before addressing any challenges. The Asian Indigenous Peoples’ Pact (AIPP) Foundation identified challenges faced by indigenous justice systems:²¹⁴

“Some of the challenges include the non-acceptance of legal pluralism, and lack of administrative and financial support by states; the increasing lack of opportunities for, and customary knowledge of, traditional leaders to enable them to update customary laws; as well as the lack of respect for indigenous juridical systems by other legal systems. If access to customary justice systems continues to be denied to indigenous societies, more and more community members may turn to, and in many cases have already turned to, state institutions for justice. However, here too they face difficulties as litigation in mainstream systems is expensive, time-consuming and complicated. In other words, indigenous communities may effectively end up with having little or no access to justice, either from their own leaders or from the state.

Indigenous people also face significant challenges in freely exercising their juridical rights and pursuing juridical developments within their communities. A high degree of juridical autonomy is recognized by state legislations in a few countries only, such as in Northeast India, Sabah-Sarawak, Malaysia, Northwest Pakistan and Southeast Bangladesh. Here too, the major challenge is in implementing these constitutionally protected rights. In most countries of Asia, indigenous communities face problems in obtaining formal state recognition of their customary laws and justice systems. In special contexts, such as the autonomous district councils in Northeast India, the councils too may pass laws, including customary laws of the indigenous (“tribal”) peoples. Indigenous peoples—whether councils, assemblies,

²¹³ Richard J. Wilson and Jennifer Rasmussen. 2001. *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering*. Washington DC, USA: International Human Rights Law Group. Pages 37-38.

²¹⁴ Asian Indigenous Peoples’ Pact Foundation. Undated. *Indigenous Governance Systems in Asia*.

chiefs, traditional courts—also amend existing customary law principles or introduce new ones. In our context, we would include such exercises within legislation. In the same vein, the rulings of indigenous chiefs, headmen, elders, councils etc in administering customary law and other disputes would also be considered as the exercise of judicial authority.”

X X X

“On the acceptance of customary law, the challenge to indigenous peoples is to demonstrate that traditional courts and customary laws are still relevant to their society. There are difficult questions on the application of customary law in a mixed society. Similar question arises on its applicability on indigenous persons who has changed his/her religion and where religious practices are in conflict with customary law.”²¹⁵

- 9 *Restorative justice systems.* Restorative justice does not take place within a vacuum. An in-depth understanding of the political, economic, social and cultural context as well as the values and personal and family backgrounds of both the victim and the offender may contribute to the success of restorative justice. In addition, restorative justice processes may involve issues that can create tensions, so every effort must be taken to be alert to such issues and to address them by, for example, encouraging all parties to act responsibly at all times and to treat each other fairly and create an environment conducive to healthy dialogue, among others.
- 10 *Advocacy and social mobilization.* The Free Legal Assistance Group (FLAG) of the Philippines suggests that the following important factors be considered when planning or undertaking advocacy and social mobilization activities: numerical strength and cohesiveness of the organization or group undertaking the action; reasonableness and importance of the demands being pressed; relevance of demands to the situation of the affected group; peaceful nature of the action and tempered language used; adequacy of preparation for the action; effectiveness of precautions and organization’s safeguards to prevent the action from getting out of hand through acts of participants, provocateurs or outside forces; absence of any taint of coercion on or manipulation of participants by organizers of the action; support of other groups for the action; and correct timing of the action.²¹⁶
- 11 *Capacity development.* Safeguards should be incorporated to ensure the application of the human rights principles of participation, accountability, nondiscrimination, transparency, human dignity, empowerment, and rule of law to capacity development activities. Safeguards should address those factors that inhibit or hinder the operation of these principles (for example, scheduling activities in consideration of women’s multiple burdens, or locating activities within safe physical reach of participants, or using materials in a language and media easily understood by participants, or providing special facilities such as day-care facilities for participating mothers).

²¹⁵ Asian Indigenous Peoples’ Pact Foundation. Undated. Indigenous Governance Systems in Asia, citing ID Conference Report 2007.

²¹⁶ Free Legal Assistance Group, *Metalegal Remedies*, 2008.

SESSION 5

Human Rights and Justice

Objectives

At the end of this session, participants should be able to relate human rights with the ends and functions of justice.

Time

11:30 am – 12:30 noon

Session Guide

This session links human rights and justice. It is divided into two activities:

- The session begins with a review of the human rights functions of justice, under the human rights principles of *accountability*, *transparency* and *independence* (30 minutes).
- Following the review, participants, working in small groups, shall use art to relate human rights with justice, by accomplishing **Exercise 11: The Art of Justice** (30 minutes).

Exercise

Exercise 11: The Art of Justice

Reference Sheet

Reference Sheet 8: Justice

EXERCISE

The Art of Justice

THIS EXERCISE allows participants to better relate human rights with the ends and functions of justice.

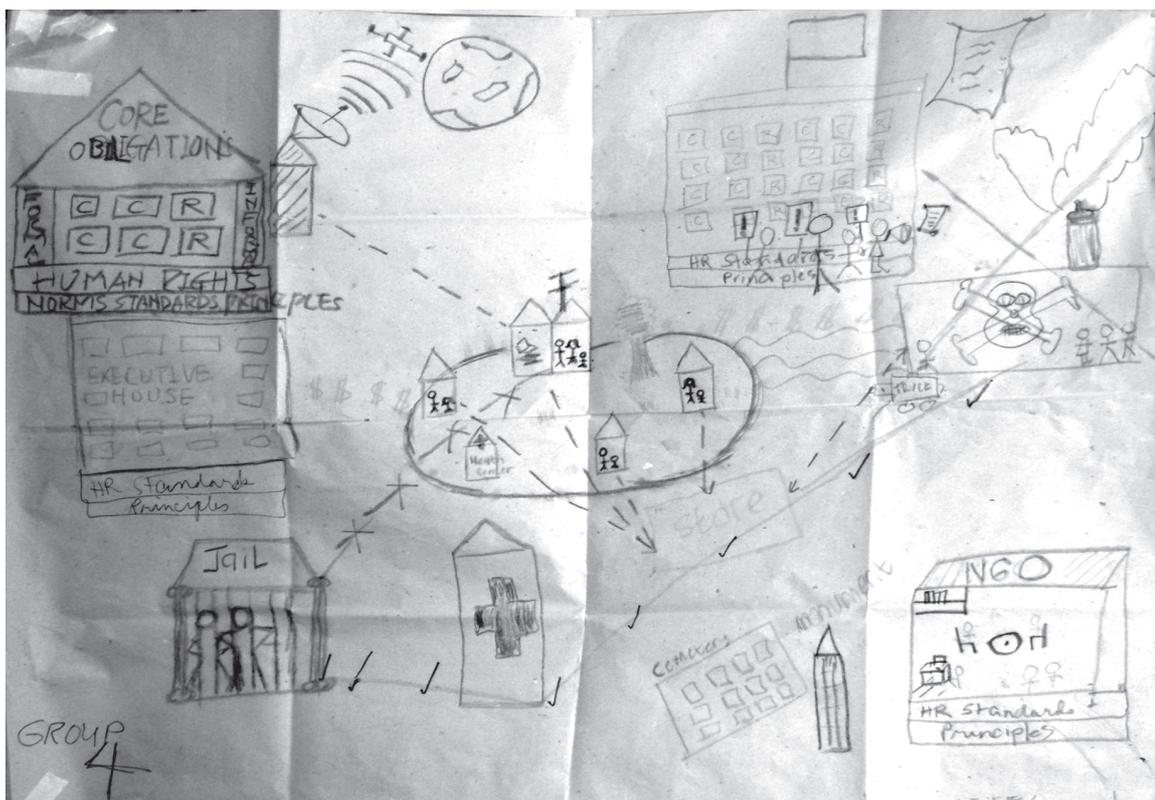
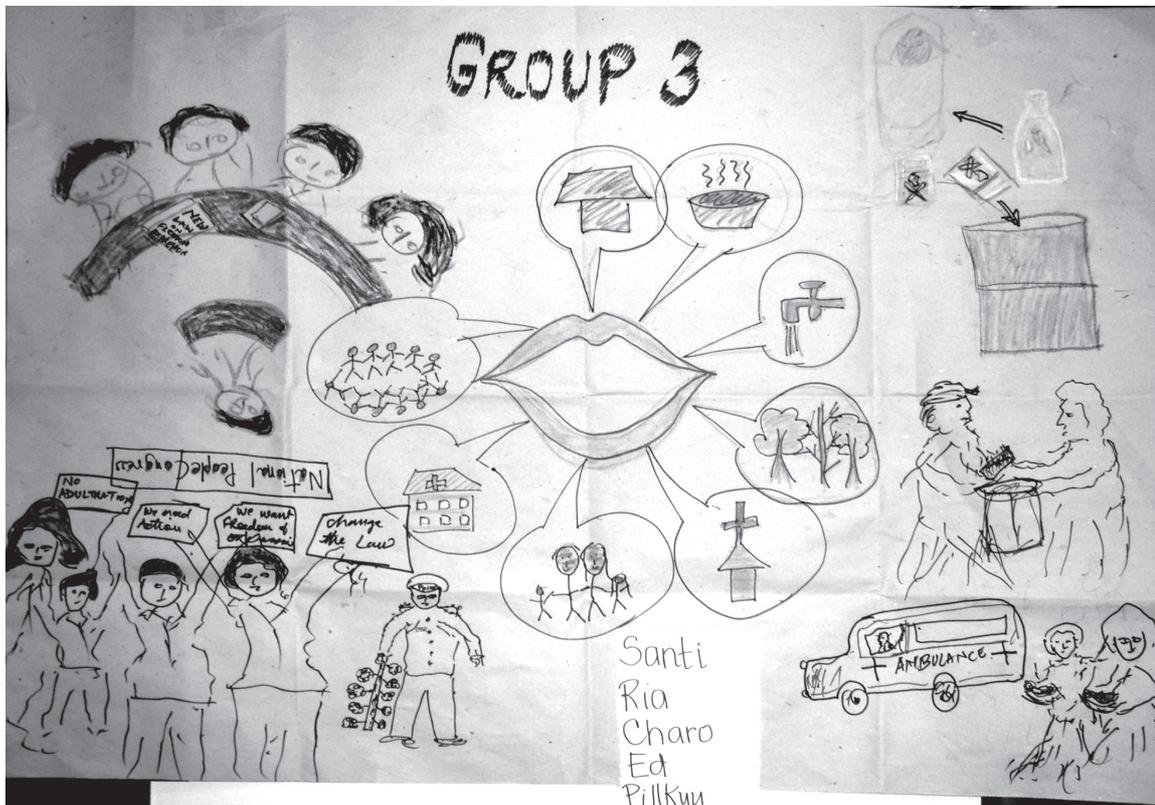
Instructions: Read the facts below.²¹⁷ Together with the members of the group, choose a right least enjoyed by claimholders based on the facts presented. Draw how the right relates to the four human rights functions of justice, how the right relates to other human rights, what obligations arise from the right, and which formal or non-formal institutions of remedy may be most appropriate for claimholders to realize the right least enjoyed by them.

The painting should reflect the four human rights functions of justice (prevention, reparation, redistribution and creation), how these functions are guided by the human rights norms of full respect for human rights and indivisibility and inter-relatedness of human rights, how duty bearers may comply with their obligations of conduct and result and which formal or non-formal institutions of remedy may facilitate claimholder enjoyment of human rights.

Facts:

In September 2008, China admitted that babies were getting sick in Gansu province because they had been drinking a particular brand of milk powder. The maker of the milk said that the milk had been contaminated with melamine, and added that they had informed the Chinese Government of this fact at least a month before. Chinese authorities eventually brought to trial the owners and executives of companies that had produced the melamine-tainted products. All over the world, Chinese products were tested, and taken off the market if they had melamine. In China, at least 296,000 children became ill because of the tainted milk. Six babies died, and the parents of the first baby who died accepted compensation (around \$29,000) from the company. However, 213 other families (whose children became ill or died) have asked for higher compensation. In December 2010, the authorities arrested the father of a child who became sick. Because of what happened to his child, he became an activist for the rights of the victims, as he and some other families were told they were not eligible to receive compensation provided by the Chinese Government for children who had become seriously ill. The father set up a website to help the families and push for compensation. He was charged with “picking quarrels and provoking trouble,” convicted of “inciting social disorder” and sentenced to two and half years imprisonment.

²¹⁷ BBC News. 25 January 2010. Timeline: China Milk Scandal in <http://news.bbc.co.uk/2/hi/asia-pacific/7720404.stm> and Stephen McDonnell, China Jails Father of Toxic Milk Victim, last updated 10 November 2010 in <http://www.abc.net.au/news/stories/2010/11/10/3062909.htm>



REFERENCE SHEET **8**

Justice

IN THE human rights approach towards realizing equal access to justice, justice prevents human rights violations, provides reparation for violations of human rights, and redistributes and creates opportunities for all to enjoy all human rights without discrimination. It is founded upon the following human rights instruments (for a detailed description of the instruments related to justice, refer to Annex 4):

Human Rights Standards, Norms and Principles	Sources (International Human Rights Instruments)
<ul style="list-style-type: none"> ☞ Full realization and enjoyment of all human rights ☞ Obligations of Conduct ☞ Obligations of Result: <ul style="list-style-type: none"> • Prevention of human rights violations • Reparation for human rights violations • Redistribution of opportunities for equal and nondiscriminatory enjoyment of all human rights • Creation of opportunities for equal and nondiscriminatory enjoyment of all human rights ☞ Accountability ☞ Transparency ☞ Independence ☞ Impartiality 	<ul style="list-style-type: none"> • Universal Declaration of Human Rights (UDHR) • International Covenant on Civil and Political Rights (ICCPR) • International Covenant on Economic, Social and Cultural Rights (ICESCR) • Declaration on the Right to Development (DRTD) • Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor” • International Convention on the Elimination of All Forms of Racial Discrimination (CERD) • Declaration on the Rights of Indigenous Peoples • Convention on the Rights of the Child (CRC) • Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) • Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) • Rules for the Protection of Juveniles Deprived of their Liberty • Convention on the Rights of Persons with Disabilities (CPD) • Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) • Declaration on the Protection of All Persons from Enforced Disappearance • International Convention for the Protection of All Persons from Enforced Disappearance • Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power • International Convention on the Rights of All Migrant Workers and Members of their Families (CMW) • Standard Minimum Rules for the Treatment of Prisoners • Procedures for the Effective Implementation of the Standard Minimum Rules for the Treatment of Prisoners • Basic Principles for the Treatment of Prisoners • Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment • Standard Minimum Rules for Non-custodial Measures (Tokyo Rules) • Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) • Declaration on the Elimination of Violence against Women • Basic Principles on the Independence of the Judiciary • Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary • Basic Principles on the Role of Lawyers • Guidelines on the Role of Prosecutors

These instruments reinforce justice towards the *full realization and enjoyment of all human rights* and compliance with *obligations of conduct and of result*, under the human rights principles of *accountability, transparency and independence*.

Full realization and enjoyment of all human rights (see Reference Sheet 5, *Centrality of the Human Person*)

Obligations of Conduct and of Result (see Reference Sheet 6, *Equal Access*)

Obligations of conduct and of result include the prevention of human rights violations, reparation for human rights violations, the creation and redistribution of opportunities for the equal and non-discriminatory realization of all human rights.

Prevention

Human rights violations are prevented when those responsible for them are held to account before the bar of justice; the prosecution of human rights violators rests on several relevant factors, including availability and strength of evidence, seriousness of offences, extent of victim, NGO and society support for prosecution, likelihood of preventing ongoing abuses or deterring future offenses, likelihood of success, security risks involved, and cost.²¹⁸

The promotion of human rights through innovative, contextual and effective strategies coupled with active participation and collective efforts, also serves to prevent human rights violations; the promotion of human rights may involve, among others, professional training on human rights for the administration of justice and special measures of assistance and support for victims.

Human rights violations may also be prevented through reform of law and policy, including those governing the armed forces and others responsible for keeping a country and its people safe, and through changes in the structures and processes of institutions of remedy.

Finally, the prevention of human rights violations requires a clear and full understanding of—and attention to—the underlying causes of violations: “Indeed, the roots of repression, discrimination, and other denials of human rights stem from deeper and more complex political, social, and economic problems. It is only by understanding and ameliorating these root causes and strengthening civil society that we can truly protect human rights.”²¹⁹

Reparation

Reparation for human rights violations may be achieved through restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition:²²⁰

²¹⁸ International Council on Human Rights Policy. 1999. *Hard Cases: Bringing Human Rights Violators to Justice Abroad*, Geneva, Switzerland. Pages 26-27.

²¹⁹ Melinda Maiese. July 2003. *Human Rights Violations*.

²²⁰ *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.

- *Restitution* includes the restoration of liberty, the enjoyment of human rights, the restoration of identity, family life and citizenship, the return to one's place of residence, the restoration of employment, and the return of property;
- *Compensation* may be granted for physical or mental harm, lost opportunities, including employment, education and social benefits, material damages and loss of earnings, including loss of earning potential, moral damage, and costs required for legal or expert assistance, medicine and medical services, and psychological and social services. The United Nations Human Rights Committee has said that the International Covenant on Civil and Political Rights guarantees a *substantive right to compensation in cases of miscarriage of justice*: "When a person has, by a final decision, been convicted of a criminal offence and when, subsequently, his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact, in time, is wholly or partly attributable to him." This requires states to enact legislation "ensuring that compensation as required ... can in fact be paid and that the payment is made within a reasonable period of time. This guarantee does not apply if it is proved that the non-disclosure of such a material fact, in good time, is wholly or partly attributable to the accused; in such cases, the burden of proof rests on the State. Furthermore, no compensation is due if the conviction is set aside upon appeal, i.e. before the judgment becomes final, or by a pardon that is humanitarian or discretionary in nature, or motivated by considerations of equity, not implying that there has been a miscarriage of justice."²²¹
- *Rehabilitation* includes the provision of medical and psychological care and legal and social services;
- *Satisfaction* refers to effective measures aimed at cessation of continuing violations, including: verification of facts and full and public disclosure of truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; search for the whereabouts of the disappeared, for identities of children abducted and for bodies of those killed, and assistance in recovery, identification and reburial of bodies in accordance with expressed or presumed wish of the victims, or cultural practices of families and communities; official declaration or judicial decision restoring the dignity, reputation and rights of the victim and persons closely connected with the victim; public apology, including acknowledgement of facts and acceptance of responsibility; judicial and administrative sanctions against persons liable for violations; commemorations and tributes to victims; and the inclusion of an accurate account of violations in training programs and educational material at all levels;
- *Guarantees of non-repetition* refer to any or all measures that contribute to the prevention of human rights violations and include: ensuring effective civilian control over military and security

²²¹ Paragraphs 52 and 53, General Comment 32, "Right to equality before courts and tribunals and to a fair trial," adopted by the United Nations Human Rights Committee at its ninetieth session, 2007, UN Doc. HRI/GEN/1/Rev.9 (Vol. I), 27 May 2008.

forces; ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary; protecting persons in legal, medical and health-care professions, media and other related professions, and human rights defenders; providing, on priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials, military and security forces; promoting observance of codes of conduct and ethical norms by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, and economic enterprises; promoting mechanisms for preventing and monitoring social conflicts and their resolution; and reviewing and reforming laws that contribute to or allow violations of international human rights law and serious violations of international humanitarian law.

Redistribution and Creation

Justice based on human rights must address all instances of injustice rooted in discrimination, exclusion, exploitation, and deprivation and in unequal social, political, cultural and economic patterns, processes and practices, by redistributing opportunities for equal and nondiscriminatory enjoyment of human rights. Redistribution may involve correction of inequitable outcomes and the restructuring of institutions, laws and policies that systematically disadvantage some persons or groups of persons in favor of others.

De Soto (1989), however, cautions that laws designed to redistribute wealth may not always result in wealth redistribution; this is particularly so where wealth and power are captured by a few.²²²

Justice also promotes the human rights principles of human dignity, empowerment, participation and accountability, by creating opportunities for equal and nondiscriminatory enjoyment of human rights. Creation may involve remedies that safeguard human rights, build self-worth, transform prejudices and social patterns, and generate wealth-producing institutions and mechanisms, particularly for those most vulnerable.

Accountability (see Reference Sheet 7, *Institutions of Remedy*)

Transparency (see Reference Sheet 7, *Institutions of Remedy*)

Independence (see Reference Sheet 7, *Institutions of Remedy*)

Human Rights and the Administration of Justice

Several human rights treaty-monitoring bodies have provided guidelines for the administration of justice; these include:

- 1 When dealing with allegations of discrimination, courts, tribunals, administrative authorities, national human rights institutions and/or ombudspersons are reminded to adjudicate com-

²²² Hernando de Soto. 1989. *The Other Path: The Economic Answer to Terrorism*, New York, NY: Basic Books.

plaints promptly, impartially, and independently and address alleged violations, including actions or omissions by private actors. The United Nations Committee on Economic, Social and Cultural Rights stresses: “Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively. These institutions should also be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, public apologies, and State parties should ensure that these measures are effectively implemented. Domestic legal guarantees of equality and non-discrimination should be interpreted by these institutions in ways, which facilitate and promote the full protection of economic, social and cultural rights.”²²³

- 2 “The degree to which acts of racial discrimination and racial insults damage the injured party’s perception of his/her own worth and reputation is often underestimated.” Thus, the Committee on the Elimination of Racial Discrimination stated: “The right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination is not necessarily secured solely by the punishment of the perpetrator of the discrimination; at the same time, the courts and other competent authorities should consider awarding financial compensation for damage, material or moral, suffered by a victim, whenever appropriate.”²²⁴
- 3 The United Nations Committee on Economic, Social and Cultural Rights reminds administrative authorities, ombudspersons and other national human rights institutions, courts and tribunals to ensure that remedies granted victims are effectively implemented.²²⁵
- 4 The Committee on the Elimination of Racial Discrimination laid down steps states should take to guarantee human rights of descent-based communities:²²⁶
 - a. Take all necessary steps to secure equal access to the justice system for all members of descent-based communities, by providing legal aid, facilitating group claims and encouraging non-governmental organizations to defend community rights;
 - b. Where relevant, ensure that judicial decisions and official actions fully take into account the prohibition against descent-based discrimination;
 - c. Prosecute persons who commit crimes against members of descent-based communities and provide adequate compensation for victims;
 - d. Encourage recruitment of members of descent-based communities into the police and

²²³ General Comment 20, “Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 42nd session, 2009, U N Doc. E/C.12/GC/20.

²²⁴ General Recommendation XXVI, “Article 6 of the Convention,” adopted by the United Nations Committee on Racial Discrimination at its 1399th meeting, 2000, U N Doc. A/52/18, annex V.

²²⁵ Paragraph 38, General Comment 16, “The equal right of men and women to the enjoyment of all economic, social and cultural rights (Art. 3 of the International Covenant on Economic, Social and Cultural Rights),” adopted by the United Nations Committee on Economic, Social and Cultural Rights at its 34th session, 2005, U N Doc. E/C.12/2005/4.

²²⁶ General Recommendation XXIX, “Article 1, paragraph 1 of the Convention (Descent),” adopted by the United Nations Committee on Racial Discrimination at its 61st session, 2002, U N Doc. A/52/18, annex V.

- other law enforcement agencies;
 - e. Organize training programs for public officials and law enforcement agencies to prevent injustices based on prejudice against descent-based communities; and
 - f. Encourage and facilitate constructive dialogue between the police and other law enforcement agencies and members of the communities.
- 5 The United Nations Committee on the Rights of the Child reminds states of their obligation to establish a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with human rights, and guided by the human rights norms, standards and principles of nondiscrimination, best interest of the child, rights to life, survival, development, to be heard and dignity. The Committee also established the core elements of a comprehensive juvenile justice policy: prevention of juvenile delinquency, interventions without resort to judicial proceedings and interventions in the context of judicial proceedings, minimum age of criminal responsibility and upper age-limits for juvenile justice, guarantees for a fair trial, and deprivation of liberty including pre-trial detention and post-trial incarceration. The Committee emphasizes the prohibition against the imposition of the death penalty and a life sentence without parole on children, and stresses that depriving liberty, including arrest, detention and imprisonment, may only be used as a measure of last resort and for the shortest appropriate time. The Committee also recommends the abolition of all forms of life imprisonment for offences committed by persons under the age of 18.²²⁷

²²⁷ General comment No. 10, "Children's rights in juvenile justice," adopted by the United Nations Committee on the Rights of the Child at its 44th session, 2007, U N Doc. A/50/18.





DEVELOPING HUMAN RIGHTS-BASED EA2J INTERVENTIONS

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Note to Trainers:

- 1 Before using this module, trainers are urged to conduct a training needs assessment (TNA) of prospective participants.
 - a. The TNA instrument should be designed to extract prospective participants' knowledge of, attitudes to, and skills in, the human rights approach to realizing equal access to justice.
 - b. A reliable TNA is based on the accomplished instruments submitted by at least 60 percent of prospective participants.
 - c. TNA results should provide sufficient guidance for trainers to choose, adapt and modify those sessions, exercises and reference sheets most appropriate to the prospective participants' levels of knowledge, attitudes and skills.
 - d. It is important that those who submitted TNA instruments actually attend and participate in the training activity.
- 2 The Pilot Training Workshop was conducted over three (3) days. Depending on the TNA results and the session activities to be conducted, trainers may adjust the time allotted to each session.
- 3 Session activities should be carefully planned.
 - a. Trainers are free to use the exercises in this module or to adapt or modify them to suit participants' training needs.
 - b. Facts that participants can relate to and that are relevant to the topic discussed should be chosen for every exercise.
 - c. Facts may be augmented by photographs; as much or as little detail may be provided, as warranted.

- d. A video or short documentary may be used instead of a fact sheet.
- 4 Trainers are encouraged to consciously apply the human rights PANTHER principles throughout the training activity.
- **Participation:** Trainers should provide ample opportunities for participants to actively and meaningfully participate in the training activity.
 - **Accountability:** Trainers should take full responsibility for the learning design, environment and process; trainers should prepare well before the training activity by updating themselves on the latest developments and conducting a trial run of the training activity a few days before it actually starts.
 - **Nondiscrimination:** Trainers should ensure that every single participant (especially the quieter one) is involved in all session activities.
 - **Transparency:** Trainers should create an open, respectful and comfortable learning environment.
 - **Human Dignity:** Trainers should respect participants' knowledge, attitudes and skills, and elicit from them their insights and experiences throughout the training activity.
 - **Empowerment:** Trainers should ensure that participants control the pace of learning and the learning process.
 - **Rule of Law:** In responding to participants' questions and concerns, and in commenting on participants' individual or group outputs, trainers should be critical, but fair.

MODULE 3

Developing Human Rights-based EA2J Interventions

THIS MODULE illustrates the practical application of the human rights approach towards realizing EA2J and the integration of human rights standards, norms and principles in the design and development of EA2J projects. It presents various human rights tools, processes and methodologies that may be utilized in developing and managing human rights-based EA2J projects.

The module is divided into two sessions:

- **Session 1: Human Rights-based EA2J Interventions** illustrates the practical application of the human rights approach towards realizing EA2J.
- **Session 2: Designing Human Rights-based EA2J Projects** presents various human rights tools, processes and methodologies that may be utilized to develop and manage human rights-based EA2J projects. It shows how human rights norms, standards and principles may be integrated into the design and development of human rights-based EA2J projects.

Time

2:00 pm – 6:00 pm (Day 2)

8:15 am – 4:00 pm (Day 3)

SESSION 1

Human Rights-based EA2J Interventions

Objectives

At the end of this session, participants should be able to:

- Share and learn from experiences with human rights-based EA2J interventions; and
- Illustrate the practical application of human rights norms, standards and principles in EA2J interventions.

Time

2:00 pm – 6:00 pm

Session Guide

This session illustrates the practical application of the human rights approach towards realizing EA2J. It is divided into two activities:

- The session begins with participants, working in small groups and applying the human rights approach towards realizing EA2J through a case study by accomplishing **Exercise 12: Integrating Human Rights Norms, Standards and Principles in EA2J Interventions** (2 hours and 30 minutes)
- Thereafter, all small groups shall convene in plenary, where each small group shall present concrete actions illustrating the practical application of the human rights approach to realizing EA2J. Comments shall be solicited from other small groups and the lead facilitator (1 hour and 30 minutes).

Exercise

Exercise 12: Integrating Human Rights Norms, Standards and Principles in EA2J Interventions

EXERCISE 12

Integrating Human Rights Norms, Standards and Principles in EA2J Interventions

THIS EXERCISE allows participants to share their experiences with equal access to justice, apply the human rights approach to realizing EA2J, and design concrete actions to integrate human rights norms, standards and principles in EA2J interventions.

Instructions: This is a three-part exercise: In part I, participants shall analyze the problem from the context of human rights. In part II, participants shall apply the human rights approach towards realizing EA2J. In part III, participants shall design concrete actions integrating human rights norms, standards and principles in EA2J interventions. Read the facts below.²²⁸

Dalit women in Nepal have been victims of discrimination. First, they have no political representation. As Dalits, they are viewed as “untouchables,” despite the 1963 National Code of Nepal prohibiting such “untouchability.” Even if Dalits form 20 percent of the total population, they have very little political representation. Second, women in Nepal are often not respected, regardless of caste. For example, Nepalese women in general are not encouraged to be involved in public life. Women make up 52 percent of Nepal’s population, but they have very low political representation (5 percent), even if the 1990 Nepalese Constitution has provisions that seek to ensure their participation. Therefore, Dalit women are doubly discriminated against, and are even less likely to be represented than Dalit men.

They also have few legal rights, and cannot control resources like land, money or housing. They have few livelihood options, and worry about their children not being able to go to school and learn. They often have to work in jobs that others in Nepalese society refuse to do. Because of their poverty, lack of education and lack of opportunities, they are often fooled or forced into becoming sex workers. They are trafficked to India to work in brothels, after being told that they would be able to work as domestic helpers.

Together with the members of your group, accomplish the three parts of the exercise.

Part I. Human Rights-based Problem Analysis

- 1 Identify the problem and enter it into the appropriate row of the exercise matrix.

²²⁸ Sob, Durba. 2005. *The Triple Oppression of Dalit Women in Nepal*. [Nepal Human Rights News Com](http://nepalhumanrightsnews.com/page.asp?id=7). Available at: <http://nepalhumanrightsnews.com/page.asp?id=7>

- 2 Describe claimholders by answering the guide questions. Enter your description into the appropriate row of the exercise matrix.
- 3 Describe duty bearers by answering the guide questions. Enter your description into the appropriate row of the exercise matrix.
- 4 Describe other actors by answering the guide questions. Enter your description into the appropriate row of the exercise matrix.
- 5 Describe the situational environment by answering the guide questions. Enter your description into the appropriate row of the exercise matrix.
- 6 Choose the most appropriate institution of remedy to address the problem. *Note that institutions of remedy are **not** mutually exclusive, so it is possible to choose more than one institution of remedy.*

Part II. Applying the Human Rights Approach to Realizing EA2J

- 7 Share your experiences with applying each element of the human rights approach to realizing EA2J by answering the guide questions. List your experiences onto the column entitled “Existing Practice.”
- 8 Consider how you can enhance your application of the human rights approach by answering the guide questions and designing concrete actions (specific, doable, measurable, relevant, and time-bound) based on each element of the approach. List these onto the column entitled “Human Rights-based Innovations.”
- 9 Anticipate potential risks that may defeat the concrete actions. List potential risks onto the appropriate column of the exercise matrix.
- 10 Design safeguards to prevent the occurrence of potential risks. List safeguards onto the appropriate column of the exercise matrix.
- 11 Identify qualitative and quantitative indicators to measure the extent to which the action integrates each element of the human rights approach. List indicators onto the appropriate column of the exercise matrix.

Part III. Applying Specific Human Rights Norms, Standards and Principles

- 12 Share your experiences with the relevant human rights norm, standard or principle as currently applied within the institution of remedy by answering the guide questions. List your experiences onto the column entitled “Existing Practice.”

- 13 Consider ways to strengthen the application of the human rights norm, standard or principle by answering the guide questions and designing concrete actions (specific, doable, measurable, relevant, and time-bound). List these onto the column titled “Human Rights-based Innovations.”
- 14 Anticipate potential risks that may defeat each human rights norm, standard or principle when implementing the action. List potential risks onto the appropriate column of the exercise matrix.
- 15 Design safeguards to prevent the occurrence of potential risks and ensure the operation of each human rights norm, standard or principle. List safeguards onto the appropriate column of the exercise matrix.
- 16 Identify qualitative and quantitative indicators to measure the extent to which the action integrates each human rights norm, standard or principle. List indicators onto the appropriate column of the exercise matrix.

Part I. Human Rights-based Problem Analysis

Statement of Problem: *(What is the problem? What are the human rights dimensions of the problem?)*

Claimholders: *(Who are most affected? How are they affected? What are their interests? What are their vulnerabilities? Which human right(s) is(are) most at risk? What would motivate them to claim their rights? Are women affected by the problem in the same way as men? How? What are gender dimensions? Are children affected by the problem in the same way as adults? How? What are their particular vulnerabilities and disadvantages? Among claimholders, are there those who are more affected than others? Who? How are they affected?)*

Duty Bearers: *(Who are duty bearers? State/non-state? What are their capacities? What are their specific roles? What are their human rights obligations? Are duty bearers complying with their obligations? How? Why not? Which obligations are duty bearers complying with? Which obligations do duty bearers still need to comply with?)*

Other Actors: *(Who are the other actors? What are their interests? What are their capacities? What are their specific roles? What are their human rights responsibilities? Are the other actors complying with their human rights responsibilities? How? Why not? Which responsibilities are the other actors complying with? Which responsibilities do the other actors still need to comply with?)*

Situational Environment: *(Is there a relevant policy framework? What is the relationship between claimholders, duty bearers and other actors? How does one affect/relate with the other? Who holds the power? What kind of power? How is power felt?)*

Institution of Remedy: *(Which institution/s of remedy are most appropriate in this case? Why? Place ✓)*

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|--|--|
| <input type="checkbox"/> Formal Legal Protection | <input type="checkbox"/> Equitable Delivery of Justice |
| <input type="checkbox"/> Legal Advice, Assistance and Other Related Services | <input type="checkbox"/> Law and Justice Policy Reform |
| <input type="checkbox"/> Reform of (Formal) Justice Institutions | <input type="checkbox"/> Social Mediation |
| <input type="checkbox"/> Indigenous Justice Systems | <input type="checkbox"/> Restorative Justice Systems |
| <input type="checkbox"/> Alternative Dispute Resolution | <input type="checkbox"/> Capacity Development |
| <input type="checkbox"/> Advocacy and Social Mobilization | |

Part II. Applying the Human Rights Approach to Realizing EA2J

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
Centrality of the Human Person	<i>Are claimholders the central actor, active participant, owner, driver, director and beneficiary of justice actions? Are claimholders actively involved in understanding their problem and determining their solutions? Are claimholders treated humanely and with respect? Do claimholders exercise their rights responsibly?</i>	<i>How can all justice actions focus on claimholders?</i>			
Equal Access	<i>Are multiple dimensions of equal access addressed? How?</i>	<i>How can equal access be enhanced?</i>			
Institutions of Remedy	<i>Are institutions of remedy available, functioning in accord with human rights, culturally acceptable and rendering services with the highest standards of ethics, quality and professionalism?</i>	<i>How can institutions of remedy be strengthened?</i>			
Justice	<i>Does justice result in the full realization and enjoyment of human rights? Does justice prevent human rights violations? Does justice provide reparation to the victims? Does justice redistribute opportunities for the equal and nondiscriminatory enjoyment of all human rights? Does justice create opportunities for the equal and nondiscriminatory enjoyment of all human rights?</i>	<i>How can justice achieve the ends of human rights in a manner consistent with human rights norms, standards and principles?</i>			

Part III. Applying Specific Human Rights Norms, Standards and Principles

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
Independence and Rule of Law	<i>Are justice actors and institutions impartial? Are decisions based on facts and in accordance with law? Is there any improper influence or pressure?</i>	<i>How can independence and rule of law be guaranteed?</i>			
Participation and Inclusion	<i>What is the current level of claimholder participation in EA2J? How do claimholders participate?</i>	<i>What is the desired level of participation? How do you raise the level of participation?</i>			
Empowerment	<i>Who decides what EA2J action to take? Whose decisions are followed, adopted or implemented? What are the forms (hidden, visible, invisible), spaces (closed, invited, claimed/created), and places (local, national, regional) of power in the institution of remedy?</i>	<i>Which aspect of power (power to, power with, power from within) should be addressed? Which form of power should be addressed? By what space and place? Which dimension of empowerment (economic, human and social, political, cultural) should be addressed? Which empowerment approach should be utilized (agency or structural or both)?</i>			
Accountability	<i>Who takes responsibility for EA2J decisions and actions? How is accountability of all EA2J actors expressed?</i>	<i>How can accountability of all EA2J actors be strengthened?</i>			
Transparency	<i>Are claimholders kept aware of EA2J developments? How often? In what language?</i>	<i>What information is needed? In what form, language, media? When should information be released? How can the "veil of secrecy" be removed? How can corruption be avoided and eliminated?</i>			
Nondiscrimination	<i>Are there any prejudices, customs or other practices that prevent claimholders from EA2J?</i>	<i>How can discrimination be eliminated? How can past discrimination be addressed?</i>			

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
Equality	<i>What gender issues are involved? What cultural and traditional practices, or ways of life, obstruct women from EA2J? Does religion or custom impose practices or beliefs that interfere with EA2J? Do the roles women and men are expected to play in society and in the family impact on women's EA2J?</i>	<i>What clearly defined temporary special measures can address inequality? How can discrimination against women be eliminated? What changes are needed in the social and cultural patterns that lead to inequality and discrimination?</i>			
Equality Responsiveness	<i>Are EA2J actors and institutions sensitive to the rights of claimholders, the obligations of duty bearers and/or the interests of other actors? Are EA2J actors and institutions quick to respond?</i>	<i>How can EA2J actors and institutions be more open to claimholders? How can quicker, more sensitive, more appropriate responses be elicited?</i>			
Attention to Most Vulnerable	<i>Do EA2J actors and institutions pay special attention to those most vulnerable, particularly those with least or no access to justice?</i>	<i>What special measures can be taken to enhance equal access to justice for those most vulnerable?</i>			
Command Responsibility	<i>Are superior officers and officials held responsible for breaches committed by those under their authority? Is the principle of command responsibility effectively and functionally operational?</i>	<i>How can command responsibility be integrated in EA2J?</i>			
Equal Access to Court, Equal Protection of Law and Equality before Law	<i>Is there equal access, equality of arms and nondiscrimination? Is appropriate, effective, professional, ethical and free legal assistance readily available?</i>	<i>How can equality of arms be enhanced? How can free legal assistance be made more widely accessible?</i>			
Equity	<i>Are EA2J actors and institutions fair and equitable?</i>	<i>How can equity be guaranteed?</i>			
Full Realization of Human Rights, Respect for Human Rights and Human Dignity	<i>Does EA2J contribute to the full realization of all human rights?</i>	<i>How can human rights be fully enjoyed through EA2J?</i>			
Obligations of Conduct and of Result	<i>Do duty bearers comply with all their obligations of conduct and of result?</i>	<i>How can duty bearer's compliance with all their obligations of conduct and of result be strengthened?</i>			

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
Procedural Rights and Guarantees	<i>Are all procedural rights and guarantees in place? Are all procedural rights and guarantees respected, protected and fulfilled?</i>	<i>How can procedural rights and guarantees be integrated into EA2J?</i>			
Responsible Exercise of Human Rights	<i>Are claimholders aware of their human rights? Do claimholders exercise their rights responsibly?</i>	<i>How can claimholders exercise their human rights responsibly?</i>			
Right of Reparation	<i>Are there available redress mechanisms? Do claimholders enjoy their right of reparation? Are claimholders able to demand reparation?</i>	<i>How can claimholders claim their right of reparation? How can duty bearers comply with obligations arising from the right of reparation?</i>			

Sample Answers to the Exercise

Part I: Human Rights-based Analysis

Example 1

Statement of Problem: *(What is the problem? What are the human rights dimensions of the problem?)*

Dalit Women are discriminated, stigmatized in society as a result of deeply rooted social construction, defective and traditional value system of caste, class and gender that deprived them of opportunities for education and livelihood; they are not represented in Governance leading to exploitation, abuse and further feminization of poverty.

Claimholders:

Who are most affected? Dalit women

How are they affected? Because of discrimination, they are not enabled to have opportunities

What are their interests? To receive education, have employment/livelihood opportunities, political representation, own property (housing, land), to have a say in the control of their lives, family resources, decisions affecting their lives, to provide for their family, respect for their dignity, to have a choice.

What are their vulnerabilities? Caste, class, gender

Which human right(s) is(are) most at risk? Nondiscrimination, human dignity as a woman, equality of men and women

What would motivate them to claim their rights? Proper/appropriate/adequate education, information and the need to protect themselves, their children

Are women affected by the problem in the same way as men? How? What are gender dimensions? No, they experience further discrimination. Based on the gender perspective—they are discriminated simply because they are women and have been raised and live in a socially-construed environment where they are sexually objectified and commodified and where they are treated as second-class citizens or members of the community. They are further discriminated because they belong to the so-called lowest caste and class.

Are children affected by the problem in the same way as adults? How? What are their particular vulnerabilities and disadvantages? No. Children are more vulnerable and girl-children face more difficulties and vulnerabilities. There is a saying that 'educating daughters means watering the neighbor's plants.' This is a waste because if you spend for them, you are actually investing for others. This is why child marriages, which often happen in this community, have justification. There is no legal personality to seek redress.

Among claimholders, are there those who are more affected than others? Who? How are they affected? Girl-children of the Dalit women and those who are disabled among them are the most affected. Power relations between children and elders further compound the problem.

Duty Bearers:

Who are duty bearers? State/non-state?

STATE

Dalit commission, ministry in charge of women, children and social welfare, justice, law enforcement officers (police, immigration officers, etc.) national human rights commission, national women's commission, ministry of home affairs

Intergovernmental organization (United Nations mechanisms, bodies, agencies—UN women, subcommission on the status of women)

LOCAL GOVERNMENT

RELIGIOUS LEADERS (specially Hindu religious leaders because caste has been introduced by the Hindu religion)

NON-STATE

NGOs

Academia

Media

INGOs

What are their capacities? What are their specific roles? What are their human rights obligations? Are duty bearers complying with their obligations? How? Why not?

Core obligation (nondiscrimination etc.,)

Respect, protect, fulfill obligations of conduct and result

Which obligations are duty bearers complying with?

Obligation to respect; obligation of conduct (Nepal law prohibiting untouchability) yes
And obligation of conduct

Which obligations do duty bearers still need to comply with?

Obligation of result because the law is not translated into reality (5 percent political representation of women despite 52 percent of their general population is comprised of women)

Core obligation of nondiscrimination in fact/reality; obligation of result

Other Actors:

Who are other actors?

Community, other caste

What are their interests? What are their capacities? What are their specific roles? What are their human rights responsibilities?

Are other actors complying with their human rights responsibilities? How? Why not? Which responsibilities are other actors complying with? Which responsibilities do other actors still need to comply with?

Situational Environment: *(Is there a relevant policy framework? What is the relationship between claimholders, duty bearers and other actors? How does one affect/relate with the other? Who holds power? What kind of power? How is power felt?)*

Yes, the national law prohibiting untouchability. Uneven relationship brought about by deeply rooted beliefs and practice in the community. Power rests in the male belonging to the higher caste and those in government.

Institution of Remedy: *(Which institution(s) of remedy are most appropriate in this case? Why? Place ✓)*

All institutions must be activated in order to bring about a change in the culture of discrimination.

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| <input type="checkbox"/> Formal Legal Protection | <input type="checkbox"/> Equitable Delivery of Justice |
| <input type="checkbox"/> Legal Advice, Assistance and Other Related Services | <input type="checkbox"/> Law and Justice Policy Reform |
| <input type="checkbox"/> Reform of (Formal) Justice Institutions | <input type="checkbox"/> Social Mediation |
| <input type="checkbox"/> Indigenous Justice Systems | <input type="checkbox"/> Restorative Justice Systems |
| <input type="checkbox"/> Alternative Dispute Resolution | <input type="checkbox"/> Capacity Development |
| <input type="checkbox"/> Advocacy and Social Mobilization | |

Example 2

Statement of Problem: *(What is the problem? What are the human rights dimensions of the problem?)*

Problem: Discrimination against Dalit Women in Nepal

Human rights dimension of the problem:

- Discrimination
 - Social
 - Economic
 - Education
 - Caste
 - Class
 - Religious
 - Traditional practices
 - Marital life

Claimholders: *(Who are most affected? How are they affected? What are their interests? What are their vulnerabilities? Which human right(s) is(are) most at risk? What would motivate them to claim their rights? Are women affected by the problem in the same way as men? How? What are gender dimensions? Are children affected by the problem in the same way as adults? How? What are their particular vulnerabilities and disadvantages? Among claimholders, are there those who are more affected than others? Who? How are they affected?)*

Who are most affected: Dalit women and children, Badi women

How are they affected:

- Forced into prostitution
- Trafficking
- Bonded labour
- Social discrimination

- **Double Discrimination against Dalit Women**
 - ☞ Discrimination against Dalits in connection with using public places and facilities
 - ☞ Discrimination against Dalits in connection with equal access to natural resources
 - ☞ Discrimination in marital life
 - ☞ Discrimination in the field of social, religious and traditional practices
 - ☞ The need for effective legal framework against the discrimination against Dalits
 - ☞ Discrimination in connection with the place of residence (denial of residence on the basis of one belonging to the Dalit community)

Exclusion:

- Fair access to water
- Fair access to education
- Dalit teachers in schools
- Syllabus and school books that do not belittle and denigrate Dalits
- Limited opportunities to work

Duty Bearers: (Who are duty bearers? State/non-state? What are their capacities? What are their specific roles? What are their human rights obligations? Are duty bearers complying with their obligations? How? Why not? Which obligations are duty bearers complying with? Which obligations do duty bearers still need to comply with?)

Duty bearers:

State actors

- Government
- Parliament – capacity to enact laws
- Executive – enforce and implement laws
 - ☞ Ministry of Women and Social Welfare
 - ☞ Ministry of Law and Justice
 - ☞ Ministry of Home Affairs
 - ☞ Ministry of Education and Health
 - ☞ Social Welfare Council
 - ☞ National Women Commission
 - ☞ National Dalit Commission

Obligation under Constitution and laws of Nepal

Obligation under UN Conventions including CEDAW and CERD

Compliance of obligations: No

Because they are not enforcing the laws, not implementing special measures.

Why not? caste system, cultural taboos, social norms and values, less pressure to state institution by international communities, civil society not exerting enough pressure

- Judiciary
- UN institution

Duty Bearers: (Who are duty bearers? State/non-state? What are their capacities? What are their specific roles? What are their human rights obligations? Are duty bearers complying with their obligations? How? Why not? Which obligations are duty bearers complying with? Which obligations do duty bearers still need to comply with?)

Non-state actors

- Political parties
- Mass media
- Religious leaders
- CBOs and NGOs
- Academia

Roles of non-state actors

- Political parties – understand the problem, they can bring changes, they can enforce, they can make people aware, they can raise voices, they can develop strategies, launch massive mass campaign, they have representatives in parliament
- Mass media – run campaign, report the issue
- Religious leaders – they can interpret religion in a progressive manner
- CBOs and NGOs – they can lobby, do advocacy, networking for social and progressive reforms
- Academia – They can conduct research and expert feedback

Which obligations are duty bearers complying with?

Duty bearers have signed the international instruments, made constitution and laws

Which obligations do duty bearers still need to comply with?

Implementation
Sensitization
Policy Framework
Budget

Other Actors: *(Who are other actors? What are their interests? What are their capacities? What are their specific roles? What are their human rights responsibilities? Are other actors complying with their human rights responsibilities? How? Why not? Which responsibilities are other actors complying with? Which responsibilities do other actors still need to comply with?)*

INGOs – influence the government and civil society
Donors – develop and allocate resources
UN institution – call upon fulfillment of obligations through their specific committees
Employers – provide decent jobs and favorable working conditions including fair wages
Trade unions – create a bridge between state and non-state actors
Dalit organizations – to unite communities for the common cause

Situational Environment: *(Is there a relevant policy framework? What is the relationship between claimholders, duty bearers and other actors? How does one affect/relate with other? Who holds power? What kind of power? How is power felt?)*

- Yes
- The relationship is uneven, not very strongly materialized, obligations are not fulfilled.
- Situation continues
- Duty bearers hold powers
- Power of enforcement, enacting legislation, allocation of budget and resources, enacting enabling environment
- Inaction or not fulfilling obligations

Institution of Remedy: *(Which institution(s) of remedy are most appropriate in this case? Why? Place ✓)*

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|--|--|
| <input type="checkbox"/> Formal Legal Protection | <input type="checkbox"/> Equitable Delivery of Justice |
| <input type="checkbox"/> Legal Advice, Assistance and Other Related Services | <input type="checkbox"/> Law and Justice Policy Reform |
| <input type="checkbox"/> Reform of (Formal) Justice Institutions | <input type="checkbox"/> Social Mediation |
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| <input type="checkbox"/> Alternative Dispute Resolution | <input type="checkbox"/> Capacity Development |
| <input type="checkbox"/> Advocacy and Social Mobilization | |
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Sample Answers to the Exercise

Part II: Applying the Human Rights Approach to Realizing EA2J.

Example 1

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
Centrality of the Human Person	<p><i>Are claimholders the central actor, active participant, owner, driver, director and beneficiary of justice actions? Are claimholders actively involved in understanding their problem and determining their solutions? Are claimholders treated humanely and with respect? Do claimholders exercise their rights responsibly?</i></p> <p>They are not the central actor. They are not active participants but only labor provider. They are not owners, drivers and directors, but they are beneficiary of justice action.</p> <p>Actively understanding their problem, but for their solution, they need political representation in each level.</p> <p>Not treated humanely or with respect</p> <p>They do exercise rights but might not be responsibly.</p>	<p><i>How can all justice actions focus on claimholders?</i></p> <p><i>To begin affirmative action for Dalit women in each level, education, awareness of their rights, gender perspective for the people, empowerment, campaign for equality in social culture and gender</i></p>	The member of higher castes will resist this attempt.	<ul style="list-style-type: none"> • Strong justice system to protect the crime against the Dalit, especially for women and children • To organize the Dalit into solid groups • Involve member of higher caste into the movement 	<ul style="list-style-type: none"> • Have a justice system that protect the Dalits • Increase solidarity to protect their interest with the Dalits
Equal Access	<p><i>Are multiple dimensions of equal access addressed? How?</i></p> <p>No, because there is no policy at all to protect the Dalits</p>	<p><i>How can equal access be enhanced?</i></p> <p>Use law regulation for to protect the Dalits</p>	The member of higher caste will resist this attempt.	<ul style="list-style-type: none"> • Social mobilization and campaign for Dalit interest • Capacity building for Dalit community • To lobby to high politicians about protecting the Dalit women 	<ul style="list-style-type: none"> • Group for social solidarity to protect Dalit interest • More knowledge on community rights • Number of politicians in sympathy for Dalit interest

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
<p>Institutions of Remedy</p>	<p><i>Are institutions of remedy available, functioning in accord with human rights, culturally acceptable and rendering services with the highest standards of ethics, quality and professionalism?</i></p> <p>Yes, there are institutions of remedy available. For example: The declaration on the Elimination of Violence Against Women that provides the victims with rehabilitation, assistance in child care and maintenance, treatment, counseling, and health social services, facilities and programs.</p>	<p><i>How can institutions of remedy be strengthened?</i></p> <p>To ratify the Declaration on the Elimination of Violence Against Women by the government into the state law</p>	<p>The state will not respond to ratify the Declaration</p>	<ul style="list-style-type: none"> • Lobby to international agency to approach the government for the ratification • International and national campaign to push for ratification 	<ul style="list-style-type: none"> • Involvement of international agency • Number of people giving positive response to the campaign
<p>Justice</p>	<p><i>Does justice result in the full realization and enjoyment of human rights? Does justice prevent human rights violations? Does justice provide reparation to the victims? Does justice redistribute opportunities for the equal and nondiscriminatory enjoyment of all human rights? Does justice create opportunities for the equal and nondiscriminatory enjoyment of all human rights?</i></p> <p>For now, still not realized and enjoyed in this kind of campaign; still needs a lot of time for realization.</p> <p>Justice may prevent human rights violation when the justice infrastructure is already available in the country. Justice can provide reparation to the victims when procedures are properly followed. Justice can redistribute opportunities for equal enjoyment of all human rights only when all parts of the society, including all its members, work together to fulfill those rights.</p>	<p><i>How can justice achieve the ends of human rights in a manner consistent with human rights norms, standards and principles?</i></p> <p>Justice can achieve human rights ends when all human actors, justice system, and other social and cultural systems work in symphony to reach the ends.</p>	<ul style="list-style-type: none"> • Some parts of society that enjoy injustice would disagree to any campaign that tries to dislodge the advantage from them. 	<ul style="list-style-type: none"> • Attempts to campaign for a win-win solution where someone's gain is not necessarily another person's pain. 	<ul style="list-style-type: none"> • The number of societal members and legal instruments both at national and international levels committed to reach human rights ends are improving.

Example 2

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
<p>Centrality of the Human Person</p>	<p><i>Are claimholders the central actor, active participant, owner, driver, director and beneficiary of justice actions? At this point, claimholders are not the central actor (but they should be!).</i></p> <p>Are claimholders actively involved in understanding their problem and determining their solutions? No. They are always talking about government implementing laws or society changing their attitude.</p> <p>Are claimholders treated humanely and with respect? No.</p> <p>Do claimholders exercise their rights responsibly? They aren't even able to exercise their rights at all.</p>	<p><i>How can all justice actions focus on claimholders?</i></p> <p>Give the claimholders quality education (e.g., increase in scholarships and number of available internships) & productive employment</p>	<ul style="list-style-type: none"> • Conflict between the higher classes & the Dalit • Pre-conceived notions about the Dalit still exist; hostility from other classes 	<ul style="list-style-type: none"> • Create massive awareness raising, media campaign 	<ul style="list-style-type: none"> • Number of Dalit women having more access to education, employment, participation • Literacy rate • Increased number of scholarship, job opportunities • Increased number of participation of Dalit women in planning & decision making
<p>Equal Access</p>	<p><i>Are multiple dimensions of equal access addressed? How?</i></p> <p>No.</p> <p>Physical – limited access to places</p> <p>Economic – limited types of jobs</p> <p>Information – limited access to education</p>	<p><i>How can equal access be enhanced?</i></p> <ul style="list-style-type: none"> • Temporary special measures for the Dalit: reserved seats for the Dalit women in state mechanisms, schools, employment 	<ul style="list-style-type: none"> • Threat from the community; other groups may object • Special vulnerability of Dalit women • Efforts might be understood by the community as charity/pity/overdoing something, thus community will be un-receptive 	<ul style="list-style-type: none"> • Create awareness within the Dalit community (women must be treated as human) 	<ul style="list-style-type: none"> • Increased political representation • Access to education, employment is enhanced • Increased political, social, cultural participation

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
<p>Institutions of Remedy</p>	<p><i>Are institutions of remedy available, functioning in accord with human rights, culturally acceptable and rendering services with the highest standards of ethics, quality and professionalism?</i></p> <p>Not clear as to how the government is functioning, but based on given facts, Dalit women seem to be unable to seek redress from anywhere.</p>	<p><i>How can institutions of remedy be strengthened?</i></p> <ul style="list-style-type: none"> • Review rules governing institutions of remedy to make sure that they are in accord with human rights and culturally acceptable standards • Ensure public participation in their decision making process; external supervision • Ensure that existing institutions of remedy are accessible to ALL classes of society 	<ul style="list-style-type: none"> • Lack of funding • Either lack of interest OR strong opposition from main-stream society; lack of political will 	<ul style="list-style-type: none"> • Have UN bodies & other international stakeholders come up with observations, comments, recommendations calling for reform (to address opposition) 	<ul style="list-style-type: none"> • In-creased special measures • In-creased number of remedy mechanisms
<p>Equal Access</p>	<p><i>Does justice result in the full realization and enjoyment of human rights? Not necessarily. Ignorance excludes the Dalit women from the rest of society. Awareness of rights is needed.</i></p> <p><i>Does justice prevent human rights violations? It should.</i></p> <p><i>Does justice provide reparation to the victims? It should.</i></p> <p><i>Does justice redistribute opportunities for the equal and nondiscriminatory enjoyment of all human rights? It should.</i></p> <p><i>Does justice create opportunities for the equal and nondiscriminatory enjoyment of all human rights? It should.</i></p>	<p><i>How can justice achieve the ends of human rights in a manner consistent with human rights norms, standards and principles?</i></p> <ul style="list-style-type: none"> • Basic standard for prosecutors & judges should be implemented (independence transparency, accountability) 	<ul style="list-style-type: none"> • Judicial incompetence • Political influence/pressure 	<ul style="list-style-type: none"> • Judicial & legal mechanisms to act as check and balance 	<ul style="list-style-type: none"> • In-creased number of cases brought before the court and other non-formal mechanisms • Judicial interpretation in favor of human rights

Part III. Applying Specific Human Rights Norms, Standards and Principles

Example 1

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
Participation and Inclusion	<p><i>What is the current level of claimholder participation in EA2J? How do claimholders participate?</i></p> <p>Very low political representation</p>	<p><i>What is desired level of participation? How do you raise level of participation?</i></p> <ul style="list-style-type: none"> • That they are able to express their opinions, problems, aspirations substantially; that their opinions are taken into consideration and acted upon • Education • Awareness raising (including media campaign) • Capacity building • Advocacy; lobbying • Mainstreaming of human rights 	<ul style="list-style-type: none"> • Lack of commitment from the community and on the part of the duty bearers • Patri-archal mindset 	<ul style="list-style-type: none"> • Regular monitoring • Continuous follow-up • Networking; bridging community gaps 	<ul style="list-style-type: none"> • Increase in political representation • Regular capacity building events • Increase in participation in cultural events

Example 2

Human Rights Approach to Realizing EA2J	Existing Practice	Human Rights - based Innovations	Potential Risks	Safeguards	Indicators
<p>Empowerment</p>	<p><i>Who decides what EA2J action to take?</i></p> <ul style="list-style-type: none"> • <i>The duty bearers and other actors</i> <p><i>Whose decisions are followed, adopted or implemented?</i></p> <ul style="list-style-type: none"> • <i>The duty bearers with the inclusion of the Dalits</i> <p><i>What are forms (hidden, visible, invisible), spaces (closed, invited, claimed/created) and places (local, national, regional) of power in the institution of remedy?</i></p> <ul style="list-style-type: none"> • Advocacy and social mobilization • Law reform 	<p><i>Which aspect of power (power to, power with, power from within) should be addressed?</i></p> <ul style="list-style-type: none"> • Power from within claim holders <p><i>Which form of power should be addressed? By what space and place?</i></p> <ul style="list-style-type: none"> • Political participation: election, hearing their voices <p><i>Which dimension of empowerment (economic, human and social, political, cultural) should be addressed?</i></p> <ul style="list-style-type: none"> • Empowerment is holistic; if we choose one, we can start with social empowerment (within themselves) <p><i>Which empowerment approach should be utilized (agency or structural or both)?</i></p> <ul style="list-style-type: none"> • Structural, because with one, there will be development of methods; integration; nothing is detached; one intervention will lead to the other 	<ul style="list-style-type: none"> • Unclear aims in realization of the claims; • Access of the claimholders to institution of remedies; • Conflict in collective interests; • Lack of motivation; • Access to information; • Risk of security 	<ul style="list-style-type: none"> • Knowledge generation/education; • Enhance capacity or institutional development ; • Strengthen the motivation and access to information; • reduce or limit the gaps between institutional remedies ; • engagement of duty bearers; build or establish security and platform for self-expression 	<ul style="list-style-type: none"> • Improved standard of living (literacy level; economic access) • Monitoring and compliance of capacity building regulations • Extent of fulfillment of obligations and conduct; • Advocacy programs in different levels to fill the existing gaps • lower incidence of all forms of violence

SESSION **2**

Designing Human Rights Based EA2J Projects

Objective

At the end of this session, participants should be able to design human rights-based EA2J projects.

Time

8:15 am – 4:00 pm

Session Guide

This session presents various human rights tools, processes and methodologies that may be utilized to develop and manage human rights-based EA2J projects. It shows how human rights norms, standards and principles may be integrated into the design and development of human rights-based EA2J projects. This session is divided into three activities:

- The session begins with a lecture discussion with an open forum. The lead facilitator shall introduce a human rights-based step guide to develop and manage human rights-based EA2J projects, present various human rights based tools, processes and methodologies, and discuss the human rights-based logical framework (1 hour).
- Following the lecture discussion and open forum, participants, working in small groups and based on the group output of the previous exercise, shall develop a human rights-based logical framework for an EA2J project, by accomplishing **Exercise 13: Designing Human Rights-based EA2J Projects** (3 hours).
- Thereafter, all small groups shall convene in plenary, where each group shall present their human rights-based logical frameworks. Comments shall be solicited from other small groups and the lead facilitator (2 hours).

Exercise

Exercise 13: Designing Human Rights-based EA2J Projects

Reference Sheets

Reference Sheet 9-A: Developing and Managing Human Rights-based EA2J Projects

Reference Sheet 9-B: Available Human Rights-based Tools and Methodologies in Developing and Managing Human Rights-based EA2J Projects

Reference Sheet 10: The Experience of the Asian Consortium for Human Rights-based Access to Justice

EXERCISE **13**

Designing Human Rights-based EA2J Projects

THIS EXERCISE allows participants to design a human rights-based EA2J project. This exercise builds upon the previous exercise.

Instructions: Together with the members of your group:

- 1 Review your group’s output in Exercise 12. Based on your group’s outputs, and the comments from the training team and other participants, choose one concrete action from the column entitled “**human rights-based innovations,**” which you can develop into a project.
- 2 Design a project using the human rights-based logical framework developed by the National Economic and Development Authority of the Philippines.²²⁹

HRBA MODIFIED ICC LOGFRAME ICC PE FORM NO. 6

	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	KEY ASSUMPTIONS/ RISK
1. GOAL	Indicate verifiable indicators, setting specific targets	Determine other actors as sources of data, other than duty bearers and claimholders	Identify factors not within the control of duty bearers that restrict addressing human rights
Link goal to specific human rights and focus on the most vulnerable	Relate to human rights entitlements such as availability, accessibility and affordability		Identify factors not within the control of other actors that restrict addressing human rights
2. PURPOSE			
Should contribute to the progressive realization of right(s) most at risk			
3. OUTPUTS			
Deliverables should include development of the capacity of claimholders			
4. ACTIVITIES			
Should ensure participatory, inclusive and transparent processes for duty bearers and claimholders.			

²²⁹ National Economic and Development Authority Sector Staff. May 25-28, 2010. Integration of RBA Instruments/Materials into Development Plans, Programs and Activities. Subic, Zambales, Philippines.

Sample Human Rights-based Logical Framework for EA2J Project:

Project Name: Access to Education for Dalit Women and Children

Duration: 3 years

	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	KEY ASSUMPTIONS/RISK
1. GOAL	Indicate verifiable indicators, setting specific targets	Determine other actors as sources of data, other than duty bearers and claimholders	Identify factors not within the control of duty bearers that restrict addressing human rights
The right to quality basic education for Dalit women and their children is realized	<ol style="list-style-type: none"> 1. Annual enrollment rate in formal schools of Dalit children increased 2. Functional literacy of Dalit women increased 	<ol style="list-style-type: none"> 1. Reports of Ministry of Education 2. Records of schools 3. Record of NGOs 4. Baseline survey 	<p>Assumptions: Attitudes positively change among law enforcement agencies, educational institutions non-Dalit and Dalit community Support of government</p> <p>Risks: Dropout of Dalit women from trainings and school to work Unstable political situation Natural disaster</p>
2. PURPOSE			
Equitable access to formal and non-formal education ensured	<ol style="list-style-type: none"> 1. Physical distance of schools from community decreased 2. Participation of Dalit children in extra-curricular activities increased 3. Participation of Dalit women in community decision-making process increased 	<ol style="list-style-type: none"> 1. Reports of Ministry of Education 2. Records of schools 3. Record of NGOs 4. Baseline survey 5. Community meeting resolutions and minutes 	<p>Assumptions: Educational policies are in favor of Dalit women and children; Attitudes positively change among educational institutions non-Dalit and Dalit community</p> <p>Risks: Dropout of Dalit women from trainings and school to work Unstable political situation Natural disaster</p>
3. OUTPUTS			
<ol style="list-style-type: none"> a. Awareness-raising campaign for realizing human rights and legal rights of Dalit community initiated b. Capacity-building events for Dalit women and children initiated c. Attitudes of law enforcement agencies towards the Dalit community positively changed 	<ol style="list-style-type: none"> 1. Segregation between Dalit and non-Dalit community decreased 2. Number of Dalit women engaging in forms of work other than traditional occupations assigned to them 3. The number of Dalit women seeking for legal redress increased 	<ol style="list-style-type: none"> 1. Records of schools 2. Record of NGOs 3. Baseline survey 4. Training reports 5. Conference/workshop reports 6. Governmental reports 7. Publications 6. International conventions 	<p>Educational policies are in favor of Dalit women and children; Attitudes positively change among governmental officials, educational institutions non-Dalit and Dalit community</p> <p>Risks: Dropout of Dalit women from trainings and school to work Unstable political situation Natural disaster</p>

	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	KEY ASSUMPTIONS/RISK
4. ACTIVITIES			
<p>For output a. Awareness-raising campaign for realizing human rights and legal rights of Dalit community initiated:</p> <ul style="list-style-type: none"> - Formation of Dalit women children groups - Organize regular meeting of the groups - Interaction with non-Dalit and Dalit community - Organize conferences on the rights of Dalit women and children - Interaction with school authorities 			
<p>For output b. Capacity- building events for Dalit women and children initiated</p> <ul style="list-style-type: none"> - Trainings on human rights: <ul style="list-style-type: none"> • International Conventions in relation to Dalit women rights and child rights, e.g. CEDAW and CRC; • Domestic legal framework in relation to Dalit women rights and child rights • Publications on Dalit women rights and child rights • Workshop with the parliamentarians on Dalit women rights and child rights • Interaction with media • Organize events on Human Rights Day and Women's Day and Prevention of Violence Against Women Day. 			
<p>For output c. Attitudes of law enforcement agencies towards the Dalit community positively changed</p> <ul style="list-style-type: none"> - Workshop with law enforcement agencies (police, courts, governmental officials from Ministry of Education and Ministry of Women) on Dalit women rights and child rights - Training among lawyers and human rights activists on legal protection of Dalit Women and Children - Advocacy with the Ministry of Education on access to education of Dalit women and children 			

REFERENCE SHEET 9-A

Developing and Managing Human Rights-based EA2J Projects

HUMAN RIGHTS-based EA2J projects are generally of two kinds: *projects directed at enhancing equal access to justice* and *projects directed at redressing injustice*.

Projects directed at enhancing equal access to justice address the human rights standards. These are nondiscrimination, physical accessibility, economic accessibility, linguistic accessibility, information accessibility, availability, cultural acceptability and quality of formal and non-formal institutions of remedy. These standards also include respect for human rights, responsible exercise of human rights, procedural rights and guarantees, obligations of conduct and obligations of result, and the principles of accountability, attention to most vulnerable, command responsibility, empowerment, equality, equal protection of the law, equality before the law, equity, human dignity, independence, participation, proportionality, responsiveness, rule of law and transparency.

One example of projects directed at enhancing equal access to justice is institutional reform towards equitable delivery of justice (e.g. justice sector reform judiciary, prosecution, law enforcement, corrections). Another is the expansion of the court/legal system (such as small claims courts, family courts, land courts, special courts, etc.). Policy reform is also another project that enhances equal access to justice. Activities under this project may include lobbying/proposing/supporting new legislation or amendments to existing legislation, advocating adoption of special procedures, among others. Other examples include infrastructure (e.g., construction of court buildings, computerization and data management, upgrading of equipment, etc.), and capacity development (e.g., training of judges, prosecutors, lawyers, paralegal training, community-based human rights seminars, etc.).

Projects directed at redressing injustice are those that seek reparation for and prevention of violations of human rights and/or the redistribution and creation of opportunities towards the equal and nondiscriminatory enjoyment of human rights by all. These projects promote respect for human rights and adherence to obligations of conduct and of result. They advance the responsible exercise of human rights, the right of reparation, the rights of equal access to courts, equal protection of the law and equality before the law, and related procedural rights and guarantees. They also promote the principles of accountability, attention to most vulnerable, command responsibility, empowerment, equality, equity, human dignity, independence, nondiscrimination, participation, proportionality, responsiveness, rule of law and transparency.

Projects directed at redressing injustice include, among others, formal legal protection (e.g., legal aid, supporting pro bono work, public interest litigation, supporting paralegals, supporting community efforts to file cases, etc.), and law and justice reform (e.g. lobbying/proposing/supporting new legislation or amendments to existing legislation, advocating adoption of special

procedures, supporting parliamentary and citizen oversight, etc.). This type of projects also promotes alternative dispute resolution (e.g. supporting arbitration, mediation and negotiations, etc.), social mediation (e.g. supporting citizen-state dialogues, inquiries, panels, research, etc.), indigenous justice (e.g. working with indigenous peoples, etc.), and restorative justice (e.g., supporting depenalization, etc.). They advance advocacy and social mobilization (e.g. supporting campaigns and/or communities, organizing communities, supporting cooperatives, etc.) and capacity development (e.g. legal information and public awareness, primers, community-based human rights seminars and workshops, paralegal training, enhancing negotiations skills, etc.).

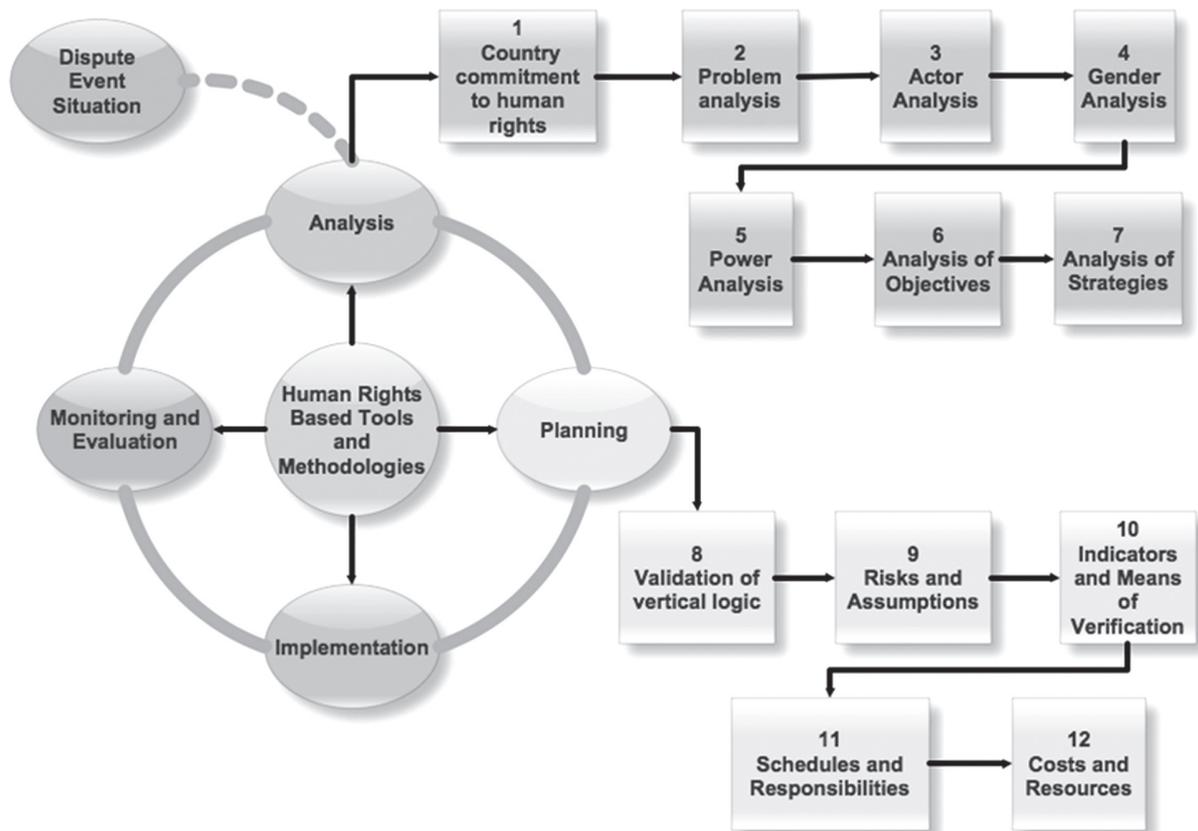
A comparative table of human rights norms, standards and principles relevant to the two generic types of human rights-based EA2J projects is presented below:

Comparative Table of Human Rights Standards, Norms and Principles Relevant to EA2J Projects

Human Rights Standards, Norms and Principles Relevant to Projects Directed at Enhancing Equal Access to Justice	Human Rights Standards, Norms and Principles Relevant to Projects Directed at Redressing Injustice
Accountability	Accountability
Attention to Most Vulnerable	Attention to Most Vulnerable
Availability	Command Responsibility
Command Responsibility	Creation of Opportunities for Equal and Nondiscriminatory Enjoyment of All Human Rights
Cultural Acceptability	Empowerment
Economic Access	Equal Protection of Law
Empowerment	Equality
Equal Access	Equality Before Law
Equal Access to Courts	Equity
Equal Protection of Law	Full Realization and Enjoyment of All Human Rights
Equality	Human Dignity
Equality before Law	Independence
Equity	Nondiscrimination
Human dignity	Obligations of Conduct
Independence	Obligations of Result
Information Access	Participation
Linguistic Access	Prevention of Human Rights Violations
Nondiscrimination	Procedural Rights and Guarantees
Obligations of Conduct	Proportionality
Obligations of Result	Redistribution of Opportunities for Equal and Nondiscriminatory Enjoyment of All Human Rights
Participation	Reparation for Human Rights Violations
Physical Access	Respect for Human Rights
Procedural Rights and Guarantees	Responsible Exercise of Human Rights
Proportionality	Responsiveness
Quality	Right of Reparation
Respect for Human Rights	Rule of Law
Responsible Exercise of Human Rights	Transparency
Responsiveness	
Rule of Law	

The development and management of human rights-based EA2J projects involves four stages with multiple steps where a variety of human rights-based tools and methodologies developed by development and human rights practitioners may be applied. These four stages, more often than not, are preceded by a dispute, event or situation, which acts as the proximate reason for the development of a particular human rights-based EA2J project.

Stages and Steps: Developing and Managing Human Rights-based EA2J Projects



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The following step guide may assist the development and management of human rights-based EA2J projects. The step guide follows the logical framework approach widely used within donor agencies.

Step Guide: Developing Human Rights-based EA2J Projects

Stage	Steps	Available Human Rights-based Tools and Methodologies
Analysis	Step 1. Examine the country's commitment to human rights by reviewing the country's human rights framework	RMAP's Human Rights and Domestic Legal Framework Checklists AHRC's Situational Analysis
	Step 2. Define the problem in human rights terms	Cross-temporal and Variance Statistical Analysis UN's Rights-based Causality Analysis using LFA's Problem Tree SIDA's LFA-AI Situation Tree Care's Causal Responsibility Matrix Diokno's Symptom-Cause-Effect Tool of Analysis
	Step 3. Understand the actors, their human rights, responsibilities, obligations and duties	NEDA's Human Rights Checklist 9 UN's Role Pattern and Capacity Gap Analysis SWOT Analysis Stakeholder Analysis Matrix
	Step 4. Consider gender dimensions, issues and concerns in the context of equality and nondiscrimination	ILO's Participatory Gender Audit
	Step 5. Assess power dynamics in terms of the realization of human rights, adherence to human rights obligations and duties, exclusion, vulnerability, injustice and discrimination	Gaventa's Power Cube
	Step 6. Plot goals and objectives in human rights terms then decide which goals and objectives are best suited to enhance equal access to justice or redress injustice	UN's HRBA to Results-based Programme Planning SIDA's LFA-AI Goal Tree Theis' Goal-based Planning Tool AHRC's Core Body of Objectives Diokno's Rights-based Objectives Setting Tool
	Step 7. Choose which of the problems, goals and objectives should be addressed, ensuring that the choice is dependent upon those that best support the incorporation of human rights norms, standards and principles	OHCHR's Process Guidelines Risk Analysis
Planning	Step 8. Set the project's goal (or impact), purposes (or outcomes), outputs (or results), and activities in human rights terms and validate the vertical logic	NEDA's Human Rights-based Logical Framework Matrix
	Step 9. Define risks and assumptions in the context of human rights and design appropriate safeguards	Risk Analysis
	Step 10. Set indicators and targets and identify means and sources of verification guided by relevant human rights norms, standards and principles	Andersen and Sano's Human Rights Indicators of Conduct and of Result Sano and Lindholt's Human Rights Commitment Indicators OHCHR's Configuration of Structural, Process and Outcome Indicators Hunt's Aligning Development Indicators with Human Rights
	Step 11. Schedule activities, set milestones and identify specific responsibilities and persons responsible	None
	Step 12. Estimate budgetary requirements and other inputs and resources	None

Stage	Steps	Available Human Rights-based Tools and Methodologies
Implementation	Step 13. Implement projects while ensuring participation, accountability, nondiscrimination, transparency, human dignity, empowerment and rule of law	None
Monitoring and Evaluation	Step 14. Track the project as it is being implemented against relevant human rights norms, standards and principles	OHCHR's Principles of Monitoring and Accountability WB's Social Guarantees Framework Save the Children's Global Impact Monitoring Action Aid Bangladesh's Planning Implementation Framework Analysis Diokno's Rights-based Monitoring and Evaluation Strategy
	Step 15. Periodically, and upon completion, assess the project's performance in relation to human rights norms, standards and principles	OHCHR's Principles of Monitoring and Accountability WB's Social Guarantees Framework Save the Children's Global Impact Monitoring Action Aid Bangladesh's Planning Implementation Framework Analysis Diokno's Rights-based Monitoring and Evaluation Strategy

* See Reference Sheet 9-B for a description of available human rights-based tools and methodologies cited in the step-guide.

Stage 1: Analysis

Analysis forms the basis for the development of any project. Analysis links a dispute, event, situation or problem directly with human rights and considers the extent to which human rights are realized, obligations are complied with, and justice is enjoyed. Analysis is:

- *participatory* - pursued with the free and active involvement of claimholders, duty bearers and other actors)
- *accountable* - examines the extent to which human rights are responsibly exercised and enjoyed by claimholders, human rights obligations are complied with by duty bearers, and human rights responsibilities are observed by other actors
- *nondiscriminatory* - scrutinizes the impact of the situation or problem on individuals and groups distinguished by the prohibited grounds of discrimination
- *transparent* - based on comprehensive and factual data and information available and accessible to all involved in a timely manner
- *focused on human dignity* - pays close attention to the problems or situation of those who least enjoy human rights or whose human rights are most at risk
- *empowering* - delves into the relations and dynamics of power operating at different levels and appraises the effects of power on the problem or situation, and
- *equitable* - fair and balanced and presents both the positive and negative dimensions of the problem or situation.²³⁰

²³⁰ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines

Analysis consists of seven steps:

Step 1. Examine the country's commitment to human rights by reviewing the country's human rights framework.

For projects directed at enhancing equal access to justice, pay special attention to the following:

- those human rights treaties ratified by the country,
- *Concluding Observations* or comments on country reports submitted under reportorial obligations of human rights treaties of treaty monitoring bodies,
- *Views* or decisions on communications or complaints filed by victims of treaty monitoring bodies, and other customarily binding human rights instruments,
- provisions of the Constitution or fundamental law, national laws, rules, regulations, administrative and executive orders, ordinances and other local government issuances, and jurisprudence that relate to the multiple dimensions of accessibility, availability, cultural acceptability and quality of institutions of remedy, and relevant human rights principles, standards and norms.

For projects directed at redressing injustice, pay special attention to:

- those human rights treaties ratified by the country,
- *Concluding Observations* of treaty monitoring bodies,
- *Views* of treaty monitoring bodies, and
- other customarily binding human rights instruments, provisions of the Constitution or fundamental law, national laws, rules, regulations, administrative and executive orders, ordinances and other local government issuances, and jurisprudence that relate to human rights in general and relevant human rights principles, standards and norms.

Domestic laws or processes guide countries in their treatment of international human rights law. When examining a country's commitment to human rights, it then becomes important to also examine the way that the country treats international human rights law. RMAP's *Human Rights Checklists* or AHRC's *Situational Analysis* may assist the determination of a country's commitment to human rights.

Step 2. Define the problem in human rights terms. Remember to apply human rights standards and norms drawn from the country's human rights framework, as well as the principles of *participation, accountability, nondiscrimination, transparency, human dignity, empowerment* and *rule of law*.

For projects directed at enhancing equal access to justice, define the problem relative to the multiple dimensions of accessibility and to the availability, cultural acceptability and quality of institutions of remedy and relevant human rights principles, standards and norms.

For projects directed at redressing injustice, define the problem relative to enjoyment or non-enjoyment of human rights, particularly the right of reparation, compliance or non-compliance with human rights obligations of conduct and of result, inequality, exclusion, injustice and discrimination and relevant human rights principles, standards and norms.

Defining the problem in human rights terms may be accomplished through any of the following tools and methodologies: *Cross-temporal and Variance Statistical Analysis*, *UN's Rights-based Causality Analysis using LFA's Problem Tree*, *SIDA's LFA-AI Situation Tree*, *Care's Causal Responsibility Matrix* and *Diokno's Symptom-Cause-Effect Tool of Analysis*.

Step 3. Understand the actors, their human rights, responsibilities, obligations and duties. The human person is at the center of all EA2J interventions. Understanding who is affected, how and why they are affected, how they relate to others, how others and their actions impact on the quality of life of those affected, helps design projects that enhance equal access to justice or redress injustice.

For projects directed at enhancing equal access to justice, identify those actors involved with the multiple dimensions of accessibility and the availability, cultural acceptability and quality of institutions of remedy; pay special attention to:

- Those with least or no access to justice (claimholders): understand who they are, what their situation is, the barriers they face in accessing justice, their special characteristics, vulnerabilities and disadvantages, their value systems, their capacities, strengths and weaknesses as individuals and as members of groups. There is also a need to know which human rights they enjoy and which human rights are at risk of deprivation. The focus of the EA2J intervention should be those claimholders with little or no access to justice.
- Those responsible for ensuring the multiple dimensions of accessibility, availability, cultural acceptability and quality of institutions of remedy (duty bearers). Understand who they are, whether they address the barriers to equal access to justice, how, and why not (if they do not address the barriers to equal access to justice), their capacities, strengths and weaknesses as individuals and as institutions. It is also important to understand their value systems, their formal and informal environment (laws, policies, rules, practices, existing regulatory and other frameworks, etc.), their human rights obligations of conduct and of result, and the extent to which they comply with their human rights obligations.
- Other actors whose interests or actions impact positively or negatively upon equal access to justice. Understand who they are, their interests and motives in facilitating or hindering equal access to justice and their relationships to and power and influence over claimholders and duty bearers.

For projects directed at redressing injustice, carefully consider whether claimholders enjoy their human rights, particularly the right of reparation, whether duty bearers adhere to human rights obligations of conduct and of result, and whether other actors responsibly exercise their rights and faithfully comply with their duties as they promote their interests and concerns. Pay special attention to:

- Those who suffer injustice (claimholders). Understand who they are and what their situation is. Know the barriers they face in enjoying and exercising their human rights, their special characteristics, vulnerabilities and disadvantages. Their value systems, their capacities,

strengths and weaknesses as individuals and as members of groups should also be deeply understood, as well as which human rights they enjoy or are at risk of deprivation. The focus of the EA2J intervention among claimholders should be those who suffer injustice most.

- Those responsible for ensuring the progressive realization of human rights (duty bearers). Understand who they are and their capacities, strengths and weaknesses as individuals and as institutions. Know their value systems, their formal and informal environment (laws, policies, rules, practices, existing regulatory and other frameworks, etc.), their human rights obligations of conduct and of result and the extent to which they comply with their human rights obligations.
- Other actors whose interests or actions impact positively or negatively upon the enjoyment of human rights. Understand who they are, their interests and motives in relation to the rights of claimholders and obligations of duty bearers, and their relationships to and power and influence over claimholders and duty bearers.

The following human rights tools and methodologies may facilitate human rights based actor analysis: NEDA's *Human Rights Checklist 9*, UN's *Role Pattern and Capacity Gap Analysis*, *SWOT Analysis* and the *Stakeholder Analysis Matrix*.

Step 4. Consider gender dimensions, issues and concerns in the context of equality and nondiscrimination. Pay special attention to equality gaps, discriminatory patterns, exclusionary practices, empowerment and capacity gaps, cultural and traditional practices or ways of life that prevent women from accessing justice and/or from enjoying and exercising their human rights. Study carefully apparently gender-neutral laws, policies, programs and practices, and prejudices, customary and other practices that promote inferiority or superiority of either sex and stereotyping of the sexes, all of which could adversely affect women's enjoyment of their human rights or their access to justice. ILO's *Participatory Gender Audit* may be useful in undertaking gender analysis.

Step 5. Assess power dynamics in terms of the realization of human rights, adherence to human rights obligations and duties, exclusion, vulnerability, injustice and discrimination.

Human rights-based analysis "addresses power relations at all levels of society; it tackles power issues that lie at root of poverty and exploitation and identifies the social characteristics that empower or disempower people." CARE and Oxfam emphasize that human rights require a deeper level of analysis grounded on people's human rights and duty bearer obligations. 'Rights-based approaches require analysis that pushes people to reflect beyond the commonly stated problems. It helps them to get into the uncomfortable, hard-to-discuss but critically important factors about power relations that have to be tackled for the issues to be meaningfully addressed. With this kind of analysis, the intervention is less likely to involve service provision, and more likely to address underlying issues like corruption, lack of transparency or lack of participatory governance.'²³¹

²³¹ National Economic and Development Authority. 2011 Human Rights-based Approach to Development Planning Toolkit, citing Co-operative Assistance and Relief Everywhere, Inc. (Care USA) and Oxfam America, Rights-based Approaches Learning Project, Virginia, USA: Stylus Publishing LLC, 2007.

For projects directed at enhancing equal access to justice, assess power dynamics in relation to the multiple dimensions of accessibility and to the availability, cultural acceptability and quality of institutions of remedy and relevant human rights principles, standards and norms.

For projects directed at redressing injustice, assess power dynamics in relation to enjoyment or non-enjoyment of human rights, particularly the right of reparation, compliance or non-compliance with human rights obligations of conduct and of result, inequality, exclusion, injustice and discrimination and relevant human rights principles, standards and norms.

Power analysis may be undertaken through Gaventa's *Power Cube*.

Step 6. Plot goals and objectives in human rights terms then decide which goals and objectives are best suited to enhance equal access to justice or redress injustice. Plotting goals and objectives entails converting negative statements arising from steps 1 to 5 above into realistic and attainable positive statements directly linked to human rights.

For projects directed at enhancing equal access to justice, plot goals and objectives that address multiple dimensions of accessibility, the availability, cultural acceptability and quality of institutions of remedy, and relevant human rights principles, standards and norms, then decide which among them are best suited to enhance equal access to justice.

For projects directed at redressing injustice, plot goals and objectives that promote full, equal and nondiscriminatory enjoyment of human rights, particularly the right of reparation, compliance with human rights obligations of conduct and of result, and relevant human rights principles, standards and norms, then decide which among them are best suited to redress injustice.

To plot goals and objectives in human rights terms, and to facilitate choice among goals and objectives, the following human rights tools and methodologies may be useful: UN's *HRBA to Results-based Programme Planning*, SIDA's *LFA-AI Goal Tree*, Theis' *Goal-based Planning Tool*, AHRC's *Core Body of Objectives* and Diokno's *Rights-based Objectives Setting Tool*.

Step 7. Choose which problems, goals and objectives should be addressed, ensuring that the choice is dependent upon those that best support the incorporation of human rights norms, standards and principles. In making a choice, remember that no human right may be prioritized over another on the ground of intrinsic merit; but human rights can be given priority at different stages of progressive realization on practical grounds, and, no human right can be deliberately allowed to suffer an absolute decline in its level of realization. It must maintain at least an initial level of realization. Further ensure that the choice should highlight a combination of interventions that best support human rights principles of participation, accountability, equality, nondiscrimination, transparency, and promotes human dignity and attention to those most vulnerable.

For projects directed at enhancing equal access to justice, choose those goals that address multiple dimensions of accessibility, the availability, cultural acceptability and quality of institutions of remedy, and relevant human rights principles, standards and norms.

For projects directed at redressing injustice, choose those goals that promote full, equal and nondiscriminatory enjoyment of human rights, particularly the right of reparation, compliance with human rights obligations of conduct and of result, and relevant human rights principles, standards and norms.

OHCHR's *Process Guidelines and Risk Analysis* may facilitate the accomplishment of this step.

Stage 2: Planning

Planning involves the translation of the analysis into the logical framework matrix. A logical framework matrix is derived from logical linkages to connect a project's *means* with its *ends*; these logical linkages are expressed through *vertical* and *horizontal* logic. *Vertical logic* "identifies what the project intends to do, clarifies the causal relationships, and specifies the important assumptions and uncertainties beyond the project manager's control (columns 1 and 4)."²³² *Horizontal logic* "defines how project objectives specified in the project description will be measured, and the means by which the measurement will be verified (columns 2 and 3). This provides the framework for project monitoring and evaluation."²³³

A typical structure of the log frame matrix, drawn from various international aid agencies, is presented below.

Typical Structure of Log Frame Matrix²³⁴

Hierarchical Objectives (A description of the objective)	Key Performance Indicators/Verifiable Indicators (Measurements to verify the accomplishment of the objective)	Means of Verification (Sources of data needed to verify the status of the objectives)	External Factors (Important external factors needed to attain the objective. Risks as well as assumptions are defined in this column.)
GOAL (The higher order objective to which the project contributes) OVERALL OBJECTIVE (The project's contribution to policy or programme objectives impact)	Measures to verify accomplishment of the GOAL <i>(What are the quantitative ways of measuring, or qualitative ways of judging, whether these broad objectives are being achieved? (estimated time))</i>	Sources of data needed to verify status of the GOAL level indicators <i>(How will the information be collected, when and by whom?)</i>	Important external factors necessary for sustaining the objective in the long-run

²³² Australian Agency for International Development. 2003. *Guidelines on the Logical Framework Approach*. Canberra: Australian Agency for International Development.

²³³ Australian Agency for International Development. 2003. *Guidelines on the Logical Framework Approach*. Canberra: Australian Agency for International Development.

²³⁴ Project Management Solutions (Aust) Pty Ltd. *Logical Framework (LogFRAME) Methodology*. Undated. See: <http://www.pmsa.com.au/LogFrame.htm>. KAR. *Constructing a Logical Framework*. Undated. See: <http://www.kar-dht.org/logframe.htm>; European Commission. *Aid Delivery Methods, Vol. 1—Project Cycle Management Guidelines*. Brussels: European Commission March 2004.

Hierarchical Objectives (A description of the objective)	Key Performance Indicators/Verifiable Indicators (Measurements to verify the accomplishment of the objective)	Means of Verification (Sources of data needed to verify the status of the objectives)	External Factors (Important external factors needed to attain the objective. Risks as well as assumptions are defined in this column)
PURPOSE (The effect or impact of the project/Direct benefits to the target group/s)	Measures to verify accomplishment of the PURPOSE <i>(What are the quantitative measures or qualitative evidence by which achievement and distribution of impacts and benefits can be judged? (estimated time))</i>	Sources of data needed to verify status of the PURPOSE level indicators <i>(How will the information be collected, when and by whom?)</i> <i>Does provision for collection need to be made under inputs-outputs?)</i>	Important external factors needed to attain the GOAL <i>(Purpose to Goal: What conditions external to the project are necessary if achievements of the project's purpose are to contribute to reaching the project goal?)</i> <i>(If the Purpose is achieved, what assumptions must hold true to achieve the Overall Objective?)</i>
OUTPUTS (The deliverables or Terms of Reference of the project/Tangible products or services delivered by the project)	Measures to verify accomplishment of the OUTPUTS <i>(What kind and quantity of outputs, and by when will they be produced? (quantity, quality time))</i>	Sources of data needed to verify status of the OUTPUTS level indicators <i>(How will the information be collected, when and by whom?)</i>	Important external factors needed to attain the PURPOSE <i>(Output of Purpose: What are the factors not within the control of the project, which, if not present, are liable to restrict progress from outputs to achievements of project purpose?)</i> <i>(If Results are achieved, what assumptions must hold true to achieve the Purpose?)</i>
ACTIVITIES (The main activities that must be undertaken to accomplish the OUTPUTS /Tasks that have to be undertaken to deliver the desired results)	A summary of the Project Budget	Sources of data needed to verify status of the ACTIVITIES	<i>Important external factors that must prevail to accomplish the OUTPUTS</i> <i>(Activity to Output: (1) What external factors must be realized to obtain planned outputs on schedule? (2) What kind of decisions or actions outside the control of the project is necessary for inception of the project?)</i> <i>(If Activities are completed, what assumptions must hold true to deliver the results?)</i>

Note that different donor agencies use different terminologies in the logical framework matrix. A comparison of the different terminologies used by different donor agencies is seen in “The Rosetta Stone of Logical Frameworks” compiled by Jim Rugh for Care International.

“The Rosetta Stone of Logical Frameworks” COMPARISONS BETWEEN TERMINOLOGIES OF DIFFERENT DONOR AGENCIES FOR RESULTS/LOGICAL FRAMEWORKS

Compiled by Jim Rugh for CARE International and InterAction’s Evaluation Interest Group

	Ultimate Impact	End Outcomes	Intermediate Outcomes	Outputs	Interventions
<i>Needs-based</i>	<i>Higher Consequence</i>	<i>Specific Problem</i>	<i>Cause</i>	<i>Solution</i>	<i>Process</i>
CARE terminology ²³⁵	Program Impact	Project Impact	Effects	Outputs	Activities
CARE logframe	Program Goal	Project Final Goal	Intermediate Objectives	Outputs	Activities
PC/LogFrame ²³⁶		Goal	Purpose	Outputs	Activities
USAID Results Framework ²³⁷	Strategic Objective	Intermediate Results		Outputs	Activities
USAID Logframe ²³⁸		Final Goal	Strategic Goal/Objective	Intermediate results	Activities
DANID + Dfid ²³⁹	Goal		Purpose	Outputs	Activities
CIDA ²⁴⁰ + GTZ ²⁴¹	Overall Goal		Project Purpose	Results/outputs	Activities
European Union ²⁴²	Overall Objective	Project Purpose	Results	Outputs	Interventions
	Ultimate Impact	End Outcomes	Intermediate Outcomes	Outputs	Interventions
	Higher Consequence	Specific Problem	Cause	Solution	Process
Needs-based	Development Objective	Development Objective	Immediate Objectives	Outputs	Activities
FAO ²⁴³ +UNDP ²⁴⁴ +NORAD ²⁴⁵	Sector Objective	Goal	Project Objective	Outputs	Activities
UNHCR ²⁴⁶				Outputs	Activities
World Bank	Long-term Objectives	Short-term Objectives	Short-term Objectives	Outputs	Activities
AusAID ²⁴⁷	Scheme Goal	Major Development Objectives	Major Development Objectives	Outputs	Activities

²³⁵ CARE Impact Guidelines, October 1999.
²³⁶ PC/LogFrame (tm) 1988-1992 TEAM technologies, Inc.
²³⁷ USAID, 1998. Results Oriented Assistance Sourcebook.
²³⁸ CDIE, 1987. The Logical Framework Approach to portfolio Design, Review and Evaluation in A.I.D.: Genesis, Impact, Problems and Opportunities.
²³⁹ ODA (Now DFID). October 1995. A Guide to Appraisal, Design, Monitoring, Management and Impact Assessment of Health & Population Projects.
²⁴⁰ CIDA Evaluation Division. Undated. Guide for the use of the Logical Framework Approach in the Management and Evaluation of CIDA's International Projects.
²⁴¹ ZOPP in Dyrpd, 1989 a
²⁴² European Commission. February 1993. Project Cycle Management: Integrated Approach and Logical Framework, Commission of the European Communities Evaluation Unit Methods and Instruments for Project Cycle Management, No. 1
²⁴³ FAO Staff Development Group, Personnel Division. August 1992. Project Appraisal and the Use of Project Document Formats for FAO Technical Cooperation Projects. Pre-Course Activity. Revision of Project Formulation and Assigned Reading.
²⁴⁴ UNDP Policy and Program Manual.
²⁴⁵ The Logical Framework Approach (LFA). Undated. Handbook for Objective-oriented Project Planning.
²⁴⁶ UNHCR. 2002. Project Planning in UNHCR: A Practical Guide on the Use of Objectives, Outputs and Indicators for UNHCR Staff and Implementing Partners. Second Version.
²⁴⁷ Australian Agency for International Development. 1998. AusAid NGO Package of Information, 1998.

Development and human rights practitioners have attempted to produce a human rights-based log frame matrix. Of note are two attempts, the first by Action Aid Bangladesh, which developed a modified log frame matrix, the *Planning and Implementation Framework Analysis*. It incorporates elements of HRBA (see *Reference Sheet 9-B*), and the second by the Philippines' National Economic and Development Authority (NEDA), which modified the logical framework matrix by incorporating human rights standards, norms and principles. NEDA's modified logical framework matrix is recommended for use, and is incorporated in the planning steps below.

Step 8. Set the project's goal (or impact), purposes (or outcomes), outputs (or results), and activities in human rights terms and validate the vertical logic. Recall that vertical logic represents "if-then causality:"

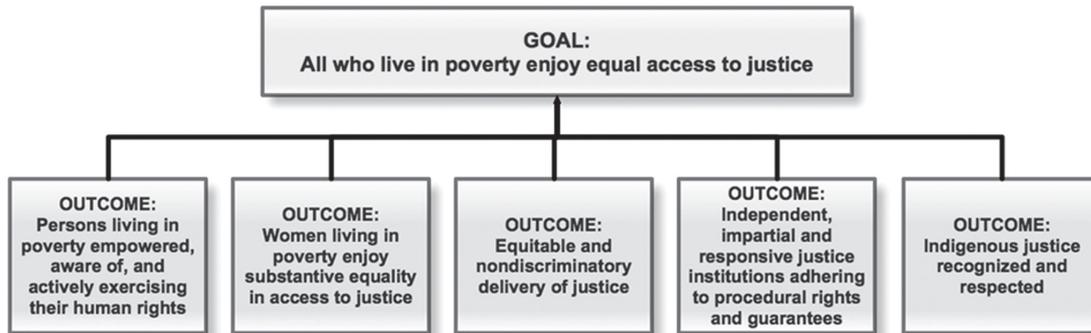
- If activities are implemented, then outputs (or results) will be produced;
- If outputs (or results) are produced, then purposes (or outcomes) will be supported;
- If purposes (or outcomes) are supported, then contributions will be made to attain the goal (or impact).

Setting goals (or impacts), purposes (or outcomes), outputs (or results) and activities in human rights terms are based on the results of steps 6 and 7 above:

- The goal (or impact) represents the one unifying long-term vision that reflects the right that needs to be realized and will only be achieved when all actually fully enjoy the right. Note also that the goal (or impact) will not be achieved by the project alone but requires contributions from other projects or programs. Thus, the goal (or impact) should be broad enough to provide a common platform and is always written in the positive.
- Purposes (or outcomes) represent positive developmental changes in institutional or individual behavior that are needed to bring about the long-term vision and realize the right most at risk. Purposes (or outcomes) incorporate relevant human rights norms, standards and principles.
- Outputs (or results) represent tangible products, which may come in the form of goods or services that will concretely contribute to help bring about desired changes and support the realization of the right most at risk. Outputs (or results) are the project's deliverables and are produced in accord with the human rights principles of participation, accountability, nondiscrimination, transparency, human dignity, empowerment and rule of law.
- Activities are specific tasks that need to be carried out to deliver the project's concrete contributions that help bring about desired changes and support the realization of the right most at risk. Like outputs (or results), activities must be participatory, accountable, nondiscriminatory, transparent, empowering and coherent with human dignity and rule of law.

A sample of a human rights-based goal and outcomes for EA2J projects is presented below:

Sample Human Rights-based EA2J Goal and Outcomes



GOAL: Represents long-term vision and is linked to realization of specific human right; **Key Question:** What is one unifying long-term vision that reflects the right(s) to be realized?

OUTCOME: Represents positive developmental changes in institutional or individual behavior and incorporates normative elements of specific human right to be realized and/or obligations arising from specific human right to be realized; **Key Question:** What changes are needed to bring about long-term vision and realize the right(s)?

OUTPUT: Represents tangible products and project deliverables and is produced with human rights PANTHER principles (participation, accountability, nondiscrimination, transparency, human dignity, empowerment and rule of law); **Key Question:** What will project concretely contribute to help bring about desired changes and support the realization of the right(s)?

ACTIVITY: Represents specific tasks, division of labor, deadlines and coordination and is undertaken with human rights PANTHER principles (participation, accountability, nondiscrimination, transparency, human dignity, empowerment and rule of law); **Key Question:** What tasks need to be carried out to delivery project's concrete contributions that help bring about desired changes and support the realization of right(s)?

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For projects directed at enhancing equal access to justice, ensure that activities, outputs (or results) and purposes (or outcomes) will result in enhanced equal access to justice.

For projects directed at redressing injustice, ensure that activities, outputs (or results) and purposes (or outcomes) will result in full, equal and nondiscriminatory enjoyment of human rights, particularly the right of reparation, compliance with human rights obligations of conduct and of result, and relevant human rights principles, standards and norms.

NEDA's *Human Rights-based Logical Framework Matrix* may facilitate the accomplishment of this step.

Step 9. Define risks and assumptions in the context of human rights, and design appropriate safeguards. It is important to understand the environment surrounding the project, as a project responds to an existing dispute, problem or situation. Understanding the operating environment of a project involves identifying risks and assumptions. The Australian Agency for International Development has noted: "Failure to realistically identify and address assumptions is a common source of activity failure."²⁴⁸

²⁴⁸ Australian Agency for International Development. October 2005. AusGuideline 3.3 The Logical Framework Approach. Canberra: Australian Agency for International Development.

Assumptions are defined as “external factors that have the potential to influence (or even determine) the success of a project, but lie outside the direct control of project managers. They are the answer to the question: ‘What external factors may impact on project implementation and the long-term sustainability of benefits, but are outside project management’s control?’”²⁴⁹ Risks are also external factors that raise the possibility of exposure to danger, threat, harm or loss.

To identify risks and assumptions, consider political, economic, socio-cultural, technological, legal, policy, and institutional issues that affect the project environment and impact on the success or failure of the project, but are outside the direct control of the project proponent. Then test the risks and assumptions to assess the project’s probability of success. Choose risks and assumptions wisely, focusing on those that may be crucial to the success of the project. “There is no set formula for doing this, and some degree of subjectivity is involved.”²⁵⁰ Include only those risks and assumptions that are likely to occur.

The identification of risks and assumptions allows the design of safeguards: in human rights, safeguards are “*anticipatory* and *proactive*, designed to prevent harm or threats to human rights and eliminate risks of human rights deprivations.”²⁵¹

For projects directed at enhancing equal access to justice, risks and assumptions are those external factors such as policies, laws, administrative orders, rules, or practices that positively or negatively affect the multiple dimensions of accessibility, the availability, cultural acceptability and quality of institutions of remedy, and relevant human rights principles, standards and norms.

For projects directed at redressing injustice, risks and assumptions are those external factors such as policies, laws, administrative orders, rules, or practices that positively or negatively affect the full, equal and nondiscriminatory enjoyment of human rights, particularly the right of reparation, compliance with human rights obligations of conduct and of result, and relevant human rights principles, standards and norms.

Undertaking *risk analysis* may be helpful.

Step 10. Set indicators and targets and identify means and sources of verification guided by relevant human rights norms, standards and principles.

Indicators are defined as “statistical data, which attempts to provide or ‘indicate’ (usually based on some form of numerical qualifications) the prevailing circumstances at a given place at a given point in time.”²⁵² “The term ‘indicator’ reflects the necessary modesty that must attach to statistics

²⁴⁹ European Commission. March 2004. *Aid Delivery Methods*, Vol. 1–Project Cycle Management Guidelines. Brussels: European Commission.

²⁵⁰ European Commission. March 2004. *Aid Delivery Methods*, Vol. 1–Project Cycle Management Guidelines. Brussels: European Commission.

²⁵¹ National Economic and Development Authority. 2011. *Human Rights-based Approach to Development Planning Toolkit*. Philippines.

²⁵² Turk, Danilo. July 1990. *The Realization of Economic, Social and Cultural Rights*. (Progress Report) UN Doc. E/CN.4/Sub.2/1990/19.

intended to measure one or other aspect of development. Indicators are not necessarily direct and full measures of what they are intended to indicate, but often indirect or incomplete measures (e.g. measures of causes, instrumentalities, or inputs; of effects or outputs; of particular manifestations, phases or parts of the whole). This is perhaps especially true of social development indicators. An indicator is not just a statistical series but a statistical series plus a set of assumptions; it requires careful examination and testing before use.”²⁵³

Human rights indicators are not precisely defined, as different authors ascribe different characteristics to their definition of human rights indicators. There are, however, some key features of human rights indicators common among the differentiated definitions:

- Indicators alone are insufficient to measure human rights;
- Indicators must be disaggregated along the prohibited grounds of discrimination;
- Indicators must be inclusive and participatory and reflect the status and views of those most vulnerable;
- Indicators must be accountable, accurate and reliable, and based on scientific standards and processes;
- Indicators must be transparent, available publicly and, timely;
- Indicators must promote human dignity, uphold confidentiality and respect the right to privacy; and
- Indicators must measure claimholders’ enjoyment of human rights and efforts of duty bearers to comply with human rights obligations.

Like the definition of human rights indicators, there is no agreement among the criteria that should guide the development and selection of human rights indicators. Nevertheless, there are common criteria:

- Valid or measure what it is intended to measure,
- Objective, precise and balanced,
- Reliable, consistent and comparable over time,
- Practical, easy to collect, timely, affordable, accurate and available,
- Amenable to disaggregation,
- Useful and highly significant in terms of the right(s) in question, and
- Directly linked to human rights.

There are also different kinds of human rights indicators, including:

- *Events-based Indicators*, which are generally compiled by human rights organizations and activists; these are based on specific events involving specific human rights violations. Examples include number of extrajudicial executions, enforced disappearances, torture, arbitrary arrests and detentions, demolitions, and forced evacuations. Because these indicators depend on the information collected by human rights groups and advocates, whose reach or influence may not extend to the entire population, events-based indicators may be under-estimated.

²⁵³ United Nations Research Institute on Social Development cited in Turk, Danilo. July 1990. The Realization of Economic, Social and Cultural Rights, July 1990 (Progress Report) UN Doc. E/CN.4/Sub.2/1990/19.

- *Human Rights Indicators of Conduct and Human Rights Indicators of Result* developed by Andersen and Sano (2006), which measure the extent of compliance with human rights obligations of conduct and of result and the extent of enjoyment of human rights.²⁵⁴
- *Human Rights Violations Approach* proposed by UNDP in 2000, which measures the extent of compliance with obligations. It focuses on human rights violations, their negative impact, and the measures that address negative impact.²⁵⁵ Note, in applying the human rights violations approach, it is important to determine whether indeed a violation took place. In this regard, one must distinguish between non-compliance with obligations of conduct and non-compliance with obligations of result, and in case of the latter, to distinguish between inability and unwillingness (See discussion on human rights violations in Reference Sheet 7, *Institutions of Remedy*).
- *Human Rights Commitment Indicators* developed by Sano and Lindholt, which comprise a country database with four major kinds of indicators. These are formal commitment indicators, which include information on ratification of human rights treaties as well as constitutional provisions, laws and jurisprudence; civil and political rights indicators, which include information on the incidence of violations of civil and political rights such as torture, enforced disappearances, extrajudicial executions, etc.; economic, social and cultural rights indicators, generally relating resource allocation against outcomes; and gender discrimination, generally based on the information collected under the Gender Development Index.²⁵⁶
- *Structural, Process and Outcome Indicators* proposed by the OHCHR, which²⁵⁷ defines structural indicators as those that measure intent or acceptance of human rights, including, for example, ratification of human rights treaties, relevant laws, policies, frameworks, among others. Process indicators measure the progressive realization of human rights by relating policy to outcome and thus representing cause and effect relationships. These indicators measure efforts taken by duty bearers to progressively realize human rights. Outcome indicators are those that measure attainments in the realization of human rights. OHCHR suggests a three-step process to develop human rights indicators. *First*, identify the major attributes of every human right, which may be sourced from the normative elements of human rights and/or human rights obligations of conduct and of result. *Second*, configure structural, process and outcome indicators for selected attributes of a human right. *Third*, define indicators for cross-cutting norms.

²⁵⁴ Andersen, Erik Andre and Sano, Hans Otto. 2006. *Human Rights Indicators at Programme and Project Level: Guidelines for Defining Indicators, Monitoring and Evaluation*. Copenhagen: Danish Institute for Human Rights.

²⁵⁵ United Nations Development Programme. 2000. *Human Development Report 2000*. New York: Oxford University Press.

²⁵⁶ Sano, Hans Otto and Lindholt, Lone. 2000. *Human Rights Indicators Country Data and Methodology*. Copenhagen: Danish Institute for Human Rights.

²⁵⁷ United Nations Office of the High Commissioner for Human Rights. 11 May 2006. *Report on Indicators for Monitoring Compliance with International Human Rights Instruments*. UN DOC. HRI/MC/2006/7.

It is possible to use existing development indicators in the context of human rights as there are similarities between development indicators and human rights indicators. Both have the same goal, which is to produce information to inform policy and improve quality of human life. Both use the same measures of outcome and input. Both use averages and disaggregation. Differences, however, exist between the two types of indicators. The conceptual foundations differ, as human rights indicators are founded on the normative framework of human rights, while development indicators are founded on the particular philosophy (e.g., utilitarianism, libertarianism, egalitarianism, etc.) that drives development. The focus of attention also differs, as development indicators generally focus on outcomes and inputs, while human rights indicators focus on outcomes plus policies, practices and conduct of relevant actors. While both require disaggregation, human rights indicators require additional information disaggregated by the prohibited grounds of discrimination. Measurement tools also differ, as development indicators apply tools, generally quantitative, that measure the well-being of an individual, while human rights indicators apply both quantitative and qualitative tools that provide information from the perspectives of claimholders and duty bearers.

When using development indicators in the context of human rights, it becomes important to align these to human rights. Hunt in 2006 proposed the following guidelines: *first*, the indicator must correspond to a norm of human rights, which may be drawn from the normative elements of a right or human rights obligations of conduct and of result; and *second*, the indicator must be disaggregated by the prohibited grounds of discrimination.²⁵⁸

For projects directed at enhancing equal access to justice, indicators could include those that measure the multiple dimensions of accessibility, the availability, cultural acceptability and quality of institutions of remedy, and relevant human rights principles, standards and norms.

For projects directed at redressing injustice, indicators could include those that measure the full, equal and nondiscriminatory enjoyment of human rights, particularly the right of reparation, compliance with human rights obligations of conduct and of result, and relevant human rights principles, standards and norms.

²⁵⁸ Hunt, Paul. March 2006. Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. UN Doc. E/CN.4/2006/48.

Sample human rights-based EA2J indicators are presented below:

Human Rights-based EA2J Indicators

Indicator Category	Sample Indicators	Means of Verification
Nondiscrimination in EA2J	<ol style="list-style-type: none"> 1. Number of individuals/groups/communities able to access justice and institutions of remedy, disaggregated by prohibited grounds 2. Number of individuals/groups/communities not able to access justice and institutions of remedy, disaggregated by prohibited grounds and classified according to barriers to EA2J 3. Restrictions in requirements, qualifications and criteria for accessing justice and institutions of remedy (e.g., dress codes, user fees, etc.) 4. Exclusions in requirements, qualifications and criteria for accessing justice and institutions of remedy 5. Preferences in requirements, qualifications and criteria for accessing justice and institutions of remedy 6. Distinctions in requirements, qualifications and criteria for accessing justice and institutions of remedy 7. Number and description of temporary special measures/special measures for those traditionally or historically unable to access justice (e.g., protective measures for women and children, child-friendly institutions of remedy, mobility and assistive devices and technology, justice-related subsidies and special services, etc.) 8. Proportion of persons availing of temporary special measures/special measures, disaggregated by prohibited grounds 9. Number and description of rules, laws, policies, mechanisms addressing barriers to EA2J 10. Proportion of persons availing of justice remedies, disaggregated by prohibited grounds 	<ol style="list-style-type: none"> 1. Official statistics and reports 2. Academic and NGO studies 3. Surveys 4. Laws, rules, regulations, policies

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Human Rights-based EA2J Indicators

Indicator Category	Sample Indicators	Means of Verification
Economic Accessibility	<ol style="list-style-type: none"> 1. Average costs of seeking justice as share of personal/household/family income 2. Average costs of seeking justice in relation to minimum wage, disaggregated by geographic areas 3. Estimate of hidden costs of seeking justice as proportion of personal/household/family income 4. Estimate of hidden costs of seeking justice as proportion of average costs of seeking justice 5. Annual rate of increase in costs of seeking justice (annual inflation rate vis-a-vis annual average cost of seeking justice) 6. Proportion of persons availing of fee waivers, free justice-related services, other justice subsidies, free legal services/pro bono services, disaggregated by prohibited grounds 7. Number and description of laws, policies, rules and mechanisms related to economic accessibility 	<ol style="list-style-type: none"> 1. Official statistics and reports 2. Academic and NGO studies 3. Surveys 4. Official schedules of fees 5. Laws, rules, regulations, policies
Physical Accessibility	<ol style="list-style-type: none"> 1. Distance of home/community to institution of remedy 2. Estimated travel time from home/community to institution of remedy 3. Incidence of travel-related accidents and crime 4. Number, description and placement of mobility and assistive devices/technology in institutions of remedy (ramps, elevators, signage in Braille, posters, equipment for interpreters, etc.) 5. Road quality 6. Incidence and severity of flooding 7. Flood prevention/control mechanisms 	<ol style="list-style-type: none"> 1. Public works reports, studies and maps 2. Weather data 3. Time and motion studies 4. Traffic reports 5. Crime statistics 6. NGO reports

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Human Rights-based EA2J Indicators

Indicator Category	Sample Indicators	Means of Verification
Linguistic Accessibility	<ol style="list-style-type: none"> 1. Language of justice in relation to functional literacy rate 2. Language of justice in relation to languages spoken 3. Number of qualified interpreters, disaggregated by official sign language, created language, Braille and other languages 4. Number of accredited interpreters, disaggregated by official sign language, created language, Braille and other languages, as proportion of total qualified interpreters 5. Proportion of persons availing of accredited interpreters, disaggregated by prohibited grounds 6. Number and nature of signed documents in Braille and in languages other than language of justice 	<ol style="list-style-type: none"> 1. Laws, rules, regulations, policies 2. Official statistics and reports 3. Official registries of documents 4. Academic and NGO studies
Information Accessibility	<ol style="list-style-type: none"> 1. Awareness of human rights 2. Awareness of justice remedies, institutions of remedy and procedures for seeking justice 3. Number, description and dissemination rate of justice-related materials, disaggregated by geographic areas and means of dissemination 4. Readership of justice-related materials, disaggregated by prohibited grounds and means of dissemination 5. Number and description of public registries of justice-related materials 6. Timeliness in release/dissemination of justice-related materials 7. Clarity of process for seeking justice 8. Quality of justice-related materials 9. Number and description of justice-related materials using communication tools, simplified language and easily-understood media 10. Ease of access to justice-related information 11. Number and description of balanced justice-related materials 	<ol style="list-style-type: none"> 1. Surveys 2. NGO and academic studies and reports 3. User data from official and NGO sources

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Human Rights-based EA2J Indicators

Indicator Category	Sample Indicators	Means of Verification
Availability of Institutions of Remedy	<ol style="list-style-type: none"> 1. Number of functioning institutions of remedy, disaggregated by geographic areas and type of justice action, with ample supply of water, electricity, sanitation, equipment and mobility and assistive devices/technology 2. Number and distribution of justice actors, disaggregated by prohibited grounds 3. Average income of justice actors, disaggregated by prohibited grounds 4. Proportion of lawyers rendering free legal services/pro bono services, disaggregated by prohibited grounds, and as proportion of total lawyers 5. Number and description of available remedies, disaggregated by specific human right 6. Proportion availing of functioning institution of remedy, disaggregated by prohibited grounds 7. Compliance with procedural rights and guarantees: <ol style="list-style-type: none"> (a) Choice of counsel (b) Presence of counsel at various stages (c) Scale and source of compensation for counsel (d) Number and duration of lawyer-client conferences (e) Circumstances of arrest, search and seizure (f) Rate of apprising constitutional rights (g) Confessions disaggregated by nature (e.g., free or coerced) (h) Incidence and type of torture, disaggregated by prohibited grounds (i) Incidence and type of threats, harassment, inducement, bribes, disaggregated by prohibited grounds (j) Average length of justice action (k) Incidence of disqualification of evidence taken as a result of torture and other cruel, inhuman and degrading treatment or punishment 	<ol style="list-style-type: none"> 1. Constitution, laws and relevant jurisprudence 2. International human rights law (treaty binding and customarily binding) 3. Official reports and statistics 4. NGO reports and studies 5. Academic studies 6. Surveys

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Human Rights-based EA2J Indicators

Indicator Category	Sample Indicators	Means of Verification
Acceptability of Institutions of Remedy	<ol style="list-style-type: none"> 1. Proportion availing of institution of remedy, disaggregated by prohibited grounds 2. Gender-responsiveness of institution of remedy 3. Number and description of occasions where free, prior and informed consent of indigenous peoples was sought and given 4. Number and type of protective measures for children and women 5. Organizational culture 	<ol style="list-style-type: none"> 1. Official reports and statistics 2. NGO reports and studies 3. Surveys 4. Academic studies
Quality of Institutions of Remedy	<ol style="list-style-type: none"> 1. Incidence and nature of corrupt and graft practices, disaggregated by institution of remedy 2. Number of justice actors sanctioned, disaggregated by nature of offense, type of sanction and prohibited grounds 3. Number and description of complaints against justice actors, disaggregated by type of complaint 4. Rate of disposition of complaints against justice actors, disaggregated by type of disposition 5. Number and description of laws, rules, policies and measures promoting EA2J 6. Rate of enforcement of laws, rules, policies and measures promoting EA2J 7. Number of justice actors, disaggregated by age, years of experience, expertise and geographic area 	<ol style="list-style-type: none"> 1. Official statistics and reports 2. Academic and NGO studies and reports 3. Laws, rules, policies

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Human Rights-based EA2J Indicators

Indicator Category	Sample Indicators	Means of Verification
Justice	<ol style="list-style-type: none"> 1. Number and description of decisions, laws, rules, policies and mechanisms promoting reparation 2. Number and description of decisions, laws, rules, policies and mechanisms preventing human rights violations 3. Number and description of decisions, laws, rules, policies and mechanisms creating opportunities for nondiscriminatory and equal enjoyment of human rights 4. Number and description of decisions, laws, rules, policies and mechanisms redistributing opportunities for nondiscriminatory and equal enjoyment of human rights 5. Rate of enforcement of decisions, rules, policies and mechanisms, disaggregated by human rights function of justice 6. Level of enjoyment of human rights as result of decisions, rules, policies and mechanisms, disaggregated by human rights functions of justice 	<ol style="list-style-type: none"> 1. Jurisprudence, laws, rules, policies 2. Official reports 3. Academic studies 4. NGO studies 5. Surveys
Participation	<ol style="list-style-type: none"> 1. Level of participation 2. Gender balance 3. Quality/breadth of participants' inputs 4. Participants' inputs incorporated/referenced in law, policy, action, decision, measure 5. Nature of notification (e.g., open or by invitation) 	<ol style="list-style-type: none"> 1. Official reports 2. NGO reports 3. Academic studies 4. Documentation reports

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Human rights targets are indicators with specific values that must be attained within a specified timeframe. In setting human rights targets, one “should aim for minimum variance to ensure greater equity among individuals.”²⁵⁹ Human rights focus on and promote the human rights of all claimholders, but target those most vulnerable among claimholders. Applying an incremental continuum facilitates the setting of human rights targets:



Human rights targets also require the maintenance and use of data and information disaggregated by the prohibited forms of discrimination, developed and achieved with participation, accountability, nondiscrimination, transparency, empowerment, human dignity, and appropriate mechanisms of redress.

For projects directed at enhancing equal access to justice, targets could include designating a certain percentage of increase in the different dimensions of accessibility and availability of institutions of remedy, or increasing the number of claimholders enjoying equal access to justice.

For projects directed at redressing injustice, targets could include increase in the number of persons enjoying human rights, particularly the right of reparation, or improvements in policies and practices promoting compliance with human rights obligations of conduct and of result, and relevant human rights principles, standards and norms.

Step 11. Schedule activities, set milestones and identify specific responsibilities and persons responsible. Note that there is no single or universal format, as donor agencies differ in the formats they require. A thorough study of the requirements of the donor agency to which the project will be submitted is therefore advised.

Step 12. Estimate budgetary requirements and other inputs and resources. Note that there is no single or universal template as donor agencies prescribe different budgetary templates and sometimes require budgetary costs estimated in foreign (not domestic) currency. A thorough study of the requirements of the donor agency to which the project will be submitted is therefore advised.

²⁵⁹ National Planning and Policy Staff, National Economic and Development Authority. *Comments on Human Rights-based Approach to Development Planning Toolkit*. Email received by Ms. Maria Socorro I. Diokno on 8 July 2010.

Stage 3: Implementation

Step 13. Implement projects while ensuring participation, accountability, nondiscrimination, transparency, human dignity, empowerment and rule of law. During project implementation, certain events may occur that may adversely affect the attainment of project objectives, the delivery of project outputs, or the successful implementation of project activities. These events may be internal (e.g. staff or management changes, etc.) and/or external (e.g. passage of new laws or policies, etc.) to the project proponent. Very often, these events may have been unforeseen, leaving the project proponent insufficiently prepared to deal with these obstacles. The impact of these obstacles on the project may be minimized, if the project were implemented with:

- Full and active participation of all relevant actors, most especially claimholders,
- Genuine accountability to claimholders for project results, including strictly enforceable control measures,
- Nondiscrimination against claimholders and other relevant actors,
- Transparency in project information, management and processes,
- Respect for human dignity,
- Empowerment of claimholders, and
- Proper recourse mechanisms for those who may be adversely affected by the project or its results.

Monitoring and Evaluation

“The human rights-based approach to monitoring and evaluation is highly participatory and inclusive, involving a broad and wide spectrum of women, men and child claimholders, duty bearers and other actors, who are given every opportunity to actively contribute to the process. It is transparent as it is pursued with clear and open monitoring and evaluation processes and methodologies. It empowers claimholders by valuing and addressing their insights, and by resolving issues of power that arise during and after the plan’s implementation. It incorporates rule of law mechanisms especially in resolving complaints or criticisms arising during or from the development plan.”²⁶⁰

Step 14. Track the project as it is being implemented against relevant human rights norms, standards and principles.

For projects directed at enhancing equal access to justice, track the project against levels of accessibility in its multiple dimensions, levels of availability, cultural acceptability and quality of institutions of remedy, and against levels of observance of relevant human rights principles, standards and norms.

²⁶⁰ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit, citing United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College. 2007. Common Learning Package on the Human Rights-based Approach—Facilitation Guide. Turin, Italy: United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College.

For projects directed at redressing injustice, track the project against levels of enjoyment of human rights, particularly the level of enjoyment of the right of reparation, levels of compliance with human rights obligations of conduct and of result, and levels of observance of relevant human rights principles, standards and norms.

Step 15. Periodically, and upon completion, assess the project's performance in relation to human rights norms, standards and principles.

For projects directed at enhancing equal access to justice, assess the project's performance in relation to the multiple dimensions of accessibility, the availability, cultural acceptability and quality of institutions of remedy, and relevant human rights principles, standards and norms.

For projects directed at redressing injustice, assess the project's performance in relation to full, equal and nondiscriminatory enjoyment of human rights, particularly the right of reparation, compliance with human rights obligations of conduct and of result, and relevant human rights principles, standards and norms.

Monitoring and evaluating human rights-based EA2J projects may be facilitated with the following tools and methodologies: OHCHR's *Principles of Monitoring and Accountability*, WB's *Social Guarantees Framework*, Save the Children's *Global Impact Monitoring*, Action Aid Bangladesh's *Planning Implementation Framework Analysis*, and Diokno's *Rights-based Monitoring and Evaluation Strategy*.

REFERENCE SHEET **9-B**

Available Human Rights-based Tools and Methodologies in Developing and Managing Human Rights-based EA2J Projects

THE DESCRIPTIONS of human rights-based tools and methodologies are copied from the National Economic and Development Authority, Human Rights-based Approach to Development Planning Toolkit, 2011.

Analysis

Country Commitment to Human Rights

RMAP's Human Rights and Domestic Legal Framework Checklists²⁶¹

The Rights-based Municipal Assessment and Planning Project (RMAP) is a pilot project that carried out human rights-based assessments and development planning of selected municipalities in Bosnia and Herzegovina (BiH). The project also tested and piloted a methodology for human rights-based development. The project was a joint project of the Ministry for Human Rights and Refugees, UNDP and the OHCHR. The Project originated from a concern that grassroots human rights information was either undocumented or not made public, thereby inhibiting action to effectively overcome problems facing vulnerable groups.

RMAP developed a series of 15 human rights checklists, which served as comprehensive reference guides to international human rights standards and as resource and quick reference guides to relevant rights. These checklists cover: cross cutting rights; freedom of movement, residence-displacement; public administration; civil society; administration of justice; trafficking and migration; the right to work; the right to education; social protection; the right to health; the right to housing; freedom of religion; culture; the right to environment; and enforced disappearances and missing persons.

Each human rights checklist divides sources of human rights into two columns: in the first column are outlined "binding standards" to which BiH is legally bound and the main provisions under international human rights law that guarantee a specific right. The second column interprets the treaty standards in more detail than the treaty text provides and gives the interpretation as well as the minimum content of the right (when available). A hierarchy of sources is used for the entries in this column: authoritative interpretations of what BiH must do to comply with its legal obligations (such as decisions of European Court of Human Rights; recommendations, conclusions and general comments of treaty bodies; and the UDHR), and other sources that may persuade BiH on how its

²⁶¹ Rights-based Municipal Assessment and Planning Project (RMAP). 2004. Consolidated Report on Municipality Assessments in Bosnia and Herzegovina. Sarajevo: United Nations Development Programme and United Nations Office of the High Commissioner for Human Rights.

treaty commitments should be interpreted (such as UN resolutions or declarations, principles and guidelines, international conferences and commitments). Note that the authoritative and persuasive sources are not legally binding.

RMAP also developed 11 Domestic Legal Framework Checklists, which represent a compilation of the pertinent provisions of domestic laws and regulations relevant to major human rights and issues identified by the assessment teams. The checklists provide an overview of the main provisions relating to the sector or right in question, and link domestic regulations with international standards. The checklists cover: freedom of movement, public administration, civil society, administration of justice, right to work, right to education, social protection, right to health, right to property, culture, and right to environment. The checklists display whether human rights obligations are or are not incorporated in domestic law. They help identify gaps and indicate which bodies are responsible and the relevant procedures. The checklists also help determine what kind of information to collect, how to use this information for human rights-based analysis and how to make the link between national and international human rights standards during the assessment process.

AHRC's Situational Analysis²⁶²

The Australian Human Rights Council (AHRC), a pioneer in the articulation and promotion of the human rights approach to development assistance, suggested a participatory process for analysis that includes the following considerations: the level of commitment to international human rights standards; the local legislative framework; and the administrative framework.

The level of commitment to international human rights standards may be seen in the following:

- By the ratification of and reservations to international instruments;
- Conformity with monitoring and reporting obligations;
- Restrictions on the impact of international instruments on domestic legal practice through reservations, interpretations or declarations or lack of domestic legislation;
- Derogation in public emergencies from obligations to maintain human rights standards;
- Cooperation with international monitoring;
- National planning; and
- National human rights institutions.

The local legislative framework consists of the country's Constitution, laws and interpretative jurisprudence, while the administrative framework covers administrative regulations, systems, procedures and services provided by the bureaucracy.

AHRC developed a series of matrices for the conduct of human rights analysis for each right in the covenant. One matrix, adapted to the Philippine context, is reproduced in the following page.

²⁶² Human Rights Council of Australia, Inc. 2001. *The Rights Way to Development: A Human Rights Approach to Development Assistance Policy and Practice*. Maroubra, NSW, Australia: Human Rights Council of Australia, Inc.

AHRC's Sample Situational Analysis Matrix adapted to Philippine Context

FOR EACH HUMAN RIGHT Human Rights Analysis					
	National level	Regional level	Provincial level	Community level	Family level
Legislative regime					
Administrative regime					
Enforcement					
Resources available (policy priorities)					
Participation					

Problem Analysis

Cross Temporal and Statistical Analysis Using Measures of Variability²⁶³

AHRC, in 2001, stressed that, “no situational analysis can be complete without statistical information. This must be incorporated in the baseline data as complementary indicators for the realization of rights. As in any statistical analysis, every effort must be made to generate comparative data over time to monitor change, both positive and negative. Data should also enable comparisons between different parts of the population based on gender, ethnicity, age, socio-economic situation and any other relevant status.”²⁶⁴

Statistical information forms the basis for conducting assessments for national development planning. Human rights require that statistical information is disaggregated by the prohibited grounds of discrimination, to enable both *cross-temporal* analysis and analysis of *variability*.

Cross-temporal analysis is a method of statistical analysis to determine progress (or retrogress) in realizing human rights. Statistics are compared over time to determine what changes, if any, have taken place. Trends are plotted and analyzed to identify differences across time periods and look into reasons why such differences occur. Cross-temporal analysis may also be used to determine whether targets set by previous development plans were indeed met. When undertaking cross-temporal statistical analysis, development planners must be certain that the methodology, formulae, or definition used to compute statistics are the same over the period under review.

X X X

In undertaking statistical analysis, most development planners rely on measures of central tendency, such as the mean or median. Rather than look at central tendency, which looks at *commonalities*, human rights also look at *differences* or *variances to locate those excluded or disadvantaged by*

²⁶³ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines

²⁶⁴ Human Rights Council of Australia, Inc. 2001. The Rights Way to Development: A Human Rights Approach to Development Assistance Policy and Practice. Maroubra, NSW, Australia: Human Rights Council of Australia, Inc.

development planning. NEDA's National Planning and Policy Staff comment below is illustrative:

"We observed that in most sectors, mean is being used as targets for the Plan. For instance, in the area of education, student performance in a province is measured by the weighted average of all students in this particular province. Having a mean grade of 85 may show an excellent education program but having a high variance will show that there are students who are being left behind. High grades from outstanding students distort the real picture by pulling the grades of those who are failing."²⁶⁵

Measures of central tendency may be good representations of a certain situation. However, these measures may not highlight exclusion or distinction, and may therefore hide discrimination. This is one of the reasons why human rights require the use of *disaggregated data* in assessing a situation. In development planning, human rights recommend that measures of central tendency be complemented by measures of variability.

In statistics, measures of variability describe the spread or dispersion of data. Data spread (or dispersion) can be measured or described in several ways, such as *range*,²⁶⁶ *inter-quartile range*,²⁶⁷ and *standard deviation*.²⁶⁸ Human rights urge development planners to apply these measures of variability to assessment and target setting, to measure compliance with obligations of equality and nondiscrimination, and to look at the differentiated situations of women and men, children, adults and the elderly, persons with disabilities, indigenous peoples, persons belonging to different social classes, persons residing in different geographic areas, etc., in order to determine whether rights are *equally* enjoyed by all, without discrimination. Measures of variability may be applied when conducting:

- *Spatial analysis* to identify *geographic variations in performance*, applicable when measuring compliance with the obligation of nondiscrimination;
- *Group variance analysis* to identify *variance in outcomes between different social groups* (e.g. indigenous peoples, persons with disabilities, persons living with HIV, children, elderly, persons living in poverty), applicable when measuring compliance with the obligation of nondiscrimination, and to ensure *inclusion*; and
- *Gender analysis* to identify *variance in outcomes or situations between women and men*, applicable when measuring compliance with the obligation of equality.

²⁶⁵ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines. Citing comments on HRBA Toolkit for Planning (Email received by Ms. Maria Socorro I. Diokno on 8 July 2010).

²⁶⁶ Range is the difference between the lowest and highest values in a dataset.

²⁶⁷ Inter-quartile range is a measure indicating the extent to which the median (or central half) of values within a dataset is dispersed. It is computed following a set mathematical formula: IQR=75th percentile–25th percentile.

²⁶⁸ Standard deviation summarizes the amount by which every value within a dataset varies from the mean and is computed by determining the positive square root of the variance.

UN's Rights-based Causality Analysis using LFA's Problem Tree²⁶⁹

The UN Action 2 Inter Agency Task Force and the UN Systems Staff College developed a Common Learning Package on the human rights-based approach, based on the Common Understanding among UN Agencies of the human rights-based approach to development cooperation.²⁷⁰ The Common Understanding consists of three principles:

- 1 All programs of development cooperation, policies and technical assistance should further the realization of human rights as laid down in the Universal Declaration of Human Rights and other international human rights instruments.
- 2 Human rights standards contained in, and principles derived from, the Universal Declaration of Human Rights and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
- 3 Development cooperation contributes to the development of the capacities of 'duty-bearers' to meet their obligations and/or of 'rights-holders' to claim their rights.

The UN stresses that an assessment is helpful for it determines "whether and where a development challenge exists, its intensity and who is affected. The Millennium Declaration, the MDGs, and the commitments, goals and targets of international conferences, summits, conventions and human rights instruments of the UN system are the benchmarks against which it can be determined whether and where major challenges exist in a country and their severity."

The UN proposes the following guide questions to facilitate human rights-based assessment: Which development challenges exist? Who are most affected by them? Where are they occurring? How widespread are they? What actions have been taken to address them? What progress has been achieved and what obstacles remain?

To undertake human rights-based causality analysis using LFA's problem tree, the UN recommends the following steps:

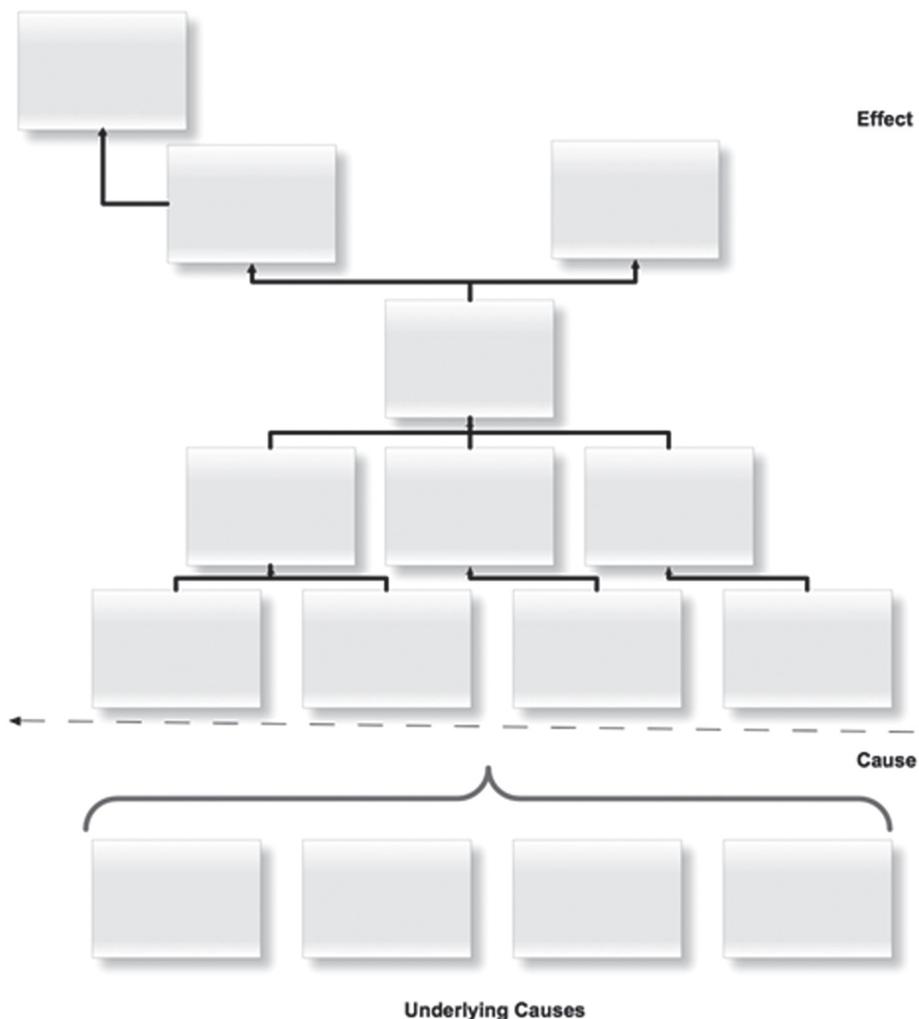
Step 1. Select the Development Challenge/Human Right Unfulfilled. The UN emphasizes the importance of recognizing development challenges as unfulfilled or violated human rights, formulating development challenges in ways that focus on those whose rights are unfulfilled or violated, and distinguishing development challenges from any of their possible causes. The UN warns against defining development challenges as "*lack of something*" because this may "prompt overly simplistic solutions and prevent analysis of additional factors affecting the lives and well-being of people."

²⁶⁹ United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College. 2007. Common Learning Package on the Human Rights Based Approach–Facilitation Guide. Turin, Italy: United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College. 2007

²⁷⁰ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit, citing the Statement of Common Understanding on the Human Rights-based Approach to Development Cooperation, adopted at an Inter-agency Workshop on a Human Rights Approach in the Context of UN Reform, held from 3-5 May 2003.

Step 2. Analyze the immediate, underlying and structural or root causes of the development challenges previously identified and directly link causal chains to unfulfilled or violated rights. The UN defines immediate causes as those that “determine the current status of the problem,” underlying causes as those that “are often the consequence of policies, laws and availability of resources ... [and] may reveal related complex issues and require interventions that take significant time in obtaining results (at least 5 years).” It defines root or structural causes as those that “reveal conditions that require long-term interventions in order to change societal attitudes and behavior at different levels, including those at the family, community and higher decision-making level.” The UN stresses that the key question in causality analysis is: “Why it is happening to a particular sector of the population?” The UN recommends the use of the problem tree, directly linking causal chains to specific human rights that are not fulfilled or are violated.

PROBLEM TREE

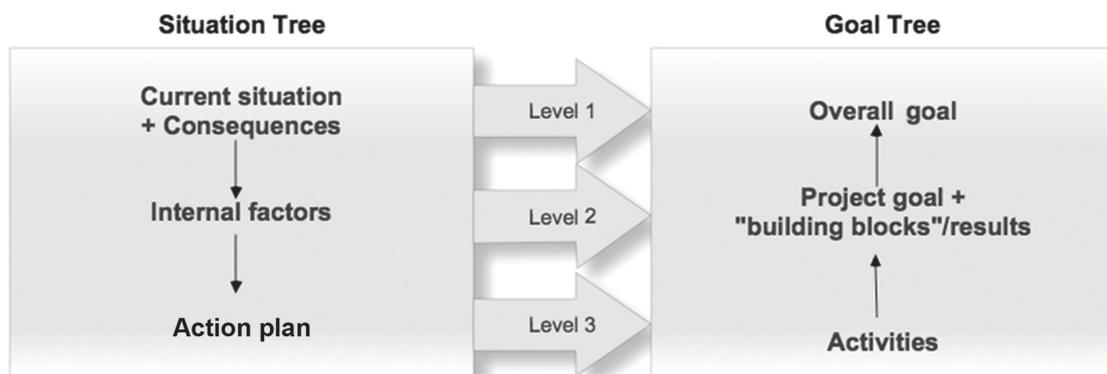


SIDA's LFA-AI Situation Tree²⁷¹

The Swedish International Development Cooperation Agency (SIDA) developed a new working model that combines the Logical Framework Approach (LFA) with Appreciative Inquiry (AI). The model was tested in Niger, Nicaragua and Tanzania in autumn 2005, and, SIDA maintains, yielded “encouraging experiences.”

SIDA defines LFA-AI as a goal-based project-planning method, which aims to “foster involvement, and bolster a sense of self among individuals, groups and organizations to take responsibility for their situation and influence their own development. It identifies and frees up resources to support the project. It facilitates the planning of an international development project. And it creates a basis for assessing a project’s underlying conditions, assumptions and resource needs.”

SIDA's LFA-AI WORKING MODEL



LFA-AI is based on the traditional and established LFA planning model, and on its essential structure and working method, but modified to incorporate AI. LFA, which is an established planning model in the field of international development, has been criticized for being an “overly problem-oriented model” that may fail to consider existing positive resources. AI, on the other hand, is a working method, which focuses on what is working well, and on finding positive action alternatives to resolve a situation. As a working method for developing individuals, groups, organizations and societies, AI involves initiating discussion and processes based on people’s own feelings and experiences to identify in narrative form individual, group, organizational and societal capabilities, resources, motivations and driving forces, to arrive at developmental possibilities and action alternatives for the future.

LFA-AI is predicated on first addressing problems based on the current situation and creating what is called a “situation tree.” Creating a situation tree entails the active participation of the target group and all other relevant stakeholders in the following steps:

²⁷¹ Swedish International Development Cooperation Agency. April 2006. Logical Framework Analysis with an Appreciative Inquiry Approach. Stockholm: Swedish International Development Cooperation Agency.

Step 1. Describe the current situation of the target group. Based on participants’ own experiences, in narrative form, identify what is working satisfactorily and what is working poorly, or is difficult or problematic.

Step 2. Undertake consequence analysis. Describe the consequences of the situation on the target group by identifying any negative undesired effects, any positive effects, future concerns, and effects in the event no change occurs. Describe also the desirable future situation or what the target group prefers to see instead.

Step 3. Conduct in-depth analysis of underlying factors. Analyze the factors that work in favor of and against the current situation. Identify positive factors such as those that contribute to the things that are working well and those that work against or mitigate the things that are working poorly, or are difficult or problematic. Identify negative factors, or those that contribute to the things that are working poorly, or are difficult or problematic, or those that work against or impede the things that are working well. Analyze how these factors interact. Examine what could bring about a change in the desired direction.

Step 4. Analyze internal conditions and assumptions and the need for development. Analyze the project’s conditions and assumptions, based on the various actors involved in the change process. Discuss who project proponents are, who should be included to contribute to bringing about change, why those who should be included should work together, what makes those who should work together especially suited to work together, and what resources, strengths and capacities are at the disposal of those who should work together.

CARE’s Causal Responsibility Matrix²⁷²

Causal-responsibility analysis, developed by CARE, represents a combination of causality analysis and responsibility analysis in a single tool.

CARE’s Causal Responsibility Matrix

Problem	Unrealized Rights	Who is responsible?	Actions and Solutions
Immediate Cause			
Intermediate Cause			
Fundamental Cause			

Theis, however, criticizes the tool because it lacks clearer guidance or a more detailed framework for specific programmatic issues, and so “risks identifying causes, responsibilities and duty bearers that are not priorities for interventions...The causal-responsibility analysis often leads to analysis paralysis by producing too many options for actions. An instructive example is the area of child labor, which has many causes and duty bearers. A detailed analysis may help to get a better understanding of the issue, but it does not necessarily lead to clear priorities for action. Rights-based analysis has

²⁷² National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines.

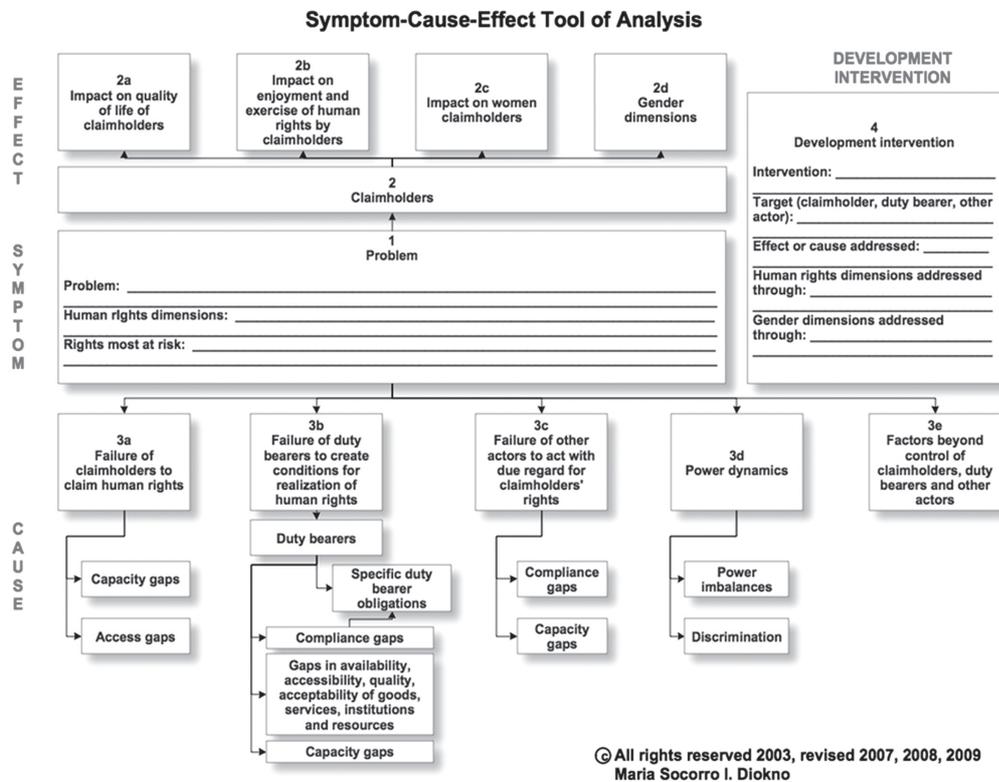
to go beyond simply combining causal and responsibility analysis.”²⁷³

CARE and Oxfam America, however, insist that “thorough analysis of underlying causes of poverty gets at *why* rights are not being realized, *who* is responsible for promoting and protecting them, *what* aspects of the governance structure need to be changed in order to make it enabling, and *how* poor people can play central roles in claiming their own rights... CARE and Oxfam America recognize that there is future work to be done to develop and recommend protocols and methods for carrying out this analysis.”²⁷⁴

Diokno’s Symptom-Cause-Effect Tool of Analysis²⁷⁵

Diokno (2003, 2007, 2008, 2009) designed a symptom-cause-effect tool of analysis to facilitate human rights-based problem analysis. She stresses that the way a problem is defined influences future choices and determines whether effective, complementary and coherent development interventions to realize human rights will be adopted and pursued.

Diokno’s *Symptom-Cause-Effect* tool of analysis is applied through four steps:



²⁷³ Theis, Joachim. 2004. Promoting Rights-based Approaches: Experiences and Ideas from Asia and the Pacific. Bangkok, Thailand: Save the Children, Sweden.

²⁷⁴ Cooperative Assistance and Relief Everywhere, Inc. (Care USA) and Oxfam America. 2007. Rights-based Approaches Learning Project, Virginia, USA: Stylus Publishing LLC.

²⁷⁵ Diokno, Maria Socorro I. 2009. *Symptom-Cause-Effect Tool of Analysis with accompanying Guide*. 2003 revised 2007, 2008, 2009.

Step 1. Identify the symptom. In the human rights-based approach to development, a problem is treated as *symptomatic* of the true or root causes of human rights deprivations (hence the use of the word *symptom*). Questions to facilitate identification of the symptom or problem include: What is the problem? Why is it a problem? What are the human rights dimensions of the problem? What rights are most at risk?

Step 2. Assess effects. Claimholders are identified and the effects of the problem on the quality of life and the enjoyment (or non-enjoyment) of human rights by claimholders are mapped out. Questions to facilitate accomplishing this step include: Who are most affected by the problem? What is the impact of the problem on the quality of life of claimholders? What is the impact of the problem on claimholders' enjoyment and exercise of human rights? Are women affected by the problem in the same way as men? What are the gender dimensions (e.g., *economic marginalization, political subordination, gender stereotyping, multiple burdens, violence against women, etc.*) of the problem?

Step 3. Trace the causes. Diokno posits that problems may be traceable to any, all or a combination of the following: (a) failure on the part of claimholders to claim their rights; (b) failure on the part of duty bearers to create conditions for the realization of human rights; (c) failure on the part of other actors to act with due regard for the rights of claimholders; (d) dynamics of power structures and relations; or (e) factors beyond the control of claimholders, duty bearers or other actors. Diokno suggested a list of facilitative questions to probe each of these causes.

Step 4. Design the best possible intervention. All possible interventions are considered and the *best possible intervention* is chosen to address the problem. Questions that may assist the design of the best possible intervention include: What is the best possible intervention to address the problem? Who does the intervention target (claimholders, duty bearers or other actors)? Does the intervention address the effect of the problem or its cause(s)? How does the intervention address the human rights dimensions of the problem? How does the intervention address the gender dimensions of the problem?

Actor Analysis

NEDA's Human Rights Checklist 9²⁷⁶

Human Rights Checklist 9. Minimum Composite Information for Human Rights-based Actor Analysis

	Claimholders	Duty bearers	Other Actors
Who?	Most Vulnerable: Inherent Disadvantages/ Vulnerabilities:		
Interests and aspirations	Complementary: Competing:	Complementary: Competing:	Complementary: Competing:
Value Systems			
Formal and Informal Structures			
Capabilities	Existing: Need Strengthening: Gaps:	Existing: Need Strengthening: Gaps:	Existing: Need Strengthening: Gaps:
Power	Power to: Power with: Power from within: Power over:	Power to: Power with: Power from within: Power over:	Power to: Power with: Power from within: Power over:
Rights, Freedoms and Entitlements	Rights: Rights Most Enjoyed: Rights Least or Not Enjoyed:		
Responsibilities/Obligations	Responsibilities Compliance	Obligations of Conduct Obligations of Result Compliance	Responsibilities Compliance

The information gathered on the different actors are studied and analyzed, with a view to appreciating the dynamics of the interaction within and among actors and their implications on development planning.

²⁷⁶ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines.

UN's Role Pattern and Capacity Gap Analysis²⁷⁷

The UN recommends role pattern analysis to identify:

- Whose rights are affected;
- Who is responsible for unfulfilled rights;
- Who rights-holders are and whether they have the capacity to claim their rights;
- What specifically is owed to the rights-holders;
- Whether mechanisms of delivery, accountability, and redress exist, and what mechanisms should be established;
- Who duty bearers are and their corresponding obligations;
- Which specific actors or institutions are responsible and whether they have the capacity to meet their obligations;
- Whether these duty bearers are also rights-holders (whether they too rely on others performing their duties in order for them, in turn, to deliver what they owe);
- The relationship between rights-holders and duty bearers in the development issue or challenge under examination; and
- The level where interventions for capacity building are most effective.

The UN cautions that role pattern analysis should be guided by rights and obligations established in international human instruments and by the more specific roles and standards defined in national laws, procedures and policies.

The UN also recommends the conduct of capacity gap analysis to determine which capacities are lacking for rights-holders to claim their rights and for duty bearers to carry out their obligations. The UN emphasizes: "In a HRBA, the concept of capacity is not only a technocratic analysis of resources and skills. It also entails political, societal, legal and institutional change."

Capacity gap analysis from the HRBA perspective focuses on: (a) Responsibility/motivation/commitment/leadership, which the UN defines as "characteristics that duty bearers *should* recognize about their roles in order to carry out their obligations;" (b) Authority, which the UN defines as the "legitimacy of an action, when individuals or groups feel or know that they *can* take action," and which are largely determined by laws, formal and informal norms and rules, tradition and culture; and (c) Access to and control over resources, which the UN defines as the combination of "human resources (skills, knowledge, time, commitment, etc.), economic resources and organizational resources influencing whether a rights-holder or duty-bearer *can* take action."

SWOT Analysis

Developed by Albert S. Humphrey (1960s), SWOT analysis is a relatively simple framework for analyzing strengths, weaknesses, opportunities and threats, used often by development practitioners.

²⁷⁷ United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College. 2007. Common Learning Package on the Human Rights-based Approach–Facilitation Guide. Turin, Italy: United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College.

Strengths	Weaknesses
Opportunities	Threats

In the context of human rights-based actor analysis, SWOT analysis is undertaken for every group of actors (claimholders, duty bearers, other actors) involved in the dispute, event, situation or problem that is being addressed.

Diokno (2004)²⁷⁸ likens strengths with positive characteristics (such as high levels of awareness of human rights, obligations of conduct and of result, institutions of remedy, and relevant human rights norms, standards and principles; free and active participation in seeking justice; and positive actions towards exercising rights responsibly). She equates weaknesses with characteristics that could be improved or actions that are being done badly or that should be avoided (e.g. factionalism, infighting, poor or no awareness of human rights, little or no participation in seeking justice, limited or no access to justice in any or all of its dimensions). She relates opportunities to favorable factors external to the actor under analysis (e.g. changes in policies, laws, rules, jurisprudence with positive human rights impact, trends in technology, markets, social attitudes, lifestyles, population patterns, availability and accessibility of formal and informal justice structures and recourse mechanisms). Threats represent external negative factors (e.g. negative value systems such as customary patterns or culture of corruption, defects of formal and informal justice structures, obstacles to availability, effectiveness and accessibility of recourse mechanisms and institutions of remedy).

Stakeholder Analysis Matrix

Another common tool among development practitioners is the Stakeholder Analysis Matrix, a flexible tool that may be adapted to meet different circumstances. The European Commission,²⁷⁹ for example, endorses the following Stakeholder Analysis Matrix:

Stakeholder and basic characteristics	Interests and how affected by the problem(s)	Capacity and motivation to bring about change	Possible actions to address stakeholder interests

²⁷⁸ Diokno, Maria Socorro I. 2004. Human Rights-centered Development: Theory and Practice. Quezon City, Philippines: The University of the Philippines Press.

²⁷⁹ European Commission. March 2004. Aid Delivery Methods, Vol. 1–Project Cycle Management Guidelines. Brussels: European Commission.

While the Australian Agency for International Development²⁸⁰ endorses twin matrices, the first dealing with problems, and the second, dealing with impacts:

Stakeholder Analysis Matrix 1 - problems

Stakeholder	How affected by the problem(s)?	Capacity and motivation to participate in addressing the problem(s)	Relationship with other stakeholders (e.g. partnership or conflict)

Stakeholder Analysis Matrix 2 - impacts

Stakeholder	Stakeholder's main objectives	Positive impacts/benefits	Negative impacts/benefits	Net impact

The Stakeholder Analysis Matrix may be modified to incorporate human rights standards, norms and principles, as the example below illustrates:

Actor	Rights, obligations and how affected by the problem(s)	Extent of participation, empowerment, accountability,	Possible actions to address claimholder rights, duty bearer obligations
Claimholder			
Duty Bearer			
Other Actor			

Gender Analysis

ILO's Participatory Gender Audit²⁸¹

The ILO developed a tool and methodology for the conduct of participatory gender audits. A gender audit “considers whether internal practices and related support systems for gender mainstreaming are effective and reinforce each other and whether they are being followed. It monitors and assesses the relative progress made in gender mainstreaming. It establishes a baseline. It identifies critical gaps and challenges. It recommends ways of addressing them and suggests new and more effective strategies. It documents good practices towards the achievement of gender equality.”

²⁸⁰ Australian Agency for International Development, 2003. Guidelines on the Logical Framework Approach. Canberra: Australian Agency for International Development.

²⁸¹ International Labour Organization. 2007. A Manual for Gender Audit Facilitators: The ILO Participatory Gender Audit Methodology. Geneva: International Labour Organization.

ILO's participatory gender audit focuses on twelve key areas of analysis, with corresponding guide questions:

- A. Current national/international gender issues and gender debate affecting the audited unit, and unit's interaction with national gender institutions and women's organizations
- B. Organization's mainstreamed strategy on gender equality as reflected in audited unit's objectives, programme and budget
- C. Mainstreaming of gender equality in the implementation of programs and technical cooperation activities
- D. Existing gender expertise and strategy for building gender competence
- E. Information and knowledge management
- F. Systems and instruments in use for monitoring and evaluation
- G. Choice of partner organizations
- H. Products and public image
- I. Decision-making on gender mainstreaming
- J. Staffing and human resources
- K. Organizational culture
- L. Perception of achievement on gender equality

Power Analysis

Gaventa's Power Cube²⁸²

John Gaventa of the Institute of Development Studies in the United Kingdom created the *power cube* as an approach to analyze and understand the nature of power. Gaventa warns that the power cube is neither a checklist nor a prescriptive tool, because neither use would allow an in-depth examination of the dynamics, context, interrelationships and forms of visible, hidden and invisible power. Gaventa, instead, describes the power cube as an analytical device, which can be used to map out the types of power and the strategies to challenge or change power relations.

Gaventa's power cube builds on Steven Lukes' spaces, places and forms of power, but argues that these spaces, places and forms of power must be analyzed as separate yet interrelated dimensions. Gaventa explains: "The power cube is a framework for analyzing the spaces, places and forms of power and their interrelationship. Though visually presented as a cube, it is important to think about each side of the cube as a dimension or set of relationships, not as a fixed or static set of categories. Like a Rubik's cube, the blocks within the cube can be rotated—any of the blocks or sides may be used as the first point of analysis, but each dimension is linked to the other."

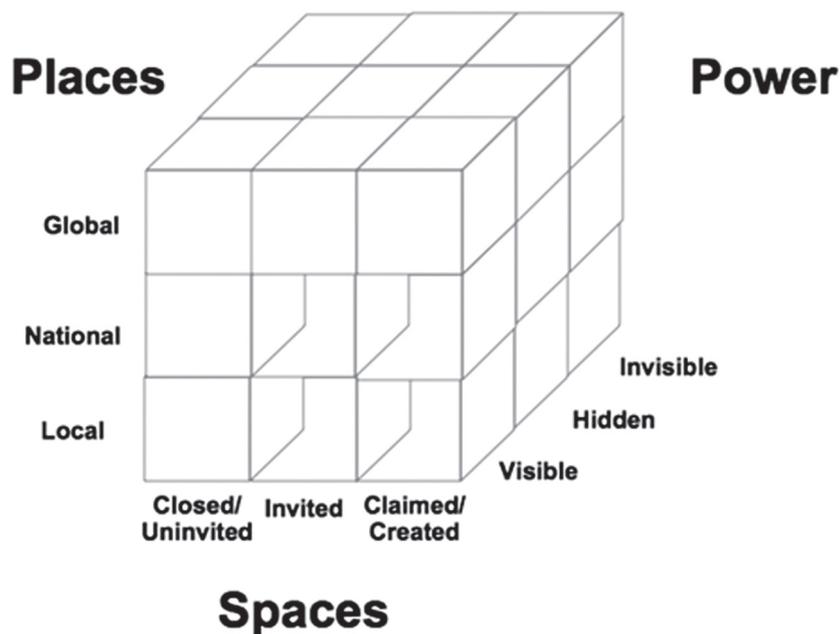
Gaventa defines spaces as "opportunities, moments and channels where citizens can act to potentially affect policies, discourses, decisions and relationships that affect their lives and interests." Citing Cornwall (2002), Gaventa emphasizes that these spaces "are not neutral, but are themselves shaped

²⁸² Gaventa, John. November 2006. Finding the Spaces for Change: A Power Analysis. IDS Bulletin. Volume 37, No. 6. See also Gaventa, John. January 22, 2007. *Participation and Citizenship: Exploring Power for Change*. Powerpoint Presentation before the ODI/IDS Development Horizons Seminar.

by power relations, which both surround and enter them.” Gaventa proposes a continuum of spaces, which include:

- **Closed or “provided” spaces**, or decisions made behind closed doors;
- **Invited spaces**, or activities where people are invited to participate; and
- **Claimed/created spaces**, or spaces autonomously created or claimed by less powerful actors from or against power holders (e.g., spaces created by social movements and community associations, natural places outside institutionalized policy arenas, where people gather to debate, discuss and resist).

Gaventa's Power Cube



Gaventa concedes the possibility that other spaces exist and vary across countries. Nonetheless, he emphasizes the dynamic nature of spaces: “spaces exist in dynamic relationship to one another, and are constantly opening and closing through struggles for legitimacy and resistance, co-optation and transformation... Similarly, power gained in one space, through new skills, capacity and experiences, can be used to enter and affect other spaces.”

Gaventa identifies the places where critical social, political and economic power resides: local, national and global. He notes the close relationships between and among these places of power and suggests that these places be seen “as a flexible, adaptable continuum, not as a fixed set of categories.”

Gaventa posits that power has three different forms:

- **Visible power**, or observable decision-making, including formal rules, structures, authorities, institutions and procedures of decision-making.
- **Hidden power**, where certain actors and institutions use their influence to control who sets the agenda and what the agenda should contain; in many instances, hidden power results in the exclusion and devaluation of the concerns, interests and representation of less powerful groups.
- **Invisible power**, which Gaventa describes as the most insidious form of power, since it shapes the meaning of what is acceptable in a society. Gaventa describes invisible power thus: “Significant problems and issues are not only kept from the decision-making table, but also from the minds and consciousness of the different players involved, even those directly affected by the problem. By influencing how individuals think about their place in the world, this level of power shapes people’s beliefs, sense of self and acceptance of the status quo—even their own superiority or inferiority. Processes of socialization, culture and ideology perpetuate exclusion and inequality by defining what is normal, acceptable and safe.”

Analysis of Objectives

UN’s Objective Setting using the Human Rights-based Approach to Results-based Programme Planning²⁸³

The UN adopted an HRBA framework to results-based program planning, which links the human rights-based approach with the elements and methodologies of results based management. The UN defined the specific type of change required by HRBA:

Impact, or sustained positive changes in the life, dignity and wellbeing of individuals and peoples;

Outcome, or legal, policy, institutional and behavioral changes leading to a better performance by claimholders to claim rights and duty bearers to meet their obligations;

Outputs, or goods, services and deliverables to develop the capacities of claimholders, duty bearers and national human rights protection systems; and

Process, the application of human rights principles to ensure a participatory, inclusive and transparent programme process for both duty bearers and claimholders, especially for those discriminated against.

²⁸³ United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College. 2007. Common Learning Package on the Human Rights-based Approach–Facilitation Guide. Turin, Italy: United Nations Action 2 Inter Agency Task Force and United Nations Systems Staff College.

The UN emphasizes the benefit of linking HRBA to results-based management methodologies: “Linking HRBA and RBM methodologies will ensure getting the objectives right. Human rights standards guide the definition of outcomes and outputs as they tell us what the desired performance change is, which is required for rights holders to claim their rights and duty bearers to meet their obligations. One of the comparative advantages of the HRBA is that capacity development is not only about service delivery but provides for policy advice, awareness raising and social mobilization. Results-based program planning ensures that the sum of interventions is not only necessary, but also sufficient to achieve the expected result.”

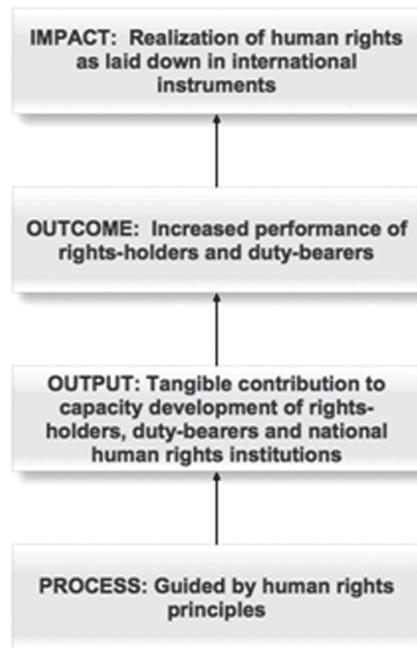
Applying the UN’s framework will require developing a results chain and discussing how to ensure HRBA during implementation. The UN notes that results can be achieved at many levels and together form a results chain.

The UN recommends the identification of strategic interventions to close the gaps between claimholders and duty bearers. The UN suggests some human rights criteria for selecting areas for intervention:

- Major gaps between human rights standards and practice;
- Issues of concern raised by treaty bodies or special procedures;
- National priorities aligned with human rights standards and MDGs;
- Persistence, severity and scope of a human rights violation (e.g. domestic violence, incarceration of juveniles with adults, human trafficking, women’s exclusion from political decision-making);
- Issues of concern raised by national human rights commissions or ombudsperson;
- Negative trends leading to human rights violations such as persistent growing patterns of social exclusion and discrimination of a minority group;
- Disparities indicating unequal treatment and discrimination, and persistent exclusion from opportunities and participation;
- Opportunities for advocacy, policy and programme cooperation by development partners;
- Opportunities for multiple impacts on development challenges and human rights; and
- Opportunities to work with national human rights partners and advocates in the state and civil society.

The UN emphasizes, “HRBA ensures a holistic and system-wide approach to development challenges,

UN’S HRBA TO RESULTS-BASED PROGRAMME PLANNING



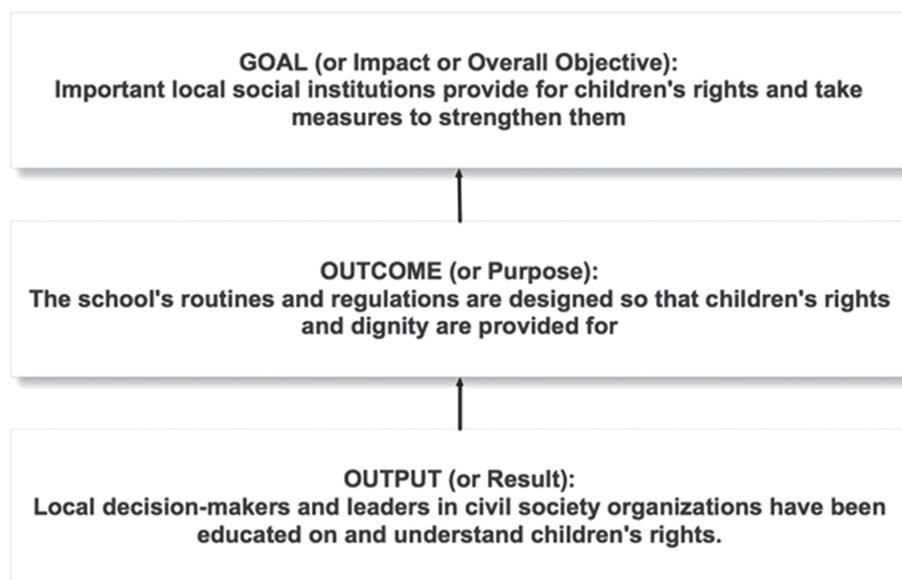
whereby other longer-term interventions, such as awareness raising and policy advice will be considered. Ultimately, the centrality of the relation between rights-holders and duty bearers in an HRBA suggests an emerging political role for the UN as a bridge between claims and duties.”

SIDA's LFA-AI Goal Tree²⁸⁴

SIDA's *Logical Framework Analysis with an Appreciative Inquiry Approach* ... proposes the use of a goal tree to formulate comprehensive project goals and identify concrete measures to achieve that goal. SIDA defines an overall goal as the “long-term sustainable changes (positive effects)” that the project contributes to, and a project goal as “the change which the target group wants to bring about, and which will occur when the target group uses the results delivered by the support initiative.”

To formulate the project goal and the “building blocks” or project deliverables, SIDA proposes the following questions: What concrete goal shall the project have? What will the project contribute that will help to improve the target group's situation? How are we to succeed in this endeavor? What are the “building blocks”/results for the project? What is the project to deliver in order to contribute to bringing about change in the areas defined earlier? Which of our resources, competencies and strengths, as arrived at under our situation analysis, are particularly suitable for achieving this? What are we, the various stakeholders involved in the project, each prepared to assume responsibility for? What are the key success factors? What else may we need to think about to ensure a favorable project result?

EXAMPLE OF HUMAN RIGHTS-BASED GOAL, OUTCOME AND OUTPUT



Swedish International Development Cooperation Agency. *Logical Framework Approach with an Appreciative Inquiry Approach*. Sweden: April 2006.

²⁸⁴ Swedish International Development Cooperation Agency. April 2006. *Logical Framework Analysis with an Appreciative Inquiry Approach*. Stockholm: Swedish International Development Cooperation Agency.

Theis' Goal-based Planning Tool²⁸⁵

Theis (2004) introduces the notion of “most significant changes” as a framework for setting goals within the context of human rights. He suggests that a short list of most significant changes facilitates the application of human rights. He proposed a sample list of most significant changes for children’s rights, which can be used as a checklist to formulate goals, outcomes, objectives, indicators and activities:

- Positive changes in children’s lives (better nutrition, lower mortality and morbidity, better education, etc);
- Changes in policies, practices, behaviors and resources (changes in policies, laws and programs; economic policies that enable human rights; effective enforcement of laws against violations; allocation of larger budgets and more resources for those living in poverty, vulnerable and at-risk persons and for basic social services; changes in awareness, attitudes, behaviors, practices, norms and values; improved quality, relevance and responsiveness of institutions and services; opportunities for greater participation of rights holders in decisions and in claiming their rights; and better data and information systems about people);
- Changes in society’s capacity and commitment to support and demand children’s rights;
- Changes in children’s participation; and
- Changes in equality, inclusion and non-discrimination.

Theis admits that “most significant changes” are generic, but nonetheless provide a human rights framework to achieve children’s rights.

Theis developed a goal-based planning tool, which is accomplished through the following steps:

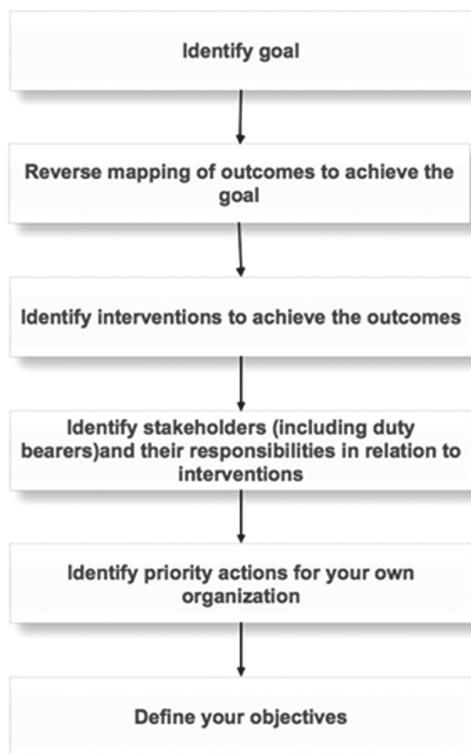
Step 1. Identify the human rights-based goal. Recall that a human rights-based goal is a long-term vision focusing on the rights of all human beings, rather than on short-term, incomplete targets. It is directly linked to specific human rights and focuses particularly on the most vulnerable groups of people. It is broad enough to provide a common focus for all work that needs to be done to achieve the goal. It cannot be achieved in a short time or by one organization on its own. It reinforces the interdependence of rights. It focuses on people and their rights, rather than on organizations and service providers.

Once the goal is identified, identify the most vulnerable population group in relation to the goal, to maintain a clear focus on those who will gain the most upon the achievement of the goal. Theis emphasizes that this step is necessary, otherwise, “there is a risk that programs lose sight of the

²⁸⁵ Theis, Joachim. 2004. Promoting Rights-based Approaches: Experiences and Ideas from Asia and the Pacific. Bangkok, Thailand: Save the Children, Sweden.

most marginalized and most difficult-to-reach people and instead concentrate on groups that are easier to work with.”

THEIS’ GOAL-BASED PLANNING TOOL



Step 2. Reverse mapping of outcomes to achieve the goal.

Assume the goal has been achieved then work backwards and identify all outcomes necessary to achieve the goal. Work backwards from the goal until you reach the current situation. The list of most significant changes may facilitate the structure and guide the mapping of outcomes. This explains why reverse mapping is important: “Development and child welfare workers are used to thinking about progress and evolution, starting now and looking towards the future. Reversing this perspective and working backwards in time helps to override established thought patterns. It forces us to think differently and helps to avoid just repeating what we know already. Identifying necessary changes in society helps to clarify what kind of work needs to be done, to focus on meaningful outcomes and to prioritize changes based on their impact on the goal. The mapping of outcomes helps to avoid, or at least reduce, the risk of spending time analyzing ‘dead-end’ causes and responsibilities that do not lead to practical action.”

Step 3. Identify interventions to achieve the outcomes. Identify specific actions that need to take place to achieve the outcome.

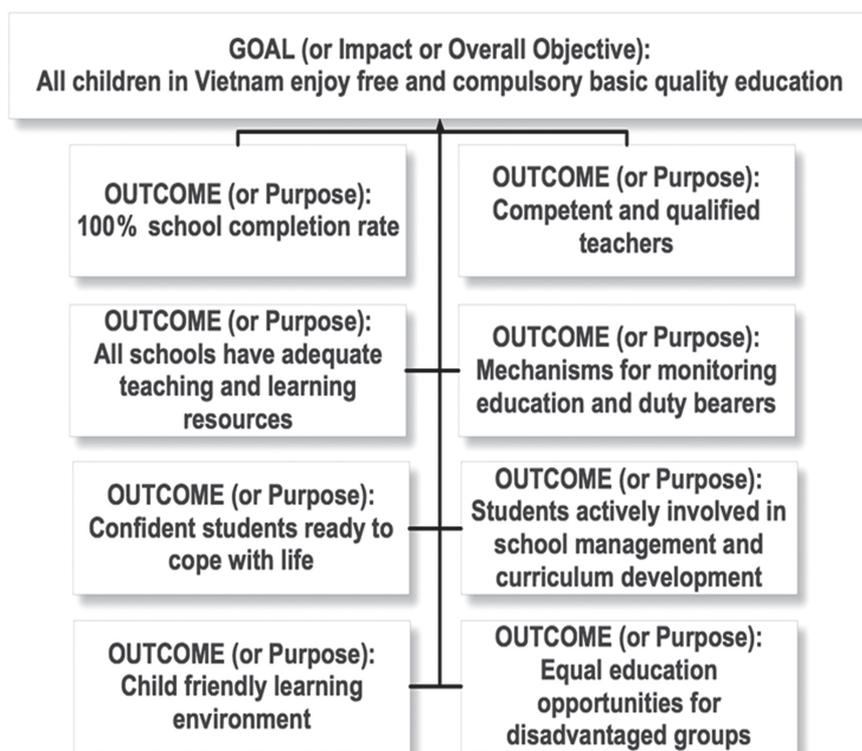
Step 4. Identify stakeholders (including duty bearers) and their responsibilities in relation to interventions. Identify claimholders, duty bearers and other agencies and individuals and their responsibilities and roles in relation to each intervention.

Step 5. Identify priority actions for your own organization. This proposes the following questions to identify priority actions: What can our organization do to have greater impact on children’s lives? What are the most important contributions that our organization can make to the achievement of the overall goal? How can we achieve this in the country, environment and context? This also suggests using the Concluding Observations of UN treaty monitoring bodies as a basis for listing priority areas and actions.

Step 6. Define your objectives. Because human rights-based goals are long-term visions, goals need to be broken down into specific, measurable and time-bound objectives. While the list of most significant changes can help refine objectives, This notes that most significant changes need not be included in each objective, so long as these were considered in the formulation of the goal, identification of outcomes and actors and the prioritization of actions.

In applying the goal-based planning tool, Thisis advises development planners to achieve wider impact, improve existing analysis and plans, build on existing analysis and experiment with the human rights-based approach.

EXAMPLE OF HUMAN RIGHTS-BASED GOAL AND OUTCOMES



Thisis, Joachim. *Promoting Rights Based Approaches Experiences and Ideas from Asia and the Pacific*. Sweden: Save the Children. 2004.

AHRC’s Core Body of Objectives²⁸⁶

AHRC presented a non-comprehensive list of goals and objectives (*core body of objectives*) classified as (a) short- to medium-term objectives, (b) longer-term objectives, (c) good governance and democracy objectives, (d) sectoral reform objectives (specific objectives for women, children, persons with HIV-AIDS, workers, environment). The short- to medium-term and longer-term objectives are generally linked to the normative content of human rights, most of which require almost immediate initial action. AHRC proposed the list as a starting point from which more detailed priorities can be formulated and from which time-governed goals can be established.

AHRC emphasizes that the formulation of human rights objectives requires a more detailed approach. It proposed the following questions to facilitate the formulation of human rights objectives: What steps must be taken by authorities to respect each right? What action is necessary to protect people

²⁸⁶ Human Rights Council of Australia, Inc. 2001. *The Rights Way to Development: A Human Rights Approach to Development Assistance Policy and Practice*. Maroubra, NSW, Australia: Human Rights Council of Australia, Inc.

from human rights breaches? What policies need to be adopted by the recipient government within its resource constraints to guarantee at least minimum services for each objective? What priority choice must be made in the allocation of such resources? What level of participation is needed to assist the design of appropriate programs?

AHRC's Core Body of Objectives

Short- to medium-term objectives	<ol style="list-style-type: none"> 1 ... 2 ... 3 End to discrimination: legislative, administrative (access to public service, information available to all, access to appeal process), cultural (social mobilization, community education and development) 4 Law reform: legal service accessible to all; alleviation of backlog of cases; redrafting of penal codes; support for legal aid; availability of lawyers; acceptance of community-based conflict resolution 5 Penal reform: minimum standards for prisoners (prison conditions, administrative oversight); minimum standards for custodial staff (working conditions) 6 Political participation: universal and equal suffrage; free voting procedures; access to political information; access to political process by women and indigenous peoples 7 Provision for redress and compensation 8 ... 9 Establishment of national human rights institutions 10 End of formal discrimination against ethnic groups
Longer-term objectives	<ol style="list-style-type: none"> 1 ... 2 Accountability of judicial institutions: appeal process; independent judiciary 3 Accountability of the bureaucracy 4 ... 5 ... 6 ...
Good governance and democracy objectives	<ol style="list-style-type: none"> 1 Strengthening civil society 2 Strengthening the judicial system 3 Strengthening the legislative system 4 Strengthening the executive system 5 Supporting transition processes
Sectoral reform objectives	<ol style="list-style-type: none"> 1 Women: reform of legal system as it relates to women; outlawing overt policies and covert practices that discriminate against women in employment, education, family affairs, land rights, credit services and social security; compensation for the effects of past discrimination; guarantees that women are aware of their rights and of the obligation of the state to respect, protect and promote these rights 2 Children: apply the Convention on the Rights of the Child 3 People living with HIV: establishment of adequate monitoring of incidence of the disease and of the community and official responses to it; judicial reform; financial assistance for HIV/AIDs support groups; sex education; human rights education
Good governance and democracy objectives	<ol style="list-style-type: none"> 1 Strengthening civil society 2 Strengthening the judicial system 3 Strengthening the legislative system 4 Strengthening the executive system 5 Supporting transition processes
Sectoral reform objectives	<ol style="list-style-type: none"> 1 Women: reform of legal system as it relates to women; outlawing overt policies and covert practices that discriminate against women in employment, education, family affairs, land rights, credit services and social security; compensation for the effects of past discrimination; guarantees that women are aware of their rights and of the obligation of the state to respect, protect and promote these rights; 2 Children: apply the Convention on the Rights of the Child; 3 People living with HIV: establishment of adequate monitoring of incidence of the disease and of the community and official responses to it; judicial reform; financial assistance for HIV/AIDs support groups; sex education; human rights education

Diokno's Rights-based Objective Setting Tool²⁸⁷

Diokno developed the *Rights-based Objective Setting* tool as a companion tool to the *Symptom-Cause-Effect* tool of analysis. Diokno notes that, because the *Symptom-Cause-Effect* tool identified the *best possible development intervention* and determined whether the intervention targets the *effect(s)* of the problem or its *cause(s)*, users of the *Rights-based Objective Setting* need not accomplish *all* the steps required by the tool, but only those steps appropriate to the development intervention under consideration.

Step 1. Formulate the overall goal(s) and outcome(s). Diokno distinguishes goals from outcomes. For Diokno, goals address the problem, represent the long-term vision, and are directly linked to the *realization* of the rights most at risk. Outcomes represent the desired results of development that the intervention sets out to achieve and are the steps needed to *progressively realize* the rights most at risk by the problem.

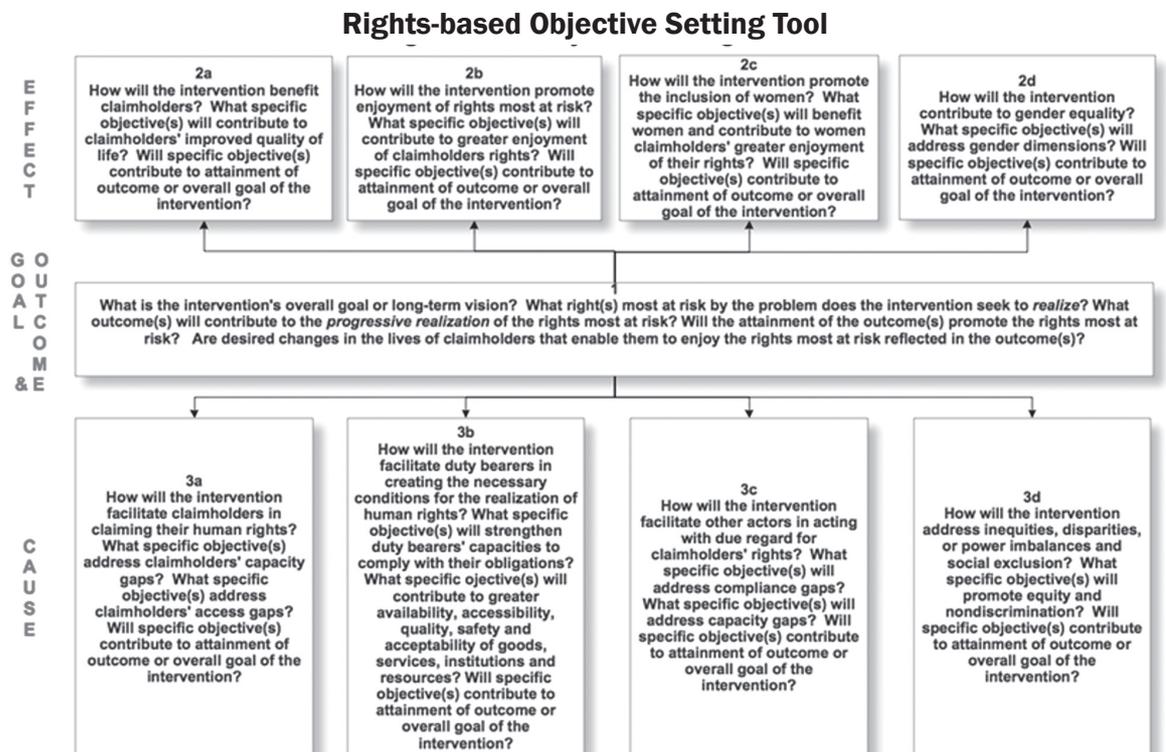
In formulating the overall goal, Diokno suggested the following question: What specific right(s) most at risk by the problem does the intervention seek to *realize*? In formulating outcomes, Diokno proposed the following questions:

- Will the attainment of the outcome(s) contribute to the *progressive realization* of the rights most at risk by the problem?
- Are desired changes in the lives of claimholders to enable them to enjoy the rights most at risk reflected in the outcome(s)?
- Does the outcome enhance the capacities of claimholders to claim their rights most at risk by the problem?
- Does the outcome enhance the capacities of duty bearers to create the necessary conditions for the *progressive realization* of the rights most at risk by the problem?
- Does the outcome enhance the capacities of other actors to act with due regard for the rights of claimholders?

Step 2: Break down the outcome(s) into realistic, attainable, logical and integrated objectives to address the effect(s) or the cause(s) of the problem. Diokno defines objectives as the concrete steps needed to reach the outcome(s) and contribute to the attainment of the overall goal(s); objectives explain in clear-cut terms what the outcome(s) and overall goal(s) mean in practice.

Diokno suggested a list of questions to facilitate the formulation of objectives that seek to address the effects of the problem and a separate set of questions to facilitate the formulation of objectives that seek to address the cause or combination of causes of the problem.

²⁸⁷ Diokno, Maria Socorro I. 2008. Applying the Rights-based Objective Setting Tool. 2003 revised 2008.



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 María Socorro I. Diokno

Analysis of Strategies

Developing Strategies to Realize Human Rights: OHCHR’s Process Guidelines²⁸⁸

OHCHR (2003) recommended five process guidelines for the formulation of poverty reduction strategies:

Guideline 1. Identify those living in poverty. Identify the attributes that constitute poverty and identify the population groups that possess those attributes.

The attributes of poverty consist of what the OHCHR calls “capability failures” resulting from the non-fulfillment of human rights. OHCHR suggested a set of basic capabilities:

- Being adequately nourished;
- Avoiding preventable morbidity and premature mortality
- Being adequately sheltered;
- Having basic education;
- Being able to ensure security of the person;
- Having equitable access to justice;
- being able to appear in public without shame;

²⁸⁸ United Nations Office of the High Commissioner for Human Rights. 2002. Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies. Geneva: United Nations Office of the High Commissioner for Human Rights.

- Being able to earn a livelihood; and
- Taking part in the life of a community.

OHCHR recommended that, through a participatory process, states should ascertain “which capabilities its people consider basic enough for their failure to constitute poverty.”

After identifying basic capabilities, OHCHR suggests identifying the population groups that suffer from inadequate achievement of these basic capabilities and then designing innovative mechanisms using both quantitative and qualitative methodologies to identify persons living in poverty. OHCHR emphasizes that identifying those living in poverty is not merely arriving at a number, proportion or percentage. It is knowing who persons living in poverty are, where they are located, whether they are young, adult or elderly, whether they are employed or not, what their ethnicity and gender are, etc. OHCHR also stresses the importance of identifying those, among persons living in poverty, who are particularly disadvantaged (e.g. women) and vulnerable (e.g. persons with HIV).

Guideline 2. Expressly identify the country’s national and international human rights framework to enhance the strategy’s effectiveness and align it to the requirements of human rights. The national and international human rights framework acts as the normative foundation for poverty reduction strategies. It can be gleaned from national human rights law and practice (e.g. Constitution, domestic laws, human rights case law), international and regional human rights instruments and treaties, and human rights commitments entered into at world conferences. OHCHR recommends:

- Basic human rights training for all involved in formulating and implementing poverty reduction strategies;
- Appointment of individuals with specific responsibility to ensure that human rights commitments are taken into account throughout the formulation and implementation of poverty reduction strategies; and
- Design and application of processes to ensure that human rights commitments receive due attention in the formulation and implementation of poverty reduction strategies.

Guideline 3. Ensure equality and nondiscrimination. Special measures may need to be adopted to afford equal and effective protection against discrimination. OHCHR recognized that inequalities and discrimination take on various forms, including explicit legal inequalities, deeply rooted social distinctions and exclusions, and policies of indirect discrimination. It thus becomes important to look into the effects of laws and policies rather than their intent.

OHCHR noted that not every distinction constitutes discrimination, especially if these are based on reasonable and objective criteria. Nonetheless, OHCHR stresses that a distinction that was “originally considered reasonable might become discriminatory over time because of changing social values within a given society.”

Guideline 4. Progressively realize human rights and set human rights indicators, targets and benchmarks. OHCHR recognized the deep-seated nature of poverty, which realistically cannot be eradicated immediately. Progressively realizing human rights

allows flexibility in two respects: there is no time limit and priorities over which rights to address at certain points in time may be set. To avoid confusion and misunderstanding over the notion of progressive realization, OHCHR prescribed the following conditions:

A. In relation to the *time dimension of progressive realization*:

1. States must acknowledge the possibility of making rapid progress to realize many human rights despite existing resource constraints, since the obligation to respect human rights requires political will rather than economic resources, while the obligations to protect and fulfill human rights may be performed by improving the efficiency of resource use;
2. States must immediately begin to take steps to realize human rights and to implement these steps within specific time periods;
3. These steps must include a series of intermediate, preferably annual, targets;
4. As a prerequisite to setting targets, States must identify indicators for every target, to measure whether the target has been met; indicators must be disaggregated for each subgroup of the population living in poverty.

B. In relation to *prioritization of human rights*:

1. The *process* of setting priorities must involve the effective participation of all claimholders, duty bearers and other actors, to enable all segments of society, especially those living in poverty, to express their value judgments on the priorities. Institutional mechanisms need to be designed and implemented to enable fair and equitable reconciliation of potentially conflicting value judgments.
2. The *substance* of prioritization must be guided by the following principles:
 - a. No human right can be given precedence over others on the ground of intrinsic merit, but different rights can be given priority at different stages of progressive realization on practical grounds.
 - b. No human right can be deliberately allowed to suffer an absolute decline in its level of realization; even as more resources are allocated to the rights accorded priority at any given time, other human rights must maintain at least their initial level of realization.
 - c. Core obligations must be met despite resource constraints, and no trade-offs are permitted with regard to core obligations.

Guideline 5. Ensure participation and empowerment through country-driven and country-owned processes, with the active and informed participation of those living in poverty. OHCHR interprets country ownership as broader than ownership by government; country ownership of a poverty reduction strategy is ownership by all claimholders, especially persons living in poverty, duty bearers and other actors.

Risk Analysis²⁸⁹

Risk analysis allows development planners to examine threats to people's lives and their environments and adapt existing resources accordingly through contingency planning or risk mitigation measures. Risk analysis is based on a structured approach to thinking through threats, followed by an evaluation of the probability that the threats will occur.

Threats may be internal to a country or external to it. Internally, threats may occur in the different realms of societal life:

- Political (e.g. government stability, regulation and de-regulation trends, social and employment legislation, tax policy, trade and tariffs controls, levels of corruption, armed insurgencies or internal conflicts, any other changes in the political landscape, etc.),
- Economic (e.g. investment climate, unemployment and labor supply, levels of disposable income and income distribution, inflation, interest rates, growth levels, any other changes in the country's economy),
- Socio-cultural (population growth, density and ageing, population health, education and social mobility and attitudes to these, population employment patterns, job market freedom and attitudes to work, migration, public opinion, social attitudes and socio-cultural taboos, lifestyle choices and attitudes to these, any other socio-cultural changes, etc.),
- Technological (e.g. emerging technologies, internet, power and energy, research and development activity, technology transfer, etc.), or
- Legal (e.g. freedom of the press, rule of law, predictability of laws and jurisprudence, independence of the judiciary, any other changes in the legal environment, etc.).

External threats may arise from globalization, global trends and markets, donor policy, and natural and physical environment (e.g. climate change, depletion of natural resources, weather patterns and disturbances, movements in the earth or earthquakes, etc.).

x x x

Risk assessment in the context of human rights may be undertaken through the following steps:

Step 1. Identify threats to people's lives and environment. Threats may involve changes in any or a combination of the fields described above. They result in failure or weakened delivery of entitlements of human rights (e.g. loss of *availability* of essential goods, services, resources and institutions inherent in human rights, loss of *physical, economic and information*

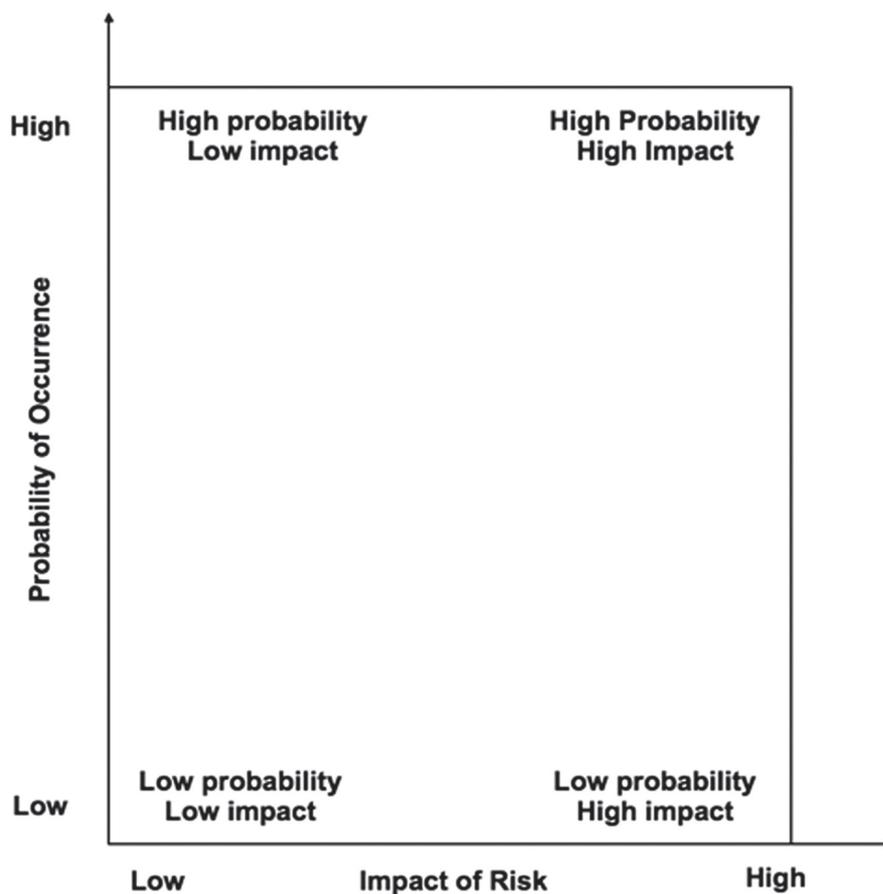
²⁸⁹ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines

accessibility, loss of quality, loss of safety, and loss of cultural acceptability), and failure to achieve equitable outcomes by not adhering to human rights obligations.

Step 2. Determine the likelihood or probability of the threat being realized. Determining probability will likely require accurate factual data for trending purposes, which may then be scientifically measured and projected through the application of methodologies of actuarial science, econometrics, statistical mathematics and allied fields. It may be important to involve experts in these fields to assist the determination of probability.

Step 3. Assess the impact of the threat on people's lives. High impact threats are events that result in violations of human rights (loss of life, pervasive starvation, widespread disease, general homelessness, etc.) or endanger the enjoyment and realization of human rights. Low impact threats are events that cause minor disruptions to human life, do not endanger the realization or enjoyment of human rights, and do not constitute human rights violations.

Step 4. Determine the level of risk. High-level risks are risks with high impact accompanied by a high probability of occurrence. Moderate-level risks are risks with high impact accompanied by low probability of occurrence. Low-level risks are risks with low impact and low probability of occurrence.



Step 5. Determine if risks can be eliminated, and, if not, which risks require contingency planning or the adoption and implementation of risk mitigation strategies.

A regular or periodic review of risk analysis is recommended.

Planning

Validation of Vertical Logic

Philippine Example of Human Rights-based Logical Framework²⁹⁰

At the **Integration of RBA Instruments/Materials into Development Plans, Programs and Activities**, held from May 25-28, 2010 at Subic, Zambales, NEDA sector staff modified the logical framework to incorporate the principles of the human rights-based approach. They also applied the modified logical framework to a concrete project. These are presented below.

HRBA MODIFIED ICC LOGFRAME ICC PE FORM NO. 6

	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	KEY ASSUMPTIONS/RISK
1. GOAL	Indicate verifiable indicators, setting specific targets	Determine other actors as sources of data, other than duty bearers and claimholders	Identify factors not within the control of duty bearers that restrict addressing human rights
Link goal to specific HR and focus on the most vulnerable	Relate to human rights entitlements such as availability, accessibility and affordability		Identify factors not within the control of other actors that restrict addressing human rights
2. PURPOSE			
Should contribute to the progressive realization of right(s) most at risk			
3. OUTPUTS			
Deliverables should include development of the capacity of claimholders			
4. ACTIVITIES			
Should ensure participatory, inclusive and transparent processes for duty bearers and claimholders.			

²⁹⁰ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines

CONCRETE EXAMPLE: SCHOOL BUILDING PROJECT

	OBJECTIVELY VERIFIABLE INDICATORS	MEANS OF VERIFICATION	ASSUMPTIONS AND RISKS
<p>Goal (Identify HR)</p> <ul style="list-style-type: none"> Access to quality basic education for all/All children aged 6–11 years old availing of quality services <hr/> <p>Purpose</p> <ul style="list-style-type: none"> Equitable access (in place infra facilities especially for disadvantaged groups/proximity of schools) <hr/> <p>Output</p> <ul style="list-style-type: none"> # of school buildings constructed # of classrooms + other facilities built 	<ul style="list-style-type: none"> 11,925 households in 205 barangays provided with year-round supply of potable water 30 percent decrease in time spent for fetching water from 40 mins to 12 mins 10 percent decrease in number of cases of water-borne diseases in the settlement areas At least 40 percent of the catchment population of Barangay Health Service availed of primary/basic health services Attained standard pupil to classroom ratio of 45:1 20 percent increase in school enrolment/participation Access to electricity connection; clean toilets Actual distance of school from residence <p>OVI should include timeframe</p> <p>Identify appropriate indicators to correctly reflect the situation in the target area and the outcome of the project.</p>	<ul style="list-style-type: none"> DepED DPWH LGU Academe/School Participation 	<ul style="list-style-type: none"> Risk: Uncontrolled population growth Inadequacy of resources to accommodate all school-aged children Land ownership & resettlement issues Absorptive capacity Assumption: adequate budget cover Premium for the constitutional mandate for basic education
<p>Activities</p> <ul style="list-style-type: none"> Site selection & prep Procurement of supplies & equipment Construction Maintenance 	<ul style="list-style-type: none"> Summary of project budget (refer to ICC-PE Form 1) 	<ul style="list-style-type: none"> DepEd NEDA-PMS (for ODA-funded projects) 	

Risks and Assumptions

Risk Analysis (see discussion under Analysis of Strategies above)

Indicators and Means of Verification

- Events-based Indicators (see Reference Sheet 9-A)
- Human Rights Indicators of Conduct and Human Rights Indicators of Result (see Reference Sheet 9-A)

- *Human Rights Violations Approach (see Reference Sheet 9-A)*
- *Human Rights Commitment Indicators (see Reference Sheet 9-A)*
- *Structural, Process and Outcome Indicators (see Reference Sheet 9-A)*

Monitoring and Evaluation

Tips for Development Planners²⁹¹

The following tips may facilitate human rights-based monitoring and evaluation, regardless of whichever tool, approach or process is adopted.

In monitoring, be alert to:

- Any form or taint of discrimination and inequality:
 - *Are any individuals or groups excluded or disfavored during implementation?*
 - *Did any gender issues surface and are these being addressed?*
 - *Do culture and traditional practices, religion and custom affect implementation and are they being addressed?*
 - *Is the ... implementation child-sensitive, child-protective and child-friendly?*
 - *What gaps, difficulties or constraints need to be addressed to enhance compliance with obligations of equality and nondiscrimination?*
 - *During implementation, is there any unintended or unanticipated harm or threats that may result in discrimination?*
 - *What corrective action or safeguard needs to be adopted and implemented to address the harm or threat?*
- Any indication during implementation that the (project) ... impairs or threatens the *best interest of the child* or is in any way inappropriate for children.
- Any inability to ensure the minimum essential levels of human rights in line with core human rights obligations
- Any undue and arbitrary interference with human rights and any human rights violation resulting from... implementation, which is incompatible with the obligation of progressive realization of human rights.
- Any inability to comply with obligations of international cooperation and assistance.
- Any obstruction or denial of claimholder entitlements to *availability, physical accessibility, economic accessibility, information accessibility, quality, safety* and

²⁹¹ National Economic and Development Authority. 2011. Human Rights-based Approach to Development Planning Toolkit. Philippines

cultural acceptability of goods, services, institutions or resources inherent in human rights. Recall that obstructions or denials of entitlements are not consistent with the obligation to respect human rights.

- Any weaknesses or constraints in the exercise of the state's regulatory and protection functions, which may not be compatible with the obligation to protect human rights:
 - *Does privatization threaten the availability, accessibility, quality, safety and acceptability of goods and services necessary for the realization of human rights?*
 - *Are appropriate quality and safety standards being implemented fairly?*
- Any gaps in observing the obligation to fulfill (facilitate) human rights.
- Any delays or inabilities in the timely provision of goods and services during disasters or calamities that may arise during ... implementation, which may be incoherent with the obligation to fulfill (provide) human rights.
- Any expressions of active, genuine and voluntary participation in implementation by claimholders, duty bearers and other actors.
- Any claimholder complaints or disputes arising from or during implementation and how these are being resolved: *Were recourse mechanisms utilized? How effective were they? What action is needed to strengthen these mechanisms?*

In evaluating the impact ..., pay special attention to the:

- Expected direct positive benefits on the quality of human life and on the realization of human rights arising from the (project) ...
- Unintended positive benefits of the (project) ...
- Direct and unintended negative effects of the (project) ... resulting in human rights violations.
- Level of enjoyment of human rights resulting from the (project) ...
- Promotion of the *best interest of the child*.
- Nature and level of compliance with human rights obligations as a result of the (project) ...
- Resolution of gender issues, and changes in cultural and traditional practices, or ways of life, religion or custom that hamper or interfere with the equal enjoyment of human rights by women and men.

- Substantial and meaningful changes in the situation of claimholders, especially those most vulnerable, as a result of the (project) ...
- Human rights that are still most at risk, despite the (project) ... and which require future action.
- Claimholders, especially those most vulnerable, who require future special and preferential treatment, despite the (project) ...
- Changes in conditions that cause or perpetuate discrimination and inequality and which require future action.

Principles of Monitoring and Accountability²⁹²

OHCHR (2002) proposed *Principles of Monitoring and Accountability* to guide the formulation and implementation of poverty reduction strategies. OHCHR stressed that monitoring provides the venue for duty bearers to identify, on an ongoing basis, those areas where concentration or attention needs to be directed in order to realize human rights, and for claimholders to hold duty bearers to account for any failure to discharge their human rights obligations.

OHCHR distinguished an accountability procedure from monitoring. According to the OHCHR, an accountability procedure is a mechanism by which duty bearers answer for acts or omissions related to their functions. An accountability procedure allows claimholders to understand the nature and level of duty bearer compliance with their human rights obligations. It also gives duty bearers the opportunity to explain their conduct and the results of their conduct. OHCHR stresses that, while accountability implies some form of remedy and reparation, it does not necessarily imply punishment.

OHCHR identified four categories of accountability mechanisms: judicial, quasi-judicial, administrative, and political, e.g. parliamentary processes, noting that in some cases, an institution performs both monitoring and accountability functions, while in other cases, the monitoring function is undertaken by an institution separately from another institution, which performs the accountability function. OHCHR also noted that the form and combination of monitoring and accountability are contextual, since these vary from one duty bearer to another. Despite being contextual, however, OHCHR recommends that all duty bearers, while discharging their obligations, must ensure that their monitoring and accountability procedures are accessible, transparent and effective.

OHCHR recognized the responsibility of the international community to facilitate the realization of human rights and so recommended that monitoring and accountability procedures “must not only extend to States, but also to global actors—such as the donor community, intergovernmental organizations, international NGOs and TNCs—whose actions bear upon the enjoyment of human rights in any country.”

²⁹² United Nations Office of the High Commissioner for Human Rights. 2002. Draft Guidelines: A Human Rights Approach to Poverty Reduction Strategies. Geneva: United Nations Office of the High Commissioner for Human Rights.

OHCHR recommends that appropriate internal and external monitoring and accountability procedures be established for the obligations to respect, protect and fulfill human rights. Internal procedures may include legislative bodies and committees; they may also involve the creation of a legal framework whereby civil society organizations can independently monitor the activities of government that affect the realization of human rights, and the provision and enforcement of remedies for human rights violations, which do not necessarily require judicial adjudication.

External monitoring and accountability procedures complement internal procedures and include compliance with procedures established by human rights treaties. OHCHR reminds states of their treaty obligations to comply with all relevant procedures required by human rights treaties (e.g. reporting, complaints and inquiry procedures) and their obligations to cooperate with other external monitoring and accountability mechanisms (e.g. special procedures established by the UN Commission on Human Rights).

OHCHR recognizes the impact of actions of the international community in the spheres of trade, aid, migration and private capital inflow and notes that these actions must conform to global actors' human rights responsibilities. Thus, they too are encouraged to adopt and implement transparent and effective monitoring and accountability procedures. OHCHR also recognizes that "States determine the policies of some global actors, including the World Bank, the IMF and the WTO. When determining the policies of such global actors, a State must conform to its international human rights duties and must be respectful of other States' international human rights obligations. How a State discharges its duties when determining the policies of global actors must be subject to monitoring and accountability procedures..."

OHCHR notes the impact of the activities of transnational corporations on human rights in the countries where they operate, and suggest the following guidelines:

- *First*, that transnational corporations also establish accessible, transparent and effective monitoring and accountability procedures in relation to their poverty reduction and human rights responsibilities;
- *Second*, the State, in which a company with overseas operations is headquartered, must take reasonable measures to ensure that overseas operations respect international human rights obligations of both the home and host State, including adopting and implementing accessible, transparent and effective monitoring and accountability procedures;
- *Third*, a host State must ensure that transnational corporations operating in its jurisdiction conform to the national and international human rights obligations of that State, including, by adopting and implementing monitoring and accountability mechanisms to regulate the conduct of these corporations.

Monitoring Human Rights through WB's Social Guarantee Framework²⁹³

The World Bank in 2008 attempted to bridge structural gaps between legally declared norms and their effective implementation, by integrating the human rights-based perspective into social policy.

²⁹³ The International Bank for Reconstruction and Development/The World Bank. February 2008. Realizing Rights Through Social Guarantees: An Analysis of New Approaches to Social Policy in Latin America and South Africa. Washington, DC: The International Bank for Reconstruction and Development/The World Bank. Report No. 40047-GLB.

WB identified three distinct features of a human rights-based approach to social policy:

- (1) Definition and widespread communication of rights, entitlements and standards which enable citizens to hold policymakers and providers to account for delivery of social policy;
- (2) Availability of mechanisms, which citizens can use if they are unable to enjoy specific entitlements or social mechanisms; and
- (3) Commitment to equitable delivery of specified rights, entitlements and standards to all on a universal basis.

WB developed a social guarantees framework, which implies an institutional design that emphasizes synergy and coordination among agencies and providers to help social programs achieve their full potential; contributes to reducing gaps in opportunity by promoting universal access to and basic quality standards for essential services; and strengthens democratic governance.

WB defines social guarantees as sets of legal or administrative mechanisms that determine entitlements and obligations related to certain rights and ensure fulfillment of obligations on the part of the state. WB refers to these as safeguards that ensure access to essential opportunities and wellbeing. WB differentiated rights from social guarantees. According to WB, rights are abstract and provide ethical content and direction, while social guarantees are specific mechanisms that governments can put in place to realize rights. WB listed five aspects of social guarantees that facilitate the realization of human rights:

- (1) Social guarantees must be expressed in the Constitution and/or domestic law;
- (2) Social guarantees are constructed with explicit reference to specific social groups;
- (3) Social guarantees act to diminish disparity in opportunities among social groups to access specified human rights;
- (4) Social guarantees contain clear definition of entitlements and all procedures necessary to fulfill the guarantee including targeted results and standards for evaluation; and
- (5) Social guarantees are flexible in the sense that one guarantee can be executed through two or more policy instruments.

To build a social guarantees framework, a normative (legal) framework that precisely defines rights and their threshold of realization and specific institutional arrangements to design programs, determine and secure budget, implement and monitor policies that will realize rights are essential.

WB identified five sub-dimensions of social guarantees, which could be used to monitor the strength of social, legal and policy arrangements underpinning the realization of economic and social rights: access; financial protection; quality; mechanisms for redress and enforcement; and participation and continued revision, and proposed assessment questions to monitor the realization of human rights.

WB stresses the key role of governments as normative and regulatory institutions, especially since social guarantees reside in four domains: the legal domain (e.g. all laws and regulations that establish state obligations and citizens' duties related to their entitlements); the institutional domain (e.g. state institutions responsible for fulfillment of the guarantee and its sub-dimensions); the instrumental

domain (e.g. policies, programs, including public-private programs or services that ensure practical implementation of the guarantee in question); and the financial domain (e.g. economic resources allocated to and invested in the realization of the guarantee and its sub-dimensions).

WB's Sub-dimensions of the Social Guarantee

Access	Are the beneficiaries and services clearly defined?
	Are there institutional procedures for monitoring access?
	Are there legal or institutional mechanisms that ensure nondiscrimination in the access to services?
	Are services guaranteed for the amount of time needed?
	Is there a maximum waiting period for receiving the service?
	If service is unavailable within this waiting period, what is a guaranteed alternative (in the same period)?
Financial Protection	Do beneficiaries need to contribute to the cost of service?
	Are services accessible to those who cannot contribute to the cost?
	Is this information effectively communicated to the public?
Quality	Are there clear quality standards?
	Are programs being evaluated on a regular basis?
	Are standards and evaluation results clearly communicated to the public?
Mechanisms for Redress and Enforcement	Are there mechanisms allowing citizens to claim adequate provision of the services guaranteed?
Participation and Continued Revision	Do civil, parent, or other community organizations have a concrete role in the design, implementation, and monitoring of the program?
	Which law or institution guarantees citizens' involvement?
	Are there mechanisms that allow for continual improvement of services?

Save the Children's Global Impact Monitoring²⁹⁴

Save the Children views evaluation as “the process of reflecting on the implementation of a given program in order to draw lessons for the future. Using the Child Rights Programming approach, the views and opinions of boys and girls form an integral part of the monitoring and evaluation process.”²⁹⁵

Save the Children anchors its mission on what it calls “three pillars of action:” practical action on violations; strengthening structures and mechanisms; and constituency awareness. Save the Children thus undertakes evaluations of the strategies relating to the three pillars of action. In evaluating strategies aiming at directly addressing violations, Save the Children looks at “whether the level of rights violation has been reduced as a result of the programme.” In evaluating strategies that aim to strengthen structures and mechanisms and build awareness and support for children's rights, Save the Children is guided by the following question: “as a result of this program, is the target system better able to protect children from rights violations?”²⁹⁶

²⁹⁴ Starling, Simon, Foresti, Marta and Smith, Helen Baños. 2004. *Global Impact Monitoring: Save the Children UK's Experience of Impact Assessment*. London: Save the Children.

²⁹⁵ National Economic and Development Authority. 2011. *Human Rights-based Approach to Development Planning Toolkit*, citing International Save the Children Alliance, 2002. *Child Rights Programming: How to Apply Rights-based Approaches in Programming*.

²⁹⁶ National Economic and Development Authority. 2011. *Human Rights-based Approach to Development Planning Toolkit, 2011*, citing International Save the Children Alliance. 2002. *Child Rights Programming: How to Apply Rights-based Approaches in Programming*.

In 2001, Save the Children United Kingdom developed the *Global Impact Monitoring* framework, in response to a need to improve impact monitoring and impact assessment and to enhance the quality and impact of their work. The key elements of the framework are:

- A focus on impact, i.e. on changes as a result of our work and on the key processes leading to such changes;
- A common framework which offers some comparability across country programs and regions within a particular theme of work;
- A country-level process that identifies positive and negative changes in people's lives in conjunction with external and internal stakeholders.

The framework assesses impact in terms of five “dimensions of change,” which are “necessarily generic, but are used to summarize specific examples of impact for each theme of work. The framework is flexible, and applicable to advocacy as well as project-based work.” The five dimensions of change are:

- 1 **Changes in the lives of children and young people:** Which rights have been better fulfilled? Which rights are no longer being violated?
- 2 **Changes in policies and practices affecting children's and young people's rights:** Duty bearers are more accountable for the fulfillment, protection and respect of children's and young people's rights. Policies are developed and implemented and the attitudes of duty bearers take into account the best interests and rights of the child.
- 3 **Changes in children's and young people's participation and active citizenship:** Children and young people claim their rights or are supported to do so. Spaces and opportunities exist, which allow participation and the exercise of citizenship by children's groups and others working for the fulfillment of child rights.
- 4 **Changes in equity and nondiscrimination of children and young people:** In policies, programs, services and communities, are the most vulnerable children reached?
- 5 **Changes in civil societies' and communities' capacity to support children's rights:** Do networks, coalitions and/or movements add value to the work of their participants? Do they mobilize greater forces for change in children and young people's lives?

The framework is applied through the following process that actively involves internal programme staff and stakeholders, including children and young persons:

- 1 Qualitative and quantitative data are collected from a variety of sources (e.g. monitoring systems, project documents, stakeholders' comments, children and young persons' comments, etc.);
- 2 Data collected is shared with stakeholders before any meetings and analyzed and cross-checked during bilateral meetings with stakeholders or specific impact review meetings

involving a variety of stakeholders. During these meetings, efforts are made to elicit unintended or negative impacts.

- 3 A Country Impact Report is then produced, which summarizes “evidence” collected from review meetings with stakeholders as well as other sources under the five dimensions of change.

The framework was initially piloted in 15 country and sub-regional programs in 2001–2002, and then revised. A second pilot test was conducted between 2002 and 2003 and involved 34 countries and 3 sub-regional programs. Save the Children United Kingdom found the framework successful “as a practical way to put Child Rights Programming principles into practice.”

Save the Children United Kingdom maintains that, the “improvement of methods of assessing impact is an iterative process.” It continues to refine its mechanisms. Save the Children United Kingdom is now developing a new “Country Planning and Review Process,” that will integrate planning, management reporting, impact assessment and learning into a single format. It is also establishing mechanisms to provide feedback on its Country Impact Reports as well as developing more specific guidance on the types of impact that might be expected within each of the four “Goals for Children.” They are also addressing the question of attribution in an advocacy context as well as other methodological challenges of assessing advocacy work.

Monitoring Human Rights through Action Aid Bangladesh’s Planning and Implementation Framework²⁹⁷

Action Aid Bangladesh attempted to apply human rights to the logical framework matrix as their guiding framework for monitoring and evaluation and developed a modified logical framework matrix, which they call the *Planning and Implementation Framework Analysis*, that incorporates elements of the human rights-based approach and participation. The modified logical framework matrix is a five-column, four-row matrix:

Action Aid Bangladesh’s Planning and Implementation Framework Analysis

Narrative Summary	Measure of Achievement (instead of OVs)	Means of Measurement/ Accountability Standards (instead of MOVs)	Programme Partners, Participants, Other Stakeholders	Risk Analysis
Goal/Impact				
Purpose/Outcome				
Output				
Activities				

²⁹⁷ Shaikh, Partha Hefaz. Undated. *Intertwining Participation, Rights-based Approach and Log-Frame: A Way Forward in Monitoring and Evaluation for Rights-based Work*.

Action Aid Bangladesh devised this tool mainly because they found the logical framework matrix unable to serve its purpose as a guiding framework to monitor and evaluate their application of the human rights-based approach. They found significant differences between the traditional logical framework approach and the human rights based-approach: basic historical connotations vary and problem analysis based on the logical framework is based, in large measure, on the basic needs approach. More importantly, based on own experiences, Action Aid Bangladesh found that human rights-based projects induce *change activities* during project implementation, which may not be compatible with the vertical logic of the traditional logical framework, yet these *change activities* simply mean taking different routes to achieve the same outcome or impact of the program.

Action Aid Bangladesh argues that by modifying the logical framework matrix to incorporate elements of human rights, its monitoring and evaluation activities are more dynamic, flexible and learning-oriented.

Diokno's Rights-based Monitoring and Evaluation Strategy²⁹⁸

Diokno emphasizes the value of adopting a human rights-based monitoring and evaluation strategy, arguing that it promotes principled development planning and policy-making consistent with the demands of human rights. Moreover, it facilitates public accountability, and supports policy reforms to create conditions to realize human rights for all. It helps identify constraints or difficulties in realizing human rights during plan implementation, as well as dimensions of human rights problems and mechanisms of redress resulting from a national development plan. It may be used to carry out human rights public awareness or educational campaigns. It may also provide the basis for reports to treaty monitoring bodies.

Diokno developed a seven-step process for developing and implementing a human rights-based monitoring and evaluation strategy:

Step 1. Establish the subject matter framework. Determine what will be monitored and evaluated, and why. In human rights monitoring, how well duty bearers comply with their human rights obligations and what effects these are having on claimholders during the course of implementing a development intervention generally form the subject matter framework. In human rights evaluation, the subject matter focus generally shifts to the impact of the development intervention on claimholders' enjoyment of human rights and duty bearers' compliance with human rights obligations.

Step 2. Establish the data framework. Identify what data and information are needed and where data and information will be sourced. Recall that data and information must be compatible with state obligations and normative elements of human rights being monitored or evaluated. Data should be accurate, factual and available. They should also be disaggregated along the prohibited grounds of discrimination. They should be sourced from all possible sources, including data and information from other actors (e.g. non-governmental organizations, academic studies, public opinion polls and surveys, etc.).

²⁹⁸ Diokno, Maria Socorro I. 2009. *Rights-based Monitoring and Evaluation Strategy*. 2006 revised 2008, 2009.

Step 3. Adopt an approach. Determine how monitoring and evaluation will be undertaken. There are two general approaches to human rights-based monitoring and evaluation, which may be applied separately or in combination with each other: the violations approach and the progressive realization approach. Both approaches seek to hold duty bearers accountable for the enjoyment or non-enjoyment by claimholders of their human rights. Both approaches emphasize state obligations and both approaches also seek to determine the status of human rights.

The violations approach focuses on obligations of conduct: acts or omissions that constitute human rights violations. It looks at the current status of a right and relies on victim-provided information and on-site investigations. In determining whether an act or omission constitutes a human rights violation, recall the need to distinguish between inability and unwillingness of duty bearers.

The progressive realization approach focuses on obligations of result: whether actions of duty bearers result in the realization of human rights. It looks at the status of a right in relation to its past status, noting improvements. It reviews related laws, policies, practices, and measures. It relies on many sources of information and comparable and disaggregated data that is accurate, impartial and covers multiple years.

In applying either or both approaches, Diokno recommends that, for every human right, a checklist of human rights violations and/or a checklist of specific or concretized human rights obligations be devised. Both checklists must be based on the country's human rights framework as interpreted by jurisprudence and General Comments and General Recommendations of treaty monitoring bodies.

Step 4. Ensure that the approach is participatory, transparent and empowering. Identify who should be involved and define mechanisms to ensure claimholders,' duty bearers' and other actors' active participation. Identify ways to make monitoring and evaluation transparent, through, for example, the use of claimholder/duty bearer-friendly tools and language. Identify mechanisms that emphasize claimholder efforts to bring about desired changes to address their situation.

Step 5. Choose monitoring and evaluation tools. Set human rights indicators and/or align development indicators with human rights. Other tools may include checklists, interview guides, surveys, focused group discussions.

Step 6. Set the timeframe or the period within which monitoring and evaluation are undertaken.

Step 7. Decide how findings should be used and by whom. Design accountability and rule of law mechanisms, including recourse processes in case of unsatisfactory findings.

REFERENCE SHEET **10**

The Experience of the Asian Consortium for Human Rights-based Access to Justice

MEMBERS OF the Asian Consortium for Human Rights-based Access to Justice have had experience in applying the human rights approach to realizing EA2J. Members were asked to submit case studies describing their experiences for inclusion in this reference sheet. Only those case studies submitted on or before 28 February 2011 are featured in this Reference Sheet.

ESCR-Asia's Human Rights-based Approaches to Access to Justice in Asia and Legal Empowerment of the Poor in the Philippines²⁹⁹

ESCR-Asia implemented a five-year project entitled *Legal Empowerment of the Poor in the Philippines*. "For ESCR-Asia, legally empowering the poor means:

- 1 Going beyond formal laws;
- 2 Participating in decision-making processes and governance concerns;
- 3 Education, capability-building, access to information, knowledge and skills, transparency and accountability, mechanisms of special needs/vulnerabilities, addressing corruption issues; and
- 4 Adapting an approach and a process that focuses primarily on the inherent dignity and rights of a human person."³⁰⁰

ESCR-Asia maintains that it applied the "Grassroots-Experts (Bottom-Up) Approach and Participatory Processes" in implementing the project, through:

- "Inputs from the experts," where "Human rights advocates and practitioners wrote the four policy papers, formulated the Magna Carta and produced other capacity-building materials for ESCR-Asia. All outputs went through consultative processes with the stakeholders. Representatives from different organizations of informal sector and subsectors were consulted. Policy and social dialogues were also advocated between vulnerable sectors and government agencies, as well as interviews with key informants from government agencies, basic sectors and the academe. Experts, basic sector groups and an Advisory Panel, formed in March 2007, reviewed the four papers. The Panel was composed of famous human rights advocates, legal luminaries, civil society leaders, academics, and former and current government officials. It provided inputs that enhanced the contents of the four thematic papers and in viable proposals/policy recommendations;"³⁰¹ and

²⁹⁹ Resurreccion T. Lao and Rosario K. Garcia, 8 January 2011.

³⁰⁰ Ibid.

³⁰¹ Ibid.

- “Inputs from the basic sectors and stakeholders,” where “consultation activities with grassroots leaders concerning the design, content and timeframe of an envisioned national focus group discussions were also conducted. Major informal sector organizations and leaders from different parts of the country were consulted. National FGDs were also conducted. These allowed much participation from the basic sectors, as is typical in the HRBA. These FGDs were followed by a national policy conference at the Makati Shangri-La Hotel on July 25-26, 2007. Government agencies, basic sectoral groups, diplomats, academicians and non-government and people’s organizations participated in the conference. In this event, several agencies pledged and committed to champion the cause of the poor. To nurture the champions, a caravan to the regions was started, and the Cebu City Administration was its first partner.”³⁰²

Project activities and outputs included:

- Research and training materials (e.g. “Situational Analysis of Informal Sector,” 20-minute video documentary, a primer on the rights of the informal sector, case studies documenting violations of the rights of informal sector members in select areas, a policy resource book with four thematic papers, etc.);
- Social dialogues (national conference, legal empowerment “caravan” and social dialogues in select areas);
- Capacity-building activities (training of select leaders of informal sector groups, development of citizen-voter education manuals, modules and related materials, and development of legal empowerment of the poor learning and advocacy modules);
- Policy reform (“An Act Providing for A Magna Carta of Workers in the Informal Sector Institutionalizing for Implementation Thereof and Amending for the Purpose Certain Provisions of Republic Act 7160 and Republic Act 8282,” filed in June 2010 before the House of Representatives as House Bill 340 and before the Senate as Senate Bill 340);
- Development of monitoring/documentation templates for specific violations (*seizure, divestment and destruction of properties, in defense of the 15-kilometer municipal waters and fishing grounds, ill-treatment, inhumane and degrading treatment and displacement*);
- Curriculum Reform Advocacy (development of curriculum design integrating the application of human rights and the Philippine Informal Sector in law and public administration/governance schools, critique of draft syllabus by key informal sector leaders, lobby efforts for inclusion of draft syllabus in law/judicial curriculum and conduct of specialized training for courts, lawyers and judges);
- Filing of test cases (ongoing investigation of two cases involving fisherfolk and street vendors); and
- Case study measuring the economic contribution of small transport groups in select areas.

³⁰² Ibid.

ESCR-Asia identified “specific points where HRBA was applied in ESCR-Asia’s thrust of legally empowering *the poor*:

- 1 ***Human rights principles and standards have been applied in ESCR-Asia’s outputs***, particularly in defining the rights that the legal poor must be able to secure through the Magna Carta, capacity-building materials, the four thematic policy papers and proposed curriculum reform.
- 2 ***The claimholders were involved in the project*** especially in expressing their views, opinions and contributions to the decision-making on the contents of the policy outputs; demonstrating the exercise of an empowering participation in the process; and
- 3 ***The relevant State Obligations*** contained in the pertinent international treaty and domestic laws are expressly incorporated into the local policy outputs on the informal sector.
- 4 ***The basic sectors’ active involvement*** was generated by the Legal Empowerment of the Poor project through use of popular forms of publications and through social artistry that made use of the specific context and language of the informal workers.
- 5 ***The outputs and capacity building activities*** of ESCR-Asia have helped the basic sectors gain knowledge and expertise on handling conflict situations and enabled them have a better sense of confidence that helped them open dialogs and face authorities from different sectors.”³⁰³

Comparative Table: Experiences in the Application of Human Rights Standards, Norms and Principles

Human Rights Standards, Norms and Principles	Project Title	Country	Proponent
Independence and Rule of Law	Legal Empowerment of the Poor	Philippines	ESCR-Asia
Empowerment	Legal Empowerment of the Poor	Philippines	ESCR-Asia
Accountability			
Transparency			
Nondiscrimination	Legal Empowerment of the Poor	Philippines	ESCR-Asia
Equality	Legal Empowerment of the Poor	Philippines	ESCR-Asia
Responsiveness			
Attention to Most Vulnerable	Legal Empowerment of the Poor	Philippines	ESCR-Asia
Command Responsibility			
Equal Access to Court, Equal Protection of Law and Equality before Law			
Equity			
Full Realization of Human Rights, Respect for Human Rights and Human Dignity	Legal Empowerment of the Poor	Philippines	ESCR-Asia
Obligations of Conduct and of Result	Legal Empowerment of the Poor	Philippines	ESCR-Asia
Procedural Rights and Guarantees			
Responsible Exercise of Human Rights			
Right of Reparation			

³⁰³ Ibid.



ANNEXES

Annex 1

International Human Rights Instruments Related to the Centrality of the Human Person

Annex 2

International Human Rights Instruments Related to Equal Access to Justice

Annex 3

International Human Rights Instruments
Related to Formal and Non-formal Institutions of Remedies

Annex 4

International Human Rights Instruments Related to Justice

Annex 5

Participants, Secretariat, Development Partners, Documentors, Finance Staff and Training
Facilitators, pilot Training Workshop, Philippines, 2011

ANNEX

International Human Rights Instruments Related to the Centrality of the Human Person

- **Universal Declaration of Human Rights (UDHR)**³⁰⁴ is the foundation instrument of what is commonly referred to as the International Bill of Rights. It consists of a Preamble and 30 articles, which upholds the dignity and worth of the human person, by enshrining interdependent and inter-related civil, cultural, economic, political and social rights and fundamental freedoms for all, at all times and places, and without discrimination. It envisions a social and international order where human rights and freedoms can be fully realized and equally enjoyed. It promotes the responsible exercise of human rights. It also allows limitations to be placed upon certain human rights, but these limitations must be authorized by law, compatible with the nature of the rights sought to be limited, and solely to promote the general welfare in a democratic society;
- **International Covenant on Civil and Political Rights (ICCPR)**³⁰⁵ is the second pillar of the International Bill of Rights. It consists of a Preamble and 6 Parts with 53 articles, which guarantee fundamental civil and political human rights, including the rights to life, liberty and security of the person, with equality and without discrimination. The ICCPR establishes the Human Rights Committee as the body responsible for monitoring state compliance. The ICCPR has two Optional Protocols: the First Optional Protocol, which consists of 14 Articles, recognizes the competence of the Human Rights Committee to receive and consider communications for violations of the Covenant, and the Second Optional Protocol, which consists of 11 articles on the abolition of capital punishment;
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)**³⁰⁶ is the third and final pillar of the International Bill of Rights. It consists of a Preamble and 5 Parts with 31 articles, which guarantee economic, social and cultural rights, including the rights to an adequate standard of living, adequate food, water, work, highest attainable standard of health, adequate housing, social security, education, benefit from scientific progress and participate in cultural life and associated obligations arising from these rights, including the obligations of progressive realization, core obligations, equality, nondiscrimination, international cooperation and assistance and the obligations to respect, protect and fulfill (provide and facilitate) human

³⁰⁴ Adopted on 10 December 1948.

³⁰⁵ Adopted on 16 December 1966; entry into force 23 March 1976.

³⁰⁶ Adopted on 16 December 1966; entry into force 3 January 1976.

rights. The Covenant establishes the Committee on Economic, Social and Cultural Rights to monitor state compliance with the Covenant. The Covenant has an Optional Protocol, which recognizes the competence of the Committee on Economic, Social and Cultural Rights to receive and consider communications for violations of the Covenant;

- **Declaration on the Right to Development (DRTD)**³⁰⁷ promotes social justice and defines development as a “comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits.” It consists of a Preamble and 10 articles, which stress that human persons are the central subjects, active participants and beneficiaries of development, and which guarantee human rights and fundamental freedoms without discrimination, including the right to development and equal access to basic resources, education, health services, food, housing, employment and fair distribution of income;
- **Guidelines on the Role of Lawyers**³⁰⁸ consist of a Preamble and 29 principles relating to access to lawyers and legal services, special safeguards in criminal justice matters, standards, duties and responsibilities of lawyers, and guarantees for the functioning of lawyers. It requires lawyers to respect the interest of their clients, uphold human rights, and maintain honor and dignity as agents in the administration of justice. Among the duties of lawyers to their clients are advising clients on legal rights and obligations and on the workings of the legal system, assisting clients and taking appropriate action to protect their clients’ interests. The Guidelines require lawyers to pay special attention to assist those who live in poverty and other disadvantaged individuals, groups and communities to assert their human rights. The Guidelines also require government and lawyers’ groups to establish programs to inform the public about human rights and the important role lawyers play in protecting human rights;
- **Guidelines on the Role of Prosecutors**³⁰⁹ consist of a Preamble and a set of 24 guidelines relating to qualifications, selection and training of prosecutors, status and conditions of service, role in criminal proceedings and guarantees for the functioning of prosecutors. The Guidelines require prosecutors to perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights; prosecutors are also mandated to carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination. The Guidelines also require prosecutors to protect public interest and act with objectivity;
- **Code of Conduct for Law Enforcement Officials**³¹⁰ consist of eight articles with commentaries. It defines law enforcement officials as all appointed or elected officers of law who exercise police powers, especially powers of arrest or detention, including uniformed or non-uniformed military authorities and security forces who exercise police powers. The Code emphasizes the obligation

³⁰⁷ Adopted on 4 December 1986.

³⁰⁸ Adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba on 27 August to 7 September 1990.

³⁰⁹ Adopted by the Eight United Nations Congress on the Prevention of Crime and Treatment of Offenders at Havana, Cuba on 27 August to 7 September 1990.

³¹⁰ Approved by the United Nations General Assembly Resolution 34/169, 17 December 1979.

to respect and protect human dignity and maintain and uphold the human rights of all. The Code stipulates the main duties of law enforcement officials: to serve the community, especially those who need immediate aid, and to protect all persons against illegal acts, consistent with a high degree of responsibility required by the profession. The Code permits the use of force, following the principle of proportionality: force may only be applied when strictly necessary and to the extent required to perform duties; the Code stresses that the use of force is exceptional and may only be used when it is reasonably necessary to prevent crime or effect or assist in the lawful arrest of offenders or suspected offenders. The Code also considers the use of firearms as an extreme measure, mandating that, in general, firearms should not be used except when the suspected offender offers armed resistance or jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. The Code prohibits law enforcement officials from inflicting, instigating or tolerating any act of torture or other cruel, inhuman or degrading treatment or punishment and from invoking superior orders or exceptional circumstances (e.g. state of war or threat of war, threat to national security, internal political instability or any other public emergency) as justification for torture or other cruel, inhuman or degrading treatment or punishment. The Code also prohibits law enforcement officers from committing or attempting to commit any act of corruption;

- **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms**³¹¹ consists of a Preamble and 20 articles. It guarantees the right, individually and in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms at national and international levels. The Declaration also spells out the different obligations arising from these rights, including the obligation to protect, promote and implement all human rights and fundamental freedoms by adopting and implementing legislative, administrative and other steps necessary to create conditions in social, economic, political and other fields, and legal guarantees required to ensure that all persons enjoy all human rights and freedoms in practice.

³¹¹ Adopted by United Nations General Assembly Resolution 53/144, 9 December 1998.

ANNEX

2

International Human Rights Instruments Related to Equal Access to Justice

- **Universal Declaration of Human Rights (UDHR)** enshrines the rights to recognition as a person everywhere, to effective judicial remedy, to be presumed innocent, and to redress of grievances. It stipulates the obligations to promote respect for human rights, to take national and international progressive measures to secure universal and effective recognition and observance of all human rights, and to ensure nondiscrimination and equality;
- **International Covenant on Civil and Political Rights (ICCPR)** guarantees equality before the law, the right to recognition everywhere as a person before the law, the right to the protection of the law against interference or attacks, and the rights to equality and nondiscrimination;
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)** upholds the general principles of equality, nondiscrimination, participation, access and respect of all rights in all conventions and declarations;
- **Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** requires states to ensure victim redress, including adequate compensation and full rehabilitation, and undertake prompt and impartial investigation of all allegations of torture;
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** guarantees equality before the law, in criminal and civil matters, and nondiscrimination;
- **Declaration on the Elimination of Violence against Women** assures the right to equal protection under the law, and mandates the provision of access to mechanisms of justice and to just and effective remedies for harm suffered;
- **Convention on the Rights of Persons with Disabilities (CPD)** advances the rights to equal recognition before the law, access to support in exercising legal capacity, access to justice, nondiscrimination and equality;
- **Convention on the Rights of the Child (CRC)** guarantees the rights of the child to prompt access to legal and other appropriate assistance, equality and nondiscrimination;
- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)** guarantees nondiscrimination and equality before the law in both formal and non-formal institutions of remedy;

- **Declaration on the Rights of Indigenous Peoples** espouses the right to access to justice and prompt decisions through just and fair procedures for the resolution of conflicts and disputes with States or other parties. It also includes effective remedies for all infringements of individual and collective rights of indigenous peoples. It requires that decisions give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights;
- **Convention concerning Indigenous and Tribal Peoples in Independent Countries** (ILO Convention No. 169) promotes the right of indigenous peoples to use legal proceedings, either individually or through representatives, to effectively protect their rights and the right to free assistance of an interpreter, if necessary. It also mandates respect for customary methods dealing with offenses committed by indigenous peoples, if these are compatible with the national legal system and internationally recognized human rights;
- **International Convention on the Rights of All Migrant Workers and Members of their Families** (CMW) guarantees nondiscrimination, equality before the law, and other procedural rights including the right to inform their embassy/consulate about their arrest if they request, the right to communicate with their embassy/consulate, the right to be informed about rights from relevant treaties, and the right to an interpreter's free assistance;
- **Draft Guiding Principles "Extreme poverty and human rights: the rights of the poor"** upholds nondiscrimination, the same right of access to justice as other citizens and equality before the law. It sets forth the obligation to set up education and public information programs to help persons living in poverty learn about their human rights and remedies;
- **Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power** enshrines the right to access mechanisms of justice;
- **Basic Principles on the Independence of the Judiciary**³¹² consist of a preamble and 20 principles relating to the independence of the judiciary. The Basic Principles guarantee the rights to equality before the law, fair and public hearing by competent, independent and impartial tribunal established by law, and the right to be tried without undue delay;
- **Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary**³¹³ consist of 15 specific and concrete procedures, steps and measures to ensure the independence of the judiciary;
- **Basic Principles on the Role of Lawyers** set forth the duty of lawyers to cooperate with government to ensure effective and equal access to legal services and the obligation to ensure that lawyers are able to assist their clients without improper interference;

³¹² Adopted by the 7th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985; endorsed by United Nations General Assembly Resolutions 40/32, 29 November 1985 and 40/146, 13 December 1985.

³¹³ Adopted by United Nations Economic and Social Council Resolution 1989/60; endorsed by United Nations General Assembly Resolution 44/162, 15 December 1989.

- **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**³¹⁴ consist of a preamble and 26 principles to ensure and promote the proper role of law enforcement officials, and mandate access to independent processes including judicial processes for persons affected by the use of force and firearms, their dependents or legal representatives;
- **Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)** guarantee the offender's right to make a request or complaint on matters affecting her/his rights in the implementation of non-custodial measures;
- **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law** guarantee victims' rights to equal and effective access to justice. These also mandate nondiscrimination, equal access to effective judicial remedy, including access to administrative and other bodies, mechanisms, modalities and proceedings conducted in accordance with domestic law. It further stipulates that groups of victims have the *collective* right to equal access to justice, and the right of victims and their representatives to seek and obtain information on causes leading to their victimization and on causes and conditions pertaining to gross violations of international human rights law and serious violations of international humanitarian law. Victims are also guaranteed the right to learn the truth with regard to these violations.

The Basic Principles and Guidelines set forth the obligations arising under international law to secure the right to access justice and fair and impartial proceedings. These include adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice. These also cover the provision of equal and effective access to justice to victims of human rights or humanitarian law violations, irrespective of who may ultimately be responsible for the violation. The Basic Principles and Guidelines also mandate developing means to inform the general public and victims about human rights and remedies and all available legal, medical, psychological, social, administrative and all other services to which they may have right of access;

- **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions**³¹⁵ consist of a set of 20 principles on the prevention, investigation and legal proceedings governing extra-legal, arbitrary and summary executions. The *Principles* set forth the obligation to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, public denunciation and the obligation of governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, to cooperate fully in international investigations. It emphasizes that intergovernmental mechanisms are to be used to investigate reports of any executions and to take effective action against such practices;

³¹⁴ Adopted by Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

³¹⁵ Recommended by United Nations Economic and Social Council Resolution 1989/65, 24 May 1989.

- **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms** promotes the right to know, seek, obtain, receive and hold information about human rights. This includes information on how human rights are given effect in domestic legislative, judicial or administrative systems. It upholds the right to effectively participate, on a nondiscriminatory basis, in government and in the conduct of public affairs, including the rights to submit any criticism and proposals to improve the functioning of public agencies, and to draw attention to any aspect that may hinder or impede the realization of human rights. It also upholds the right of those whose human rights are allegedly violated to complain either in person or through a legally authorized representative. The Declaration also promotes the right to complain about policies and actions of individual officials and governmental bodies that result in violations of human rights. It also upholds the right to attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments, the right to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and the right to be protected effectively under national law in reacting against or opposing, through peaceful means, any activities and acts that result in violations of human rights.

The *Declaration* requires states to take legislative, judicial, administrative or other appropriate measures to promote understanding of civil, political, economic, social and cultural rights and ensure full and equal access to international documents in the field of human rights.

ANNEX**3****International Human Rights Instruments Related to Formal and Non-formal Institutions of Remedies**

- **International Convention for the Protection of All Persons from Enforced Disappearance** mandates that enforced disappearances constitute criminal offenses under national laws. It is a crime against humanity under international law. Governments must investigate enforced disappearances and bring to justice the persons or groups of persons who commit enforced disappearances, even if such persons act without the authorization, support or acquiescence of the State. Superiors who either knew or deliberately disregarded information that indicated their subordinates were committing or about to commit a crime of enforced disappearance or had effective responsibility for activities, which were concerned with enforced disappearances and failed to stop or report the offense, should be considered criminally responsible for the disappearance. A subordinate also cannot justify the enforced disappearance by saying that s/he was ordered to commit the offense by a superior.

The Convention also requires states to establish the crime of enforced disappearance and assign the corresponding appropriate penalties. However, it allows for mitigating and aggravating circumstances to be taken into account. Each state party must also take steps to exercise jurisdiction over the crime of enforced disappearance committed in its territory, and to exercise jurisdiction over persons located within its territory who have committed this crime (whether nationals of the State or other State parties).

The Convention stipulates that when state parties find non-nationals suspected of committing an enforced disappearance in their territory, they must take such person/s into custody, until they are prosecuted or turned over to the proper authorities through extradition. However, the procedural rights of such detained persons should also be respected.

The Convention also guarantees the rights of victims and family members. They have the right to report such crime to competent authorities, which should promptly and impartially investigate the report and be provided with the necessary powers and resources to effectively conduct such investigation. They also have the right to be protected against ill-treatment or intimidation resulting from the complaint or evidence given.

Victims and their family can obtain reparation, which may be material and moral damages, or where appropriate, rehabilitation, satisfaction, including restoration of dignity and reputation, and guarantees of non-repetition. They also have the right to prompt, fair and adequate compensation. During the duration of the investigation, state parties must ensure that when necessary, families of the disappeared are provided with social welfare, financial, family law and property rights assistance.

Victims and their families also have the right to form and freely participate in organizations and associations, which seek information on enforced disappearances and the fate of those who disappeared. They should also be free to assist other victims of enforced disappearance. They should have access to information. They have the right to know who ordered the deprivation of liberty; when and where the person was deprived of liberty, and when and where the person was admitted to the place of detention. They should be free to know the whereabouts of the person deprived of liberty, including any transfers and the destination, and the names of those responsible for the transfer; when and where the person was released; and the health of the person. In the event of death, the victim's family has the right to know the circumstances and cause of death and the destination of the remains. Moreover, the state must protect persons seeking such information from intimidation or reprisal as a result of their search. Restricting the right to information should only be done under very limited circumstances, such as when the disappeared person is under the protection of the law and is subject to judicial control, and if the release would jeopardize the safety of the person being deprived of liberty, or hinder a criminal investigation.

Release of information should always be in conformity with international law and the provisions of the Convention. Any personal information such as medical and genetic data used in the search of a disappeared person can only be used in the search or in criminal proceedings relating to the prosecution of the crime, or the exercise of the right of reparation. The storage of such information should not infringe upon or violate any other human rights.

The Convention also stipulates that states must also prevent and punish acts, which hinder the conduct of an investigation. Persons being investigated must not influence the investigation or intimidate any persons involved.

The Convention imposes upon state parties several obligations. One is to cooperate with other states in prosecuting enforced disappearances. Another is to assist victims of enforced disappearances and find disappeared persons. In the event of their death, the state parties must locate their remains and return them to their families. The expulsion or return of a person to another state is prohibited if s/he would be in danger of being subjected to enforced disappearance. States must also enforce the right of victims to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person. They should also guarantee the right to a prompt and effective judicial remedy to obtain the information without delay, without prejudice to the consideration of the lawfulness of the deprivation of a person's liberty (*the right to a remedy may not be suspended or restricted in any circumstances*). They should also take measures to sanction the delay or obstruction of any remedies. Failure to record deprivation of liberty or the deliberate recording of inaccurate information, refusal to provide information or the provision of inaccurate information, even if the legal requirements for providing such information have been met, are violations against the Convention.

States must ensure that law enforcement personnel (civil and military), medical personnel, public officials, and others involved in the custody or treatment of persons deprived of liberty are trained on the relevant provisions of this Convention to prevent their involvement

in enforced disappearances. They need to recognize the urgent need to resolve such cases, thus, the prevention and investigation of enforced disappearances must be emphasized. States must also prohibit orders and instructions authorizing or encouraging enforced disappearance. They should also ensure that persons who refuse to obey such orders will not be punished. Persons who have received training on the Convention should report any instances of enforced disappearances to their superiors or to appropriate authorities.

The Committee on Enforced Disappearances carries out the functions provided under the Convention. State parties are required to submit to the Committee a report on the measures taken to meet its obligations within two years after the Convention's entry into force in their country. Relatives or legal representatives of a disappeared person, or any parties with an interest in the disappeared person are allowed to submit urgent requests to the Committee that a disappeared person be sought and found.

- **Declaration on the Protection of All Persons from Enforced Disappearance** prohibits the practice, permission or toleration of enforced disappearances. This prohibition is non-derogable and applies under all circumstances, including during threat of war, state of war, internal political instability or any other public emergency.

The Declaration imposes on states the obligation to prevent and eradicate enforced disappearance. It also directs them to take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance. Enforced disappearance must be incorporated as an offense under criminal law punishable by appropriate penalties, with civil liability in addition to criminal penalty for perpetrators and state or state authorities who organize, acquiesce in or tolerate disappearances. Orders or instructions directing, authorizing or encouraging any enforced disappearance must also be prohibited by state parties. They must also train law enforcement officials.

The Declaration considers enforced disappearance a continuing offense as long as perpetrators continue to conceal the fate and whereabouts of disappeared persons, and the facts remain unclear. It requires that the statute of limitations relating to enforced disappearance be substantial and commensurate with the extreme seriousness of the offense, and be suspended until remedies are re-established.

The Declaration also prohibits the invocation of any order or instruction of any public authority (e.g. civilian, military or other) to justify enforced disappearance. It guarantees both the right and the duty of any person receiving such order or instruction not to obey it.

The Declaration guarantees the rights of victims and their family to obtain redress and adequate compensation, including means for complete rehabilitation. If the victim dies, his or her family has the right to compensation and prompt and effective judicial remedy. They should be free to complain to competent and independent authorities and to have that complaint promptly, thoroughly and impartially investigated.

States have the obligation to promptly refer enforced disappearances for investigation, even

without formal complaint. They should refrain from undertaking any measure that curtails or impedes the investigation. The investigating authority should also be provided with necessary powers and resources to conduct the investigation effectively. These include the powers to compel witnesses to attend, and produce relevant documents and make immediate on-site visits. All those involved in the investigation (complainant, counsel, witnesses and those conducting the investigation) must be protected against ill-treatment, intimidation or reprisal. Findings should also be made available upon request, unless doing so would jeopardize an ongoing criminal investigation. Competent national authorities and any other competent authority entitled under law or by any international legal instrument must be granted access to all places where persons deprived of their liberty are being held. They must be able to access each part of those places, and to any place in which there are grounds to believe that such persons may be found.

Any ill-treatment, intimidation or reprisal or any other form of interference with lodging of complaint or during investigation must be appropriately punished by the State. The investigation must be pursued for as long as the fate of the victim remains unclear. All persons presumed responsible for enforced disappearance within their jurisdiction or under their control should be brought to justice. Persons alleged to have committed enforced disappearances during the investigation should be suspended from official duties. Alleged perpetrators should be tried only in competent ordinary courts, not by any other special tribunal including military courts. There should be no privileges, immunities or special exemptions granted in trials. However, the Declaration, while guaranteeing the rights of victims and their families, also guarantees offenders their right of fair treatment at all stages of investigation, prosecution and trial.

- **Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power** advances the rights to prompt redress, to privacy of victims, to safety and protection of victims, their families and witnesses from intimidation and retaliation. It also upholds fair restitution (including return of property or payment for harm or loss suffered, reimbursement of expenses, provision of services and restoration of rights), to necessary material, medical, psychological and social assistance.

The Declaration also imposes several obligations upon state parties. Judicial and administrative mechanisms of redress must be established and strengthened, including formal or informal procedures. These mechanisms must be expeditious, fair, inexpensive and accessible. States must also inform victims of their right to redress, their role, and the scope, timing and progress of the proceedings and of the disposition of their cases. Views and concerns of victims must be allowed to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system. Proper assistance to victims must also be provided and inconveniences to them must be minimized. States must also avoid unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims. Informal mechanisms for the resolution of disputes (including mediation, arbitration and customary justice or indigenous practices) must also be used. Practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions must be reviewed.

States must also provide remedies to victims (including restitution and/or compensation, and necessary material, medical, psychological and social assistance and support). They must also inform victims of available health and social services and other relevant assistance, which should be readily accessible. Trainings should also be provided to police, justice, health, social service and other personnel. Moreover, the Declaration requires judicial and administrative processes to be responsive to the needs of victims;

- **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law** promotes victims' rights to adequate, effective and prompt reparation for harm suffered. It also advances access to relevant information concerning violations and reparation mechanisms, as well as equal access to effective judicial remedy including access to administrative (and other bodies) mechanisms, modalities and proceedings conducted in accordance with domestic law. It promotes access to justice, to fair and impartial proceedings. It advances victims' right to seek and obtain information on causes leading to their victimization and on causes and conditions pertaining to gross violations of international human rights law and serious violations of international humanitarian law. It advances the right to learn the truth in regard to these violations, as well as the right to adequate, effective and prompt remedy;

The Basic Principles and Guidelines require states to make available adequate, effective, prompt and appropriate remedies, including reparation. States are also required to take appropriate legislative, administrative and other appropriate measures to prevent violations and to investigate violations effectively, promptly, thoroughly and impartially. Where appropriate, they should take action against those allegedly responsible. They must also refrain from applying statutes of limitations to crimes under international law. In addition, non-restrictive domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including time limitations applicable to civil claims and other procedures must be imposed by the states.

States must take measures to minimize inconvenience to victims and their representatives and to protect them against unlawful interference with their privacy. Their safety and the safety of their families must be ensured and witnesses must also be kept safe from intimidation and retaliation before, during and after judicial, administrative, or other proceedings. Proper assistance must be provided to victims seeking access to justice. All appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy must be made available. Information about all available remedies must be disseminated through public and private mechanisms. In addition, states must also develop means of informing the general public and victims about human rights and remedies and all available legal, medical, psychological, social, administrative and all other services.

Procedures to allow groups of victims to present claims for and receive reparation must also be developed by state parties. They should also cooperate with other states and assist international judicial organs competent in investigation and prosecution of violations. Appropriate provisions for universal jurisdiction must also be incorporated or implemented within domestic law. States must also facilitate extradition or surrender offenders to other states and to appropriate

international judicial bodies, and provide judicial assistance and other forms of cooperation in pursuit of international justice, including assistance to, and protection of, victims and witnesses;

- **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms** guarantees the rights, individually and in association with others, to promote and strive for the realization of human rights at national and international levels. It advances the right to peaceably assemble, form, join and participate in non-governmental organizations, associations or groups. It guarantees the right to communicate with non-governmental or inter-governmental organizations, as well as the rights to know, seek, obtain, receive, and hold information about human rights, including information on how human rights are given effect. It covers the right to freely publish, impart or disseminate to others views, information and knowledge on human rights and to study, discuss, form and hold opinions on how human rights are observed. Public attention can also be drawn to these matters. The Declaration also guarantees the right to develop and discuss new human rights ideas and principles and advocate their acceptance.

The Declaration promotes the right to participate in government and in the conduct of public affairs, including the right to submit any criticism and proposals to improve how government functions. It also advances the right to draw attention to any aspect that may hinder or impede the promotion, protection and realization of human rights. It also covers the right to benefit from an effective remedy and be protected in cases of violations of human rights.

The Declaration guarantees the right to complain, either in person or through a legally authorized representative, and to have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law. It also pushes forward the right to obtain from such an authority a lawful decision that provides redress without undue delay. It also covers the right to complain to competent domestic judicial, administrative, legislative or other authorities about policies and actions of individual officials and governmental bodies with regard to violations of human rights. It stipulates that individuals can attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments. They can also offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights.

The Declaration also advances the right to be effectively protected when reacting against or opposing, through peaceful means, activities and acts attributable to states that result in violations of human rights and acts of violence that affect the enjoyment of human rights. It also upholds the right to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights through peaceful means.

The *Declaration* imposes on states the obligations to: protect, promote and implement all human rights. They should also adopt and implement legislative, administrative and other steps to create conditions in all fields of life to ensure that all persons enjoy all human rights in practice. They should conduct prompt and impartial investigations whenever there is reasonable ground

to believe that a violation of human rights has occurred. States should refrain from participating, by act or failure to act where required, in human rights violations and from subjecting anyone to punishment or adverse action of any kind for refusing to do so. They should ensure protection against any violence, threats, retaliation, *de facto* or *de jure* adverse discrimination, pressure or any other arbitrary action against those who exercise the rights above.

Legislative, judicial, administrative or other appropriate measures to promote understanding of human rights should also be taken. States should also ensure support, where appropriate, to the creation and development of independent national institutions to promote and protect human rights (e.g. ombudspersons, human rights commissions or any other form of national institution). They should also promote and facilitate the teaching of human rights at all levels of education and ensure the inclusion of appropriate elements of human rights in the training of lawyers, law enforcement officers, personnel of the armed forces and public officials.

The Declaration recognizes the role of individuals, non-governmental organizations and relevant institutions in contributing to public awareness on human rights through education, training, research, and other activities. It emphasizes their duties to and within the community, including the duties to safeguard democracy, promote human rights, contribute to the promotion and advancement of democratic societies, institutions and processes. The Declaration encourages them to contribute as appropriate to promote social and international order where human rights can be fully realized.

- **Standard Minimum Rules for the Treatment of Prisoners** imposes on states the duties to: provide every prisoner with written information on regulations governing treatment of prisoners, authorized methods of seeking information and making complaints, and all other matters necessary to understand rights and obligations and adapt to life of institution. These information should be conveyed orally to prisoners unable to read.

Prisoners must also be provided an opportunity each day to make requests or complaints to the prison director or authorized representative, without censorship in substance but in proper form. States must promptly deal with every request or complaint and reply thereto without undue delay. They must also conduct a thorough examination of every disciplinary case. Where necessary and practicable, states must provide the prisoner with the assistance of an interpreter to facilitate her/his defense in disciplinary matters.

Every grade of personnel must be carefully selected, based on integrity, humanity, professional capacity and personal suitability for work. Only professional prison officers with civil service status must be appointed on a full-time basis. Their security of tenure is subject to good conduct, efficiency and physical fitness, and adequate salaries, employment benefits and favorable conditions of service. Women prisoners are required to be held under the authority of a responsible woman officer with custody of keys. They should be attended and supervised only by women officers. Male staff members, particularly doctors and teachers, may carry out their professional duties in institutions for women.

The *Rules* prohibit the use of force except in self-defense or in cases of attempted escape, or

active or passive physical resistance to an order based on law or regulations. Officers who use force are required not to use more force than strictly necessary. They should report the incident immediately to the director. The *Rules* also require prison officers with direct contact with prisoners to be unarmed except in special circumstances.

- **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment** guarantees the rights of all detained or imprisoned persons to the prompt assistance of legal counsel. Free legal counsel should be assigned by a judicial or other authority if s/he cannot afford to pay and if s/he does not have a legal counsel of own choice. Persons in detention or imprisonment should be able to communicate and consult with their legal counsel, in full confidentiality, with adequate time and facilities and without delay or censorship. This right may not be suspended or restricted, except in exceptional circumstances specified by law and when indispensable to maintain security and good order. Detained persons have the right to privacy of communications with legal counsel. These communications cannot be used as evidence, unless connected with a continuing or contemplated crime.

The Body of Principles also stipulate that detained persons have the right to be brought before a judicial or other authority provided by law promptly after arrest. The authority must decide on the lawfulness and the need for detention without delay. The trial should be within a reasonable time, and proceedings must be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority must produce without unreasonable delay the detained person before the reviewing authority.

Detained persons can also make a request or complaint regarding treatment, especially in cases of torture or other cruel, inhuman or degrading treatment. These requests should be kept confidential, and should be promptly dealt with and addressed. Any form of prejudice against the complainant should be avoided. If the request or complaint is rejected, or in case of inordinate delay, the complainant can bring it before a judicial or other authority; h/she should be heard before disciplinary action is taken.

The rights of persons who do not adequately understand or speak the language used by authorities must receive information promptly in the language which s/he understands. An interpreter, free of charge, may be sought to assist the detainee in legal proceedings subsequent to arrest. No person shall be detained pending investigation or trial without written order of a judicial or other authority. It requires states, among others, to specify by published law or lawful regulation the types of conduct constituting disciplinary offenses during detention or imprisonment, description and duration of disciplinary punishment that may be inflicted, and the authorities competent to impose punishment;

- **Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)** uphold the offender's right to make a request or complaint on matters affecting her/his rights in the implementation of non-custodial measures. This right carries with it the obligation to provide an appropriate machinery for recourse and redress of any grievance related to non-compliance with human rights. The Tokyo Rules also state that, where the conditions to be observed by the offender are breached, the non-custodial measure may be modified or revoked by the competent authority

only after careful examination of facts adduced by both the supervising officer and the offender. The Rules also state that the failure of a non-custodial measure should not automatically lead to the imposition of a custodial measure, which should be imposed only in the absence of other suitable alternatives. Upon modification or revocation, the offender has the right to appeal to a judicial or other competent independent authority. The *Tokyo Rules* incorporate the human rights principles of accountability, rule of law, and protection of society and interests of the victim;

- **Basic Principles on the Independence of the Judiciary** and the **Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary**³¹⁶ focus on the availability, acceptability, and quality of justice, as well as the equitable delivery of justice. They impose upon states the obligation to respect and observe the independence of judiciary.

The twin documents uphold the rights to fair and public hearing by competent, independent and impartial tribunal established by law, to be tried without undue delay, to be presumed innocent, to be tried by ordinary courts or tribunals using established legal procedures, and to fair judicial proceedings. They specify the duty of the judiciary to decide matters impartially on the basis of facts and in accord with law, without restrictions, improper influence, inducements, pressure, threats or interference made directly or indirectly by anyone or for any reason. They vest with the judiciary the exclusive authority to decide whether an issue submitted is within its competence or defined by law.

The twin documents further stress that judicial decisions are not subject to revision, without prejudice to judicial review or mitigation of commutation of sentence by competent authority. They also prohibit the unwarranted or inappropriate interference with the judicial process, and the establishment of tribunals that do not use duly established procedures in order to displace the jurisdiction of ordinary courts;

- **Basic Principles on the Role of Lawyers** upholds the rights to effective access to legal services by an independent legal profession and to counsel of choice.

The *Basic Principles* impose on states the obligations to ensure efficient procedures and responsive mechanisms for effective and equal access to lawyers without discrimination. Sufficient funding and other resources for legal services must be provided to those who live in poverty and other disadvantaged persons. Lawyers must be able to perform their professional functions without intimidation, hindrance, harassment or improper interference, and that they can travel and consult with clients freely. Lawyers should not suffer from or be threatened with prosecution, administrative, economic or other sanctions for actions taken in accord with professional duties, standards and ethics. States must safeguard lawyers whose security is threatened; lawyers should not be identified with clients or clients' causes as a result of discharging their functions. States must also ensure that lawyers have access to appropriate information, files and documents in government's possession or control, with sufficient time, to enable them to provide effective legal assistance.

³¹⁶ Adopted by United Nations Economic and Social Council Resolution 1989/60 and endorsed by United Nations General Assembly Resolution 44/162, 15 December 1989; consists of 15 specific and concrete procedures, steps and measures to ensure the independence of judiciary.

States must also immediately inform all arrested, detained or charged persons of their right to be assisted by lawyer of choice. If they cannot afford one, a lawyer of experience and competence be provided to him/her, free of charge. Arrested or detained persons should have prompt access to a lawyer not later than forty-eight hours from the time of arrest or detention. All arrested, detained or imprisoned persons should be given adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer without delay, interception or censorship. These consultations must be confidential, may be within sight, but not within hearing, of law enforcement officials.

The *Basic Principles* prohibit courts from refusing to recognize a lawyer unless that lawyer is disqualified in accord with law and practice. This instrument also grants lawyers civil and penal immunity for relevant statements made in good faith in written or oral pleadings or professional appearances. It also upholds lawyer-client privilege, and, in relation to disciplinary proceedings, promotes the rights of lawyers to speedy and fair disposition of complaints, fair hearing and lawyer of choice. The Basic Principles require an impartial disciplinary committee established by the legal profession and subject to independent review.

Finally, the *Basic Principles* impose on lawyers and professional associations of lawyers the duties to cooperate in the organization and provision of legal services, facilities and other resources; to establish programs to inform the public about human rights and duties and the important role lawyers play to protect human rights; to pay special attention to assist those who live in poverty and other disadvantaged persons to assert their human rights;

- **Guidelines on the Role of Prosecutors** impose on states the obligations to provide prosecutors with appropriate education and training, including ideals and ethical duties, constitutional and statutory protection for the human rights of suspects and victims, and on human rights, and to protect prosecutors and their families from intimidation, harassment, threat, improper influence, etc.

The *Guidelines* emphasize that prosecution is strictly separate from judicial functions and require prosecutors to: perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights.

Prosecutors must carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination. They should protect public interest and act with objectivity, taking into proper account the position of suspect and victim, and paying attention to all relevant circumstances, whether they are advantageous or disadvantageous to the suspect.

Prosecutors must consider the views and concerns of victims when their personal interests are affected and ensure that they know their rights. Initiating or continuing prosecution must be stopped when impartial investigation shows the charge to be unfounded.

Prosecutors must also give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other

crimes recognized by international law and, where authorized by law or consistent with local practice, investigate such offenses. They should refuse to use evidence known or believed on reasonable grounds to be obtained through unlawful methods (e.g. torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights) against the suspect. They should also inform the court and take all necessary steps to ensure that those responsible for using unlawful methods are brought to justice.

The *Guidelines* also stipulate that, where prosecutors face disciplinary proceedings, they have the right to a fair hearing. These proceedings should be based on law or lawful regulations, code of professional conduct and other established standards and ethics. They should be expeditious, fair, and guarantee an objective evaluation and decision, subject to independent review.

The *Guidelines* also promote the human rights principles of transparency and accountability.

- **Code of Conduct for Law Enforcement Officials and Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials**³¹⁷ uphold the principle of proportionality, i.e. that the use of force is permitted only when strictly necessary and to the extent required to perform official duty.

The *Code* and its *Implementing Guidelines* consider the use of firearms an extreme measure. In general, firearms should not be used except when a suspected offender offers armed resistance or jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. A report to the competent authorities in every instance where a firearm is discharged is always required.

The *Code* and its *Implementing Guidelines* prohibit the infliction, instigation or toleration of any act of torture or other cruel, inhuman or degrading treatment or punishment. They prohibit the invocation of superior orders or exceptional circumstances (e.g. state of war or threat of war, threat to national security, internal political instability or any other public emergency) to justify torture or other cruel, inhuman or degrading treatment or punishment.

The *Code* and its *Implementing Guidelines* impose on states the obligations to fully protect the health of persons in custody and to take immediate action to secure medical attention whenever required. States should refrain from committing or attempting to commit any act of corruption and should rigorously oppose and combat corruption and enforce the law against any law enforcement official who commits or attempts to commit any act of corruption in the performance of or in connection with one's duties, (e.g. in response to gifts, promises or incentives demanded or accepted, or wrongful receipt of these once the act has been committed or omitted).

States must prevent and rigorously oppose any violations of the law. They should report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. They should refrain from

³¹⁷ Adopted by United Nations Economic and Social Council, 24 May 1989; consists of 2 parts relating to the application and implementation of the Code of Conduct for Law Enforcement Officials.

imposing administrative or other penalties on law enforcement officials because they reported a violation.

The principles in the Code must be incorporated in domestic law and practice. Necessary measures can be adopted to instruct law enforcement officials on the Code and on human rights. Effective mechanisms can also be established to ensure internal discipline, external control and supervision of law enforcement officials, including provisions for receipt and processing of complaints against law enforcement officials made by the public. The public should be informed of the existence of these provisions/mechanisms.

- **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** impose obligations on states to adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials, keeping ethical issues associated with the use of force and firearms constantly under review.

The Basic Principles require rules and regulations to include guidelines that: (a) specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted; (b) ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; (c) prohibit the use of firearms and ammunition that cause unwarranted injury or present unwarranted risk; (d) regulate the control, storage and issuance of firearms, including procedures to ensure that law enforcement officials are accountable for firearms and ammunition issued to them; (e) provide for warnings to be given when firearms are to be discharged; (f) provide for a system of reporting whenever law enforcement officials use firearms when performing their duty.

The Basic Principles requires states to develop a broad range of means and equip law enforcement officials with various types of weapons and ammunition for differentiated use of force and firearms, including development of non-lethal incapacitating weapons for use in appropriate situations. Law enforcement officials must also be equipped with self-defensive equipment (e.g. shields, helmets, bullet-proof vests and bullet-proof means of transportation) to decrease the need to use weapons of any kind.

The Basic Principles oblige states to carefully control the use, development and deployment of non-lethal incapacitating weapons to minimize risk of endangering uninvolved persons. Arbitrary or abusive use of force and firearms by law enforcement officials should be criminalized and punished (*note: this obligation is non-derogable; exceptional circumstances such as internal political instability or any other public emergency are no justification for non-compliance*).

Proper screening procedures should be used in hiring all law enforcement officials. They should also receive continuous and thorough professional training, and should including training and testing on the use of force, police ethics and human rights especially in the investigative process, alternatives to use of force and firearms including peaceful settlement of conflicts, understanding of crowd behavior, and methods of persuasion, negotiation and mediation. Training programs and operational procedures must be periodically reviewed. Stress counseling should be provided

to law enforcement officials involved in situations where force and firearms were used. Effective reporting and review procedures for all incidents involving use of force and firearms should also be established.

The *Basic Principles* also specify the duties of law enforcement officials, including the duties to: refrain from using firearms against persons except in self-defense or in the defense of others; prevent perpetration of particularly serious crimes involving grave threat to life (*note: the intentional lethal use of firearms is only allowed when strictly unavoidable in order to protect life*); apply non-violent means before resorting to the use of force and firearms; use force and firearms only if other means remain ineffective or are unable to achieve the intended result. All law enforcement officials must identify themselves and give clear warning of their intent to use firearms, giving sufficient time for the warning to be observed, unless to do so would unduly risk the safety of law enforcement officials and other persons or is clearly inappropriate or pointless in the circumstances.

The *Basic Principles* specify additional duties of law enforcement officials, whenever lawful use of force and firearms is unavoidable; these include the duties to: exercise restraint and act in proportion to the seriousness of the offense and the legitimate objective to be achieved; minimize damage and injury, and respect and preserve human life; ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment; ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment; and report the incident promptly to superiors.

The *Basic Principles* further mandate that, in the dispersal of unlawful but non-violent assemblies, law enforcement officials are duty-bound to avoid the use of force. If this is not feasible, restrict force to the minimum extent necessary. In the dispersal of violent assemblies, law enforcement officials are duty-bound to use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.

The *Basic Principles* also prescribe principles applicable to detention centers, prisons, jails or similar institutions, including the prohibition against the use of force except when strictly necessary to maintain security and order within the institution, or when personal safety is threatened in relation with persons in custody or detention, and the prohibition against the use of firearms, except in self-defense or defense of others or when strictly necessary to prevent an escape. The *Basic Principles* also uphold the principle of command responsibility;

- **Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**³¹⁸ consist of 6 non-derogable principles that: require health personnel to protect the physical and mental health of detained persons and treat disease with the same quality and standard they give to those not imprisoned or detained; prohibit active or passive acts constituting participation, complicity, incitement to, or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment; prohibit the involvement in

³¹⁸ Adopted by General Assembly Resolution 37/194 of 18 December 1982.

any professional relationship with prisoners or detainees for purposes not solely to evaluate, protect or improve physical and mental health; prohibit applying knowledge and skills to assist in the interrogation of prisoners and detainees in a manner adversely affecting the physical or mental health or condition and not in accord with relevant international instruments; prohibit the certification or participation in the certification of fitness of prisoners or detainees for any form of treatment or punishment that adversely affects their physical or mental health and is not in accord with relevant international instruments; prohibit the participation in any way in inflicting any treatment or punishment not in accord with relevant international instruments; prohibit the participation in any procedure to restrain a prisoner or detainee unless such procedure is in accord with purely medical criteria and is necessary to protect the prisoner or detainee's physical or mental health or the safety of other prisoners or detainees or guardians, and presents no hazard to the prisoner or detainee's physical or mental health;

- **Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**³¹⁹ upholds the rights of alleged victims of torture or ill-treatment and their legal representatives to be informed of, and have access to, any hearing, and to all information relevant to the investigation, and to present other evidence.

The Principles set the following aims of the effective investigation and documentation of incidents of torture and other cruel, inhuman or degrading treatment or punishment: (a) clarification of facts and establishment and acknowledgement of individual and state responsibility for victims and their families; (b) identification of measures needed to prevent recurrence; (c) facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as responsible; and (d) demonstration of the need for full reparation and redress from the state, including fair and adequate financial compensation and provision of means for medical care and rehabilitation.

The Principles impose on states the obligation to promptly and effectively investigate complaints and reports of torture or ill-treatment even in the absence of an express complaint if indications exist that torture or ill-treatment might have occurred. This obligation requires competent and impartial investigators independent of the suspected perpetrators and agency, with powers and all necessary budgetary and technical resources to (a) commission investigations by impartial medical or other experts using methods meeting the highest professional standards and obtain all necessary information, (b) oblige all acting in official capacity allegedly involved in torture or ill-treatment and witnesses to appear and testify, (c) issue summons to witnesses and any officials allegedly involved, and (d) demand production of evidence. This obligation requires that the findings of the investigation be made public.

The Principles also impose upon states the obligation to protect alleged victims of torture or ill-treatment, witnesses, those conducting investigation and their families from violence, threats of violence or any other form of intimidation. States should also remove those potentially implicated in torture or ill-treatment from any position of direct or indirect control or power over the complainants, witnesses, their families and those conducting the investigation.

³¹⁹ Recommended by General Assembly Resolution 55/89 of 4 December 2000 and consists of 6 paragraphs.

The Principles further stipulate, that in cases where investigative procedures are inadequate because of insufficient expertise or suspected bias or apparent existence of a pattern of abuse or other substantial reasons, states are required to ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. The members must be chosen for their recognized impartiality, competence and independence, and should be authorized to obtain all necessary information. The Principles further require that the commission issue a written comprehensive report within a reasonable time. The state must reply to the report or indicate the steps it has taken to respond to the report within a reasonable period of time.

The Principles also set forth the duties of medical experts involved in the investigation of torture or ill-treatment. These include the duty to behave at all times with the highest ethical standards and obtain informed consent before any examination. It also requires health personnel to conduct the examination in conformity to established standards of medical practice. These examinations should be done in private, without the presence of security agents and other government officials. Afterwards, an accurate written report must be promptly prepared, which includes the circumstances of the interview and the victim at the time of examination, any other relevant factors and history, including alleged methods of torture or ill-treatment, the times when they were allegedly inflicted and all complaints of physical and psychological symptoms. The health personnel must also keep a record of all the findings, opinion and authorship. These reports are confidential, but must be communicated to the victim or her/his nominated representative, whose views must be solicited and recorded in the report. The health personnel must prepare the report in writing and submit it to the authority responsible for investigating the allegation. The state must ensure that the report is delivered securely to these persons. Before the report is released to any person, the victim's consent or the authority of the court is needed.

- **Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions**³²⁰ has a set of 20 principles on the prevention, investigation and legal proceedings governing extra-legal, arbitrary and summary executions. The Principles uphold the rights to life and the security of the person. They also stipulate that a person should not be involuntarily returned or extradited to a country where there are substantial grounds to believe that the person may become a victim of extra-legal, arbitrary or summary execution.

The Principles also uphold the rights of families and dependents of victims of extra-legal, arbitrary or summary executions to fair and adequate compensation within a reasonable period of time. They should also be informed of, and have access to, any hearing and all information relevant to the investigation. They are guaranteed the right to present other evidence, and they can insist that a medical or other qualified representative be present at the autopsy.

The Principles impose on states the obligations to prohibit by law all extra-legal, arbitrary and summary executions. They should ensure that any such executions are offenses under criminal laws and should be punished by appropriate penalties. Invocation of exceptional circumstances (e.g. state of war or threat of war, internal political instability or any other public emergency) cannot and should not be used to justify executions. No executions should be carried out under any

³²⁰ Recommended by the Economic and Social Council resolution 1989/65 of 24 May 1989.

circumstances, including situations of internal armed conflict. Excessive or illegal use of force is prohibited. These prohibitions prevail over orders or decrees issued by government. States must ensure strict control, including clear chain of command, over all officials responsible for the apprehension, arrest, detention, custody and imprisonment. This covers all officials authorized by law to use force and firearms. Orders from superior officers or public authorities to other persons to carry out any extra-legal, arbitrary or summary executions are prohibited.

The state must guarantee effective protection through judicial or other means to individuals and groups in danger of extra-legal, arbitrary or summary executions. This protection must also cover those who receive death threats. Persons deprived of liberty must be held in officially recognized places of custody. Accurate information on custody and whereabouts, including transfers must be made promptly available to relatives and their lawyer or other persons of confidence.

There should be regular inspections of places of custody by qualified inspectors, including medical personnel or equivalent independent authority. They should be empowered to conduct unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. States must also undertake thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including complaints by relatives or other reliable reports, which suggest unnatural death. They should also maintain investigative offices and procedures to determine the cause, manner and time of death, as well as the person responsible, and any pattern or practice, which may have brought about that death. These offices should have powers to obtain all necessary information, oblige officials allegedly involved in any such executions and witnesses to appear and testify, issue summons to witnesses and demand production of evidence. These offices should have all necessary budgetary and technical resources.

States are obliged to protect complainants, witnesses, those conducting investigation and their families from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions should be removed from position of direct or indirect control or power over complainants, witnesses, their families, and those conducting investigations. States must also bring to justice all persons who participated in extra-legal, arbitrary or summary executions, irrespective of who and where perpetrators or victims are, their nationalities or where the offense was committed. There should be no grant of immunity from prosecution to any person allegedly involved in extra-legal, arbitrary or summary executions.

The Principles further state that, when established investigative procedures are inadequate, states must pursue investigations through an independent commission of inquiry or similar procedure. The members should be impartial, competent and independent. Furthermore, the commission must be independent of any institution, agency or person subject of the inquiry, and must have the authority to obtain all needed information. The commission's investigation requires an adequate autopsy conducted by a physician, who shall, if possible, be an expert in forensic pathology, and who must have access to all investigative data, the place where the body was discovered, and the place where death is thought to have occurred. If the body was buried,

it must be promptly and competently exhumed for autopsy. If skeletal remains are discovered, these should be carefully exhumed and studied according to systematic anthropological techniques. The body of the deceased must be available to those conducting the autopsy for a sufficient amount of time for a thorough investigation. The autopsy must establish the identity of the deceased, cause and manner of death, and time and place of death, and any and all injuries to the deceased including any evidence of torture. Those conducting autopsies should also be impartial and independent. When the identity of the deceased has been determined, states must immediately inform the family or relatives of the deceased and return the body of the deceased to the family upon completion of the investigation.

ANNEX 4

International Human Rights Instruments Related to Justice

- **Universal Declaration of Human Rights (UDHR)** guarantees the rights to life, liberty, security of the person, freedoms from slavery, torture and cruel and unusual treatment or punishment, and arbitrary arrest. It upholds the rights to recognition as a person everywhere, to effective judicial remedy, to be presumed innocent, to asylum, to peaceably assemble, to redress of grievances, to associate and to take part in government, and freedoms of movement, residence, thought, conscience, religion opinion and expression. It advances the rights to social security, work, equal pay for equal work, rest and leisure, standard of living for health and well-being, education, and participate in cultural life of community, and the right to a social and international order in which human rights are realized.

The Declaration imposes on states the obligations to promote respect for human rights; to take national and international progressive measures to secure universal and effective recognition and observance of all human rights; of nondiscrimination and equality; and to protect the family as the natural and fundamental unit of society. The Declaration also imposes duties of individuals to the community. Finally, the Declaration prescribes the circumstances under which human rights may be limited: (a) by law, (b) for the purpose of securing due recognition and respect for the rights of others, or (c) required by public morals, public order or general welfare in a democratic society;

- **International Covenant on Civil and Political Rights (ICCPR)** guarantees the rights to self-determination, equal rights for women and men, and life. It promotes equality before law, equal protection, guarantees in criminal and civil proceedings. It advances the rights to privacy, honor, reputation, peaceful assembly, and association. It also guarantees the rights to marry, have a family, take part in public affairs, vote, and be elected. It also stipulates the right to access public service, rights of the child and ethnic, religious and linguistic minorities, freedoms from torture, slavery, involuntary servitude, arbitrary arrest and detention, freedoms of thought, conscience, religion, opinion and expression.

The *Covenant* imposes on states the obligations: to promote civil and political rights; of equality; of nondiscrimination; of international cooperation and assistance; to adopt national laws to give effect to civil and political rights; to ensure effective remedy for violations of civil and political rights; not to derogate certain rights even during public emergencies; to respect, protect and fulfill civil and political rights; to segregate accused from convicted prisoners and juvenile prisoners from adult prisoners; to enact laws prohibiting propaganda for war; to protect the family as the natural and fundamental group unit of society; to ensure equality of rights and responsibilities of spouses in marriage; and the reporting obligation.

- **International Covenant on Economic, Social and Cultural Rights (ICESCR)** guarantees the rights to self-determination, equal rights for women and men, work, just and favorable conditions of work, form and join trade unions, social security, protection and assistance for the family. The Covenant stipulates the rights to adequate standard of living, highest attainable standard of health, education, and take part in cultural life.

The *Covenant* imposes on states the obligations of equality, nondiscrimination, progressive realization, international cooperation and assistance, core obligations, and the obligations to respect, protect and fulfill economic, social and cultural rights.

The *Covenant* also imposes the following specific obligations: to protect and provide assistance to families, mothers before and after delivery, children and young persons; to improve methods of production, conservation and distribution of food; to develop and reform the agrarian system; to reduce stillbirth rate and infant mortality; to improve all aspects of environmental and industrial hygiene; to prevent, treat and control epidemic, endemic, occupational and other diseases; to provide compulsory and free primary education for all; to progressively introduce free secondary and higher education; to develop a school system at all levels; to conserve, develop and diffuse science and culture; and the reporting obligation.

- **Declaration on the Right to Development (DRTD)** stresses that people are the central subjects, active participants and beneficiaries of development. The *Declaration* upholds the rights to development, self-determination and full sovereignty over all natural wealth and resources.

It imposes on states the obligations: of international assistance and cooperation; to formulate appropriate national development policies aimed at improving the well-being of all; to create national and international conditions to realize the right to development; to eliminate massive and flagrant violations of human rights; to eliminate obstacles to development resulting from failure to observe human rights; of progressive realization; to ensure equality of opportunity for all in access to basic resources, education, health services, food, housing, employment and fair distribution of income; to ensure that women have an active role in the development process; to eradicate all social injustices; and to encourage popular participation in all spheres of development. It vests in individuals the duties, alone or collectively, to promote and protect an appropriate political, social and economic order for development.

- **Draft Guiding Principles “Extreme poverty and human rights: the rights of the poor”** promote the equal opportunity to enjoy human rights and fully develop human potential. It upholds civil, cultural, economic, political and social rights and freedoms and the right to an adequate standard of living.
- **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)** guarantees the rights to equal treatment before the law, security of the person, vote, be elected, take part in government and in the conduct of public affairs at any level. It guarantees

equal access to public service, freedom of movement and residence. It stipulates the right to leave country and return to own country. It advances the rights to nationality, marriage, choice of spouse, property, inherit and the freedom of thought, conscience, religion, opinion, expression, and association. It also advances the rights to peaceful assembly, work, form and join trade unions, housing, health, and education. CERD also upholds the right to take part in cultural activities, access any place or service intended for public use, and effective remedy.

The *Convention* imposes on states the obligations: to prohibit all forms of discrimination, racial segregation and apartheid, and propaganda based on the idea of superiority of one race or group; to eliminate racial discrimination in all its forms; to promote understanding among all races; to respect, protect and fulfill human rights without discrimination; to guarantee nondiscrimination; to ensure effective protection and remedies for violations of human rights; to adopt immediate and effective measures in teaching, education, culture and information to combat prejudice and promote understanding, tolerance and friendship; and the reporting obligation.

- **Declaration on the Rights of Indigenous Peoples** upholds the right of indigenous peoples to fully enjoy all human rights and freedoms individually and collectively, and the following rights:
 - Right to self-determination (freely determine political status and freely pursue economic, social and cultural development);
 - Right to autonomy or self-government in internal or local affairs, including financing local autonomy;
 - Right to maintain and strengthen distinct political, legal, economic, social and cultural institutions,
 - Right to nationality, life, physical and mental integrity, liberty and security of the person;
 - Right against any act of genocide or any other act of violence, including forcibly removing children to another group;
 - Right against forced assimilation or destruction of their culture;
 - Right to belong to an indigenous community or nation;
 - Right against forcible removal from their lands or territories;
 - Right to practice and revitalize cultural traditions and customs, including right to maintain, protect and develop past, present and future manifestations of their cultures (e.g. archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature);
 - Right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies;
 - Right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures;
 - Right to establish and control their educational systems and institutions providing education in their own languages in a manner appropriate to their cultural methods of teaching and learning;

- Right to all levels and forms of education of the state without discrimination;
- Right to establish own media in own languages and access all forms of non-indigenous media without discrimination;
- Right to work;
- Right against any discriminatory conditions of labor, employment or salary;
- Right to participate in decision-making in matters, which would affect their rights through representatives chosen through own procedures;
- Right to maintain and develop indigenous decision-making institutions;
- Right to maintain and develop political, economic and social systems or institutions;
- Right to be secure in the enjoyment of own means of subsistence and development;
- Right to engage freely in all traditional and other economic activities;
- Right to improve economic and social conditions, including in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security;
- Right to determine and develop priorities and strategies for exercising the right to development;
- Right to be actively involved in developing and determining all economic and social programs affecting them and, as far as possible, administer such programs through own institutions;
- Right to traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals;
- Right to access, without discrimination, all social and health services;
- Equal right to the enjoyment of the highest attainable standard of physical and mental health;
- Right to maintain and strengthen distinctive spiritual relationship with traditionally owned or occupied and used lands, territories, waters and coastal seas and other resources and uphold their responsibilities to future generations;
- Right to lands, territories and resources traditionally owned, occupied or otherwise used or acquired;
- Right to own, use, develop and control lands, territories and resources they possess by reason of traditional ownership or other traditional occupation or use, including those they otherwise acquired;
- Right to conservation and protection of the environment and productive capacity of their lands or territories and resources;
- Right to maintain, control, protect and develop cultural heritage, traditional knowledge and traditional cultural expressions, and manifestations of their sciences, technologies and cultures;
- Right to maintain, control, protect and develop intellectual property over cultural heritage, traditional knowledge, and traditional cultural expressions;
- Right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources;
- Right to determine own identity or membership in accordance with customs and traditions;

- Right to obtain citizenship of the states in which they live;
- Right to determine the structures and select members of their institutions in accord with own procedures;
- Right to promote, develop and maintain institutional structures and distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards;
- Right to determine responsibilities of individuals to the communities;
- Right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with own members and other peoples across borders;
- Right to recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with states or their successors and to have states honor and respect such treaties, agreements and other constructive arrangements; and
- Right to access financial and technical assistance from States and through international cooperation for the enjoyment of human rights.

The Declaration upholds the collective right of indigenous peoples to live in freedom, peace and security as distinct peoples. It prohibits relocation without the free, prior and informed consent of the indigenous peoples concerned. After agreement on just and fair compensation, there should be an option of return, when possible.

The Declaration reposes on states the obligations: in conjunction with indigenous peoples, states must take effective measures to ensure access to an education in their own culture and provided in their own language; they must also take effective measures, in consultation and cooperation with indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society. The Declaration also obliges states to take effective measures to ensure that state-owned media duly reflects indigenous cultural diversity. In consultation and cooperation with indigenous peoples, measures to protect indigenous children from economic exploitation and hazardous or harmful work should also be taken. Effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions must also be employed. States must also ensure, in conjunction with indigenous peoples, that indigenous women and children enjoy full protection and guarantees against all forms of violence and discrimination. They must progressively and fully realize the rights of indigenous peoples and give legal recognition and protection to indigenous peoples' lands, territories and resources, with due respect to their customs, traditions and land tenure systems. States must also establish and implement assistance programs for indigenous peoples for conservation and protection without discrimination. No storage or disposal of hazardous materials should take place in lands or territories of indigenous peoples without their free, prior and informed consent. Programs for monitoring, maintaining and restoring the health of indigenous peoples, must also be ensured, as developed and implemented by the peoples affected by such materials, are duly implemented. Military activities in the lands or territories of indigenous peoples

must not be conducted, unless justified by relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned. States must undertake effective consultations with indigenous peoples through appropriate procedures and through their representative institutions, prior to using their lands or territories for military activities. They should also consult and cooperate in good faith with indigenous peoples, through their own representative institutions, in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

- **Convention on the Rights of the Child (CRC)** guarantees the rights of the child. These rights include the rights to life, a name, nationality, know and be cared for by parents, identity, leave any country and return to own country, privacy, access to information, health, education, social security, adequate standard of living, rest and leisure, participate in cultural life and freedom of expression, thought, conscience, religion, association, and peaceful assembly.

The *Convention* also guarantees the rights of a child separated from one or both parents to maintain personal relations and direct contact on a regular basis, unless this is contrary to child's best interests and the rights of a child to be temporarily or permanently deprived of family environment for special protection and assistance. The *Convention* further guarantees the rights of children with disabilities to full and decent life in dignity and the rights of indigenous children to enjoy their own culture, profess their own faith and use their own language;

The *Convention* imposes on states the obligations:

- to prevent the illicit transfer and non-return of children, trafficking in children,
- to prevent all forms of physical or mental violence, injury or abuse, and economic exploitation;
- to respect, protect, fulfill the rights of the child;
- of nondiscrimination;
- of equality;
- not to separate the child from parents against their will except in the child's best interest subject to judicial review;
- of international cooperation and assistance;
- to regulate child care institutions, services and facilities;
- to encourage mass media to respect the rights of the child;
- to provide appropriate assistance to parents and legal guardians;
- to identify, report, refer, investigate, treat and follow-up all instances of child maltreatment;
- to ensure alternative care for the child separated from the family;
- to regulate intra- and inter-country adoption;
- to protect the child refugee and provide humanitarian assistance;
- to provide special assistance to children with disabilities;
- to improve methods of rehabilitation, care, treatment and education of children with disabilities;

- to diminish infant and child mortality;
- to provide necessary medical assistance and health care to all children;
- to develop a primary health care system;
- to ensure appropriate pre- and post-natal health care for mothers;
- to combat disease and malnutrition;
- to provide information on child health and nutrition;
- to develop a preventive health care system;
- to abolish traditional practices prejudicial to child health;
- to establish free and compulsory primary education;
- to encourage the development of different forms of secondary education;
- to reduce drop-out rates;
- to ensure regular school attendance;
- to ensure school discipline consistent with the child's dignity;
- to refrain from recruiting child soldiers;
- to protect and care for the child affected by armed conflict;
- to establish a variety of dispositions for the child in conflict with the law;
- to protect the child from sexual exploitation, sexual abuse and economic exploitation;
- to protect the child from illicit use of narcotic drugs and psychotropic substances;
- to prevent the use of the child in the illicit traffic and production of narcotic drugs and psychotropic substances; and
- the reporting obligations.

The *Convention* imposes on parents the duty to secure conditions of living necessary for the child's development;

- **Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)** uphold the rights to: be presumed innocent, be notified of charges, remain silent, counsel, presence of parent or guardian, confront and cross-examine witnesses, appeal to higher authority, privacy and against publication of information on the identity of the juvenile, life, against torture and cruel, inhuman or degrading treatment or punishment, and the right of parents or guardians to access juveniles in institutions. The *Beijing Rules* emphasize the principle of proportionality between offender and offense.
- **Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)** set forth a range of obligations and responsibilities of the family, educational systems, community and mass media.
- **Rules for the Protection of Juveniles Deprived of their Liberty** uphold the rights to the services of an interpreter, free of charge, when necessary, and especially during medical examinations and disciplinary proceedings, be presumed innocent; legal counsel; free legal aid where available; communicate regularly with legal advisors; privacy and confidentiality of communications with legal advisors; receive and retain materials for leisure and recreation compatible with the interests of the administration of justice, services and facilities, that meet requirements of health and human dignity; use own clothing; adequate food; clean

drinking water; education; receive vocational training; be protected against child labor; suitable amount of time for daily free exercise in the open air whenever weather permits; religion; highest attainable standard of health and the right of untried detained juveniles to be separated from convicted juveniles.

The Rules impose on states the obligations: to provide juveniles with the opportunity to work and continue education or training; to design detention facilities and physical environment consistent with human rights; to provide adequate space, installations and equipment; to notify family or legal guardian of illness, injury or death during detention; and to provide juveniles with adequate means of communicating with the outside world.

- **Convention on the Rights of Persons with Disabilities** (CPD) guarantees the rights to life, equal protection of law, access to justice, liberty and security of person, freedom from torture or cruel, inhuman or degrading treatment, freedom from exploitation, violence and abuse, integrity of the person, liberty of abode, movement and nationality, personal mobility, freedom of expression and opinion, access to information, privacy, education, health, habilitation and rehabilitation, work, employment, adequate standard of living, social protection, participation in political and public life and in cultural life, rest, recreation, leisure and sports.

The *Convention* imposes on states the obligations to:

- ensure and promote the full realization without discrimination of all human rights of persons with disabilities;
- adopt appropriate measures to implement recognized rights;
- modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
- include rights of persons with disabilities in all policies and programs;
- refrain from an act or practice inconsistent with the *Convention*;
- undertake or promote research and development;
- provide accessible information on mobility aids, devices and assistive technologies;
- provide training to professionals and staff working with persons with disabilities;
- progressive realization of economic, social and cultural rights;
- closely consult with and actively involve persons with disabilities in the formulation and implementation of laws and policies;
- provide effective legal protection against discrimination;
- take all appropriate measures to ensure the full development, advancement and empowerment of women;
- take all necessary measures to ensure the full and equal enjoyment of all human rights by children with disabilities;
- adopt immediate, effective and appropriate measures to raise awareness, combat stereotypes, prejudices and harmful practices;
- ensure access to available resources;
- identify and eliminate all obstacles and barriers to accessibility;
- develop, promulgate and monitor the implementation of minimum standards and guidelines for accessibility;

- provide signage in Braille and in easy to read and understand forms in buildings and facilities open to the public;
 - promote the design, development, production and distribution of accessible information and communications technologies and systems;
 - take all necessary measures to ensure the protection and safety of persons with disabilities in all situations of risk;
 - take all appropriate measures to prevent all forms of exploitation, violence and abuse;
 - take effective measures to ensure personal mobility with greatest possible independence;
 - employ teachers, including teachers with disabilities, qualified in sign language and/or Braille;
 - respect, protect and fulfill the rights of persons with disabilities;
 - collect appropriate disaggregated information, statistical and research data;
 - international cooperation and assistance;
 - designate focal points within government to implement the *Convention*;
 - maintain, strengthen, designate or establish a framework and independent mechanisms to promote, protect and monitor implementation of the *Convention*; and the reporting obligation.
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** guarantees the right against torture and cruel and unusual treatment or punishment, and imposes on states the obligations: to prevent torture under all circumstances, including during states of emergency; to enact national laws prohibiting torture; to include the prohibition of torture in training and rules governing security personnel; to undertake prompt and impartial investigation of all allegations of torture; to refrain from expelling, returning or extraditing a person to another State when s/he is in danger of being subjected to torture; of international cooperation and assistance; to undertake a systematic review of interrogation rules, instructions, methods, practices and custody arrangements and treatment of all persons under any form of arrest or detention; to protect the complainant and witnesses against ill-treatment or intimidation as a consequence of a complaint or evidence given; to ensure victim redress including adequate compensation and full rehabilitation; to prevent other acts of cruel, inhuman or degrading treatment or punishment not constituting torture committed by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity; and the reporting obligation;
 - **International Convention for the Protection of All Persons from Enforced Disappearance** expressly prohibits enforced disappearances and guarantees all civil, political, economic, social and cultural rights, including the right to reparation.

The *Convention* imposes on states the obligations to: establish the crime of enforced disappearance and assign appropriate penalties for such crime, taking into consideration mitigating and aggravating circumstances; take steps to exercise jurisdiction over the crime of enforced disappearance committed in its territory, and to exercise jurisdiction over persons located within its territory who have committed this crime (whether nationals of the State

or other State parties); investigate enforced disappearances and bring to justice persons or groups of persons who commit enforced disappearances, even if such persons act without the authorization, support or acquiescence of the State; take all person/s suspected of committing an enforced disappearance in their territory into custody, including non-nationals, until they are prosecuted or turned over to the proper authorities through extradition, while respecting all procedural rights of such detained persons.

The *Convention* also requires states to enact laws which: establish conditions under which orders of deprivation of liberty may be given; indicate who is authorized to order the deprivation of liberty; guarantee that deprivations of liberty are solely in officially recognized and supervised places; guarantee that persons deprived of liberty can communicate with and be visited by family, counsel or any other person of their choice, or consular authorities if the person is a foreigner; guarantee access by competent and legally authorized authorities and institutions to the places where persons are deprived of liberty; guarantee that any person deprived of liberty or, in the case of a suspected enforced disappearance, any persons with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, are entitled to take proceedings before a court, to decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful; and sanction the delay or obstruction of any remedies, the failure to record deprivation of liberty or the deliberate recording of inaccurate information and the refusal to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

The *Convention* also vests in states the obligations to: compile and maintain one or more up-to-date official registers and/or records of persons deprived of liberty, which shall be made promptly available, upon request, to any judicial or other competent authority or institution authorized for that purpose by the law of the State Party concerned or any relevant international legal instrument to which the State concerned is a party. At minimum, the registers should contain information on: the identity of the person deprived of liberty; when and where s/he was deprived of liberty and who deprived the person of liberty; who ordered the deprivation of liberty and the grounds for the deprivation of liberty; who is responsible for supervising the deprivation of liberty; the place of deprivation of liberty, when and where the person was admitted to that location, and who is responsible for the place of deprivation of liberty; the state of health of the person deprived of liberty; in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; and when the person was released or transferred to another place of detention, the destination and the authority responsible for the transfer.

The *Convention* requires states to take necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. The *Convention* also requires states to take all steps to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.

The *Convention* imposes on states the obligations to take all steps to prevent and punish the wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance, as well as any concealment, destruction or falsification of information related to these children; to assist other states to search for, locate and return these children to their parents; and, in situations where these children have been legally adopted, to review the adoption, and when appropriate, to annul the adoption. The *Convention* upholds the *best interests of the children* and the right of children capable of forming their own views to freely express those views, which shall be given due weight in accordance with the age and maturity of the child.

Finally, the *Convention* requires the conduct of human rights training for law enforcement personnel (civil and military), medical personnel, public officials, and others involved in the custody or treatment of persons deprived of liberty, and adherence to the human rights principles of command responsibility and proportionality.

- **Declaration on the Protection of All Persons from Enforced Disappearance** upholds the rights to recognition as a person before law, liberty and security of the person, not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, life, and the right against expulsion, return or extradition to another state where there are substantial grounds to believe that s/he would be in danger of enforced disappearance.

The *Declaration* imposes on states the obligations to: take into account all relevant considerations including the existence of a consistent pattern of gross, flagrant or mass violations of human rights; hold any person deprived of liberty in an officially recognized place of detention and bring that person before a judicial authority promptly after detention; make promptly available to family members, counsel or other persons, accurate information on the detention of persons and their place or places of detention, including transfers; maintain official up-to-date register of all persons deprived of liberty in every place of detention and maintain similar centralized registers; make available information in registers to family members, counsel, other interested parties, judicial or other competent and independent national authority and any other competent authority entitled under law or any international legal instrument seeking to trace the whereabouts of a detained person; release all persons deprived of liberty in a manner permitting reliable verification that they have actually been released in conditions, in which, their physical integrity and ability to fully exercise their rights are assured; establish rules under national law indicating officials authorized to order the deprivation of liberty, establishing conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention; ensure strict supervision, including clear chain of command, over all law enforcement officials responsible for apprehension, arrests, detentions, custody, transfers and imprisonment, and other officials authorized by law to use force and firearms; prohibit any special amnesty law or similar measures that exempt those responsible from any criminal proceedings or sanction; take into account extreme seriousness of enforced disappearances in the exercise of pardon; prevent and suppress abduction

of children of parents subjected to enforced disappearance and of children born during their mother's enforced disappearance, devote efforts to search for and identify children and provide restitution of children to their families of origin; review the adoption of abducted children and annul any adoption, which originated in an enforced disappearance; and penalize the abduction of children of parents subjected to enforced disappearance or children born during mother's enforced disappearance, and any act of altering or suppressing documents attesting to their true identity.

- **Declaration of Basic Principles of Justice for Victims of Crime and the Abuse of Power** provides different forms of restitution whenever harm results in the dislocation of a community (including restoration of environment, reconstruction of infrastructure, replacement of community facilities and reimbursement of expenses of relocation) and requires restitution from the state whose officials or agents were responsible for harm inflicted (*note: the Declaration provides that, where the government under whose authority the victimizing act or omission occurred is no longer in existence, the successor state or government successor should provide restitution*). The *Declaration* imposes on states the obligations to: provide compensation for significant bodily injury or impairment of physical or mental health resulting from serious crimes, for death of a victim, for physical or mental incapacity resulting from victimization, when compensation is not fully available from the offender; establish, strengthen and expand national funds for compensation to victims; periodically review existing legislation and practices to ensure responsiveness to changing circumstances; enact and enforce legislation proscribing acts that constitute serious abuses of political or economic power; and promote policies and mechanisms to prevent abuses of power;
- **International Convention on the Rights of All Migrant Workers and Members of their Families (CMW)** guarantees the rights against discrimination, to freedom of movement, leave and return to own countries, life, freedom from torture, cruel, inhuman or degrading treatment or punishment, freedom from slavery, servitude, forced or compulsory labor, freedom of thought, conscience, religion, freedom to manifest one's religion or belief, freedom of opinion, expression, privacy, property, liberty, security of the person, due process of law, equal protection of law, presumption of innocence, freedom from collective expulsion, recognition everywhere as a person before the law, just and favorable conditions of employment including compensation, social security, medical care urgently required to preserve lives, cultural identity, and the rights of children of migrant workers to a name, nationality and education.

The *Convention* guarantees additional rights for documented migrant workers, including the rights to be informed, prior to departure, of the terms and conditions of employment, liberty of movement and abode in the country of employment, form and join associations and trade unions, participate in the public affairs of the country of origin (including the rights to vote and be elected in the country of origin), equal treatment in employment (including access to educational institutions and services, vocational guidance and training), housing, social and health services, cooperatives and self-managed enterprises, participate in cultural life, protection of family, transfer earnings and savings, freely choose remunerated activity,

protection against dismissal, unemployment benefits, access to public work schemes and access to alternative employment.

The *Convention* imposes on states the obligations to: respect human rights without discrimination; consult and cooperate to promote sound, equitable and humane conditions of international migration of workers and their families; maintain appropriate services to deal with questions concerning international migration; facilitate provision of adequate consular and other necessary services; regulate recruitment of workers for employment in another State; cooperate to adopt measures for orderly return of migrant workers and families to the State of origin; cooperate on terms agreed upon by States to promote adequate economic conditions for resettlement of migrant workers and their families in regular situation and facilitate their durable social and cultural reintegration in the State of origin; collaborate to prevent and eliminate illegal or clandestine movements and employment of migrant workers in irregular situation; take appropriate measures to ensure existence of migrant workers and members of their families in irregular situation does not persist; take measures not less favorable than those applied to nationals to ensure working and living conditions of migrant workers and members of their families in regular situation; facilitate, whenever necessary, repatriation to the State of origin of bodies of deceased migrant workers or members of their families; as appropriate, provide assistance to persons concerned for prompt settlement of compensation matters relating to the death of a migrant worker or member of her/his family; and the reporting obligation;

- **Standard Minimum Rules for the Treatment of Prisoners** uphold the right against torture and ill treatment and the rights to humane accommodations, adequate food, highest attainable standard of health, exercise, water and sanitation. The *Rules* prohibit: the employment of a prisoner in any disciplinary capacity; punishment except in accordance with law or regulation, and never twice for the same offence; punishment unless the prisoner is informed of her/his alleged offence and given proper opportunity to present a defense; corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments; punishment by close confinement or reduction of diet unless a medical officer has examined the prisoner and certified in writing that s/he is fit to sustain it; any other punishment prejudicial to the physical or mental health of the prisoner; application of handcuffs, chains, irons and straitjackets as punishment; use of chains or irons as restraints, requiring the use of instruments of restraint only in the following circumstances: (a) as precaution against escape during transfer, but must be removed when the prisoner appears before a judicial or administrative authority; (b) on medical grounds, by direction of a medical officer; (c) by order of the director, if other methods of control fail, to prevent the prisoner from injuring her/himself or others, or from damaging property, but, the director must at once consult a medical officer and report to a higher administrative authority, further requiring that the patterns and manner of use of instruments of restraint be decided by the central prison administration and not applied for any longer time than strictly necessary.
- **Basic Principles for the Treatment of Prisoners** uphold the rights of prisoners to take part in cultural activities, education and access to health services without discrimination, require the creation of conditions for reintegration with involvement of the community and

social institutions and with due regard for the victims' interests, and conditions enabling remunerated employment to facilitate reintegration into the country's labor market and contribute to own and family's financial support, and mandate the abolition or restriction of solitary confinement as punishment.

- **Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment** govern any form of detention or imprisonment and all measures affecting human rights ordered by, or subject to the effective control of judicial or other authority. The *Body of Principles* uphold the detained or imprisoned persons rights to: compensation for damage incurred because of acts or omissions by a public official contrary to human rights; against torture or cruel, inhuman or degrading treatment or punishment; treatment appropriate to un-convicted status; be kept separate from imprisoned persons; be informed at the time of arrest of the reason for the arrest and be promptly informed of any charges; against arbitrary detention (detention without being given an effective opportunity to be heard promptly by a judicial or other authority); defend self or be assisted by counsel of choice; receive prompt and full communication of any order of detention together with reasons; be informed of human rights and how to avail of these rights; promptly notify or require the competent authority to promptly notify her/his family of her/his arrest, detention, imprisonment or transfer to a place of custody; request or petition a judicial or other authority for medical examination or opinion; access own medical records; access information about her/his detention; obtain within limits of available resources if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment; be visited by and correspond with family and be given adequate opportunity to communicate with the outside world subject to reasonable conditions and restrictions specified by law or lawful regulations; communicate freely and in full confidentiality with persons who visit or inspect places of detention or imprisonment subject to reasonable conditions to ensure security and good order; be presumed innocent and be treated as such until proved guilty according to law in a public trial, with all guarantees necessary for defense; and release pending trial subject to conditions that may be imposed in accordance with law except in special cases provided by law and unless a judicial or other authority decides otherwise in the interest of the administration of justice.

The *Body of Principles* also uphold the rights of foreign detained or imprisoned persons to communicate by appropriate means with her/his consular post or diplomatic mission and to be promptly informed of this right.

The *Body of Principles* set forth the obligations of states to: prohibit by law any act contrary to human rights, make any such act subject to appropriate sanctions, and conduct impartial investigations upon complaints; conduct arrests or detain persons pending investigation and trial only for purposes of the administration of justice and only on grounds and under conditions and procedures specified by law; exercise only the powers granted to them under the law subject to recourse to a judicial or other authority; duly record all information relating to an arrest and detention (e.g. reasons for arrest, time of arrest and taking of arrested person to place of custody, first appearance before a judicial or other authority, identity of

law enforcement officials concerned, precise information concerning place of custody, etc.) and to communicate such information to the detained person or counsel; promptly notify parents or guardians on own initiative if the detained or imprisoned person is a juvenile or incapable of understanding her/his entitlements; prohibit taking undue advantage of the situation of a detained or imprisoned person for the purpose of compelling a confession to incriminate oneself or testify against any other person; prohibit the use of violence, threats or methods of interrogation, which impair the capacity of decision or judgment during interrogation; prohibit medical or scientific experimentation; record and certify the duration of any interrogation, intervals between interrogations, identity of officials who conducted interrogations and others present; offer proper medical examination as promptly as possible after admission to the place of detention or imprisonment and provide medical care and treatment whenever necessary and free of charge; duly record medical examination, name of physician and results of examination; take into account non-compliance with principles in obtaining evidence when determining the admissibility of evidence against a detained or imprisoned person; regularly inspect places of detention by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of administering the place of detention or imprisonment; provide assistance when needed to dependent and minor members of families of detained or imprisoned persons and devote particular measure of care to appropriate custody of children left without supervision; conduct inquiry into the cause of death or disappearance, whenever death or disappearance of detained or imprisoned person occurs during detention or imprisonment, either on own initiative or at the instance of the family or any person who has knowledge of the case (*note: the Body of Principles require that the inquiry be conducted by a judicial or independent authority on the same procedural basis whenever death or disappearance occurs shortly after termination of detention or imprisonment, and the findings of the inquiry or report must be made available upon request, unless doing so would jeopardize an ongoing criminal investigation*); prohibit the imposition of restrictions not strictly required for purpose of detention or to prevent hindrance to the process of investigation or administration of justice, or for maintenance of security and good order in the place of detention; and keep the necessity of detention under review.

- **Standard Minimum Rules for Non-custodial Measures (Tokyo Rules)** incorporate the principles of accountability and rule of law and require states to protect the dignity of the offender, society and the interests of victim at all times. The *Tokyo Rules* emphasize that the offender's rights may not be restricted beyond the restrictions authorized by the competent authority that rendered the decision imposing the non-custodial measure. The *Tokyo Rules* prohibit medical or psychological experimentation on, or undue risk of physical or mental injury to, the offender. The *Tokyo Rules* also uphold the offender's and offender's family's right to privacy and require that the offender's personal records be kept strictly confidential and closed to third parties.
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** guarantees the rights of women to vote and be elected, participate in the formulation of public policy, participate in development planning, hold public office, perform all public functions at all levels of government, participate in non-governmental organizations,

represent Government at the international level, acquire, change or retain nationality, education, work, health, social security, access to credit, rest and leisure, participate in cultural life, adequate standard of living, property, enter into marriage with free and full consent, freely choose spouse, and choose family name, profession and occupation. The *Convention* imposes on states the obligations to: take all appropriate measures to ensure the full development and advancement of women; adopt temporary special measures to accelerate de facto equality; take appropriate measures to modify social and cultural patterns of men and women to eliminate prejudices, customary and other practices of discrimination against women; ensure family education includes proper understanding of maternity as a social function and recognition of common responsibility of men and women in upbringing and development of children; suppress all forms of traffic in and exploitation of women; eliminate discrimination against women in political and public life; eliminate discrimination against women in education; eliminate discrimination against women in health care; eliminate discrimination against women in economic and social life; eliminate discrimination against women in rural areas; eliminate discrimination against women in all matters relating to marriage and family relations; and the reporting obligation.

- **Declaration on the Elimination of Violence against Women** upholds all human rights and fundamental freedoms (political, economic, social, cultural, civil), including the rights to life, equality, liberty and security of person, freedom from all forms of discrimination, highest standard attainable of physical and mental health, just and favorable conditions of work, and against torture, or other cruel, inhuman or degrading treatment or punishment. The *Declaration* imposes on states the obligations to: eliminate all forms of violence against women; develop national plans of action to protect women against any form of violence; develop comprehensive legal, political, administrative and cultural preventive approaches and measures to protect women against any form of violence; ensure that re-victimization of women does not occur because of laws insensitive to gender considerations, enforcement practices or other interventions; ensure, to maximum extent feasible in light of available resources, specialized assistance to victims (e.g. rehabilitation, assistance in child care and maintenance, treatment, counseling, and health and social services, facilities and programs); and adopt all appropriate measures, especially in education, to modify social and cultural patterns of conduct of men and women and eliminate prejudices, customary practices and all other practices based on the idea of inferiority or superiority of either sex and on stereotyped roles for men and women.
- **Basic Principles on the Independence of the Judiciary** uphold the rights of members of the judiciary (e.g. freedom of expression, belief, association and assembly provided that, in the exercise of these rights, judges always conduct selves to preserve the dignity of office and impartiality and independence of judiciary) and impose the obligation on the state to provide adequate resources to enable the judiciary to properly perform its functions.
- **Basic Principles on the Role of Lawyers** uphold the rights of lawyers (e.g. freedom of expression, association, belief and association, right to form and join professional organizations) and of professional associations of lawyers (e.g. self-regulation), and mandate states to establish guarantees for the functioning of lawyers.

- **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law** uphold the right of accused persons to benefit from applicable standards of due process, and victims' right of reparation for harm suffered (*note: the Declaration states that reparation includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition*). The *Basic Principles* state that adequate, effective and prompt reparation aims to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law and require reparation proportional to the gravity of the violation and harm suffered. The *Basic Principles* impose on states the obligations to: provide reparation to victims for acts or omissions, which can be attributed to the state and constitute gross violations of international human rights law or serious violations of international humanitarian law (*note: the Basic Principles mandate that, where a person, legal person or other entity is found liable for reparation, said person, legal person or other entity should provide reparation to the victim or compensate the state if the state already provided reparation*); establish national programs for reparation and other assistance to victims in the event that parties liable for the harm suffered are unable or unwilling to meet their obligations; enforce domestic judgments for reparation against individuals or entities liable for harm suffered; enforce valid foreign legal judgments for reparation in accord with domestic law and international legal obligations; and provide in domestic laws effective mechanisms for enforcement of reparation judgments.
- **Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms** upholds all human rights and imposes on states relevant obligations of conduct and of result. The *Declaration* mandates that any limitations on human rights must be in accordance with applicable international obligations and determined by law solely for the purpose of securing due recognition and respect for rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

ANNEX 5

Participants, Secretariat, Development Partners, Documentors, Finance Staff and Training Facilitators

Pilot Training Workshop
Philippines
2011

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- 26 Sunga, Ricardo
- 27 Suparyati, Sri
- 28 Torafing, Joseph
- 29 Umbac, Angie

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- 2 Mabanesh, April Rose
- 3 Pallera, John I. G.
- 4 Manuel, Marlon
- 5 Tejada, Joan Marie C.
- 6 Buzon, Marina

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ACRONYMS

ABA	American Bar Association
ADB	Asian Development Bank
ADR	Alternative Dispute Resolution
AHRC	Australian Human Rights Council
AI	Appreciative Inquiry
AIPP	Asian Indigenous Peoples' Pact
CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CMW	International Convention on the Rights of All Migrant Workers and Members of their Families
CPR	Convention on the Rights of Persons with Disabilities
CRC	Convention on the Rights of the Child
CSOPP	Civil Society Organizations and Participation Programme
DepEd	Department of Education (Philippines)
DFID	Department For International Development (United Kingdom)
DIHR	Danish Institute for Human Rights
DPWH	Department of Public Works and Highways (Philippines)
DRTD	Declaration on the Right to Development
EA2J	Equal Access to Justice
ED	Enforced Disappearance
EJK	Extrajudicial Killing
ESCR-Asia	Economic, Social, Cultural Rights-Asia
FAO	Food and Agriculture Organization
HRBA	Human Rights-based Approach
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labor Organization
IMF	International Monetary Fund
INGO	International Non-government Organization
IOM	International Organization for Migration
IP	Indigenous People
LEAD	Legal Empowerment and Assistance of the Disadvantaged
LEP	Legal Empowerment of the Poor

LFA	Logical Framework Analysis
LGU	Local Government Unit
MDG	Millennium Development Goals
NEDA	National Economic Development Authority (Philippines)
NGO	Non-government Organization
OHCHR	Office of the High Commissioner for Human Rights
PWD	People With Disabilities
RMAP	Rights-based Municipal Assessment and Planning Project
SIDA	Swedish International Development Cooperation Agency
SWOT	Strengths, Weaknesses, Opportunities, Threat
TNA	Training Needs Assessment
UDHR	Universal Declaration of Human Rights
UNDEF	United Nations Democracy Fund
UNDP APRC	United Nations Development Programme–Asia-Pacific Regional Centre
USAID	United States Agency for International Development
WB	World Bank
WJP	World Justice Project
WTO	World Trade Organization