



# ACCESS TO JUSTICE ASSESSMENT TOOL

A guide to analyzing access to justice for  
civil society organizations





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civil society organizations



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**ABA** RULE OF LAW INITIATIVE

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74015<sup>th</sup> Street, NW  
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For more information, contact  
Jennifer Tsai, Access to Justice Advisor  
American Bar Association Rule of Law Initiative  
74015<sup>th</sup> Street NW  
Washington, DC 20005  
[jennifer.tsai@americanbar.org](mailto:jennifer.tsai@americanbar.org)

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# FOREWORD

The American Bar Association Rule of Law Initiative (ABA ROLI) is a mission-driven, non-profit program grounded in the belief that rule of law promotion is vital to address the pressing problems facing the world today, including poverty, conflict, endemic corruption, and disregard for human rights. ABA ROLI implements legal reform programs in more than 40 countries in Africa, Asia, Europe and Eurasia, Latin America and the Caribbean, and the Middle East and North Africa.

Access to justice requires that citizens are able to use justice institutions to obtain solutions to common justice problems. Unless citizens have access to justice, the rights and duties enshrined in international treaties, constitutions, and laws are meaningless, and fail to provide any protection to vulnerable groups. Improving access to justice, which is a central focus of ABA ROLI's work and that of its partners around the world, is vital to ensure that rights exist in practice, rather than solely in theory.

This manual is intended to make the work of those who aim to improve access to justice more effective. It was inspired by two key beliefs: first, that access to justice programs are most successful when they address needs identified by reliable research, and, second, that local organizations are best-placed to improve access to justice in their own communities, and should take the lead in developing and implementing access to justice programs. The manual seeks to encourage local civil society organizations to conduct research on access to justice and to design reforms and programs to address key obstacles. To do so, it provides them with a conceptual framework for analyzing access to justice and explains the basic skills and concepts necessary for research to be useful and reliable. The manual does not try to convert local civil society organizations into academic research institutions, but will, we hope, contribute to a culture of evidence-based decision-making and advocacy among access to justice practitioners.

ABA ROLI is very grateful to the many people who contributed to the development of this manual. ABA ROLI would particularly like to thank the members of an expert working group who reviewed and provided insightful comments on the manual. ABA ROLI greatly benefited from the counsel of Persida Rueda Acosta, Philippines Chief Public Attorney; Juan Carlos Botero, Interim Executive Director and Director of the Rule of Law Index of the World Justice Project; Stephen Golub, legal empowerment expert and law professor; Martin Gramatikov, a lecturer at Tilburg University and a member of the Measuring Access to Justice Project; Simeon Koroma, Executive Director of a Sierra Leonean paralegal services program, Timap for Justice; Zaza Namoradze, Director of the Budapest office of the Open Society Justice Initiative; and Annette Pearson, an international development consultant and expert on Colombia's National Community Justice Houses. ABA ROLI is also grateful to the many colleagues who worked on this manual, particularly Jennifer Tsai, Jim Wormington, Simon Conté, Brie Allen, Katherine Stehle, Katherine Southwick, Michael Maya, Jennifer Rasmussen, and Zachary Zarnow.

Last but not least, ABA ROLI wishes to thank the U.S. Agency for International Development for funding this project, and more generally, for its commitment to promoting access to justice around the world.







# INTRODUCTION

This manual provides civil society organizations with the tools they need to conduct useful and reliable research on access to justice. The manual was inspired by a belief that justice sector reform is most effective when it is based upon sound research. Research helps civil society organizations understand a justice system's strengths and weaknesses. It also allows them to make an informed decision as to what reforms are necessary and appropriate. This understanding of the access to justice situation ensures that reforms target key problems, and coordinate with and complement existing institutions and initiatives. Research also strengthens the case of reformers by providing evidence of the need for change and real-life examples of the positive effect that change will have.

**This manual is a comprehensive guide to access to justice research that both novice and experienced researchers can use.** This manual concentrates on explaining the basic skills and concepts necessary for research to be useful and reliable. It does not seek to convert civil society organizations into academic-level research institutions. The American Bar Association Rule of Law Initiative (ABA ROLI) hopes that this manual will contribute to a culture of evidence-based decision-making and advocacy among access to justice organizations.

## WHAT IS ACCESS TO JUSTICE?

**Access to justice means that citizens are able to use justice institutions to obtain solutions to their common justice problems. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizens' justice problems.**

Every justice system should provide citizens with access to justice. Access to justice means that citizens are able to use justice institutions to obtain solutions to their common justice problems. Unless citizens can do this, the rights enshrined in laws and constitutions are meaningless. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizens' justice problems.

## WHAT IS AN ACCESS TO JUSTICE ASSESSMENT?

**An access to justice assessment analyzes whether citizens are able to use justice institutions to solve their common justice problems, what factors affect whether they can do so, and what reforms and programs could make justice institutions more responsive to citizens' needs.**

An access to justice assessment analyzes whether citizens are able to use justice institutions to solve their common justice problems, what factors affect whether they can do so, and what reforms and programs could make justice institutions more responsive to citizens' needs. There are a number of research techniques that can be used to assess access to justice. One approach is to use surveys or focus groups to ask citizens how well justice institutions serve their needs. Another method is to interview country experts to get their perspectives on the strengths and weaknesses of a justice system.

Often the appropriate technique depends on the particular context of each country or region. This manual does not prescribe a preferred research method but outlines a number of different techniques that organizations can pick and choose from when planning their assessment. Civil society organizations can match the size and scale of their research, as well as the techniques they employ, to their capacity, skills, and resources.

## WHICH JUSTICE INSTITUTIONS?

This manual has been specifically designed to analyze both **formal** and **informal** institutions.

In many regions of the world, multiple justice institutions co-exist within the same geographic area. This manual has been specifically designed to be useful in circumstances involving both formal and informal institutions and state and non-state institutions.

## HOW COULD A CIVIL SOCIETY ORGANIZATION USE THIS MANUAL TO IMPLEMENT AN ACCESS TO JUSTICE ASSESSMENT?

A civil society organization could use this manual to design future reforms and programs, develop an advocacy platform, and improve research capacity.

- **TO DESIGN FUTURE REFORMS AND PROGRAMS**

Use this manual to assess a justice system's strengths and weaknesses and design reforms and programming that address key problems and coordinate with and complement existing efforts.

- **TO DEVELOP AN ADVOCACY PLATFORM**

Use this manual to document deficits in access to justice, provide compelling evidence of the need for reform, and demonstrate the positive effect reform will have. Publicize a final report that mobilizes local and international support in favor of change.

- **TO IMPROVE RESEARCH CAPACITY**

Use this training manual, which was developed in consultation with some of the world's leading experts on justice sector research and access to justice, to develop the skills necessary to ensure that research is consistently useful and reliable.

## CONDUCTING AN ACCESS TO JUSTICE ASSESSMENT

An access to justice assessment can be broken down into four stages: (1) the pre-assessment phase; (2) collecting data; (3) organizing and analyzing data; and (4) writing reports. These are discussed in detail in Sections II—V.

Section I of the manual provides you with a conceptual and analytical framework, The Elements of Access to Justice, to guide you in thinking about access to justice. The Elements of Access to Justice are the six key topics that an access to justice assessment should address – **Legal Framework, Legal Knowledge, Advice and Representation, Access to a Justice Institution, Fair Procedure, and Enforceable Solution**. Because each Element impacts citizens' ability to use justice institutions to solve their problems, an assessment analyzes whether each element is present in a justice system, the factors that affect whether the element is fully present, and, if the element is not fully present, the reforms that could improve the situation. We discuss each Element in detail in Section I.

# SECTION I.

## THE SIX ELEMENTS OF ACCESS TO JUSTICE

### REMINDER – WHAT IS ACCESS TO JUSTICE?

Access to justice means that citizens are able to use justice institutions to obtain solutions to their common justice problems. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizens' justice problems.

This section of the manual introduces the six key topics that an access to justice assessment should discuss – The Elements of Access to Justice.

Each Element of Access to Justice – Legal Framework, Legal Knowledge, Advice and Representation, Access to a Justice Institution, Fair Procedure and Enforceable Solution – impacts citizens' ability to use justice institutions to solve their common justice problems. If, through our assessment, we can recommend reforms that move toward fully realizing each Element of Access to Justice, citizens will be better able to use justice institutions to obtain solutions to their common justice problems, and justice institutions will more effectively provide fair solutions to them.

For each Element, you should ask **three key questions:**

1. To what extent is each Element present in the justice system?  
e.g. To what extent is there a legal framework that establishes citizens' rights and duties and provides citizens mechanisms to solve their common justice problems?

2. What factors affect the extent to which each Element is present?  
e.g. What legal, political, and institutional factors affect whether there is a legal framework that establishes citizens' rights and duties and provides citizens mechanisms to solve their common justice problems?
3. What are possible reform strategies?  
e.g. What reforms or programming could improve the legal framework that establishes citizens' rights and duties and provides citizens mechanisms to solve their common justice problems?

The sections below should help you answer each of the above three questions. For each Element of Access to Justice, we have included:

1. A brief discussion of what it means for each Element to be present in the justice system.
2. A list of factors that can affect the extent to which the Element is present in a justice system.
3. A list of reform strategies to keep in mind when designing reforms or programming to improve each Element.

## ELEMENT 1: LEGAL FRAMEWORK

### TO WHAT EXTENT IS THERE A LEGAL FRAMEWORK THAT ESTABLISHES CITIZENS' RIGHTS AND DUTIES AND PROVIDES CITIZENS MECHANISMS TO SOLVE THEIR COMMON JUSTICE PROBLEMS?

The existence of a set of written or unwritten laws lays the foundation on which citizens can rely to seek solutions to their justice problems.

#### BACK TO BASICS: FORMAL AND NON-STATE LAWS AND JUSTICE SYSTEMS

**State laws** are laws that have been enacted by your country's government. State laws often appear in a constitution, the highest law of the land. A constitution enumerates the power, duties, structure, and procedures of a government. It is important that the constitution contains human rights and access to justice principles to provide a basic framework that the government and citizens are required to observe. Legislation such as the criminal and civil procedure codes of a country can help to provide a more detailed framework, including how to implement constitutional provisions.

**Formal justice systems** refer to the courts, the judiciary, and prosecutors. A court consists of an official public justice institution authorized by state law to adjudicate disputes and apply laws. The judiciary is made up of judges and magistrates. The prosecution is the legal party responsible for presenting a case against a citizen accused of a crime in a criminal proceeding. Prosecutors will also enforce the judgments of a court.

**Non-state laws** are not enacted by governments, but through social interaction, and reflect customs, norms, and accepted behavior within a certain group or community. They can be written or unwritten.

**Non-state justice systems** refer to institutions of justice that adjudicate disputes outside of formal court systems. This includes non-state justice systems such as traditional and indigenous systems, and state-sanctioned alternative dispute resolution institutions. Both provide an alternative to formal court litigation. This manual uses the term "non-state" interchangeably with other adjectives commonly used to refer to these systems, such as "informal," "customary," "traditional," and "indigenous."

**CASE-IN-POINT:** Keep in mind that rights contained in non-state laws can be recognized in formal justice systems, and vice-versa. For example, Section 112 of the South African Constitution requires the courts to apply non-state laws, provided they are not in conflict with other parts of the Constitution. In Indonesia, where traditional *Adat* law has a prominent role in dispute resolution, *Adat* law may govern the distribution of marital property, even in state courts.<sup>1</sup>

In formal justice systems, the legal framework establishes the rights and duties of citizens. It also defines when a problem, conflict, or dispute is a **justiciable event**, an event that is capable of being decided by legal principles or by an institution of justice. The legal framework should also enable citizens to bring legal proceedings at justice

institutions that deal with those justiciable events. Determining which justice institution is able to hear a citizen's case invokes principles like **jurisdiction** – the types of cases that a court is permitted to hear – and **standing** – which parties are permitted to bring a case. The adversarial nature of court decisions generally results in a “win-lose” outcome, whereby one party's gain is another party's loss.

In non-state justice systems, customary laws and practices shape the legal framework that is used to resolve a problem. Oftentimes, the problem is viewed as relating to the whole community as a group. The solution to the problem strongly emphasizes reconciliation and restoring social harmony. The focus is on duties rather than individual rights, as in the formal justice system. Decisions made under this framework are intended to find solutions to problems that restore social harmony.



## BACK TO BASICS: RIGHTS AND DUTIES

A theory of rights also means that there are correlative duties.

**Rights** provide a minimum level of protection for the individual or group against others and the state. The beneficiary of rights could be individuals or groups, such as children, women, and minorities.

**Duties** can mean an obligation to do something or an obligation not to do something. For example, in some societies, the constitution grants a basic right to an education. The state therefore has a duty to provide schools and pay teachers and a duty not to prevent students from attending school by discriminating against or mistreating them. The right also imposes a duty on citizens to pay taxes, so that the state has the funds to create schools. A citizen may have other duties with respect to rights he or she has in the community, village, or town where he or she lives.

Rights will be a starting point for resolving disputes. In some societies, though, the goal will be to move beyond a rights-based “win-lose” approach to solutions with a restorative focus, with each parties' rights recognized and duties fulfilled.



## **WHAT FACTORS AFFECT WHETHER THE LEGAL FRAMEWORK ESTABLISHES CITIZENS' RIGHTS AND DUTIES AND PROVIDES CITIZENS MECHANISMS TO SOLVE THEIR COMMON JUSTICE PROBLEMS?**

### **CLEAR RULES AND STANDARDS**

In formal justice systems, clear rules and standards are needed to define how constitutional provisions will be implemented. In non-state justice systems, where there may be a lack of substantive laws, formal procedures in decision-making, and minimum standards for mediators and arbitrators to follow, the rights of victims and suspects are protected only by social and customary norms. As such, the outcome of decisions will depend on the knowledge and moral values of the individual mediator or arbitrator. The absence of clear rules and standards in either the formal or non-state system may lead to **arbitrary** or **discriminatory** practices by the official conducting the proceeding.

### **NON-DISCRIMINATORY LEGAL FRAMEWORK**

A law, rule, or regulation should confer the same rights on all categories of citizens, especially vulnerable populations. Laws or regulations that deny rights to one or more categories of citizens are discriminatory. For example, in some societies, some local customary laws, including inheritance laws, family laws, and laws on the right to own property, may discriminate against women and contradict protections provided by international law. These laws reflect social and customary norms that give women second-class status.

## **WHAT ARE POSSIBLE REFORM STRATEGIES?**

### **PROMOTE COMPREHENSIVE RESEARCH AND KNOWLEDGE DEVELOPMENT OF TRADITIONAL AND INDIGENOUS SYSTEMS**

Because little may be known about traditional and indigenous justice systems, reform strategies centered on recording and researching laws and traditions may be a useful starting point. This will help to identify strengths and weaknesses of the systems and target reform strategies. Research and publication of customary law may also

help judges and those who work in the formal justice system better understand, and possibly consider utilizing, indigenous practices when a case relating to indigenous populations comes before them.

### **PROMOTE AND ASSIST IN THE DEVELOPMENT OF CLEAR AND EFFECTIVE RULES AND STANDARDS**

Relevant authorities such as formal court judges, mediators, and arbitrators should be aware of their mandate and their duties, including the rules and standards they need to follow. A program to promote clear and effective rules and standards might include developing a code of ethics and a handbook on how to apply the code of ethics. They could be used as part of a training curriculum, including training on minimum standards, human rights, and international standards. Broader reform efforts along these lines could also include working with legislators to ensure that laws and regulations are drafted using clear, plain language. This may be accomplished through training sessions and public consultations that produce a more participatory law-making process and consider the concerns of affected parties.

In order to effectively resolve disputes, customary leaders must possess a range of skills and knowledge. Concerted efforts to develop the capacity of customary leaders and improve the quality of decision-making through non-state systems must be made. A training program may be implemented to improve customary leader's mediation skills and knowledge of relevant law.

### **FORM PARTNERSHIPS WITH CSOS FOCUSING ON DISADVANTAGED GROUPS, ESPECIALLY WOMEN'S CSOS, TO ADDRESS THE DISCRIMINATORY EFFECTS OF SOCIAL AND CUSTOMARY PRACTICES**

Changing attitudes and behaviors takes a long time, and the state and civil society need to be involved through active advocacy to encourage traditional systems to be more inclusive. This can include promoting the active participation of members of disadvantaged groups in traditional justice institutions. Collective voices can be a powerful way to make more demands of the traditional systems.

## USEFUL DATA COLLECTION TECHNIQUES

- **Document review:** You should try to get the most up-to-date versions of constitutional provisions that relate to access to justice. Then try to figure out what framework regulates the specific substantive rights, duties, and interests you are examining. If your focus is on the formal justice system, you will want to look at any relevant legislation, such as provisions from the civil, criminal, and administrative procedure codes, and possible relevant non-state laws. If the focus is on the informal system, you will want to collect any customary laws and any relevant state laws.

Collecting this information will help you become familiar with the access to justice issues you are examining. Researching these laws early in the process will also help guide you in thinking about what reforms could realistically be achieved and recommended later.

- **Secondary sources:** Getting information on existing reports, assessments, projects, and reform efforts is one way to give you an idea of what has already been done, what has worked, and what has not worked relating to the issues you are considering. It can also help you identify the types of questions and data you want to target later in your interviews and focus groups.
- **Interviews:** Since it may be difficult to collect information on customary laws, especially if they are unwritten, interviewees such as non-state village heads, ADR officials, and other local decision-makers will be a good source of information.

Consult Section III for More Information

## USEFUL QUESTIONS FOR ELEMENT 1 ASSESSMENT

When conducting the assessment for Element 1, you should consider the following general areas of inquiry:

- What state laws, if any, exist that create clear legal rights for citizens within the formal justice system?
- What customary laws and practices, if any, exist that create clear legal rights for citizens within the informal justice system?
- Are they simple and easy to understand?
- Are they consistently enforced and applied?
- What mechanisms does the law provide to citizens to allow them to enforce their rights?
- Are informal justice institutions given the power, by law, to solve justice problems or provide a remedy?

Please note, however, that you do not need to limit the assessment to these particular questions.



## EXERCISE: ANALYZING WHETHER A LEGAL FRAMEWORK EXISTS

This exercise is based upon a Cambodia case study.<sup>2</sup> The text below is a fictional extract from an access to justice report written by a Cambodian legal aid organization. The organization provides legal aid in civil cases. The extract, which would be located near the beginning of the final report, describes the focus of the assessment. Use the information from this extract to answer the questions that follow.

### The Focus of Our Assessment

Because this project had a modest budget, we knew our assessment would have to focus on a number of key issues. To analyze what those issues should be, we undertook comprehensive background research, including a review of published and internet material and interviews with a number of key in-country experts. Through this research, we reached a number of conclusions as to how our project should be focused.

### THE ASSESSMENT SHOULD FOCUS ON ACCESS TO JUSTICE FOR CITIZENS SEEKING TO ASSERT OWNERSHIP OF LAND.

We believe that the most significant problems for which citizens seek recourse to the civil justice system are disputes over ownership of land and gender-based violence. In gender-based violence cases, complainants rely on the civil system because the criminal courts rarely provide the justice they seek. As a civil legal aid provider, we are not well-placed to identify problems with the criminal justice system. We also believe that access to land is an issue of such significance that it merits specific consideration. Access to land is fundamental to the livelihood of many Cambodians. Eighty percent of the population lives in rural areas<sup>3</sup> and the vast majority of rural residents farm their own land to make a living.<sup>4</sup> Unfortunately, villagers frequently lose their lands as a result of non-transparent concessions, land grabbing, and illegal encroachment from powerful persons, corporations, army members, and some high-ranking officials.<sup>5</sup>

### THIS PROJECT MUST BE CAREFUL TO GIVE SPECIFIC CONSIDERATION TO OBSTACLES TO ACCESS TO JUSTICE FOR WOMEN AND INDIGENOUS GROUPS.

The massacres that occurred in Cambodia during the Khmer Rouge regime left many women widowed: an

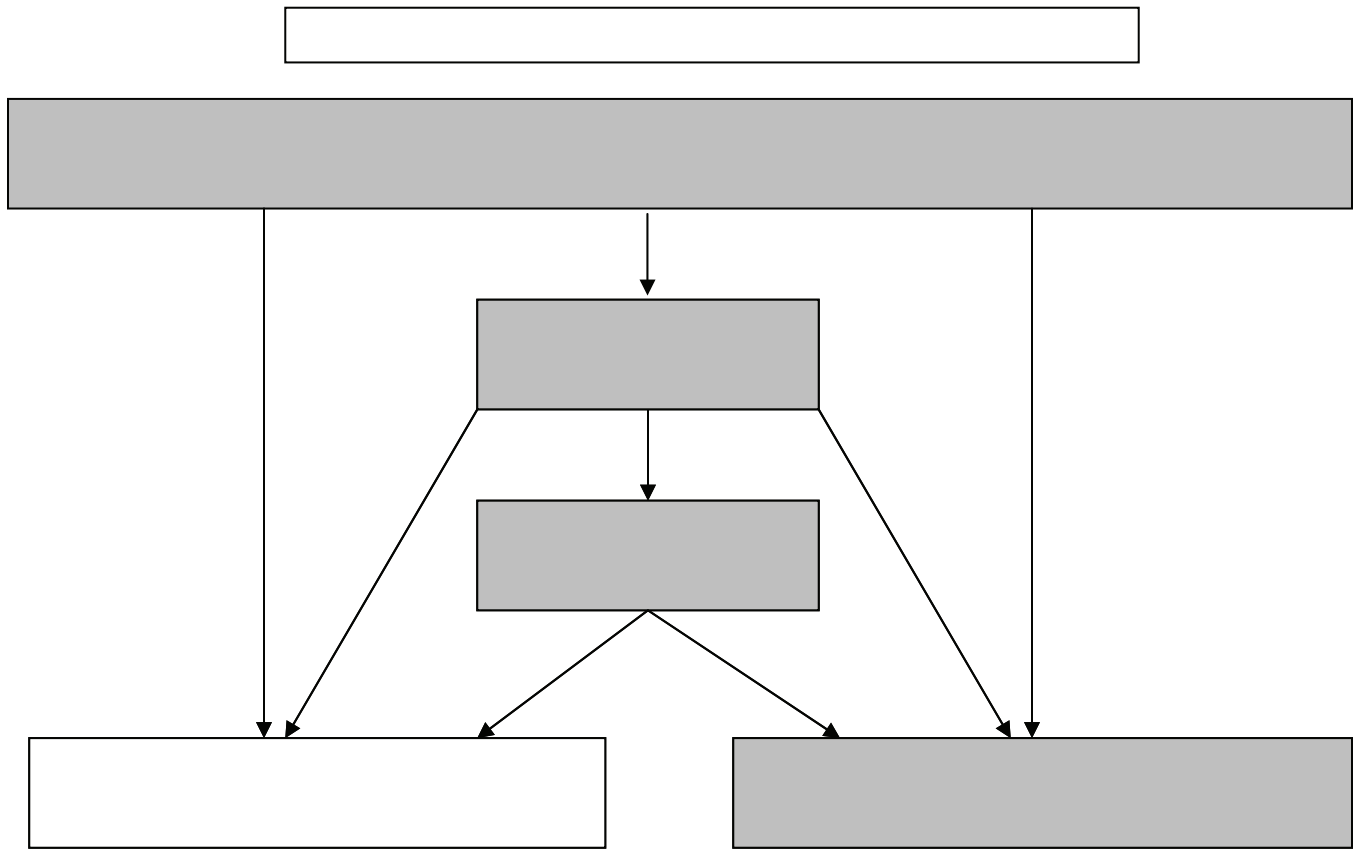
estimated 25 per cent of Cambodian households are headed by single women.<sup>6</sup> As with many Cambodians, a large percentage of these women rely on access to land to make a living. Women are likely to face particularly severe obstacles to access to justice. They are often less well educated than men; thirty-one percent of women are illiterate, compared to 21% of men.<sup>7</sup> Women are also likely to face discrimination when interacting with public institutions.

Cambodia's indigenous peoples constitute a significant minority of its population (less than 4%).<sup>8</sup> The most serious problem that indigenous peoples face is loss of land. Powerful or wealthy speculators use local brokers to buy or even seize indigenous peoples' land, taking advantage of their lack of legal awareness and access to legal assistance. Cambodia's Land Law forbids the alienation of indigenous community land.<sup>9</sup> Indigenous groups also face significant obstacles to access to justice. They speak their own languages and frequently encounter ethnic discrimination.

### THIS PROJECT FOCUSES ON THE JUSTICE INSTITUTIONS IN WHICH CITIZENS ENFORCE CLAIMS IN RELATION TO UNREGISTERED LANDS.

Because 80% of land title in rural areas is unregistered, the majority of disputes over land ownership concern unregistered land.<sup>9</sup> During our background research, we began to understand how land rights disputes are resolved. Where cases involved registered land, state courts have jurisdiction. For disputes involving unregistered land, the land commission, known as the Cadastral Commission, has exclusive jurisdiction. However, in the majority of cases, people initially bring their complaint to the local village chief or commune council, who can either mediate the case or refer it to the land commission.

We found it useful to map the justice institutions used to resolve land disputes in the diagram below. The shaded justice institutions are those used to adjudicate unregistered land cases. Our analysis of access to justice focuses on those justice institutions.



This exercise presupposes that you are seeking to analyze whether a legal framework exists for citizens to use in seeking solutions to their problems.

**Question 1:** What relevant frameworks will you want to consider? Based on the definitions of formal and non-state laws and justice systems on page 4, explain whether each one is part of the formal or informal justice systems.

**Question 2:** Which data collection technique would you use to collect information about the following?

- Customary laws establishing the rights and duties of citizens, particularly women, as they relate to land disputes
- Rules and procedures of conciliation, if any, village chiefs and the commune council follow
- State laws protecting citizens' land rights and interests

- Rules and procedures for alternative dispute resolution that apply to the land commission
- Laws on alternative dispute resolution that regulate how the courts enforce land commission decisions
- Right to access to justice in the Cambodian Constitution

**Question 3:** Let's look at the legal framework that regulates the land commission. Through your document review, you read that the Land Law established the commission, which is part of the Ministry of Justice, to resolve conflicts relating to unregistered land. The commission operates at the district, provincial, and national levels. You also learn that the commission has no clear timeframe regulations for its procedures, so citizens do not know when and if their case will be resolved. Currently all cases sent to the national land commission are sent back to the lower level land commissions without any decision. How might this information affect your analysis with respect to this element?

### SUGGESTED ANSWERS

**Question 1:** You will want to consider both the traditional justice system of the village chiefs and commune council and the state-sanctioned alternative dispute resolution system, the land commission. Both are informal justice systems because they are institutions of justice that adjudicate disputes outside of formal court systems. The definition the manual uses for “informal justice systems” appears in the box on page 4.

**Question 2:**

- a) Document review and/or interviews with village chiefs, leaders of the commune council and ADR land commission officials.
- b) Document review and/or interviews with village chiefs, leaders of the commune council and ADR land commission officials.

- (c) Document review.
- (d) Document review and interviews with ADR land commission officials.
- (e) Document review and interviews with ADR land commission officials.
- (f) Document review.

**Question 3:** Clear rules and regulations on the timeframe to process cases make the land commission efficient and reliable. The absence of clear rules and regulations may lead to a delay in procedure, which may be viewed as an obstacle to access to justice. Your analysis will want to look at the causes that contribute to this delay and the reforms that could improve it.

## ELEMENT 2: LEGAL KNOWLEDGE

### TO WHAT EXTENT ARE CITIZENS AWARE OF?

#### 2.1 THEIR RIGHTS AND DUTIES; AND

#### 2.2 THE MECHANISMS AVAILABLE TO SOLVE THEIR COMMON JUSTICE PROBLEMS.

### 2.1 TO WHAT EXTENT ARE CITIZENS AWARE OF THEIR RIGHTS AND DUTIES?

To find solutions to their justice problems, citizens need to understand, in very general terms, that they have been wronged in some way or are not receiving something to which they are entitled. They do not need specific knowledge of their rights and interests. Consider the example, adapted from a United Nations Development Program report on access to justice, of laborers in Indonesia who have the right to reasonable working hours and benefits. Because most laborers were ignorant of this right, few laborers would lodge legal claims to complain about long working hours.<sup>10</sup>

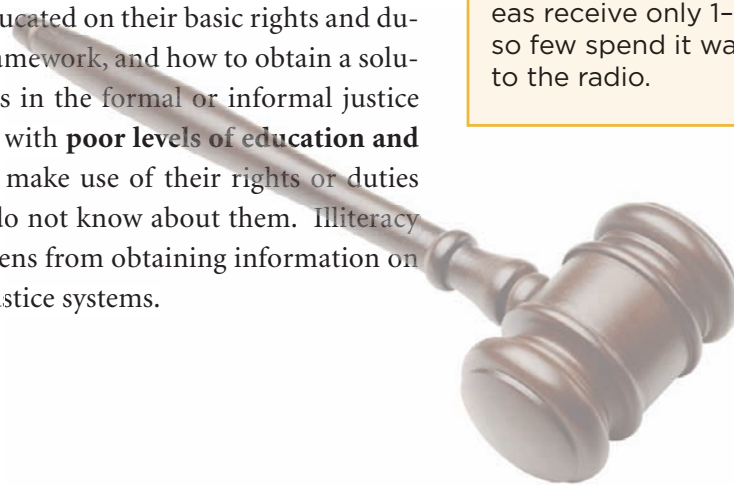
### WHAT FACTORS AFFECT WHETHER CITIZENS ARE AWARE OF THEIR RIGHTS AND DUTIES?

#### EDUCATION

Citizens need to be educated on their basic rights and duties under the legal framework, and how to obtain a solution to their problems in the formal or informal justice systems. Populations with **poor levels of education and literacy** often do not make use of their rights or duties because they simply do not know about them. Illiteracy may also prevent citizens from obtaining information on the workings of the justice systems.

### CASE-IN-POINT: RURAL TAJIKISTAN

**Education can be a particular challenge for women.** In rural Tajikistan, low levels of education are a barrier to attaining legal awareness and access to justice for women. Women are frequently withdrawn early from school to earn money for their families. As a result, many women are illiterate. This can have tragic consequences. Women are often in unregistered marriages to a husband with multiple wives, unaware that they have no right to their husband's property. When their husband dies, these women are thrust into poverty. Had they been aware that, to receive their full inheritance rights, they must force their husband to register their marriage, such unfortunate consequences would be avoided. Attempts to inform women about their rights through the media, for example television or radio, are unlikely to succeed because public services do not reach women in remote locations. Tajiks in those areas receive only 1-2 hours of electricity per day, so few spend it watching television or listening to the radio.



## AVAILABLE INFORMATION FROM GOVERNMENT AND NON-STATE INSTITUTIONS

Knowledge depends on good information, and virtually all the institutions within the formal and non-state justice systems have a responsibility to educate and inform the people who rely on their services. They should ensure that citizens can access information when it is requested. If government and non-state institutions are **reluctant** or **lack the resources to provide information**, citizens will not know they have any means of obtaining a solution to their justice problems or know about their rights and duties.

## WHAT ARE POSSIBLE REFORM STRATEGIES?

### EMPLOY POPULAR EDUCATION METHODS IN COMMUNITY EDUCATION PROGRAMS

Using popular education methods will ensure that legal knowledge-building programs achieve maximum impact and reach the widest audience. Some popular education methods are: public radio or television shows, street theatre, information kits/flyers on how to initiate legal action for those who cannot afford to hire a lawyer, legal information kiosks or centers, and internet resource pages. A few examples of these types of initiatives are described below.

To address a lack of legal literacy among women in Tajikistan, ABA ROLI commissioned a theatrical performance that informs Tajiks about women's rights. **Theatre** is a powerful medium in Tajikistan. The show, *Three Stories*, focuses on the most pressing justice issues affecting Tajik women—a women's right to education, the risk of an unregistered marriage, and enabling women to get child support payments from their children's fathers. Attorneys trained by ABA ROLI are available during and after the performance to answer any questions audience members

might have about the issues discussed during the show and, where possible, to arrange future consultations.

Another example is the **ABA ROLI Street Law programs** launched in Krygystan to combat the lack of legal literacy among Kyrgyz citizens. The program is active both in madrassas and secular schools, educating children about their constitutional rights and how the Kyrgyz justice system works. Through the Street Law Program, students are instructed on the role of the police and limits on police power, and instructed on how to bring a claim in court, or protect their rights if detained by law enforcement. ABA ROLI currently supports five Street Law centers around Krygystan, where law students are trained to teach Street Law to high school age children.

Involving non-lawyers, such as community organizers, teachers, and religious leaders, in the design and delivery of community education programs is extremely effective. They can make substantial contributions to increasing public knowledge of the law and of citizens' rights and duties.

### DEVELOP THE CAPACITIES OF STATE AND NON-STATE JUSTICE ACTORS TO PROVIDE INFORMATION

Effective dissemination of information often requires increasing the government's capacity to handle requests for information. Developing training programs for government officials in topics like access to information and legal awareness may also break down institutional resistance to openness.

Non-state justice actors are often the persons to whom citizens first report when they need assistance or are using the justice system to seek a solution to their justice problems. They are therefore an effective means of spreading information to the community.

## USEFUL DATA COLLECTION TECHNIQUES

- **Citizen Surveys/Interviews/Focus Groups**

You will wish to ask citizens about the extent of their knowledge of their basic rights and duties. It may also be useful to find out whether they are able to access materials about rights, produced in languages they can understand.

- **Statistics**

If available, you may wish to gather statistics, such as the percentage of the population that is literate and the percentage of the population that has completed primary and secondary schooling.

- **Interviews/Focus Groups with Government and Non-state Justice Actors.**

In interviewing government justice actors, you may wish to find out whether there are constitutional and legislative provisions guaranteeing access to information, as well as freedom of information policies and rules to implement them. You may also want to find out whether information is produced in user-friendly formats, including those targeted to people with low-level literacy skills or disabilities, whether information is disseminated to disadvantaged groups, and whether information windows or kiosks are available.

In interviews or focus groups with non-state justice actors, you may wish to ask them whether they provide information to members of their community about citizen rights and duties and legal and other services that might be available to citizens.

Consult Section III for More Information

### EXERCISE: ANALYZING CITIZENS' KNOWLEDGE OF RIGHTS AND DUTIES

This exercise is based upon the Cambodia case study that we first discussed on page 8. You will recall that, in this example, you are tasked with analyzing access to justice before three justice institutions: village chiefs, commune councils, and the land commission. You are concentrating on cases involving unregistered land and must particularly keep in mind obstacles to access to justice for women and indigenous populations.

This exercise presupposes that you are seeking to analyze whether citizens have knowledge of their rights and duties.

**Question 1:** What groups of individuals will you want to collect information from and why?

**Question 2:** What types of questions will you want to ask and have answered related to knowledge of rights?

**Question 3:** Through your interviews with indigenous populations, you learn that they are the least informed about the land commission, even though they face serious communal land alienation problems that can only be resolved before the land commission. What reform strategies would you suggest?

### SUGGESTED ANSWERS

**Question 1:** The second element looks at whether and to what extent citizens have the knowledge to find solutions to their justice problems. You will want to try to get the perspectives of women and indigenous groups who actually have or have had cases before the village chiefs and the commune council, as well as the land commission. You can then compare these responses to information you get through interviews with non-state justice actors such as village chiefs, commune council leaders, and land commission officials.



**Question 2:** You may want to think about these questions in conducting your assessment under this element: To what extent do women and indigenous groups know they have basic rights and duties relevant to land ownership? To what extent do women know how to file a complaint with the village chief, commune council, or land commission to seek solutions to their problems? What efforts are made to promote knowledge among women? What efforts are made to promote knowledge among other marginalized populations, such as rural persons and ethnic minorities?

**Question 3:** Reform strategies might include: promoting community education programs to indigenous groups, including the dissemination of the Land Law in indigenous languages through the use of popular education methods; involving local land commission officials and other non-state justice actors in the dissemination of information; and training local land commission officials and other non-state justice actors on access to information and legal awareness.

## 2.2 TO WHAT EXTENT ARE CITIZENS AWARE OF MECHANISMS AVAILABLE TO SOLVE THEIR COMMON JUSTICE PROBLEMS?

To know how to solve their justice problems, citizens will do well to understand the steps and strategies they need to take to address them. If they cannot address their justice problems on their own, they must know which institutions that they can go to for assistance.

Citizens tend to seek assistance first from the closest institutions available. This may include local authorities, such as village chiefs and other communal authorities, as well as paralegals, such as NGO personnel and community-based volunteers. At the district or national level, there are more authorities available, including policemen, clerks and prosecutors. Laborers in Indonesia in the example above would have sufficient legal knowledge if they knew whom to ask for help without necessarily knowing that they had a right to reasonable working hours and benefits.

### BACK TO BASICS: PARALEGALS

Typically paralegals are persons with specialized training who provide legal advice to marginalized groups, and who are themselves often members of those groups. They may also be ordinary community residents who use the law to collectively or individually help themselves. Both types of paralegals receive non-formal legal training from CSOs before undertaking paralegal work. They educate and help marginalized groups, including ethnic and religious minorities, indigenous peoples, and women regarding legal issues. They may often strive to resolve problems without going to court—whether through administrative processes, alternative dispute resolution, or community action.

## WHAT FACTORS AFFECT WHETHER CITIZENS KNOW ABOUT MECHANISMS TO SOLVE THEIR COMMON JUSTICE PROBLEMS?

### TRUST OF RELEVANT INSTITUTIONS

Citizens have to trust the relevant institutions that can help them address their justice problems. Citizens are more likely to trust and be familiar with local institutions and authorities than they are with policemen, clerks, and prosecutors. This may be particularly true

for marginalized populations. They may fear the police or prosecutors because of past incidents of abuse or mistreatment.

### EXISTENCE OF SOCIAL NETWORKS IN THE COMMUNITY

Social networks that are trusted and familiar may effectively provide information to citizens about the institutions that are available to help them with their justice problems.



## WHAT ARE POSSIBLE REFORM STRATEGIES?

### INCREASING CITIZENS' KNOWLEDGE AND TRUST IN LOCAL INSTITUTIONS AND AUTHORITIES

Citizens must be made aware of the availability and benefits of obtaining assistance from relevant institutions. Non-state justice actors may be in the best position to provide information to the community regarding institutional options.

### PRIORITIZE PARALEGALS

A paralegal program is an effective way of improving citizens' knowledge of relevant institutions. With training, paralegals can speak with citizens on familiar terms about the institutions that best suit citizen needs. Where required, paralegals could also assist citizens in navigating between state and non-state institutions.

## USEFUL DATA COLLECTION TECHNIQUES

- **Citizen Surveys/Interviews/Focus Groups**

Through surveys, interviews, and focus groups, citizens will be able to tell you whether they know how to access relevant institutions to assist them with their justice problems. Getting information directly from citizens will help you design reform strategies that build on the existing strengths of citizens.

- **Interviews/Focus Groups with Institutional Representatives**

To improve the accuracy of your research, you may want to collect multiple points of view. You may wish to interview or conduct focus groups with village chiefs and other communal authorities, policemen, clerks, and prosecutors regarding the extent to which citizens have knowledge about the relevant institutions from which they can seek assistance to help them solve their justice problems.

Consult Section III for More Information

## USEFUL QUESTIONS FOR ELEMENT 2 ASSESSMENT

When conducting the assessment for Element 2, you should consider the following general areas of inquiry:

- How would you rate citizens' level of familiarity (i.e., good, average, not good, do not know) with:
  - how to access legal information?
  - functions of the formal justice system?
  - functions of the informal justice system?
  - functions of lawyers?
  - functions of paralegals?
  - functions of the court?
  - functions of the prosecutor?
- What are the amount and quality of legal information available to citizens?
- What is the extent to which legal information is produced in local languages?
- What activities do state and non-state actors undertake to enhance legal knowledge among citizens?
- How would you rate the level of information dissemination by the state (i.e., good, average, not good, do not know)?
- What media are used to communicate legal awareness messages?
- What are the main obstacles to raising legal awareness of citizens?

Please note, however, that you do not need to limit the assessment to these particular questions.

## ELEMENT 3: ADVICE AND REPRESENTATION

### TO WHAT EXTENT CAN CITIZENS ACCESS THE LEGAL ADVICE AND REPRESENTATION NECESSARY TO SOLVE THEIR COMMON JUSTICE PROBLEMS?

Even if citizens know about their basic rights and duties, and the steps and strategies they need to take to solve their justice problems, it is unlikely that citizens will know how to navigate judicial and bureaucratic systems on their own. Citizens may also not know that they have rights or duties, but may still seek legal advice about a problem. Citizens should be able to obtain the professional legal advice and/or representation they need to make informed decisions and choices to assert their rights and interests. This includes the right to free legal advice and representation when they are unable to afford paid services.

The legal advice and representation needed to bring a claim will depend on the circumstances of each citizen and case. If citizens can afford to pay for legal advice and representation, then it is sufficient if legal services are available for a fee. However, where citizens are unable to afford legal advice and representation, mechanisms should exist to provide them with legal services free of charge or for whatever sum they can afford.

The nature of the justice institution will also affect the level of training and expertise legal assistance providers need to provide effective legal advice and representation. If, for example, the case involves a complex claim before a national level court, it is likely to require the services of an accredited attorney who is well-versed in the laws and procedures applicable in national courts. If, however, the claim is straightforward and the citizen wishes it resolved by mediation, negotiation, or before a non-state, village justice system, a trained paralegal may be appropriate.

While in most cases it is the government's responsibility to provide legal services to those unable to afford them, the reality in most countries is that government-sponsored programs only meet some of the demand. There are a range of other organizations that can provide legal advice and representation (see the box below). When analyzing the range of legal advice and representation that is available to citizens, you will therefore have to consider both government initiatives and other sources.

### BACK TO BASICS: COMMON LEGAL SERVICES PROVIDERS

**Government Programs:** Government-funded legal aid can take a variety of different forms. Legal aid can be provided through a government agency, such as a public defender office, through private lawyers, employed by the government on a case-by-case basis, or through cooperation agreements with civil society organizations (CSOs), whereby the government pays the costs of legal services delivery by a CSO.

**Pro-bono Assistance:** To varying degrees, lawyers and law firms may provide free or reduced cost legal aid to persons who would not otherwise be able to afford legal representation.

**Civil Society Organizations:** CSOs frequently supply legal services, whether through lawyers or paralegals, as in the Timap for Justice project described below. CSO intervention can also take the form of self-help, whereby citizens are trained to represent themselves in simple legal proceedings.

**Law School Clinics:** Law school clinics utilize law students to supply legal services, providing free legal advice and representation while also affording hands-on-legal experience to students.

## WHAT FACTORS AFFECT WHETHER CITIZENS CAN ACCESS THE LEGAL ADVICE AND REPRESENTATION NECESSARY TO SOLVE THEIR COMMON JUSTICE PROBLEMS?

### ACCESSIBILITY OF LEGAL ADVICE AND REPRESENTATION IN REMOTE AREAS

Legal advice and representation should reach even the most marginalized populations living in rural populations. However, many countries have few lawyers. Even where there are lawyers, they are often located in the most densely populated areas, such as major cities, and often fail to reach more remote areas. For example, a 2008 ABA ROLI report found that 560 of Armenia's 755 active advocates live and work in Yerevan, the capital city, even though only one third of Armenia's total population lives there.<sup>12</sup>

### COST OF LAWYERS

Citizens may require professional help to reach solutions to their justice problems. Legal advice and representation from lawyers is often beyond the reach of the poor and disadvantaged groups because of cost. Free, state-provided legal aid is also often not available.

### CITIZEN TRUST OF LAWYERS

To build trust, lawyers should provide legal information and advice sought by citizens in ways that citizens can understand, avoiding technical and legal phrases when giving advice. Many citizens may have an instinctive fear or mistrust of lawyers, whom they may believe will not understand them or provide explanations in ways they can understand, or even blame them for their situation. Lawyers should therefore do everything they can to overcome citizens' fear and mistrust.

## WHAT ARE POSSIBLE REFORM STRATEGIES?

### BRINGING LAWYERS FROM URBAN TO RURAL AREAS THROUGH TRAVELING LAWYERS PROGRAMS

One of the challenges facing legal aid providers is reaching rural populations. Often, the vast majority of a country's lawyers are based in the capital city, though only a minority of the country's population lives there. Traveling between rural areas and the capital can be made more difficult by poor infrastructure. One solution to this problem is to

bring lawyers from the capital out to rural areas through a traveling lawyers program. ABA ROLI has started a traveling lawyers program in Bangladesh. Read about it below.

For victims of domestic violence in **rural Bangladesh**, a lack of legal advice and representation is a significant barrier to obtaining redress against perpetrators. In the remote villages where many victims live, few lawyers are available, and because many women rely on their husbands for financial support, legal fees are unaffordable anyway. Lawyers can be paid through a government-sponsored legal aid fund, but many rural lawyers have not been trained in the complicated procedures needed to access the fund.

To combat these problems, ABA ROLI has created a **traveling lawyer** program that brings free legal assistance to thousands of women in rural villages. ABA ROLI has trained 15 lawyers in domestic violence and women's rights law, legal problem-solving, case resolution strategies, and meeting the various legal needs of a rural village. The traveling lawyers also receive a women's rights brochure that they can distribute. The brochure includes an explanation of women's rights, using words and pictures, and clear guidelines for villagers who want to contact the traveling lawyers program or ABA ROLI.

### MAKE BASIC LEGAL AID READILY AVAILABLE

Efforts to improve legal aid can include enhancing the capacity of civil society organizations that provide free legal aid and university-based clinics that provide legal advice and representation. Legal aid programs are often linked to paralegal programs, such as those discussed below, which provide paralegals with access to legal expertise and support on more complex community problems.

### CASE-IN-POINT: MEDIATORS IN NICARAGUA

A **volunteer network** of mediators has had success in Nicaragua in settling property disputes, cases of violence, and issues of family law. The mediators are elected by the local community, report to a local judge, and undergo regular training.<sup>13</sup>



### PRIORITIZE PARALEGAL PROGRAMS

Paralegals and other non-lawyer advocates can play an important role in providing legal aid services. Indeed, they are in touch with community dynamics in ways that even the best-intentioned lawyers are not. They can offer legal assistance at a lower cost than lawyers, and, while they cannot offer the same range of services that lawyers provide, they can provide preliminary assistance that avoids the need for cases to be tried. This includes providing support for alternative dispute resolution. Paralegals are also often versed in the non-formal legal system and in social-movement type organizing tools and techniques. You can read about two successful examples below.

**In the Philippines**, the **Sentro ng Alternatibong Lingap Panlegal (Saligan)** has relied on lawyers who work on land reform and other development issues to train Saligan's twelve-hundred-household association of farmers to complete basic legal tasks. Several dozen of the Saligan's members provide basic legal information to their fellow farmers on farm-related matters. Fifteen of these trained volunteer paralegals have represented the organization's members in

suits before quasi-judicial government bodies, in an effort to facilitate land reform. Their efforts have been successful in overcoming landlord resistance. Saligan members have identified two specific factors as being key to their success in the suits: first, the paralegals received **specific and practical trainings** for ongoing and extended periods; and second, Saligan is a very **well-respected organization** within its community, giving its members stature that they might not have otherwise had in bringing their claim.<sup>14</sup>



**In Sierra Leone**, **Timap for Justice**, a successful access to justice initiative, is an example of how effectively paralegals can provide legal advice and representation. Timap uses trained paralegals to resolve cases through **negotiation**, **mediation** and the **non-state justice system**, and estimates that 80% of its cases are successfully resolved in this way.<sup>15</sup> Timap believes that its paralegals are better placed than a trained lawyer to provide representation in such cases as they have a deeper understanding of the non-state law and institutions operating in their localities.

## USEFUL DATA COLLECTION TECHNIQUES

- **Citizen Surveys/Interviews/Focus Groups**

You will wish to ask citizens who have sought the services of a legal service provider whether they were able to obtain legal advice and/or representation; if they were not able to afford them, whether they were able to do so free of charge; and whether they were satisfied with the quality of legal advice and representation they received.

- **Interviews/Focus Groups with Legal Service Providers**

Interviews and focus groups with legal service providers, including lawyers and paralegals, who provide legal advice and/or representation in the related areas you are examining will give you additional perspectives on their practices as well as the nature and state of legal aid and/or representation. You may also be able to elicit information on the amount and quality of information available to citizens about legal advice and/or representation.

- **Document Review**

You may want to research laws that protect the right to legal representation and lawyers' right to meet with clients and present a case specific to the access to justice issues you are examining. Collecting information on whether standards exist to ensure the quality of lawyers will also be helpful.

- **Official Statistics**

To the extent that you can, you should collect official statistics on:

- (1) the number of lawyers by region, including a breakdown by ethnicity, nationality and gender;
- (2) how lawyers practice – for example, the number of lawyers practicing various types of law and the number of lawyers providing legal aid;
- (3) if the government provides free legal aid relating to the issues you are examining, how much the government spends per case, how many requests for legal aid have been received every year for the past three years, and how many of those requests have been granted;
- (4) the number of individuals who are not permitted to practice law but are permitted to represent clients in legal proceedings.

Keep in mind the warning concerning government statistics contained on page 68 of this manual.

Consult Section III for More Information

## USEFUL QUESTIONS FOR ELEMENT 3 ASSESSMENT

When conducting the assessment for Element 3, you should consider the following general areas of inquiry:

- What is the availability of lawyers offering legal advice and representation to citizens?
- What is the availability of lawyers' services that are free of charge?
- What is the availability of services by paralegals and non-lawyers?
- How would you assess the quality of the above (i.e., quality service, low quality because it is free of charge/from a non-lawyer, unsatisfactory, cannot make assessment)?
- What roles do paralegals play in resolving justice problems?

Please note, however, that you do not need to limit the assessment to these particular questions.



## ELEMENT 4: ACCESS TO A JUSTICE INSTITUTION

### TO WHAT EXTENT DO JUSTICE INSTITUTIONS, WHETHER FORMAL OR INFORMAL, EXIST THAT?

4.1 ARE AFFORDABLE AND

4.2 ARE ACCESSIBLE, AND

4.3 PROCESS CASES IN A TIMELY MANNER.

#### 4.1 TO WHAT EXTENT IS THE JUSTICE INSTITUTION AFFORDABLE?

Citizens must be able to afford the cost of using a justice institution in order for them to be able to rely on the justice institution to solve their justice problems.

#### WHAT FACTORS CAN AFFECT WHETHER THE JUSTICE INSTITUTION IS AFFORDABLE?

##### DIRECT AND OPPORTUNITY COSTS

When analyzing the cost of using a justice institution, you should consider both “direct” and “opportunity” costs. Direct costs are fees citizens must pay to use the justice institution, such as a payment to a legal representative, a charge to file a case, or a bribe. An opportunity cost is the income citizens lose when they spend time bringing a case before the justice institution rather than earning money.

**CASE-IN-POINT:** Victims of gender-based violence in eastern Democratic Republic of Congo must overcome *direct* and *opportunity* costs to bring claims against perpetrators in the formal court system. Their direct costs include case filing and processing fees and, because police and prosecutors have little or no resources, the price of gas needed to track down the suspect. Opportunity costs are the result of courts’ inaccessibility. Because courts are located so far away, victims miss out on days of work to travel to and attend a hearing.

#### “UP-FRONT” COSTS

You should distinguish between costs that must be paid when citizens begin their claim and those that citizens need only pay after the justice institution finds a solution to their justice problem. Citizens may find it much easier to pay costs once they have a solution to their justice problem, particularly where the solution awards citizens money.

**CASE-IN-POINT:** India’s Court Fees Act of 1870, which is still in force in certain provinces, is an example of the obstacle that up-front costs can present to access to justice. The act requires any citizen that files a claim for damages to pay in advance a non-refundable fee of 7–11% of the money sought. This effectively debars the poor, who are rarely able to pay this fee, from pursuing tort litigation.<sup>16</sup> Such up-front costs are not unique to the formal justice system: in Mozambique it is common for adjudicators in non-state courts to require payments from all parties prior to hearing cases.<sup>17</sup>

#### WHAT ARE POSSIBLE REFORM STRATEGIES?

##### RECOGNIZE THAT REDUCING COSTS CAN REQUIRE LONG-TERM REFORMS

Many costs are a symptom of complex, systemic problems in a justice system. For example, a demand for a bribe might be caused by a lack of effective accountability for corruption as well as insufficient salaries for public officials. Although your assessment will be able to pinpoint the key costs of using a justice institution, you might lack the time or resources to

analyze what causes those costs and how best to tackle their causes. Where that is the case, acknowledge that further research is required and recommend that a long-term reform strategy be developed to address key costs.

### COMBINE LONG-TERMS REFORMS WITH SHORT-TERM MEASURES TO MAKE A JUSTICE INSTITUTION AFFORDABLE

If you recommend that a long-term reform strategy be developed, try to also propose reforms that make the cost

of using the justice institution affordable in the short-term. One approach, where permitted by local legislation, is to make small grants or loans available to citizens seeking to bring a claim. In eastern Democratic Republic of Congo, ABA ROLI pays the costs of victims of gender-based violence seeking justice in the formal court system. Ensuring the availability of standard-form documents for common legal transactions can also increase accessibility, lessen the time and effort required to solve common problems, and reduce costs.

## USEFUL DATA COLLECTION TECHNIQUES

- **Citizen Surveys/Interviews/Focus Groups**

One approach to analyzing costs is to ask citizens to draw a timeline of the costs that they encountered when using the justice institution. If you do this through a small survey, you might develop some useful basic statistics, such as “average” direct and opportunity costs. If you use interviews or focus groups, the timelines will at least point to the key costs of using the justice institution.

It can also be useful to ask citizens about their general impression of whether using the justice institution is affordable. You might ask, for example, “In retrospect, given the costs of using the justice institution, was it worth it?”

- **Statistics**

To put the costs of using the justice institution in context, compare costs to average income and the average cost of living. The greater costs are in proportion to income and cost of living, the more significant a barrier to access to justice they represent.

Consult Section III for More Information

### EXERCISE: ANALYZING WHETHER USING THE JUSTICE INSTITUTION IS AFFORDABLE

This exercise is based upon the Cambodia case study introduced on page 8. You will recall that, in this example, you are tasked with analyzing access to justice in relation to disputes over unregistered land. You are studying three justice institutions: village chiefs, commune councils, and the land commission. You must pay particular attention to obstacles to access to justice for vulnerable groups, in this case women and indigenous peoples.

This exercise presupposes that you are seeking to analyze the cost of solving a dispute using the land commission.

**Question 1:** You begin your analysis by stating some basic information about the financial circumstances of

Cambodians, particularly women and indigenous peoples. What statistics could you include?

**Question 2:** How could you collect information about the cost of using the land commission to solve a justice problem?

**Question 3:** What costs might citizens have to pay when they bring a legal claim before the commission?

**Question 4:** Citizens identify the cost of travel to hearings as the principal direct and opportunity costs. Citizens say that it often takes multiple hearings to resolve even minor disputes. You want to know what procedure the commission follows to resolve claims. Who could explain the procedure to you?





### SUGGESTED ANSWERS

**Question 1:** Include in your report statistics on the average income of Cambodians and, particularly, of indigenous peoples and single women. Compare average income to the average cost of living.

**Question 2:** One approach would be to ask citizens whether the commission is affordable and to outline the direct and opportunity costs of using the land commission.

**Question 3:** Citizens might describe the following costs:

- Direct costs
  - *Unofficial filing fees:* Although the land commission is supposed to be a free service for the public, some officials demand a small payment to accept a case.
  - *Travel costs:* The costs of travel to the commission.
  - *Legal fees:* While people do have the right to appear before the commission on their own, it can be useful to have someone to represent your interests during the conciliation process.
- Opportunity costs
  - *Travel time:* The time it takes citizens to travel to and attend hearings.

**Question 4:** You could seek clarification from the commission's staff or officers.

## 4.2 TO WHAT EXTENT IS THE JUSTICE INSTITUTION ACCESSIBLE?

In order for citizens to use a justice institution to solve their justice problems, citizens must be able to travel to the justice institution. The more difficult it is for a citizen to travel to a justice institution, the less likely it is that the citizen will think it is worth using the justice institution to resolve their justice problems.

### WHAT FACTORS CAN AFFECT WHETHER THE JUSTICE INSTITUTION IS ACCESSIBLE?

#### NUMBER AND DISTRIBUTION OF JUSTICE INSTITUTIONS

A region must have an adequate number of sufficient functioning justice institutions, so that citizens do not have to travel long distances to resolve their disputes. The justice institutions must also be sufficiently evenly distributed so that all citizens, no matter how remote a location they live in, can travel to them.

#### TRANSPORT INFRASTRUCTURE

The better functioning a region's transport infrastructure, the easier it will be for citizens to travel to a justice institution. If citizens are not provided with a viable means of transport to travel to the justice institution, it will remain inaccessible.



**CASE-IN-POINT:** The plight of victims of gender-based violence in eastern Democratic Republic of Congo provides an extreme example of the negative effect that a lack of justice institutions and poor transport infrastructure can have on access to justice. Courts in eastern Congo with jurisdiction over sexual crimes, Les Tribunaux de Grande Instance, are few and far between. In Maniema province, which has a population of more than 1 million and a size larger than 100,000 km, there is only one such court. Furthermore, a lack of proper roads means that citizens living in rural areas would have to take one of the region's infrequent flights just to get to court. There is no way that citizens can afford to do that.

## INSECURITY

Whether citizens are able to travel to a justice institution, and how willing they are to do so, is affected by the level of stability in a region. Citizens will rightly not want to travel to a justice institution if it exposes them or their family to risks.

## RESTRICTIONS ON TRAVEL

In some cases, citizens are prevented from traveling to the justice institution by official rules and restrictions.

**CASE-IN-POINT:** Burmese refugees who live in camps on the Thai-Burmese border must leave their camps to bring a claim in local Thai courts. However, to leave the camp, refugees must get permission from a guard. Because this process can be risky and stressful, many people decide not to pursue legal claims.

## THREATENING NATURE

In some cases, people, particularly vulnerable populations, may feel threatened by a justice institution and wary of negative consequences that may arise from interacting with a justice institution. They may also feel intimidated or harassed by the justice institution itself or by other actors who don't agree with their decision to use the justice institution. This may in turn lead to stigmatization.

**CASE-IN-POINT:** For many unlawful residents – citizens who do not have the right to remain in their country of residence – fear of public institutions is a significant obstacle to access to justice. Unlawful residents fear that, in interacting with the justice system, their status will be discovered and they will be sanctioned and possibly deported.<sup>18</sup> Even where they suffer serious injustice, they are not likely to draw attention to their status by voluntarily seeking out contact with the justice system.<sup>19</sup> This poses a particular problem because, in many cases, residents need authorization from the justice system to obtain lawful status.

**CASE-IN-POINT:** Stigmatization can be an acute problem for women, particularly in gender-based violence cases. In rural Tajikistan, ABA ROLI has found that women are extremely reluctant to bring cases of sexual assault before the non-state or state justice system. Complainants are likely to be wrongly held responsible for the assault taking place and, as a result, alienated or ostracized from their community.

## WHAT ARE POSSIBLE REFORM STRATEGIES?

### DIVERT APPROPRIATE CASES TO MORE ACCESSIBLE JUSTICE INSTITUTIONS

Making a formal court system more accessible often requires building new courts and infrastructure — a significant investment of time and money. In many contexts, accessible non-state justice institutions already exist, but lack the capacity to resolve common disputes fairly and effectively. Where this is the case, one reform strategy is to **empower accessible non-state mechanisms** to consider a wider range of cases, for example through intensive training programs. Such reforms are likely to be far quicker and cheaper to implement.

### DEPLOY MOBILE COURTS WHILE LONG-TERM REFORM IS ONGOING

Mobile courts deploy in remote areas on a temporary basis, hearing cases, and then moving on. They are an

efficient way to improve access to a justice institution when a country lacks the resources or infrastructure to establish accessible permanent tribunals. They can also be an effective “stop-gap”: a way to improve access to justice in the short or medium-term, while long-term reforms, such as building permanent courts or developing infrastructure, are put in place.

#### USE CIVIC EDUCATION PROGRAMS TO COMBAT FEAR OF PUBLIC INSTITUTIONS AND NEGATIVE ATTITUDES AND CREATE SUPPORT MECHANISMS FOR CITIZENS USING A JUSTICE INSTITUTION

Civic education programs can address citizens’ fear of public institutions by explaining the process of using a justice institution and allaying concerns as to the possible negative consequences of interacting with the justice system. Education programs can also combat harassment

and stigmatization by explaining the importance of the rights citizens enforce in the justice institution and combating negative societal attitudes towards the justice institution itself. Where a certain population group is particularly vulnerable to harassment or stigmatization, consider how to provide holistic support to citizens using a justice institution. This could include physical protection for victims and providing support to reduce stress.

**CASE-IN-POINT:** In Eastern Congo, ABA ROLI works with local civil society groups to organize mobile courts in remote rural areas. These courts, which are officially recognized through Congolese legislation, have helped dozens of victims of gender-based violence, who would not otherwise be able to travel to court, obtain justice against perpetrators.<sup>20</sup>

### USEFUL DATA COLLECTION TECHNIQUES

- **Citizen Interviews/Focus Groups**

Citizens are best placed to tell you whether they are able to travel to justice institutions, what factors affect whether they can do so, and what reforms they think could make justice institutions more accessible. They can also tell you whether and why they find using the justice institution threatening. When you ask citizens about these issues, remember that stories of fear, harassment, and stigmatization are personal matters that citizens may not be willing to share with strangers. Try to arrange a setting for interviews and focus groups that helps citizens share personal feelings.

- **Statistics**

Statistics on the number and distribution of justice institutions can illustrate challenges to access to a justice institution identified by citizens. However, keep in mind that, as we discussed above, the number of justice institutions is not the only factor that affects whether citizens can travel to a justice institution.

- **Maps**

Maps can also demonstrate the obstacles citizens face when they travel to a justice institution. You could draw a map that shows the location of justice institutions and key transport infrastructure. The map could also plot where key population groups are located, allowing you to compare where people live in relation to where justice institutions are located.

- **Interviews with Justice Institution Officials/Legal Representatives**

If you decide that fear, harassment and/or stigmatization are an obstacle to access to justice, ask justice institution officials and/or legal representative what mechanisms currently exist to provide support and protection to citizens using the justice institution.

Consult Section III for More Information





### 4.3 TO WHAT EXTENT DOES THE JUSTICE INSTITUTION PROCESS CASES IN A TIMELY MANNER?

To ensure that people obtain access to justice, justice institutions should process cases promptly. Delays worsen the effect of other obstacles to access to justice, such as the cost of using the justice institution, and prevent citizens from finding solutions to their justice problems.



### WHAT FACTORS AFFECT WHETHER THE JUSTICE INSTITUTION PROCESSES CASES IN A TIMELY MANNER?

#### CASELOAD

A justice institution's caseload - the number of cases it is asked to deal with - will affect how quickly the justice institution is able to process cases. Keep in mind, however, that justice institutions are often keen to blame slow processing times on caseload, because this implies that delays are not the fault of the justice institution's own practices. To analyze the true effect of caseload, you should analyze it in the context of the

justice institution's resources.<sup>21</sup> Only if a justice institution does not have sufficient resources to process the number of cases it receives is caseload a cause of delay.

#### CASE MANAGEMENT PROCEDURES

Whether a justice institution has procedures to ensure cases are processed efficiently will effect how quickly it resolves cases. There are certain people in every justice institution who have an incentive to delay cases: parties might want to hold off decisions against them; lawyers might try to string out a case to increase fees; even justice institution staff can have little interest in progressing cases as "there will always be more work tomorrow."<sup>22</sup> Without sufficient oversight, people will act according to these incentives and will delay cases. Strong case management procedures should set out: the **steps that a justice institution takes to process cases** as well as the personnel responsible for each step, a **timeline** that shows when each step must be completed, and **oversight** procedures that explain the personnel responsible for checking that each step is carried out.

## USEFUL DATA COLLECTION TECHNIQUES

- **Official Statistics**

Official statistics indicating how long cases take to process can be useful, although take note of the warnings concerning government statistics contained on page 68. If you are focusing your assessment on a very specific group of cases (for example, title to land), you should try to obtain statistics relating to that type of case only. The more detailed the statistics available, the better the information they will give you. If, for example, you can obtain statistics stating how long each part of the legal process takes (for example, from filing a claim to the first hearing, from the first hearing to the second), you might be able to identify where delays most commonly occur.

- **Citizen Surveys/Interviews/Focus Groups**

To check the accuracy of official statistics, ask citizens to estimate how long their dispute took to resolve. If you do this through a survey, you will be able to formulate basic statistics (for example, the average length of time a case took from start to finish.) Alternatively, you could ask citizens in interviews or focus groups to draw a timeline of their case, helping you to understand where the most significant delays occur. Finally, you may wish to ask citizens a simple question to gauge their satisfaction with the time their case took to process (for example, “when you consider the time your case took, did you think this was a reasonable length of time? If not, why not?”)

- **Interviews/Focus Groups with Justice Institution Staff and Legal Representatives**

Once you know how long a case takes to process, try to find out the key causes of delays. Get the opinions of the justice institution’s staff (adjudicators/mediators/clerks/support staff) as well, where relevant, of legal representatives appearing in the justice institution. Ask justice institution staff to provide you with copies of the justice institution’s case management procedures or, if no formal procedures exist, to describe to you what procedures the justice institution follows to process cases. Keep in mind that most people will seek to downplay their own responsibility for delays!

## WHAT ARE POSSIBLE REFORM STRATEGIES?

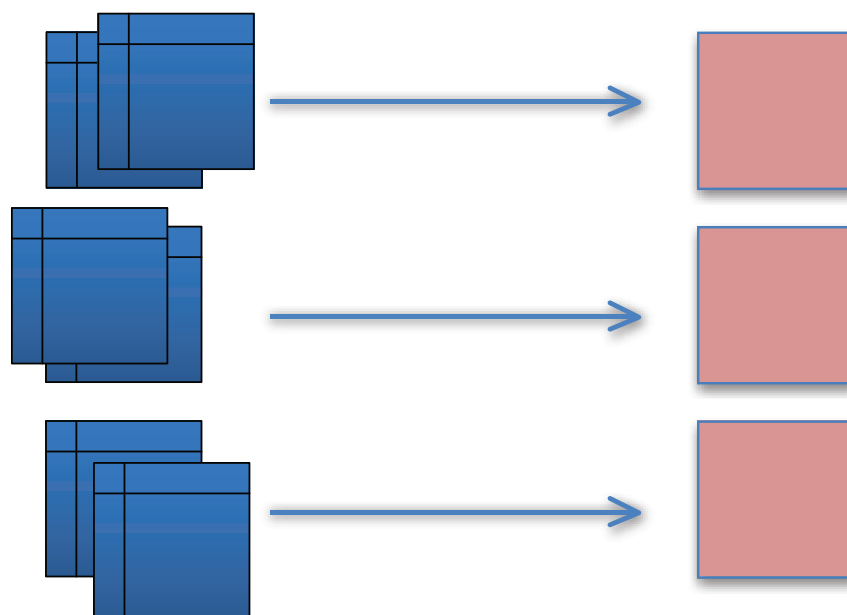
### REDUCE CASELOADS BY DIVERTING CASES TO OTHER JUSTICE INSTITUTIONS

Although every justice institution can be made more efficient with improved case management practices, in some cases you will find that a justice institution’s caseload is too heavy. Try to take an imaginative approach to this problem. Consider, for example, whether there are other types of justice institutions which, were the right reforms to be put in place, could take on a greater number of cases.

### IMPLEMENT UNDERSTANDABLE AND SUSTAINABLE CASE MANAGEMENT PROCEDURES

A common approach to improving a justice institution’s case management procedures is to implement an

automated system that uses computer programs to track key case information and alert justice institution staff to upcoming deadlines. In the right context, such systems can be extremely efficient. However, implementing computer-driven systems requires justice institution staff to be trained in how to use the new technology and to possess the expertise and resources necessary to maintain equipment. In some settings, it may be more appropriate to improve case management practices through a paper-based method that offers a simple step-by-step approach to processing disputes. In any case, the introduction of a new case management system, whether computer driven or otherwise, should be accompanied by intensive training explaining the new processes.



#### EXERCISE: ANALYZING WHETHER A JUSTICE INSTITUTION PROCESSES CASES IN A TIMELY MANNER

This exercise is based upon the Cambodia case study introduced on page 8. You will recall that, in this example, you are tasked with analyzing access to justice in relation to disputes over unregistered land. You are studying three justice institutions: village chiefs, commune councils, and the land commission. You must pay particular attention to obstacles to access to justice for vulnerable groups, in this case women and indigenous peoples.

This exercise presupposes that you are seeking to analyze whether the commune council resolves disputes in a timely manner.

**Question 1:** Soon after beginning your assessment, you discover there are no official statistics available in

Cambodia as to how quickly cases are resolved by commune councils. However, because you are visiting a number of different communes during your research, you decide to try to collect your own statistics. Each commune keeps hold of basic papers relating to disputes that it has dealt with. These papers include information as to when the case was first brought before the commune as well as the dates of all conciliation meetings and a successful resolution. The papers do not state what type of dispute the case involved (e.g. land rights, divorce). Three commune councils among Cambodia's 1,621 agree to make these documents available to you, provided you do not reveal the parties' names in your final report. An examination of the information contained in these documents reveals the following information:

Commune	1	2	3	Total
Number of Cases Received	29	48	15	92
Number of Cases Heard:	22	11/11 <sup>23</sup>	15	48
- Within 1 week after complaint	16	9/11	14	39
- Between 1–2 weeks after complaint	5	1/11	1	7
- More than two weeks after complaint	1	1/11	0	2
Number of Cases where Agreement Reached:	20 <sup>24</sup>	32	9	61
- Within one week after complaint	12/19	9/18 <sup>25</sup>	8	29/46
- Within two weeks after complaint	6/19	8/18	1	15/46
- More than two weeks after complaint	1/19	1/18	0	2/46

Using the above chart and some simple calculations, you are able to compile statistics that demonstrate how quickly cases are conciliated and resolved in commune councils. What statistics can you come up with?

**Question 2:** There are a number of limitations with the data you collected above. Can you identify what those limitations are?

**Question 3:** The information you have collected above suggests that commune councils are a relatively quick way to resolve cases involving unregistered land. Through further research, you learn the following basic facts:

- The disputes about unregistered land that are resolved by the commune council are minor. They concern very small pockets of land or land boundaries, rather than significant ownership disputes.
- Each commune processes 20 to 35 cases each year.
- Once a citizen lodges a complaint, the council calls the parties together for a conciliation meeting. The parties explain the dispute, try to make compromises and, where possible, reach an agreement.
- The commune chief and council members facilitate the conciliation, encouraging the parties to settle the case. The council will sometimes pressure the parties to agree, keeping in mind that some disputes threaten community harmony.

How do the above factors allow the councils to resolve cases quickly?

#### **SUGGESTED ANSWERS**

**Question 1:** The following statistics might be useful:

- 81% (39/48) of cases were conciliated within one week.
- 96% (46/48) of cases were conciliated within two weeks.

- In around 2/3rds of cases (61/92) an agreement was reached between the parties.
- In 63% (29/46) of cases, an agreement was reached within one week.
- In 96% (44/46) of cases, an agreement was reached within two weeks.

**Question 2:** Two limitations with the data:

- It might not be accurate to extrapolate results based on 3 commune councils to the remaining 1,618.
- Your assessment specifically considers access to justice in unregistered land cases. The above figures show how quickly all disputes were mediated and resolved, rather than only those involving unregistered land.

**Question 3:** Factors that mean that the justice institution is able to resolve cases quickly:

- *Caseload:* The council appears to have a manageable caseload.
- *Minor cases suit quick resolution:* Because disputes before the councils are minor, the disputes are of insufficient value to justify lengthy litigation and the parties look to the commune council for a quick resolution.
- *The procedures followed by the council are streamlined:* The parties do not call witnesses or evidence to support their case, nor do they make arguments in support of their claim. Instead, once the parties have explained the dispute, the process becomes a facilitated negotiation.
- *The council can apply a certain amount of pressure to settle a dispute:* The council, as a commune-level political body, has a level of authority over the parties. The parties feel a certain pressure to accept compromises proposed or suggested by the council.



## USEFUL QUESTIONS FOR ELEMENT 4 ASSESSMENT

When conducting the assessment for Element 4, you should consider the following general areas of inquiry:

- In your opinion, what justice institutions do citizens use in resolving disputes, and why?
- What is the approximate time citizens take to travel to and return from the justice institution?
- What are the costs of accessing the justice institution?
- How quickly are justice problems resolved?
- What obstacles prevent citizens from bringing justice institutions before the justice institution?
- What activities are state or non-state actors undertaking to make access to the justice institution easier?

Please note, however, that you do not need to limit the assessment to these particular questions.

## ELEMENT 5: FAIR PROCEDURE

### TO WHAT EXTENT DO JUSTICE INSTITUTIONS, WHETHER FORMAL OR INFORMAL, ENSURE?

- 5.1. CITIZENS HAVE AN OPPORTUNITY TO  
EFFECTIVELY PRESENT THEIR CASE,
- 5.2 DISPUTES ARE RESOLVED IMPARTIALLY  
AND WITHOUT IMPROPER INFLUENCE,
- 5.3 WHERE DISPUTES ARE RESOLVED BY MEDIATION,  
CITIZENS CAN MAKE VOLUNTARY AND INFORMED DECISIONS TO SETTLE.

#### 5.1 TO WHAT EXTENT DO CITIZENS HAVE AN OPPORTUNITY TO EFFECTIVELY PRESENT THEIR CASE?

Unless citizens can effectively present their case, an adjudicator or mediator will not be in possession of all relevant facts and laws affecting a dispute, reducing the chance of a just outcome. Citizens should be able to make arguments in support of their case and, where factual issues are in dispute, call witnesses.

#### WHAT FACTORS AFFECT WHETHER CITIZENS ARE ABLE TO EFFECTIVELY PRESENT THEIR CASE?

##### PROCEDURE DURING HEARING

Although it may seem obvious, the primary factor that affects whether citizens are able to present arguments and call witnesses is the procedure followed by the justice institution to resolve disputes. Remember that, if formal rules of procedure exist, it will be necessary to analyze both the rules themselves and how they are applied in practice.

##### LANGUAGED IFFICULTIES

The justice institution must ensure that, no matter what language the parties speak, they are able to understand and participate in proceedings. Citizens' ability to effectively present their case is likely to be severely impeded if they are unable to understand the hearing and read the key documents in the case.

**CASE-IN-POINT:** A 2007 report on justice in East-Timor noted that the court's use of Portuguese, spoken by less than 7%<sup>26</sup> of the population, "impedes individuals from accessing the justice system" and "preclude[s] the Timorese community from active participation in the processes of justice."<sup>27</sup>

##### POWERS TO ENSURE WITNESS ATTENDANCE

To analyze whether a citizen is able to call witnesses to support their case, consider whether the justice institution has a mechanism to compel witnesses to attend proceedings and to protect witnesses from reprisals, either verbal or physical. Witness intimidation can be a significant barrier to witness participation in a justice institution.

**CASE-IN-POINT:** A 2008 Human Rights Watch report on judicial reform in Rwanda noted that defense witnesses were so fearful of testifying in support of genocide suspects (as one Rwandan lawyer said - "any statement can bring misfortune") that "the difficulty of presenting a defense through witness testimony remains one of the chief obstacles to the delivery of justice."<sup>28</sup>

## WHAT REFORM STRATEGIES CAN ENSURE CITIZENS ARE GIVEN AN EFFECTIVE OPPORTUNITY TO PRESENT THEIR CASE?

### USE LEGISLATIVE REFORM TO CORRECT RULES OF PROCEDURE ONLY IF NECESSARY

In some formal court systems, you might find that the rules of procedure are so deficient that legislative reform is required to amend them. However, before advocating for reform, keep in mind that obtaining legislative change can be a very slow process. Consider whether, working with the existing rules, you can partner with justice sector officials to change practices.

## WORK DIRECTLY WITH ADJUDICATORS AND MEDIATORS TO IMPROVE THEIR PRACTICES

Where legislative reforms will be difficult to achieve or where, as with some informal systems, a justice institution has no written rules of procedure, work with adjudicators and mediators directly to improve practices through training and development courses. While some will be resistant to change, many will be open to trainings that can improve their dispute resolution skills. Best practices research in this area has found that training and development are most effective when they are based on active learning and participation and use problem solving techniques to address real in-country problems. Additionally, joint training of mediators, lawyers, judges, prosecutors, and police officers is more effective than independent efforts.<sup>29</sup>

## USEFUL DATA COLLECTION TECHNIQUES

### • Document review

Where a justice institution has written rules of procedure, analyze those rules to determine what opportunity the parties have to present arguments and call witnesses. Consider also whether any rules provide for the justice institution to compel witness attendance and protect witnesses.

### • Observation

Where a justice institution does not have written rules of procedure, consider observing a number of hearings to assess the procedures followed. Once you have observed a hearing, it can be useful to ask those involved (e.g. the adjudicator or mediator, the parties, and any legal representatives) questions about what you saw.

### • Interviews with Adjudicators and Legal Representatives

If you are not able to observe a hearing, adjudicators and mediators will be able to explain the procedures a justice institution follows to resolve cases in detail. Where legal representatives appear in the justice institution, they will also be well-placed to assess whether the justice institution gives them an effective opportunity to present their clients' cases.

Consult Section III for More Information



## 5.2 TO WHAT EXTENT ARE DISPUTES RESOLVED IMPARTIALLY AND WITHOUT IMPROPER INFLUENCE?

An adjudicator or mediator should not be biased in relation to any of the issues or parties involved in a dispute, nor be influenced to resolve disputes in a particular way. When an adjudicator is biased or unduly influenced, there is a risk that he or she will deny a claim that is well-founded in both fact and law. A mediator might pressure a party to accept an agreement contrary to his or her interests.

Undue influence will have a particularly detrimental effect on access to justice for vulnerable groups, who are least able to mobilize political and financial resources in their favor. Undue influence comes in many different forms, and includes inducements, pressures, or threats, whether direct or indirect, and no matter source.<sup>30</sup> It includes corruption, as well as pressure from the executive, private interests, and family and friends.

## WHAT FACTORS CAN AFFECT WHETHER DISPUTES ARE RESOLVED IMPARTIALLY AND WITHOUT IMPROPER INFLUENCE?

### INSTITUTIONAL GUARANTEES

The presence or absence of a number of guarantees, outlined below, will affect the prevalence of impartiality and undue influence in a justice institution.

- *Independence guaranteed by law:* Laws, formal or informal, give the justice institution the sole power to resolve disputes over which it has jurisdiction. The law requires the executive, legislature, public authorities, and private interests to respect and abide by a justice institution's decisions, even if they do not agree with them.
- *Transparent appointment process:* Adjudicators/mediators are appointed (and re-appointed) on merit, according to publicized, objective and clear criteria, and through as non-politicized a process as possible. This ensures that adjudicators/mediators do not have a political bias and do not owe any debt of gratitude to the political actors responsible for their appointment.
- *Protection from dismissal:* Once appointed, adjudicators/mediators are guaranteed tenure until retirement or until the expiration of a fixed term. They can be disciplined, and even dismissed, but only for official misconduct (for example, corruption or incompetence) and according to established, objective criteria. These protections ensure

that adjudicators/mediators are protected from arbitrary removal by members of the executive or legislature, giving adjudicators the freedom to act independently without fear of putting their livelihood in jeopardy.

**CASE-IN-POINT:** A 2008 ABA ROLI report on judicial reform in Armenia provides an example of the chilling effect that inadequate protection from dismissal could have on the independence of adjudicators. In one documented case, the executive dismissed a judge because he had acquitted two company executives of fraud who had accused senior customs officials of corruption.<sup>31</sup> In a country where judges are reluctant to rule against the state or businesses associated with government officials, this type of case drove home the significant deterrent to independent judicial action that the situation poses.

- *Salaries:* Adjudicators/mediators are sufficiently well-remunerated so that they are not tempted to rely on corruption to obtain a reasonable standard of living.
- *Safety and security:* Adjudicators/mediators and those close to them are protected from threats to their security so that they can make decisions without fear of reprisal from government or private interests.



## OVERSIGHT MECHANISMS

The level of oversight that decisions and allegations of bias, corruption, or undue influence receive significantly affects the extent to which undue influence and impartiality exist among adjudicators/mediators. If adjudicators, and those who might influence them, believe that allegations will be investigated and exposed, they are far less likely to succumb to temptation. State institutions, such as a human rights commission or ombudsmen, as well as civil society initiatives, can provide this oversight.

## REASONED DECISIONS

When a justice institution resolves a case by adjudication, it should give reasons for its decision, whether orally or in writing. This ensures that citizens (and the oversight organizations described above) have a basis from which to examine whether the decision was based on pertinent facts and law or, if not, whether there is evidence of impartiality or undue influence. A citizen receives a reasoned decision when the justice institution informs him or her of the **key elements of its decision**, including the facts of the case, the rationale for the verdict, and the final settlement or order.

## WHAT ARE POSSIBLE REFORM STRATEGIES?

### IDENTIFY FUTURE RESEARCH NEEDS

As the discussion above shows, there are a wide range of legal and institutional factors that affect whether adjudicators/mediators are impartial and/or subject to

undue influence. If you have limited resources available, while your assessment might be able to identify that bias and/or undue influence are an obstacle to access to justice, it might not be able to comprehensively analyze all the factors that cause them to occur. When that is the case, give your initial impression of current institutional failings and recommend that further research be conducted in those areas before specific reforms are formulated.

### INCREASE OVERSIGHT OF ADJUDICATORS AND MEDIATORS

Increasing public oversight of adjudicators/mediators can have a very positive effect on reducing bias and/or undue influence of adjudicators. Reform strategies should foster government and civil society efforts to monitor cases and investigate and sanction incidences of bias and undue influence. One basic way to increase oversight and lessen corruption is to require all adjudicators/mediators to publish their assets and those of their immediate family members periodically.<sup>32</sup>

**CASE-IN-POINT:** In 2009, India's Supreme Court judges voluntarily made available their assets after a powerful public campaign demanding that they do so.<sup>33</sup> The assets can now be viewed on the Supreme Court's website.<sup>34</sup>



## USEFUL DATA COLLECTION TECHNIQUES

### • Statistics from International Organizations

Before you explore the extent to which impartiality and/or undue influence is present in the justice institution that you are studying, it can be useful to get a general sense of the prevalence of corruption in your country or region. There are a number of international organizations that provide such information. For example, Transparency International ([www.transparency.org](http://www.transparency.org)), a non-governmental organization focused on fighting corruption, releases two annual indexes analyzing corruption:

- *Corruption Perceptions Index* ([www.transparency.org/policy\\_research/surveys\\_indices/cpi](http://www.transparency.org/policy_research/surveys_indices/cpi)): This index measures the perceived level of public sector corruption in 180 countries across the world, using surveys of country experts and businessmen. Countries are given a mark out of 10, 10 representing the lowest level of perceived corruption and 0 the highest. Countries are also ranked, allowing countries with similar economic and political conditions to be compared.
- *Global Corruption Barometer* ([www.transparency.org/policy\\_research/surveys\\_indices/gcb](http://www.transparency.org/policy_research/surveys_indices/gcb)): This survey, rather than collecting information from experts, surveys the general public's perceptions and experiences of corruption and bribery. Although the survey does not cover every country, it can be particularly useful because it contains questions specific to the judiciary.

### • Interviews with Watchdogs/Civil Society Organizations

The indexes discussed above only provide a general impression of the level of corruption in your country. They ignore other sources of undue influence and do not specifically address the justice institution that you are examining. To address impartiality and undue influence in more detail, interview those organizations, both in government and civil society, which play a role in monitoring the justice institution's decisions. These organizations will be well-placed to explain the extent of bias and undue influence in the system, as well as the key factors that cause problems to exist.

### • Interviews with Adjudicators/Mediators

It might be difficult to get honest and frank answers from adjudicators/mediators as to the prevalence of bias and undue influence within the justice institution. However, provided interviews are confidential, adjudicators might be willing to explain the sources of pressure exerted upon them, as well as the factors that affect whether they are able to resist such pressures.

Consult Section III for More Information

### EXERCISE: ANALYZING WHETHER MEDIATORS ARE IMPARTIAL AND FREE FROM IMPROPER INFLUENCE

This exercise is based upon the Cambodia case study introduced on page 8. You will recall that, in this example, you are tasked with analyzing access to justice in relation to disputes over unregistered land. You are studying three justice institutions: village chiefs, commune councils and the land commission. You must pay particular attention to obstacles to access to justice for vulnerable groups, in this case women and indigenous peoples.

This exercise presupposes that you are seeking to analyze whether village chiefs are impartial and free from improper influence.

**Question 1:** Begin by getting some general context on the level of corruption in Cambodia using the international indexes referred to above. What useful statistics can you gather from Transparency International's Corruption Perceptions Index and Global Corruption Barometer?



**Question 2:** The above indexes only give you a general sense of the problems Cambodia faces in relation to corruption. What persons or organizations would be able to discuss whether village chiefs are biased and/or subject to undue influence?

**Question 3:** Your sources suggest that, while some village chiefs are very fair mediators, many are influenced by political influences and others, albeit less frequently, by corruption. What factors might affect the presence of corruption among village chiefs?

**Question 4:** Look at the suggested answers to question 3 below. What reforms could address incidents of bias and/or undue influence among village chiefs?

### SUGGESTED ANSWERS

**Question 1:** Useful statistics from Transparency International's Corruption Perceptions Index and Global Corruption Barometer:

- 2011 Corruption Perceptions Index: The perceived level of corruption in Cambodia's public institutions is such that it ranks 164<sup>th</sup> out of 183 countries, receiving a score of 2.1/10. According to the index, Cambodia's institutions are perceived as more corrupt than Zimbabwe and Kenya.
- 2010 Global Corruption Barometer:
  - 84% of Cambodians reported that they had paid a bribe to receive attention from one of nine different service providers in the last 12 months.
  - When asked, "To what extent do you perceive the following institutions in this country to be affected by corruption? (1 being not all corrupt; 5 extremely corrupt)," Cambodians gave public officials an average rating of 3.5 and the judiciary 4.0.
  - When asked, "In the past three years, how has the level of corruption in Cambodia changed?," 43% of Cambodians said it had increased, 30% said it had decreased, and 27% said it stayed the same.

**Question 2:** The following are possible sources of information on the prevalence of bias and/or improper influence among village chiefs:

- *Citizens:* Citizens who have brought claims in relation to unregistered land will have an opinion as to

whether the village chief in their case was biased or subject to improper influence. Keep in mind, however, that citizens' perspectives might be affected by whether or not they received a favorable result. Citizens are also unlikely to admit their own attempts to influence an adjudicator.

- *Village Chiefs:* Village chiefs may be unlikely to state that they or their colleagues ever succumb to improper influence or bias but might provide useful information as to how frequently they are offered bribes or asked by influential figures to resolve cases in a particular way.
- *Civil Society Organizations:* Many civil society organizations work to protect the interests of citizens and may even help citizens resolve legal problems. Where such organizations operate at the village level, they will offer a useful perspective as to whether village chiefs can be biased or subject to improper influence.

**Question 3:** The following are examples of factors that might affect bias and/or improper influence among village chiefs:

- *Appointment Process:* Because village chiefs are political appointments, they sometimes hold political allegiances to certain parties and individuals. This can be reflected in the way they resolve cases.
- *Salary:* Village chiefs receive a monthly allowance of only 22,000 riels (\$5). Where village chiefs do accept bribes, it might be to supplement this meager income.
- *Oversight:* Apart from the work of civil society organizations, there is no oversight mechanism that verifies that village chiefs fulfill their duties properly. Village chiefs who take bribes or act according to political influence are rarely held accountable for their actions.

**Question 4:** You might propose reforms addressing each of the factors identified in your answer to question 3. For example, suggested reforms might be:

- *A better appointment process:* Require that village chiefs be appointed through a non-political process, for example through a non-partisan committee.

- *Increased salary:* Increase the salary of village chiefs, providing them with enough money for a reasonable standard of living, while emphasizing that incidents of corruption will be severely punished.
- *Oversight:* Foster civil society organizations that monitor bias and undue influence, and ask that a formal government institution be created and charged with monitoring the conduct of village chiefs (who could be made subject to a code of conduct) and punishing missteps.

### 5.3 WHERE DISPUTES ARE RESOLVED BY MEDIATION, TO WHAT EXTENT CAN CITIZENS MAKE VOLUNTARY AND INFORMED DECISIONS TO SETTLE?

In order for a case to be resolved fairly by mediation, each party must be well informed as to the nature and consequences of the proposed solution. Otherwise, one party may accept a solution contrary to his or her interests simply because he or she did not fully understand the consequences of the decision. The parties must also be free to reject or accept a proposed solution voluntarily, or one party might be pressured or coerced into accepting a solution.

#### WHAT FACTORS CAN AFFECT WHETHER CITIZENS ARE ABLE TO MAKE A VOLUNTARY AND INFORMED DECISION AS TO WHETHER TO SETTLE THEIR CASE?

##### IMBALANCES OF POWER BETWEEN THE PARTIES

A fair mediation process relies on the capacity of the parties to represent (and defend) their own interests. Where one party has a weaker negotiating position, the stronger party may be able to impose his or her desired result on an opponent. Parties with political influence can make life difficult for opponents who will not agree to proposed solutions. Parties with greater economic resources know that opponents are less able to continue drawn out litigation, allowing them to pressure their opponents into a quick solution.



**CASE-IN-POINT:** In a 2005 UNDP report, one criticism of Cambodia's commune councils, which resolve disputes through conciliation, was that: "When there is an unbalanced relationship or unequal bargaining power between the parties, it is difficult for the outcome of the conciliation to be fair, since the stronger party may be able to impose terms on the weaker."<sup>35</sup> To support this claim, the report cited a survey that asked women about the fairness of the commune councils. Fifty-three percent of women surveyed felt that the commune councils were either a little biased (38%) or quite biased (15%) to the rich and powerful.<sup>36</sup>

#### ROLE OF THE MEDIATOR

The mediator can help to ensure that parties make an informed and voluntary decision to settle a dispute. Prior to any settlement being finalized, the mediator should explain to the parties the basic contents and consequences of the settlement. The mediator should be on the look-out for any signs that one party is using coercion, and should suspend negotiation between the parties if he or she believes such coercion is present. While the mediator can encourage compromise from both parties, the mediator should not pressure either party to agree to a solution.

#### WHAT ARE POSSIBLE REFORM STRATEGIES?

##### DEVELOP TRAINING PROGRAMS FOR MEDIATORS

Because of the significant role that mediators play in ensuring cases are settled fairly, consider developing a training program that **informs** mediators of their responsibilities and **trains** them on how to fulfill them.

##### IMPROVE ACCESS TO ADJUDICATION TO IMPROVE MEDIATION

Mediation works best in the shadow of a justice institution that can resolve disputes by adjudication. If the more powerful party knows that, should mediation fail, the case will be resolved by adjudication, he is more likely to agree to a fair settlement. If you discover that mediation frequently results in unfavorable settlements for the weaker party, try to empower the weaker party by providing a realistic alternative to mediation.

## USEFUL DATA COLLECTION TECHNIQUES

### • Interviews/Focus Groups with Citizens

Citizens will be well-placed to give you their opinion as to whether their decision to settle a case was informed and/or voluntary. In interviews or focus groups, you could ask citizens to recall why they accepted the solution offered to them, and whether they fully understood the consequences of the proposed settlement. Keep in mind, however, that such questions, while useful, do have certain limitations. People have the tendency to intellectualize decisions that they took in the past, creating logical reasons for decisions that were, in reality, acts of instinct or feeling. Keep this in mind when analyzing responses to your question.

### • Observation

Observe mediation processes as they take place, analyzing the power dynamics at play. After the mediation, try to interview the parties, asking them questions about what you observed and, particularly, why they agreed to settle the case.

Consult Section III for More Information

## USEFUL QUESTIONS FOR ELEMENT 5 ASSESSMENT

When conducting the assessment for Element 5, you should consider the following general areas of inquiry:

- What is the extent to which citizens can present arguments and call witnesses before the justice institution?
- What are the procedures for presenting arguments and calling witnesses?
- What is the extent to which laws give citizens a right to a reasoned decision that can be reviewed by a higher tribunal?
- How much must a party pay to lodge an appeal?
- What is the average time taken for an appeal to be heard?
- What activities are state or non-state actors undertaking to address problems in the procedure used by the justice institution to resolve justice problems?

Please note, however, that you do not need to limit the assessment to these particular questions.

## ELEMENT 6: ENFORCEABLE SOLUTION

### TO WHAT EXTENT ARE JUSTICE INSTITUTIONS ABLE TO ENFORCE THEIR DECISIONS?

In order for a justice institution's resolution to a dispute to be meaningful, citizens must be able to enforce it in the outside world, including through the use of sanctions against individuals who refuse to comply with the justice institution's decision.

#### WHAT FACTORS AFFECT WHETHER JUSTICE INSTITUTIONS ARE ABLE TO ENFORCE THEIR DECISIONS?

##### NATURE OF SANCTION FOR NOT COMPLYING

To ensure that all parties comply with a justice institution's resolution of a dispute, the justice institution must be able to sanction parties that are non-compliant. There are two principal types of sanction:

- *Coercive force:* Many state justice institutions can employ coercive force, through a law enforcement agency, to force compliance with their solutions to problems. A justice institution's power to arrest and imprison a person who refuses to pay a fine is an example of a coercive enforcement power.
- *Social sanction:* Other justice institutions, often in a non-state setting, utilize a social or community sanction to enforce solutions, relying on an "unwritten rule" within the community that solutions be implemented – a rule enforced by the community's disapproval of – and non-cooperation with – citizens flouting the justice institution's decisions.

Different factors affect whether coercive force or social sanction are an effective way to enforce a justice institution's decision.

**CASE-IN-POINT:** Non-state justice institutions, as well as state justice institutions, can possess coercive enforcement powers. In Afghanistan's non-state *jirga* system, if a case involves serious injury or valuable land, judges can demand that the parties provide a *baramta*, or security deposit, to ensure that they will accept the final decision. If a party refuses to accept the *jirga* decision, the security deposit, which can be substantial, is given to the opposing party.<sup>37</sup>

##### FACTORS AFFECTING ENFORCEMENT THROUGH COERCIVE FORCE

- *Costs:* Citizens must be able to afford any costs that they must pay to enforce a justice institution's solution to their justice problem.

**CASE-IN-POINT:** In Albania, a 2008 ABA ROLI report estimated that, in order to enforce a contractual claim, the parties must pass through 39 procedures that last an average of 390 days, while incurring costs equivalent to 38.7% of the claim.<sup>38</sup> As with an access to a justice institution, enforcement fees that a citizen must pay "up-front" pose a particular problem. In the Democratic Republic of Congo, victims of gender-based violence are required to pay the justice institution 10% of any monetary remedy awarded in order for it to be enforced.

- *Corruption:* Law enforcement agencies can be paid not to enforce a justice institution's decision or told not to do so by influential political figures. Enforcement procedures should contain oversight mechanisms to ensure law enforcement officials enforce the justice institution's decisions.

**CASE-IN-POINT:** In the Democratic Republic of Congo, where corruption is a significant reason that many criminal judgments are not enforced, the enforcement procedure provides a clear opportunity for official corruption. If an accused absconds following conviction, he forfeits his bail money, meaning “a judge who sees an opportunity to keep the bail money for himself has little motivation to ensure that a [criminal] sentence is enforced.”<sup>39</sup>

## FACTORS AFFECTING ENFORCEMENT THROUGH COERCIVE FORCE

- *Strength of community norms:* Enforcement through social sanction will not be affected by the shortcomings of judges and law enforcement agencies. However, effective enforcement relies on strong community norms and respect for the justice institution's decisions within the community.

**CASE-IN-POINT:** A 2007 UNDP study of access to justice in Aceh, Indonesia, provides an example of the important role the cohesiveness of the community and the justice institution's credibility have on the effectiveness of social sanctions. The study found that the enforcement powers of local *Adat* justice mechanisms were “especially weak in conflict affected villages that are ethnically plural and politically divided,”<sup>40</sup> because ethnic and political divisions undermined the local sense of community. The study also reported that “the level of respect or even fear that the *Adat* leaders garner in their community will influence the extent to which decisions, remedies and sanctions are accepted by a community.”<sup>41</sup>

- *Power imbalances:* Power dynamics within society can affect enforcement through social sanction. Parties with standing and influence are likely to be able to resist community pressure to comply with the justice institution's ruling. Citizens from marginalized groups are unlikely to be able to exert pressure to comply with judgments in their favor.<sup>42</sup>

**CASE-IN-POINT:** A 2008 World Bank study in Indonesia illustrates the difficulty of enforcing judgments through social sanction when the result is prejudicial to a powerful figure or conflicts with community values. The study describes the case of a rich market-trader who, after assaulting a public official, paid only 25% of the compensation agreed to in the *damang*, the local *Adat* justice institution. The *damang* has no coercive powers of enforcement and, as the wealthier and more powerful party, the trader is resistant to the social sanction that is supposed to enforce the agreement.<sup>43</sup>

## WHAT ARE POSSIBLE REFORM STRATEGIES?

### LINK NON-STATE JUSTICE INSTITUTIONS AND STATE JUSTICE INSTITUTIONS

As discussed above, many non-state justice institutions rely on community sanctions to enforce their solutions. If that sanction is ineffective, citizens have no other avenue through which to ensure a solution is enforced. One way to address this problem is to allow the decisions of non-state justice institutions to be enforced in state justice institutions, utilizing the formal enforcement mechanisms available to state actors.

## USEFUL DATA COLLECTION TECHNIQUES

- **Official statistics**

Where available and accurate, official statistics can be useful to understanding whether citizens are able to enforce a justice institution's solution. Statistics can tell you, for example, the percentage of a justice institution's decisions that remain outstanding, as well as how long it takes, on average to enforce a decision.

- **Citizen Interviews/Focus Groups**

To understand the process that citizens go through when trying to enforce solutions, you could ask citizens to draw a timeline of the process, as well as the costs and obstacles they encountered along the way.

- **Interviews with Justice institution Officials/Legal Representatives**

Individuals who have worked within a justice institution will be able to give you their perspective on the procedures that must be followed to enforce a solution, how effective the enforcement process is, and the major challenges they encounter when seeking to enforce the justice institution's judgment.

Consult Section III for More Information

## USEFUL QUESTIONS FOR ELEMENT 6 ASSESSMENT

When conducting the assessment for Element 6, you should consider the following general areas of inquiry:

- What procedures, if any, exist, established by law, to provide for decisions to be enforced?
- What is the amount of costs a party must pay to enforce a decision?
- To what extent does corruption affect whether decisions are enforced?
- What obstacles prevent a decision from being enforced?
- What activities are state or non-state actors undertaking to make decisions easier to enforce?

Please note, however, that you do not need to limit the assessment to these particular questions.



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# SECTION II.

## PRE-ASSESSMENT PHASE

This section focuses on the pre-assessment process, the logical starting point of any assessment, broken down into three parts. First, undertake background research to familiarize yourself with the key characteristics of your state or region. Second, use this research to determine the scope and focus of your assessment. Third, plan and design your research.

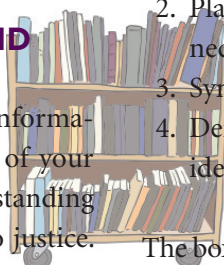
### A. GETTING STARTED: BACKGROUND RESEARCH

The purpose of background research is to collect information about the social, political, and legal context of your state or region, as well as to gain a basic understanding of the key justice issues and obstacles to access to justice. Background research is essential both to planning your assessment and to interpreting the more detailed information that will be collected later. A literature review is one method of understanding what others have already learned about access to justice in your community. By including your results in the report, a literature review also puts your report in context. The review should consider

books, scholarly articles, government documents, reports, newspapers, and any other source that may be informative. A literature review accomplishes four goals for your final report. It:

1. Tells the reader that the report is familiar with the pre-existing body of knowledge in this area and establishes the credibility of the report;
2. Places your report in context and demonstrates its connection to prior research;
3. Synthesizes, integrates, and summarizes past research;
4. Demonstrates how your report has identified new ideas, approaches, and avenues for future research.

The box below outlines some of the information you should obtain during your background research. The information in the box can be collected from internet research or published materials. At the very least, background research should include an analysis of existing reports and assessments on the justice system, to ensure that existing work is not duplicated. Typically, background research will take at least one staff person in your organization between 3–4 weeks.



## CORE CONTENTS OF BACKGROUND RESEARCH: CONTEXT

### Social and Political Context

- Overview of the history of the country, from founding until present, with a focus on current events that are relevant to access to justice, such as civil wars or political upheaval.
- Introduction to demographics of the country: geography; economic performance; population; religious and ethnic breakdowns; distribution of poverty by region and population; other relevant demographics.

### Legal Context

- Overview of government and legal structure of the country, including information on the structure of non-state justice systems.
- Discussion of government and non-government institutions most active in access to justice issues.
- Collection of relevant laws affecting access to justice including, where relevant: constitution; civil and criminal laws; civil and criminal procedure codes; laws affecting the legal profession, including legal assistance; laws on courts, including any law regulating the relationship between state and non-state courts.

### Basic Access to Justice Issues

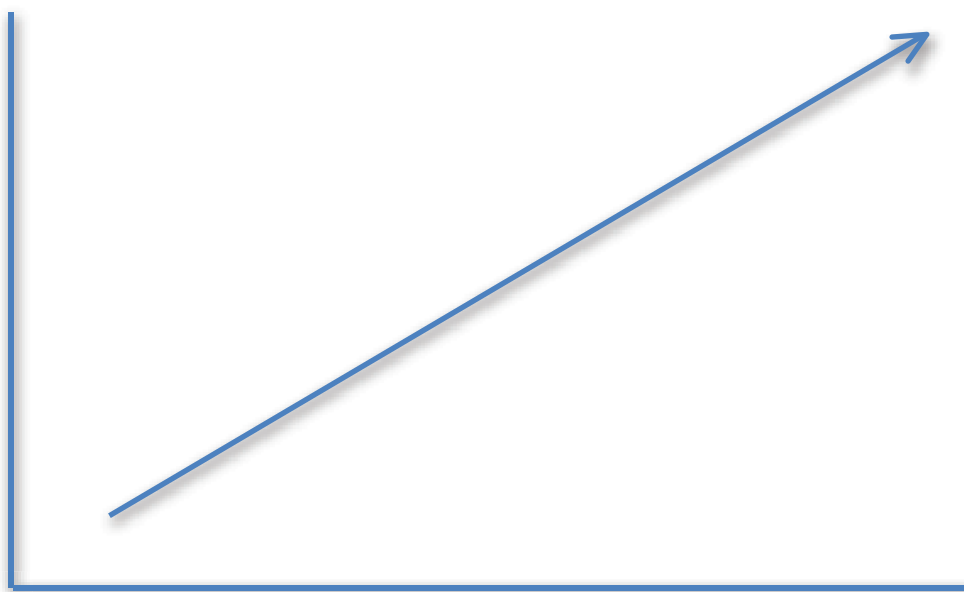
- Initial discussion of the **key obstacles to access to justice** affecting citizens, such as lack of legal representation or prohibitive costs.
- Discussion of the **most significant legal problems** citizens face, such as lengthy pretrial detention or discrimination against women in the work place, as well as the region and/or population groups most affected by these problems.
- Discussion of the **justice institutions** most frequently used by citizens to resolve their problems, such as formal courts, informal tribunals, and village elders.
- Members of your organization might already know, or at least have a sense of, some of the key facts that you will collect during background research, such as the basic legal structure of your country. However, it is important to collect this information from outside sources to demonstrate that your report is based on objectively verifiable facts and not just on the opinions or perspectives of your organization.

## B. DETERMINING THE SCOPE AND FOCUS OF YOUR ASSESSMENT

Every justice sector assessment has a focus and scope. When an assessment focuses on a small number of well-defined issues, it is narrow in scope. For example, an assessment focusing on “access to property rights for women using the traditional *Adat* justice system in Central Sulawesi” is narrow in scope. When an assessment focuses on a wide range of issues, it is broad in scope. Consider, for example, “access to justice in Central Sulawesi.” It is extremely important that the scope of an assessment correspond with time and resources available. The broader the scope of a project, the more time and

resources will be required to obtain detailed information about each issue covered. Unless sufficient time and resources are available, a broad assessment can result in a superficial evaluation.

Before your project begins, you will need to define its scope. In some cases, your funder will already have made this decision. A foundation might, for example, have requested that you implement an access to justice assessment in relation to a specific issue. In other cases, it will be up to you to make this decision, matching scope to the time and resources available. The section below describes a number of different ways to limit the scope of your assessment.



## APPROACHES TO FOCUSING YOUR ASSESSMENT: PRIORITIZE

### **Prioritize the most vulnerable populations and regions.**

Citizens from different groups or regions frequently face different obstacles to access to justice. Rural citizens, for example, encounter different obstacles than urban dwellers. Focusing your assessment on the most vulnerable populations ensures that your assessment concentrates on those most in need of help. If you succeed in raising the level of access to justice for the most vulnerable, you will improve access to justice for all.

### **Prioritize the most significant problems people face.**

Citizens can look to justice institutions to resolve a number of problems, from a civil dispute between neighbors to unlawful pretrial detention. If you focus your assessment on the problems and issues most important to citizens, you maximize the positive impact that reforms have on people's lives.

### **Prioritize justice institutions with the greatest potential to provide accessible legal remedies.**

The obstacles to access to justice that a citizen faces frequently differ depending on the justice institution in which a citizen is pursuing his or her claim. The obstacles to bringing a legal claim in formal courts can be different from those in an informal system. You may want to focus your assessment on particular justice institutions, analyzing whether citizens are able to use each justice institution to obtain access to justice. Try to focus your project on those justice institutions that have the greatest potential to provide accessible legal remedies.

If you decide to limit the scope of your assessment by looking at particular populations, problems or justice institutions, your background research will be instrumental in helping you choosing the most important issues to focus on. You might also want to take account of the following factors:

- **BUILD ON, BUT DON'T REPLICATE, WORK THAT HAS BEEN DONE BEFORE.**

Your background research will have given you a good sense of the justice sector evaluations that have already been undertaken. Do not replicate previous work, but try to build upon it. Consider, for example, whether there are significant gaps in existing research or whether it identifies particular areas in need of further investigation.

- **DON'T SHY AWAY FROM CONTROVERSIAL SUBJECTS, BUT DO IDENTIFY REALISTIC REFORM OPPORTUNITIES.**

Once your report has been written, you want the reforms it recommends to be adopted. During the pre-assessment phase — indeed, throughout the assessment process — try to identify areas where relevant stakeholders are likely to be amenable to proposed reforms. Consider whether you can focus on those issues without neglecting other important, but more controversial, topics.

- **PLAY TO YOUR STRENGTHS, BUT DON'T BE AFRAID TO TRY SOMETHING NEW.**

Take into account the strengths, expertise and experience of your organization when deciding how to focus your assessment. Consider, for example, whether your organization is particularly well-suited to address obstacles to access to justice in a particular region, for a particular constituency, or in relation to particular legal problems.

#### **EXERCISE: DETERMINING THE SCOPE AND FOCUS OF AN ASSESSMENT**

Deciding how to focus an access to justice assessment can be a difficult task. After all, you don't want to neglect important topics. This section provides an example of how one organization determined the focus of its assessment. The text below is a fictional extract from an access to justice report written by a Cambodian legal aid organization

that was first discussed on page 8 and is reproduced here. The organization provides legal aid in civil cases. The extract, which would be located near the beginning of the final report, describes how the organization decided to focus its report. Can you spot how the organization's background research informed its decisions on how to focus its assessment?

#### **The Focus of Our Assessment**

Because this project had a modest budget, we knew our assessment would have to focus on a number of key issues. To analyze what those issues should be, we undertook comprehensive background research, including a review of published and internet material and interviews with a number of key in-country experts. Through this research, we reached a number of conclusions as to how our project should be focused.

#### **THE ASSESSMENT SHOULD FOCUS ON ACCESS TO JUSTICE FOR CITIZENS SEEKING TO ASSERT OWNERSHIP OF LAND.**

We believe that the most significant problems for which citizens seek recourse to the civil justice system are disputes over ownership of land and gender-based violence. In gender-based violence cases, complainants rely on the civil system because the criminal courts rarely provide the justice they seek. As a civil legal aid provider, we are not well-placed to identify problems with the criminal justice system. We also believe that access to land is an issue of such significance that it merits specific consideration. Access to land is fundamental to the livelihood of many Cambodians. Eighty percent of the population lives in rural areas<sup>44</sup> and the vast majority of rural residents farm their own land to make a living.<sup>45</sup> Unfortunately, villagers frequently lose their lands as a result of non-transparent concessions, land grabbing, and illegal encroachment from powerful persons, corporations, army members, and some high-ranking officials.<sup>46</sup>

#### **THIS PROJECT MUST BE CAREFUL TO GIVE SPECIFIC CONSIDERATION TO OBSTACLES TO ACCESS TO JUSTICE FOR WOMEN AND INDIGENOUS GROUPS.**

The massacres that occurred in Cambodia during the Khmer Rouge regime left many women widowed: an estimated



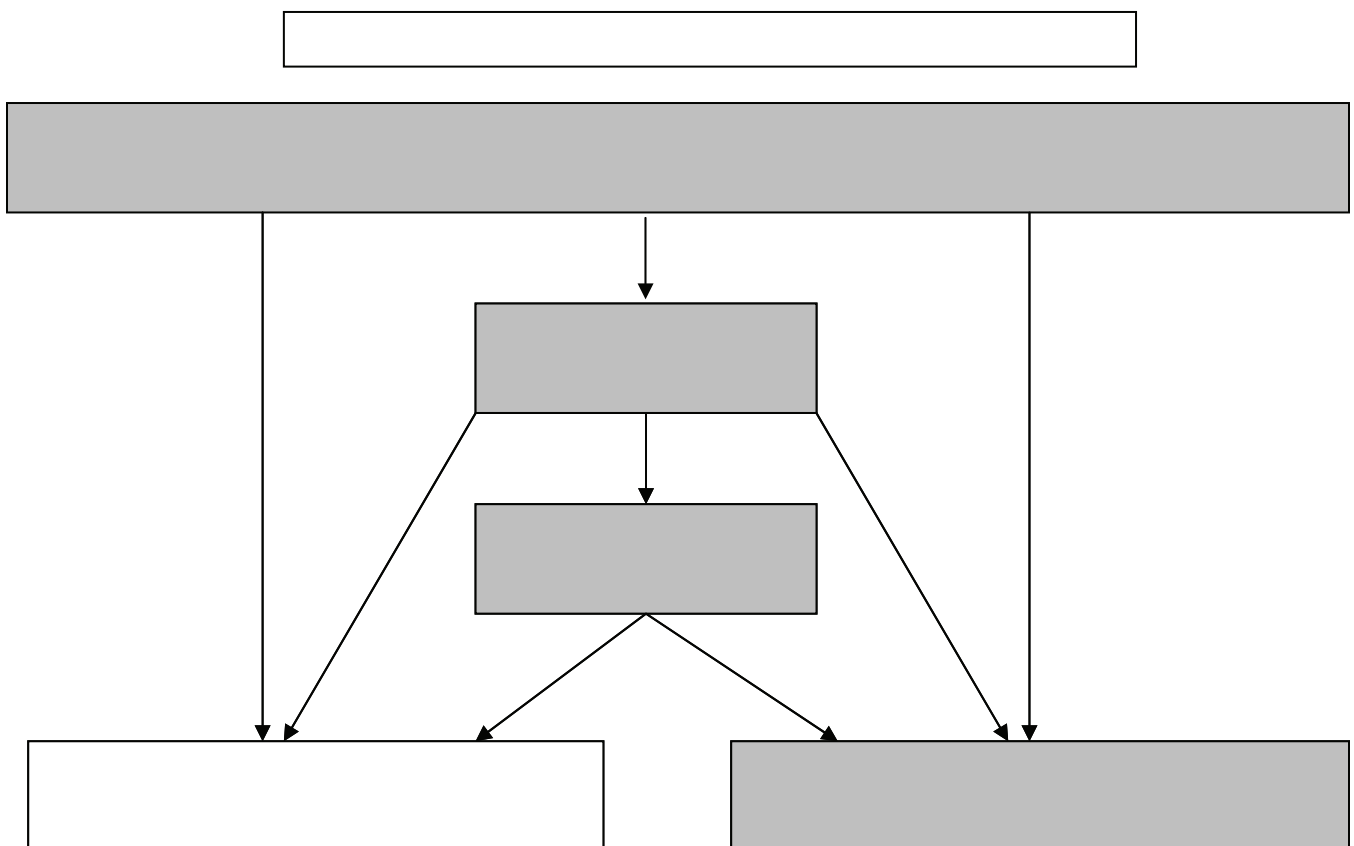
25 per cent of Cambodian households are headed by single women.<sup>47</sup> As with many Cambodians, a large percentage of these women rely on access to land to make a living. Women are likely to face particularly severe obstacles to access to justice. They are often less well educated than men; thirty-one percent of women are illiterate, compared to 21% of men.<sup>48</sup> Women are also likely to face discrimination when interacting with public institutions.

Cambodia's indigenous peoples constitute a significant minority of its population (less than 4%).<sup>49</sup> The most serious problem that indigenous peoples face is loss of land. Powerful or wealthy speculators use local brokers to buy or even seize indigenous peoples' land, taking advantage of their lack of legal awareness and access to legal assistance. Cambodia's Land Law forbids the alienation of indigenous community land.<sup>50</sup> Indigenous groups also face significant obstacles to access to justice. They speak their own languages and frequently encounter ethnic discrimination.

### **THIS PROJECT SHOULD FOCUS ON THE JUSTICE INSTITUTIONS IN WHICH CITIZENS ENFORCE CLAIMS IN RELATION TO UNREGISTERED LAND.**

Because 80% of land title in rural areas is unregistered, the majority of disputes over land ownership concern unregistered land.<sup>51</sup> During our background research, we began to understand how land rights disputes are resolved. Where cases involved registered land, state courts have jurisdiction. For disputes involving unregistered land, the land commission, known as the Cadastral Commission, has exclusive jurisdiction. However, in the majority of cases, people initially bring their complaint to the local village chief or commune council, who can either mediate the case or refer it to the land commission.

We found it useful to map the justice institutions used to resolve land disputes in the diagram below. The shaded justice institutions are those used to adjudicate unregistered land cases. Our analysis of access to justice focuses on those justice institutions.



## C. PLANNING AND DESIGNING YOUR RESEARCH

During the last part of the pre-assessment phase, you will want to develop a detailed research plan to explain how and from whom information is to be collected. You will want to collect information from a broad range of people to ensure that the conclusions of your research are objective and unbiased.

The technique described below is a good way to check whether or not the research that you are planning will provide the information you want to include in your final report. The technique has four steps. First, draft the basic structure of your assessment report. Second, thinking about principles of objectivity and diversity, select the people you want to participate in your research, based on their knowledge and ability to provide the kind of information you are looking for. Also, determine the methods you may use to collect information. Third, evaluate whether your research plan is likely to provide you with sufficient information to write a report. Fourth, design protocols for your interviews and focus groups.

### 1. DRAFTING THE BASIC STRUCTURE OF YOUR ASSESSMENT REPORT

A report should be structured according to the six Elements of Access to Justice. We discuss this more in Section III.

How you organize the report under each Element will depend on the content of the report. One organizational method is to devote separate sections to each particular justice institution, population, or legal problem that you are examining. The following exercise provides an example of how to do this. Keep in mind that there are many ways to structure your report, and this is but one possible format.

### EXERCISE: DRAFTING THE BASIC STRUCTURE OF YOUR ASSESSMENT REPORT

Look back at the example discussed earlier concerning an access to justice assessment in Cambodia. In this example, you are writing a report that considers access to justice for citizens seeking to assert ownership of unregistered land. The report considers all populations, but gives specific consideration to obstacles to access to justice for women and indigenous groups. The justice institutions that citizens rely on most to resolve disputes involving unregistered land are village chiefs, commune councils, and the land commission. You are now planning a draft structure for your final report. You want to structure the report according to the six Elements of Access to Justice, but are debating what subheadings to have under each Element. Can you draft a proposed structure for the report?

## SUGGESTED ANSWERS

HEADINGS	COMMENTARY
<b>1: LEGAL FRAMEWORK</b>	As we discussed above, the key headings in your report are the six Elements of Access to Justice, which are capitalized in this document.
<i>A. General</i>	Remember that your report will give specific consideration to women and indigenous groups. To reflect this fact, discuss under separate subheadings whether any specific provision is made in the legal framework for indigenous groups and women.
<i>B. Indigenous groups</i>	
<i>C. Women</i>	
<b>2: LEGAL KNOWLEDGE</b>	The legal knowledge of vulnerable populations might be significantly less than that of other groups. For this reason, give specific consideration to the legal knowledge of indigenous groups and women.
<i>A. General</i>	
<i>B. Indigenous groups</i>	
<i>C. Women</i>	The advice and representation available to vulnerable populations can differ from that of other groups. Vulnerable populations might, for example, face significant discrimination in accessing legal services. For this reason, give specific consideration using separate subheadings to the advice and representation available to indigenous groups and women.
<b>3: ADVICE AND REPRESENTATION</b>	
<i>A. General</i>	
<i>B. Indigenous groups</i>	In discussing Access to a Justice Institution it makes sense to separately discuss each justice institution: village chiefs; commune councils, and the land commission. Do this by inserting a separate heading for each justice institution.
<i>C. Women</i>	
<b>4: ACCESS TO A JUSTICE INSTITUTION</b>	
<i>A. Village Chief</i>	Theoretically, you might want to consider Access to a Justice Institution separately for indigenous groups and women. After all, vulnerable groups might face particular challenges in obtaining access to a justice institution. However, if you include a separate heading for each group, this would further complicate your report's structure. Instead, discuss each vulnerable group in your body text.
<i>B. Commune Council</i>	
<i>C. Land Commission</i>	
<b>5: FAIR PROCEDURE</b>	In discussing the fairness of each justice institution's procedure, it is of course necessary to consider each justice institution separately. Do this by inserting a separate heading for each justice institution.
<i>A. Village Chief</i>	
<i>B. Commune Council</i>	
<i>C. Land Commission</i>	In discussing whether you can enforce the solutions provided by each justice institution, discuss each justice institution separately using separate subheadings.
<b>6: ENFORCEABLE SOLUTION</b>	
<i>A. Village Chief</i>	
<i>B. Commune Council</i>	
<i>C. Land Commission</i>	

## 2.S ELECTING YOUR RESEARCH PARTICIPANTS AND METHODS: OBJECTIVE AND DIVERSE RESEARCH

**Objectivity.** Objectivity lies at the heart of research. It is important because you want your research to be trusted as a **reliable and truthful source of knowledge**. Releasing an evidence-based report on access to justice will be a persuasive tool to build public support and advocate for change. In addition, local and international donors are more likely to fund your program ideas if they can trust the quality and integrity of your research. If your research is accused of being subjective or based on personal judgment, its status as a source of knowledge sinks slowly into the horizon like a setting sun.

What does being objective in research mean? As a researcher, you should strive to eliminate or diminish bias. The aim of your research is to design a methodology that yields information that, when analyzed, gives you an objective understanding of the issues you are studying.

Complete objectivity is an ideal, but it is nearly impossible to reach given that we come to our research topics, our research questions, and even our interpretations from perspectives that are shaped by our values and life experiences. This does not invalidate research; it just shows that research is the work of individuals who fundamentally come from different frameworks of understanding. Just like anyone else, researchers cannot escape their own heads into a neutral place from which to observe reality. Thus, you should strive to reach objectivity by purposefully considering the access to justice issues you are examining from many different angles.

**Diversity.** Diversity is the idea that **looking at something from multiple points of view improves accuracy**. By looking at something from more than one perspective, you are more likely to see all aspects of it. We discuss three ways you can consider diversity.

One way is to take **multiple measures** of the same event or phenomenon. For example, you may want to measure citizens' experience and perception of corruption in the formal justice system. You may conduct a survey using multiple-choice questions, convene a focus group with

citizens, and gather statistics from the Global Corruption Barometer, an international source. Your confidence in getting an accurate measure of citizens' experience and perception of corruption is greater if all three measures are similar.

Another method is to collect information from **multiple observers**. This is more likely to give you a complete picture of a situation. One person's observation limits the research to that person's perspective and background. Multiple observers add alternative perspectives and backgrounds and will reduce these limitations. Using the example above, observation of female citizens in a focus group about corruption by one person — a 50-year old male of a different race than the research participants — may differ if the observer was female, 30 years old, and of the same race as the research participants.

The third way is to **mix quantitative and qualitative methods of collecting data**. A combination of methods will make your research more comprehensive because each method has its strengths and weaknesses. You may use the methods sequentially or simultaneously. An example of using the methods sequentially is to begin with a qualitative open-ended focus group with citizens to discuss corruption, and then follow that with a quantitative survey questionnaire from which you can gather statistical information.

**Selecting Your Research Participants.** Research participants should be selected on the basis of their knowledge or ability to find and produce information that will answer your research questions.

As we mention above, you should collect information from as many people and in as many diverse ways as possible to ensure that your research will be trusted as a reliable and truthful source of knowledge.

Research participants can be expected to have a point of view defined by whether they have used the justice system or, if they work in the justice system, their role in the system. For example, a citizen, a legal aid lawyer, and a judge will all have different views of delay or corruption.

While the intent here is not to tell you how many interviews or focus groups to do, below are a few suggestions regarding research participants and the number of interviews and focus groups that you should conduct. To be comprehensive, you may want to aim to have **at least 40–60 research participants in total**. Remember, though, that it may not be possible for you to have that many participants, or you may even want to have more. You will have to make those decisions based on the resources that are available.

- **Citizens who have accessed or are accessing the relevant justice institutions:** 15–20 interviews or 4 or more focus groups.
- **Relevant state and non-state adjudicators and/or mediators operating in the relevant justice institutions:** 6–8 interviews or 1 or more focus group(s).
- **Legal representatives operating in the relevant justice institutions, including paralegals and other legal assistance providers:** 10–12 interviews or 2 or more focus groups; at least 4–5 of these interviews or 1 focus group should be conducted with legal aid providers.
- **Local CSO representatives, including those who are active in promoting access to justice, the legal profession or judicial reform, and protecting substantive rights:** 4–5 interviews or 1 focus group
- **Officials of various branches of local, provincial and national government:** 2–3 interviews.
- **Representatives of international organizations and donors:** 2–3 interviews (1 per organization).

- **Representatives of law schools, including deans and professors, students active in law clinics and/or an association of law students:** 2–3 interviews or 1 focus group.
- **Journalists, including those who are knowledgeable about the state of access to justice, legal profession and judicial reform, and substantive rights:** 1–2 interviews.

During the data collection phase, a typical day may consist of 3–4 interviews or 2 or more focus groups, each lasting between approximately 1.5 to 2 hours. In advance of your interviews or focus groups, you should send each research participant an introduction to the project and an explanation of the assessment process. Follow-up communication confirming interview dates, times, and locations are important. You can find a sample letter template to send to a potential interview subject at the end of this manual.

### 3. EVALUATING YOUR RESEARCH PLAN

To evaluate whether your planned research will allow you to draft a report with this structure, divide your page into two columns. On the left-hand side, list the headings and subheadings of your draft report. On the right-hand side, draw an empty box next to each heading. For each heading, write in the corresponding box the research sources that will give you information relating to that heading. Once you have done this for each heading, analyze whether you are likely to obtain sufficient information for that topic. If not, you may want to plan further research. An example is below.

Heading	Potential Sources
<b>2: LEGAL KNOWLEDGE</b>	
<i>A. General</i>	1. Focus groups with citizens. 2. Legal awareness survey by Asia Foundation. 3. Interviews with community leaders.
<i>B. Indigenous groups</i>	1. Focus groups with indigenous groups. 2. Interviews with community leaders amongst indigenous groups.
<i>C. Women</i>	1. Focus groups with women. 2. Legal awareness survey by Asia Foundation. 3. Interviews with women's rights civil society groups.

#### 4.D DESIGNING YOUR INTERVIEW AND FOCUS GROUP PROTOCOLS

You should design protocols that structure the flow of discussions for everyone on your team who will be conducting interviews and focus groups. Protocols are important to ensure consistency across multiple interviews or focus groups, prioritize interview questions, and allocate the appropriate amount of time for topic areas. Below are suggested protocols that you may want to cover:

- **Introduce** yourself, other staff members present, and your organization.
- Give an **overview of the purpose of the access to justice assessment**, including the important role of the interview or focus group research.
- Explain **why** the research participants have been asked to participate.
- Lay out a number of **ground rules**, including:
  - The **length of time** of the interview or focus group.
  - Any assurances you can give that what is said during the discussion will be **confidential**. You should make clear to research participants that their participation will be kept confidential and that the final report will not include their names.
  - If you are doing **focus groups**, you may want to give these ground rules:
    - The need to **respect** the opinions of other participants and to ensure everyone has a chance to share his or her thoughts.
    - **How research participants should refer to each other.** You may want to use nametags to easily identify participants.
    - How the discussion will flow, including in particular that it is intended to be a **discussion among research participants**, rather than a simple question and answer session between each participant and the moderator.
- **How you are recording the contents of the discussion**, including written notes. You should explain whether quotes will be attributed, how and where the notes will be kept, and how they will be used.
- **Information about the types of reporting** that will come from the data.
- **The questions come next.** A protocol generally groups questions by topic, because this makes the most sense for directing and organizing the flow of the discussion. The actual discussion might not follow the flow specified, but the protocol will help you keep track of what has been addressed and what still needs to be covered. Specific probes may also be outlined in the protocol. Section III describes how to design interview and focus group questions.

Finally, at the end of the interview or focus group, you should take the time to thank the research participants and indicate the next steps in the process. Do you need to send anyone a follow-up document? Has the research participant promised to send something to you?





## ENDNOTES

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45. United Nations, Food and Agriculture Organization quoted by Kirjavainen, Leena M. (1999): Gender Issues. Cambodia. Regional Environmental Technical Assistance 5771. Poverty Reduction and Environmental Management in Remote Greater Mekong Sub-region (GMS) Watersheds (Phase I), p. 15.
46. U.N.D.P., Cambodia, Pathways to Justice: Access to Justice with a Focus on Poor, Women, and Indigenous Peoples (2005), p. 63.
47. Organisation for Economic Co-operation and Development (OECD), Development Centre, Social Institutions and Gender Index, Cambodia Country profile, at: <http://genderindex.org/country/cambodia>. (Visited July 7, 2010).
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49. CIA World Fact Book.
50. U.N.D.P., Cambodia, Pathways to Justice: Access to Justice with a Focus on Poor, Women, and Indigenous Peoples, pp. 94-95.
51. U.N.D.P., Cambodia, Pathways to Justice: Access to Justice with a Focus on Poor, Women, and Indigenous Peoples, p. 68.



# SECTION III.

## COLLECTING DATA

Collecting data will make up most of your fieldwork. As we mentioned in Section II, how much information you collect, how you organize the information, and how much emphasis is placed on the information depends on the **focus and scope** of your assessment and the **time and resources** available to you. You may have a few weeks or months of fieldwork, a few more for the pre-assessment and report-writing stages, and a limited budget. If this is the case, it is a good idea to narrow the focus and scope of your assessment by target population, problem, and/or justice institution, as is suggested in Section II.

When you are writing and designing your research plan, you should expect to mainly conduct interviews and focus groups to collect the opinions, perceptions, and attitudes of people related to your assessment topic. Interviews and focus groups are two types of qualitative data collection methodologies that are commonly used in research and are applicable to many research questions.

The data collection stage of the assessment process, should not be undertaken until the steps outlined in Section II, like compiling a list of research participants and organizing any interviews and focus groups, have been completed.

As you do this, please keep in mind the ethical considerations discussed below.

### A. ETHICAL CONSIDERATIONS

As a researcher, you need to prepare yourself and to treat the individuals who participate in your research in an ethical manner. All researchers have an obligation to be ethical, even when the research participants themselves might be unaware of ethical issues. Many ethical issues involve a balance between the potential benefits of advancing knowledge in an area being studied and protecting the rights (such as privacy and dignity) of those being studied.

You should keep in mind that the relationship between you and your research participants involves power and trust. You will be in a position of power relative to your participants because of your training and expertise. Accordingly, you need to protect their interests. You should avoid placing research participants in embarrassing, unpleasant, or stressful situations. Also, developing trust is extremely important to ensuring the candor of research participants. By earning the research participant's trust, you will be able to get better information. You should also strive to be honest, act with integrity, and respect your research participants' need for confidentiality.

- **Honesty**

Strive for honesty in all your communications. Honestly report data, results, and methods and procedures. Do not fabricate, falsify, or misrepresent data. Do not deceive colleagues, donors, or the public.

- **Integrity**

Honor all promises and agreements of confidentiality; act with sincerity; strive for consistency of thought and action.

- **Confidentiality**

Protect confidential communications with research participants by keeping names secret from the public. Do not release information in a way that links specific individuals to specific responses.



## B. HOW TO COLLECT DATA

The following section discusses the different methods you can use in collecting data for your assessment. Data collection methods can be divided into qualitative and quantitative categories. Qualitative data are descriptive information. Some of the more common methods of gathering qualitative data are interviews and focus groups. Quantitative data are information that can be expressed in numerical terms, counted, or compared on a scale. Examples of quantitative data are administrative data, data from surveys, and data from existing, secondary surveys.

### 1. Interviews

- a. What is an interview?

#### Interviews Can Obtain Different Kinds of Data

- Opinions, perceptions, attitudes
- Background information (expert knowledge, facts, descriptions of processes)
- Some interviews may include aspects of both

An interview is a purposeful discussion between two people. Interviews can be placed on a continuum of structure, from “unstructured” to “highly structured.” Basic to this

continuum is the idea of how much “control” the researcher will have over the conversation. There are benefits to each type of interview.

#### Unstructured interviews

*Example: I’m here for the year to understand what justice systems citizens use to seek solutions to their problems.*

With unstructured interviews, the researcher has a clear plan but minimum control over how the research participant answers. An example might be a case where the researcher visits an office, sits down with someone who works there, and asks, “What do you do?”

The conversation can go in many directions. The researcher does not exert much control over the course of the discussion. He or she might follow explanations with additional questions based on the topics the researcher brings up, but the conversation is relatively free-flowing.

- Gathering information in this manner, though it might lead to very rich and nuanced data, can take a long time. These kinds of interviews are really most suitable when researchers have a great deal of time to spend with the community from which they are gathering information.

### Semi-structured interviews

*Example: Could you describe how the justice system in your village works?*

- *PROBE: How many village heads hear disputes?*
- *PROBE: What is the frequency of people coming to you? Do you have any statistics of the cases received?*
- *PROBE: What is the majority of cases that you receive here?*

\*For a discussion of Probes, see Part f of this Section

In semi-structured interviewing, a guide is used, with questions and topics that must be covered. The researcher has some discretion about the order in which questions are asked, but the questions are standardized, and probes may be provided to ensure that the researcher covers the correct material. This kind of interview collects detailed information in a style that is conversational. Semi-structured interviews are often used when the researcher wants to delve deeply into a topic and to thoroughly understand the answers provided.

The example above indicates an initial question that you might ask a village chief about the traditional justice system, as well as probes that you might use to ensure that the information you received across different interviews was complete and consistent.

### Structured interviews

*Example: What is the majority of cases that you receive here?*

- ☐ Land disputes
- ☐ Domestic violence
- ☐ Divorce

The most controlled kind of interview is structured. In structured interviews, the questions are fixed and asked in a specific order. Multiple research participants will be asked identical questions, in the same order. Structured interviews look most closely like a survey being read aloud. If the research participant indicates he or she does not understand a question, the researcher is limited to saying only, “Whatever the question means to you” or another scripted explanation. These interviews are often used when there are very large samples and data is wanted that can be generalized to a large population.

In the example above, you would read the question aloud and then read each of the response choices to the research participant.

**Tip:** It may be useful to incorporate all these methods in your interviews. For example, you could use an unstructured format for much of the discussion and then add a series of the same questions you would ask every research participant.

### b. How can you understand access to justice through interviews?

Interviews can help you gather valuable data relevant to your research questions. Talking to people who work in and regularly use your country’s state and non-state justice systems is important when determining what gaps exist in practice and what is written in the law. Interviews can help you identify the problems that citizens encounter in accessing justice. They can also be used to collect information from lawyers, judges, and court staff on their perspectives on how the systems operate, and their motives and tactics in playing out their roles in the systems.

### c. How do you maintain neutrality in an interview?

Maintaining neutrality toward research participants is important to promoting objectivity in research. When a researcher does not maintain neutrality, he or she may bias the data by affecting how the research participant answers a question.

Most research participants want to give information that is helpful to the research. If they are given the impression that certain kinds of responses are preferable, they may provide more of the “preferred” answers to please you. For example, using phrases such as “this is good information” may lead to bias because it implies that some responses provide good information and other responses provide bad information. Likewise, you should never give your opinion or suggest a response to a research participant because the research participant may edit his or her responses accordingly. Watch out, too, for nonverbal behaviors, such as excessive nodding of the head that may cause a research participant to answer in a certain way. In short, you should **be aware of your own behavior** and never lead the research participant to believe there is a right or wrong answer.

**d. What kind of training will you want your research team to have?**

You should ensure that everyone on your research team not only has basic training on interviewing skills, but also training on how to take good notes and on the note-taking protocols the team has decided to use. When someone sits down to analyze 50 sets of interview notes, it is important that all note-takers have a uniform understanding of the meaning of symbols and terms. The team should also have training on the access to justice assessment. **What is the purpose of the project? What are the procedures for contacting interviewees? What is the purpose of the questions being asked?** This will allow your team to know how to address potential questions from research participants, and know when they have collected the right data.

Interaction with your research team should be ongoing. You should not simply train your team and send them off to conduct 50 interviews. Instead, you should meet again after the first few interviews and debrief. This is when you and your team can decide whether the questions are working and whether there are any unanticipated issues. You should also get updates from your team on how many interviews are being completed, how long the interviews are taking, and other logistical or administrative considerations. This can be important in keeping the project on schedule.

**e. How do you design questions?**

As you design your interview questions, remember what you want to get out of your interviews. Remember that you are trying to answer your research questions using the six-part framework that is provided in Section I.

As the researcher, you should make sure that research participants understand what they are being asked. The questions you design might appear perfectly clear to you, but research participants may understand the question differently or, even worse, be unable to answer the question because they do not understand what you are asking.

**Descriptive questions** ask people to describe things and can provide insights you may not have considered. You should ask these types of questions if you want a long answer from the research participant. The introductory question is a

good descriptive question to use near the beginning of an interview because it often encourages the research participant to talk. An introductory question may be simple, and can include multiple small questions or repeated phrases. For example, you could ask, “I’m interested in your life growing up in this village. What was it like? What was your family like?” A follow-up question asks about a specific element, and is often used after an introductory question. For example, “you’ve told me a lot about your life when you were growing up. Please tell me more about your family. For example, what did they do for a living?”

Another way to ask a descriptive question is to ask the research participant to express ideas in his or her native language. If, for example, you are trying to learn something about the person’s experience with the justice system, questions to ask might include, “What do you call the person who heard your case?” or “How would you refer to the place where you went to make your complaint?”

**Structural questions** help the researcher understand relations between things, and to categorize groups of the same things or processes. The difference between structural and descriptive questions are that structural questions result in a list and descriptive questions are “how” questions. For example, structural questions such as “What are the reasons you chose to bring a claim in the informal justice system?” will result in a different kind of answer than the descriptive question, “How did you decide to use the informal justice system to solve your justice problem?”

A type of structural question confirms that there is a category or group of items that the researcher has an idea about. Thus, such a question might be, “What are the different kinds of cases your court hears?” or “What are the different reasons a person might choose to bring a claim in the informal justice system?” The groups are “different kinds of cases” and “different reasons to choose the informal justice system.”

Another type of structural question tries to put something the researcher has heard in context in order to further develop a list. An example might be: “I understand that divorce cases are one type of case your court hears. What are other types?”



### • Problem Questions

There are several things the researcher should be cautious of when writing questions.

**Compound questions** are questions that are actually made up of two different questions that may have two different answers. An example of this might be “How did you find out that your land was unregistered and how will it impact your life?” Compound questions are difficult for the research participant to answer. He or she may answer just one part of the question or may be more likely to give an unclear answer.

**Leading questions** encourage the research participant to answer in a certain way, and they imply that there is a right or wrong answer. “You don’t support the government’s policy, do you?” is an example of a leading question.

## f. What are probes?

**Probes should be used whenever:**

- The researcher doesn’t understand the reply given by the research participant.
- The question specifically indicates that you should probe.
- Research participants give the researcher any reason to think that they have not given the complete picture of their thinking, say “don’t know” or “I can’t answer that,” give an answer that doesn’t fit, or seem not to have understood the question.

Probing is a way to stimulate the interview. You can use probes when you do not understand what the research participant has said and you need further clarification. Sometimes questions specifically indicate that the researcher should probe. In semi-structured interviews, the researcher is sometimes asked to follow up on an issue if the topic does not come up in the response to the initial questions. You should also probe when you think that the research participant has not told you everything they can, and has not answered or understood the question.

## Some Standard Probes

- Can you be more specific?
- Can you tell me more about that?
- What do you think?
- Which answer comes closest to how you feel/think?
- If you had to pick one answer, what would you choose?
- Anything else?
- Tell me more.

## g. How should you contact interview participants?

There are many factors to consider when deciding how to contact a potential research participant. If you do not have a professional relationship with the individual, you face more decisions and more difficult challenges. Will the initial contacts be in person, by phone, by email, or by letter? Sometimes you can simply visit the location where an individual is likely to live or work, and contact the individual directly. In other instances, you will need to send information in advance or have someone else make the initial contact. It may make sense to send the potential research participant a letter or an email that gives a brief description of the project and explains why it is important that the individual participate.

You should also think about how to overcome the concerns that people may have about the interview. Having brief, prepared answers provides enough information to gain cooperation without spending too much time on long conversations. For example, when someone says they are not interested, you might try letting the individual know what is interesting about the research and why the research is potentially important to that person. You can also remind the individual that participating in the research will give them an opportunity to state their opinions on the research topic. For the most part, you will have to rely on the fact that your project, focused as it is on improving access to justice, will be relatively well-supported by the individual.

### h. What makes a good researcher?

Not everyone makes a good researcher. A good researcher is very familiar with the questions in the interview protocol and understands the purpose and meaning of the questions. As a result, a good researcher is knowledgeable enough to answer any questions a research participant may have. You will want to make sure that you covered all the material in the interview protocol. Sometimes questions will be asked out of order because of the natural flow of the conversation. You might find it helpful to check off questions as they are asked. Also, at the end of the interview, you should review the protocol and return to questions that were not covered.

Most importantly, researchers need to be able to get the research participant to participate and stay engaged in the conversation. They must be able to actively listen to the research participant. This is not always easy after he or she has conducted many interviews and may think he or she has already heard all the possible answers.

You should practice **active listening techniques** when you are conducting your interviews. Active listening is about focusing on the person who is speaking. An active listener needs to focus full attention on the person who is speaking. The way you can show you are actively listening is to do the following:

- **Ask good questions**
- **Listen non-judgmentally**
- **Paraphrase**
- **Empathize with the person who is speaking**

First, train yourself to ask questions in a way that allows the research participant to feel comfortable about answering openly and truthfully, and about using his or her own words. Second, restate what you heard to make sure that you understood what the research participant is saying. Finally, take the time to see things from the perspective of the research participant so you can gain understanding of how he or she is experiencing a situation.

### • Asking Questions: A Self-Evaluation

You can be fairly sure that you are using active listening techniques effectively if you do the following:

Do not assume that you know what the research participant means; don't try to complete his or her statements or say, "I know just how you feel."

Ask for clarification with questions such as: "What did you mean when you said you didn't know what to do?" or "What did the police do to make you feel that way?"

Check your tone for sincerity. As you are talking to the research participant, check that your tone of voice matches your feelings and body language.

Ask open-ended questions that allow for a variety of responses. If you ask closed-ended questions, you limit the range of responses and suggest that you already know what is going to be said.

Show interest in the research participant and the conversation by saying, "Tell me more about that" or "Keep going, I'm following you."

In sum, a successful researcher uses active listening techniques to obtain information and explanations from the research participant in the participant's own terminology and "native language," and allows the researcher to understand the answers provided and gain valuable information that will aid in further research.

### i. How should you capture data?

A key member of the interview team is the **note-taker**. It is a best practice to have a note-taker as well as a researcher. Taking detailed notes and conducting an interview at the same time are close to impossible. That is not to say that the researcher does not take any notes. However, the researcher should leave taking detailed notes to the note-taker, as researchers cannot capture details while also paying attention to research participants and making sure the protocol is being followed.

### Drafting interview notes

Interview notes should begin with descriptive information: the date and location of the interview; the name of the research participant; the names of the researchers; and information about any organizations to which the person being interviewed belongs.

Interview notes should also contain information about why the research participant was chosen for the interview; for example, he or she may be an expert. It may also be important to note any issues with the research participant that might have influenced the data collected. Did the person resist answering some of the questions? Also be sure that notes include any additional information that will be important to the analysis and not included in the actual content of the conversation. Where was the interview conducted—in a private office or a public space? Were there any distractions?

### Writing final interview notes

Final notes should be written with polished language, with words and terms fully spelled out. Notes should be understandable if reviewed by someone years after the interview was completed.

It is important to indicate the difference between actual answers taken from the research participant and information added by either you or the note-taker. Any editorial comments should be noted in a way that makes these differences clear.

If appropriate, the note-taker should check and edit all factual information. Also important is to specify exact quotes, but only those that are meaningful. If you are using quotes, you may want to put them in the context of the discussion, so that they can be used appropriately in the analysis and reporting.

### Example: Partial Notes of Interview with Community Leader

**Research Participant Says:** “We have had trouble getting officials to compensate villagers for land that was taken over by the government. For example, last year indigenous residents sold land to farmers in a deal known to local officials. After the farmers cleared and planted cacao trees on the land, the government seized the land as part of a National Park. Officers from the National Park burned the crops, claiming that it was government land. The farmers are angry and confused as to why the government permitted the sale of the land and then destroyed the crops. The community is upset [because] the government does not recognize claimed farmers’ land rights, they cannot register their land, and we do not believe there is anything we can do to help the farmers.”

#### Note-Taker Writes:

- Community has had problems getting the government to pay money to farmers for taking land
- EX: Indigenous residents sold land to farmers, local government officials knew about it. Years later, farmers crops were destroyed, government said it was part of National Park
- Farmers are angry and confused
- Government has policy making all unregistered land to be state land
- Community leaders feel they cannot do anything about the policy

**Types in Report:** “The main context in which land disputes arise is over land use and ownership where the government has appropriated land for national parks. Expansion of national parks has affected many poor citizens. For example, in one village, indigenous residents sold land to farmers. Local government officials knew about the transaction. After the farmers had cleared and cultivated the land, officers from the National Park torched the crops stating that they were within the boundaries of the National Park. The farmers are angry and confused as to why one branch of government permitted the sale of land while another subsequently destroyed the crops. Community leaders have not been able to get the government to compensate the farmers for taking their land.

## 2. Focus Groups

### a. What is a focus group?

A focus group brings together individuals sharing certain key characteristics to discuss a particular topic. A moderator asks the group a set of questions in a conversational manner that allows them to respond to, and elaborate on, the comments of others. This can result in a deeper, more thoughtful discussion than an interview, as the comments of research participants trigger thoughts and ideas among others.

It is central to focus group research that all research **participants share certain characteristics**. This ensures that you can present your research as providing insight into the views of a particular group of people. For example, you might require that all participants are 1) women; 2) who live in Southeast Sulawesi, Indonesia; 3) and whose land was taken from the government. In explaining the results of your research, you can then say, “we spoke to women, living in Southeast Sulawesi, Indonesia, whose land was taken by the government, and they said...”

- A focus group should, as much as possible, be a natural, conversational discussion, in which participants are free to express diverse opinions and experiences. For this reason, when you decide what type of people you would like in your focus groups, **you need to try to bring people together who can relate to each other**, and avoid those who are likely to make others feel uncomfortable or reluctant to speak freely. Try to avoid, for example, bringing together people with different levels of expertise, power or authority, all factors that can influence the dynamic of a group discussion.

You also need to be practical when choosing your Target Population. You need to know, for example, whether the people that fall within the group are easily identifiable and reasonable to locate.

### b. How can you understand access to justice through focus groups?

You can use focus groups to get the perspectives of a large group of people, whether citizens who actually use the justice systems or legal aid lawyers who provide advice and representation to poor citizens. You may then assess whether the problems and concerns identified using other research methods, such as interviews with government officials or civil society organizations, are shared by the research participants in your focus groups.

### c. How do you choose your Target Populations?

The group of people who will participate in your focus groups and share certain key characteristics are known as your **Target Population**. Prior to beginning focus groups, you will wish to decide what characteristics you want your Target Population to possess. Do you want all participants to be women, all men, or a mix? How old will they be? What will they do for a living? To answer this question, it is best to reflect on the categories of people you want to say you surveyed in your final report. Do you want to say you spoke specifically to one particular group of people — to return to the example above, women from Southeast Sulawesi whose land was taken by the government? If so, what characteristics define that group? In your access to justice assessment, your Target Population might be partially determined by region, race, gender, ethnicity and/or wealth. You may also decide to include only citizens who have experience working in or using the justice system, formal or informal, to ensure participants can provide a thoughtful perspective on access to justice.

### d. How many focus groups are necessary?

You should complete enough focus groups with different members of the Target Population so that you can say you have heard the full range of the Target Population’s perspectives. Otherwise, your research might be missing important observations and opinions. It is usually sufficient to plan on holding four focus groups with each Target Population. However, if during the last focus group it becomes clear that new opinions or views are being expressed, you may want to do more focus groups to ensure the study takes account of all possible perspectives. You should therefore

make sure that in both your budget and timetable, you provide for the possibility that you will have to undertake more focus groups than you originally anticipate.

After having decided on the number of focus groups you will conduct, you should consider whether your plan is achievable given your resources. If it is not, you will need to reduce the number of Target Populations you are analyzing. You will not be able to reduce the number of focus groups you hold for each Target Population without severely impacting the integrity of the study. When considering what resources you will need to implement focus group research, you should think about having **focus groups of between 4–6 people**. Because Access to Justice is a complex topic, requiring research participants to explain in detail their experiences with the justice system, it is best suited to small focus groups.

- Remember that focus group research does have inherent limitations. Because of the **relatively small number of people you talk to**, you cannot say that the views expressed in focus groups are necessarily shared by the entire Target Population. Focus groups are just a way of understanding how the people we talk to think about access to justice.

#### e. How do you find participants for your focus group?

In an ideal world, to maintain objectivity in research you would randomly select members of your Target Population to participate in your focus group. This ensures that participants represent a balanced cross-section of your

Target Population. Unfortunately, selecting focus group participants by random is very difficult; it can be hard to locate participants at all. Instead, use one of the techniques below. These techniques balance practicality with objectivity.

*Nominations:* Ask persons who have no vested interest in the outcome of your research for the names of people with the characteristics of your Target Population. The most suitable people to ask are those who know their community well and who might be able to encourage participation in the focus group. It is best to use multiple sources to get the names of participants, to ensure that one person cannot overly influence the composition of the focus group. Note that it is possible to ask people who are actually participating in the focus group for nominations, although this increases the risk that the group will lack diversity.

*Piggybacking from other Meetings:* Another option is to hold the focus group around the same time as another meeting or community gathering at which members of the Target Population are likely to be present. Participants can be recruited from those attending the meeting and can be asked simple questions to ensure they share the required characteristics.

Once you have a list of potential research participants, randomly select participants from the list. Random selection will increase the chance that you have a proper mix of people in your group.

- **WARNING:** When recruiting focus group participants, remember that many of the issues that might be discussed during an access to justice assessment – corruption, for example – are highly sensitive. There is a very real danger that those people participating in focus groups might suffer if they are known to have criticized the government or other powerful figures. To account for this risk, you must:
  1. Obtain approval from local officials and influential figures. This approval should include an understanding that focus groups will be one method of research utilized, that focus groups are confidential discussions, and that some of the opinions aired might be prejudicial to the government.
  2. Fully explain to potential participants the purpose of the focus group, the types of subjects that will be considered, and any risks they might face in participating.
  3. Emphasize to participants that focus groups are confidential. To the extent possible, exclude anyone from the group that might divulge the contents of the discussion, particularly government officials.

**f. How do you design questions and probes?**

Although primarily a conversation between participants, a moderator directs the focus group discussions to ensure the group covers certain key questions. You can refer to the section above on interviews to design questions and probes for your focus groups.

At the outset, you should also remember that the aim of focus group research is to compare the responses of participants in a number of focus groups within your Target Population. You should also compare the responses of different Target Populations. For this reason, you should try your best to ask the same questions in each focus group to ensure that you can compare and contrast responses across different focus groups. Because it is difficult to change questions once your research has begun, you should test them on a couple of members of your Target Populations. You should consider, in particular, whether the participant understood the question, whether it prompted a conversational-style response, and whether it elicited information of the type sought.

- A frequent criticism of focus groups is that participants tend to portray themselves as thoughtful, reflective beings, who act according to rational thoughts. In reality, many decisions are not rational, and depend instead on emotions and feelings. To analyze why participants made particular decisions, you have to ensure that they can recall the emotions they felt at the time (questions like, “think back to when...” are often effective) and try to minimize the understandable temptation to justify a decision with rational thoughts.

The document below is an example of a question plan, devised for an access to justice assessment looking at a Target Population of citizens who have used or are using their justice system to reclaim land taken by the government. The questions included are only suggestions, and will have to be modified depending on the context of each assessment.



**EXAMPLE: QUESTION PLAN FOR FOCUS GROUP OF CITIZENS**

<b>QUESTIONS</b> [Instructions to moderator in brackets]	<b>EXPLANATION</b>
<i>Introductory Questions</i>	Early questions are designed to make research participants comfortable in their surroundings, rather than to elicit useful information.
Could you each share two words you think of when you hear the word, “justice”? [Moderator goes first to demonstrate].	By asking each research participant a simple, short-answer question, you ensure that everyone is immediately involved in the discussion.
One thing that brings us all together today is that you have all had recent experience trying to get land belonging to you back from someone else. I want to begin by asking each of you to explain when and how was your land taken from you?	This question introduces the topic that we will discuss during the focus group, and draws attention to the experiences shared among research participants, facilitating future conversation and discussion between them. During our Access to Justice Assessment, you will bring together participants who have all tried to use the justice system to resolve the same type of dispute – in this example, a title to land issue. This should foster a shared sense of struggle among them.
<i>Key Questions</i>	Key questions are those that actually drive your research study. These questions should be open-ended, so as to elicit long and thoughtful answers and stimulate conversation between research participants on key issues. It may take as much as 20 minutes for the group to finish discussing each question.
1. Write [or just reflect on] the steps you took, from beginning to end, to try to get your land back. After you have thought about it, we'll ask you to tell the group the steps you have taken.  [Moderator writes down and/or represents pictorially the different steps taken by participants on a large flip chart, to allow the different steps taken by each participant to be easily compared.]	Remember the purpose of an access to justice assessment: to discover to what extent citizens are able to use justice institutions to solve their problems. This initial question asks citizens to recount what they did when trying to overcome a problem: reasserting ownership of land. From citizens' accounts, you will begin to understand which institutions citizens rely on to solve their problems and the strengths and weaknesses of each institution.  Note that, during this question, the moderator might have to prompt participants to ensure they fully explain the steps they took.
2. [It is likely that participants will have relied on different justice institutions to try to reassert ownership of land. For example, some will have used the land commission, and others will have used the commune council.] Why did you choose to use one justice institution to help you get your land back over another? In retrospect, would you use the same institution again?	Asking citizens <i>why</i> they chose to use one institution over another (as well as whether this was the right decision) will help us identify the positive attributes of some institutions and negative characteristics of others.
3. What did you think of the availability and quality of the advice and representation you received when using justice institutions?	You began your key questions with very general questions, aimed at getting the full range of participants' perspectives on how effectively justice institutions help them solve common problems.
4. What did you think of the procedure followed to decide your case? Was the procedure fair?	Having asked such general questions, begin to focus on more specific issues that you want considered.
5. What would you do to help people like yourselves use justice institutions to reassert ownership of land?	This question, which changes the tone of the discussion to be more positive, can be a useful trigger for future rule of law programming ideas.
<i>Concluding Question</i>	Concluding questions demonstrate to participants that their comments have been listened to.
[As a moderator, summarize the focus group discussion and, particularly, the responses you received to key questions 1-4. Ask participants, “Was that summary accurate?”]	The summary question is a way to check that our interpretation and recording of the focus group discussion has been accurate. It also allows participants to confirm that views they put forward earlier in the group have not been modified during the discussion.

**g. How should you train and follow up with your team?**

After each focus group, you may want to sit down with other members of the research team for a **debriefing meeting**. Those who were present at the focus group should write annotations to the notes of the discussion, recording their own observations of the focus group. Team members should note the emotions participants expressed at important points in the focus group and any underlying tensions or feelings they felt were present during the discussion.

During the debriefing meeting, you should consider whether the focus group was successful. Consider, for example, whether you got enough responses to each question and whether you need to spend more time discussing it. This information can be used to improve future sessions.

**h. What makes a good moderator?**

As with the interviewer, the role of a focus group moderator is to ask research participants questions, listen actively to their answers, seek clarification and explanation where necessary, and keep the discussion on track, so that participants actually respond to the questions posed. It is extremely important that you find the right moderator for your focus group discussions. A moderator should have the following characteristics:

***A background that encourages openness.***

The moderator must be someone who will help research participants to honestly share their thoughts and views on access to justice. Who is best suited to this task depends on each particular context. In some cases, it might require someone of the same gender, race, age, or ethnic group as the research participants. In others, participants might be happier talking to someone very different from themselves. It is often worth asking one or two potential research participants who would make a good moderator.

***Be a listener, not a contributor.***

The moderator's role is to facilitate, not impede, the group's discussion. He or she should be a good listener, who makes participants feel like their voices are being heard. Above all, the moderator should never insert his

or her own judgments and personal reactions into the discussion, either by speaking or even displaying body language that shows approval or disapproval.

Prior to the focus group actually beginning, when research participants are arriving, you should make people feel at ease so that they will be willing to share their thoughts and perspectives when the group begins. You may want to try to encourage participants to talk to each other, thereby fostering a cohesive group before the discussion begins.

During the discussion, you may want to keep in mind the following tensions that are inherent in the role of moderator:

***Balancing listening with follow-up questions.***

Your role is, for the most part, to listen to research participants' responses to the focus group questions. However, you may want to ask a follow-up question where a participant's response needs further clarification or explanation or where a further question might take the conversation to a deeper level.

***Respecting the group dynamic while ensuring inclusiveness.***

A focus group works well when research participants begin to discuss issues among themselves and to ask questions of each other. For this reason, you will want to let the discussion flow. However, you may also want to intervene if one research participant is dominating the discussion, or if some participants are not participating in the discussion at all. Make sure that people who disagree with the prevailing point of view are given the chance to express their opposing perspective.

***Keeping the discussion on track without influencing its direction.***

Research participants may give answers that do not directly address the question asked or are plainly irrelevant. If this is the case, the moderator will need to balance letting the discussion run its own course with intervening to get the conversation back on track. The moderator should be aware that what might initially

seem an irrelevant answer can become a significant insight into key issues.

In addition to facilitating the discussion, the moderator should take word-for-word notes. You may also want to have an assistant take notes. There is no need to record the names of the speakers, but the notes should indicate when a new speaker takes up the conversation. Notes should also include the date and time of the focus group, its location, the moderator and note taker, and the number and characteristics of the participants. It is important to keep the notes from focus groups even after your research has been completed and written up. The notes are the record of your research that allows you to demonstrate to others the work you have done.

#### **i. How do you analyze the results of focus group discussions?**

Once all your focus groups have been completed, you will be left with notes of what research participants said in each group, as well as of your own observations of the focus groups. The next task is to organize these notes so that you can analyze how research participants responded. For each Target Population, arrange the notes so that responses to each key question are grouped together, including responses elicited in different focus groups. This allows you to consider whether research participants' responses were consistent across focus groups. There is a very simple approach to doing this, outlined below:

- Assemble a number of large sheets of paper. Label each sheet with one of the focus group's "key questions." Then, divide the page into different sections, one section for each Target Population.
- For each quote you have written down in your notes, attach the quote to the relevant page, matching quotes with the key questions they refer to. Place each quote in the section for the appropriate Target Population, depending on the identity of the speaker. Note that research participants do not always answer the question they are asked – some quotes will be relevant to questions that have already been discussed or were discussed later in the focus group. Others will simply be irrelevant and should be put aside.
- Once you begin to put the quotes relating to the same key question on the same sheet of paper, your pages will quickly become cluttered. Therefore, you'll need to devise ways to better organize the quotes. You should devise categories of quotes that can be grouped together, and should label those categories by theme or subject matter. The better you organize the quotes, the more easily you will be able to understand the results of your focus groups.

Once you have allocated and organized all the quotes, your next aim is to summarize how each Target Population responded to each key question. You can use this information to write the final report. To write this summary, look over all the quotes relating to the question and Target Population under consideration, paying particular attention to how you have organized those quotes. Reflect on how best to summarize this information, considering what information to include and how much weight or emphasis to give certain comments or themes. In undertaking that analysis, consider the following factors:

#### ***Frequency* (the number of times a comment is referred to during the focus groups).**

Frequency is highly relevant in indicating importance, but is not determinative. Some vital insights may be mentioned only once or twice during focus groups – for example, because participants are reluctant to share sensitive information or because only a few individuals were perceptive enough to make the observation.

#### ***Extensiveness* (the number of participants that made a particular comment).**

Extensiveness is arguably more important than frequency because it shows many people are influenced or affected by a particular theme. However, for similar reasons as frequency, it is not determinative.

#### ***Specificity* (how many details a particular response contained).**

It is generally true that the more specific a description of an event or feeling, the more likely it is that something is true and affected a participant's actions.

**Emotion (how much emotion participants expressed when referring to a particular theme).**

You should often give more weight to comments that elicit emotion in participants, as such comments are likely to be significant to the participants themselves. Team members can use the notes put together during the focus group debrief to identify when participants expressed strong emotions during the group.

Once you have summaries of how each Target Population responded to each question, you can use these summaries in your report writing. For example, in your reports, you will want to include a section on the most common justice system mechanisms utilized by each Target Population. Using the summaries prepared for key question 1 - “Write [or just reflect on] the steps you took, from beginning to end, to try to get your land back?” - you could say: “having spoken to women living in Southeast Sulawesi, Indonesia, whose land was taken by the government, most said they relied on the customary *Adat* system to bring their claim.”

- When reporting the results of your analysis, do not use numbers to explain how many participants held a particular view. To reflect the small sample size used during focus group research, use descriptive words such as “no one,” “some,” “many,” or “most.”

**3. Administrative data**

Ethical research preserves the privacy and confidentiality of research participants. But ethical considerations also come up when you involve official administrative data. Most official statistics are designed for top-down bureaucratic or administrative planning purposes. Which information is collected reflects the values of officials who may want to use it to shape and guide the direction of public policy. Such information may still be valuable for your purposes as a researcher, but you should also keep in mind that official statistics are inherently political products.

We recognize that countries vary widely in the availability of data, and you may find it difficult to collect statistics in “data-poor” environments. In that case, collecting opinions

from the people who experience the justice system will suffice.

**a. What is administrative data?**

Administrative data is data that is typically generated by the records of institutions in the course of their work. Common examples include records police keep on reported crime and court records of the outcome and length of judicial cases. Administrative data may also come from civil society organizations, such as the records on the services they deliver in local communities.

The most reliable and accurate administrative data are those an agency collects for its own operational purposes. If a department’s staff rely on the data in the ordinary course of business, they are more likely to maintain its accuracy. Assuming the data can be trusted, administrative data can very effectively prove a point.

**b. What statistics should you collect from government sources and CSOs?**

You will want to try to collect the most recent available statistical information — usually the past three years’ worth of data — relevant to your research. Include these statistics in your final report. Whenever possible, you can try to get statistics that include a breakdown by gender, ethnicity, nationality, etc., so as to address discrimination. Statistics should be cited to their source, even if their source is an individual who collected and provided the data.

**4. Surveys****a. What is a survey?**

Surveys are another collection method in which you gather information from a given population for the purpose of analyzing a particular issue. You may collect information such as attitudes, impressions, opinions and the satisfaction level of your population. Data is often collected from only a sample of the population. This is known as a **sample survey**. The most reliable and unbiased survey research involves a random assignment of research participants who make up a representative sample of your target population. Random assignment allows a researcher to divide research participants into two or more equivalent groups for the purpose of making comparisons. Because it is a mechanical

method based on mathematical theory, the researcher does not assign the groups on the basis of personal preferences.

This type of quantitative research is often much more expensive and time-consuming than other data collection methods. Because you likely will not have the resources to conduct such a study, this manual discusses some equally effective survey methods below.

#### b. How do you conduct a survey?

##### The Steps in a Survey Project

- 1) Define what you want to learn
- 2) Determine whom you will interview
- 3) Choose survey method
- 4) Create your questionnaire
- 5) Pre-test the questionnaire
- 6) Collect and enter data
- 7) Analyze the data

#### Purpose and Target Audience

Before you conduct your survey, you will want to have a **purpose** for the survey in mind. You will usually have one or more specific pre-defined groups you are seeking to study. For example, you may have seen people on the street who are stopping various people and asking if they could interview them. Most likely they are conducting some kind of purposeful survey. They might be looking for women between 30–40 years old. They are probably **deciding who to interview** by observing people passing by and asking people to participate in the survey if they look like they might be someone who fits in the category of people they wish to study. One of the first things they are likely to do is verify that the respondent does in fact meet the criteria for being in the sample.

Conducting a survey in this way can be very useful for situations where you need to reach a targeted sample quickly. You will be able to get the opinions of your target population, but you are also likely to overweigh subgroups in your population that are more readily accessible.

#### Survey Method

You can conduct a purposeful survey in a couple of ways. You might want to sample for specific groups or types

of people as in **quota sampling**. You might also want to sample for diversity as in **heterogeneity sampling**. In both of these methods you know what you want – you are sampling with a purpose.

In **quota sampling**, you select people non-randomly according to some fixed quota. There are two types of quota sampling: *proportional* and *non proportional*.

In **proportional quota sampling**, you want to represent the major characteristics of the population by sampling a proportional amount of each. For example, if you know the population has 40% women and 60% men, and that you want a total sample size of 100, you will continue sampling until you get those percentages and then you will stop. So, if you already have the 40 women for your sample, but not the sixty men, you will continue to sample men. Even if legitimate female respondents come along, you will not sample them because you have already “met your quota.” The problem here is that you have to decide the specific characteristics on which you will base the quota. Will it be by gender, age, education, race, religion, etc.?

**Nonproportional quota sampling** is a bit less restrictive. In this method, you specify the minimum number of sampled groups you want in each category. Here, you are not concerned with having numbers that match the proportions in the population. Instead, you simply want to have enough to assure that you will be able to talk about even small groups in the population. This may be the method you prefer to use if you do not know the proportional numbers of the population you are considering.

You may also want to consider **heterogeneity sampling** when you want to include a diversity of opinions or views, and are not concerned about representing these views proportionately. Your primary interest is in getting a broad spectrum of ideas. In effect, what you would like to be sampling is not people, but ideas. Imagine that there is a universe of all possible ideas relevant to the issues you are examining and that you want to sample this population, not the population of people who have the ideas. Clearly, in order to get all of the



ideas, and especially the unusual ones, you have to include a broad and diverse range of participants.

### Creating the Questionnaire

You can find a template for creating a questionnaire on p. 95 at the end of the manual.

### **Question Types**

Open-ended questions do not provide choices from which to select an answer. Respondents must formulate an answer in their own words.

- Can be used when the main goal is to give survey respondents a chance to state strong opinions, or let you know what has been overlooked. For example at the end of a survey, respondents might be asked, “Is there anything else you would like to tell us about the subjects addressed in this questionnaire?”
- Can be helpful when they immediately follow a closed-ended question (which we discuss below) and ask respondents to explain why they selected a particular answer. E.g. Question 9 of the EXAMPLE QUESTIONNAIRE.
- Rarely provide accurate measurements or consistent, comparable information across the whole sample, and require an enormous amount of time to prepare for later entry into a computer.

**Closed-ended questions provide** a set of alternative choices from which the respondent can choose the answer.

- Can usually be answered quickly, relatively easy to score and analyze. Closed questions can be difficult to prepare because they require that all respondents interpret them the same way and that all relevant choices are included.
- In most circumstances, the number of answer choices should be kept to a relatively small number – just four or perhaps five at most – especially in telephone surveys.
- Basic types of response choices are:
  - *Yes/No*; e.g. question 8 of the EXAMPLE QUESTIONNAIRE.
  - *Ordered*; answer choices represents a gradation and fall on a continuum; e.g. question 10 of the EXAMPLE QUESTIONNAIRE.

- *Unordered*; answer choices are discrete, unordered categories which don’t fall on a continuum; e.g. question 5. of the EXAMPLE QUESTIONNAIRE.

### **EXERCISE: ANALYZING THE EXAMPLE SURVEY PROJECT**

This exercise is based upon the Cambodia case study introduced on page 8. You will recall that, in this example, you are tasked with analyzing access to justice in relation to disputes over unregistered land. You are studying three justice institutions: village chiefs, commune councils, and the land commission. You must pay particular attention to obstacles to access to justice for vulnerable groups, in this case women and indigenous peoples.

This exercise presupposes that you decide to conduct a survey with the example questionnaire on page 95 about the obstacles to access to justice for women and indigenous groups, who seek to assert ownership of unregistered land.

**PLEASE, ANSWER THE FOLLOWING QUESTIONS, BASED ON YOUR OWN LOGIC AND THE INFORMATION PROVIDED IN THE MANUAL.**

**Question 1:** Why would you choose the survey research method?

**Question 2:** Which sampling method would you choose and why?

**Question 3:** How would you determine the size of the sample?

**Would you use quotas? If yes, for which sub-groups?**

**Question 4:** Which survey method would you choose and why?

**Question 5:** Which question types are used in the example questionnaire and why?

**Question 6:** For which questions of the example questionnaire would coding be necessary?

**Question 7:** Please draw up a timetable for the survey project.





## SUGGESTED ANSWERS

### Question 1:

- The data you would like to collect is not available from secondary sources.
- You would like to find out what percentage of the population has a particular attribute and opinion
- You would like to generalize your findings to a large population.

**Question 2:** Any of the sampling methods might be good; the reasoning is important.

**Question 3:** Logical thinking is important to determine the sample size. *You might use quota sampling for women and indigenous groups.*

**Question 4:** Possible methods might be mail or drop-off surveys, although the questions can be used with other methods too.

### Question 5:

Open-ended: 1, 2, 3, 6, 9.

Closed-ended: 8 (Yes/No).

Ordered: 10.

Unordered: 4, 5, 7.

**Question 6:** Questions 4, 5, 7, 8.

**Question 7:** A possible timetable for the survey project might be:

### Survey project – Time planning

1. Scope and objective determination
2. Sampling process
  - 2.1. Target Population determination
  - 2.2. Sampling frame determination
  - 2.3. Sample selection
3. Decision about the survey method
4. Questionnaire composition
  - 4.1. Draft document preparation
  - 4.2. Questionnaire production
  - 4.3. Ancillary material (e.g. cover letter) production
5. Questionnaire pre-testing
6. Data collection
  - 6.1. Training and supervision
  - 6.2. Interviewer compensation
  - 6.3. Travel or telephone charges
  - 6.4. Questionnaire return costs
7. Data analysis
  - 7.1. Editing and coding
  - 7.2. Tabulation

### Pre-Test the Questionnaire

Pre-testing is conducted using a small sample of people from the survey population and the same method as the survey. Pre-testing a questionnaire is time consuming, but absolutely essential. It will help you to answer the following questions:

- Are all the words understood?
- Are the questions interpreted the same by all respondents?
- Are the questions answered correctly and in a way that can be understood?
- Are skip patterns (omission of not relevant questions) followed correctly?
- Is each question getting the information it is intended to get?
- Does the questionnaire create a positive impression that motivates people to respond?
- Do all closed-ended questions have an answer that applies to each respondent?

By providing an “*Other, please specify: \_\_\_\_\_*” option, you can make sure that this criteria is fulfilled.

- Does any part of the questionnaire suggest bias on your part?

E.g. the question “*Do you think bribery is wrong?*” would likely elicit a reflexive “Yes” response. The phrasing clearly indicates that the questioner believes that bribery is wrong and wants to know if the respondent agrees with him. Also, when phrased in this way, there can be multiple interpretations of the word “bribery.”

Alternatively, this question could be phrased as an agree/disagree question: “*It is not acceptable for public officials to ask for additional fees for their services.*” This phrasing removes the implicit value judgment of the question, but could still be subject to acquiescence bias. Less educated and less-informed respondents are more likely to agree with the statement in agree/disagree questions.

This bias can be reduced by using a choice format wherein respondents are offered two plausible and neutrally phrased statements, and asked to select the one with which they agree:

- “A. Public officials are not paid enough, so it is acceptable for them to ask for additional fees for good service.
- B. Public officials serve the public and it is not acceptable for them to ask for additional fees.”

### Collect and Enter Data

After you have finalized and pre-tested your questionnaire, you can start to collect data with the chosen survey method.

When you have the completed questionnaire, you can start to edit and code the survey data. The purpose of **editing** is to clean the questionnaires from obviously erroneous responses, extraneous notes and checking to make sure that each one tells a consistent story. **Coding** the questionnaires means expressing in terms of numbers all responses that will eventually be analyzed.

☞ For example if you ask people if they belong to an indigenous group, and the possible answers are “Yes” or “No,” you will need a numeric response so the data can be tabulated. You could code “Yes” = 1 and “No” = 2. In this way you can easily count the number of 1s and 2s.

### Analyze the Data

Survey data analysis uses statistical and qualitative **methods** to describe, compare, and interpret respondents’ answers to the survey’s questions.

**Descriptive statistics** provide simple summaries about the sample and the responses to some or all questions. Descriptive statistics for surveys include frequencies or frequency distributions (numbers or percentages), measures of central tendency (the mean, median and mode), and measures of variation (range and standard deviation). A descriptive perspective means that the aim of the data collection is to depict a justice procedure – its costs and quality. It just tells us how the justice procedure looks like in the eyes of its users, without getting deeper to explain why.

☞ For example you could report: “Having surveyed 82 women and indigenous people who had disputes over unregistered land in Ratanakiri province, Cambodia during the last five years, we found that 76% of them brought their complaint to the local village chief or commune council. 38% of these cases were referred to the land commission. Only 24% of all claims were initially brought to the land commission.”

**Content analysis** is used to analyze qualitative data for the purpose of drawing inferences about the meaning

of recorded information such as the open-ended responses and comments made by survey respondents. The explanatory perspective aims to address a wide array of “why” and “how” questions – why the outcome scores high or low, why some users pay more, how the perceptions on the procedural quality impact the outcome, etc.

☞ For example you could report: “76% of women and indigenous people who had disputes over unregistered land brought their complaint initially to the local village chief or commune council, instead of the land commission. The majority of them reasoned their decision with concerns about the prolonged process, as the Commission has no clear timeframe regulations for its procedures.”

The quality of a survey is best judged not by its size, scope, or prominence, but how much attention is given to dealing with all the many important problems that can arise.

**Suggestions how to reduce the four types of errors that affect accuracy:**

- (1) **Coverage error** occurs when the list – or frame – from which a sample is drawn does not include all elements of the population that you wish to study.
  - Make every reasonable effort to minimize coverage error by using or compiling the best sampling frame. Still, coverage error will probably remain a problem to some extent. It cannot be measured directly, but you can think about how it might affect the results. Consider who might have been excluded from the survey and how they might differ with respect to characteristics important to the study.
- (2) **Sampling error** is the degree to which a sample might differ from the population. It occurs when you survey only a subset or sample of all people in the population instead of conducting a census.
  - The level of sampling error can be controlled by selecting a smaller or larger sample. The hard decision is how much error you can tolerate.
- (3) **Measurement error** occurs when a respondent’s answer to a given question is inaccurate, imprecise, or cannot be compared in any useful way to other respondents’ answers.
  - Avoid obviously biased or vague questions and other areas where measurement error might creep into the results. One usually cannot say with any confidence how large the measurement error is, but it can be minimized with careful question wording, pretesting, and thorough interviewer training in telephone and face-to-face surveys.
- (4) **Nonresponse error** occurs when a significant number of people in the survey sample do not respond to the questionnaire *and* are different from those who do in a way that is important to a study.
  - Design a questionnaire and implement the survey so as to get the highest possible response rate. In this way, the chances of nonresponse error will be minimized. A low response rate serves as a warning that nonresponse error might be a problem.

**Cost saving tip:** If you have the chance, contact the statistics or sociology department at the local university! Professors and students might help you with your survey project.

**Response rate** is the number of persons who respond (numerator) divided by the number of eligible respondents (denominator). If 100 people are eligible and 75 completed surveys are available for analysis, the response rate is 75%. All surveys hope for a high response rate. No single rate is considered the standard, however.

## Tips for improving the response rate:

- Identify a larger number of eligible respondents than you need in case you do not get the sample size you need. Anticipate in advance the proportion of respondents who may not be able to participate because of survey circumstances (such as incorrect addresses) or by chance (they suddenly get ill).
- Provide options for completing the survey. Some people prefer online surveys, whereas others prefer telephone or mail surveys.
- Be precise in describing how privacy is safeguarded.
- Make certain the questions are understandable to the respondents, to the point, and not insensitive to their sociocultural values.
- Use trained personnel to recruit respondents and conduct surveys.
- Send reminders to non-respondents.
- Provide gift or cash incentives.
- Pay attention to the design of your questionnaire, as people are more willing to respond to attractive questionnaires.

## 5. Case Observations /Visits

### a. What are observations?

Collecting information through observations means attending a hearing and *observing* and *analyzing* what takes place. Observation can help you to discover the procedure a justice institution uses to resolve disputes and to analyze its strengths and weaknesses.

### b. How should you carry out observations?

As with all research techniques, it is important to take a systematic approach to observations. This section divides observation-based research into four stages: **planning; gaining access; observing a hearing; and analyzing the results.**

### *Planning your Observations*

Prior to beginning your observations, plan the number, location, and times of the hearings you will visit. Plan to observe a sufficiently diverse range of hearings. This will allow you to state that the common practices you observe reflect those of the majority of justice institutions you are studying. To do this, plan to observe hearings in different locations and involving different parties, mediators/or adjudicators and issues.

- Where possible, plan to use multiple researchers to observe similar hearings. This reduces the risk that one researcher's preconceptions will cause him to misreport what took place.

### *Gaining Access*

Once you begin your observations, the first challenge you will face is obtaining access to the hearings you want to observe. Because you are seeking to observe private or sensitive cases, it might be difficult for you to get permission to be present or to talk to the persons involved. Keep in mind the following tips when seeking to gain access to hearings:

- Choose appropriate observers

Be aware that certain types of people will be more welcome at hearings than others. Try to use observers who can relate to the people involved, keeping in mind ethnicity, gender, and professional status.

- When in doubt, ask permission

If you are unsure as to whether you are allowed to observe a hearing, ask for permission. Ensure that you give a simple, clear, and non-provocative explanation as to the purpose and scope of your research.

- Don't compromise safety

Some people, including the parties to a case or government officials, might not support the aim of your study or might disagree with an outsider observing private and sensitive matters. Remain aware of threats to the safety of yourself and your colleagues at all times.

- Keep in mind that your presence as an observer at a hearing may affect how people behave. Try to take steps to reassure people about your presence and encourage them to act “normally.” You might do this by, for example, explaining the purpose of your research and guaranteeing that the names of those persons involved will not be shared.

### Observing a Hearing

When you observe a hearing, the quality of the information you obtain depends on your ability to accurately record and interpret what takes place. Prior to beginning your observations, ensure that you have a clear sense of the questions you want answered. Be alert and sensitive to relevant information as events unfold. Once the hearing has finished, consider interviewing the persons involved. These interviews can help you clarify what happened and allow you to ask people why they acted as they did.

Be diligent about taking notes during your observations. Notes are extremely important because they are your evidence of what you observed; they protect the credibility of your research. It is nearly impossible to take good notes while you are observing a hearing, as frantic writing means missing key details. Instead, write short, “jotted” notes and write full and comprehensive notes immediately after the hearing. Your notes may contain the following information:

- Heading: Date, time, place of observation, nature of dispute and persons involved.

- Description of what you see and hear: The bulk of your notes should be a description of everything you saw and heard as the hearing unfolded. Try to make your notes as detailed as possible, including, where possible, exact records of conversations. Even include details that did not appear relevant to your assessment at the time. As your understanding of your subject deepens, your assessment of what is relevant, and what is not, will change. Finally, be careful to distinguish between what you actually see and hear and what you infer. For example, you cannot observe someone is angry, but instead infer it from their behavior. Ensure you note down sufficient observations to justify any inference that you draw. If you notice someone is angry, note down how you know they are angry!
- Comments: Supplement your description of what you see and hear with your commentary of the hearing. Distinguish comments from observations by underlining or writing in a different color.

- We have emphasized a number of times the importance of taking detailed notes. The more detailed your description of what took place, the more evidence you have to support your analysis of the hearing. For example, imagine that two people are observing a criminal trial. The defense attorney questions the complainant.

The first observer notes, *Defense attorney questions complainant about the crime. Questioning lasted for 10 minutes.* Comment: Attorney's questions were clear and comprehensive.

The second observer writes: *Defense attorney questions complainant about the crime. I found it hard to understand many of his questions. Complainant often asked attorney to repeat his questions. Attorney questioned complainant about events leading up to crime, but not the day of crime itself.* Comment: Attorney's questions were neither clear nor comprehensive.

Imagine that you are asked to choose between these two observers' analyses. Which would you choose? Isn't the second observer's analysis much more credible because his notes provide evidence to support his conclusion?

**Analyzing Observations**

The purpose of analyzing observations is to discover common practices among the hearings that you observed, and to consider the strengths and weaknesses of those common practices.

To analyze your research, summarize the notes you made during each observation, organizing them into key topics such as “legal representation” or “reasons given for decision.” Use the same key topics for each hearing.

Next, examine all your notes that relate to each key topic for all hearings – notes on “legal representation” for hearing 1, hearing 2, hearing 3.

Can you identify commonalties regarding each key topic among the hearings you observed? For example, you might write: In hearings 1, 2 and 3, the quality of legal representation was poor.

If you identify such commonalties, incorporate them into your report. You might say, “Based on our observations, the quality of legal representation was poor.” If you cannot identify commonalties, this might in itself be significant to your research: “the quality of representation was variable.”



# SECTION IV.

## ORGANIZING AND ANALYZING DATA

This section considers how to organize and analyze the information that you have collected during your research. The key to analyzing large amounts of information is to organize it in a clear and simple way that allows you to compare and contrast information quickly and easily. Below, we explain a simple and efficient way to organize the data that you collect during your research. This approach aims to organize data according to the planned structure of your final report. This will allow you to write each section of your report using the data you have collated for that particular section.

**Organizing Data.** To organize the data you collect during your research, first create an “outline” of your final report. As you start your research, insert the data that you collect into your outline. Take care to insert data into the correct sections of the outline. Information should be placed under the headings or subheadings for which it is relevant. If information is relevant to multiple headings, insert it in multiple places. Each time you insert information into

your outline, be careful to record its source in detail. You will have to cite this source if you refer to the information in your final report.

Let’s use an example to show how to organize data in the way described above. Imagine that your report follows the same proposed structure as the suggested answer on page 49. During your research, you interview an official from the land commission, a Mr. Akara Mey. You take extensive notes during the interview. Later that day, you organize your notes, inserting the official’s testimony into the relevant parts of the outline of your report. Among your notes is the official’s statement that citizens are not charged a fee to use the land commission. You decide that this is relevant to whether the land commission is affordable. The official also referred you to a website which has relevant statistics on how long the commission takes to process disputes. You believe that this is relevant to how fast the land commission processes cases. You insert the statements into your outline in the way shown in the box below:

### ACCESS TO A JUSTICE INSTITUTION

#### C. Land Commission

4.1 To what extent is using the justice institution affordable?

*Citizens are not charged a fee to use the land commission, Interview, Mr. Akara Mey, Land Commission official, 05/12/2010.*

4.2 To what extent is the justice institution accessible?

4.3 To what extent does the justice institution process cases in a timely manner?

*Website ([www.landcommission.com/processingtimes](http://www.landcommission.com/processingtimes)) states how long commission take to process disputes, Interview, Mr. Akara Mey, Land Commission official, 05/12/2010.*

**Analyzing Data.** Once you have organized all your data, you will have a record of all the information available to you to write your report, arranged according to your report's proposed structure. During the analysis phase, you should analyze this data to identify what information is sufficiently significant to be included in your final report. Each person likely has his or her own way of doing this. Some people may simply read in detail the data they have collected and begin writing the paragraphs of their report. Others use a colored pen to highlight key pieces of information and then begin report writing. Whatever approach you take, consider the following points when deciding what information should be included in your final report:

- ***Focus on Key Points***

You cannot include all the information you collected in your report. As you pore over the outline of your report, you will begin to develop a picture of the key points affecting each issue your report will discuss. In your final report, concentrate on conveying these key points to the reader.

- ***Remember the Importance of Accuracy***

Because you want your report to be reliable, a central consideration in deciding what information to include is whether that information is accurate. There is no

surefire approach to determining whether information is correct. However, the following are useful tips:

- ***Trust your own judgment***

A key check on the accuracy of information is the insight and awareness of you and your fellow researchers. You should assess the credibility of the people with whom you spoke during your research, and only include information that you believe is accurate.

- ***Remember triangulation***

Keep in mind our earlier discussion on the importance of triangulation. Where the information you receive is confirmed by a number of different observers and/or has been obtained through a variety of research methods, it is more likely to be accurate.

- ***If in doubt, acknowledge it***

If you have some doubt as to the accuracy of certain pieces of information, but wish to include them in your report, explain your misgivings about this information in your report. For example, if you are worried that one group of interviewees only expressed a particular view to further their own ends, acknowledge this risk in your report.

# SECTION V.

## WRITING ASSESSMENT REPORTS

### A. INTRODUCTION

This part of the manual discusses how to write an access to justice assessment report. It lays out a sample structure for reports, including the basic contents of each section and some suggested guidelines on style. You can find a template for completing your access to justice assessment report at the end of this manual.

Before discussing your report in more detail, it is important to emphasize two key elements of report writing.

- First, all points made must be supported by evidence that is cited in your report. It must be clear from your writing that the information contained therein is the product of careful and systematic research and is not just your own opinion or that of your colleagues.
- Second, you should not mention the names of people or organizations that you interviewed during the assessment unless they gave you their express permission and, even then, only if you are certain they will not face adverse consequences.

### B. STRUCTURE OF AN ACCESS TO JUSTICE REPORT

Note: You will remember that we discussed above how to plan a proposed structure for the main body of your report. While later in this section we outline how to finalize the main body text, this section also discusses other important sections of a report.

#### EXECUTIVE SUMMARY: 2-3 PAGES

The Executive Summary is a synopsis of the conclusions in your report as well as a chance to outline the reforms you recommended to improve access to justice. You should write the executive summary only after completing the report's main body text. A model Executive Summary should include the following headings:

- *Overall Summary*: Summary of the contents of your report.
- *Recommendations*: Recommendations for a reform program to address the obstacles to access to justice identified in your report. Your recommendations should be organized as short-term, medium-term, and long-term reforms (use those terms as sub-headings).

- When developing recommendations, try to think of short, medium and long-term reforms to address each of the obstacles to access to justice that you have identified. Short-term reforms are inexpensive “quick-fixes” that a government would find easy to implement within 6-12 months but which could produce tangible improvement in access to justice. Medium-term reforms take longer for governments to implement (1-3 years), but have a more significant effect on access to justice. Long-term reforms address the root causes of the obstacles to access to justice and are the most difficult to put in place (3+ years).

Let's consider an example of short-, medium- and long-term reforms. One obstacle to access to justice might be a lack of legal advice and representation in a remote rural region. A short-term reform to address this obstacle would be a traveling lawyers program, whereby lawyers travel twice monthly to the region to provide legal advice. This, however, would only partially address the problem of a lack of legal representation. Medium-term reforms might better address the problem by, for example, providing start-up grants for legal clinics or law firms operating in the region. Long-term reforms would address the root causes of a lack of legal services in rural areas by, for example, developing a better infrastructure to link rural and urban areas.

**INTRODUCTION: 2–3 PAGES**

Your introduction should cover:

- *A definition of access to justice.*
- *Why access to justice is particularly important in your region or country.* Explain why individuals need to be able to access the legal system to protect their rights and, very briefly, the obstacles to doing so they face.
- *The purpose of this report.*
- *The structure of this report.* Explain how the report is structured, describing how it breaks access to justice down into six stages (include a diagram of the six stages) as well as how you have organized information relating to different justice institutions or vulnerable populations.

**METHODOLOGY: 2–3 PAGES**

The methodology section describes how you collected the information contained in your report, demonstrating that you applied a systematic and comprehensive approach. It should contain the following sections:

- *Background Research:* Describe the background research that you undertook. Where relevant, explain how this background research guided you in identifying which legal issues, regions or populations your assessment should focus on.
- *Data Collection Methodology:* Outline your data collection methodology, showcasing the systematic approach you developed to collecting information.
  - Describe the data collection methods you adopted (for example, focus groups or interviews) and explain why you chose those particular methods.
  - For each method, explain how you implemented that data collection method, demonstrating that you followed the necessary steps to ensure information collected is valid. For example, if you used focus groups to collect information, under a subheading titled “focus groups” explain: Who attended the groups and why? How did you find focus group participants? Who moderated the focus groups? How were the results analyzed?

- *Assessment Team and Credits:* Describe, briefly, the members of the team that carried out the assessment. Remember to explain that your assessment was funded by the United States Agency for International Development, was implemented in partnership with ABA ROLI and was based upon this training manual, The Access to Justice Assessment Tool: A Guide to Analyzing Access to Justice for Civil Society Organizations.

**GLOSSARY: 2–3 PAGES**

Reports should have a glossary explaining all key terms and acronyms, including all those terms that are written in a local language. The glossary can also appear at the end of the report as an Appendix.

**COUNTRY OR REGION BACKGROUND: 5–7 PAGES**

The country background section report gives the reader an overview of the political and legal situation in the country, to ensure that they will understand the main body of the report. It should include the following sections:

*Basic background information:*

- 1–1.5 pages: Overview of the history of the country, from founding until present, with a focus on current events that will be particularly relevant to access to justice (e.g. civil wars, political upheaval).
- 1–2 pages: Introduction to demographics of country: geography; economic performance; population; religious and ethnic breakdowns; other relevant demographics.

*Legal context:*

- 1–2 pages: Introduction to government and legal structure of the country, including information on the structure of the state and non-state legal systems.
- 1–2 pages: Discussion of government institutions and non-government institutions most active in access to justice issues.
- 2–3 pages: Introduction (with full citations) to relevant laws affecting access to justice, including the Constitution, laws establishing the state court system, laws on legal assistance, and laws on criminal and civil procedure.

**KEY LEGAL ISSUES AND POPULATIONS: 3–4 PAGES***Key Legal Issues*

Where your report concentrates on certain legal issues that you identified as important during your background research, describe why you decided to focus on these issues. Explain, for example, that these legal issues are the most important to citizens, giving evidence to support this claim. Where possible, explain that an analysis of access to justice, even if limited to particular legal issues, is likely to impact access to justice across all rights.

*Key Population Groups*

Your report may also focus on particular groups of people, whether those groups are demarcated by ethnicity, religion, or area of residence. If that is the case, begin your report by explaining why you have chosen to focus on these populations. Describe how and why these groups face the most significant obstacles to access to justice and explain that reforms that improve access to justice for the most disadvantaged are likely to raise the level of access to justice for everyone.

*Key Justice Institutions*

Finally, your report may focus on particular justice institutions that serve your target populations or the specific legal issues you are examining. If that is the case, begin your report by explaining why you have chosen to focus on these justice institutions. Describe how and why these justice institutions are most significant to your target populations or legal rights and explain that targeting these justice institutions has the most potential to improve access to justice.

**MAIN BODY OF REPORT: 30–50 PAGES**

We have already discussed how to structure the main body of your report above, as well as how to organize and analyze the data you have collected to fit within that structure.

Following the analysis phase, you will have a good sense of the information you want to include in your report. All that is left to do is to present that information in the appropriate way. When writing your report, aim to write a report with the following characteristics:

- *Clear:* You want your report to be accessible to a wide range of people who can advocate for the changes you recommend, including politicians, journalists and community activists.
- *Powerful:* You want your report to persuade people that the reforms you recommend are necessary. To do this, your report must demonstrate that current obstacles to access to justice have a profound impact on people's everyday lives and prove that the reforms you propose could significantly improve the status quo. To make your report powerful, include quotes, statistics and real-life examples to illustrate the points that you are making.
- *Well-Reasoned:* We've said it before, and we'll say it again. If your report is to carry any weight, the points it makes must be supported by evidence cited in your report.

**C. STYLE GUIDELINES**

Some organizations have their own in-house writing styles and guidelines. The guidelines below are a selection of those currently applied by ABA ROLI. Please disregard them if they are in conflict with your own in-house style.

**i. General rules**

- Text of the entire report should be fully justified.
- There should be two spaces between sentences.
- All citations should be included in footnotes.
- Footnotes should be limited. They can be used to provide an interesting piece of information that does not constitute a crucial part of the analysis; background context; or an explanation of a term/phenomenon.



## ii. Fonts

TEXT	STYLE	SIZE	CAPS
<b>Headings</b> (Introduction, Executive Summary, Country Background, Glossary, Elements,)	Bold	16	Each word
<b>Subheadings</b> • First level subheadings • Second level subheadings	Bold Bold Italic	14 12	Each word Each word
<b>Footnotes</b>	Regular	10	N/A
<b>Table Headings</b>	Bold	10	All caps
<b>Content Paragraphs</b> (within Introduction, Executive Summary, Country Background, and Analysis)	Regular	12	N/A

## iii. Numerals

As a general rule, numbers 0–10 should be spelled out. For higher-order numbers, numerals should be used. The following exceptions apply:

ISSUE	RULE	EXAMPLES
Percentages and monetary amounts	Always numerals	5%; 35%; USD 2; USD 350
Article numbers	Always numerals	Art. 5
Number begins a sentence	Avoid or spell out	Fifty judges attended the event OR ABA ROLI organized the event, in which 50 judges participated.
Number includes a decimal point	Always numerals	5.6; 10.27
Number contains four or more digits	Use comma to separate groups of three digits	7,350; 250,456
Sentence includes multiple numbers	Always numerals	The office purchased 5 desks, 3 computers, and 15 chairs. The offense is punishable by imprisonment of 5 to 12 years.

## iv. Symbols

- Usage of dollar (\$) symbol should be avoided.
- Currency code should be placed before each monetary amount. There should be one space between a code and a numeral, e.g., USD 1,234.  
Percent (%) symbol should be used instead of “percent” phrase.
- There should be no space between percent (%) symbol and a numeral, e.g., 35%.

Monetary amounts in foreign currencies should be converted into their US dollar equivalents. Both amounts

should be included in the report, e.g., MXN 200 (approximately USD 20). When a conversion is used for the first time in the report, the following footnote should be inserted:

In this report, [country] [currency] are converted to United States dollars at the average rate of conversion at the time when the [tool] interviews were conducted (USD 1.00 = [foreign currency code] [amount]).

ABA ROLI relies on a currency exchange rate published on OANDA, <http://www.oanda.com>, a historical online currency converter. Go to Currency Tools menu at the top of the



page, select Historical Currency Converters, and then select Historical Exchange Rates (you can also access this page directly at <http://www.oanda.com/currency/historical-rates>). From that page, enter the date when the assessment started as the starting date and the date when the first draft of the assessment was completed as the ending date; select appropriate currency codes, choose “Interbank rate,” and press “Get table.” Scroll down to the bottom of the generated table, where you will find the average exchange rate for the selected period. In quoting the rate, use two decimal points.

#### v. Dates

- Correct format examples: May 6, 2008; Jan. 20, 1999. Short forms for months should be used, e.g., Jan., Mar., Aug., etc.

#### vi. Citations and Acronyms

- Usage of citations and acronyms should be consistent throughout the entire report. E.g., if a short form for “Constitution” is introduced as Const., all subsequent citations should refer to Const., rather than Federal Const. or Constitution.
- **Acronyms should be introduced** when a phrase in need of an abbreviation is used for the first time in either of the following sections: Country Background or Main Body of Report. Once an acronym is introduced, the full phrase should not be used again in the text of the report. Acronyms are created by using the word “hereinafter” enclosed in square brackets, e.g., State Examination Commission [hereinafter SEC]. Each acronym must be explained in the List of Acronyms that appears at the end of the report.
- **Short citation form should be introduced** any time a law or other source is cited for the first time, unless a particular source is referred to in the entire report only once. However, citations should not be used or created in Executive Summary. Once a short citation form is created, the full citation should not be used again. Short citations are created by using the word “hereinafter” enclosed in square brackets, e.g., CONSTITUTION OF THE REPUBLIC OF ARMENIA art. 89(5) (*adopted July 5, 1995, as amended*) [hereinafter CONST.]. They should be based on titles rather than on numbers of laws or regulations.
- **Full citation should provide sufficient identifying information** for the source, including, at a minimum, the date of promulgation and the date of last amendments (if applicable); and, in the case of a regulation, reference to the government body that adopted it. Every effort should also be made to provide the number of a particular law or regulation. It is also helpful to cite to official sources where laws were first published. However, because laws are published differently in different countries, law numbers or official sources sometimes will not be available.
- **Internet sources** should be cited only if a print version of a given document is unavailable or very difficult to find. Parallel citations should be avoided. E.g., if a report is published both in print and online, only a citation of the print source should be provided.

*Specific citation rules*

SOURCE	RULE	EXAMPLES
<b>Laws</b>	<p>LAW TITLE art(s). . . . (Law No. . . . , <i>adopted</i> Date, OFFICIAL SOURCE, <i>as amended</i> Date) [hereinafter SHORT TITLE].</p> <p>OR</p> <p>LAW TITLE art(s). . . . (Law No. . . . , <i>adopted</i> Date, OFFICIAL SOURCE, <i>last amended</i> Date) [hereinafter SHORT TITLE].</p>	<p>POLITICAL CONSTITUTION OF THE UNITED MEXICAN STATES art. 5 (<i>adopted</i> Feb. 5, 1917, OFFICIAL JOURNAL OF THE FEDERATION [hereinafter D.O.], <i>as amended</i>) [hereinafter CONST.]</p> <p>CONSTITUTION OF THE REPUBLIC OF ARMENIA arts. 5(1), 18 (<i>adopted</i> Jul. 5, 1995, <i>as amended</i> Nov. 27, 2005 through a national referendum) [hereinafter RA CONST.]</p> <p>LAW OF THE REPUBLIC OF ARMENIA ON EDUCATION art. 36(1) (<i>adopted</i> Apr. 14, 1999, <i>last amended</i> May 10, 2005) [hereinafter LAW ON EDUCATION]</p> <p>LAW ON THE ORGANIZATION AND FUNCTIONING OF THE JUDICIAL POWER art. 3 (Law No. 8436, <i>adopted</i> Dec. 28, 1998) [hereinafter LAW ON JUDICIAL POWER]</p>
<b>Regulations</b>	REGULATION OF INSTITUTION ON TITLE/SUBJECT art(s). . . . (Act No. . . . , Date, <i>as amended</i> /last amended Date) [hereinafter SHORT TITLE].	DECISION OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA ON PROCEDURE FOR STATE ACCREDITATION OF INTERMEDIATE AND HIGHER PROFESSIONAL EDUCATIONAL ESTABLISHMENTS AND PROFESSIONS THEREOF (Decision No. 372, Jul. 7, 2000) [hereinafter STATE ACCREDITATION PROCEDURE].
<b>International treaties</b>	TREATY TITLE art(s). . . . ( <i>adopted by</i> Document, Date, <i>as amended by</i> Protocol, Date, <i>ratified</i> Date) [hereinafter SHORT TITLE]	<p>EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS art. 6 (Nov. 4, 1950, <i>as amended by</i> Protocol No. 11, Nov. 1, 1998, <i>ratified</i> ) [hereinafter EUROPEAN CONVENTION ON HUMAN RIGHTS]</p> <p>INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS art. 26 (<i>adopted by</i> the UN General Assembly Resolution No. 2200A/XXI, Dec. 16, 1966, <i>ratified</i> Jun. 11, 1993) [hereinafter ICCPR]</p>
<b>International caselaw</b>	<i>Decision Title</i> art(s)./§(§) . . . , Issuing court Decision No. (date).	<i>Turcan and Turcan v. Moldova</i> §§ 61-64, ECHR No. 39835/05 (Jan. 23, 2008)

SOURCE	RULE	EXAMPLES
<b>Books / Non-periodic materials</b>	FIRST AUTHOR & SECOND AUTHOR, TITLE at Pg. # (Editor or edition ed(s)., Publisher Year)  If a work has more than two editors, list the first name followed by "et al."	DAVID BATSTONE, NOT FOR SALE: THE RETURN OF THE GLOBAL SLAVE TRADE – AND HOW WE CAN FIGHT IT at 57(1st ed., HarperCollins 2007)  AIDS AND THE LAW at 3-15 (Harlon L. Dalton et al. eds., 1987)
<b>Institutional author</b>	OVERALL INSTITUTION, SMALLEST SUBDIVISION THAT PREPARED THE WORK, TITLE at Pg. # (Year)  If an individual author is credited on the cover or title page, list the individual author first, followed only by the overall institutional body (no subdivisions)	U.S. DEPARTMENT OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, TRAFFICKING IN PERSONS REPORT 2007 at 57 (2007)  DAVID HAWK, FREEDOM HOUSE, CONCENTRATIONS OF INHUMANITY at 23 (2007)
<b>Chapters &amp; Shorter Works in Book or Collection</b>	Author, <i>Title</i> , in TITLE OF THE BOOK/ COLLECTION at Pg. # (Editor or edition ed(s)., Publisher Year)	FREEDOM HOUSE, <i>Moldova</i> , in NATIONS IN TRANSIT 2008: DEMOCRATIZATION FROM CENTRAL EUROPE TO EURASIA at 416 (2008) [hereinafter NIT 2008]  U.S. DEPARTMENT OF STATE, <i>Moldova</i> , in COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2008 (Feb. 25, 2009) [hereinafter STATE DEPT. HUMAN RIGHTS REPORT]  Derek Matyszak, <i>Creating a Compliant Judiciary in Zimbabwe</i> , 2000-2003, in APPOINTING JUDGES IN AN AGE OF JUDICIAL POWER: CRITICAL PERSPECTIVES FROM AROUND THE WORLD at 332 (Kate Malleson & Peter H. Russell eds., University of Toronto Press 2006)
<b>Series</b>	AUTHOR, TITLE at Pg. # (Organization, Series Title No. . . ., Year)  Author, <i>Title</i> , in TITLE OF THE BOOK/ COLLECTION at Pg. # (Organization, Series Title No. . . ., Year)	ALAN AUERBACH, NATIONAL SAVINGS, ECONOMIC WELFARE, AND THE STRUCTURE OF TAXATION at 23-24 (National Bureau of Economic Research, Working Paper No. 729, 1981)  Anne C. Vladeck, <i>Counseling a Plaintiff During Litigation</i> , in EMPLOYMENT LITIGATION 1990 at 77, 80-87 (PLI Litigation & Administrative Practice Course, Handbook Series No. 386, 1990)

SOURCE	RULE	EXAMPLES
<b>Periodicals Journals</b>	Author, <i>Title</i> , Journal Volume # NAME OF JOURNAL Pg. # (Year)	Arturo Carrillo, <i>Bringing International Law Home: The Innovative Role of Human Rights Clinics in the Transnational Legal Process</i> , 35 COLUMBIA HUMAN RIGHTS LAW REVIEW 527-534 (2004)
<b>Newspapers</b>	Author, <i>Title</i> , NAME OF NEWSPAPER at Pg. # (Date).	Vehbi Kajtazi, <i>Special Prosecution Office Reinitiates Investigations against Judge Selman Bogiqi</i> , KOHA DITORE (May 5, 2009)
<b>Newsletters, Non-commercial Periodicals</b>	Author, <i>Title</i> , NAME OF NEWSLETTER at Pg. # (Institution, Date)	<i>Curbing Extrajudicial Killings in the Philippines</i> , RULE OF LAW INITIATIVE UPDATE (ABA ROLI, Feb. 13, 2008).
<b>Letters, Memoranda</b>	Letter (Memorandum) from Name, Position/Institution to Name, Position/Institution (Date)	Letter from Zbigniew Ćwiąkański, Minister of Justice of the Republic of Poland, to ABA ROLI (Apr. 4, 2008)
<b>Press releases</b>	Press Release, Institution, Title (Date)	Press Release, American Bar Association, ABA Criminal Justice Section Recaps Year Filled with White Collar Crime, Death Penalty and Detainee Cases (May 2, 2008)
<b>Internet</b>	Traditional citation, <i>available at</i> Internet address	U.S. DEPARTMENT OF STATE, OFFICE TO MONITOR AND COMBAT TRAFFICKING IN PERSONS, TRAFFICKING IN PERSONS REPORT 2007 at 57 (2007), <i>available at</i> <a href="http://www.state.gov/g/tip/rls/tiprpt/2007">http://www.state.gov/g/tip/rls/tiprpt/2007</a> .

### Common signals & short citations

*Id.* at Page #

*Id.* art. #

*See*

*See also*

*See also* Factor 3 above (below) for additional details

*See generally*

*See, e.g.,*

*See id.* at Page #

*See id.* art. #

# APPENDICES

## APPENDIX 1: HUMAN RIGHTS STANDARDS

This section contains key human rights standards concerning access to justice. You do not need to refer to human rights standards in your reports, but they will be a useful tool as you advocate for your recommendations to be adopted. Human rights standards are useful as an advocacy tool because they represent either a legal obligation or a best practice with which a state should comply.

- **A LEGAL OBLIGATION:** If your country is party to a human rights treaty, your country is *required by law* to comply with the standards contained in the treaty. Where this is the case, emphasize during your advocacy that your country is *required by law* to comply with relevant human rights standards. The text below, An Introduction to Key Human Rights Treaties, explains how to check which countries are bound by which treaty.
- **A BEST PRACTICE:** As well as a legal obligation for many states, human rights standards represent agreed-upon best practices that states should follow to protect their citizen's rights. Human rights treaties, whether regional or international, are created through a collaborative process. For example, the International Covenant on Civil and Political Rights was adopted unanimously by 106 nations in the United Nations General Assembly.<sup>1</sup> Treaties subsequently gain widespread recognition and acceptance, as more countries sign them and agree to comply with their standards. During your advocacy, you might argue that, because a particular human rights treaty has gained such widespread acceptance, it represents a best practice that your country should aspire to. If your country ignores this standard, it is denying its own citizens those rights which citizens in neighbor states enjoy.

The human rights standards we refer to in this manual are divided into two categories.

- **HUMAN RIGHTS STANDARDS: ACCESS TO JUSTICE IN GENERAL:** The first category of human rights standards underscores the importance of access to justice itself. These standards require countries to provide citizens with access to a justice institution to solve their problems (or, in the language used in many of the treaties, it requires that citizens receive an effective remedy to protect their rights). During your advocacy, you could use these standards to emphasize the importance of access to justice. For example, you could say to a government official, "You should provide citizens with access to justice by adopting the recommendations in our report, because access to justice is required by human rights law. The International Covenant on Civil and Political Rights Article 2(3) requires that every country must ensure that persons who claim that their rights or freedoms have been violated have their claim adjudicated by a judicial, administrative, or legislative authority. By denying citizens access to our justice system, you are denying them this right."
- **HUMAN RIGHTS STANDARDS: ELEMENTS OF ACCESS TO JUSTICE:** The second category of standards requires countries to provide citizens with many of the elements of access to justice outlined in Section I of our manual. You could use these standards to emphasize the importance of one or more elements. For example, you could say to a government official, "You should provide poor citizens with free legal advice and representation in criminal cases by adopting the recommendations in our report, because it is required by human rights law. The International Covenant on Civil and Political

Rights Article 14(3) (d) requires that criminal defendants have free legal assistance assigned to them where the interests of justice require it and they do not have sufficient means to pay.”

## AN INTRODUCTION TO KEY HUMAN RIGHTS TREATIES

### INTERNATIONAL:

*International Covenant on Civil and Political Rights:* The ICCPR was adopted by the United Nations General Assembly on December 16, 1966.<sup>2</sup> To be subject to the treaty, states have to consent to be bound by it and a list of states who have done so is available on the website of the United Nations Office of the High Commissioner for Human Rights.<sup>3</sup> Compliance with the ICCPR is monitored by the United Nations Human Rights Committee, a body of independent experts from a range of different countries. The Committee’s rulings and comments are authoritative interpretations of the ICCPR.

### REGIONAL:

*African Charter on Human and People’s Rights:* The African Charter on Human and People’s Rights was adopted by a unanimous vote of the Organization of African Unity (now the African Union) in an Assembly Meeting in 1981.<sup>4</sup> The Charter is a human rights treaty and all African Union member states are legally obligated to respect the rights therein. Implementation of the Charter is monitored by the African Commission on Human and People’s Rights. The African Court on Human and Peoples’ Rights rules on alleged violations of the rights and freedoms guaranteed in the charter.

*American Convention on Human Rights:* The American Convention on Human Rights is a human rights treaty and was adopted by the Organization of American States (OAS) in 1969.<sup>5</sup> To be subject to the treaty, states must have consented to being bound by the treaty’s terms. Currently, according to the OAS website, 24 of its 35 members are bound by the ACHR.<sup>6</sup> The Inter-American Court of Human Rights interprets the ACHR and adjudicates allegations of violations of convention rights. The Inter-American Commission on Human Rights monitors state compliance with the ACHR.

*Arab Charter on Human Rights:* The Arab Charter on Human Rights was adopted by the Council of the League of Arab States on May 22, 2004. To be subject to the Charter, members of the Arab League have to agree to be bound by its terms. The Charter entered into force on 15 March 2008. The Charter provides for an Arab Human Rights Committee to monitor implementation of the Charter’s rights.

*European Convention on Human Rights:* The European Convention on Human Rights is a human rights treaty and all members of the Council of Europe are legally obliged to respect the rights contained therein.<sup>7</sup> Individuals who believe their Convention rights have been violated can, after exhausting their avenues of appeal in domestic law, bring a case before the European Court of Human Rights. The court’s rulings are authoritative interpretations of the ECHR.

## ACCESS TO JUSTICE IN GENERAL

### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**Article 2(3)** Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the justice system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

**Article 14(1)** All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.



## AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

**Article 7(1)** Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

**Article 19** All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

*African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.*

### C. Right to an Effective Remedy

- (a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.
- (b) The right to an effective remedy includes:
  - (i) access to justice;
  - (ii) reparation for the harm suffered;
  - (iii) access to the factual information concerning the violations.
- (c) Every State has an obligation to ensure that:
  - (i) any person whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body;
  - (ii) any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities;
  - (iii) any remedy granted shall be enforced by competent authorities;
  - (iv) any state body against which a judicial order or other remedy has been granted shall comply fully with such an order or remedy.

## ELEMENT 3 ADVICE AND REPRESENTATION

### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**Article 14(3)** In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees:

- (d) to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

## AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

**Article 7(1)** Every individual shall have the right to have his cause heard. This comprises:

- (c) the right to defense, including the right to be defended by counsel of his choice.

*African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.*

### G. Access to Lawyers and Legal Services

- (a) States shall ensure that efficient procedures and mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, color, ethnic origin, sex, gender, language, religion, political, or other opinion, national or social origin, property, disability, birth, economic or other status.
- (b) States shall ensure that an accused person or a party to a civil case is permitted representation by a lawyer of his or her choice, including a foreign lawyer duly accredited to the national bar.
- (c) States and professional associations of lawyers shall promote programs to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental rights and freedoms.

## H. Legal Aid and Legal Assistance

- (a) The accused or a party to a civil case has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused or party to a civil case if he or she does not have sufficient means to pay for it.
- (b) The interests of justice should be determined by considering:
  - (i) in criminal matters:
    - (1) the seriousness of the offence;
    - (2) the severity of the sentence.
  - (ii) in civil cases:
    - (1) the complexity of the case and the ability of the party to adequately represent himself or herself;
    - (2) the rights that are affected;
    - (3) the likely impact of the outcome of the case on the wider community.
- (c) The interests of justice always require legal assistance for an accused in any capital case, including for appeal, executive clemency, commutation of sentence, amnesty or pardon.
- (d) An accused person or a party to a civil case has the right to an effective defense or representation and has a right to choose his or her own legal representative at all stages of the case. They may contest the choice of his or her court-appointed lawyer.
- (e) When legal assistance is provided by a judicial body, the lawyer appointed shall:
  - (i) be qualified to represent and defend the accused or a party to a civil case;
  - (ii) have the necessary training and experience corresponding to the nature and seriousness of the matter;
  - (iii) be free to exercise his or her professional judgment in a professional manner free of influence of the State or the judicial body;
  - (iv) advocate in favor of the accused or party to a civil case;
  - (v) be sufficiently compensated to provide an incentive to accord the accused or party to a civil case adequate and effective representation.
- (f) Professional associations of lawyers shall co-operate in the organisation and provision of services, facilities and other resources, and shall ensure that:
  - (i) when legal assistance is provided by the judicial body, lawyers with the experience and competence commensurate with the nature of the case make themselves available to represent an accused person or party to a civil case;
  - (ii) where legal assistance is not provided by the judicial body in important or serious human rights cases, they provide legal representation to the accused or party in a civil case, without any payment by him or her.
- (g) Given the fact that in many States the number of qualified lawyers is low, States should recognize the role that paralegals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.
- (h) States should, in conjunction with the legal profession and non-governmental organizations, establish training, the qualification procedures and rules governing the activities and conduct of paralegals. States shall adopt legislation to grant appropriate recognition to paralegals.
- (i) Paralegals could provide essential legal assistance to indigent persons, especially in rural communities and would be the link with the legal profession.
- (j) Non-governmental organizations should be encouraged to establish legal assistance programs and to train paralegals.
- (k) States that recognize the role of paralegals should ensure that they are granted similar rights and facilities afforded to lawyers, to the extent necessary to enable them to carry out their functions with independence.

## AMERICAN CONVENTION ON HUMAN RIGHTS

**Article 8(2)** Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- (d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;

- (e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law.

#### ARABIC HARTER ON HUMAN RIGHTS

**Article 13(1)** Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.

**Article 16** Everyone charged with a criminal offence shall enjoy the following minimum guarantees:

- (4) the right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require, and the right to the free assistance of an interpreter if he cannot understand or does not speak the language used in court.

#### EUROPEAN CONVENTION ON HUMAN RIGHTS

**Article 6(3)** Everyone charged with a criminal offence has the following minimum rights:

- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

#### Note

Although the European Convention on Human Rights does not grant an explicit right to counsel in civil cases, it does guarantee citizens the right to have claims relating to civil rights and obligations brought before a court.<sup>8</sup> It has been successfully argued before the European Court of Human Rights that a state might be required to provide a citizen with a lawyer (for free if necessary) where the failure to do so would render this right ineffective by denying a citizen the right to present a case properly and satisfactorily.<sup>9</sup>

#### ELEMENT 4.3 PROCESSES CASES IN A TIMELY MANNER

##### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**Article 14(3)** In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees:

- (c) To be tried without undue delay.

##### AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

**Article 7(1)** Every individual shall have the right to have his cause heard. This comprises:

- (d) the right to be tried within a reasonable time by an impartial court or tribunal.

##### AMERICAN CONVENTION ON HUMAN RIGHTS

**Article 8(1)** Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

##### ARAB CHARTER ON HUMAN RIGHTS

**Article 14(5)** Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

##### EUROPEAN CONVENTION ON HUMAN RIGHTS

**Article 6(1)** In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

#### ELEMENT 5.1 EFFECTIVE OPPORTUNITY TO PRESENT CASE

##### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**Article 14(2)** In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of

witnesses on his behalf under the same conditions as witnesses against him;

- (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

*African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.*

1. Fair and Public Hearing In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

2. Fair Hearing The essential elements of a fair hearing include:

- (e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
- (g) an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body.

#### AMERICAN CONVENTION ON HUMAN RIGHTS

**Article 8(2)** Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- (a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- (f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts.

#### ARABIC CHARTER ON HUMAN RIGHTS

**Article 16** Everyone charged with a criminal offence shall be presumed innocent until proved guilty by a final judgment rendered according to law and, in the course of the

investigation and trial, he shall enjoy the following minimum guarantees:

- (4) The right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require, and the right to the free assistance of an interpreter if he cannot understand or does not speak the language used in court.
- (5) To examine, or have examined, the witnesses against him, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.

#### EUROPEAN CONVENTION ON HUMAN RIGHTS

**Article 6(3)** Everyone charged with a criminal offence has the following minimum rights:

- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### ELEMENT 5.2 IMPARTIAL ADJUDICATOR, FREE FROM IMPROPER INFLUENCE

##### INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

**Article 14(1)** All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

#### AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS

*African Commission on Human and Peoples' Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.*

- 1) Fair and Public Hearing In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

**AMERICAN CONVENTION ON HUMAN RIGHTS**

**Article 8(1)** Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

**ARAB CHARTER ON HUMAN RIGHTS**

**Article 12.** All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.

**Article 13(1)** Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.

**EUROPEAN CONVENTION ON HUMAN RIGHTS**

**Article 6(1)** In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

**APPENDIX 2: SAMPLE INTERVIEW COVER LETTER**

Date

Dear Mr./Ms. \_\_\_\_\_:

I am writing you on behalf of (*Organization*) to ask for your participation in an important research project assessing access to justice in (*Country/Region/Community*).

Access to justice requires that citizens are able to use justice institutions to obtain solutions to common justice problems. Without access to justice, the rights enshrined in constitutions and legislation offer little or no meaningful protection, especially to vulnerable groups.

An access to justice assessment analyzes whether communities and individuals are able to use justice institutions to solve common justice problems. The goals of the study are to generate an understanding about the access to justice situation in (*Country/Region/Community*) and to use this understanding to design effective reforms. Reforms informed by research support communities and individuals in their efforts to seek and obtain justice and to use justice institutions to improve their lives. The study will consider six elements - Legal Framework, Legal Knowledge, Advice and Representation, Access to a Justice Institution, Fair Procedure and Enforceable Solution – that impact the ability of communities and individuals to use justice institutions to solve common justice problems. An assessment analyzes the extent to which each element is present, evaluating both the formal and informal justice systems.

(*Organization*) seeks your input and observations concerning access to justice in (*Country/Region/Community*). Your input may include commentary on both the legislative and procedural framework relating to the six elements and the *de facto* practices under each of those elements. We assure you that your participation in the study will be strictly confidential. As a matter of longstanding practice, (*Organization*) does not release the names of our interviewees.

Your candid and detailed insights will be invaluable in the development of reform efforts that will be targeted, collaborative, and apolitical. Your contributions will also assist in the compilation of hard-to-find information on the structure, nature, and status of the formal and informal justice systems, and will encourage local and international support in favor of change.

We hope that you will assist us in our research. If you wish to participate, please (*fill out the attached survey/call the enclosed number/fill out the attached form/come to our office/etc.*). Please (*do what you need them to do*) by (*date & time*). Thank you.

Sincerely,



## APPENDIX 3: SAMPLE QUESTIONNAIRE

Dear Sir/Madam,

You recently sought to assert ownership of unregistered land. Your claim has been brought before village chiefs, commune councils or the land commission. The present questionnaire is about:

1. the time and money you spent on the process,
2. the justice institution you chose to solve your justice problem,
3. the obstacles you faced during the process.

We are interested in your experiences from the moment you first took action until the moment the process came to an end. This questionnaire is anonymous and we will treat your responses with confidentiality. No information that can identify you will be passed on to anybody else.

Gender: M/F

Ethnicity:

- ☐ Khmer  
☐ Vietnamese  
☐ Chinese  
☐ Indigenous: \_\_\_\_\_  
☐ Other: \_\_\_\_\_

Age: \_\_\_\_\_ years

Marital status:

- ☐ Single  
☐ Married  
☐ Divorced  
☐ Widowed  
☐ Other: \_\_\_\_\_

Highest level of education:

- ☐ No education  
☐ Less than high school  
☐ High school  
☐ Vocational  
☐ University  
☐ Other: \_\_\_\_\_

Current employment

- ☐ Unemployed  
☐ Full-time  
☐ Self-employed  
☐ Home-maker  
☐ Full-time student  
☐ Other: \_\_\_\_\_

1. When did you first take action to solve your justice problem?

\_\_\_\_\_ (month) \_\_\_\_\_ (year)

2. When did you first receive an income?

\_\_\_\_\_ (month) \_\_\_\_\_ (year) ☐ I did not receive an income yet.

3. What was the value of your claim? \_\_\_\_\_

4. Who paid for the monetary costs of the process?

- ☐ I paid. How much? \_\_\_\_\_  
☐ The other party in the dispute paid. How much? \_\_\_\_\_  
☐ I received legal aid (state paid). How much? \_\_\_\_\_  
☐ Other: \_\_\_\_\_

5. Where did you bring your claim initially?

- ☐ village chief      ☐ commune council      ☐ land commission

6. Why did you choose this forum?

7. Where was your case heard?

- ☐ village chief
- ☐ commune council
- ☐ land commission

8. Did you know that the land commission has exclusive jurisdiction for disputes involving unregistered land? Yes/No

9. If yes, why did you turn to a different justice institution?

10. To what extent did you face the following obstacles when you accessed the justice system? Please circle the number.

(1 = not at all; 2 = small extent; 3 = moderate extent; 4 = large extent; 5 = completely)

Distance and location.	1	2	3	4	5
Expenses.	1	2	3	4	5
No representation by a lawyer.	1	2	3	4	5
Not available legal aid.	1	2	3	4	5
Biased processes.	1	2	3	4	5
Language barriers.	1	2	3	4	5
Deficient knowledge about the methods for dispute resolution.	1	2	3	4	5
Other: _____	1	2	3	4	5

## APPENDIX 4: SAMPLE REPORT TEMPLATE

# ACCESS TO JUSTICE ASSESSMENT FOR COUNTRY X

Month 201X

## EXECUTIVE SUMMARY

Insert brief outline of the nature and goal of your report, so as to introduce the findings that are summarized below.

### THE ELEMENTS OF ACCESS TO JUSTICE

1. *Legal Framework: Laws and regulations establish citizens' rights and duties, and provide citizens with mechanisms to solve their justice problems.*

Insert text here.

2. *Legal Knowledge: Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.*

Insert text here.

3. *Legal Advice and Representation: Citizens can access the legal advice and representation necessary to solve their justice problems.*

Insert text here.

4. *Access to Justice Institutions: Justice institutions exist, whether formal or informal, that are affordable and accessible, and process cases in a timely manner.*

Insert text here.

5. *Fair Procedure: Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and that disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.*

Insert text here.

6. *Enforceable Decision: Justice Institutions are able to enforce their decisions, including through the use of sanctions.*

Insert text here.

### INTRODUCTION

The introduction should discuss: a definition of access to justice; why access to justice is particularly important in your region or country; the purpose of this report; and the structure of this report.

**EXAMPLE:** Access to justice requires that all citizens are able to use justice institutions to enforce their rights. If law is to contribute to human development, it must guarantee access to justice; without it, the rights and duties it enshrines—and the protections they provide—are meaningless. Guinea's recent past demonstrates the effect that an absence of access to justice can have on a state and its citizens. A neglected justice system that was, in any case, only an extension of executive power, meant citizens had little recourse when their rights were violated. The resulting culture of impunity led to the violent suppression of opposition, entrenched corruption, and widespread human rights abuses by security forces against the civilian population.

Guinea's government, with support from the international community, has begun the process of reconstructing the justice system. In March 2011, the government convened a high-level roundtable, the Etats Généraux de la Justice, to identify a broad strategy for justice sector reform. A pilot committee has subsequently been established by law to oversee the reform of the justice sector, and is currently being put in place. The work of the pilot committee is supported by a justice sector working group (Plateforme Justice), which brings together relevant ministries, Guinean civil society groups and international donors and NGOs. International donors, particularly the European Union, have pledged to provide funds to support necessary reforms.

A focus on access to justice will undoubtedly be a key element of justice sector reform: improvements in the functioning of courts and tribunals mean little if citizens cannot, or will not, utilize them. This report discusses the key obstacles to access to justice that justice reform in Guinea must address. To do so, it breaks down access to justice into a number of components, the Elements of Access to Justice, and considers the extent to which each element is present in Guinea. Because each element is essential if citizens are to be able and willing to use justice institutions, the focus of the report is on

what citizens—the consumers of justice—need to have access to justice. This offers a new perspective from recent justice sector assessments undertaken in Guinea, many of which are cited in this report, in which justice sector experts conduct detailed evaluations of key justice institutions but do not consider the interaction of those institutions with citizens. The Elements of Access to Justice are described in the table below.

	Elements of Access to Justice
<i>LegalF framework</i>	Laws and regulations establish citizens' rights and duties, and provide citizens mechanisms to solve their justice problems.
<i>LegalK knowledge</i>	Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.
<i>Legal Advice and Representation</i>	Citizens can access the legal advice and representation necessary to solve their justice problems.
<i>Access to a Justice Institution</i>	Justice institutions exist, whether formal or informal, which are affordable and accessible, and process cases in a timely manner.
<i>Fair Procedure</i>	Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.
<i>Enforceable Decision</i>	Justice institutions are able to enforce their decisions, including through the use of sanctions.

Reading this table, you will note that the final three elements of access to justice discuss both the formal justice system—institutions established by the State to apply and enforce laws—and the informal justice system—institutions that, although not sanctioned by the State, play a role in resolving disputes between citizens. Because, in many countries, informal institutions play a vital role in settling disputes, an analysis of access to justice would not be complete without a discussion of the extent to which informal institutions permit citizens to enforce their legal rights.

## METHODOLOGY

Insert description of methodology. An example is below.

This report is the product of a partnership between XXX and ABA ROLI. The report was developed using a research methodology, called the Access to Justice Assessment Tool (AJAT), developed by ABA ROLI to assist civil society organizations to assess whether communities and individuals are able to use justice institutions to solve common justice problems. XXX undertook the majority of the research in this report, using a research plan based upon the AJAT and developed during working groups with ABA ROLI. XXX then analyzed the data collected and drafted this report, with ABA ROLI providing multiple rounds of commentary and edits. The final report was reviewed by experts and key stakeholders in X country and, after a final edit, was published in English and local languages.

The findings in this report are based on qualitative research methodologies, and are intended to present an informative analysis of access to justice in X country. Data for this report was collected through semi-structured interviews and focus groups. Most interviews were conducted between XXX dates, although further research was conducted throughout XXX. Research was conducted primarily in X and Y regions. Close to XX people were interviewed, including X, Y and Z (categories of interviewees not names). A number of beneficiaries of legal services were also interviewed, and their testimony, with fictional names added, greatly enriches this report. Records of individuals interviewed, whose names are kept confidential and whose time and assistance are highly appreciated, are on file with XXX and ABA ROLI. Prior to, and during, the assessment process, a review of key legislation and secondary sources was also conducted.

The use of a qualitative methodology has some limitations. The requisite small sample size is more likely to yield information on individual experiences and perceptions than generalizable findings on institutional impacts. The research team strongly believes that use of a mixed-methods research, including a comprehensive mixed-methods evaluation, would help to gain a more accurate picture of access to justice.

## ACKNOWLEDGEMENTS

Acknowledge those who contributed to this report. Include standard text on the AJAT below.

ABA ROLI's Access to Justice Advisor, Jennifer Tsai, led the development of the AJAT, with assistance from Legal Analyst, Jim Wormington. An expert working group provided input and critical comments on the draft methodology. Members of the expert working group included Chief Persida Rueda Acosta, Philippines Chief Public Attorney; Juan Carlos Botero, Interim Executive Director and Director of the Rule of Law Index at the World Justice Project; Stephen Golub, legal empowerment expert and law professor; Martin Gramatikov, a lecturer at Tilburg University and a member of the Measuring Access to Justice Project; Simeon Koroma, Executive Director of a Sierra Leonean paralegal services program, Timap for Justice; Zaza Namoradze, Director of the Budapest office of the Open Society Justice Initiative; and Annette Pearson, an international development consultant and expert on Colombia's National Community Justice Houses. ABA ROLI extends sincere thanks to these individuals for their invaluable contributions to the development of the AJAT.

## COUNTRY X BACKGROUND

Should be 4–6 pages long. Use Arial 10-point font, fully justified. The country background section report gives the reader an overview of the political and legal situation in the country, to ensure that they will understand the main body of the report. It should include an overview of the history of the country, with a focus on current events that will be particularly relevant to access to justice (e.g. civil wars, political upheaval) and an introduction to key demographic characteristics (geography; economic performance; population; religious and ethnic breakdowns). It should then discuss the country's legal context, including an introduction to the government and legal structures of the country.

## HISTORICAL CONTEXT

## LEGAL AND POLITICAL CONTEXT

## KEY LEGAL ISSUES/POPULATIONS/INSTITUTIONS (DELETE AS APPROPRIATE)

Where your report concentrates on certain legal issues, population groups or justice institutions, describe why you decided to focus on these issues.

**Example:** It is difficult to create a typical consumer of justice in Guinea. Citizens divided by gender, age, income, political influence and other factors will face different challenges. The extent of access to justice will also depend on the type of rights violation sought to be remedied: a citizen seeking to prosecute a perpetrator of gender-based violence will face different obstacles to one trying to enforce a contract to purchase land. For this reason, this report chooses to use one group of justice consumers as a test for access to justice in Guinea more generally. Where necessary, it adopts the perspective of those consumers, assesses their particular challenges in obtaining access to justice, and seeks to use this analysis to draw lessons for access to justice in Guinea more generally.

This report adopts the perspective of women as consumers of justice, principally because, as Guinea's Politique Nationale Genre observes: "women are the least well off, the most vulnerable, and are the least likely to have the skills and resources necessary to realize their rights." A number of reports have considered the so far fruitless attempts to obtain justice against those



responsible for the shocking violence of September 28, 2009, in which more than 100 women suffered brutal sexual violence at the hands of the security forces. These attempts, however, which involve a special panel of investigate judges closely scrutinized by the international community, are perhaps not reflective of the daily struggle for access to justice in Guinea (although many of the obstacles are similar). This report therefore chooses to use examples of women's attempts to obtain access to justice in three supposedly more mundane cases: domestic violence; unfair inheritance; and harassment in the workplace.

## **COUNTRY X ELEMENTS OF ACCESS TO JUSTICE**

### **ELEMENT I. LEGAL FRAMEWORK**

**Laws and regulations establish citizens' rights and duties, and provide citizens mechanisms to solve their justice problems.**

#### **Conclusion**

Conclusion should not exceed 3–4 paragraphs. Language should be supported by the analysis that follows below.

#### **Analysis**

Factor analysis should be, on average, 5–7 pages in length and, as a general rule, should not exceed 10 pages, although there may be instances where some factors will require more analysis, while others can be analyzed in less than a single page. Analysis should begin with de jure and then move to de facto.

#### **Recommendations**

Discussion of possible recommendations should not exceed 1–2 pages.

### **ELEMENT II. LEGAL KNOWLEDGE**

**Citizens are aware of their rights and duties, and the mechanisms available to solve their justice problems.**

#### **Conclusion**

Conclusion should not exceed 3–4 paragraphs. Language should be supported by the analysis that follows below.

#### **Analysis**

Factor analysis should be, on average, 5–7 pages in length and, as a general rule, should not exceed 10 pages, although there may be instances where some factors will require more analysis, while others can be analyzed in less than a single page. Analysis should begin with de jure and then move to de facto.

#### **Recommendations**

Discussion of possible recommendations should not exceed 1–2 pages.

### **ELEMENT III. ADVICE AND REPRESENTATION**

**Citizens can access the legal advice and representation necessary to solve their justice problems.**

#### **Conclusion**

Conclusion should not exceed 3–4 paragraphs. Language should be supported by the analysis that follows below.

#### **Analysis**

Factor analysis should be, on average, 5–7 pages in length and, as a general rule, should not exceed 10 pages, although there may be instances where some factors will require more analysis, while others can be analyzed in less than a single page. Analysis should begin with de jure and then move to de facto.

### Recommendations

Discussion of possible recommendations should not exceed 1–2 pages.

### ELEMENT IV. ACCESS TO JUSTICE INSTITUTION

Justice institutions exist, both formal and informal, which are affordable and accessible, and process cases in a timely manner.

### Conclusion

Conclusion should not exceed 3–4 paragraphs. Language should be supported by the analysis that follows below.

### Analysis

Factor analysis should be, on average, 5–7 pages in length and, as a general rule, should not exceed 10 pages, although there may be instances where some factors will require more analysis, while others can be analyzed in less than a single page. Analysis should begin with de jure and then move to de facto.

### Recommendations

Discussion of possible recommendations should not exceed 1–2 pages.

### ELEMENT V. FAIR PROCEDURE

Justice institutions, whether formal or informal, ensure that citizens have an opportunity to present their case and disputes are adjudicated impartially and without improper influence. Where cases are resolved by mediation, citizens make voluntary and informed decisions to settle.

### Conclusion

Conclusion should not exceed 3–4 paragraphs. Language should be supported by the analysis that follows below.

### Analysis

Factor analysis should be, on average, 5–7 pages in length and, as a general rule, should not exceed 10 pages, although there may be instances where some factors will require more analysis, while others can be analyzed in less than a single page. Analysis should begin with de jure and then move to de facto.

### Recommendations

Discussion of possible recommendations should not exceed 1–2 pages.

### ELEMENT VI. ENFORCEABLE SOLUTION

Justice institutions are able to enforce their decisions, including through the use of sanctions.

### Conclusion

Conclusion should not exceed 3–4 paragraphs. Language should be supported by the analysis that follows below.

### Analysis

Factor analysis should be, on average, 5–7 pages in length and, as a general rule, should not exceed 10 pages, although there may be instances where some factors will require more analysis, while others can be analyzed in less than a single page. Analysis should begin with de jure and then move to de facto.

### Recommendations

Discussion of possible recommendations should not exceed 1–2 pages.

## GLOSSARY

## LIST OF ACRONYMS

## ENDNOTES

1. The United Nations General Assembly gives all member states an equal vote in deciding whether to pass a resolution. All 106 states present in the General Assembly voted in favor of adopting the ICCPR. See Christian Tomuschat, International Covenant on Civil and Political Rights, United Nations Audiovisual Library of International Law, *available at* <http://untreaty.un.org/cod/avl/ha/iccpr/iccpr.html>.
2. See Christian Tomuschat, International Covenant on Civil and Political Rights, United Nations Audiovisual Library of International Law, *available at* <http://untreaty.un.org/cod/avl/ha/iccpr/iccpr.html>.
3. United Nations Treaty Collection Database, Signatories and Ratifications of the ICCPR, *available at* [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).
4. Amnesty International, A Guide to the African Charter on Human and Peoples' Rights (August 2006), *available at* <http://www.amnestyusa.org/document.php?lang=e &id=ENGIOR630052006>. Amnesty's guide is an excellent source for more information on the African Charter.
5. Organization of American States, Inter-American Commission on Human Rights, American Convention on Human Rights, *available at* [www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm](http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm).
6. Organization of American States, Department of International Law, General Information on the American Convention on Human Rights, *available at* [www.oas.org/juridico/english/sigs/b-32.html](http://www.oas.org/juridico/english/sigs/b-32.html).
7. Council of Europe, Simplified Chart of Signatures and Ratifications, *available at* <http://conventions.coe.int/Treaty/Commun/ListeTableauCourt.asp?MA=3&CM=16&CL=ENG>.
8. See Article 6(1), at Standards for Access to Justice in General, at page 156.
9. Airey v. Ireland [1979] 2 EHRR 305.