

**ACCESS TO JUSTICE
FOR THE URBAN POOR**
Toward Inclusive Cities





ADB

ACCESS TO JUSTICE FOR THE URBAN POOR

Toward Inclusive Cities

Asian Development Bank

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The publication analyzes case studies and other data that appear in the final report of the RETA on Access to Justice for the Urban Poor prepared by The Asia Foundation (TAF) for ADB, and integrates these findings with input from the participants of the RETA's final regional workshop; ADB policies and strategies; and literature on law and policy reform and urban development. Christine V. Lao, legal consultant, is the main author of this publication. The TAF team—comprised of Erik Jensen, Debra Ladner, Asha Ghosh, and Michael Lieberman, as well as its country specialists: Ferdous Jahan, Lydia Ruddy, John Taylor, Emma Porio and Sauwalak Kittiprapas—prepared the final report from which this publication draws, and patiently conducted in-depth country research and organized several country and regional consultations and workshops.

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Abbreviations

ADB	Asian Development Bank
BJS	Barangay Justice System (Katarungang Pambarangay)
BNP	Bangladesh Nationalist Party
CODI	Community Organizations Development Institute
DSK	Dushtha Shasthya Kendra
ETESP	Earthquake and Tsunami Emergency Support Project
HOA	homeowners' association
ICESCR	International Covenant on Economic, Social and Cultural Rights
MERALCO	Manila Electric Company
MOA	memorandum of agreement
NGO	nongovernment organization
OSPF	Office of the Special Project Facilitator
PAT	Port Authority of Thailand
PDB	Power Development Board
PDIP	Partai Demokrasi Indonesia Perjuangan, (Indonesian Democratic Party of Struggle)
PIL	public interest litigation
PNPM	Program Nasional Pemberdayaan Masyarakat Mandiri (National Program on Community Self-Help and Empowerment)
RETA	regional technical assistance
TAF	The Asia Foundation
WASA	Water Supply and Sewerage Authority

Currency Conversion Rate

\$1.00	=	Tk69 (Bangladesh taka)
		Rp9,425 (Indonesia rupiah)
		P47 (Philippine peso)
		B33 (Thai baht)

Glossary

adat (Indonesia) – Local or traditional law.

Agrabad Bastuhara (Bangladesh) – A homeless community; the name of a slum in Chittagong, Bangladesh.

Baan Mankong (Thailand) – Secure housing; the name of a slum upgrading project in Thailand.

badan keswadayaan masyarakat (Indonesia) – Local community self-help agencies.

barangay (Philippines) – Village.

betjak (Indonesia) – A three-wheeled pedal-powered taxi that is a common mode of public transportation in Indonesia.

chinnomul (Bangladesh) – Literally, “rootless,” a term used to refer to people who do not have permanent homes.

jeepney (Philippines) – A modified jeep that is a widely used mode of public transport in the Philippines.

Katarungang Pambarangay (Philippines) – The barangay justice system, a traditional community-based dispute resolution mechanism employing mediation, conciliation, or (rarely) arbitration.

ketua rukun tetangga/rukun warga (Indonesia) – Commonly referred to as *Ketua RT* and/or *RWs*, these are neighborhood leaders who liaise between government and the community and serve as intermediary service

providers with respect to legal identity documents. They are elected by the community but are not considered government employees. They do not receive a salary from the government.

kelurahan (Indonesia) – Also known as the subdistrict, it is the lowest legally constituted level of government. It consists of several *RWs* and is administratively managed by the *lurah* (subdistrict head).

lupong tagapamayapa (Philippines) – Peace committee, an integral part of the barangay justice system that settles disputes through mediation and conciliation.

lurah (Indonesia) – Also known as the subdistrict head, is responsible for the administration of the *kelurahan*. People who wish to obtain formal access to electricity and water or prove they reside on a particular piece of land need to obtain a letter of introduction from the *lurah*, which is considered proof that they reside in a particular *kelurahan*.

musyawarah (Indonesia) – an informal gathering of community members that is constituted to facilitate dialogue, circulate information, and resolve disputes within a community. It is often facilitated by the *Ketua RT/RW* and may be called on a monthly basis or incidentally for specific issues.

Musyawarah Rencana Pembangunan/Musrenbang (Indonesia) – Also known as a development planning discussion, is an

informal gathering in the subdistrict where the interests of various RWs are mediated, and feedback on the needs and issues of the communities in the subdistrict and district are obtained and elevated to higher levels of government.

orang di dalam (Indonesia) – Literally, a “person inside” or “insider.” The term is used in Pademangan Barat, Indonesia (an area with a community living along both sides of a railway track) and refers to people of higher economic status who live further away from the railway track.

orang di luar (Indonesia) – Literally, a “person outside” or “outsider.” The term is used in Pademangan Barat, Indonesia to refer to people who live in illegal settlements along the railway tracks.

pangkat tagapagkasundo (Philippines) – A mediators’ group composed of the barangay captain, the barangay secretary, and three members of the *lupon* to be chosen by both disputing parties.

Program Nasional Pemberdayaan Masyarakat Mandiri (Indonesia) – National Program on Community Self-Help and Empowerment.

rai (Thailand) – A unit of area equal to 1,600 square meters (40 m × 40 m).

rukun tetangga (Indonesia) – Literally, the “neighborhood group.” It refers to a territorially defined semiformal institution consisting of 30–70 houses. It is responsible for coordinating the needs and mediating social or physical problems of households residing within its jurisdiction. It is headed by the *ketua RT*.

rukun warga (Indonesia) – Literally, the “community group.” It refers to a territorially defined semiformal institution consisting of 70–250 houses and 3–10 RTs. It is responsible for coordinating the needs and mediating the social or physical problems arising from the RTs below them.

Samahang Tubig Maynilad (Philippines) – Maynilad Water Association, a community water association organized by a private water company in the Philippines.

shalish (Bangladesh) – The traditional practice of gathering elders to discuss the problem and come to a peaceful resolution of a local dispute.

thana (Bangladesh) – Police station.

tuktuk (Thailand) – A three-wheeled motorized rickshaw that functions like a taxi and is a common mode of public transport in Thailand.

Foreword

To reduce poverty in Asia, the Asian Development Bank (ADB) is focusing its operations on five core areas under its long-term strategic framework, Strategy 2020. One of these areas is infrastructure. ADB defines infrastructure as including not only the construction of physical assets, but also the provision of infrastructure services; the promotion of institutional and policy reforms that enhance the efficiency and sustainability of infrastructure projects; and the building of its member countries' capacity to manage infrastructure projects. Developing member countries are expected to invest heavily in urban infrastructure due to exponential growth of urban centers throughout the region. But do these investments benefit the most disadvantaged among the urban population?

Access to Justice for the Urban Poor

In 2006, ADB approved a regional technical assistance (RETA) grant on Access to Justice for the Urban Poor. ADB studied the common grievances and disputes faced by the urban poor in Bangladesh, Indonesia, Philippines, and Thailand. The final report of the RETA described the traditional, community-based, or informal processes that the urban poor used to express grievances and resolve disputes.

One major type of grievance encountered by the urban poor arises from national and local authorities' setting and implementing policies that prevent the urban poor from obtaining formal access to basic urban services or make it difficult for them to do so. As a result, the urban poor often obtain access to urban assets through personal and social connections and unregulated intermediary service providers. But the access obtained through these informal arrangements is often tenuous, and comes at greater economic and social cost. Unregulated service providers impose higher fees for less reliable services; individuals and communities are held hostage by powerful groups or mafias that control access. Worse, they usually have no way of complaining about unfair treatment and seeking redress for grievances.

Access to Justice and the ADB

Access to justice is often used as a synonym for access to the courts and judicial processes. But how do the poor, who are unable to access judicial processes, obtain "justice"? When the legal framework hinders, rather than facilitates, their ability to exercise basic rights under international law—for example, the right to water, shelter, health, education, and the ability to receive proof of one's legal identity such as a birth registration certificate—how are the poor able to seek redress for this grievance?

This is not the first time that ADB has explored the concept of access to justice outside the formal justice system. Previously, ADB conducted a study on “legal empowerment,” which it defined as the ability of disadvantaged groups to “use legal and administrative processes and structures to access resources, services, and opportunities.”³⁹ ADB recognized that (1) institutions other than courts play roles in interpreting and enforcing the law; and (2) poor and disadvantaged groups link the concept of justice with securing concrete outcomes.

This approach to law and policy reform focuses on strengthening the legal capacities of the poor. It addresses the reality that in many developing countries, laws that can benefit the poor might exist on paper, but not in practice. Unable to access the formal justice system, the disadvantaged need to find, or create, alternative means of securing justice—that is, fair treatment and results that address their rights and needs. Combined with the work that ADB is doing with the formal justice system and other government agencies to improve governance, this approach helps ensure that ADB supported projects will benefit those who need them the most.

Toward Inclusive Cities

What, then, can ADB do to ensure that the urban development projects it supports will benefit the most disadvantaged among the urban population? This publication suggests some preliminary answers to this question. It builds on the final report of the study carried out by The Asia Foundation for ADB, and analyzes the findings through the lens of ADB’s Governance Policy. It includes a list of possible design features—for example, project grievance redressal or dispute resolution mechanisms—that ADB project officers can include in putting together a project that can benefit the urban poor.

It argues that the failure to deliver adequate urban services to the urban poor indicates poor urban governance. Institutional and policy reforms need to be enhanced so governments will be able to deliver efficient and sustainable urban services to all, including the urban poor. In some cases, the solution includes the design of community grievance and dispute resolution mechanisms designed to increase the urban poor’s voice and the accountability of government and service providers. But even when appropriate, such reforms need to be implemented in tandem with others that seek to increase the accountability of public officers and regulators, and the empowerment of the urban poor.

We hope that this publication serves as a useful resource for ADB staff working on urban development and governance. The last chapter—which includes a list of suggested enhancements to the design of urban development projects that can address some typical problems met by the urban poor, as well as information on the design and implementation of grievance mechanisms—may be of particular interest. Likewise, we hope that the analysis it contains contributes something valuable to the current discourse and literature on urban governance and development.

Jeremy H. Hovland
General Counsel

³⁹ Golub, Stephen and Kim McQuay. 2001. Legal Empowerment: Advancing Good Governance and Poverty Reduction. In *Law and Policy Reform at the Asian Development Bank*, 2001 Edition. Manila: Asian Development Bank (p. 5).

Executive Summary

This publication suggests solutions that can be built into the design of urban development projects undertaken by the Asian Development Bank (ADB) to address the common problems and grievances of the urban poor, and improve urban governance overall. It also identifies successful or promising community-based approaches to dispute resolution that can likewise be adopted in urban project design.

Asia's urban population, which rose from only 232 million people in 1950 (17% of the population) to 1.6 billion in 2005 (40% of the population) is currently considered "the fastest-growing urban population in the world." About 2.7 billion people, or almost 55% of the population in Asia, will be urban by 2030.

Over 40% of Asia's urban dwellers live in substandard housing and overcrowded slums. Housing sites built for the poor at the city's periphery often lack water and sanitation, solid waste collection and disposal and other amenities. Urban dwellers, particularly those who live in slums, are vulnerable to risks associated with natural hazards, health, and crime.

Many occupy dwelling spaces without secure tenure, and the absence of proof of secure tenure effectively bars them from obtaining access to urban assets and critical services such as water connections and health services. The proportion of households with piped water connections is decreasing in South Asia and in the Pacific, and in East and Southeast Asia, urban dwellers receive an intermittent water supply, which causes water contamination,



Ian Gill

unreliable metering, high levels of corruption and stress among the urban poor.

Only 40% of household sewage in Asian urban areas is treated before disposal, and the bulk of pollutants is discharged untreated into urban water systems or the ocean, where they wreak havoc to the environment and place all humans at great risk. And while 75% of solid

waste in Asia is generated in its urban centers, only a fraction of this amount is disposed of in properly managed solid waste landfill sites. Municipal garbage collection and disposal systems tend to neglect the urban poor who often live in areas that are not readily accessible to the trucks that gather and transport garbage, and who generate wet biodegradable waste material of little value to private waste collectors contracted by government.

Urban Service Delivery Failure and the Urban Poor

To be sure, it is a challenge for Asian governments at the national and local levels to serve their rapidly growing urban populations. Operating existing infrastructure and building new facilities to meet the needs of Asia's growing urban population require substantial investment. But the limited resources available for urban development does not seem to benefit the urban poor who appear to be more affected by the failure of urban service delivery than affluent urban dwellers. Urban assets and services remain inaccessible, despite the privatization of public utilities and service providers and decentralization of service delivery to local government.

National and local authorities continue to set and implement policies that prevent the urban poor from obtaining formal access to basic urban services such as water and sanitation services; solid waste collection and disposal; and transportation—or at least make it inconvenient or difficult for them to do so. Authorities and service providers resist from providing permanent utility connections to structures that appear to be nothing more than temporary shelters—for if the dwellings are torn down, or the residents evicted or resettled elsewhere, they would be unable to recover their investment. In cases where the urban poor have settled on land without the landowner's consent, authorities fear that formal and regular service provision may be interpreted to mean that they have legitimized the settlers' claim over the land. Consequently, the public sector generally prioritizes service delivery to urban dwellers with formal proof of residence or tenure.

Why Informal, Self-Help Solutions Ultimately Fail to Benefit the Poor

Because the public sector generally has failed to adequately serve the urban poor, many urban poor communities have employed self-help solutions to obtain access to urban assets and services for themselves. Without formal means of obtaining access to services, the poor build relationships with local politicians, street leaders, lower level bureaucrats, neighborhood associations or family members who are perceived to have the authority or influence that can likely secure the urban asset or service required. This strategy often creates patron–client relations, renders a community vulnerable to the influence of a powerful group or mafia, and weakens governance at the local and national levels.

The poor also opt to approach unregulated intermediary service providers, which impose higher rates for less reliable utility services. Since there is no adequate way for them to hold these intermediaries accountable for service delivery failure or corruption, the urban poor become even more vulnerable.

The Way Forward: Toward Inclusive Cities

If the poor remain unable to demand greater accountability from the public sector and service providers (both formal and informal), projects that aim to provide access to urban assets and services will fail to deliver what they promise. Policies that allow and encourage the poor to voice and resolve their grievances against the public sector, service providers, and even members of their own community must be adopted. Grievance and dispute resolution mechanisms that consider in their design the challenges faced by the urban poor will help ensure that urban development and service delivery projects improve the lives of their target beneficiaries. The ADB would be well advised to support the development and implementation of grievance and dispute resolution mechanisms in its urban development projects. Support for the following activities is also recommended: community consultation

meetings, community organizing, training, and other technical support.

Results of the study conducted by ADB and The Asia Foundation (TAF) for the Access to Justice for the Urban Poor project suggest that there do not appear to be adequate venues for the urban poor to raise grievances and disputes relating to (i) the management and distribution of urban assets by intermediary service providers—who often operate informally; and (ii) intracommunity disputes—i.e., those involving the management and distribution of urban assets between and among members of a community, and “power struggles” between two or more groups within a community. Interpersonal disputes are often, if not always, rooted in conflict over scarce urban assets. These are raised in community-based and/or traditional dispute resolution systems embedded within the community, which are often influenced by local hierarchies. Although interpersonal disputes appear to be settled by these mechanisms, they are bound to erupt again if community members are unable to obtain adequate access to urban assets. Community and/or traditional dispute resolution systems do not appear to be used to resolve conflicts regarding the management and distribution of already scarce urban assets.

Although the establishment of grievance and dispute resolution mechanisms within public sector offices responsible for urban service delivery and formal service providers has been commonly prescribed and implemented in a number of urban development projects in Asia, these mechanisms have not proven particularly useful for the urban poor. The mechanisms had been designed without considering the circumstances of the urban

poor. For example, only customers of record can access grievance mechanism of a formal service provider. In many urban poor areas, only one resident is connected to the service provider as the customer of record; other residents derive water or power from that neighbor, often for a fee that is not remitted to the formal service provider. If the customer of record arbitrarily cuts the connection enjoyed by his or her neighbors, the latter cannot complain to the formal service provider about the former.

The fact that commonly accessed community-based dispute resolution mechanisms are prone to elite capture does not detract from the inherent value of having a cost-effective and accessible means of airing grievances and settling disputes. Grievance and dispute resolution mechanisms can improve urban governance and create inclusive cities. The United Nations Human Settlements Programme (UN-Habitat) now measures the success of urban improvement projects not only according to the number of affordable housing and physical services made available to the poor—but also “in terms of improved social equity, sustainable overall development of cities and the involvement of all stakeholders, especially the marginalized and more vulnerable members of society.” Therefore, grievance and dispute resolution mechanisms must be embedded in urban development projects and designed in a manner that encourages the urban poor to access them.

Inclusiveness can only be achieved if we allow the urban poor to speak and be heard. In the context of an urban development project, a grievance or dispute resolution mechanism may very well serve as the forum that can encourage the poor to do this.

The Principles of Good Governance and Urban Development Projects for the Poor

The relevant features of successful or promising community-based dispute resolution strategies described in the ADB-TAF study can be considered when assessing and designing grievance redressal and dispute resolution mechanisms in ADB's urban development projects. Among these features, which are arranged according to the elements of good governance identified in ADB's Governance Policy, are:

Accountability

1. A legal and policy framework that supports the urban poor's right to demand accountability from officials and service providers, and allows the urban poor to submit substitute identity documents as a precondition to accessing urban assets and grievance mechanisms embedded in service providers.
2. A mechanism whereby government and formal service providers ensure that intermediary service providers are held accountable for performing their functions.
3. A "tripartite model" of partnership and accountability, wherein government, nongovernment organizations (NGOs), and community representatives agree to ensure that their staff and/or constituency perform each of their required actions—necessary for the poor to obtain better access to urban assets and services—and hold each other accountable for nonperformance.
4. Community-based grievance and dispute resolution mechanisms with trained staff and/or members.
5. A grievance and dispute resolution mechanism that is either self-enforcing or one whose decisions are recognized by the formal justice system.

Participation

Greater participation by community members or their recognized and/or legitimate representatives can increase the legitimacy of community-based dispute resolution mechanisms. Participation by representation works best where there is a high level of social cohesion; where social cohesion is low, efforts and resources must be directed toward community organization.

Predictability

1. Recognizing the right to secure tenure improves predictability and overall governance.
2. Negotiated agreements can increase understanding of what rights the urban poor can claim from government, and what they need to comply with to obtain secure tenure.
3. Local governments can increase people's ability to access urban assets, services, and grievance and dispute mechanisms by adopting policies that facilitate the provision of legal identity documents.

Transparency

1. Recording and making community-related information about urban assets and services available to the public can prevent or significantly decrease disputes over the same.

Introduction

This publication suggests solutions that can be built into the design of urban development projects undertaken by the ADB to address the common problems and grievances of the urban poor, and improve urban governance overall. It also identifies successful or promising community-based approaches to dispute resolution that can likewise be adopted in urban project design.

The publication uses ADB's Governance Policy as a framework for analyzing key findings of Access to Justice for the Urban Poor, a regional technical assistance (RETA) grant to four developing member countries in Asia that identified the strategies employed by the urban poor to express grievances and solve disputes. These strategies revealed emerging patterns of behavior that point to more effective solutions that have not yet been recognized as best practice. The findings consist of case studies illustrating typical problems encountered by the poor in relation to access to urban assets and services. The case studies also identify the types of grievances or disputes that may arise because of these issues. The publication reproduces key case studies to illustrate significant concepts in the text.

Dispute resolution processes play an important role in mitigating disputes over urban assets and improving access to assets for the urban poor

Access to Justice for the Urban Poor aims to “understand the role that dispute resolution processes have or may have in mitigating disputes over urban assets and improving access to assets for the urban poor.”¹ Grievance and dispute resolution mechanisms have been viewed as a means of enabling citizens to demand greater accountability from the public sector and service providers, thereby improving overall urban governance.



¹ The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). p. 2.

The Asia Foundation (TAF) was engaged under this urban poor project to study how urban poor in Bangladesh, Indonesia, the Philippines, and Thailand resolve complaints, grievances and disputes,² and how the dispute resolution strategy chosen by the urban poor enabled or prevented them from gaining access to urban assets and services.

Researchers were fielded to two cities in each of the four countries. Three urban poor communities were selected in each country, which ultimately became study sites.³ Researchers interviewed a wide range of stakeholders including members and community leaders of urban poor communities, local and national officials involved in service delivery to the urban poor, and staff of nongovernment organizations (NGOs) working in the communities studied. They solicited and obtained from the urban poor descriptions of their experiences and their perceptions of the processes involving the resolution of complaints, grievances and disputes;⁴ insights into the types and causes of disputes involving, or occurring among, the urban poor; and a description of how dispute resolution mechanisms in the area operate.

Poverty Reduction and Urban Governance

In 1999, ADB announced that its overarching goal is the reduction of poverty in the Asia and

Pacific region. Its Poverty Reduction Strategy rests on three pillars: pro-poor sustainable economic growth, inclusive social development, and good governance.⁵ In 2008, ADB reiterated in Strategy 2020 that its long-term vision is a region free of poverty, where citizens enjoy more education, better health, and quality of life.⁶

Urban development is a focus of Strategy 2020. In 2008–2009 alone, around \$4.5 billion of ADB’s lending portfolio was devoted to urban development projects.

ADB’s Urban Sector Strategy, which it also adopted in 1999, made the case for investing in urban sector development, citing the “central role played by urban centers in national economic growth...innovation and entrepreneurship” and the delivery of “highly developed social services.”⁷ However, the Urban Sector Strategy also recognized that urban poverty—which it characterized as being “often more harsh and extreme than rural poverty”⁸—was, and continued to be, widespread in the region. Such poverty was “not only related to low income,”⁹ but also involved “poor health and education, deprivation in [sic] knowledge and communications, inability to exercise human and political rights, and low self-esteem; in short, a poor quality life.”¹⁰ It noted that “conditions of urban poverty are worsened by the scale and speed of urbanization in many [developing member countries], forces with which municipal governments cannot keep pace.”¹¹ Moreover, it noted that

² The study used complaints, grievances, and disputes interchangeably, but a passage suggests that a complaint is “an expression of displeasure;” a grievance, “a situation where an individual or group perceives an injustice and believes there are grounds for resentment or complaint;” and a dispute, an “articulation of disagreement between two or more parties.” Footnote 1, p. 9.

³ Two of the three study sites were located in a single city, and in all countries except Thailand, one of the two study sites in that city was involved in, or the beneficiary of, an ADB urban development project.

⁴ The researchers asked the interviewees the following questions: (1) What types of disputes and complaints over urban assets are arising among the poor in rapidly urbanizing areas? (2) What institutions do the urban poor approach to resolve disputes over urban assets and why? (3) What are the institutions’ prescribed procedures or customary practices for resolving disputes? (4) How do the urban poor actually resolve disputes over urban assets? and (5) How satisfied are the urban poor with the dispute resolution forums they access? Footnote 1, p. 8.

⁵ ADB. 1999. *Poverty Reduction Strategy*. Manila. pp. 8, 10, 12.

⁶ ADB. 2008. *Strategy 2020: Long-Term Strategic Framework*. Manila. p. 8.

⁷ ADB. 1999. *Urban Sector Strategy*. Manila. p. 4.

⁸ Footnote 7, p. 9.

⁹ Footnote 7, p. 9.

¹⁰ Footnote 7, p. 9.

¹¹ For example, “access to water is generally provided unevenly among income groups, with formal supply systems being denied to poor communities who are forced to turn to water vendors and often pay much more per liter than higher income households. This is often due to unavailability of reticulated supplies to these communities or the high one-time connection fee that most urban poor cannot afford.” Footnote 7, p. 9.

ADB defines “governance” as “the manner in which power is exercised in the management of a country’s economic and social resources for development”

“the urban poor are badly placed to compete for essential services and shelter” and that “[b]iases in investments, standards, pricing policies, and institutional structures often skew services in favor of the better off in cities.”¹²

The Urban Sector Strategy submits that “[b]etter governance is required if cities are to function as engines of growth, avoid further environmental deterioration, and provide residents with at least a reasonable quality of life”¹³ for all, including and especially the urban poor.

ADB and Good Governance

ADB defines “governance” as “the manner in which power is exercised in the management of a country’s economic and social resources for development.” Governance is about the public sector’s capability to “conduct public business,” that is, to “provide citizens with an acceptable level of public services, in an effective and efficient manner.” A country’s “institutional capacity to conduct public business determines in large part its ability to undertake economic reforms and implement projects successfully.”¹⁴ For instance, a government’s capacity to analyze, formulate, and manage policies contributes to its ability to establish and maintain public infrastructure and deliver public goods and services. Conversely, the “failure to establish effective public sector capacity undermines the credibility of reform initiatives and impacts adversely

on the performance of development projects, raising costs for both borrowers and the Bank.”¹⁵

Governance also refers to “the institutional environment in which citizens interact among themselves and with government agencies/officials.”¹⁶ “[R]ules and institutions that create the framework for the conduct of public and private business” (including rules defining the public sector’s capability to perform its functions and frameworks regulating companies, corporations, and partnerships)¹⁷—provide government with its mandate to set and implement reform priorities, policies, and projects. This framework holds the public sector accountable for economic and financial performance, ensures that “money spent to improve the social infrastructure is indeed used to benefit the sectors targeted,”¹⁸ and prevents or minimizes the impact of corruption. Laws, policies, and institutions also set the framework within which citizens can claim from government the rights, services, and benefits that these laws and policies protect, guarantee or provide.

Governance likewise refers to the public sector’s ability to implement its laws, policies, and institutions. Government should be able to ensure that laws, policies, and institutions are implemented fairly and consistently:

The success of programs to increase economic opportunities for all requires an institutional and legal environment in which political and social authority are used equitably. It also implies that all segments of society should have recourse to courts of justice, and be protected from both the power of the state and that of dominant social groups (e.g., ethnic majorities, economic elites, etc.).¹⁹

¹² Footnote 7, p. 11.

¹³ Footnote 7, p. 11.

¹⁴ ADB. 1995. *Governance: Sound Development Management* (henceforth, “Governance Policy”). Manila. p. 26.

¹⁵ Footnote 14, p. 26.

¹⁶ Footnote 14, p. v.

¹⁷ Footnote 14, p. 3.

¹⁸ Footnote 14, p. 17.

¹⁹ Footnote 14, p. 16.

The Elements of Good Governance

In defining the scope of its own governance initiatives, ADB identified the following four elements of good governance: accountability, participation, predictability, and transparency.

Accountability

Accountability is the element of good governance that “makes public officials answerable for government behavior and responsive to the entity from which they derive their authority.”²⁰ It also refers to established “criteria to measure the performance of public officials, as well as oversight mechanisms to ensure that the standards are met.”²¹

Although there are a variety of ways by which different countries or political structures might make public officials accountable

for government behavior or ensure that they meet established performance standards, “the litmus test is whether private actors in the economy have procedurally simple and swift recourse for redress of unfair actions or incompetence of the executive authority.”²²

Participation

Participation refers to the ability of people to access the institutions that promote development. In the context of a public program or project, it implies the existence of a government structure or bureaucracy that is flexible enough to offer beneficiaries and other stakeholders the opportunity to improve the design and implementation of the project.²³

People participate in the development process through a variety of ways. They can “act through groups or associations (e.g., trade unions, chambers of commerce, NGOs,



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²⁰ Footnote 14, p. 8.

²¹ Footnote 14, p. 8.

²² Footnote 14, p. 8.

²³ Footnote 14, p. 9.

ADB identified the following principles of good governance in the urban context: accountability of public sector staff and organizations; greater participation of community and interest groups in decision-making processes relating to the delivery of services; predictability of regulations, frameworks, and markets; and transparency in dealings between the private sector and government

political parties) and as individuals (e.g., through letters to newspaper editors, participating in radio and television talk shows, voting).” ADB recognized the importance of civil society and NGOs in “channeling the energies of private citizens.”²⁴ NGOs, it noted, have been “helpful in identifying people’s interests, mobilizing public opinion in support of these interests and organizing action accordingly”²⁵ and have been “useful allies” in fostering a “bottom-up” approach to economic and social development.²⁶

Predictability

Predictability refers to (i) the existence of laws, regulations, and policies to regulate society; and (ii) their fair and consistent application. Predictability is the outcome of rule-based systems of governance—sometimes referred to as “rule of law”—which encompasses “well-defined rights and duties, as well as mechanisms for enforcing them, and settling disputes in an impartial manner.”²⁷ It “requires the state and its subsidiary agencies to be as much bound by, and answerable to, the legal system as are private individuals and enterprises.”²⁸

Transparency

Transparency refers to the availability of information to the general public and clarity about government rules, regulations, and decisions, including decisions issued to address a grievance or settle a dispute. Transparency complements and reinforces predictability:

Transparency in government decision making and public policy implementation reduces uncertainty and can help inhibit corruption among public officials. ...[R]ules and procedures that are simple, straightforward, and easy to apply are preferable to those that provide discretionary powers to government officials or that are susceptible to different interpretations.²⁹

Urban Governance

Urban governance refers to the management of the city’s resources and development. Such management necessarily includes setting policies and rules that regulate relationships between and among the city’s stakeholders, implementing and enforcing these policies and rules, and regulating public and private agencies or individuals that aid in implementation. It is a complex process that requires the participation of both the public and private sectors. Public sector agencies at various levels are required to coordinate their functions to ensure a seamless delivery of public service. Agencies or persons that make policies—which may be a national institution or a local legislative body at a regional/provincial/community level—might be different from those tasked with implementing the same—a local official or council, a community leader, an NGO representative or regulated service provider. The process also requires coordination and cooperation among the relevant authorities and stakeholders.

²⁴ Footnote 14, p. 10.

²⁵ Footnote 14, p. 10.

²⁶ Footnote 14, p. 10.

²⁷ Footnote 14, p. 10.

²⁸ Footnote 14, p. 10.

²⁹ Footnote 14, p. 12.

ADB's commitment to urban sector development within the Asia and Pacific region involves support for urban governance. Four principles were identified as the foundations of good governance and development management in the urban context: (i) accountability of public sector staff and organizations; (ii) greater participation of community and interest groups in decision-making processes relating to the delivery of services; (iii) predictability of regulations, frameworks, and markets; and (iv) transparency in dealings between the private sector and government.³⁰

Issues in Urban Governance

Asia's urban population, which rose from only 232 million people in 1950 (17% of the population) to around 1.6 billion in 2005 (40% of the population)³¹ is currently considered "the fastest growing urban population in the world."³² It is estimated that by 2030, around 2.7 billion people, or almost 55% of the population in Asia, will be urban.³³

Urban Finance

Growing urban populations create increasing demands on existing service infrastructure, and the supply of such infrastructure requires huge investments that governments find difficult to put up. Securing and/or supporting water supply and meeting the requirements for sanitation, solid waste management, slum upgrading, and urban roads and mass transit systems in Asian cities, require each ADB developing member country to spend around \$60 billion per annum on the development of the necessary infrastructure and services between 2006 to 2010.³⁴ ADB has found that city governments in Asia are unable to

Without these sustained high levels of expenditure, cities will become increasingly inefficient and unpleasant places to live and work in as pollution, overcrowding, social friction, and deteriorating environmental conditions reduce the quality of life

invest adequately in infrastructure, and this is "undermining economic growth, private sector development, and the achievement of social and poverty reduction goals."³⁵ Local governments are noted to have difficulty in mobilizing and accessing investment funds.³⁶

Consequently, although lending for the urban sector increased by 6% from 1999 to 2005, thanks to increased financing from the private sector, serious funding gaps remain.³⁷ Without these sustained high levels of expenditure, cities will become increasingly inefficient and unpleasant places to live and work in as pollution, overcrowding, social friction, and deteriorating environmental conditions reduce the quality of life.³⁸ Without adequate financing to sustain the requirements of urban development, government and service providers are constrained to provide uneven levels of service, so that some members of the population are able to access basic services, while others—usually the poor without secure tenure—are unable to do the same.

Urban Infrastructure and Services

Urban governance also involves the construction and maintenance of infrastructure necessary to sustain the cities' rapid growth. Such growth requires the sustained provision of basic services

³⁰ Footnote 7, p. 11.

³¹ ADB. 2006. *Urbanization and Sustainability: Case Studies of Good Practice*. Manila. p. 13.

³² ADB. 2006. *Special Evaluation Study on Urban Sector Strategy and Operations*. Manila, p. 19.

³³ Footnote 31, p. 13.

³⁴ Footnote 32, p. 22.

³⁵ Footnote 31, p. 26.

³⁶ Footnote 31, p. 28.

³⁷ ADB. 2006. *Evaluation Study on Urban Sector Strategy and Operations*. Manila. p. 31. Multilateral agency financing of urban development projects has declined, however.

³⁸ Footnote 7, p. 12.



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to the city's inhabitants as well as the protection of residents' quality of life. Operating existing infrastructure and building new facilities to meet the needs of Asia's growing urban population require substantial investment.³⁹

Although governments and private service providers have the "propensity...to build infrastructure," ADB has noted that maintenance and repairs do not receive adequate attention, and this results in high losses and damages thereby adding to the high cost of services in urban areas.⁴⁰ The processes involved in providing urban assets and services often lack transparency. This promotes corruption, which "can occur throughout the project chain, raising costs, affecting the affordability of services, undermining community support for government and...the investment climate by reducing access to both domestic and international funds."⁴¹

Urban Housing

It has been estimated that "an additional 400 million dwellings will be needed in Asia

by 2030, requiring large and increasing investments in housing and ancillary infrastructure and services."⁴²

Rising urban populations and increasing land prices have made access to affordable urban housing difficult. More than 40% of urban populations in Asia live in substandard housing. Dwelling units are overcrowded, there is little more than 6 square meters of floor space enjoyed by each person,⁴³ and houses remain vulnerable to risks associated with natural hazards such as flooding, political vendettas, and protection racketeering.⁴⁴ Increased instances of squatting on public and private lands and a growing number of homeless in the region have been observed.⁴⁵

Public sector institutions in the Asia and Pacific region do not seem to provide affordable shelter for low-income households.

With the exception of Singapore, no country in Asia has solved its housing problems. Public housing programs

³⁹ An ADB study estimates that Asia has an overall infrastructure investment need of about \$750 billion per year for the period 2010–2020. ADB. 2009. *Infrastructure for a Seamless Asia*. p. 5.

⁴⁰ Footnote 31, p. 29.

⁴¹ Footnote 31, p. 29.

⁴² Footnote 31, p. 25.

⁴³ Footnote 31, p. 25.

⁴⁴ Footnote 31, p. 25.

⁴⁵ Footnote 7, p. 15.

have failed to deliver adequate low-income housing and are not affordable on the scale required from the public purse. In many cases, the elite, armed forces, police, and senior public servants have been the main beneficiaries of public housing programs. Promising low-cost housing schemes funded by development partners have not been sustainable.⁴⁶

Instead, individual households, community-based organizations, and private developers provide the bulk of housing in ADB's developing member countries. Informal housing supply markets that are not regulated by the public sector make up a growing share of urban housing. This appears to be due to the limited availability of formal credit to low-income families. Consequently, low-income families often "fund improvements through help from family and friends," or "join informal, community-based savings groups and obtain loans from

those groups."⁴⁷ Although cooperative housing has worked in some countries, this has "not been widely adopted by urban communities to meet housing needs."⁴⁸

Urban Land Management

Significant numbers of small businesses, poor, and middle class families are unable to gain access to land, and are constrained to occupy public and private land without secure tenure. Due to lack of secure tenure, they are unable to obtain legal access to utilities and other services, among other things.⁴⁹ The urban land market is plagued by "inappropriate or unaffordable land use, building standards and regulations... [and] cumbersome and expensive procedures for land transfer (including cadastral mapping, titling and registration)..." which increase the price of land to levels that urban dwellers cannot afford—for example, the cost of land takes up to 40% of site development costs in Metro Manila. Public and private landowners thus find it more attractive to develop



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⁴⁶ Footnote 31, p. 25.

⁴⁷ Footnote 7, p. 16.

⁴⁸ Footnote 31, p. 25.

⁴⁹ Footnote 7, p. 16.

To meet these challenges, city water services have been contracted out or privatized in certain countries, such as the Philippines and Thailand

available land for commercial purposes (which allows them to recoup their investment) instead of using the land to build houses for the poor. Other problems that contribute to increasing land prices include lack of transparency of information regarding land market indicators, and the failure of agencies to coordinate among themselves when servicing new urban land.⁵⁰

Water Supply

In the 1990s, ADB estimated that some 93 million people residing in urban areas in its developing member countries had no access to safe drinking water, and noted that “[w]ater shortages contributed to high levels of waterborne disease in many cities....”⁵¹ Over-extraction of groundwater, salination, unrecorded extraction, and the pollution of raw water supplies caused water resource management problems; conversely, poor management failed to adequately solve these issues. Many water utilities failed to provide adequate service. Over 50% of treated water produced by such utilities in Jakarta and Manila was classified as nonrevenue water—that is, consumed by unauthorized persons or otherwise unaccounted for. Water usage was inadequately metered, and tariff collections remained low. Pipe networks were often damaged, and the water passing through such networks, contaminated. Consumers complained that service providers arbitrarily set water tariffs, and residents of informal settle-

ment areas claimed that they were excluded from water delivery services. “Faced with an unreliable or intermittent supply and variable quality, a high proportion of residents buy potable water from vendors and/or are obliged to boil, disinfect, or filter it to protect their health.”⁵² To meet these challenges, city water services have been contracted out or privatized in certain countries, such as the Philippines and Thailand.

In 2004, the World Health Organization (WHO) and the United Nations Children’s Fund (UNICEF) disclosed that urban water provision in ADB’s developing member countries require further improvement. Although 85% of urban populations in developing member countries had sustainable access to a water source, the proportion of households with piped water connections declined from 55% in 1990 to 53% in 2002 in South Asia, and from 69% to 67% in the Pacific.⁵³ And while the percentage of households connected to piped water sources increased in East and Southeast Asia, water is not available 24 hours a day, and water quality is poor.⁵⁴ “Intermittent water supply [which] is at present the norm rather than an exception,”⁵⁵ brings about “water contamination, wastage of water at all stages, need for bigger pipes in the network (thus higher economic cost) for water delivery in a short time, unreliable metering, high levels of corruption, and stress among the urban poor to obtain their supply each day.”⁵⁶

Water Sanitation

In general, wastewater management in developing countries in Asia has received far lower priority than has provision of water supply, and focused on wastewater collection from urban areas—with limited, or no treatment—for disposal elsewhere.⁵⁷

⁵⁰ Footnote 7, p. 16.

⁵¹ Footnote 7, p. 13.

⁵² Footnote 7, p. 13.

⁵³ World Health Organization and United Nations Children Fund. 2004. Meeting the MDG Drinking Water and Sanitation Target. A Mid-Term Assessment of Progress. New York and Geneva.

⁵⁴ ADB. 2005. *Water Utilities Data Book*. Manila.

⁵⁵ ADB. 2007. *Asian Water Development Outlook*. p. 26.

⁵⁶ Footnote 55, p. 26.

⁵⁷ Footnote 55, p. 29.

In 1999, ADB estimated that around 300 million urban residents in its developing member countries had no access to adequate water sanitation facilities—such as wastewater treatment facilities, septic tanks, and sewerage.⁵⁸ Such facilities are capital-intensive, and cash-strapped governments find it challenging to put up the required investment. And “[e]ven where substantial investments in sewerage have been made, as in South Asia, institutional weaknesses and poor cost recovery⁵⁹ have held back further investment.” Consequently, wastewater is discharged without treatment in many cities. Where septic tanks provide intermediate levels of treatment, “the resulting discharge in built-up areas often enters the street drainage system, where it poses a potential health hazard, made worse in many...cities that are subject to flooding.”⁶⁰

While more recent statistics on wastewater management suggest that there is growing access to sewers, septic tanks, or improved pit latrines in the region, only 40% of household sewage is treated before disposal, and the bulk of pollutants is still discharged untreated into urban water systems or the ocean.⁶¹

Solid Waste Management

To deal with large amounts of garbage, many Asian cities prefer to adopt expensive solid waste management solutions such as open dumps, sanitary landfills, and incineration. While efficient, these require capital from domestic and foreign sources, use vast amounts of energy, and rely on imported technology, all of which strain local government resources.

ADB estimates that while 75% of solid waste generated in urban areas is collected, less than 60% of this is taken to a solid waste disposal site.⁶² Only a fraction of this percentage is disposed in properly managed solid waste landfill sites. Solid waste finds its way to



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open dumpsites, “or [is] left to rot in backyards, streets, drains, and waterways,” contributing to health risks and water pollution.⁶³ Few cities in the region have the technology to develop integrated solid waste management systems and sanitary landfills, and there appears to be an increasing shortage of sites available for landfill development.

Urban Transport

Cities require transport systems that can move large numbers of passengers at affordable prices; however, mass transit systems are costly. Few cities in the region have well-integrated road systems. Many lack road space

⁵⁸ Footnote 7, p. 14.

⁵⁹ Footnote 7, p. 14. In its Urban Sector Strategy, ADB defines “full cost recovery” in the water sector as the recovery of all financial costs associated with the provision of water, including direct and indirect operations and maintenance costs, depreciation, taxes, interest on debt and a reasonable return on equity.” See footnote 7.

⁶⁰ Footnote 7, p. 14.

⁶¹ ADB. 2001. *Cities Data Book: Urban Indicators for Managing Cities*. Manila.

⁶² Footnote 61.

⁶³ Footnote 7, p. 14.

Because of decentralization, the role of central government in service delivery has decreased

in their central areas. Consequently, despite low motorization levels in many developing member countries (relative to levels in developed countries), larger cities suffer from constant traffic congestion, which decreases productivity and efficiency, lengthens already long community commuting times, and causes accidents and pollution.⁶⁴ Furthermore, public transport services in many developing cities are “of poor quality, crowded, dirty, slow, infrequent, and unsafe. Access—embarking and disembarking—is often difficult and sidewalks are cluttered and dirty.”⁶⁵

Although there is a wide range of urban transport available in Asian cities, cities have largely failed to plan and protect infrastructure corridors from development or ensure that the future transportation needs of cities can be met. This has resulted in congestion and the lack of adequate systems for secondary roads.⁶⁶

Service Delivery Failure and Decentralization

Service delivery failure has been attributed to resource constraints and the inability of national service providers to adequately deliver what is required to citizens living in locations far from the capital. In most developing member countries, political, fiscal, and/or administrative decentralization “has been pursued in part to reduce the gap between citizens and government authorities,”⁶⁷ and result in improved service delivery. Urbanization and economic growth in Asia have increased the political and administrative pressures to

decentralize government decision making and service delivery from central government to subnational levels.⁶⁸

Because of decentralization, the role of central government in service delivery has decreased. Central government financing for urban development projects in developing member countries declined from 18% to 13%,⁶⁹ and the percentage of national government agencies tasked with the execution of urban development projects has decreased from 62.2% to 41.9%.⁷⁰ On the other hand, the authority of local institutions has been augmented; and urban sector development has, increasingly, become a local government initiative. Local government financing for urban projects increased from 9% to 15%,⁷¹ and the percentage of local agencies tasked to execute urban projects increased from 2.2% (in 1999) to 14% (in 2005).⁷²

Although governments continue to vary in how they deliver services in urban areas—some have centrally or regionally managed agencies providing formal connections to water and electricity services; others mandate local governments to provide service delivery themselves—local governments play critical roles in service delivery within their jurisdiction. Elected local officials, now empowered in varying degrees, play roles that are even more critical in urban governance and service delivery. For example, the Local Government Code (1991) in the Philippines devolved the authority, responsibilities, and resources for urban service delivery to local government units.

But while decentralization improved service delivery in some ADB developing member countries, this was not the case in others. When decentralization failed to result in better service delivery, this failure was attributed to weak local capability to perform the additional

⁶⁴ Footnote 7, p. 15.

⁶⁵ ADB. 2006. *Urban Transport Energy Efficiency*. p. 6.

⁶⁶ Footnote 31, p. 28.

⁶⁷ Footnote 1, p. 5. 5.

⁶⁸ Footnote 31, p. 38.

⁶⁹ Footnote 37, p. 38.

⁷⁰ Footnote 37, p. 40.

⁷¹ Footnote 37, p. 38.

⁷² Footnote 37, p. 40.

responsibilities resulting from decentralization,⁷³ and insufficient fiscal resources:

[The] failure to build local capacities in line with devolved responsibilities has frequently resulted in insufficient local revenue generation and inadequate local management capability that have compromised the developmental benefits of decentralization.”⁷⁴

Many local governments desperately lack the required skills to manage growth, provide urban services, and maintain infrastructure. Often training and capability-building initiatives are undertaken in an uncoordinated, unfocused fashion, replicating previous programs and failing to enhance skills of urban managers and their staff.⁷⁵ Unclear lines of authority and mandates between and among agencies also prevent decentralization from delivering what it promises:

Better horizontal coordination is critically needed in cities, particularly as urban areas spread across several local administrations. Policy dialogue with and assistance to metropolitan authorities are required to redesign institutional frameworks, revise regulations, and restructure decision-making mechanisms. Better vertical coordination between central (state and provincial) and local governments is increasingly essential as decentralization policies become more common and are progressively implemented.⁷⁶

Moreover, unless effective accountability mechanisms accompany decentralization, corruption among local officials who have

increased control over distribution of resources may hinder better service delivery outcomes.⁷⁷

Privatization and Regulation of Service Providers and Public–Private Partnerships

One response to the problems arising from perennial public resource constraints and the inability of national or local service providers to deliver the required urban services is to attract private capital by privatizing national, regional, local or urban service providers, or by forming public–private partnerships.⁷⁸ When the private sector gets involved in urban service delivery, government often ceases to play the role of a direct service provider; instead it becomes an enabler and regulator for service providers, and engages in policy making, planning, regulation, and consumer protection. Meanwhile, a private sector company takes responsibility for the actual delivery of services, pursuant to the government’s policies, plans, and regulations. As policy maker and regulator, public sector agencies need to balance the commercial interests of service providers with consumer protection, which is no easy feat.

Participation, Service Delivery, and Access to Services

On the ground, participation of individuals in urban development efforts across the region is often coursed through community-based groups and NGOs; business associations;

As policy maker and regulator, public sector agencies need to balance the commercial interests of service providers with consumer protection

⁷³ TAF notes: “For example, an underfunded central government incapable of delivering services will choose to decentralize sanitation service delivery, even though local government bodies may be even less equipped.” The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). p. 5.

⁷⁴ Footnote 7, p. 11.

⁷⁵ Footnote 7, p. 13.

⁷⁶ Footnote 7, p. 13.

⁷⁷ The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). p. 2.

⁷⁸ Since most, if not all government service providers used to be highly centralized and subsidized government utility companies, the removal of subsidies and improvements in the agencies’ accountability, transparency, and responsiveness were commonly prescribed reforms. Public sector facilities and services (such as water supply and sanitation) were restructured as corporations or privatized. In some countries, service delivery was opened to private sector companies.

religious associations; environmental pressure groups; and slum dweller associations. These groups, often community-based, facilitate partnership between the public, private, and nonformal/informal sectors, and are the means by which individuals succeed in having their voices heard during local planning initiatives or project implementation.

In some cases, citizens' groups have taken responsibility for infrastructure improvement and maintenance; developed innovative means of credit; or even directly provided basic services. Particularly in the urban poor setting, these groups have stepped into roles mandated on the government, but which the government had refused or failed to play. They denote self-help at a time when public governance—and therefore the capacity to undertake service delivery—is weak or absent.

Where public sector governance is weak, even increased opportunities for public participation through representation in urban governance and development may fail to yield better access to services. The local bureaucratic structure might provide a seat for a community representative and course the resources required for community development to such a person—but unless the public sector or private citizens have adequate means to hold that person accountable, the latter may be able to capture institutions designed to respond to community needs and use community resources for his or her own ends. Meanwhile, poorer community members remain vulnerable and disenfranchised.

Grievance and Dispute Resolution Mechanisms

Establishing grievance redressal mechanisms that allow citizens to demand more responsive, accountable, and transparent delivery of public goods and services is commonly prescribed for improving urban governance. Scaling up grievance redressal mechanisms in urban development projects is described as:

...a standard prescription associated with the new public management, an apolitical conceptualized style of

governance wherein governments are encouraged to act more like private businesses and entrepreneurs...and citizens are encouraged to exert "client power" to directly demand accountability from public and private service providers, rather than rely on the more traditional long-winded chains of accountability through public actors.⁷⁹

It has been argued that direct individual feedback on service provider performance ought to be ensured in the urban sector because:

...service providers of certain infrastructure sectors (such as water, sanitation, electricity) exhibit natural monopoly characteristics and economies of scale—that is, a single supplier is more viable than several smaller suppliers—[and] have very few substitutes. As such it is imperative that monopoly suppliers are effectively regulated to ensure universal coverage.⁸⁰

Consumers and beneficiaries are thought to be in the best position to monitor the quality of a particular service or the status of an urban infrastructure project, and are therefore called on to assist in regulating suppliers.

In recent years, grievance redressal mechanisms have included innovations such as setting up customer complaint service centers that can be accessed by telephone or email; assigning field teams to handle the rapid resolution of grievances in specific areas; and using citizens' report cards or citizen charters that set out the standards of performance and service delivery that citizens can and ought to expect from national and local government agencies.

But recent literature has questioned the efficacy and assumptions underlying this standard prescription. Ranganathan (2008) notes that there appear to be limitations to the accessibility and efficacy of formal grievance redressal mechanisms and other "direct routes" to holding service providers accountable. This

⁷⁹ M. Ranganathan. 2008. *ADB Governance Brief: Grievance Redressal Processes in Urban Service Delivery: How Effective Are They?* Manila. pp. 2–3.

⁸⁰ Footnote 79, p. 1.

appears to be particularly true in the case of the urban poor, who appear more inclined to voice their grievances through informal redressal procedures involving “local politicians, street leaders, lower level bureaucrats and neighborhood associations” instead of resorting to established formal procedures.⁸¹ Ranganathan posits the following reasons behind the failure of the urban poor to access established grievance redressal mechanisms:

- (i) The poor lack property rights or capabilities and connections to access formal systems.
- (ii) The poor are geographically isolated or too time constrained to formally register or follow up on complaints.
- (iii) Service providers face institutional, financial, and human resource barriers hindering their ability to respond to urban poor complaints.⁸²

Complexity⁸³ and Urban Governance

One possible reason for the failure of grievance redressal mechanisms to obtain the expected

results is that the mechanisms were designed for simple contexts, when urban development, by its very nature, is complex. Customer service centers in governments or formal service providers are designed to address grievances that usually arise in the course of service delivery—grievances relating to nonprovision, or inadequate or unsatisfactory provision of the service to which the customer is entitled. There is usually a standard response for the reported grievances, and in some instances, a target response time that customer service representatives aim to meet, when dealing with each customer.

But the context in which urban development projects are undertaken are not always simple. As recent literature⁸⁴ emphasizes, some rights claimed by the urban poor (secure tenure, for example) are contested, and the lack of clarity in this area affects their ability to access urban assets and services. The fact that the local government or service provider introduces a grievance mechanism for its customers does not enable the urban poor who cannot obtain access to formal systems, to access the same. Existing rules usually provide formal access to

⁸¹ Footnote 79, p. 3.

⁸² Footnote 79, p. 3.

⁸³ The sheer number of interacting agents in a city makes it impossible (or at the very least improbable) to predict every possible outcome of each person’s interaction. In recent literature, “organized complexity” has become a “constructive way of thinking about urban life.” S. Johnson. 2001. *Emergence: The Connected Lives of Ants, Brains, Cities, and Software*. Simon & Schuster: New York. p. 52.

The Cynefin framework, an approach developed by David J. Snowden to understand complex real world problems, provides another explanation for the apparent failure of grievance redressal mechanisms. Leaders—including public managers—who “understand that the world is often irrational and unpredictable will find the Cynefin framework particularly useful.” D. Snowden and M. Boone. 2007. A Leader’s Framework for Decision Making. *Harvard Business Review*. November. p. 70.

The framework sorts the issues facing leaders into contexts. The first of these domains is the simple context, where all stakeholders share an understanding of a particular issue, and the right resolution is “self evident and undisputed.” Simple contexts “are characterized by stability” and involve “areas that are little subject to change, such as problems with order processing and fulfillment.” Leaders, or public managers “assess the facts of a situation, categorize them, and then base their response on established [best] practice.” The information needed to deal with the situation is known and accessible to leaders and/or managers, their staff and/or employees, and the stakeholders who have a grievance. Once the problem in this domain has been identified and correctly categorized, a solution based on best practice is applied. Thus, in the simple context, “line workers...are more than capable of independently handling any issues that may arise.”

Complicated contexts are called the “domain of experts” because they “call for investigating several options [good practice, as opposed to best practice]—many of which may be excellent,” and the determination of which option might best resolve a particular issue that requires expert analysis.

Complex contexts exhibit the following characteristics, among others: (1) large numbers of interacting elements; (2) nonlinear interactions and minor changes that produce disproportionately major consequences; (3) a dynamic system, the whole of which is greater than the sum of the parts, where the solution to issues—in the form of recurring patterns of behavior—emerge instead of being imposed; and (4) a constantly changing system where things seem to be constantly in a state of unpredictability and flux.

When an issue arises in a situation which is undergoing, or has undergone, a major change that introduces unpredictability and flux, leaders cannot resort to the application of best or good practices—both of which are past practice, and therefore, not necessarily the response required in a dynamic and changing context. Instead, the leader, public manager, and expert would do well to allow instructive patterns to emerge and wait for behavioral patterns to reveal a solution. The study on Access to Justice for the Urban Poor studied how the urban poor actually expressed grievances and solved disputes, in order to find emerging patterns that point to solutions that have not yet been recognized as best practice.

⁸⁴ Footnote 79.

The study found emerging patterns in the manner in which the urban poor express grievances relating to their inability to obtain access to urban assets

urban assets and services only to those with proof of tenure or formal title to the land they occupy. The status of many urban poor, who are unable to present such proof, or any legal identity document, for that matter, remains unresolved. When they are able to obtain access to assets and services despite these rules, the urban poor do not enjoy such access with any stability. Future issues arise in relation to such access, causing them to find informal and ad hoc solutions to continue having such access.

Recognizing that grievances and disputes in the urban poor setting often arise in

complex, rather than simple contexts, the Access to Justice for the Urban Poor project conducted a study on the processes used by the urban poor to voice and resolve grievances relating to urban assets—what has been described as “the every day negotiations that the poor engage in to improve access to urban services.”⁸⁵ The study obtained insights into the nature of urban governance and the policies and recommendations that can enhance such governance, so that the urban poor are able to “access justice”⁸⁶ in the context of urban service delivery—that is, claim the delivery of public goods and services from the institution or agency responsible for such delivery—and, in so doing, obtain longer term enjoyment of urban assets. The study found emerging patterns in the manner the urban poor express grievances when they are unable to obtain access to urban assets.

⁸⁵ Footnote 79, p. 3.

⁸⁶ Justice is understood in this context as “a function of the relationship between the institution responsible for the delivery of public goods and services in a predictable, affordable, and accountable manner, and the ability of the poor to sustain their access to key sets of assets.” ADB. 2001. *Report and Recommendation of the President to the Board of Directors of the Asian Development Bank on the Proposed Loans and Technical Assistance Grant to the Islamic Republic of Pakistan for the Access to Justice Program*. Manila.

The Urban Poor, Governance, and Service Delivery Failure

Poverty is usually defined in terms of an income standard, but is also defined in terms of a person's failure to meet one's basic needs. The urban poor are members of the city population that are unable to access certain minimum requirements for private consumption—adequate food, shelter, and clothing; essential services such as safe drinking water, sanitation, public transport; and health, educational, and cultural facilities.

Asked to define poverty, those who are considered "poor" under these criteria describe the concept in terms of their lack of (i) physical well-being; (ii) material assets such as land, house, furniture, and money; (iii) insecurity and vulnerability to crime, violence, calamities, and disasters; (iv) social support from family, friends, neighbors, the community, and the state; and (v) a sense of power when dealing with political elite or the government.⁸⁷



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⁸⁷ A. Laquian. 1969. *Slums are for People*. Honolulu: East West Center Press; S. Collas-Monsod. 2003. Poverty Indicators. Manila: Philippine Daily Inquirer. 27 September, both cited in A. Laquian. 2004. Who are the Poor and How are They Being Served in Asian Cities (a paper presented at the 2004 Forum on Urban Infrastructure and Basic Service Delivery for the Urban Poor, Regional Focus: Asia, jointly sponsored by the Woodrow Wilson International Center for Scholars and the National Institute of Urban Affairs, New Delhi India) p. 5. Available: www.wilsoncenter.org/topics/docs/Prod.doc



Eric Sales

The urban poor tend to be concentrated in slums or squatter colonies.⁸⁸ Slums and squatter colonies are commonly located in inner city areas where old dilapidated housing is available for low rent, or at the city's periphery. The two main features characterizing urban poverty in these areas are the physical deterioration of the urban environment and illegality of tenure status.⁸⁹ The residents of slum and squatter communities tend to be among the poorest or most vulnerable sectors of the urban population—recent migrants or former migrants who are more vulnerable and are less able to get ahead in life. While there appears to be a correlation between recent migration and poverty levels, the more successful migrants appear to be able to leave the slums, and the less capable

slum residents remain in dilapidated, unsanitary, and vulnerable communities.

The urban poor tend to suffer a disproportionate share of the external costs of urban development. Urban poor settlements tend to have inadequate access to urban infrastructure and services (for water and sanitation, health clinics, schools, and social welfare, among other things), and the poor tend to pay higher fees for such services than other urban residents.

Those living at the city's periphery spend a significant amount of their income and time commuting between their homes and the city, where they hold jobs. Those who live in the city often do so in unsafe, unsanitary structures, often without secure tenure.

⁸⁸ A slum is defined as an area that has a combination of the following physical and legal characteristics: (i) inadequate access to safe water; (ii) inadequate access to sanitation and other infrastructure; (iii) poor structural quality of housing; (iv) overcrowding; and (v) insecure residential title or tenure. United Nations Centre for Human Settlements. 2003. *The Challenge of the Slums: Global Report on Human Settlements 2003*. London: UNCHS (UN-Habitat). p. 12. A squatter is defined as a person who "occup[ies] land or buildings without the explicit permission of the owner." United Nations Centre for Human Settlements. 2003. *The Challenge of the Slums: Global Report on Human Settlements 2003*. London: UNCHS (UN-Habitat). p. 82.

⁸⁹ A. Laquian. 2004. Who are the Poor and How are They Being Served in Asian Cities? A paper presented at the 2004 Forum on Urban Infrastructure and Basic Service Delivery for the Urban Poor, Regional Focus: Asia, jointly sponsored by the Woodrow Wilson International Center for Scholars and the National Institute of Urban Affairs, New Delhi India. p. 8. Available: www.wilsoncenter.org/topics/docs/Prod.doc

Philippines

Anthony opened a small eatery in Barangay Duljo-Fatima. As the eatery was located far from the communal water source, he applied for a private water connection with the Metro Cebu Water District, Cebu City's water service provider. Despite his submission of all required documents, he obtained a private water connection only after several months. The delay was reportedly caused by the lack of basic infrastructural foundations connecting the urban poor community to the formal service provider's facilities.

Source: E. Porio. 2009. *Philippines Country Report: Access to Justice for the Urban Poor*. p. 77.

Housing and Secure Tenure

Despite the continued increase in investments in urban land development, there does not appear to be a corresponding sustained effort to enable the urban poor to obtain secure tenure and access to land and housing.

Housing

The high cost of urban real property has placed decent housing beyond the means of the urban poor. Where it is able to do so, the public sector subsidizes the cost of shelters built for and purchased by the urban poor.⁹⁰ But resource and other constraints (including space constraints in the urban center) usually allow for building socialized housing facilities only at the urban periphery, where real estate prices are considerably lower. Since such sites are located some distance from the city, residents usually spend a considerable percentage of their income for transport and waste more time in traffic than better-off urban dwellers.

It has been observed that the main problem in shelter provision for the urban poor

“is not housing itself but land, especially adequately serviced land that the poor can afford.”⁹¹ Housing sites built for the poor at the city's periphery often lack water and sanitation, solid waste collection and disposal and other amenities. They are often isolated settlements far from schools, health clinics, or other social services. It is therefore not surprising that the urban poor prefer that government carry out onsite development projects rather than provide new suburban shelter facilities. Notably, community upgrading projects—which, with the support of multilateral and bilateral development agencies, including ADB, develop existing communities and provide basic services such as water, pathways, storm drains, canals, and garbage collection, are now recognized as one of the most effective instruments for making housing and services accessible to the urban poor.

That being said, it appears that the public sector, particularly in South and Southeast Asia, continues to play a peripheral role in shelter provision for the poor. The urban poor themselves “construct the greatest bulk of housing...usually in illegal or uncontrolled settlements.”⁹²

Secure Tenure

Many urban poor believe that their problems are related to the lack of secure tenure. Insecure tenure and the lack of documentary proof of one's right to occupy land or a structure built therein, are often the reasons why the urban poor are unable to obtain legal access to utility connections. As an example, only those who can present proof of residence can obtain legal connection to electricity and water services in Bangladesh. Since urban poor communities occupy what is categorized as fallow land, they are unable to obtain proof of residence and cannot present the legal document required. Similarly, in Thailand, legal connection to utility providers requires

⁹⁰ Subsidies commonly provided by the government include land grants; subsidized construction or housing loans at or below government borrowing rates; the provision of public housing or government employee housing; and the provision of income-tax exemptions for socialized housing investors.

⁹¹ Footnote 89.

⁹² Footnote 89.

the presentation of a residence certificate, which many urban poor do not have. If one resides on land that he or she does not own, it is necessary to present proof that one has been permitted by the landowner to obtain the connection. Many local governments in the Philippines do not take into account slum dwellers without secure tenure when designing proper sewage and drainage systems.

In some instances, local government units are prevented from extending infrastructure and urban services to urban poor areas by land laws, zoning codes, building regulations and housing standards that require proof of secure tenure as a precondition to granting access to urban services. But even when legislative or administrative powers have been decentralized to local governments, some persist in preventing the connection of urban poor communities to basic urban services, believing that this would legitimize their occupancy.

Water and Sanitation

To increase the amount of potable water and expand water distribution systems in cities, a number of Asian countries have privatized water and sanitation systems. Although some projects are able to meet these objectives, they generally have been unsuccessful in extending water and sanitation services to the urban poor. Authorities often refuse to provide, or allow private water companies to provide, piped water to congested slums and squatter settlements. Communities that have settled in dangerous areas such as riverbanks and other flood-prone areas such as both sides of a railroad track or highway, usually against government advice or regulations, fail to receive piped water, as they may eventually be evicted for their own safety. Authorities are also reluctant to extend piped water connections to squatter communities, believing that this would legitimize the squatters' tenure status. Water providers are just as reluctant to build the infrastructure necessary to connect their reservoirs with poor communities without secure tenure, as this entails a risk that they might not be able to recover their investment if the communities are evicted. Consequently, many urban poor buy water from vendors at prices that are often as high

Bangladesh

There are about 15 water lines in Korail slum that are legally connected to the Water Supply and Sewerage Authority (WASA). Each line has the capacity to provide water to around 60 to 65 households. These water connections serve only about 10% of the slum population. Normally, WASA-supplied water is piped into the community once a day. When there is water, slum dwellers collect it directly by maintaining a queue. Slum dwellers who access water this way pay Tk100 each month for this service.

Despite the existence of legal connections within the community (or perhaps because of their incapability of serving the entire Korail slum population), around 90% of the Korail slum population obtain water from illegal sources. According to an official of an NGO operating in the area, there are many water lines in the community that are illegally connected to WASA. The slum dwellers reportedly provide Tk500 to WASA staff to obtain such a line. If a WASA inspector comes to disconnect the line, the same amount is reportedly offered as a bribe to prevent disconnection.

Source: The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). pp. 53–54.

as ten times what richer people pay. They also tap into water mains, open fire hydrants, or tamper with water meters, thereby increasing the volume of nonrevenue water.

Solid Waste Management

Municipal garbage collection and disposal systems tend to neglect the urban poor, partly because of their inability or unwillingness to pay for the service. In addition, slum and squatter areas, often congested or in remote areas outside the city, are not readily accessible to the trucks that gather and transport garbage.

Many local governments have begun contracting out solid waste collection and disposal to private companies. But these companies have little interest or incentive to pick up the urban poor's garbage, which consists mostly of wet biodegradable material of little value—some of which may be

subject to putrefaction and is hazardous to collect. Consequently, the urban poor dispose uncollected garbage in vacant lots, streets, canals, streams and rivers, creating serious health risks and contributing to environmental degradation.

Transportation

Asian countries have generally adopted transport models that favor motorized private transport systems such as automobiles, buses, and other vehicles reliant on road infrastructure. In recent years, however, bigger cities have adopted metro transit systems. Public funds invested in such systems are taken from cutbacks in expenditures for education, health, affordable housing, and social welfare—all of which are critical to the urban poor. These favored transport modes do not

fit the travel behavior of the urban poor, who get around by “walking, riding bicycles, taking human-powered tricycles or rickshaws, riding on para-transit vehicles (tuktuks, betjaks, or jeepneys) or traveling in packed, overcrowded, smoke-belching and poorly maintained buses.”⁹³ The urban poor also tend to suffer a disproportionate share of the “external costs” of transport modes—pollution, delays caused by traffic, higher cost of goods and services due to transport difficulties, and high transit fares.

In recent years, urban transport systems have been increasingly operated and financed by public-private partnerships, which favor self-financing transport systems that do not require subsidies. It should be noted, however, that the urban poor usually cannot afford the fares for road- and rail-based systems even when these are heavily subsidized by the public sector.



Takeshi Takahara

⁹³ A. Laquian. 2004. Who are the Poor and How are They Being Served in Asian Cities? A paper presented at the 2004 Forum on Urban Infrastructure and Basic Service Delivery for the Urban Poor, Regional Focus: Asia jointly sponsored by the Woodrow Wilson International Center for Scholars and the National Institute for Urban Affairs, New Delhi India, p. 15.

Conclusion

Although a lack of resources and weak capacity are common explanations for urban service delivery failure by the public sector (or the private providers regulated by the public sector), it does not explain why such failure appears to have a disproportionately greater negative effect on the urban poor. Moreover, the solutions to service delivery problems that have been adopted are not responsive to the poor.

Urban assets and services remain inaccessible despite the privatization of public utilities and service providers, and decentralization of service delivery to local government levels. One reason for this is that national and local authorities continue to set and implement policies that prevent the urban poor from obtaining formal access to basic urban services such as water and sanitation services; solid waste collection and disposal; and transportation—or at least make it inconvenient or difficult for them to do so. Authorities and service

providers resist from providing permanent utility connections to structures that appear to be nothing more than temporary shelters—for if the dwellings are torn down, or the residents evicted or resettled elsewhere, they would be unable to recover their investment. In cases where the urban poor have settled on land without the landowner's consent, authorities fear that formal and regular service provision may be interpreted to mean that they have legitimized the settlers' claim over the land.

In many cases, the urban poor's inability to provide a formal legal document showing that they occupy homes or conduct their business on a piece of land with the landowner's consent makes it impossible for them to obtain basic services or a legal connection to utilities providers. In other cases, their inability to individually shoulder the cost of obtaining such connections or of meeting technical requirements (such as using housing materials prescribed under a building code) prevents access to basic services. In both cases, it is evident that government prioritizes delivery to persons who can present formal proof of residence or tenure, and those who can afford installation and other related costs. When the state subsidizes the cost of service delivery, the subsidies are sometimes not enough for service providers to recoup their investment or spend for improvements that could extend services to more people. Consequently, some service providers tend to treat the poor—often the most difficult to reach—as their last priority.

When the state subsidizes the cost of service delivery, the subsidies are sometimes not enough for service providers to recoup their investment or spend for improvements that could extend services to more people

Grievances, Disputes, and the Urban Poor

The Access to Justice for the Urban Poor project of the ADB⁹⁴ found that most, if not all grievances and disputes involving the urban poor relate to their inability to access urban assets and services. The study concluded that failure to resolve the urban poor's grievances—which are directed primarily at government and service providers—generate intracommunity and interpersonal disputes among members of the urban poor, who

compete for access to, or the management of, available urban assets.

Formal Dispute Resolution Mechanisms and the Urban Poor

In theory, citizens with grievances can voice their demands, and pressure governments and service providers into providing access to urban assets or improving service delivery.



Ian Gill

⁹⁴ ADB. 2009. *Regional Technical Assistance for Access to Justice for the Urban Poor*. ADB (RETA 6366).

Community-based organizations are the primary means by which the urban poor make their concerns known to their formal and/or elected representatives

Alternatively, they can choose to exit the system and pursue options that would enable them to obtain better access.

There are two ways that citizens can voice their concerns. The traditional route is to make their demands known to policy makers and elected officials, who, as the citizens' representatives, pressure service providers to meet citizens' demands.

Where service utility providers have been privatized, a shorter route has been developed: Citizens are viewed as "clients" of service providers who can directly make their demands known to the service providers. Service providers are required to operate according to models that are more corporate and provide mechanisms through which citizens can directly lodge complaints and grievances, which service providers should then immediately redress.

On the ground, however, it appears that the urban poor do not commonly access direct routes to service providers. Instead, they choose to go through informal redressal procedures involving "local politicians, street leaders, lower level bureaucrats and neighborhood associations."⁹⁵ Moreover, community-based organizations, which facilitate partnership between the public, private, and nonformal/informal sectors, are the primary means by which the urban poor make their concerns known to their formal and/or elected representatives.

It has been suggested that the urban poor do not use formal venues where citizens provide feedback on the performance of public or private service delivery because (i) they lack the knowledge, capability, resources, or connections that would enable them to access these systems; (ii) geographical isolation or time constraints make it impossible to follow

up on reported service failures; and (iii) institutional, financial, and human resource barriers hinder service providers from responding to the poor.⁹⁶

Two main types of formal grievance and dispute settlement mechanisms are examined in detail in the following paragraphs.

The Judicial System

Virtually all countries in the world have a formal justice system composed primarily of courts that resolve conflicts arising from alleged violations or different interpretations of rules that govern behavior and protect rights. Courts interpret laws and determine their application in actual disputes. When a court decides that a person has violated a law, the court is tasked with imposing an appropriate sanction.

Courts are usually part of a hierarchical system. Decisions of lower courts are subject to review by higher appellate courts. Courts are staffed by judges, who are usually appointed by a central appointing authority. In some jurisdictions, judges are subject to the supervision of this central authority or its representative; in others, they are supervised and may even be removed by a chief justice of the highest court. In theory, judges are at less risk of being partial to any party involved in a dispute heard in their court if they are appointed (rather than elected). They owe no favors to anyone, and are answerable only to the appointing power or the chief justice of the highest court.

Although the system is meant to ensure that judges and courts are able to adjudicate cases impartially, the poor often find themselves at a disadvantage during court proceedings. Such proceedings effectively exclude persons without specialized legal knowledge—especially the poor. Furthermore, the cost of litigation is beyond their means. There are filing fees, bail bonds, and other litigation-related expenses. In the Philippines, for example, it has been estimated that the typical cost of a criminal case, excluding lawyers' fees, is equivalent to "the subsistence budget for an entire Filipino family of six for an

⁹⁵ Footnote 79.

⁹⁶ Footnote 79, p. 3.



Richard Abrina

entire year,”⁹⁷ and “three times more than the average annual savings of a Filipino family.”⁹⁸ Financial constraints also make it difficult for the poor to retain competent counsel. These limitations, together with the fact that the poor generally do not have sufficient knowledge to access, understand, and navigate through judicial processes, are some of the reasons why the urban poor find it difficult to participate in legal processes, and are reluctant to air their grievances in court.

Grievance Mechanisms Lodged within Service Providers

The drive to privatize public utilities or at least have such utilities adopt a corporate operating model, which deems citizens as clients, has given birth to grievance and dispute resolution mechanisms embedded within service providers. Sometimes, these mechanisms take the form of customer complaint service centers that can be accessed by telephone or email. Sometimes, these consist of assigning field teams to handle the rapid resolution of grievances in specific areas, or issuing citizens’

report cards or citizen charters that set out the standards of performance and service delivery that citizens can and ought to expect from public or private service providers.

These strategies—adopted to increase a service provider’s accountability to its clients, and encourage clients to participate in improving service delivery—are largely irrelevant to the urban poor. Grievance mechanisms are available to the service provider’s individual clients of record. Many of the urban poor are not customers of record. Many obtain utility services indirectly, through intermediary service providers who happen to be the customers of record. It is the intermediaries, and not the urban poor, who have access to the grievance mechanism of service providers. Moreover, as previously mentioned, the urban poor rarely voice their grievances individually; they choose to act in concert and voice their concerns through community representatives, neighborhood, and local leaders. Unless their intermediaries or representatives pass on their concerns to the service providers, the service providers would not know of their complaints.

⁹⁷ Lawyers’ League for Liberty. 2004. *Study on Addressing Affordability Constraints on Access to Justice by the Disadvantaged: Focus on Free Legal Service*. Manila: Supreme Court of the Philippines.

⁹⁸ Footnote 97.

Types of Grievances and Disputes

Four types of grievances or disputes involving urban assets emerged in all the sites covered by the Access to Justice for the Urban Poor project. These are: (i) grievances directed toward the state or formal service providers regulated by the state; (ii) grievances and disputes with intermediary service providers that provide access to urban assets in situations where the state or formal service providers fail to provide the urban poor with such assets;⁹⁹ (iii) intracommunity disputes; and (iv) interpersonal disputes. The first two are vertical grievances or disputes, which involve the poor and the government (or larger society), and which involve questions relating to the poor's security of tenure or access to urban assets. The third and fourth refer to horizontal grievances or disputes, which occur between and among members of the urban poor, and involve questions about the design, management, and distribution of urban assets.

Vertical Grievances and Disputes

Grievances against the state or formal service providers

Grievances against the state often involve its failure to provide the urban poor with secure land tenure, housing, utility and sanitation services, and public goods services such as education and health; and the requirement that citizens provide legal documents before they can gain access to utility and other public services.

Grievances against formal service providers relate to their failure to provide a mandated utility or service to all citizens or residents of a particular area.

Disputes revolving around the absence of secure tenure

Although the poor generally do not file cases in court, many find themselves entangled in litigation—as the accused in criminal complaints, and as parties in eviction complaints. In disputes where the urban poor occupy a certain property without secure tenure, it is often the public or private landowner that files a case in court against those who actually occupy the properties. The urban poor generally do not go to court to express a grievance against the government for resorting to eviction instead of resolving tenure issues amicably.

A notable exception takes place in Bangladesh, where laws on public interest litigation (PIL) recognize the right of the urban poor to file petitions to temporarily enjoin government eviction drives. This exception suggests that, where laws and policies expressly allow the urban poor to claim certain rights through the court, the latter would be more open to seeking redressal of grievances from the courts.

But even when there are laws and policies that the poor can use to raise such claims to the courts, "...getting a stay order from the court is not enough and the impact of [PIL] in securing the social and economic rights of the slum dwellers is constrained by the fact that there is a general reluctance on the part of the relevant government authorities to comply with court orders."¹⁰⁰ For although courts have the power to determine the rights and obligations of disputing parties in accordance with the law, the actual enforcement of their decisions requires the participation of other agencies—such as law enforcement and local government units. Without their cooperation, court judgments are not enforced, rendering the court proceedings ineffective.

⁹⁹ "Intermediary service provider" denotes a type of intermediary that directly provides a utility or other service (such as the distribution of legal identity documents or social welfare benefits) to residents. The study suggests that not all intermediaries are engaged in the direct provision of utility services to the urban poor; some (mostly NGOs) perform the role of community organizers or enablers that facilitate the urban poor community's ability to contact or access regular or other service providers. Often, there is no venue where complaints against intermediary service providers can be expressed. Intermediary service providers are not accountable to a regulator or other authority, and often charge higher fees for less reliable utility services. The study's country reports also suggest that a person or a powerful group of elite members of the urban poor community often takes on the role of intermediary service provider, making it prone to elite capture. In some instances, the emergence of intermediaries as service providers signals the emergence of new elite that is chiefly interested in perpetuating a patron-client relationship with the urban poor.

¹⁰⁰ F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. p. 9.

Thailand

A court order to relocate the residents of a slum failed to be enforced due to the residents' resistance. The residents claimed that the relocation site was too remote. The government issued a cabinet resolution ordering the landlord (a government agency), the local government, the residents, and the Community Organizations Development Institute (CODI) to negotiate a solution acceptable to all stakeholders. As a result of the negotiation, the residents relocated to an area nearer their original settlement and entered into a land sharing agreement with the landlord. The negotiated solution resolved the dispute.

Source: S. Kittiprapas. 2009. *Thailand Country Study: Access to Justice for the Urban Poor*. Manila. pp. 22–23.

Grievances and disputes directed at formal service providers

Many jurisdictions generally adhere to the legal principle of exhausting administrative remedies—that is, courts will not hear a case unless it is established that there is no other remedy available from another administrative agency or tribunal.¹⁰¹ Consequently, where grievance and dispute resolution mechanisms exist within formal service providers, complainants are generally expected to attempt to resolve their complaints at that level before filing a case in court. It is also more practical to resolve grievances at the level of the service provider, as the service provider can immediately and directly implement the agreed upon solutions.

However, the grievance mechanisms of service providers are accessible only to their customers of record. Many urban poor are not directly connected to formal service providers, and obtain services from intermediary service providers. They are therefore unable to register grievances in the formal grievance mechanisms.

The grievance mechanisms of service providers are accessible only to their customers of record

When the source of an intermediary's utility services is a legal connection to a formal service provider and the grievances of end consumers are due to the latter's quality and quantity of the services, the intermediary can elevate these complaints on their behalf using the formal grievance mechanism. But without the cooperation of the intermediary, which is the customer of record, consumers that do not have formal utility connections will find it difficult to elevate their grievances to the formal service provider.

How the urban poor voice grievances and resolve disputes with government and formal service providers

Instead of filing a complaint in court or accessing a service provider's grievance mechanism, the urban poor attempt to resolve a grievance or dispute with the help of family members, friends, local politicians and bureaucrats, and community or neighborhood leaders. They request any or all of these helpers to find someone who can put them in contact with the government or private officer or agency who can provide the sought-after solution or service. Community-based organizations, which facilitate partnership between the public, private, and nonformal/informal sectors, appear to play a significant role in making the concerns known to the urban poor's elected government representatives and/or service providers.

Once contact is made, negotiations begin regarding the possibility of revising policies that prevent or discourage government or private service providers from delivering services to the urban poor. If the urban poor succeed in negotiating solutions to the problems underlying such policies, they are often able to obtain some form of secure tenure

¹⁰¹ The doctrine provides that one who objects to the act of an administrative agency must exhaust available administrative remedies before being permitted to litigate in a court of law subject to the following qualification: It need not be followed when (i) an agency's action is challenged as either unconstitutional or wholly beyond its grant of power, (ii) when resorting to an administrative remedy would be futile, or (iii) when its pursuit would cause irreparable injury.

and/or legal utility connections. They become paying customers of the service providers and can access grievance mechanisms embedded within the service provider. National and local government, as well as service providers, benefit from such solutions as well—conflict is averted, service delivery is improved, and system loss that might otherwise result from pilferage of utilities is decreased.

Grievances and disputes involving intermediary service providers

When the urban poor are barred from obtaining legal or formal access to services and utilities, they rely on intermediaries to provide such access.

Community-initiated solutions to address service delivery failure often revolve around intermediary service providers. Intermediary service providers¹⁰² include community members with a legal connection to utility providers, households outside the urban poor community that allow the community to tap into the connection for a fee, and private sellers. An individual or group illegally tapped into the formal service can also offer a connection to the poor. NGOs and community-based organizations sometimes play the role of intermediaries.

In many cases, recourse to intermediary service providers is a form of “self-help,” whereby persons unable to obtain assistance from government or the formal sector seek alternative means of obtaining access to urban services. When the intermediary provides the poor with access by tapping into the formal service provider without its permission, or using the connection of a paying customer without its consent, it creates disputes between the

Bangladesh

According to Mr. Mannan, an assistant engineer of Water Supply and Sewerage Authority (WASA), WASA provides legal water connections to temporary settlements (including slums) in the following manner: “Different committees of the settlement provide the security deposit for water connection (Tk10,000 for a 3/4 inch pipe and Tk20,000 for a 1-inch pipe) and lines are provided in the name of the person who provides the deposit. Usually, any influential person or leader of a committee provides this deposit.” Sometimes, the water connection is provided through the ward councilor or an NGO. Legal documents relating to land ownership are required to be presented before a connection is provided.

Source: The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). pp. 53–54.

formal service providers or formal customers and the poor. In some jurisdictions, it exposes the poor to criminal prosecution.

But recourse to intermediary service providers may also be undertaken with the knowledge and consent of the government or formal service provider.

In some instances, an individual or group is given a legal connection by a formal service provider, with the understanding that it will distribute the utilities, monitor usage, and collect user fees from the rest of the community. In some areas, the intermediary service provider virtually acts as the government’s agent. For example, Indonesia’s *ketua rukun tetangga/rukun warga* (RT/RWs),¹⁰³ neighborhood

¹⁰² In this section, the term “intermediary service provider” is used to denote a type of intermediary that directly provides a utility service to residents. Not all intermediaries are engaged in the direct provision of utility services to the urban poor; some (mostly NGOs) perform the role of enablers who facilitate the urban poor community’s access to regular or other service providers.

¹⁰³ The RT is a group of 30 to 70 households in a particular territory. The RT serves as a forum for coordinating the needs of the households, and mediating social and physical problems in the area. It is headed by the *ketua RT*. The RW is a territorially defined group of 3–10 RTs. The *ketua RTs* represent the households within their RT in the RW. RW leaders are responsible for coordinating solutions for any social or physical problems that occur in the RTs comprising the RW and which remain unresolved. *Ketua RTs* may raise any issue pending at the RT level to the RW level. Several RW leaders represent their communities at the *kelurahan* or subdistrict level, which is the lowest legally constituted level of government. The *kelurahan* is administratively managed by the *lurah* (subdistrict head). RW leaders are free to bring up their communities’ concerns to the *kelurahan*. They participate in the *kelurahan*’s development planning sessions (*Musyawah Rencana Pembangunan* or *Musrenbang*) and use the *Musrenbang* as a forum to make their communities’ needs known to government. L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. pp. vii–viii.

Bangladesh

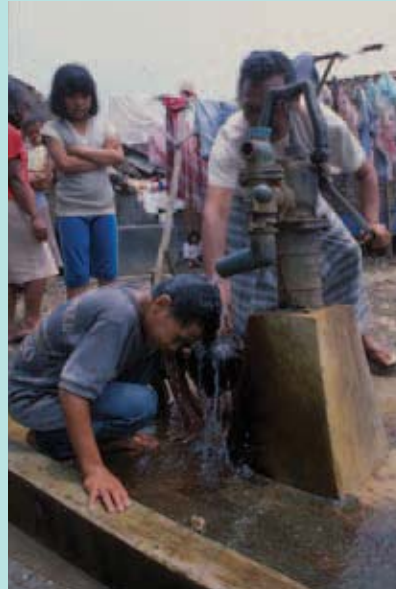
To address the prevalence of illegal electricity connections, the government agreed to provide three legal connections to a slum welfare association for redistribution to the community. The association decided that the connections be provided to, and registered under the names of, three individuals. Two of the connections were registered under the association president's name. The money collected from the residents for the necessary infrastructure was deposited into [bank] accounts under the names of the president and another individual designated as the owner of a connection. Both redistributed and collected electricity fees from the residents, which they remitted to the government utility provider. But they also collected fees that were much higher than what the utilities provider charged, and enjoyed profits of Tk50,000 to Tk1 lakh. The president has prohibited other individuals from obtaining legal electricity connection. Except for providing electricity to the president and the other designated owner of the legal connection and receiving payment for the cost of providing electric power, the government is not involved in the slum dweller association's arrangement, including the manner and frequency of electricity distribution or the amounts actually collected from the slum residents.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. pp. 48–49.

Philippines

Maynilad Water Services Inc. (Maynilad) seeks out the homeowners' association (HOA) of an urban poor community to discuss how Maynilad can provide water to all community members, when the community's land tenure is unclear. If there is more than one HOA in the community, the HOAs need to decide among themselves which HOA would enter into a contract with Maynilad on everyone's behalf. When a community without water connection has no HOA, Maynilad helps organize a Samahang Tubig Maynilad (Maynilad Water Association). The HOA or the Samahang Tubig Maynilad enters into an agreement with Maynilad, which sets out the conditions under which Maynilad will provide water to the community. If residents cannot afford Maynilad's regular payment scheme, Maynilad builds a public faucet that can be used by everyone in the community. Maynilad works closely with the barangay to ensure that the water from the public faucet is used by all the residents.

Maynilad has a bulk selling billing scheme whereby customers—including the urban poor—whose average monthly consumption is 10 cubic meters and below are entitled to a 20% discount off the regular rate. A person from the community is assigned to monitor individual water usage, collect the tariffs, detect, and repair leaks. Maynilad provides livelihood opportunities to the persons assigned to do these tasks.



Raul Del Rosario

Source: C.V. Lao. 2009. *A Summary of the Proceedings of the Regional Workshop on Access to Justice for the Urban Poor*. pp. 36–37.



Ian Gill

leaders who act as liaisons between government and the community, serve as intermediary service providers with respect to legal identity documents. They are elected by the community but are not considered government employees and do not receive a salary from the government. The government has tasked them with keeping track of the neighborhood population and relies on them to provide population data. *Ketua RT/RW's* are also in charge of issuing identification cards that people need to present to avail of health and other social services, and access basic education and electricity services.

Government, formal service providers, and community leaders—usually the intermediaries through which the first two provide services to the rest of the community—report they are satisfied with these arrangements. The first two are spared the costs of connecting and manag-

Bangladesh

There are five legal connections to the Power Development Board's electricity lines in Agrabad, each in the name of a slum resident. One connection is privately used by the subscriber for his own home and shop; the other four redistribute power to the rest of the community.

The slum committee divided the slum into four zones, so that the four intermediary service providers would avoid disputes regarding subscriptions. When the Law and Order Enforcement Force, a joint army and police force, inspected the slum for illegal connections in 2008, it concluded that there were none.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. p. 43.

ing connections with myriad households, over which they have little or no effective control. In some areas, the service provided by members of the community's elite is managed with great efficiency.

Moreover, informal self-help solutions are demonstrations of people power, the triumph of an individual or community over bureaucracy. They are examples of people's participation in governance.

No mechanism to hear grievances and resolve disputes with intermediaries

But in all countries covered by the ADB-TAF study, a problem has emerged from arrangements involving intermediary service providers, which puts the urban poor at great risk: the poor do not have adequate mechanisms to hold intermediary service providers accountable.

In the formal sector, grievances relating to access to assets, utilities, and services can be expressed in various forums (even if only in theory). Complaints against the government and its officials may be brought to court. Citizens can withdraw support from nonperforming local public officials during succeeding elections. Subscribers of record can access their service provider's customer complaint system and, if ignored, can complain to the

government regulator. Consumers in the informal sector usually have no equivalent means for expressing grievances or settling disputes with informal service providers. There appear to be few cases where a community has an agreement with service providers that sets out a procedure for airing and addressing complaints about an abusive, uncooperative intermediary service provider.

On occasion, NGOs and local officials are made aware of the abuses of intermediary service providers. NGOs help by organizing and supporting community efforts to find solutions to their continuing inability to obtain satisfactory access through the intermediary. Local officials, when they are not captured by the same individuals or groups running the intermediary service provider, may negotiate for better conditions on behalf of the urban poor.

It is often, if not always, the local elite that possesses the economic and social capital required to serve as intermediary service providers

Elite capture of intermediary service providers and community grievance and dispute resolution mechanisms

The ADB–TAF study notes that “informal arrangements have a complex relationship with existing community hierarchies.”¹⁰⁴ It is often, if not always, the local elite that possesses the economic and social capital required to serve as intermediary service providers. Such capital accords the elite with high, if not leadership, status in the community.

Where the intermediary service providers are not powerful or members of the

Bangladesh

The Power Development Board (PDB) promised to provide three prepaid electric meters—and therefore legal power connections—to a slum following an incident where slum residents beat up PDB men who had cut the illegal electricity connection and confiscated a TV from a resident. The PDB would supply electricity through the prepaid meters at a reduced rate (Tk2.50 per unit, instead of the regular price of Tk3.50 per unit). The slum committee—the “Chinnomul” committee—discussed the arrangements that were needed to obtain the electric meters. As the 20 committee members were also members of the Cooperative Society, most members proposed to place the meters under the Cooperative Society’s name. The Cooperative Society had sufficient funds to pay for the meters, and would make a profit from redistributing power from the prepaid meters to each slum resident.

The committee chairperson—who was also the chairperson of the Cooperative Society—argued that the Cooperative Society’s 20 members would be unduly burdened by paying Tk2,000 a month on behalf of the entire community. He then proposed to place the meters under an individual’s name. Two of the three meters were eventually placed under his name. He invested Tk17,000 worth of cable and placed a Tk33,000 security deposit with the formal service provider.

The chairperson claimed that he provides 400 electricity lines from his meters, and charges slum residents Tk600 for the following: an energy saving light, fan, a table fan, a television set, and a refrigerator. But other slum residents contended that he supplies around a thousand connections, and some of these connections were made to nonresidents of the community. They alleged that he charged residents Tk100 for the use of an energy saving bulb, which cost him only Tk30. Slum residents were unsatisfied with the legal connection provided by the chairperson, as supply was shut off between 7 in the morning and 1 in the afternoon. They also argued they had to pay less for electricity when this was sourced through illegal connections.

Moreover, the chairperson purportedly prevents other community members from obtaining their own electrical meters. A rival who had been able to do so claims he supplies power for 24 hours to 14 other households, despite the chairperson’s repeated attempts to prevent him from doing so. The chairperson had “called me names in front of my shop. He threatened to beat me and take Tk270,000 from me to make up for the money he had spent to bring the connection. I could easily have provided [up to 40 more] connections to neighbors, relatives and friends, but [the chairperson] did not let me do so.”

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. pp. 48–49.

¹⁰⁴ The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). p. 58.

elite, they can use their role to emerge as a new elite.

In three of the four countries covered by the ADB–TAF study, it was observed that the local elite are chosen to head, or become members of the traditional or community-based dispute resolution system operating in the community. Although these traditional, community-based dispute resolution systems are widely accessed in resolving interpersonal disputes, they are ill-equipped to handle

disputes involving intermediary service providers. Composed of the same parties running the intermediary service providers, or persons related or sympathetic to the latter, such mechanisms cannot claim to be impartial adjudicators of complaints against intermediaries. Consequently, the study notes that grievances and disputes involving intermediary service providers often remain unresolved “largely due to entrenched power dynamics within communities.”¹⁰⁵

Bangladesh

Four residents had managed to obtain electric meters. Three of the 4 residents were known to be powerful leaders of a district in a slum, and supplied power to slum dwellers in this district. They were known to have helped government law enforcement agents arrest alleged terrorists living in the slums. One of the three was the president, secretary, and cashier of the Bazaar committee. The fourth resident who had an electric meter was Mosarof, the owner of a rickshaw store. Mosarof supplied electricity to some 300 houses in a particular colony and a bazaar, and was recognized as a powerful figure in the colony.

Mosarof used to provide his partner Kalam with power for free. But when their relationship began to deteriorate, Mosarof demanded that Kalam start paying for the electricity. A conflict erupted between the men. Mosarof stopped providing electricity to Kalam. Kalam went to the Bazaar committee and obtained an electricity connection from one of the three other intermediary power providers. Mosarof believed this was an incursion into the territory he controlled and engaged the Bazaar committee in an argument about electricity distribution and the jurisdiction of each intermediary service provider.

One morning, five or six men showed up in front of the garage and began shooting at Mosarof, who was then drinking tea with his friends. Mosarof managed to escape with injuries, but one of his associates died. Although the three other power providers were eventually charged in court for the shooting, the one who is also president, secretary, and cashier of the Bazaar committee has claimed that Mosarof had many enemies as a result of his involvement in questionable business activities, and that any of them would have had the motive to arrange the shooting incident.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. pp. 46–47

Indonesia

Several women observed that the distribution of benefits within their community had been directed to people in the social, economic, and political network of the *ketua RT*. The *ketua RT* had complete discretion over the distribution of the benefits from the national Direct Cash Aid program; another national program aimed at distributing 3-kilo gas tubes; and a community effort to provide meat at a cheap price for its poor at the end of Ramadan. In all three cases, most residents who had collected the benefits appeared to be members of the *orang di dalam*, the lower middle class, instead of the extremely poor. Given the *ketua RT*'s influence and power over the community, no one seemed willing to protest or file a complaint. When asked, the women said that they did not know who they could complain to, since it is the *ketua RT* who usually hears community complaints.



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Source: L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. p. 19.

¹⁰⁵ L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. p. 54.

No mechanism to ensure effective participation by representation

Even when local officials and formal service providers allow an intermediary service provider to sublease, redistribute, or otherwise serve the community in their stead, they are reluctant to intervene when users have grievances against the intermediary. These service providers depend on the intermediary to deliver services that they would otherwise need to deliver directly to individual community members. They contract with the intermediary service provider (which may be run by community leaders) or the community leaders, with the assumption that the intermediary and/or leaders represent the community. There is little incentive to go after the intermediary. They can claim that their responsibility to the community is fulfilled once they provide the intermediary with the asset, utility, or service.

Intermediary service providers without incentive to respond to grievances or provide transparent, predictable guidelines for obtaining access and setting user fees

The ADB–TAF study obtained many accounts of abusive intermediary service providers. Individuals and groups acting as intermediaries operate with the threat of withdrawing a person’s or a community’s access to basic necessities such as water.

They are able to charge higher fees than the formal service provider for less reliable utility services. The Bangladesh country report includes a case study of an intermediary that charged user fees equivalent to three times the cost of the service enjoyed by better-off Dhaka residents with legal utilities connection. In the Philippines, individuals who provide electricity to their neighbors in Payatas reportedly charge their neighbors 30%–50% higher than the legal rate. In Thailand, intermediary service providers have been reported to charge 50%–100% more than the regular cost. Residents of the

Bangladesh

A person standing for election as ward councilor promised that he would solve an acute water crisis that had beset a slum community because of WASA’s decision to stop supplying it with water through an over-drain tap. To fulfill his promise, which was given during his campaign, the elected councilor privately set up deep tube wells from which residents could obtain water for free. However, once his seat had been confirmed, he stopped providing free water and employed a person to regulate distribution of water and charge residents Tk1 per pitcher.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. p. 41.

Pademangan Barat community in Indonesia who wish to obtain water from neighbors who are tapped into the water service provider likewise incur higher costs than those incurred by legal subscribers.¹⁰⁶

Where a mafia or syndicate involved in criminal activity provides the service, obtaining access comes with the risk that a person becomes involved or associated with the crimes perpetuated by the service provider or its owner.

Where government requires the assistance of individuals or groups from the community in registering and providing identification documents, such individuals and groups take on an intermediary role that is subject to the same risk. Although the government issues identification cards for free, *ketua RT/RWs* in North Jakarta have reportedly charged a fee

Abusive intermediary service providers charge higher fees than formal service providers for less reliable utility services

¹⁰⁶ Intermediary service providers who charge higher access fees are not always or solely motivated by profit. If the funds used to build the necessary infrastructure for the connection were advanced by the intermediary service provider, it is likely to recoup the investment by charging higher user fees. Moreover, intermediary service providers are subject to the risk of customers who fail to pay for services already delivered. In an example from the Philippines, only 15 out of 30 original members of a communal water association regularly paid for the water distributed to them by the association. To mitigate this risk, intermediaries charge and collect fees that are higher than those charged by regular service providers.

(between Rp200,000–Rp300,000, or around \$20–\$30) from applicants.

Consequently the ADB–TAF study notes that government policies that use intermediaries to “provide, regulate or monitor services to the urban poor” have allowed individuals to “collude with government officials to facilitate low quality, expensive and unaccountable services.”¹⁰⁷

Special issues involving NGO service providers

NGOs that take on the role of intermediary service providers appear to be less successful in this role as compared to being community organizer and trainer, facilitator between government and community, or community negotiator for urban assets, legal documents, and other relevant information. The NGOs’ accountability to their respective charters or to larger NGO networks or federations has not prevented them from being subject to complaints or being perceived as corrupt when they engage in the provision of utility services. NGOs and the urban poor find such complaints and perceptions difficult to address as they strain the relationship between NGOs and the community. This prevents NGOs from pursuing far more effective interventions such as organizing communities.

Horizontal Disputes

Intracommunity and interpersonal disputes collectively referred to as “horizontal disputes,” differ from vertical disputes, in that they do not directly relate to a community’s lack of access to urban assets and services; they refer rather to conflicts that occur among community members because of their struggle to manage or obtain what they can from the scarce resources available. Unresolved vertical grievances or disputes cause intracommunity and interpersonal disputes, as it is the failure of the government or service provider to provide the poor with basic needs that causes fierce competition for available resources among neighbors.

Intracommunity disputes

Intracommunity disputes refer to disputes between groups or factions within the community that compete for the management of urban assets or urban asset programs for the community. Such disputes usually involve the questions of community leadership, such as “Which individual or group should act as the community’s representative when dealing with government and formal or intermediary service providers?” or “Who has the authority

Bangladesh

When WASA refused to provide certain slum residents with a legal water connection, an NGO that focuses on health and sanitation work, constructed two reservoirs and a tube-well to increase the community’s access to clean water. It organized two committees composed of slum residents, tasked with collecting fees for the sale of water, maintaining expenditure records, and maintaining the water facilities.

The cashier of one of the water committees alleged that they and the NGO had mutually agreed to allow the NGO to handle water supply operations and the finances derived from that for the first 3 years. Thereafter, ownership and management of the water supply system would be turned over to the slum residents. After 5 years of initial operations, the NGO failed to turn over the management and financial records of the water supply operations, and denied the existence of the alleged agreement. Although the NGO eventually promised to turn over the water supply operations in September 2008, they had not done so as of 2009. Some residents believe that the NGO had already made back whatever money they had invested in the project, and have expressed the intention of filing a corruption case against the NGO.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. pp. 52–53.

¹⁰⁷ Footnote 104, p. 43.



Richard Abrina

to manage and distribute urban assets in the community?” Intracommunity disputes often challenge existing local hierarchies. If left unaddressed, intracommunity disputes facilitate social fragmentation and result in the commission of violent crimes.

Intracommunity grievances may also erupt when community leaders fail to manage available urban assets. When intracommunity

grievances are unheard or remain unaddressed, this can generate interpersonal disputes between neighbors.

Intracommunity grievances may also erupt when community leaders fail to manage available urban assets

Thailand

In Piman Pattana community, the Four Regions Slum Network assisted in operating a savings group that would ultimately enable its members to obtain formal tenure to land with CODI support. The members of the savings group consisted of slum residents who had better economic and social status; many of the most disadvantaged residents did not join the group because they were reluctant to take out loans, which they feared they would be unable to repay.

The Four Regions Slum Network insisted that the savings group ought to address problems besetting the entire community, and not just those that affected the better-off members of the savings group. The policy created tensions within the group, as many members did not want to spend their time and resources addressing community problems that did not directly affect them. As a result, 75% of the members withdrew from the savings group. CODI eventually organized a separate savings group that focused solely on problems related to land and housing.

Source: S. Kittiprapas. 2009. *Thailand Country Study: Access to Justice for the Urban Poor*. p. 25.

Interpersonal disputes

Interpersonal disputes refer to disputes between individuals or family members over access to, or use of, urban assets.

The ADB–TAF study noted that

[M]any of the interpersonal disputes uncovered [in the case studies] were rooted firmly in competition over urban assets. [Although o]n the surface, disputes involved fist fights, vandalism and disruptions of the peace ... the root cause of these

altercations was competition over scarce resources and an inability to access those resources through more legitimate means. When informal intermediaries became involved, the potential for profits and exploitation increased and resulted in increased personal tension.¹⁰⁸

The study also points out that “control over assets increases as an individual intermediary’s wealth or influence,” and this “can create tensions that often spill over into interpersonal disputes.”

Bangladesh

Mafia managed to buy a bigger house from another slum dweller who had left the slum. Mafia set up a sanitary latrine, a well, and a washroom, on the available space in front of her house. In 1994, the slum welfare committee paid her a visit and told her that she had to surrender the land in front of her house. They said that they were trying to establish a “rule of law” within the slum since more people were coming to the slum, and it would be unwise of Mafia to occupy the land in front of her house. According to Mafia, she gave in to their demands since she, “... had no other option. If I started fighting with the committee, I would not be able to live here. At the same time, I was thinking that there was no harm in letting another needy, poor family live on ‘my’ land.” Thus Mafia rearranged her housing layout, moved her house back, further from the main road, but still occupied a certain amount of free land.

Hasina entered the land vacated by Mafia after paying the slum welfare committee a certain fee. The two women had very different understandings of the situation. Mafia thought she was allowing Hasina to stay on her land. Hasina thought that she had bought the land from the committee. The neighbors constantly clashed with each other. A year later, the slum welfare committee told Mafia that she had to give up more land to make space for another tenant. Jalil Mia moved in after paying the slum welfare committee Tk500 and a bag of cement. Jalil Mia showed no obligation to Mafia, and this caused them to quarrel.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. pp. 44–45.

Bangladesh

The chairman of a slum committee had obtained two prepaid electric meters in his name from the local electricity office with the understanding that he would redistribute power to his neighbors. The chairperson was a political partner of the ward councilor and was identified with a political party. Members of the Chinnomul committee identified with the rival political party attempted to obtain a meter in their names. One of these members sought the assistance of the ward councilor who directed him to the local electricity office. The member was informed that he would be unable to obtain a meter from the office, since the chairperson had purportedly secured a contract with the office stating that the office would establish no other meters in the slums apart from the three that already existed. This notwithstanding, the member was able to obtain a meter after presenting a written recommendation from the ward councilor together with an accomplished application form and making a security deposit. The member said that, “Many of the slum residents want to take their own meter lines but cannot bargain and hound the officers as I did. My affiliation with a political party gives me some level of influence. Most residents don’t have the determination to even go to the councilor.”

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. p. 49.

¹⁰⁸ Footnote 104, p. 5.



Ian Gill

Philippines

A homeowners' association (HOA) leader at Duljo-Fatima believes that competition over scarce urban assets—mainly land—and insecure tenure underlie conflicts between neighbors. She says that a common type of grievance in the community is caused by boundary disputes between informal settlers. The resident encroaching on another's boundary does so, believing he is free to do so, as the land does not belong to the latter. Meanwhile, the other party feels that he cannot complain, since he is not the owner of the land taken away from him. She has noticed, however, that the tensions caused by this unresolved grievance build up and physical violence often follows. She narrated how a man was shot to death by his neighbor, with whom he had an outstanding boundary dispute. She noted that the dispute had generated other disputes, such as quarrels between the two men's spouses.

Source: E. Porio. 2009. *Philippines Country Report: Access to Justice for the Urban Poor*. p. 85.

Community and traditional dispute resolution mechanisms and horizontal disputes

In all countries studied except Thailand,¹⁰⁹ there appears to be an established community-based or traditional grievance or dispute resolution system (often, but not always, employing mediation), or some other community-based institution with local legitimacy that is accessed by the urban poor to resolve interpersonal disputes. In Bangladesh, this is often the slum welfare committee; in the Philippines, it is the Barangay Justice System; in Indonesia, this appears to be a group of community stakeholders engaging in the *musyawarah* (community deliberations process).¹¹⁰ Community-based leaders and dispute resolution institutions play an important role in resolving these disputes.

In Bangladesh, interpersonal disputes often make their way to slum welfare committees, which are formed by slum residents primarily to resist eviction drives and facilitate slum rehabilitation. Slum welfare associations are slum welfare committees registered with the Social Welfare Department.

When disputes arise, the complainant asks relatives, neighbors, and friends to help mediate a solution. If it cannot be resolved at this level, the dispute is brought to the slum welfare committee. The complainant writes an application that is formally received by the slum welfare committee after the complainant pays a fee. The complaint is recorded in a ledger and the parties are informed of a date and time for a *shalish*.

A *shalish* is the traditional practice of gathering elders for the resolution of a local dispute. Parties meet to discuss the problem and come to a peaceful resolution.



Raul Del Rosario

The community elders and influential locals are in charge of delivering a resolution after listening to stories from both sides. *Shalish* can be conducted in various forms—it can be arbitrary or mediatory or a blend of the two. Normally it takes more than one day for a *shalish* to come to a conclusion. As the people conducting the *shalish* are considered to be well-respected or powerful, their decisions always carry great weight.¹¹¹

¹⁰⁹ The study's country report for Thailand describes a community justice system that, at the time the ADB-TAF research was completed (2009), had just been established by the Ministry of Justice. The system is a network of community and provincial justice centers, which are staffed by community and provincial residents, who are trained in alternative dispute resolution with the support of the Ministry of Justice. Community justice centers were established in certain communities and allowed to mediate certain disputes (such as issues related to compensation) and promote restorative justice. Provincial justice centers linked with community justice centers, as well as the police, judges, lawyers, and other justice sector actors and stakeholders in the area. Being a newly established system at the time the ADB-TAF research was conducted, the researchers decided it too early to assess whether the urban poor were actually accessing the system.

¹¹⁰ Furthermore, the study adds, "Influential individuals and institutions with economic or political power within the community provide mediation. Local committees, politicians, wealthy individuals, ethnic leaders and [community-based organizations] all were seen to serve as mediators in some cases." The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). p. 53.

¹¹¹ Footnote 100, p. 10.

If the *shalish* resolves the dispute, an agreement is drawn up and a fee is paid. If the *shalish* fails, the dispute is referred to higher authorities or the formal dispute settlement system. Certain cases in Bangladesh suggest that social and economic hierarchies influence the manner in which slum welfare committees resolve disputes.

In Indonesia, *ketua RT/RW* leaders—neighborhood leaders elected by the community—who act as liaison between the government and the community but who are not paid by the government for their services, are called to mediate between community members on a wide variety of disputes taking place within the community.

Musyawahar, or face-to-face deliberations, is used to resolve disputes. Community members discuss common problems and share information during the deliberations, which are expected to result in consensus among the parties. Some have suggested that stronger leaders in the deliberation process have more influence than other parties, and people are more likely to abide by what such leaders express as their preferred solution. It has also been criticized for the slowness of deliberations and a requirement that consensus be reached. The traditional system of resolving disputes using *adat* law does not appear to have survived the urban poor's transition from rural to urban areas. Likewise, the influence of religious leaders in mediating conflicts, while positive, decreases as community cohesion diminishes.

In the Philippines, some interpersonal disputes—those relating to competition over urban assets managed by the HOA—are submitted to the HOA for mediation or resolution. The case studies suggest that the Philippine Barangay Justice System (BJS), a traditional community-based dispute resolution mechanism employing mediation, conciliation, and under certain circumstances, arbitration, is widely recognized to provide satisfactory outcomes. Of the barangays studied, three-fourths of the cases submitted to the system were resolved with varying degrees of satisfaction.

In Thailand, savings group associations have been asked to resolve disputes among disputing members.

Philippines

When Fele, an informal settler in Duljo-Fatima, extended her house to build a restroom, the improvement encroached on the lot occupied by Lucy, another informal settler. Although both parties had no title to the land they occupied, Lucy approached the Hospicio Housing Association (HOA) for advice on how to address her grievance. The HOA's Peace and Order Committee (a grievance committee consisting of 3 members) brokered a compromise agreement between the women. Lucy received an equivalent area of land from Fele's yard as compensation for the area that she had lost.

Source: E. Porio. 2009. *Philippines Country Report: Access to Justice for the Urban Poor*. p. 68.

Philippines

The Reyes family lodged a complaint with the Barangay Justice System (BJS). It alleged that the Vasquez family had constructed their living room over an open drain. After construction, water that used to flow into the drain went into the Reyes' home. The BJS mediator conducted an ocular inspection of the area and noticed that the water could be redirected toward another area and advised the Reyes family to construct a new canal. The Reyes and Vasquez families agreed to share the cost of building the canal and the dispute was resolved amicably.

Source: E. Porio. 2009. *Philippines Country Report: Access to Justice for the Urban Poor*. pp. 82–83.

Community-based and/or traditional dispute resolution mechanisms are widely accessed to resolve interpersonal disputes because of their accessibility. They are located within the community or composed of conciliators, mediators, or decision makers living in the community. Consequently, recourse to these mechanisms entail less economic, opportunity and other costs. Proceedings are usually informal or casual, rather than technical, thereby increasing the disputing parties' ability to participate therein. The community members who act as conciliators, mediators, or decision makers are perceived to have personal

The ADB–TAF study states that “the reputation and status of the mediators play a critical role in determining whether or not mediated agreements will be respected

knowledge, and therefore better understanding, of the community and even the disputing parties.

Often concurrently the community’s leaders, their incentive to settle the disputes amicably is to keep the peace within the community. The ADB–TAF study states that “the reputation and status of the mediators

play a critical role in determining whether or not mediated agreements will be respected.”¹¹²

Where social cohesion is particularly strong within the community, community-based mechanisms appear particularly accessible. In Surabaya, where community cohesion is strong, *musyawarah* is conducted on a regular basis by *ketua RT/RWs*, government representatives such as the *lurah*, by local NGOs and community-based organizations. There was less evidence of its use in Pademangan Barat, where lower levels of social cohesion made face-to-face deliberations and reaching consensus (a requirement in *musyawarah*) more difficult.

Bangladesh

When Hasina or her family members had to go out of their room, they had to jump over a canal and trespass the base of Mafia’s room. Mafia refused to allow Hasina to trespass her land and built a fence that made it impossible for Hasina to jump across. Since this prevented Hasina from leaving her house, she destroyed the fence. A physical fight ensued. Mafia got injured and complained to the slum welfare committee. The slum welfare committee provided the following solution: Since the canal was next to Hasina’s room, she should fill up the canal at her own expense. In exchange, she would take Tk1 k from each person using the road until she recovered her investment. Neither Hasina nor Mafia would claim the empty space between the rooms or use it for personal needs. Even though both the parties were not satisfied with the decision, they decided to act accordingly.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. pp. 44–45.

Indonesia

The residents of Pademangan Barat complained about a neighbor who expanded a public toilet facility that the government had built in his backyard. The neighbor charged residents for the use of the additional toilets, which flushed untreated sewage into open canals. Some 30 neighbors wrote a letter to the *ketua RT* to report the health risk posed by the new toilets. The *ketua RT* discussed the issue with the toilet owner who promptly installed a filtration system.



Source: L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. p. 18.

¹¹² Footnote 104, p. 56.

Indonesia

The Indonesian Democratic Party of Struggle (PDIP) has traditionally been strong in a particular slum community, and the city parliamentarian is a PDIP politician. Given the support the party enjoys in the community, one prominent PDIP supporter, an *orang di dalam* (literally, an “insider”—that is, a better-off community member whose house was built further away from the railroad tracks) suggested that the party supporters build a structure along the railway tracks as a meeting place for PDIP members. The PDIP supporter collected money from local party supporters including *orang di luar* (literally, an “outsider,” a term used to refer to poorer community members who lived along the train tracks). However, when construction was completed, the man claimed the property as his own and rented it out for profit. This outraged those who had contributed to the project, but nobody challenged the perpetrator due to his influence in the community and ties with the PDIP. Instead, the community decided not to support any parliamentary candidates from PDIP in the future.

Source: L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. p. 20.

Traditional and/or community-based mechanisms do not appear to be used as a forum to resolve intracommunity disputes, possibly because such dispute resolution systems are often in the hands of a particular individual or group of individuals whose authority over the community and access to resources is being challenged in these types of disputes.

Community and traditional dispute resolution and vertical disputes

Although widely used to resolve interpersonal disputes, community and traditional dispute resolution mechanisms cannot appropriately address communal grievances and/or disputes with government agencies or formal service providers, which do not recognize the jurisdiction of these locally based institu-

And where the community or traditional dispute resolution mechanisms are, in fact, staffed by the same personalities controlling access to the service demanded, questions may be raised about the fairness and impartiality of the decision rendered

tions. Consequently, while such grievance and dispute mechanisms appear to address interpersonal disputes satisfactorily, they are unable to address the root cause of the dispute—that is, the urban poor’s inability to obtain sufficient access to urban assets.

Likewise, these community-based or traditional systems do not appear to be widely used to address grievances or resolve disputes involving intermediary service providers. The decisions of community-based and traditional mechanisms in these matters are difficult to enforce unless the service provider recognizes their authority. And where the community or traditional dispute resolution mechanisms are, in fact, staffed by the same personalities controlling access to the service demanded, questions may be raised about the fairness and impartiality of the decision rendered.

Limitations of community-based and/or traditional dispute resolution mechanisms

Although widely accessed by the poor, community-based and traditional dispute resolution mechanisms appear to be engaged mainly in resolving interpersonal disputes.

A particular weakness of these mechanisms is that they are “deeply entrenched in local hierarchies.”¹¹³ Socioeconomic hierarchies influence dispute resolution. The ADB–TAF study observed that the position of a party to the dispute within the local hierarchy and social structure “directly affects the outcome of the dispute...”¹¹⁴ and “[w]hile in many cases social hierarchies push disputants towards resolution, they can also lead to unfair treat-

¹¹³ Footnote 104, p. 50.

¹¹⁴ Footnote 104, p. 56.

Bangladesh

Ali built a garden 15 yards away (the required distance) from his neighbor Kadar's property. Kadar's spouse then built a dam to pool water for fishing by Ali's garden, even though Ali had requested that she refrain from doing this because the dam would damage his garden. After they quarreled about the dam and garden, Ali found his garden uprooted. Eventually there was a confrontation and Kadar attacked Ali. Local community members stopped the physical confrontation, and though Ali wanted to take Kadar to thana (the police station) the other residents persuaded him not to do so. The residents told Ali that the process of resolving the dispute at the police station would be too expensive and promised that the slum committee would mediate the dispute. Ali agreed to go to the slum committee, but the slum committee member responsible for the mediation was Alauddin, Kadar's uncle. Since Alauddin is the mediator, Ali is convinced he will favor Kadar regardless of the circumstances.

Source: The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366). p. 57.

Bangladesh

Mafia refused to allow Jahanara to pass through her land and collect water from a well. The conflict eventually escalated into a physical fight, which left Mafia injured. Mafia spent Tk5,000 for medical treatment. Mafia's spouse complained to the slum committee, which did not immediately resolve the dispute. When Mafia's spouse attempted to go to the police station, slum committee members stopped him and promised to take action. Mafia assumed that the other parties had bought off the slum committee members. But the slum committee members claim that they had refrained from resolving the issue because Mafia's brother, a leader of a political party, was pressuring them to decide in Mafia's favor. "We were stuck and could not take an unbiased and neutral decision based on such threats and so we took our time."

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. pp. 44–45.

ment and dissatisfaction with the settlement mechanisms."¹¹⁵

Moreover, although they are able to de-escalate interpersonal disputes, they do little to address the poor's lack of access to urban assets and services, which is the root cause of these disputes. There is a constant threat that disputes will erupt because of competition over scarce resources.

Summary

The picture that emerges from all 12 sites included in the ADB-TAF study is that the urban poor are largely unable to voice their demand on governments and service providers for access to urban assets or improved service delivery. Many government policies

prohibit or discourage the poor from obtaining such assets or services, or prevent formal service providers from recognizing the poor as legitimate consumers. Consequently, the poor are constrained to pursue options that enable them to obtain access—that is, approach local politicians, street leaders, lower level bureaucrats, and neighborhood associations—which can potentially build patron-client relations. They opt to approach unregulated intermediary service providers, even when they impose higher rates for less reliable utility services, and make the poor more vulnerable to abuse.

In theory, grievance and dispute resolution mechanisms that have been set up in the formal sector or within formal service providers enable citizens to voice their demands for better access and services. But the ADB-TAF study on Access to Justice for the Urban Poor finds that

¹¹⁵ Footnote 104, p. 56.

the poor rarely access courts and customer service grievance procedures. Moreover, there do not appear to be adequate venues for the urban poor to raise grievances and disputes relating to (i) the management and distribution of urban assets by intermediary service providers—who often operate informally; and (ii) intracommunity disputes—i.e., those involving the management and distribution of urban assets between and among members of a community.

Finally, interpersonal disputes are often, if not always, rooted in conflict over scarce urban assets. They are usually referred to community-based and/or traditional dispute resolution

Interpersonal disputes are often rooted in conflicts over scarce urban assets

systems embedded within the community, which are often influenced by local hierarchies. Although interpersonal disputes are frequently settled by these mechanisms, they are bound to erupt again if community members are unable to obtain adequate access to urban assets. Community and/or traditional dispute resolution systems do not appear to be used to resolve conflicts regarding the management and distribution of already scarce urban assets.

What Works

The conditions in urban poor communities and slum areas suggest that economic and social resources for urban development are not adequately managed or distributed fairly. A significant part of the population does not receive acceptable levels of public service. The ADB–TAF study suggests that this demonstration of weak urban governance is largely caused by the institutional environment’s inability to sufficiently regulate interactions between government and its constituents, who are either unable or hard-pressed to claim their basic rights and voice grievances regarding access to urban assets. Urban institutions

are unable to adequately facilitate interactions between urban poor community members, and there appears to be no grievance and dispute mechanism that can adequately resolve issues relating to the management and distribution of available urban assets.

If the urban poor are to be provided with sustainable access to urban assets and services, they need to have access to institutions that keep service providers accountable and responsive. The absence of accessible venues for the poor to express and seek redress for grievances affects their ability to access urban assets and services. Providing the poor with urban assets or resources through unregulated



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intermediary service providers may make the poor even more vulnerable, and often weakens overall governance. Thus, while it is true that, except for community-based mechanisms, grievance and dispute resolution mechanisms remain largely inaccessible to the urban poor, it is necessary to create or enhance such institutions. Although their design will vary according to local conditions, the following models show that accountability, participation, predictability, and transparency—the elements of governance—are integral to their accessibility and effective operation.

Accountability

While different countries employ a variety of ways to keep public officers accountable, “the litmus test is whether private actors in the economy have procedurally simple and swift recourse for redress of unfair actions or incompetence of the executive authority.”¹¹⁶ The urban poor living in the 12 sites included in the ADB–TAF study have largely been unable to access the formal justice system or grievance mechanisms embedded in government-regulated formal service providers.

Demanding accountability through the formal justice system requires a supportive legal and policy framework.

Although courts are tasked with protecting citizens from government abuse, the urban poor generally do not access the court system to express a grievance against the government.

To access the court system, the urban poor must have a cause of action against the government—that is, a right recognized by law that ought to be protected, or redressed when violated. The formal justice system recognizes and upholds these rights, particularly where local laws provide adequate support. Consequently, where such support exists, and where the urban poor have sufficient knowledge of such laws or the support of legal aid

Bangladesh

The urban poor, usually represented by legal aid, human rights, or development organizations, have been able to obtain judicial recognition of their right to secure tenure (protection from forced eviction) through public interest litigation (PIL). PIL consists of a petition before the High Court Division of the Supreme Court of Bangladesh seeking the issuance of a writ to prevent the breach of fundamental rights. PIL’s legal basis is found in Article 102 of the Constitution of the People’s Republic of Bangladesh, which allows the court to pass an order in case of such a breach.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*.

groups, the urban poor have been known to file petitions in court to obtain redress for grievances against the government.

Acceptance of substitute identity documents can increase access to services and grievance mechanisms of formal service providers.

“‘Legal identity’ refers to a human being’s legal (as opposed to physical) personality. [It] allows persons to enjoy the legal system’s protection and to enforce their rights or demand redress for violations by accessing state institutions such as courts and law enforcement agencies. Proof of legal identity consists of official, government-issued and recognized identity documents—documents that include basic

“Legal identity” refers to a human being’s legal (as opposed to physical) personality. [It] allows persons to enjoy the legal system’s protection and to enforce their rights or demand redress for violations by accessing state institutions such as courts and law enforcement agencies

¹¹⁶ ADB. 1995. *Governance Policy*. Manila. p. 8.

Table 1. Legal Documents that Affect Access to Urban Assets and Services

Country	Legal document	Use(s)
Bangladesh	Birth registration/ Certificates	School enrollment, land ownership, and health services—but not enforced
	Proof of land ownership (administered by slum committees)	School enrollment, electricity and water services, settling land disputes within the community
Philippines	Birth registration/ Certificates	School enrollment
	Educational certificates	School enrollment, proof of educational attainment
Thailand	Legal identity card/ number	School enrollment, educational certificates, health services
	Resident registration	Health services
	Census records	Proof of residency
	Educational certificates	School enrollment, proof of educational attainment and residency
	Health card for the disadvantaged	Health services for those who do not have identity cards/numbers
Indonesia	Family card	School enrollment and health services
	Identity card	School enrollment and health services Job applications, major purchases (like cars) In Jakarta, must have local ID or risk eviction
	Land ownership document	Water and electricity services
	Poor person's card	Health insurance for the very poor

Source: The Asia Foundation. 2009. *Final Report: Access to Justice for the Urban Poor*. ADB (RETA 6366).

information attesting to the holder's identity and age, status, and/or legal relationships." Narrowly construed, "legal identity" refers to "official, government-issued identity documents that prove one's status as a person who can exercise rights and demand protections under the law."¹¹⁷

Table 1 shows variations that exist in relation to legal identity documents and their impact on the urban poor's access to assets and services in the four countries included in the ADB-TAF study.

The ADB-TAF study notes that "legal identity is central to the ability of the urban poor to [claim or demand] access to land, housing, education, health, water, electricity and other basic services," and "the intersection of legal identity and health and education services is particularly important."¹¹⁸ Nevertheless, "[o]btaining legal documents [proves to] be very time-consuming, complex, and expensive, particularly for those living in slum communities."¹¹⁹

In some jurisdictions, formal service providers have begun to solicit and accept substitute identity documents as preconditions to granting access to services.

Formalizing the relationship between the urban poor and the service providers makes good business sense, as it decreases the risk of systems loss, is able to generate revenue which would otherwise have gone to informal intermediary service providers, and improves the service providers' corporate image. As for the urban poor consumer, a formal connection would provide access to utilities at a more predictable service and at less cost. It would also make the consumer a customer of record who can access the utility service providers' customer complaint and grievance system.

Government and formal service providers must ensure accountability of intermediary service providers.

Where government or formal service providers allow or use intermediary service providers

¹¹⁷ ADB. 2007. *Legal Identity for Inclusive Development*. Manila. p. vii.

¹¹⁸ Footnote 104, p. 15.

¹¹⁹ Footnote 104, p. 15.

Philippines

In lieu of proof of land ownership, the electricity distributor Manila Electric Company (MERALCO) now usually accepts a certification from the local government's Urban Poor Affairs Office identifying the applicant as a resident of an urban poor community, who is allowed to obtain electricity service. MERALCO also conducts meetings in urban poor areas, where pilferage of electricity is rampant, to inform potential applicants about its application procedures. MERALCO reportedly endeavors to make it easy for the urban poor to obtain legal electricity connections to keep its systems losses below 9.5% of the total amount of electricity that it distributes. The Energy Regulatory Board penalizes MERALCO when it fails to keep its systems losses below this cap.

When the National Housing Authority (NHA) informed MERALCO that a large group of informal settlers would be relocated as a result of the government's modernization of the Philippine National Railway facilities, MERALCO proposed and implemented the following measures to ensure that the relocated households would be provided with electricity connections once they had settled into their new homes:

- (a) MERALCO waived the requirement that the residents present an identification card issued by a national government agency together with their application for electricity connection. Aware that the residents might not have such an identification card, it agreed to accept a certification of their identity issued by the barangay in lieu of an identification card.
- (b) MERALCO waived its requirement for the residents to present proof of ownership over their new home lots. Since it was aware that the residents did not have such proof, MERALCO requested NHA to furnish the list of beneficiaries and the lots allocated to each.
- (c) MERALCO waived the usual fees that it charged applicants, as well as the cash advance required from new subscribers. It condoned the overdue and unpaid accounts of residents, making them eligible for a new connection. MERALCO also absorbed the entire capital cost of extending new electricity connections to 15 resettlement sites (equivalent to P111 million).
- (d) MERALCO also negotiated with the local government with jurisdiction over the resettlement sites so that the local government would waive all fees pertaining to its issuance of the required local government certification of final electrical inspection.

Source: C.V. Lao. 2009. *A Summary of the Proceedings of the Regional Workshop on Access to Justice for the Urban Poor*. Manila. p. 35.

Philippines

Maynilad Water Services Inc. (Maynilad) has adopted policies that encourage consumers to apply for legal water connections. It no longer requires applicants to present land titles as a precondition to obtaining a water connection. Instead, Maynilad accepts a certificate issued by the barangay attesting to the identity and residence of the applicant, together with the following: a billing statement issued by the electricity provider and proof of payment of the bill; any form of identification card; and a P500 cash deposit. Applicants who cannot pay the application fee (equivalent to P7,124) upfront are allowed to pay in installments. It compromises with consumers who use illegal connections. They are given easy application and payment procedures to facilitate their registration with Maynilad. Maynilad application procedures are publicized, and such procedures are well known to the barangay.

Source: C.V. Lao. 2009. *A Summary of the Proceedings of the Regional Workshop on Access to Justice for the Urban Poor*. p. 36.



A grievance mechanism that allows consumers to complain to the government or formal service provider helps keep the intermediary accountable

to deliver utilities and other services to urban poor communities, institutions must be set in place to hold the intermediaries accountable. One way of accomplishing this is for a government agency or service provider to enter into an agreement with the intermediary clearly setting out its entitlements, obligations, and the consequences of its failure to deliver what it promised.

An agreed-upon grievance mechanism, which allows consumers to complain not only to the intermediary service provider, but also to the government or formal service provider, would help keep the intermediary accountable for its performance.

A “tripartite model” of accountability acts as a system of checks and balance.

Naga City, Philippines, has often been cited for employing a governance framework that allows the local government to work productively with nongovernment organizations (NGOs) and the urban poor, while each party keeps the other accountable for previously agreed-upon responsibilities in urban development projects.

Indonesia

The National Program on Community Self-Help Empowerment (PNPM) is a national community empowerment program that operates through the distribution of block grants to local communities. PNPM supports grants of up to Rp50,000,000 (about US\$5,000) to local groups to develop small-scale infrastructure projects and income-generating programs. All ministerial and institutional community empowerment-based poverty eradication programs have been coordinated under the umbrella of PNPM as administered by the Ministry of Housing and Infrastructure through the Department of Social Welfare. Funds are disbursed to Badan Keswadayaan Masyarakat (BKM) or local Community Self-Help Agencies, which are community-based organizations (CBO's, the intermediaries in this case) that partner with PNPM to implement the projects.

PNPM has a built-in complaint process designed to provide feedback to higher levels of government regarding the actual implementation of local projects. The complaint process is a project-based complaint system that not only aims to resolve grievances, but also ensures that those working on the PNPM projects are held accountable for their actions or non-actions; project implementation proceeds smoothly; and implementation issues are immediately referred to the appropriate staff, officer, or authority. Complaints relating to the project are fielded to PNPM representatives at all levels of government—and not necessarily to the ketua RT/RWs or lurahs, who themselves might be the subject of the complaint. In brief, the grievance process is as follows:

1. A complaint is filed directly to representatives of the PNPM program at any level of government or indirectly through websites, complaint boxes, or by telephone including text messages. Anyone is permitted to file complaints and their identity is kept confidential unless they give permission otherwise.
2. To ensure objectivity, complaints must be verified through an investigation.
3. A meeting is held at the local level.
4. The community is informed of the complaint through a variety of mechanisms including forums and announcement boards or according to local practices of information sharing.
5. If the result of verification confirms that the complaint is justified, then the attendants discuss the necessary follow-up actions.
6. The problem is considered “resolved” when the community declares it is.

In situations when resolution takes a very long time or does not occur, the case will be referred to a facilitator at a higher level.¹²⁰

Source: L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. p. 7.

¹²⁰ Having been launched only in 2008, there has been no evaluation or feedback on the effectiveness of this grievance mechanism.



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Philippines

The Naga City government assists organized urban poor communities to obtain secure tenure and access to utilities and services by routinely entering into negotiated agreements with an organized urban poor homeowners' association (HOA) and an NGO partner. An NGO partner of the city government must sponsor the urban poor group and the urban poor group must be a registered HOA. The HOA must agree to take part in all steps of project design and implementation, as this allows government to avoid charges that it had done the foregoing without public consultation or participation, or is overcharging beneficiaries for the land and improvements the latter would be paying for. This is incorporated in a memorandum of agreement (MOA), which also sets out what

each party is expected to deliver: (1) government is expected to enforce the policies and rules that govern urban development projects, develop, and improve the land that it intends to transfer to the HOA; (2) the HOA is expected to ensure that its members understand and comply with their individual obligations under the MOA, including the payment of the agreed price of the land to be developed by the city government. They are expected to turn over improvements to individual beneficiaries; and (3) the NGO is expected to assist in organizing the community, and help it negotiate with government. When the project beneficiaries default on their payments to the city government, the NGO, together with the HOA, are deemed to be responsible for the project's failure; government will refuse to partner with them again. Meanwhile, NGOs and HOAs are expected to criticize the city government when public facilities built on the land are poorly done or fail to be completed. Grievances and complaints are aired at regular project meetings between the three parties. The MOA serves as a record of the rights that each might enforce against the other.



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Source: C.V. Lao. 2009. *A Summary of the Proceedings of the Regional Workshop on Access to Justice for the Urban Poor*. pp. 17, 24–26.

Philippines

Presidential Decree No. 1508 (1978) created the Barangay Justice System (BJS), a formal system based on traditional mechanisms of mediating local disputes. It operates at the lowest level of the government, the barangay. Under the system, each barangay creates a *lupong tagapamayapa* (peace committee, commonly known as “*lupon*”) that settles disputes through mediation and conciliation. The BJS is composed of at least 10 (but not more than 20) respected members of the community, chosen and headed by the barangay captain, who is elected every 3 years by the residents. The *lupon* members are nominated by the community or by other officials and are appointed by the barangay captain and council.

Disputes and cases that are brought before the *lupon* can be settled by the barangay captain through simple mediation. If this fails, he submits the dispute to the *lupon*, who in turn, constitutes a *pangkat tagapagkasundo* (a mediators’ group or cluster, henceforth to be referred as the “*pangkat*”), composed of the barangay captain, the barangay secretary, and three members of the *lupon* to be chosen by both disputing parties. This body acts as reconciliatory board for the disputants. If the mediation is successful, the parties sign a compromise agreement. The agreement will have the force of a court judgment. However, if no reconciliation takes place, the *pangkat* will issue a certificate saying that the parties had undergone mediation at the BJS but no agreement had been reached. The certificate will then be appended to a case that is filed in court.

The BJS process is a precondition to filing a court case. If a case under a BJS’s jurisdiction is filed in court without passing through BJS, it will be dismissed, and parties will be required to mediate the dispute at the barangay level.

Source: Presidential Decree No. 1508 (1978).

Community grievance and dispute resolution mechanisms are widely accessed, and therefore ought to be improved.

The ADB-TAF study notes that the urban poor most frequently resort to community-based grievance mechanisms, but these are ill-equipped to handle disputes that are not interpersonal in nature—that is, disputes that involve the management and distribution of available urban assets among community members. Training on handling complaints relating to urban assets would be beneficial to community members tasked with mediating or resolving such disputes.

The informal and culturally sensitive procedures used in community-based dispute resolution mechanisms are important in ensuring that participants understand the process, and such understanding normally leads to quicker resolution of disputes. But training on

universally accepted principles of fairness—such as the principle of providing notice and hearing to all parties involved in a dispute before handing down a decision—may increase the likelihood that community mediators and arbiters will resolve disputes with greater fairness, or even adopt rules that assure the disputing parties that they will be treated fairly.

But even when community dispute resolution mechanisms operate fairly, the community must have the capability to enforce the mediated settlements or decisions they have rendered through the mechanism. Training on

Philippines

Local officials who form the *lupong tagapamayapa* (peace committees, or “*lupon*”) of the BJS receive training sessions on grievance and dispute resolution techniques from the Department of Justice and a number of NGOs. Having undergone a number of these training sessions, the *lupon* of Duljo-Fatima in Cebu and Payatas have adopted, on their own initiative, a system of raffling disputes to their members.

Source: E. Porio. 2009. *Philippines Country Report: Access to Justice for the Urban Poor*. p. 8.

Training on handling complaints relating to urban assets would be beneficial to community members tasked with mediating or resolving such disputes

the techniques of enforcing these settlements or decisions—such as the use of public censure, community-imposed sanctions, or recourse to enforcement by way of formal institutions, including the judicial system—may be useful and beneficial to members of the dispute resolution mechanism, community leaders, and members.

Linking the formal justice system with community-based dispute resolution mechanisms can check abuse at the community level.

One striking weakness of community-based and/or traditional dispute resolution mechanisms is the propensity of such institutions to be subject to the influence of local hierarchies. In the Philippines, mediators cannot compel parties to settle a dispute; parties who are unable to agree despite the efforts of community mediators are entitled to obtain a certificate from the mediators that would allow them to file their complaint in court.

Participation

The ADB–TAF study suggests that the urban poor’s participation in the urban development process is carried out largely through organizations and representatives. Grievance and dispute resolution processes—institutions that allow individuals, rather than groups, to provide feedback to improve the performance of institutions that promote development—do not appear to be commonly accessed (except in the case of community-based dispute resolution systems, which are most effectively used to settle interpersonal disputes).

Participation by representation in the urban development process requires social cohesion and/or community organization.

To obtain secure tenure or access to urban assets and services, a person must first be able to voice his or her grievances to the person who has the authority to provide tenure or access. The first challenge faced by the urban poor is

that they cannot access the usual forums where grievances can be aired. Consequently, to obtain tenure and access, the poor find themselves engaged in trying to change the policy behind such exclusion. This requires negotiation with state and private agencies, whose power can best be matched when the urban poor organize and pursue their common objectives.

The ADB–TAF study suggests that socially cohesive urban poor communities have higher levels of individual participation, which correlate with better outcomes for the community as a whole. The Indonesia Country Report notes that:

Communities that show higher levels of social and cultural cohesion are more likely to successfully work together to realize benefits for the community as a whole. The contrast between the experiences of Jakarta and Surabaya demonstrate this point quite clearly. In Jakarta, where social cohesion is relatively low, there is very little community mobilization and urban assets remain largely unattained. In contrast, in Surabaya, the collective actions of the communities working with various institutions have resulted in substantially increased access to assets.¹²¹ The contrast seems to be the result of a difference in social cohesion, which can be explained by several factors including population, diversity, geographic size, and economic scale.¹²²

Community organization is particularly important where social cohesion is weak. The ADB–TAF study suggests that organized urban poor groups are able to obtain better training about their rights and are able to claim them from government or formal service providers more effectively. Community organization is

Community organization is particularly important where social cohesion is weak

¹²¹ Footnote 105, pp. 23–24.

¹²² Footnote 105, p. 27.

Indonesia

In Surabaya, the provincial irrigation department required the local government to clear an urban poor settlement located on public land beside a river. It claimed that the settlement contributed to the erosion of the riverbank, clogged the drainage system, and contributed to the occurrence of floods in the area. When the local government began the process of evicting the settlers, a national NGO facilitated a meeting between the community and the Ministry of Housing, which appealed to the local government to obtain a solution that was acceptable to the urban poor community. The local government convened an ad hoc committee with representatives of the local government and civil society as members. The committee drew up alternative settlement plans. The government-supported plan proposed to resettle the community offsite, while the plan supported by civil society proposed onsite development that included measures to minimize the community's potential to harm the environment. Both plans were presented to the community, which chose the civil society-backed plan. The provincial government approved the civil society-backed plan, which it began to implement.

In contrast, the urban poor community of Pademangan Barat, whose members had built houses alongside the railroad tracks, were unable to obtain a more permanent mode of tenure over the land they occupy, or a satisfactory alternative. The railway company that owns the land have negotiated agreements with the community whereby residents are allowed to stay onsite for a specific period of time (the last being 2 years) without threat of eviction, provided residents move back the houses built alongside the railway track by 3 meters on each side of the track. In each case, the affected homeowners eventually expanded their houses into the 3-meter no-build zone. The railway company would then be constrained to threaten the settlers with eviction, on the ground that the houses by the tracks constituted a danger to public safety.



Source: L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. pp. 23–24 (Surabaya) and pp. 16–17 (Pademangan Barat).

also important as government, formal service providers, and NGOs are increasingly willing to partner with the urban poor, provided they are organized. A poorly organized community poses significant risks to partner government and nongovernment agencies. If they happen to deal with an individual or group that does not represent the interests of the majority, the likelihood of community protests can delay, if not derail, the project.

Social cohesion and community organization are correlated with the effectiveness of community-based dispute resolution systems.

There appears to be a correlation between social cohesion and the likelihood that grievances

will be addressed in the community. It was noted that *musyawarah* was more regularly held in Surabaya, where social cohesion was strong, but only sporadically in Jakarta, where this was weak.

Weak social cohesion can be addressed by better community organization. Organizing the community provides the opportunity to establish venues that can address disputes involving the management and distribution of scarce assets within a community.

NGOs, which play a critical role in organizing urban poor communities, should consider training community members in inclusive ways of setting rules and procedures, and in receiving and handling grievances and disputes.

Philippines

A community leader noticed that boundary disputes between neighbors decreased after the community was organized into a homeowners' association (HOA). When the HOA was set up, community members would approach its officers to let them know about existing boundary disputes. HOA officers would then explain to each of the disputing parties that the HOA was in the process of re-blocking the community—creating spaces for road and critical infrastructure—so that the boundary issues would soon be addressed. The HOA had also set up a grievance committee where boundary complaints could be heard.

Source: E. Porio. 2009. *Philippines Country Report: Access to Justice for the Urban Poor*. p. 85.

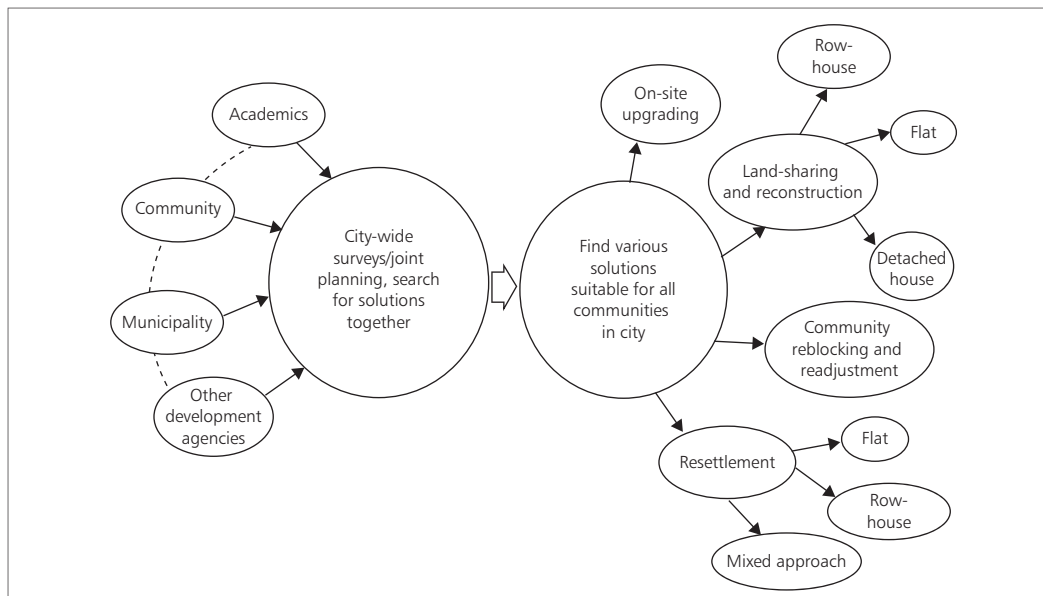
Greater participation can increase legitimacy of community-based dispute resolution systems.

The following strategies to increase people's participation and representation in community-based dispute resolution processes were

considered at the final workshop on the Access to Justice for the Urban Poor project:

- (i) Persons who are tasked with dispute resolution should be elected by community members for a fixed term (for example, 2 years), after which such members would no longer be allowed to run for reelection. This would decrease the risk that the mechanism would be subject to elite capture. It would be favorable if the composition of the group engaged in dispute resolution would be representative of the groups existing in the community.
- (ii) Dispute resolution mechanisms that provide the urban poor with an uninterrupted level of communication and at low cost—mobile telephones and SMS, for example—have proven to be particularly effective in relaying complaints in Indonesia. Alternatively, government or formal service providers can establish a presence within the community through branch offices or field officers who regularly visit, listen and resolve residents' grievances. Their increased presence will likely encourage people's participation in

Figure 1: The Baan Mankong Program



Source: S. Kittiprapas. 2009. *Thailand Country Report: Access to Justice for Urban Poor*.

reporting complaints and grievances, and finding solutions.

- (iii) A team composed of community members and NGO staff can be organized to monitor and evaluate government or service providers' compliance to citizens' charters, negotiated agreements, and other performance standards, as well as the performance of grievance mechanisms designed to address the community's complaints.

Participative approaches encourage community organization and initiative.

The Thailand Country Report highlighted the success of its Baan Mankong Community Housing Program, which provided shelter for many urban poor community residents in Thailand. A key factor behind its success was the urban poor's participation in the process of obtaining tenure and shelter for themselves. Following is an excerpt from the Thailand Country Report that discusses the Baan Mankong Community Housing Program:

Launched in 2003, the Baan Mankong Community Housing Program channels government funds, in the form of infrastructure subsidies and soft housing and land loans, directly to poor communities. Instead of delivering housing units to individual poor families, the program lets Thailand's slum communities plan and carry out improvements to their housing, environment, and obtain basic services and tenure security.

To join the program, communities need to demonstrate the presence of a well-established savings group. The resources of the savings group "act as a crucial stabilizing force when

[the] upgrading project begins, so that flexible finance [infrastructure subsidies and housing loans provided by the government] can link with people's collective financial base."¹²³ It is also assumed that the savings group has developed sufficient capability to manage both personal and project resources.

Community Organizations Development Institute (CODI), a public organization under the Ministry of Social Development and Human Security, implements the project. With funds allocated from the national budget, CODI provides resources to partner NGOs and community-based organizations for organizing community savings groups, building and strengthening networks of poor communities, and increasing both the community's and community networks' capacity to work with local government and NGOs in planning and implementing urban upgrading projects. Once citywide plans are completed, and upgrading projects are selected, CODI channels infrastructure subsidies and housing loans directly to the communities.

Baan Mankong has reportedly solved over 70% of problems relating to forced evictions of communities covered by the program. Of those living in the communities, 44% have been able to own the land they occupy (through cooperative land ownership); 39% have a long-term lease in the name of the community cooperative; 8% have a short-term lease; and 9% have some other form of permission to use the land from the landowner.¹²⁴

¹²³ S. Kittiprapas. 2009. *Thailand Country Report: Access to Justice for the Urban Poor*. p. 57.

¹²⁴ Footnote 123, pp. 48–59.

Predictability

Laws, regulations, and policies that are fair and consistently applied result in predictability. Predictability refers to the existence of “well-defined rights and duties, as well as mechanisms for enforcing them, and settling disputes in an impartial manner.”¹²⁵ It “requires the state and its subsidiary agencies to be as much bound by, and answerable to, the legal system as are private individuals and enterprises.”¹²⁶

Recognizing the right to secure tenure improves predictability and overall governance.

The ADB–TAF study linked many, if not all, grievances and disputes involving the urban poor, with their lack of secure tenure. It should be noted that international law recognizes the right to housing—the right to be secure in one’s dwelling—as a universal human right.¹²⁷ Article 11 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) provides that:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

The UN Committee on Economic, Social, and Cultural Rights has identified legal security

Laws, regulations, and policies that are fair and consistently applied result in predictability

of tenure as an aspect of the right to housing recognized under ICESCR (the other aspects are: availability of services, materials, facilities and infrastructure; habitability; accessibility; location; and cultural adequacy). Secure tenure has been defined as “a degree of certainty that can motivate investment of [the urban poor’s own] resources for the purpose of improving shelter and services.” It is not necessarily equated with full title or ownership; a document or instrument recognizing even temporary occupancy rights, can provide secure tenure. “By providing occupancy rights, state authorities render to slum dwellers a degree or urban citizenship—“a right to the city” that enable the poor to make “claims on public resources or negotiat[e] with state authorities for access to basic services.”¹²⁸

“Formalizing” the relationship between the state or local government and the urban poor in this manner does not benefit only the poor.¹²⁹ By recognizing slum dwellers’ “right to the city,” national and local officials have the opportunity to “sensitize slum dwellers to their rights and responsibilities as urban citizens.”¹³⁰ A common understanding of what rights can be claimed from the government, and urban dwellers’ responsibilities decreases opportunities for misunderstanding and conflict between government and the urban poor; the urban poor and other city dwellers; and among members of the urban poor community.

¹²⁵ ADB. 1995. *Governance Policy*. Manila. p. 10.

¹²⁶ Footnote 125, p. 10.

¹²⁷ International law also recognizes the basic right to water and sanitation. In its General Comment No. 15 (2002), the United Nations has stated that the right to water and sanitation is recognized in articles 11 and 12 of the ICESCR.

Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human rights.

The human right to water entitles everyone to sufficient, safe, acceptable, physically accessible, and affordable water for personal and domestic uses. An adequate amount of safe water is necessary to prevent death from dehydration; to reduce the risk of water-related disease; and to provide for consumption, cooking, personal, and domestic hygienic requirements.

¹²⁸ United Nations Human Settlements Programme (UN-Habitat). 2004. *Global Campaign for Secure Tenure*. 2nd ed. p. 28.

¹²⁹ The “formalization” referred to in this paragraph refers to (1) the enactment of laws and policies that recognize the existing relationship that the poor have with the land they occupy and the rights that proceed from this relationship (not necessarily land ownership); and (2) the establishment of formal agencies and institutions that enforce such laws and policies and enact regulations to enforce them.

¹³⁰ Footnote 128, p. 28.



Thailand

The government has supported the transition of informal settlers into formal, tenured homeowners through the Baan Mankong Collective Housing Program implemented by CODI. CODI assists communities that fall under the Baan Mankong program to negotiate secure tenure, and has proposed cooperative land purchase, long-term lease contracts, land swaps, and user rights, as solutions by placing them in touch with relevant government agencies.

Obtaining secure tenure in Thailand affects a community's ability to gain access to other urban assets and services. Only one of the three Thai communities included in the ADB-TAF study had participated in the Baan Mankong program and obtained secure tenure—in the form of a 3-year lease with a government-owned corporation.

The 70 Rais¹³¹ Pattana community had been evicted from its original settlement and was resettled by government on land leased from the Port Authority of Thailand (PAT). Having been part of the Baan Mankong program, the community was able to negotiate not only a 3-year lease from PAT, but was also able to secure a certification from the district government. This certification entitled the community to receive funding from the local government (equivalent to B5,000 per month). More importantly, residents were provided with "housing documents" that would enable them to apply for piped water and electricity connections from formal service providers. Residents also obtained the identification cards required by schools and health agencies. The two other communities, which have been unable to obtain the same support, are unable to obtain community-wide connections to formal utilities providers, and there are more disputes that arise due to their inability to obtain identification cards and access to services.

Source: S. Kittiprapas. 2009. *Thailand Country Report: Access to Justice for the Urban Poor*. p. 24.

¹³¹ The literal translation of the community's name is "112,000 Square-Meter Pattana Community." A *rai* is a unit of measure in Thai that is equivalent to 1,600 square meters (40 meters by 40 meters).

Negotiated agreements can increase understanding of the rights the urban poor can claim from government, and what they need to comply with to obtain secure tenure.

In some jurisdictions, local governments have begun to enter into negotiated agreements with urban poor communities to identify the following: (1) the rights that the urban poor can claim from government with respect to secure tenure and urban development

projects; (2) when they can claim these rights; (3) the conditions upon which the rights are granted; and (4) when these rights may be taken away or modified. The terms of these negotiated agreements can be enforced by the courts, and have been successfully used in Naga City and Cebu City in the Philippines to build partnerships between local government and urban poor groups.

Philippines

Former Naga City Mayor Jesse Robredo said that the Naga City government entered into memorandums of agreement (MOAs) with urban poor organizations and NGOs that are in the process of obtaining land from private landowners, which would then be developed into urban poor housing sites. The city government would advance a cash payment to the landowner and obtain title to the property in its name. Upon the association's payment of 15% project equity, the city government and the urban poor association would enter into a MOA and conditional deed of sale. These agreements provide that the urban poor association members have the right to buy the property, and will obtain ownership upon remitting full payment to the city government. The agreements stipulate that the members have the right to buy the property. If they complete payment, they obtain title; if they default, they will be evicted. The agreement provides that the beneficiaries should each construct a house on the lot awarded to them within a 2-year period; if they do not, the city would award the lot to another individual. Mr. Robredo said that the Naga City government requires full payment for the property to have enough funds to sustain the program for other urban poor communities in the city.



Eric Sales

Mr. Robredo reported that 25% of all lots developed for urban poor housing are now in the name of the project beneficiaries. Another 25% are in a “transition” phase—that is, the beneficiaries have paid some part of the purchase price. This phase lasts for about 2–3 years. Once the urban poor are in the “transition” phase, the city government provides a “transitional” form of utilities connection. For example, instead of providing piped water (which may require significant infrastructure investment), it provides communal faucets upon the petition of at least 10 beneficiaries.

Mr. Robredo said that livelihood programs accompany Naga City's urban development and housing projects. If the poor do not have access to livelihood opportunities, they will likely default on payments. The city's investment in infrastructure connecting the community to service providers would be wasted. He estimated that 3 in 10 beneficiaries default on equity payments. In such cases, the city files a case in court to enforce the terms of the MOA and conditional deed of sale.

Mr. Robredo noted that efforts to provide housing, basic services and livelihood to Naga City's urban poor have strengthened the city's economy, which is dependent on the informal sector. According to Mr. Robredo, there are 4,000–5,000 informal entrepreneurs in the city. As a result of these efforts, he said that the number of business establishments in the city have increased from 2,000 to 6,000.

Source: C.V. Lao. 2009. *Summary of the Proceedings of the Regional Workshop on Access to Justice for the Urban Poor*. p. 24.

Informal land occupation prevents the urban poor from receiving documents that prove their legal identity

Local governments can increase people's ability to access urban assets, services, and grievance and dispute mechanisms, by adopting policies that facilitate the provision of legal identity documents.

Informal land occupation, like employment in the informal sector and status as illegal immigrants or illegal internal migrants, often prevents the urban poor from receiving documents that prove their legal identity. With decentralization of many administrative functions of the state, local governments usually have the requisite powers to address grievances regarding the nonprovision of legal identity documents; facilitate the provision of legal identity documents to their constituents; or create rules that allow the presentation of substitute documents in lieu of those which are more difficult to obtain.

Indonesia

In Surabaya, the *lurah* of the *kelurahan* in Bratang decided not to allow any of the newborn children of families living along the riverbanks to be registered on the family identification cards. Non-registration would prevent the newborns from obtaining health services and other benefits. The RTs in the affected areas decided to seek help from a local politician. As a result of the politician's efforts, a hearing was held at the local parliament's Demography and Citizenship Committee, which decided that the children's names should be registered on the family identity cards. The local politician then convened a meeting with the *lurah* and the head of the Department of Demography. The *lurah* rescinded his decision and allowed the children to be registered.

Source: L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. p. 22.

Indonesia

Media publicized the deaths of 8 children in Surabaya. The children, who were without identity cards, died because they were denied access to health services. While hearings in both the regional and local parliaments were held on this issue, a local health care NGO was able to discuss the issue with the Minister of Health. After a meeting between the NGO, the Minister of Health, and the head of the district hospital, the hospital head adopted a policy allowing children to access health services at the hospital even if they did not have any proof of legal identity. In addition, NGO and public health centers agreed that the latter would treat homeless patients (who, being homeless, have no proof of residence or other identity document) when NGO centers are unable to treat them.

Source: L. Ruddy and J. Taylor. 2009. *Indonesia Country Report: Access to Justice for the Urban Poor*. p. 19.



Eric Sales

Bangladesh

Boundary disputes frequently erupted in Agrabad Bastuhara colony. When the slum burned down, the slum welfare committee prepared a map to reconstruct the spaces previously held by each household. Land was allotted to residents according to the map. Residents were issued a document describing the boundaries of the land occupied by their household. These documents, and the map, have prevented new boundary disputes.

Source: F. Jahan. 2009. *Bangladesh Country Report: Access to Justice for the Urban Poor*. p. 43.

Documenting rights and claims over available urban assets prevents disputes over the same

Transparency

Transparency refers to the availability of information to the public. The simple strategy of documenting rights and claims over available urban assets in a community—even when done informally by the community itself—can prevent or significantly decrease disputes over the same.

The Way Forward: Toward Inclusive Cities

If the poor remain unable to demand greater accountability from the public sector and service providers (both formal and informal), projects that aim to provide access to urban assets and services will fail to deliver what they promise. Policies must be adopted that allow and encourage the poor to voice their grievances against the public sector, service providers, and even amongst members of their own community. Grievance and dispute resolution mechanisms that consider, in their design, the challenges faced by the urban poor will ensure that urban development and service delivery projects improve the lives of their target beneficiaries. ADB would be well advised to support the development and implementation of such grievance and dispute resolution mechanisms in its urban development projects. Support for the following activities is also recommended: community consultation meetings, community organizing, training, and other technical support.

The study conducted by ADB and The Asia Foundation for the Access to Justice for the Urban Poor project suggests that there do not appear to be adequate venues for the urban poor to raise grievances and disputes relating to (1) the management and distribution of urban assets by intermediary service providers—who often operate informally; and (2) intracommunity disputes—i.e., those involving the management and distribution of urban assets between and among members of a community, and “power struggles” between two or more groups within a community. Interpersonal disputes are often, if not always, rooted in conflict over scarce urban assets. They are often raised in community-based

and/or traditional dispute resolution systems embedded within the community, which are often influenced by local hierarchies. Although interpersonal disputes are frequently settled by these mechanisms, they are bound to erupt again if community members are unable to obtain adequate access to urban assets. Community and/or traditional dispute resolution systems are not used to resolve conflicts regarding the management and distribution of already scarce urban assets.



Takeshi Takahara



Ian Gill

Although the establishment of grievance and dispute resolution mechanisms within public sector offices responsible for urban service delivery and formal service providers has been commonly prescribed and implemented in a number of urban development projects in Asia, they have not proven particularly useful for the urban poor. The mechanisms had been designed without considering the urban poor context. For example, only customers of record can access the citizens' complaints system of a formal service provider. In many urban poor areas, only one resident is the customer of record connected to the service provider; other residents derive water or power from that neighbor, often for a fee that is not remitted to the formal service provider. If the customer of record arbitrarily cuts the connection enjoyed by his or her neighbors, that neighbor cannot complain to the formal service provider about the customer of record.

In many urban poor areas, only one resident is the customer of record connected to the service provider; other residents derive water or power from that neighbor, often for a fee that is not remitted to the formal service provider

However, the fact that the commonly accessed community-based dispute resolution mechanisms are prone to elite capture does not detract from the inherent value of having a cost-effective and accessible means of airing grievances and settling disputes. One must therefore find ways by which grievance and dispute resolution mechanisms embedded in urban development projects are designed in

a manner that encourages the urban poor to access such mechanisms.

In other words, grievance and dispute resolution mechanisms are means by which we can improve urban governance and create inclusive cities.

Projects that are meant to address urban poverty and the challenge of the slums must now aim for much more than increasing the availability of affordable housing and physical

services. To succeed, urban improvement projects must be strategic, inclusive, and holistic, with success measured in terms of improved social equity, sustainable overall development of cities, and the involvement of all stakeholders, especially the marginalized and more vulnerable members of society.¹³² (Emphasis supplied.)

Inclusiveness can only be achieved if we allow the urban poor to speak and be heard.

¹³² UN-Habitat. 2007. *Inclusive Cities Remain Elusive*. p. 1. www.unhabitat.org/downloads/docs/4631_75722_GC%2021%20Inclusive%20Cities.pdf

What We Can Do

Urban development is a focus of Strategy 2020. In 2008–2009, around \$4.5 billion of ADB’s lending portfolio was devoted to urban development projects in a wide range of Asian countries, including Bangladesh, the People’s Republic of China, India, Indonesia, Mongolia, countries in the

Greater Mekong Subregion (Cambodia, the Lao People’s Democratic Republic, and Viet Nam), Nepal, Pakistan, Palau, the Philippines, Samoa, Sri Lanka, and Uzbekistan.

ADB’s challenge is to ensure that the urban poor are able to benefit from the urban development projects it supports—that is, they are able to access the assets and services that are envisaged to benefit Asian cities. This approach goes beyond compliance with ADB’s safeguard policies, which aim to protect vulnerable groups from unforeseen negative effects that the project might exert.

In certain projects—such as those focusing on neighborhood upgrading or community water supply and health—the urban poor are the targeted beneficiaries and directly enjoy the benefits derived from the projects. The projects themselves are undertaken to make urban development more inclusive. But projects that are intended to benefit the general urban population can—and should—be designed in a manner that considers the urban poor and the difficulties they experience in accessing urban assets and resources.



Takeshi Takahara

ADB’s challenge is to ensure that the urban poor are able to benefit from the urban development projects it supports—that is, they are able to access urban assets and services in Asian cities

Inclusive Project Design: Examples

The following are some of the typical problems encountered by the urban poor, and examples of solutions that might help facilitate their access to urban assets and services and overcome these difficulties:

Lack of proof of identity documents or other eligibility requirements necessary for obtaining access to urban assets and services

Many of the case studies illustrate that the inability of the urban poor to access urban assets and services frequently gives rise to grievances and disputes involving the government or a formal service provider.

Urban development projects can facilitate urban poor access by supporting negotiated agreements between the urban poor, the local or national government, and even NGOs. These agreements enable the urban poor to obtain title to property or other proof of secure tenure, and allow the urban poor to present substitute documents to prove legal identity. The following strategies may also prove helpful:

- i. supporting organizations that undertake public interest litigation (PIL) cases that argue for the recognition of urban poor rights, and which provide paralegal training or similar education activities to the urban poor. These enable the poor to recognize and enforce their right to urban assets and services;
- ii. supporting changes in legal or policy frameworks that exclude the urban poor from accessing urban assets and services; and
- iii. providing urban services to the urban poor through an intermediary, with qualifications.

Inability to shoulder connection and maintenance fees required by the asset or service

Government officials and formal service providers are reluctant to provide the urban poor with access to urban services such as piped water partly because of the likelihood that the urban poor do not have the resources

required to shoulder connection and maintenance fees.

ADB urban development projects can address this concern by extending formal service connection to an eligible intermediary, which acts as the community's representative. In this manner, government or formal service providers are able to perform their duty by delivering the service to the community instead of individuals.

Inability to access formal service providers' grievance mechanisms

When the urban poor obtain access through intermediaries, they become susceptible to the intermediary's abuse, and might not be able to enjoy access to assets and services that the government or formal service provider intends to provide.

To prevent this from happening, formal access must be directly extended to the urban poor. Where access can only be extended through an intermediary, the intermediary must be accredited by the formal service provider. The formal service provider must exercise oversight and revoke accreditation if the intermediary fails to elevate the grievances and complaints of the urban poor to the formal service provider. Clear conditions must govern the relationship between formal and intermediary service providers. The conditions for the withdrawal of accreditation by the formal service providers must be clearly provided in the agreement between formal and intermediary service providers.

It is also useful for the formal service provider and government to provide the urban poor with multiple intakes for complaints or grievances in addition to their regular grievance mechanism.

It might also be useful to provide the staff of the intermediary service provider with training on grievance resolution techniques.

Traditional or community dispute mechanisms do not adequately address grievances and disputes

When existing community grievance and dispute resolution mechanisms are employed

to address grievances and disputes relating to the community's or its members' access to urban assets and services—but are unable to effectively resolve them, the following activities might prove useful, and should be supported:

- i. training community mediators;
- ii. training the community in choosing the kind of mediators that might be able to resolve disputes effectively; and

- iii. launching information campaigns on the procedure to access community grievance and dispute resolution mechanisms, and enforce their resolutions.

The following table summarizes the preceding discussion:

Problem identified during Project Identification/Preparation/Project Design	Grievances and disputes that arise	Possible design features to facilitate urban poor access and improve urban governance
Urban poor population ineligible to access urban service to be provided at the end of the project	Vertical disputes involving the individual and/or community, and the national and/or local government, or formal service providers	<ul style="list-style-type: none"> • Support negotiated agreements between the urban poor, the local or national government, and possibly NGOs that will <ul style="list-style-type: none"> – enable the urban poor to obtain title or other proof of secure tenure; and – allow the urban poor to present substitute legal or identity documents as a precondition to access • Support organizations that undertake public interest litigation (PIL) cases that argue for the recognition of urban poor rights, and which provide paralegal training or similar education activities to the urban poor, to enable them to enforce their right to urban assets and services • Support changes in legal or policy frameworks that exclude the urban poor from accessing urban assets and services • Consider the provision of urban services to the urban poor through an intermediary, under certain conditions (see 69, second row, third column)

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Table continued

Problem identified during Project Identification/Preparation/Project Design	Grievances and disputes that arise	Possible design features to facilitate urban poor access and improve urban governance
Urban poor unable to shoulder connection and maintenance fees required by the asset or service	Vertical dispute involving individual, and the national/local government or formal service provider	<ul style="list-style-type: none"> • Extend formal service connection to an eligible intermediary tasked with representing the community • Explore arrangements that provide services to the community instead of individuals
Urban poor without access to the formal service providers' grievance mechanisms because they are not formal customers of record	Vertical dispute involving an individual and the formal service provider	<ul style="list-style-type: none"> • Where possible, extend formal access to the urban poor and provide related support; or • When access is to be provided by an intermediary, the intermediary must be accredited by the formal service provider. The formal service provider must exercise oversight and revoke accreditation if the intermediary fails to elevate the grievances and complaints of the urban poor to the formal service provider <p>In either case, the formal service provider or government must provide multiple intakes for complaints or grievances that the urban poor might have.</p>
An intermediary service provider (and/or its grievance redressal mechanism, if any) is captured by the local elite, abusive, or nonperforming	Disputes involving an individual and the intermediary service provider	<ul style="list-style-type: none"> • Establish a system that would allow multiple intakes for complaints or grievances from the urban poor, which could exist simultaneously with the intermediary service provider's grievance redressal mechanism. • Election of community members to staff a community-based dispute resolution mechanism for a limited period (e.g., 2 years) without possibility of reelection.

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Table continued

Problem identified during Project Identification/Preparation/Project Design	Grievances and disputes that arise	Possible design features to facilitate urban poor access and improve urban governance
Traditional or community dispute mechanisms do not adequately address grievances or resolve disputes brought before it	Horizontal disputes between individuals	<ul style="list-style-type: none"> • Establish government or formal service providers' branch offices, or a regular schedule of field visits that would encourage the reporting of complaints • Allow the urban poor to report their grievances to government offices/regulators/formal service providers through mobile telephones and other low cost means of communication • Train members of the intermediary service providers' grievance redressal mechanism • Accredite intermediary service providers and have them overseen by formal service providers • Establish clear conditions that govern the relationship between formal and intermediary service providers, including conditions for the withdrawal of accreditation by the formal service providers • Train community mediators • Train community in choosing mediators • Support public information campaigns on the procedure for accessing the mechanism and enforcing its resolutions

Questions to Ask During the Project Preparation Stage

During a fact-finding mission or during a preliminary poverty or social assessment, it is important to ask whether: (i) significant urban poor populations reside or work (for example, itinerant vendors) in the urban area that will benefit from the project; and (ii) such populations are currently barred from accessing similar assets or services, and the reason why access is denied. The findings of the Access to Justice for the Urban Poor project suggest that the denial of access to critical urban assets and services, which government is duty-bound to provide the urban population, becomes the cause of grievances and disputes that not only make the urban poor vulnerable to exploitation and abuse, but weaken urban governance overall.

Project-focused Complaint Handling Mechanisms

The introduction of new (or enhancement of existing) grievance and dispute resolution mechanisms is only one of many possible innovations that can be integrated into project design, to make the outcome of an urban development project more accessible. This, in tandem with other useful innovations, can support greater access to urban assets and services for the urban poor. Apart from facilitating greater access, new or enhanced grievance and dispute resolution mechanisms

improve governance and community cohesion. They are intended to survive the project and be used by the community after project completion.

These mechanisms ought to be distinguished from project-focused complaint handling mechanisms (also referred elsewhere as “grievance mechanisms”), which many development organizations, including ADB, have supported.

A project-level grievance mechanism is a locally based, formalized way for a company to accept, assess, and resolve community complaints related to company activities. It offers a package of widely understood and effective procedures for solving problems that are culturally appropriate, in combination with specially trained personnel, and aims to help parties reach speedy, efficient, and acceptable resolutions with dignity, justice, and finality.¹³³

Project-focused complaint handling mechanisms only exist while the project is being implemented. Although they can enhance good governance and facilitate the urban poor’s access to assets and services, they exist primarily to “reduce risk for projects, even as they offer communities an effective avenue for expressing concerns, and achieving remedies, and promote a mutually constructive relationship.”¹³⁴ The benefits of setting them up include the fact that problems arising in a project context “are often resolved more easily, cheaply, and efficiently, when they are dealt with early and locally.”¹³⁵

ADB’s Office of the Special Project Facilitator (OSPF), an independent office that is part of ADB’s accountability mechanism, has characterized “an effective system for complaint handling” as “one of the key elements of a good development project, especially if the project is complex and has

During the project preparation stage, check whether (1) significant urban poor populations reside in the project area; and (2) such populations are barred from accessing urban assets or services

¹³³ The Office of the Compliance Advisor/Ombudsman, World Bank Group. 2008. *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*. p. 17.

¹³⁴ Footnote 133, p. 1.

¹³⁵ Footnote 133, p. 2.



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broad social and environmental impacts.”¹³⁶ OSPF has assisted in the design of effective and responsive complaint handling mechanisms in ADB development projects. OSPF has reported success, particularly with the design and implementation of a complaint handling system in ADB’s Earthquake and Tsunami Emergency Support Project (ETESP) in Aceh, Indonesia. The complaint handling system—comprised of three interrelated complaint handling mechanisms—was established (i) to help people who are adversely affected by subproject implementation; (ii) resolve disputes and conflicts arising from the preparation and implementation of subprojects; (iii) ensure that project resources are used well and for the intended purposes; and (iv) ensure open communication and feedback among project implementors, communities, and beneficiaries.¹³⁷

Despite the complex context in which ETESP was implemented (not only was “the social, political, and physical environment in which the ETESP operated severely fractured and remained fragile as a result of both the 2004 and 2005 earthquakes and several decades of conflict in the region;”¹³⁸ there were numerous, simultaneous rehabilitation efforts in a variety of sectors, undertaken by various development organizations, all of which had their own accountability mechanisms, processes, and procedures)—ETESP was implemented without a single complaint being elevated to the OSPF for action, implying that complaints were adequately dealt with on the ground. Moreover, because of the good experiences generated by the ETESP complaint handling system, ADB’s Extended Mission in Sumatra in 2009 reported that the ETESP expe-

¹³⁶ ADB. 2009. *Complaint Handling in the Rehabilitation of Aceh and Nias: Experiences of the Asian Development Bank and Other Organizations*. p. ix.

¹³⁷ Footnote 136, p. 21.

¹³⁸ Footnote 136, p. 11.

rience would be used to build the capabilities “within local governments in Aceh and Nias to mainstream and integrate complaint handling into their regular government procedures.”¹³⁹

Lessons learned from ADB’s ETESP.

OSPF has described the ETESP complaint handling system as well as the lessons learned from setting up and implementing the system in the publication, *Complaint Handling in the Rehabilitation of Aceh and Nias: Experiences of the Asian Development Bank and Other Organizations*. The following were among the lessons learned:

1. Interest and support from funding agencies build support for establishing project complaint handling systems. “Implementing agencies and NGOs are more responsive to community feedback and complaints when the sources of funds are seen as equally interested in having these issues addressed and resolved.”¹⁴⁰
2. Grievance mechanisms that are put in place early in the project cycle are particularly helpful. Therefore, the complaint handling unit should be established when the project begins.
 - a. Early issuance and dissemination of construction standards and guidelines to partner organizations and communities help avoid complaints about variations in the quality of construction.
 - b. Complaint handling systems need to be built into standard operating procedures or made

an integral part of the project’s field manual.”¹⁴¹

However, ADB notes that “limited planning and social preparation in some sectors enabled an earlier start but resulted in huge delays and protracted conflicts during implementation.”¹⁴²

3. “Planning that is community based will help ensure success.” And, “where communities were involved in design and monitoring of house construction, ownership was increased and conflicts and problems minimized.”¹⁴³
4. It was important to create goodwill and build relationships with stakeholders: “Targeting rehabilitation activities that were identified as priorities in the community created goodwill and built relationships with stakeholders.”¹⁴⁴
5. “Planning should include an understanding of the social interactions and relationships among the people in the village or area.”¹⁴⁵

Application of ETESP’s good practices to urban development projects.

Although ETESP did not focus specifically on increasing access to urban assets—and even if the context in which it was developed differs from that in which urban development projects are undertaken—some features of the complaint handling mechanism employed in Aceh and Nias can be adopted in the urban poor context:

1. *Availability of multiple channels for submitting complaints.* Because the urban poor are

¹³⁹ Footnote 136, p. x.

¹⁴⁰ Footnote 136, p. 12.

¹⁴¹ Footnote 136, p. 11.

¹⁴² Footnote 136, p. 11.

¹⁴³ Footnote 136, p. 11.

¹⁴⁴ Footnote 136, p. 11.

¹⁴⁵ Footnote 136, p. 11.

vulnerable to political and elite capture, providing multiple channels for submitting complaints provides the poor with more opportunities to be heard without the mediation of local hierarchies. In ETESP, parallel complaint handling mechanisms were established, maximizing people's access to someone who could help redress their grievances. Coordination among the complaint handling mechanisms can mitigate the risk that some individuals will engage in "forum-shopping."

2. *Grievance and dispute resolution at the lowest (neighborhood) level.* It is generally preferable to deal with complaints and grievances at the lowest level, as this ensures timely resolution of complaints and prevents grievances from festering and becoming more complicated.
3. *Flexibility in the design of grievance and dispute resolution mechanisms.* The forms in which grievances and disputes are handled vary from community to community. Problems can usually be solved through discussions, explanations, and community meetings. Regular opportunities to call and attend the foregoing will help surface unreported grievances and resolve disputes.
4. *Monitoring grievance and dispute resolution mechanisms.* In the project context, implementation consultants played the role of monitors. In the urban poor context, NGOs can play this role. At the outset, government (or formal service providers), NGOs, and the urban poor community need to clarify their roles in relation to resolving grievances and disputes.

The Access to Justice for the Urban Poor project studied situations wherein grievance mechanisms were either absent or inaccessible to the urban poor

5. *Grievance and dispute resolution as part of a communication plan.* Grievance redressal is a continuing effort to communicate with vulnerable groups and other stakeholders (such as NGOs and local officials). A communication plan and budget to inform communities and the public of their right to ask questions, give feedback, and learn the procedure for registering complaints will help people access the mechanism.

Phases in the Design and Implementation of Grievance Mechanisms

The Access to Justice for the Urban Poor project studied situations wherein grievance mechanisms were either absent or inaccessible to the urban poor. Although its conclusions argue for the introduction (or strengthening) of grievance and dispute resolution mechanisms in urban poor communities in order to facilitate better access to urban assets and services, one needs to look elsewhere for technical and practical information on setting up and running such mechanisms. Apart from OSPF's publication on Complaint Handling in the Rehabilitation of Aceh and Nias, an advisory note issued by the Office of the Compliance Advisor/Ombudsman for the World Bank Group, *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects* is very useful in this regard.

The Guide suggests that a grievance mechanism ought to have the following components:

- A transparent grievance receipt and registration system;
- A grievance eligibility assessment procedure to determine whether a complaint falls within its jurisdiction, and the complainant has standing (the right to access the mechanism);
- A grievance evaluation procedure to clarify issues and concerns in the complaint and identify how the issues might be resolved;

- A menu of problem solving processes;
- A system of tracking, monitoring and reporting to the community the status of complaints and grievances; and
- A procedure for identifying and learning from systemic problems.

The Guide also states that the creation of a grievance mechanism generally takes place in four phases. Questions to guide the creation of grievance mechanisms at every phase are summarized below:

	Phase 1	Phase 2	Phase 3	Phase 4
Description	Define the scope of grievances to be handled by the mechanism	Design the grievance mechanism	Introduce and implement the mechanism	Monitor, evaluate and report on the mechanism's performance
Questions to assist design at every phase	<p>Purpose: Why is a grievance mechanism being established?</p> <p>What is the grievance mechanism expected to achieve in the long and short term?</p> <p>Existing structures: How are complaints handled (formal, informal and ad hoc approaches)?</p> <p>Are there mechanisms that prevent grievances from escalating into disputes?</p> <p>Are existing channels for dealing with community complaints able to handle future grievances?</p> <p>Why are existing procedures being used, or not used?</p>	<p>Is the designed grievance mechanism legitimate? Does it have clear, transparent and independent governance structures?</p> <p>Is it designed to be accessible? Will its existence and procedures be publicized to those who may wish to access it?</p> <p>Is it designed to be predictable? Will it provide a clear and known procedure for every stage?</p> <p>Is it designed to be equitable? Will it ensure that all parties have access to information, advice and expertise?</p> <p>Is it designed to be rights-compatible-- its outcomes and remedies, in accord with internationally recognized human rights standards?</p>	<p>Is there a strategy to introduce the grievance mechanism?</p> <p>Are there regular training sessions planned for the staff who will administer the system as well as the potential users of the system and managers of the project?</p> <p>What can be done to minimize risk and fear of using the system?</p> <p>Does the system demonstrate that retaliation is not tolerated, and confidentiality, protected?</p> <p>Do people feel their rights are protected?</p> <p>What can be done to encourage use of the system?</p>	<p>How well is the system accomplishing its purpose and goals?</p> <p>How is it making a difference?</p> <p>What is, and is not working?</p> <p>What types of problems is it addressing?</p> <p>Is the mechanism accessible and immediately understood?</p> <p>Do those who receive and register complaints document the complaints?</p> <p>Can complainants readily determine the status of their complaints?</p> <p>Does the mechanism provide opportunities for face to face participation and discussion?</p>

continued on next page

	Phase 1	Phase 2	Phase 3	Phase 4
	<p>What are the existing barriers for those who might want to complain?</p> <p>How does the community typically handle conflicts?</p> <p>Are trusted institutions within the community engaged in grievance resolution? Might they play a role in the grievance mechanism?</p>	<p>Is it designed to provide sufficient transparency of process and outcomes?</p>	<p>Is the system changing the way the community views conflict and complaints?</p> <p>Are there tangible benefits and results? Are they being reported to the community?</p> <p>Do community leaders encourage use of the system?</p>	<p>Does the mechanism allow where appropriate, external, independent means to redress grievances?</p> <p>What community issues, trends or issues in project operations can influence the kind of conflicts expected in the future? Is the mechanism set up to handle them?</p> <p>What can increase its effectiveness?</p>

Source: The Office of the Compliance Advisor/Ombudsman, World Bank Group. 2008. *A Guide to Designing and Implementing Grievance Mechanisms for Development Projects*.

Access to Justice for the Urban Poor: Toward Inclusive Cities

This publication suggests solutions that can be built into the design of urban development projects undertaken by the Asian Development Bank (ADB) to address the common problems and grievances of the urban poor, and to improve urban governance overall.

It also identifies successful or promising community-based approaches to dispute resolution that can be useful in urban project design.

It uses ADB's Governance Policy as a framework for analyzing key findings of *Access to Justice for the Urban Poor*, a regional technical assistance grant to four developing member countries in Asia and the Pacific—Bangladesh, Indonesia, the Philippines, and Thailand. The findings consist of case studies illustrating typical problems encountered by the poor in connection with access to urban assets and services, and identifies the types of grievances or disputes that may arise because of these issues. The publication reproduces key case studies to illustrate significant concepts.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries substantially reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than \$2 a day, with 903 million struggling on less than \$1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

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