

**INCEPTION REPORT**

**ACCESS TO JUSTICE  
FOR THE URBAN POOR**

**ASIAN DEVELOPMENT BANK  
TA 6366-REG**

**Submitted by**

**The Asia Foundation  
September 30, 2008**

# **Inception Report Access to Justice for the Urban Poor**

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# **Inception Report Access to Justice for the Urban Poor**

This Inception Report is divided into five sections. The first section provides an Executive Summary for the report. The second section presents the conceptual framework for the project. The third section provides an overview of the project, including the research objectives, the key questions, and an overview of the research methodology and project status. The fourth section presents the key findings of the scoping studies. And the final section presents the framework for the in-depth phase of the research. The main body of the report is followed by a series of appendices, which include key documents prepared for the project, namely the scoping study guidelines, the scoping study reports, and the instructions for phase II of the research.

## **SECTION 1: Executive Summary**

### **1.1. Background**

Current rates of urbanization in Asia are overwhelming. Most of the world's growth in the next several decades will take place in the cities of developing countries where an estimated one third of all inhabitants live in slums.<sup>1</sup> This rapid population growth stands to increase competition over already scarce urban assets. Gaining access to land, housing, water, electricity, education and other essential services will most likely become even more challenging for many of the world's urban poor, potentially resulting in an overall reduction in the living standards of millions of families throughout Asia. Increased competition and conditions of scarcity result in an increase in the frequency and intensity of disputes and grievances among the urban poor over access to urban assets. In order for the urban poor to gain access to the resources they need, effective methods for resolving disputes over urban assets must exist.

Poverty, discrimination and weak institutions all contribute to environments in which it is difficult for the urban poor to resolve their disputes through formal processes. In many cases, the urban poor resolve their disputes through informal processes and institutions. Yet, we lack a thorough understanding of these mechanisms and the adequacy of the solutions they present. A better understanding of both formal and informal dispute resolution processes from the perspective of those that use and administer them is necessary if improvements are to be made.

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<sup>1</sup> Montgomery, Mark R. (2008) "The Urban Transformation of the Developing World" *Science* (319:5864), p. 761-764. and Dye, Christopher (2008) "Health and Urban Living" *Science* (319:5864), p. 766-769.

## 1.2. Project Overview and Progress

This project is designed to generate insights and guidance which can contribute to the development of institutions to help the urban poor effectively resolve disputes over urban assets. Too often institutional change is initiated without a complete understanding of the social, economic and political dynamics effecting status quo institutions. The knowledge gained about the current informal and formal dispute settlement mechanisms being employed by the urban poor will inform plans to either improve existing institutions or create new institutions that effectively serve the needs of the urban poor.

The project includes four countries: Bangladesh, Indonesia, Philippines, and Thailand. A team of International Consultants are leading the implementation of the project and a National Consultant has been selected from each country to conduct the research and analysis and participate in the international workshops.

A six stage approach has been developed for this project, of which the initial stages of research and planning have been completed. The national consultants completed a literature review and preliminary scoping study, based on detailed guidelines developed by the international consultants. These initial reports were presented and discussed at an inception meeting that was held in Manila in July, 2008. The meeting provided an opportunity to review the findings of the scoping study and to further define the focus of the second phase of the research.

Following the inception meeting, the international consultants developed research guidelines to direct the in-depth phase of the research. These guidelines were distributed to the national consultants along with explanatory notes to provide direction for the in-depth research and to ensure that the country reports address similar issues and answer similar questions. The in-depth research outline and guidelines are described in Section 5 and provided in full in Appendix A of this report.

With guidance from the international consultants, the national consultants are currently in the process of conducting in-depth studies at their research sites and preparing their final reports. After a draft report has been produced each national consultant will hold an in-country workshop to present their findings and solicit feedback. Upon completion of the final drafts a regional workshop will be held at ADB headquarters in Manila at which the national consultants will present their findings to the international consultants, ADB staff, relevant stakeholders and invited experts. This workshop will provide an opportunity to compare findings, identify areas where further work is needed and to discuss the implications of the study for development practitioners.

### **1.3. Scoping Study Findings**

Each of the national consultants submitted a scoping study report following the initial phase of research. The scoping studies include a literature review, a description and justification of study sites, and preliminary findings about dispute settlement in the subject communities. Each of the reports emphasized different issues relating to dispute settlement in their research locations. The report from Bangladesh focused on patronage structures and the distribution of resources and services through intermediaries. Research in Thailand emphasized the importance of legal identity to the distribution of key urban assets. In Indonesia findings highlighted the lack of legal education among the urban poor. Information gathered in the Philippines suggested the importance of the Barangay Justice System for dispute settlement in most urban poor communities. All of the findings informed the discussions at the Inception Meeting in Manila and allowed for a more focused research plan to be developed. After further review it was decided that the quality of work being conducted in Indonesia was inadequate. Measures have been taken to ensure that the final report will be of a higher quality. Summaries of scoping study findings can be found in Section 4 and each of the scoping study reports are in the appendix.

## SECTION 2: Conceptual Framework

### 2.1. Urbanization and Disputes over Urban Assets

Countries across Asia are experiencing staggering rates of urbanization. According to UNFPA statistics, more than half the world's population now lives in urban areas.<sup>2</sup> The UN Population Division projects that by 2024 total population will increase by 1.76 billion persons with approximately 86% of this growth expected to take place in the cities and towns of developing countries.<sup>3</sup> Among developing countries, the largest number of urban dwellers resides in Asia and this trend is expected to continue.<sup>4</sup> By 2030 the urban proportion of Asia's population is expected to reach 56 percent. A large number of urban inhabitants in developing countries currently live in slums (estimated as one in three, or approximately one billion people) and this proportion is estimated to be higher than average in South Asia.<sup>5</sup> Urban growth and urbanization has been taking place through three major processes:<sup>6</sup>

- 1) *Migration from rural to urban areas*: In developing countries it is estimated that this contributes to 40% of urban growth rates.
- 2) *Natural population increase*: In developing countries, the remaining 60% of the urban growth is attributed to natural growth.
- 3) *Reclassification of rural settlements as urban*: As population densities in small towns reach a certain level, the government may reclassify areas as urban, therefore increasing nationwide urbanization.

A steady pace of urbanization<sup>7</sup> combined with rapid urban population growth has given rise to a number of interrelated problems, including resource shortages, increased competition for services and employment, and environmental degradation.<sup>8</sup> Rapid population growth has also increased pressure on access to urban assets, including land, housing, water, sanitation, electricity, education, health services, and personal security. Coping with the pressures of rapid urban growth has become a major concern for government officials and policy makers, particularly in developing countries with high levels of urban poverty. Urban and municipal governments, in particular, must respond to increasing demands with limited resources and few opportunities to generate greater revenue. As a result, government officials often either neglect the poor or pursue regressive measures.

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<sup>2</sup> UNFPA, State of World Population 2007.

<sup>3</sup> Montgomery, Mark R. (2008) "The Urban Transformation of the Developing World" *Science* (319:5864), p. 761-764.

<sup>4</sup> Ibid.

<sup>5</sup> Dye, Christopher (2008) "Health and Urban Living" *Science* (319:5864), p. 766-769.

<sup>6</sup> Ibid.

<sup>7</sup> The term urbanization refers to the proportion of urban areas as compared to rural.

<sup>8</sup> Montgomery, p. 762.

For example, government agencies have limited the access of informally occupied areas to urban services, or have evicted settlers from illegally occupied land. These and other policies tend to have the greatest impact on the poor since they have fewer options for making claims on urban resources.

The ADB Urban Sector Strategy recognizes the pressures of urban growth and stresses that the scale and speed of urbanization further exacerbates the conditions of poverty, leaving the urban poor competing for scarce resources.<sup>9</sup> When the poor are denied access to urban assets they have limited channels through which they can pursue their interests. Due to poverty, discrimination, and weak institutions, the urban poor often face systemic challenges to resolving their disputes, enforcing their rights, and accessing the protections and benefits to which they are legally entitled. Formal courts and government institutions are often inaccessible to poor and vulnerable groups, and it is unclear whether informal dispute resolution mechanisms provide adequate solutions and sufficiently protect the rights of the poor. The Asian Development Bank (ADB) has expressed concern that, "...little attention has been given to decentralizing accessibility to and delivery of justice, establishing efficient and effective grievance procedures when decentralized service delivery fails, and facilitating people's participation in the resolution of conflicts and disputes."<sup>10</sup> In rapidly growing urban areas, government initiated mechanisms to redress the grievances of the poor over urban assets often lag behind the level of demand.

## **2.2. Informal versus Formal Dispute Settlement Mechanisms**

Over the past two decades, institutional reforms within urban service provision agencies have in part addressed the need for mechanisms to recognize and resolve disputes and complaints over service provision. For example, complaint registration systems have been established to provide a mechanism for customers to register their grievances. However, these mechanisms often do not respond to the needs of the poor for a number of reasons. In some cases the urban poor do not have legal tenure to land and therefore are denied formal access to services. In others, engineers face technical constraints in settlements with high population densities or irregular terrain. And, in cases where the poor cannot afford the level of formal services provided, they may opt for informal access to resources (e.g. private water suppliers or illegal electricity connections). Finally, the institutionalized systems often respond more efficiently to the needs of wealthier residents, and neglect the poor.

In many cases the urban poor pursue informal mechanisms to resolve their disputes by identifying assistance within a network of personal relationships. The poor often depend on these social networks to determine what they can expect and what is fair or acceptable. Research regarding access to urban assets

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<sup>9</sup> ADB Urban Sector Strategy 1999

<sup>10</sup> Asian Development Bank (2006) "Access to Justice for the Urban Poor" Technical Assistance Report

by the poor describes a number of mechanisms used by the poor to meet their needs, including patron-client relationships, community organizing and mobilization, and social networks. In particular, the poor seek out more powerful individuals or institutions that can assist them in making their claims, including political party officials, elected local council members, ethnic or caste based leaders, religious leaders, fixers, local mafia leaders, and local leaders with connections to formal institutions. We lack a systematic understanding of these informal institutions and mechanisms that the poor use to resolve disputes and their relative levels of effectiveness, particularly in disputes with more wealthy or powerful parties. Further, we lack an understanding of the replicability of those institutions that are effective. In addition, it is likely that these networks are disrupted by migration within cities, shifting alliances, and new power equations. Thus the impact of rapid growth on the frequency and intensity of disputes and the mechanisms available to resolve them among the urban poor is not clear.

### **2.3. Working Definitions**

The specific words that have been used in this research framework may not be appropriate if they are directly translated to the local language. Therefore, it is important to understand the definitions intended for this research project, and translate the words appropriately to capture the meaning and solicit the narratives that this project seeks. Also, in conducting this research, it is important to be aware that the terms used (such as justice, dispute, complaint, urban asset, etc.) may mean different things to different people depending on a person's judgment and analysis of a situation. Thus, it will be extremely important to be descriptive in communicating with interviewees and keep in mind that the terminology must be adapted to communicate the underlying issues that we are examining.

#### *Urban Assets:*

For purposes of the scoping study, urban assets were defined broadly as key resources which are, or should be available in the city and that contribute to residents' quality of life, basic personal security, or economic well being. Urban assets include critical infrastructure, such as access to or ownership of land, housing, water, sanitation, electricity, education, health services, and personal security. At the inception meeting, it was decided to narrow the definition of urban assets for phase 2 of the research to more closely intersect with ADB operations. The urban assets considered in phase 2 of the research are limited to land and housing, public utilities, and health and education to the extent that disputes over access to these services are due to lack of documentation.

#### *Institutions:*

In this study, the term institution includes any mechanism or agent that serves as a forum for resolving a dispute or complaint. Institutions are defined broadly to



cover formal, semi-formal and informal channels, including: institutionalized dispute resolution mechanisms, alternative dispute resolution forums, police, NGOs/CBOs, local elected officials, bureaucrats, family members or neighbors, respected elders/community leaders, religious leaders, informal networks, mafia leaders, and slum leaders, among others.

*Dispute, Complaint, Grievance:*

The articulation of a disagreement between two or more parties or a situation in which an individual or group perceives an injustice and therefore, believes there are grounds for resentment or complaint. This definition includes not only situations in which the disputant pursues some form of action to remedy the problem, but also situations in which the aggrieved does nothing. The term grievance would also encompass the situation where the poor are not accessing adequate urban assets, without there necessarily being a clear dispute between two parties. In this framework the word 'complaint' is to be understood according to its general usage definition, as an expression of displeasure (e.g., for poor service delivery), not according to its definition under common law (i.e., as a formal legal document that sets out a claim or cause of action, entitling the claimant to damages).

## **SECTION 3: Project Overview**

### **3.1. Research Objectives**

The overarching goal of this research is to generate critical insights and guidance for efforts to develop new or improve existing institutions through which the urban poor can effectively prevent and resolve disputes over urban assets. Too often new institutions are created without a thorough understanding of what institutions currently exist; the political, economic and social dimensions of how these institutions operate; and the extent to which existing institutions are effective. If new institutional structures for dispute resolution are to have a chance of success, it is important to understand how they will disrupt, support, or potentially be manipulated by existing interests and institutions. Therefore, it is critical to take into account the contextual realities of the dispute resolution mechanisms that exist and the political and economic realities of the poor.

The primary objective of the research is to increase our understanding of how the urban poor go about resolving disputes and complaints over access to urban assets, including land, housing, water, sanitation, electricity, education, health services, and personal security. This increased understanding will inform the design of dispute resolution mechanisms that effectively meet the needs of the urban poor. We are particularly interested in asymmetrical disputes, in which there are significant power disparities between the parties. In this study, researchers will elicit narrative accounts from the urban poor regarding their experiences resolving disputes through both formal and informal channels, courts, police, NGOs/CBOs, local elected officials, bureaucrats, family members or neighbors, respected elders/community leaders, religious leaders, informal networks, fixers, slum lords, among others. Researchers will analyze trends in how the urban poor go about solving their problems, noting relationships between the type of complaint/dispute and choice of forum.

The research will provide insights into the types of disputes and complaints that arise over urban assets in rapidly urbanizing areas; whether and how these disputes are currently resolved; and to what degree of satisfaction. It will also generate guidelines to consider when strengthening or establishing dispute resolution mechanisms to complement urban development investments. This will further the Foundation's and ADB's shared interest in developing strategic interventions to improve dispute resolution options that are cost effective, locally rooted, and that optimally maximize the welfare of the urban poor target populations.

### **3.2. Key Questions**

#### **3.2.1. What types of disputes and complaints over urban assets are arising among the poor in rapidly urbanizing areas?**

The research will provide detailed narrative accounts of asymmetrical disputes and complaints, which involve claims by the urban poor against more powerful or wealthy parties over access to urban resources and services. These disputes may be between the urban poor and a range of actors including city government officials or agencies, state owned enterprises, private developers or corporations, non-governmental organizations, slumlords, or organized crime networks. The researchers will identify, clarify, and provide detailed accounts of the particular issues in dispute. For example, within the general area of disputes related to water, there are a range of specific problems the urban poor may face including access to a water supply, poor water quality, equipment repairs, etc.

In developing narrative accounts of the disputes and complaints, the researchers will conduct interviews with the disputants, the institutions through which they attempt to resolve their dispute, and other relevant informants. These interviews will explore the relationships between the parties involved; their interests and motivations; and the various interwoven social, economic, and political plot lines of the dispute. The research will also investigate the relationship between the issues on the surface of the dispute and underlying dimensions and interests at play that are not immediately apparent. For example, in Nepal accusations of false citizenship are often made by family members in order to exclude other family members from eligibility to inherit their portion of land (i.e. in Nepal citizenship is required to legally own and register land).<sup>11</sup> In this example, a case that appears to be about false citizenship is actually a dispute over land ownership.

### **3.2.2. What institutions do the urban poor approach to resolve disputes over urban assets and why?**

The urban poor may approach a wide range of institutions to resolve their disputes, including courts, court annexed or community mediation, local bureaucrats or politicians, NGOs and CBOs, influential community or religious leaders, as well as fixers, slumlords or mafia networks, among others. To encompass this diverse list of potentially relevant dispute resolution mechanisms, we define the term “institution” very broadly to include both public and private formal, semi-formal, informal and even illegal operations. In the context of this research, institutions are understood to include both formal structures that have been intentionally established (e.g., courts, NGOs) as well as informal patterns of social order and cooperation that have emerged and developed organically as a reflection of local culture, customs, and political and economic interests.<sup>12</sup> This

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<sup>11</sup> ADB, *Establishing Legal Identity for Inclusive Development*, 2007.

<sup>12</sup> Avner Greif, “Commitment, Coercion and Markets: The Nature and Dynamics of Institutions Supporting Exchange,” *Handbook of New Institutional Economics* (Springer: Netherlands: 2005).

expansive definition of institutions reflects the primary focus of the research, which is on function not structure.

Where the urban poor go to resolve their disputes reflects strategic decisions, based on a number of factors, including the availability of information on various options, their ability to gain access, the range of plausible alternatives, and the perceived likelihood of a successful outcome. The research will investigate what factors the urban poor consider in deciding whether or not to pursue redress, which institutions to approach, and which to avoid. Potential characteristics that the urban poor may care about include affordability, speed, fairness and neutrality, geographic proximity, the likelihood of issuing a favorable and enforceable outcome, the ability to actively participate in the dispute resolution process, and the preservation of social relations, among others. Understanding that there are always trade offs between various options, the research will investigate which features and characteristics the urban poor value most and which are less significant.

Gaining a clear-eyed picture of where the urban poor go to resolve their disputes tells us something about the needs various formal and informal institutions meet and their relative levels of accessibility, legitimacy, and effectiveness. The research will focus on the strategies the urban poor *actually* employ to access dispute resolution, not what government agencies, NGOs or development experts think they *should* do. We anticipate that the urban poor may be exploited by some of the institutions that they approach for assistance; however, we assume that they would seek redress elsewhere if they believed that credible and effective alternatives existed. The researchers will also try to uncover and examine cases in which the urban poor have significant disputes or complaints, yet make no attempt to resolve them.

### **3.2.3. What are the institutions' prescribed procedures or customary practices for resolving disputes?**

Researchers will briefly describe the prescribed procedures of the institutions that the urban poor approach to resolve disputes over urban assets. In the case of formal or semiformal institutions, such as courts or community mediation, written procedures may exist. However, since many of the institutions involved in resolving the disputes of the urban poor are informal, researchers will describe customary practice, as it is articulated by relevant institutional actors. For example, in understanding how a local community leader goes about resolving disputes, researchers will explore questions such as: What steps are typically involved in the dispute resolution process? Who participates in the process (besides the parties to the dispute)? How long does the process generally take? Does the community leader ultimately issue a decision or does he or she help the

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parties reach a mutually agreeable solution? Are the parties required to pay a fee and if so, how much?

#### **3.2.4. How do the urban poor actually resolve disputes over urban assets?**

Often there is a divergence between how dispute resolution processes are *supposed* to work and how they *actually* work in practice. While question (iii) examines how dispute resolution institutions are supposed to function, according to their written rules of procedure or customary practices, this question will focus on how institutions actually operate. The researchers will approach this question by viewing the dispute resolution process as a dynamic interaction between the urban poor and the institutions through which they seek to resolve their disputes. Accordingly, the research will investigate both (a) the strategies employed by the urban poor to access and work through a particular institution as well as (b) how institutional actors operate in resolving disputes.

To this end, researchers will investigate the following questions: What strategies do the urban poor use to pursue their cases through a particular institution? For example, do they seek assistance from more powerful allies? Do the urban poor pursue multiple dispute resolution strategies simultaneously and if so, do these different strategies interact or affect each other? How are institutional procedures used? Are procedures manipulated and if so, what consequences flow from the manipulation of procedures? For example, do patronage relationships influence the resolution of disputes? How do the incentives of institutional insiders affect the dispute resolution process? How does their incentive structure affect the urban poor? For example, requirements to dispose of a certain number of cases may lead institutional actors to force the parties to accept a resolution without giving the case adequate consideration.

Understanding the dynamics of how the urban poor resolve disputes over urban assets will require both interviewing a range of relevant actors and, to the extent possible, observing dispute resolution processes in action.

#### **3.2.5. How satisfied are the urban poor with the dispute resolution for they access?**

The research will investigate the urban poor's satisfaction levels with the various dispute resolution options available to them. The aim of this line of questions is to understand what attributes the urban poor value and prioritize when seeking dispute resolution services and whether the resolutions provide long or short term satisfaction. Questions will include: What characteristics do the poor use to describe their degree of satisfaction with the dispute resolution institutions or processes available? How do they

describe their level of satisfaction with the process and the outcome? Do they feel that the solutions provide temporary fixes or steps towards longer term solutions? Finally, in order of priority, what characteristics or features of dispute resolution institutions would generate higher levels of satisfaction for the urban poor?

### **3.3. Overview of Research Methodology and Project Status**

The project is being implemented through a six phase process. Detailed descriptions of each of these phases are provided below:

#### **3.3.1. Development of the Research Framework and Methodology**

In the first phase of the project, the international consultants reviewed a wide range of literature to develop an analytical framework and methodological approach for the research that would integrate perspectives from a variety of disciplines and perspectives. Because the national consultants were expected to complete an initial scoping exercise prior to the inception meeting, this document also included detailed guidelines for conducting interviews and gathering information for the scoping study (provided in the Appendix).

#### **3.3.2. Literature Review and Scoping Study**

In the second phase, the national research consultants conducted an initial scoping exercise. This assessment provided the opportunity to explore the research questions described above and to survey the selected sites for dispute resolution institutions to consider for further research. The findings of this preliminary research provided a basis for discussions at the Inception Meeting, which resulted in a more focused research agenda, framework and methodology for the in depth case studies.

#### **3.3.3. Inception Meeting**

The inception workshop was held from July 24-26, 2008, at ADB headquarters in Manila. This meeting convened international consultants, national consultants and ADB staff from both the OGC and the ADB advisory group to the project. This workshop provided an opportunity to share initial findings, discuss problems or challenges encountered, and identify issues and areas to focus on in the next phase of the research. Discussions at the meeting provided a basis for the revision and finalization of the conceptual framework and methodology for the in depth case studies.

At the inception workshop, national research consultants presented and discussed their initial findings, including the types of disputes encountered, the institutions involved in their resolution, and factors unique to the selected sites. Based on these discussions, a common framework has been developed for the next phase of the research to ensure that the cross-section of data represents the range of relevant issues and includes contrasting and comparable factors.

Details of the meeting's proceedings are provided in the Appendix.

#### **3.3.4. In Depth Studies**

Based on a common analytical framework and methodology, the researchers will conduct an in-depth study of selected institutions involved in resolving disputes over urban assets. This study will be based on an ethnographic research methodology, involving observations and interviews with a wide range of actors. The specific focus of this research was determined based on the findings of the scoping exercise and discussions at the Inception Workshop. These specifics are detailed in Section 4.2 of this report.

#### **3.3.5. National Workshops**

Upon completion of the in-depth research, the national consultants will host a small workshop or focus group discussions. These discussions will provide an opportunity to present the research findings and solicit feedback and comments from a range of stakeholders, including policy makers, academics, NGO representatives, government officials, and others. Taking these discussions into account, the national consultants will refine the analysis and prepare the final report.

#### **3.3.6. Final Workshop**

Following the in depth case study phase of the research, a Final Workshop will be convened at ADB headquarters in Manila to present and review the overall findings of the study, discuss regional comparisons, and solicit feedback on the study. Participants will include the project team, ADB staff, relevant stakeholders, and invited experts.

## SECTION 4: Scoping Study Findings

This section of the report summarizes the major findings of the scoping studies. These findings were discussed at the inception workshop, and were used as a basis to develop the framework for the second phase of the research.

### 4.1. Bangladesh

The sites selected for the scoping study in Bangladesh included one slum in Dhaka in an ADB project area (Korail Slum) and two slums in Chittagong (Aam Bagan and Agrabad Bastuhara). In Bangladesh, the urban poor often depend on welfare committees and associations (including market committees and mosque committees) to negotiate with government administrators and representatives for access to services and to resist eviction. In general, influential local leaders control these associations and use connections with political leaders to gain access to services. This networking plays a major role in determining the power relations and political dynamics of the area. While these committees are generally informal, in a few cases, such as in Aam Bagan, a slum committee may register with the Ministry of Social Welfare. In the Korail slum area in Dhaka, multiple committees exist, while in each of the slum areas in Chittagong, one committee plays a predominant role.

The findings of the scoping study illustrate the role of welfare committees in both minimizing and causing disputes. For example in Aam Bagan, the welfare committee leaders arranged for current tenants to purchase their rooms from the landlords. Tenant ownership put an end to landlord-tenant conflicts. Similarly, in the Agrabad slum, the slum welfare committee conducted a survey of the households living in the slum and recorded the amount of land they occupied. This kind of organization and record keeping helped minimize disputes over land. In contrast to these two positive examples of local association activity, other examples demonstrate that local associations can also cause disputes. In Korail slum, the associations reached an agreement with Water and Sanitation Authority (WASA) officials to introduce and control a water supply for the slum. In the end local leaders delivered water to residents at rates much higher than actual bills they paid to WASA.

The study found that most disputes are settled through informal mechanisms, including the *shalish* system (justice conference) in which local leaders mediate disputes. The disputants often reach genuine compromises through the *shalish*, but *shalish* is also subject to political manipulation and coercion by powerful leaders. Findings in Bangladesh indicate that dispute settlement procedures often reinforce social hierarchy and patronage structures. Welfare committees or associations that control access to urban assets hold a disproportionate amount of power and influence. It is this influence that positions them as dispute mediators. One area for further research is how the welfare committees both enable and



hinder access to equitable dispute resolution systems (both formal and informal) by the urban poor.

## 4.2. Indonesia

Research in Indonesia was conducted in Jakarta and Tangerang. Both these cities have experienced considerable growth in recent years, but significant portions of their populations still live in slums and illegal housing settlements. In both study areas, disputes over land ownership and tenancy were pronounced and difficult to resolve. Other disputes revolved around resource distribution, police harassment and rampant crime.

It was found that informal mediation conducted by influential community leaders is a common method of problem solving in the study areas. This method is preferred by the urban poor because it is cheap, fast and is widely considered to be more fair than formal mechanisms. Among the urban poor, there is a clear distrust in the formal justice system and a widespread perception that legal institutions can create more trouble than benefit for a complainant. This fear is largely due to corruption and discrimination against poor residents. The urban poor communities studied generally lacked awareness of legal aid services, though some NGOs, such as the Legal Aid Institute, had provided training.<sup>13</sup> Further study is required to develop a better understanding of the dynamics of informal mediations that are taking place.

## 4.3. Philippines

The sites chosen for study in the Philippines included two areas of Barangay Payatas (Golden Shower and Barangay Trece), which are located in Quezon City in metro Manila, and a site in Cebu City (Barangay Duljo Fatima). Among secondary cities, Cebu City has one of the highest populations of urban poor residents and the local government has recently been recognized for its support of alternative community-based justice for the poor. In the Philippines, the government recognized the backlog of cases in the legal system and decided to decentralize the judicial process by creating a barangay-level mechanism to resolve cases that would otherwise be filed in the regular courts. The Barangay Justice Law, in effect, established a new legal process at the lowest political-administrative unit of the country based on the traditional modes of resolving disputes within communities. To facilitate this change, the law mandates that every barangay creates a *Lupong Tagamapayapa*<sup>14</sup> (henceforth, *Lupon*) to settle disputes through mediation and conciliation.

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<sup>13</sup> The Legal Aid Institute, known as Lembaga Bantuan Hukum, is the largest and prominent legal service in Indonesia.

<sup>14</sup> Payapa means peace in Pilipino. Thus, the Lupon Taga-Mapayapa is like a peace-keeping force that ensures peace in the community through their mediation efforts.

Significant informal, formal and semi-formal processes are being used to settle disputes over urban assets in the Philippines. Both traditional courts and government agencies with quasi-judicial functions provide formal dispute resolution. For example, government organizations like the National Housing Authority can hear and decide disputes related to the specific issues they oversee. In the areas studied, the most commonly used semi-formal technique was the *barangay* justice system. This process is intended to build local harmony so any solution must be mutually agreed upon by the disputing parties. When agreements cannot be reached the *lupon* issues a certificate that allows the case to move into formal proceedings.

This study found that political power, networks, and economic status play a role in the capacity of the urban poor to file a case as well as how the case is resolved by barangay officials. If someone lodges a case before the barangay justice system (BJS), there is a perception that the complainant does not have the money to finance the case in the formal courts. As a result, some litigants bribe the *lupon* or barangay captain to grant a certificate to file the case in the courts simply to demonstrate their power to their opponent. However, because the upper courts now demand that the case undergoes mediation before being filed, the BJS is starting to be taken seriously.

While each of the formal, informal and semi-formal mechanisms have their strengths, all of them are influenced by the political and economic status of the person filing a complaint. This has led the urban poor to rely on intermediaries, who might be either influential individuals or organizations, to help them access dispute settlement mechanisms. In general, before cases are brought to the barangay, disputants will use customary mediation mechanisms employing elders or influential community members to seek resolution. While satisfaction with the informal and semi-formal proceedings for resolving small disputes is high, competition over necessary and scarce urban assets often cannot be resolved at this level. High-stakes dispute settlement requires the use of the formal system, which the urban poor find largely inaccessible and unsatisfactory.

Unfortunately the urban poor are largely unable to use the formal justice system effectively. Complainants often lack the capacity to fulfill the requirements for participation in government programs and processes. Furthermore competition between the poor has prevented them from developing a unified voice with which to gain better access to resources. In general, these problems have contributed to a lack of trust in the judicial system and a frustration with existing dispute settlement mechanisms.

#### **4.4. Thailand**

In Thailand two sections of the Klong-Tuey area of Bangkok and one squatter community in Nakorn Ratchasima Province were selected for the study. An

important difference between these sites is that residents of Klong-Tuey pay rent and have some tenant rights, whereas those residing at the Nakorn Ratchasima site lack legal identity or land rights. Since higher income residents generally have some land security and access to resources, their most common disputes focus on issues of community and personal security. Lower income residents are much more concerned about land disputes as well as issues of sanitation, local environment and access to health and education resources. Many of the major problems of the lowest income residents originate from their lack of legal identity, which makes it impossible for them to register land and receive a variety of services.

A general discontent with the formal judicial system was found due to high costs and pervasive corruption. Further frustrating the urban poor is the extensive patronage system and discrimination they face in the formal justice system. A number of semi-formal dispute settlement mechanisms also exist in Thailand, but it remains unclear if they are at all effective. In remote areas of the country community committee's have the legal power to mediate and settle local disputes. Thailand's Arbitration Office, which is controlled by the Court of Justice, actively tries to settle disputes quickly out of court. However, the urban poor generally have little knowledge or understanding about these mechanisms, which undermines their usefulness. Methods of informal dispute settlement are prevalent because of the shortcomings of formal and semi-formal mechanisms. Local leaders are frequently asked to mediate small disputes between members of the community. These leaders are chosen because of their political influence or wealth.

This study found that for larger problems or disputes with parties outside of the community, the poor often approach local NGOs and the Community Organization Development Institute (CODI). CODI is a semi governmental organization (funded partly by the government, but managed by a non-government administration) under the Ministry of Human Security and Social Development. CODI is responsible for 80 percent of the urban communities in Thailand and emphasizes a problem solving approach to achieve long-term, sustainable housing through community demand-driven mechanisms. CODI is often significantly involved in dealing with land issues and provides aid and funding for mediations as well as land arbitration. NGOs in all of the areas studied were also very influential in deciding which forums were used to resolve disputes. Community members often turn to these organizations for advice and sometimes active support.

Findings suggest that semi-formal and informal settlement procedures still need further development to effectively resolve disputes. At the same time, the urban poor face difficulties in accessing formal processes, due to patronage and lack of legal identity.

## **SECTION 5: Framework for In-Depth Research**

The international consultants developed detailed guidelines to direct the in-depth phase of the research. These guidelines were developed after careful readings of the scoping studies and based on discussions that took place at the Inception Meeting in Manila. The guidelines were distributed to the national consultants along with explanatory notes to provide direction for the in-depth research and to ensure that the country reports address similar issues and answer similar questions. The in-depth research outline and guidelines are provided in Appendix A of this report.

With guidance from the international consultants, the national consultants are currently in the process of conducting in-depth studies at their research sites and preparing their final reports. After a draft report has been produced each national consultant will hold an in-country workshop to present their findings and solicit feedback. Upon completion of the final drafts a regional workshop will be held at ADB headquarters in Manila at which the national consultants will present their findings to the international consultants, ADB staff, relevant stakeholders and invited experts. This workshop will provide an opportunity to compare findings, identify areas where further work is needed and to discuss the implications of the study for development practitioners.

## **Appendix A – PHASE II OUTLINE AND INSTRUCTIONS**

### **1. Country Specific Context**

#### **A. Urbanization and Growth of Urban Poverty**

##### **i. Country specific data on urbanization and qualitative issues related to urban growth**

In this section researchers will discuss recent rates and patterns of urbanization in the country (include data as available and cite sources) and how that process is affecting quality of life in urban centers. Introduce and briefly discuss the consequences of urbanization, particularly on the urban poor.

##### **ii. Growing problem of resource scarcity**

Researchers will explore and describe the significance of resource scarcity and access to urban assets in the face of growing urban populations. What effects have increased competition for resources had on urban poor households and communities?

#### **B. Institutions, Policies and Practices that Govern Urban Assets for the Urban Poor**

##### **i. National Institutions, Policies and Legislation**

In this section, researchers will consider national policies, pieces of legislation and institutions that govern access to and distribution of urban assets. In particular, which policies and institutions contribute most to causing or resolving problems of resource distribution? In order to provide context for the analysis and discussion of specific disputes uncovered by field research, describe the relevance and structure of key institutions and policies.

##### **ii. Regional/Local Institutions, Legislation and Policies**

What policies, pieces of legislation and institutions at the regional and/or local levels govern access to and distribution of urban assets? Consider the roles and initiatives of local governments and institutions that are active in dealing with urban assets. To provide necessary background for the analysis and discussion of specific disputes, this section will succinctly introduce the relevance and structure of important institutions.

### **iii. Role of documentation/legal identity in accessing urban assets**

Documentation and legal identity policies affect the distribution of urban assets in a number of ways. Research into what kinds of documentation (e.g. birth certificate, national ID card, land tenure certificate, etc.) is needed to access health, education, housing, electricity and other urban assets will inform further analysis of existing disputes. Developing an understanding of access problems created by lack of documentation will provide context for the analysis of the disputes described later in the report.

## **2. Research Methodology**

### **A. Selection and description of research sites**

#### **i. Characteristics of selected cities**

In this section, researchers will describe each of the selected cities, considering a range of topics including: urban population and growth, rates of urban poverty, economic opportunities, resource scarcity, and characteristics of service delivery. Researchers will also describe any unique characteristics of the cities, such as a history of community mobilization, dynamic local leadership, or political affiliation.

#### **ii. Selected sites within cities**

Researchers will describe the selected research sites and the rationale for selecting these sites. For each research site selected, there should be some discussion of the history and nature of the settlement and its inhabitants, the development of the community, the socio-economic status of its inhabitants, community leadership and institutions, organizations that are active in the community and other relevant information.

#### **iii. Variables between research cities/sites (presence of local NGOs, legality of tenancy, local leadership, ongoing collective disputes with government or ministries)**

In this section researchers will discuss both the commonalities and differences among the selected research locations. While it is important that some variables are held constant across all selected sites, the differences may provide insights into why certain disputes or dispute settlement mechanisms might be more or less prevalent in specific locations.

**B. Selection and Description of Interviews**

Selecting subjects to interview is one of the most important activities in the research process. For this reason researchers will present both the range of interviewees selected and the approach used to identify the interviewees. Describe potential biases in the selection of interviewees and identify any information gaps due to the range of interviewees included.

**C. Description of Research Methodology**

This research is based on an ethnographic approach that benefits most from flexible interviews instead of more rigid questionnaires. Researchers will describe the information collection process. This section will describe the methodology used to conduct interviews and gather information and explain and justify the research approach chosen.

**3. Disputes Among the Urban Poor over Urban Assets**

The objective of this section is to describe and analyze the types of disputes that arise over urban assets. Analysis presented in this section will be largely based on the narratives of disputes collected.\* Researchers will describe and analyze the most commonly occurring and significant disputes over urban assets in their study areas. Urban assets considered in this research are limited to those most relevant to ADB operations, namely public utilities, land, and housing. Researchers will also investigate disputes arising from lack of legal identity or other documentation that impede access to education and health care. Consider both disputes between individuals and households as well as collective or community wide disputes with actors external to the community. Briefly introduce specific examples of disputes throughout the discussion in this section either within the text of the analysis or in separate text boxes. While the content of this section will largely be decided by the research findings, the following questions should be considered specifically:

**A. Disputes involving the link between land tenure and public service delivery**

In most of the communities studied, the residents do not own the land they live on. Scoping studies revealed that varying degrees of land security among the urban poor affect the delivery of public services and the distribution of assets. Consider how land tenure and a lack of housing security cause or affect disputes over urban assets.

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\* Complete narratives of all stories referenced in the analysis will be presented in the annex.

### **Illustrative Excerpt**

*A study by the Office of the National Human Rights Commission of Thailand explained that the principle problem of the urban poor is land rights and land ownership. Most of the land used by the poor for informal settlements is either government land (about 80 percent) or private land (about 20 percent). As the government has not instituted policies for correcting the problems of land ownership and land use, in many cases the urban poor occupy land illegally and without permission. As a result, the urban poor face problems related to basic rights such residence registration, health services, and education. They pay more for facilities such as piped-water and electricity because they must buy these services from private houses near their communities. Municipal and district offices are not authorized to provide basic facilities such as piped-water and electricity to the urban poor because their settlements are considered illegal under the Building Control Act of B.E.2522 (1979). The government will not change this policy because they fear that providing basic facilities to these communities will be seen as tacit approval of such informal settlements. (Pintobtang and Boonchai 2003, p.5.)*

This excerpt from the Thailand scoping study report clearly illustrates some of the consequences that result from lack of land security. In Thailand, communities with very different levels of land tenure security were researched. This comparison made clear the importance of land tenure for service provision and the types of disputes that result from lack of land tenure.

### **B. Personal disputes that have underlying dimensions related to urban assets**

At times disputes involving violence or ill will between individuals or households might seem like a unique category of disputes. However, often these seemingly personal disputes are created by competition over or distributional inequality of urban assets. Researchers will analyze personal disputes when the deeper roots of the conflicts involve issues related to urban assets. This analysis will generate a more thorough understanding of the effect that competition over urban assets is having on urban poor communities.

### **Illustrative Excerpt**

*Angelita, 42 years old, has lived in Area B, Barangay Trece (Payatas, Quezon City) for the past 33 years. The Barangay Trece residents elected her to serve as auditor of their association, the Samahan ng Nagkakaisang Damdamin, Isip at Gawa or SANDIG (roughly translated, The Association of Residents United in Thought, Word and Deed).*

*Angelita was also assigned to be the water tender or monitor by the barangay captain. Being the water monitor, she makes sure that people line up to get their water and take only the amount allotted for each household. Three years ago, Delia, a former community association officer refused to line up to get her water. A fight ensued involving Angelita, Delia, and some residents who cordoned Angelita so she wouldn't be hurt. Delia appeared before the barangay and accused Angelita of causing her physical injury. They underwent three hearings, but did not arrive at a*



*settlement. Delia wanted Angelita to pay a huge sum of money supposedly for physical and moral damages. Angelita refused to pay because she had not done anything wrong and she knew that the former officer just wanted to harass her. She also knew that Delia had undergone a medical examination after the incident and the results were negative.*

*Angelita says she does not know how the case got filed so quickly in the Quezon City Municipal Trial Court. She thinks her enemy bribed the Lupon to make sure the complainant certificate would be filed immediately. Angelita wished that her case had remained in the barangay justice system. Although the barangay captain tried to issue a certification that Angelita was the assigned water monitor, it did not help resolve the case. It also did not prevent the case from being elevated to the higher court. Angelita is quite frustrated with the whole process as the case has cost her money and time. According to Angelita, she was just doing her official duties as the water monitor. In fact, Angelita did not even need the publicly-provided water as she has her own water tank.*

This story from the Philippines scoping study illustrates well how a personal dispute involving a fist fight might actually have its roots in the competition for urban assets. In this case the scarcity of water created tension and resulted in a fight, giving birth to a personal quarrel and lengthy dispute. Researchers will investigate incidents like this one in order to develop a thorough analysis of how competition for urban assets affects urban poor communities.

### **C. Disputes arising from transitions to more formalized/regularized systems**

In many of the study areas researchers described initiatives being undertaken by governments and non-governmental organizations to improve service delivery in slums. These slum development projects often involve a transition from informal distribution channels or arrangements to more formalized and regularized systems. This transition to a more rigid and structured system may require changes that can actually cause disputes. Researchers should consider this process of formalization when relevant and analyze how it has contributed to or changed the nature of disputes.

#### **Illustrative Excerpts**

The following excerpt from the Philippines scoping study report describes a number of disputes arising from a government program (CMP program) that allowed an urban poor community to collectively pay a mortgage in order to legalize their land tenure.

*If land happened to be going through the process of acquisition by the urban poor through the CMP program, the accompanying disputes and cases generally pertain to 1) recalcitrant members (i.e., those refusing to join in paying the community mortgage but continue to enjoy the privilege of living on the mortgaged land.) 2) defaults in payment of mortgage or contribution, and 3) the selling of rights by members or nonmembers of housing associations or by land syndicates.*

This interesting example from the Philippines demonstrates how creating a way for urban poor residents to acquire legal ownership of their land actually caused disputes in the short term. For communities that have been living to some extent outside of the country's legal and social system this transition can be challenging. Disputes arising from the challenges posed by formalization should be studied carefully.

Another type of transition to a more formalized system is described in the following example from Bangladesh.

*In Aam Bagan, the SWC, after discussions with the local electricity office undertook an initiative to supply electricity to the slum dwellers. Eventually a pre-paid meter was sanctioned under the name of the committee's president. From that main connection, sub-connections were supplied to households. Thus the entire process of electricity distribution came under the control of one man. This new method of electricity service resulted in higher costs to get the service. A household has to pay Tk100 for a light bulb, Tk150 for a fan, Tk90 for a color TV set and Tk50 for a black and white TV set. Similarly in the Agrabad slum, four neighboring legal landlords supply sub-connections to the households of the slum. For each apparatus used, a household has to pay Tk70. In this way the so-called legalized system actually created tension and hidden conflict as well as increased expenses for the urban poor. Hasina of Aam bagan slum said, "I have sold my TV to reduce the electricity bill. Poor people like me have to pay an extra amount of at least Tk250 per month to adapt to the new system, making it beyond our capacity."*

This situation demonstrates how an effort to regularize electricity provision to slum dwellers actually resulted in increased exploitation and local disputes. Where a transition to a more formal or regularized provision of services has been initiated, researchers should investigate how the process has affected disputes within the community. Do more formal systems reduce the number of disputes in slums or simply change the nature of the disputes?

**D. Disputes/complaints over urban assets (including education and health) that involve issues of documentation/legal identity**

Scoping studies frequently found an important relationship between legal identity and the distribution of urban assets. Researchers should look at disputes specifically rooted in a problem with documentation or legal identity. This section should consider disputes related to problems accessing health and education services in addition to the general research focus on public utilities, land and housing. Consider the various ways in which legal identity is affecting the process of dispute resolution.

**Illustrative Excerpt**

*The poverty in this community is not only economic, but also might be described as social. Residents face exclusion and lack capacity, influence and power. These*

*problems stem from a very basic problem – many residents do not have birth certificates, resulting in an inability to claim certain rights and services which require legal identification. One out of every ten community members has no basic legal identity documents such as birth certificates, ID cards, or residence registration documents. They live in informal settlements and have severely limited rights over their land and homes. As a result, residents are unable to access basic services and assets such as health services, higher education (over Grade 6), water and electricity. As a result, residents are forced to pay inflated prices for utilities (water and electricity) provided through intermediaries if they do not want to live in the dark.*

The Thailand scoping study revealed a number of ways in which the lack of legal identity affected both service provision and disputes in the study areas. Researchers will consider and analyze examples of how legal identity is both causing specific disputes over urban assets and affecting methods of dispute resolution.

**E. Disputes related to/created by informal institutions/individuals that fill the gap between services providers and the urban poor (investigate costs associated with the provision of services through intermediaries)**

Many urban assets in poor communities are not delivered directly to consumers. In the scoping studies researchers found a variety of intermediaries operating to provide basic services like water and electricity. In some cases community organizations control this distribution, while in others individual households play this role. The effect of these intermediaries on disputes over urban assets should be considered and the additional costs of such a system analyzed.

**Illustrative Excerpt**

*The president of the Aam bagan slum committee explained that “At the beginning of the month, I pay around Tk 60,000 to activate the electricity connection and at the end of the month, through the collector of the committee, I collect the bill from each household.” He also said, “Compared to other suppliers, I charge at a lower rate because I am conscious about my social responsibility and commitment to the community.” But a group of poor residents mentioned in a FGD that “He regularly turns off the main connection from 7am to 1pm in addition to regular disruptions from load shedding dictated by the government service provider. Despite this we are paying at the same fixed rate.” As in Korail slum, the president makes a surplus profit from the household bills. Akkas, a rickshaw garage worker, said “The committee president’s son is running a cable TV business in the slum. For each connection we now pay Tk150. Starting next month the charge will be increased to Tk300.” These changes in service have led poor residents to become anxious and begin resisting silently. Akkas was vocal in expressing his frustration, saying “I’ll go back to the illegal connection and cut off the legal electricity line (sabotage).”*

*From these examples it can be seen that the president of the committee is the supreme boss for the slum by dint of his position on the committee. He is making a profit from the electricity connection and his son is also running a profitable business. Within the current the system the poor have no alternatives but to accept this injustice.*

This example taken from the Bangladesh scoping study reveals how intermediaries, in this case a slum committee leader, affect the delivery of vital services to slum dwellers and causes dispute. Intermediaries might be committees or individuals with various sources of legitimacy. Investigating these channels will reveal much about the process of the distribution of urban assets and resulting disputes.

**F. Other major categories of disputes over urban assets**

Researchers are expected to look specifically for the categories of disputes listed in this outline. Most likely there will be additional types of disputes discovered through in-depth research. If a category of dispute does not fit well into the headings provided in this outline, additional analytical categories might be added as appropriate.

**4. Institutions that Resolve the Urban Poor's Disputes Over Urban Assets and Costs Associated with the Dispute Resolution Process – How do the urban poor resolve their disputes?**

This section of the report will provide an analysis of dispute settlement mechanisms and procedures present in the study areas. Researchers should provide details on the types of dispute settlement procedures available to the poor, their structures and processes, as well as their perceived and actual utility to the urban poor. The analysis in this section should not focus too much on the failings of formal institutions. The shortcomings of formal processes are generally well documented and are not the primary focus of this study; rather, the functioning of semi-formal and informal institutions are the most important sections of the institutional analysis.

**A. Formal Institutions**

Scoping studies revealed a variety of government institutions and programs that the urban poor use to attempt to resolve their disputes. In almost every case there were serious challenges for the urban poor in using formal institutions. Some discussion of these challenges is needed, but researchers should also look into disputes in which the urban poor prefer to use formal institutions for settlement proceedings. Any formal proceedings that are viewed favorably by the urban poor and seem to provide an effective forum for resolving disputes over key assets should be carefully analyzed to understand better the reasons for those successes.

**B. Quasi-Government Institutions**

Scoping studies revealed a number of dispute settlement mechanisms that were neither completely formal nor entirely informal. Institutions with only limited government accountability also fall into this category. These institutions often attempt to bridge the gap between the formal and informal proceedings with varying levels of effectiveness. Assess these institutions both according to their effectiveness in resolving disputes and their utility in complimenting the formal and informal processes that exist around them.

**C. Informal institutions**

Most of the discussion in this section of the report should revolve around informal institutions for dispute settlement. Significant bodies of literature already exist assessing and describing more formal institutions; the value of this study is in its attempt to better understand the less studied and less clearly defined informal institutions that are so important to the urban poor. Discuss all mechanisms discovered. The research findings will dictate much of this section's content, but the following types of institutions and questions should be considered:

**i. Include analysis of community leaders, associations, and intermediaries that provide services**

All of the scoping studies mentioned informal processes involving mediation by influential people and organizations in a community. These settlement mechanisms should be studied and their processes and effectiveness described and analyzed.

**ii. Do intermediaries that fill the gap between services providers and the urban poor play a role in resolving disputes?**

The scoping studies described ways in which the intermediaries between service providers and the poor play a role in resolving disputes. It is important to describe how intermediaries play a role in dispute resolution through informal or quasi-formal processes.

**iii. To what extent do these intermediaries' actions give rise to disputes?**

Preliminary research revealed that many urban communities do not receive services directly from a formal provider but instead resources are channeled through an organization or an individual. This arrangement gives those intermediary organizations or individuals a very influential role. Given this influence do these intermediaries get

involved in resolving disputes over the assets they distribute? Consider this question and analyze the effect these intermediaries have on the settling of disputes, specifically reflect on whether these intermediaries are in fact causing disputes to take place.

### **Illustrative Excerpt**

*Like electricity, slum dwellers are not entitled to get a direct water connection because they do not have holding addresses. In all three slums, groups of elites control the whole business of water supply. Interestingly these groups of elites are not necessarily the ones who control the electricity supply. New actors emerge and in particular cases the supply of water has a political dimension.*

*In Korail slum, using the name of associations, elites along with corrupt Water and Sanitation Authority (WASA) officials control the water supply. These associations hand control of the water over to an individual contractor. This contractor supplies houses in the slum water for Tk50 per household. Again this rate is much higher than the actual bill paid by the contractor. For example, if a supplier provides service to 600 households, he receives Tk30,000 per month in payments while the actual bill comes at most to Tk5,000. Conflicts also arise between suppliers regarding this matter of payments and profits.*

This analysis of water delivery in Bangladesh reveals that intermediaries not only cause disputes between those paying for and providing services, but also between competing suppliers. Intermediaries seem to be both profiting monetarily and gaining influence through their roles in service provision. How does this situation cause disputes within the community? Another interesting question to consider is: to what extent intermediaries use their power and influence to actually help resolve disputes around service delivery.

#### **iv. Are informal and formal dispute settlement mechanisms substitutes, complements, or in competition with each other? Do they ever come into contact?**

When considering the informal dispute settlement mechanisms available to the urban poor, researchers should both consider the effectiveness of those mechanisms independently and also analyze how they fit into the larger system. Do informal proceedings operate as substitutes for formal processes that do not work or do they somehow compliment formal proceedings? Is there any competition between various dispute resolution forums? What is the relationship between the formal and informal mechanisms and do disputes tend to move from one to the other? If so, how? Considering these questions will build an understanding of the different paths the urban poor take in trying to resolve disputes.

### **Illustrative Example**

*The formal mediation system in the communities studied is the barangay justice system (BJS.) The BJS seems to possess varying levels of efficiency and effectiveness, as assessments by different stakeholder groups produced different opinions. In theory, the BJS is integrally linked to the judicial system. In practice, the Lupon in the BJS submits their record of cases to the Department of the Interior and Local Government (DILG) and not to the municipal courts, which should be the next level of authority above the BJS.*

*Meanwhile, the informal mediation (i.e., informal leaders and officers of housing associations) system is the first recourse for most urban poor complainants when resolving disputes over urban assets. But these informal processes can only attend to small matters and issues like recalcitrant resident's refusal to join the housing association and make mortgage payments, boundary disputes among lot owners and other similar problems. The larger issues of land access and basic service delivery are often beyond their competence and jurisdiction.*

The Philippines scoping study described the connection between the informal and formal dispute settlement processes. Where informal processes failed, clear steps exist in the Philippines which can be used to transition cases to semi-formal and formal proceedings. In this way informal systems seem to compliment the formal process as they take care of the simple cases quickly and at low cost without burdening government agencies and courts. In other situations informal processes might not compliment but rather provide a substitute for formal proceedings. Researchers will consider the institutional linkages and relationships when analyzing both formal and informal institutions.

**v. How do the methods of dispute settlement affect the social dynamics or hierarchies around them?**

Scoping studies revealed that not only do social dynamics affect dispute settlement, but also that the process of dispute settlement can affect social dynamics and hierarchies. Researchers should consider if informal dispute settlement procedures analyzed reinforce community hierarchies and power relationships or if they alter them in any way.

### **Illustrative Excerpt**

*Low income status, heterogeneous social structures and residential insecurity force the urban poor to seek out other patron-client relationships (Shaw and McKay cited in Sampson et al, 1989). To them a patron is someone who will offer them much-needed protection from menace; would avail them with resources and would be a source of reliability in a deceitful world. As Stein put it, "...if you can not rely upon anyone else, at least you can count on the patron." (Stein, 1984).*

*Today the state remains blind to the living conditions of slum dwellers. State resources are available only through illegitimate means and insecurity has turned out to be a common phenomenon. This situation has led slum dwellers to seek out and enter into new patron-client relationships. This patronage system allows them to get basic necessities while bypassing formal and official structures.*

This interesting discussion from the Bangladesh scoping study report describes the presence of a patron-client system in the slums of Bangladesh. Researcher will consider how patronage or power systems in a slum both shape and are shaped by the type of dispute settlement mechanisms being used. At its essence, as this excerpt points out, patronage is a method for the poor to access “basic necessities.” Dispute settlement mechanisms related to urban assets are institutions that protect and gain vital assets. Researchers will analyze the role patron-client relationships play in this process.

**vi. Have informal dispute settlement tactics increased the accountability of service providers?**

Formal judicial proceedings against service providers or government officials are generally intended to increase the level of accountability among those actors. When analyzing informal dispute settlement mechanisms researchers should assess the procedures to see if they do indeed increase accountability in any meaningful way.

**vii. Are the urban poor satisfied with the dispute settlement mechanisms available to them?**

In field interviews researchers will investigate exactly how satisfied the urban poor are with the methods of dispute resolution available to them. This line of questioning is designed to reveal which institutions are perceived to be the most effective and also to clarify the perceptions that shape decisions among the urban poor as to how they will proceed in trying to settle their disputes. Researchers should dedicate a section of their report to analyzing the satisfaction of the urban poor with a specific focus on the informal institutions available to them.

**Illustrative Excerpts**

*In many cases people said that if they are not satisfied with informal decisions they just have to cope as they have no better alternatives. Sometimes coping with decisions and feeling satisfied overlap. As one interviewee in Aam Bagan slum narrated, “One day, a young boy stole a cell phone from an elderly person and was caught. The decision of the shalish was obviously against him. He had to pay a monetary penalty which was more than the actual price of the phone. He didn’t say*



*anything in front of the shalishkars but expressed his dissatisfaction with this punishment when he came out of the room.” Sometimes, offenders as well as slum dwellers feel that an injustice has been caused by the shalish decision. A young woman recounted a story in which “A male person married a second woman without the permission of his first wife. He then started to live with the second wife. When the first wife complained to the committee, they arranged a shalish. According to the decision the second wife was given Tk5000 to leave the place and the male was ordered to live with his first wife. Didn’t this decision leave the second wife in an insecure position?”*  
(Bangladesh)

*The BJS is regarded by residents with a high level of dissatisfaction when it hears cases pertaining to key urban assets like land, housing, public domain spaces, infrastructure, and site development. But there is a high level of satisfaction with BJS resolutions when the cases filed are disputes among neighbors concerning loans and debts, gossip leading to defamation, and cases of physical injury. Parties to these cases often express satisfaction because the mediation system emphasizes the preservation of peace and harmony in the community.*  
(Philippines)

*In general the urban poor are not very satisfied with the formal dispute resolution process. They seem to prefer relying on the support of NGOs and working through less formal processes. Community groups are more comfortable requesting help from local NGOs, religious leaders or other organizations and are more satisfied with this informal approach.*  
(Thailand)

All of the scoping studies made interesting points about satisfaction with dispute settlement mechanisms among the urban poor. The subtle distinction between being satisfied and merely coping with a situation, the appropriateness of some mechanisms only for certain types of disputes and the issue of trust in determining who the urban poor approach to resolve disputes are all issues that should be considered when trying to gauge satisfaction. While analysis is important, researchers must be careful that their conclusions are coming directly from the interviews they conduct and not their own assessments of the institutions. Researchers might even find that seriously flawed institutions produce high levels of satisfaction and well designed institutions completely fail to do so. After gauging satisfaction levels among the urban poor, researchers will compare and contrast those findings against their objective assessments of the institutions studied.

## 5. Conclusions

### A. Successes

In this section, researchers will identify incidents or institutions that demonstrate successful dispute resolution. One of the challenges of this section will be to define the meaning of success. Success could be understood as disputants' satisfaction with the result or process of a dispute resolution mechanism, the maintenance of community harmony, just outcomes, a fair process, the ability to participate, or even equitable distribution of resources. Indicators might be proposed to try and measure success, but for purposes of this research, ultimately defining success requires some qualitative judgment on the part of the observer. So while no specific indicators are being provided, researchers should explain how they choose to measure success with reference to the different perspectives on success listed above. Through that discussion researchers should develop a method through which they can assess the dispute settlement mechanisms studied.

Once 'successful' mechanisms have been identified, analysis of what specific features made those processes effective is needed.

### B. Failures

Researchers should take time to consider dispute settlement failures at this point in the paper. Once again reports should not overemphasize the failures of formal institutions, which have generally been well documented. Analysis should of course refer to formal institutions, but should focus primarily on informal processes studied.

### C. Innovations

During the course of the investigation researchers should actively seek innovative and effective means of dispute settlement. Governments and communities have tried a variety of means to resolve their disputes, with different locations trying different methods. This section of the report will highlight and assess any unique processes that have worked for a community studied or innovations to a common practice that have made it more effective for the urban poor.

### D. Analysis of Context

With respect to effective dispute resolution mechanisms detailed in your research, to what extent are they context specific? And to what extent can those successes and innovations be generalized and replicated in other cities or countries?

In this final section of the paper, rather than offer a bullet point list of recommendations, researchers are asked to consider the dispute resolution mechanisms that were studied and to analyze why they were successful within the specific context of their study areas. This analysis should build into a discussion of those features of effective processes that are context-specific and those that could be replicated elsewhere. This will require significant thought on what variables are needed to make these institutions work effectively.

## **6. Research Narratives**

Over the course of the report, researchers should consistently refer back to specific narratives taken directly from field interviews. These stories should be used as support for analysis wherever appropriate. To avoid the report becoming too descriptive, stories from the interviews should not be transcribed completely in the body of the paper. Researchers should use text boxes or quick descriptions of disputes in the body of the report. In this final section, researchers will provide full write-ups for each narrative used in the analysis. Since analysis will come directly from these narratives, researchers are encouraged to draft these write-ups of the narratives prior to writing the analytical sections. In this way the substantive analysis will refer to and draw from the actual disputes discovered through the research.

## **Appendix B – Scoping Study Guidelines**

### **Scoping Study: Instructions and Guidelines**

This document describes the guidelines for the scoping study, which will be completed prior to the inception meeting. The first part presents the objectives of the scoping study. The second part describes the key deliverables research consultants are required to submit for this phase of the research. And the final part provides a detailed explanation of the methodology research consultants will follow in conducting the scoping study.

#### **A. Objectives of the Scoping Study**

The scoping study provides an opportunity to gain a broad understanding of disputes and complaints that arise among the urban poor in the countries and cities selected for this project, and the mechanisms available to resolve these issues. The insights gained from the scoping exercise will provide a basis to develop more focused guidelines for the in-depth phase of the research.

During the scoping study, it is expected that a broad range of informants will provide a better understanding of the following issues:

- The types of issues that the urban poor are most likely to identify as critical disputes and complaints regarding access to urban assets and government services
- The mechanisms that the urban poor are most likely to employ to resolve their disputes and any unique processes initiated by poor communities, NGOs, or government agencies that have successfully enabled quicker or more efficient access to services
- How these mechanisms work or don't work for the urban poor
- Why the urban poor approach certain institutions (and not others) to resolve disputes over urban assets
- How satisfied the urban poor are with the dispute resolution mechanisms they access

#### **B. Key Deliverables**

The following deliverables will be submitted during the scoping study, prior to the inception meeting. Detailed instructions (including timeline and procedures for the submission of key deliverables) are provided in Appendix A.

i. *Proposed Approach for the Scoping Study*

Upon reviewing the conceptual approach and scoping study guidelines (as described in this document), please prepare a brief, preliminary proposal for your approach to the scoping study. This will include identifying research sites, key informants, and secondary data sources. Your proposed approach for the scoping study should include the following components:

- A. Comments and questions on the conceptual approach to the research, including identification of any constraints or specific issues to consider in the local context
- B. Factors to consider regarding the cities and sites selected for the research, including the definition of the unit of analysis (e.g. neighborhood, block, slum, ward, administrative area, etc.) at the local level that will be most appropriate for this study
- C. Description of the actors on the ground who you anticipate will be critical informants for this study
- D. Additional questions and modifications to the question checklists provided in Appendix C.

Please submit this approach document within the first week of the scoping study, as specified in Appendix A.

ii. *Secondary Data and Literature Review*

During the scoping study, compile a literature review that provides an analysis of academic publications and secondary data and reports relevant to this study in your country context. The review should be limited to literature that is directly relevant to the research locations as well as the framework and key questions of this study. In preparing the literature review, researchers should meet with academics that can help identify relevant sources, which may include scholarly publications as well as project reports prepared by NGOs and development agencies, evaluations or strategic planning documents commissioned by practitioners or donor agencies, and newspaper or journal articles. In reviewing the literature, take special note of any innovative approaches or mechanisms developed to resolve disputes over urban assets, particularly those that actively involve poor communities themselves.

The Secondary Data and Literature Review should not be a summary of the sources, but rather an analysis of the sources reviewed according to their key themes and findings. Most importantly, it should include a complete bibliography of all identified sources. The literature review should be approximately 5 pages.

*iii. Interview notes*

The research methodology section below describes the protocol for data collection and transcribing interview notes. The log of interviews conducted and a summary of the key points of each interview should be submitted according to the schedule outlined in Appendix A. The researcher should maintain a file of the transcribed interview notes, which may be shared at a later date.

*iv. Scoping Study Findings and Analysis*

A scoping study final report describing and analyzing the findings of your research must be submitted prior to the Inception Meeting, as per the schedule provided in Appendix A. The research reports should organize the findings of the scoping exercise according to the five key questions, outlined in Section I above. In drafting the reports, endeavor to address the key questions to the maximum extent possible. Support your analysis with specific examples and anecdotal stories from your background research, interviews, and observations.

The reports should be approximately 20 - 25 pages (single spaced) of text in length, not including appendixes and other attachments that supplement the prescribed text. The sections of the report should include the following:

- A. Problem statement in the given country context (~ 3-4 pages)
- B. Description of the rationale for the sites selected, the approach to identifying interviewees, and technique(s) used to interview informants and observe dispute resolution processes (~ 2-3 pages)
- C. Findings of the scoping study, **organized according to the five key questions** (~ 10 pages)
- D. Analysis of the findings (~ 5 pages)
- E. Recommendations for further study during the in-depth phase (~ 3 pages)

The reports should be formatted in the style of this document, in accordance with the following requirements:

- Word documents
- 12 point Times New Roman font
- 1 inch margins on top and bottom
- 1.25 inch margins on the left and right side

## C. Research Methodology

This part describes the research methodology for the scoping study, including guidelines on selecting research sites, identifying key informants, working with research assistants, conducting interviews, collecting data, and including observations.

### *i. Select Research Sites*

For each of the participating countries, the following cities have been selected as research sites:

- Thailand – Bangkok and Nakhon Ratchasima
- Philippines – Manila and Cebu
- Indonesia – Jakarta and Tangerang
- Bangladesh – Dhaka and Chittagong

With the exception of Thailand, there is a significant ADB urban development project in at least one of the selected cities in each country. This factor was intended to ensure that the research is relevant and useful to ADB operations. Other factors that were considered in the selection of cities include size, location, levels of economic development, rates of urban growth, and dominant ethnicities and religions. For example, Nakhom Ratchasima was selected in light of issues with Laotians and Cambodians in this secondary city near the borders. Similarly, we expect that we may find interesting ethnicity related issues in Chittagong.

For the initial scoping exercise researchers must select a total of three sites or neighborhoods for conducting research. In the city with the ADB project, researchers will select two sites - one of which should have an ongoing ADB urban development project and the other should not.<sup>15</sup> In the second city, which does not have an ADB urban development project, researchers will select one site. In selecting relevant sites, draw on your knowledge of the city as well as information gathered through the literature review and initial round of interviews with key informants at the city level. Other issues to consider in site selection include:

- the presence of organizations through which the poor mobilize
- the level of NGO involvement with local communities
- major infrastructure development projects
- the existence of innovative dispute resolution mechanisms
- recent increases in the value of land
- the location of the site (central or on the periphery of the city)
- the level of economic development

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<sup>15</sup> Since ADB does not have ongoing urban development projects in Thailand, none of the three selected research sites there will have an ADB project.

- availability of and access to resources and services

Selecting sites that represent a diverse range of these characteristics will help ensure that the research yields a variety of disputes, grievances, and complaints; contrasting approaches to their resolution; and an array of the actors involved. Propose sites that represent an appropriate mix of the issues and factors listed above and explain the rationale for your selection of research sites.

ii. *Identify Key Informants*

The key informants will include a range of actors who are in a position to provide broad input on the key questions this research will investigate and/or identify specific cases or examples. In identifying key informants, draw on professional and personal contacts as well as The Asia Foundation's or ADB's referrals. Key informants will include urban poor individuals (particularly those involved in disputes over urban assets), politicians, government officials, NGO personnel, judges and lawyers, religious leaders, informal community leaders (including slumlords), and academics, among others.

A key to this research is to get a multi-faceted view of the issues in question. To this end, interview as representative a cross-section of the urban poor as possible; for example, include a mix of gender, age, ethnicity, religion, degree of poverty, and both those with and without legal title to their land. The sample of urban poor who are interviewed will include those who have had disputes over urban assets and pursued resolution through various institutions as well as those who have had disputes over urban assets, but either did nothing or found alternate means to deal with the situation.

To the extent possible, you should select highly dissimilar informants<sup>16</sup> that are representative of all parties involved in disputes of the urban poor. Interviewing an appropriately diverse mix of informants is likely to result in different and sometimes contradictory accounts of the same issue or dispute. It is important to take each account as it is. At the same time, in selecting informants to interview, consider the potential biases and incentives that may influence stakeholders' views and perceptions and make every effort to verify and cross-check information provided by those interviewed. Balance the viewpoints of local NGOs with the perspectives of local community members, including both those who are and are not working with the NGO.

During the scoping study, it is expected that a broad range of interviewees will be selected to ensure that the findings reflect a diversity of views. Researchers will identify a cross-section of relevant informants and conduct a number of interviews with each type of actor to get a representative picture of

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<sup>16</sup> Handwerker (2001) *Quick Ethnography*, Alta Mira Press.



the dynamics of disputes over urban assets. Interviewees will include, but should not be limited to, the following actors:

- Representatives of NGOs
- Local politicians
- Urban poor
- Urban service providers (both public and private)
- Community leaders
- Religious leaders
- Mediators
- Police
- Judges/lawyers/court personnel
- Fixers
- Academics

In the final report, please describe the methodology or justification for selection of the particular interviewees, and describe any biases that may be due to the interests of the selected interviewees.

*iii. Working with Research Assistants*

In the event that you choose to hire research assistants to provide support on this project, all costs associated with the research assistants must be covered within the consultancy rates and research budget provided. In selecting assistants, please pay special attention to the personality characteristics that are required to conduct effective interviews, such as appropriate social skills, tact in posing sensitive questions, ability to empathize, and strong listening skills. Most importantly, you are ultimately responsible for the quality of results, and for ensuring that research assistants follow the guidelines provided in this document, and are well trained. It is expected that the national consultant will accompany research assistants on the initial field work and intermittently throughout the course of the study.

*iv. Protocols for Conducting Interviews*

The study will use a range of research methods (open ended/informal and semi-structured interviews, secondary data analysis, and observation). Due to the open-ended nature of the research, it is imperative that the protocols for conducting interviews are consistent and methodical. Throughout the project, consultants will adhere to the following guidelines for conducting interviews:

- Create an interview topic guide prior to commencing any interviews. You may choose whether to create a set of open-ended interview questions or to rely on an interview guide and allow the questions to develop naturally

depending on each interviewee's responses. Most likely it will make sense to combine elements of both approaches. Please carefully review Appendix B, which further describes the research methodology and interviewing guidelines, before deciding on a final interview format.

- Pre-test the interview questions on a small number of respondents and modify them as appropriate before commencing primary interviews. This pre-test should ensure that interview questions are not too complex or confusing and that the time required to answer all questions is one hour or less. Pre-testing will also allow consultants to clarify the range of terms used by respondents to discuss key topic areas. Consultants should make every effort to identify local terms for problems, conflicts, and urban assets. Consultants also need to identify the appropriate names and terms for all relevant government agencies, NGOs, service providers, and pertinent social groups/individuals.
- Prior to commencing each interview consultants need to explain the following to the interviewee:
  - The purpose of the study
  - That the respondent's identity will be kept confidential and that responses will not be traceable back to the respondent
  - What the information will be used for
  - That the respondent may ask questions at any point during the interview and is not obliged to answer any questions he or she does not feel comfortable with.
- If you feel an audio-recording of the interview will not affect the interviewee's candidness and the quality of the interaction, you may request the respondent's permission to audio-record the interview. An advantage of this approach is that it will make the task of transcription easier post-interview. However, many interviewees are more reluctant to provide sensitive insights if they are being recorded. Whether or not a recording device is used, the consultant should take comprehensive notes throughout the interview.
- To set an open, conversational tone for the interview, sequence the interview questions to begin with non-controversial questions that encourage respondents to provide descriptive answers.
- Demographic questions should be asked at the end of each interview, as beginning interviews with demographic questions tends to condition respondents to provide short factual answers.
- A challenge of this open ended research approach is the need to pay special attention to the influence of your own biases. In general, people

have a subconscious tendency to focus in on familiar issues and give inadequate attention to others. For example, if a researcher has a background in land issues, her awareness of these issues may influence what she observes and consequently, what she investigates. Researchers can keep their biases in check by being aware of them and by gaining a solid overview of the range of disputes and grievances experienced by the poor over urban assets.

- Eliciting information on why the urban poor pursue and avoid various institutions for resolving their problems may touch on a range of sensitive issues. For example, we are interested in analyzing how patron client relationships play out in efforts by the urban poor to obtain redress and whether various officials, institutions, and organizations are looked upon with suspicion or trust. Exploring these issues will require a level of investigative skill, tact, and diplomacy on the part of the researchers. For example, a respondent is unlikely to admit that they approached a particular person or venue for help because of their personal connections. Since direct questions may not yield the information we are looking for, researchers will have to be skillful and creative in their information gathering techniques, using information gleaned from one interview as a basis for asking questions in another.
- Assure interviewees that the information they provide will remain completely confidential. Still, interviewees may be reluctant to discuss the details of their own situation. For example, they may fear that if they complain openly, they will lose favor with those in power or face social stigma. One tactic for eliciting information is to ask about problems faced by family members or neighbors. For example, in some cases, women will talk about the problem of domestic violence faced by *other* women in their community, only after establishing that *they* have been blessed with a harmonious marriage.

v. *Protocols for Data Collection*

The following guidelines for collecting, documenting and compiling your findings should be followed throughout the project. During the interviews take comprehensive shorthand notes and identify any direct quotations. As long as it does not affect the quality of the interview, take the opportunity to clarify the interviewee's responses and to make sure your notes are accurate and complete. Immediately following each interview spend at least half an hour further clarifying and elaborating on these notes. This is also an opportunity to describe the context of the interview and any significant details that may have affected the discussion, including the location, people present, observations of the interviewee's situation and reactions, and any other information that provides a context for interpreting the interview.

Within 24 hours of each interview, transcribe the interview notes and log the interview, noting the name and title or affiliation of the person interviewed, employment status (if any), economic status, religious affiliation, ethnic background/family origin, immigrant status (including rural-urban migration within the same country), the location of the interview (city and site), the date and time, and any additional comments (e.g., the interviewee may have not spoken freely because a neighbor walked in the middle of the interview). The interviews may be transcribed in your national language, if that is more convenient than English, however a summary of the key points from each interview must be compiled in English.

Submit your interview logs and the key points from each interview according to the schedule specified in Appendix A. The international consultants will review these submissions and respond promptly with comments, questions, and feedback on lines of questioning to pursue in future interviews. This level of engagement and guidance is necessary given the flexible and open-ended nature of the initial scoping exercise.

vi. *Observation Techniques*

In addition to conducting formal and informal interviews, the researchers will also gain useful information from direct observations. This may include observing the mediation or resolution of a dispute or accompanying someone with a complaint or dispute as they approach a potential mediator, fixer or dispute resolution institution. When conducting observations, there is a strong possibility that your presence can introduce biases and variations into the process. It is important to be aware of this and to minimize your role and avoid any intervention in the process. Regardless, observing the dispute resolution process can provide unique insights and thicker descriptions of the ways in which the urban poor pursue opportunities to resolve their disputes, the actual operations and functioning of dispute resolution institutions, and the conditions that the urban poor face in attempting to resolve their disputes.

## Appendix C - Inception Meeting Agenda

### Agenda Inception Meeting: Access to Justice for the Urban Poor (RETA 6366)\*

The Asian Development Bank  
and  
The Asia Foundation

July 24 - 25  
Manila, Philippines

**Venue:** The Asian Development Bank  
Manila, Philippines

*Wednesday, July 23* Arrival and check in to EDSA Shangri la

*Thursday, July 24* ***Meetings will be held in OGC Conference Room (8317W)***

9:00 – 9:30 Welcome remarks  
Jeremy Hovland, General Counsel, ADB

9:30 – 9:45 Meeting agenda, goals, and objective  
Erik Jensen, Co-team leader, The Asia Foundation

9:45 – 10:00 Participant introductions

10:00 – 11:00 Overview presentation and discussion of the conceptual framework  
and research agenda  
Debra Ladner, Co-team leader, The Asia Foundation

11:00 – 11:15 Coffee break

11:15 – 12:30 Presentation and discussion of scoping study findings - Bangladesh  
Ferdous Jahan, National Consultant

12:30 – 1:45 ***Welcome lunch at PDR 6***

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\* Draft agenda as of 22 July, 9:20am

1:45 – 3:00	Presentation and discussion of scoping study findings - Indonesia Yacobus Kunharibowo, National Consultant
3:00 – 3:30	Coffee break
3:30 – 4:45	Presentation and discussion of scoping study findings - Philippines Emma Porio, National Consultant
4:45 – 5:15	Remaining issues
Evening free	

*Friday, July 25*

<b>Venue</b>	<b><i>OGC Conference Room (8317W)</i></b>
9:00 – 10:15	Presentation and discussion of scoping study findings - Thailand Sauwalak Kittiprapas, National Consultant

10:15 – 10:30	Coffee break
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<b>Venue</b>	<b><i>West Lobby Conference Room (8256W)</i></b>
10:30 – 12:00	Discussion of key findings of the scoping study across countries

12:00 – 1:15	Lunch
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<b>Venue</b>	<b><i>OGC Conference Room (8317W)</i></b>
1:15 – 2:30	Discussion of issues of focus for the in-depth research

2:30 – 3:00	Coffee break
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3:00 – 5:30	Discussion of conceptual framework, scope and research methodology for in-depth research
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Evening free

*Saturday, July 26*      *Members of the research team to meet if necessary.*

## **Appendix D – Inception Meeting Overview Presentation**

(removed for file size)

**Appendix E – Bangladesh Scoping Study Report**

**Scoping Study Report**

**Access to Justice for Urban Poor  
in Bangladesh**

**By**

**Ferdous Jahan**

**Revised following Project Inception Meeting  
In Manila, the Philippines  
24-26 July 2008**



## 1. Introduction

The staggering pace of urbanization in developing countries has left its mark on cities through a rapid increase in urban poverty. Like most developing countries, Bangladesh has experienced the unplanned growth of a few urban centers. This unbridled rural to urban migration occurred because these cities are sources of employment, higher income and other facilities not found in other areas of the country. This trend, along with natural population growth, has severely constrained the ability of urban centers to provide basic necessities to city dwellers (Roy and Abdullah, 2005; Singha, 2001.) As a result of increased urbanization, urban populations have experienced, "...poverty, gross inequality, high unemployment, underemployment, over crowded housing, proliferation of slums and squatters, deterioration of environmental conditions, highly inadequate supply of clean water, high incidence of diseases, over crowding in schools and hospitals, overloading in public transports and increase in traffic jams, road accidents, violence, crimes and social tension" (Taskforce Report, on Bangladesh Development Strategies, 1990). Clearly the growth of slums and deteriorating living standards in urban centers are closely related to the rural to urban migration that Bangladesh is experiencing.

This rural to urban migration has become a significant phenomenon in Bangladesh. After arriving in cities most migrants find their places in slum areas. A slum can generally be defined as "...substandard housing with insecurity of tenure and the absence of one or more urban services and infrastructures- sewage treatment, plumbing, clean water, electricity, paved roads" (Davis 2006). Consequently new arrivals must make their way in the city while living in sub-standard housing, where tenure insecurity is high and living conditions are low (Roy and Abdullah, 2005). Problems like insecurity of tenure, lack of access to basic urban services, etc. give rise to conflicts over urban assets in slums. There are many informal ways and institutions that serve to minimize these conflicts and resolve disputes. However, little systematic research has been conducted to understand the extent of disputes and conflicts that the urban poor experience and the availability of formal and informal dispute resolution systems.

The Asia Foundation has initiated a four-country study to increase our understanding of how the urban poor go about resolving disputes and complaints over access to urban assets, including land, housing, water, sanitation, electricity, education, health services, and personal security (TAF Concept note, 2008). The Asian Development Bank (ADB) has provided financial support for the research. This report details the findings from a scoping study conducted in three urban slums in Bangladesh during June-July of 2008. There are 5 sections in this report. Following the introductory section, section 2 provides the problem statement and section 3 discusses the rationale behind site selection and research methods used. Section 4 contains the basic findings and their analysis. Finally, section 5 attempts to present a conceptual framework that may be considered for in-depth case studies. This final section recommends issue areas for focus during the in-depth research phase of the project. This report also draws some conclusions based on the recommendations being made.

## 2. Problem Statement

Throughout the world, an astounding increase in urbanization has become a common trend. Studies have identified three basic modes of urbanization; migration from rural to urban areas, natural population increases and reclassification of rural settlements. Though urbanization is often considered an inseparable ingredient of development, the positive and negative consequences of this phenomenon largely depend on a country's ability to cope with the three mechanisms through which urbanization is taking place. In most cases a steady pace of urbanization combined with rapid urban population growth has given rise to a number of interrelated problems including resource shortages, increased competition for services and employment, and environmental degradation which can hinder the overall development of a country. In fact, in developing countries, urban centers often face severe difficulties making room for all inhabitants. As a result, the majority of urban inhabitants in developing countries currently live in slums (the number is estimated at one in three, or approximately one billion people) and this proportion is estimated to be even higher in South Asia.

Like in many developing countries, in Bangladesh the rural poor are often forced to migrate to urban areas and live in slums. There are several different types of slums in big cities: a) slums owned by landlords; b) slums in disputed lands; c) slums in government land. Within these types local political and influential elites have the most control in slums that are situated on disputed or government land. Inhabitants of these slums are more vulnerable to disputes, violence, structural injustice and insecurity of tenure compared with residents living in privately owned slums. The politicization of slums is most visibly displayed when political parties hire slum dwellers to demonstrate their political support base and during elections to get their votes.

The slum dwellers of Bangladesh, in effect, live in their own 'planet'. The scale and speed of urbanization exacerbates the conditions of poverty, leaving them competing for scarce resources. They are denied access to urban assets and services, including land, housing, water, sanitation, electricity, education, health services, and personal security. Most slum residents are left with few options and limited access to urban resources. As they do not enjoy legal tenure to land, most households live with the constant threat of eviction by government agencies. Eviction, or the threat of eviction, is of key significance for the urban poor living in slums. For instance, in January 2007 after the current caretaker government came to power, it initiated an eviction process of illegal slums and small vendors in big cities. This massive eviction adversely affected the livelihood and tenure security of many urban poor. To cope with the situation, most of the affected poor simply tried to move to another relatively stable slum; very few of the evicted residents went back to their villages. As a result, those slums that were not evicted are now accommodating more people than they do regularly. These push and pull factors affect the types of disputes over urban assets.

Poverty, discrimination and weak institutions have cornered the urban poor to such an extent that they have limited or no access to formal channels and institutions that might

help resolve their disputes, enforce their rights, and access the protections and benefits to which they are legally entitled. Institutional reforms taken by government agencies have so far failed to respond to the needs of the poor. Their illegal 'existence' and the governments' failure to respond to their needs often force the urban poor to opt for accessing resources through informal means (e.g. private water suppliers or illegal electricity connections). Research regarding access to urban assets by the poor has revealed a number of informal mechanisms commonly used including patron-client relationships, community organizing and mobilization, and social networks.

In Bangladesh, there are many interest groups or associations that develop from slum power structures. Some examples include market committees, mosque committees, regional welfare associations and political parties. These different welfare committees and associations play a very significant role in the life of the slum dwellers. The main responsibilities of these committees generally include negotiating with the administration to resist eviction drives. These committees are also in charge of keeping peace and harmony by resolving disputes that arise within the slums. Though they are mostly informal in nature, in a few instances these committees have attempted to gain formal status by registering with the Ministry of Social Welfare. Generally, in these committees, power is centralized in the hands of a few influential elites among the poor. These elites are mainly the proxy-owners or people with political connections.

These various committees work as hubs that maintain a close relationship with both the local administration and local representatives. These relationships help them to control not only the lives of the slum dwellers but also the local political dynamics. The slum dwellers need a channel through which to access basic necessities which are inaccessible to them through legitimate means, such as water and electricity. The slum dwellers depend on the committees to create this channel and these committees pressure the urban local administration to ensure access to these services. This process in turn makes the committees dependent on the political parties because pressuring the administration is quite difficult without their help. Political parties are keen to help the committees as the slums represent significant vote banks over which they like to have some control. This dynamic creates a complex relationship where the slum dwellers depend on the committees for service provision, while the committees depend on the political parties to interact with the administration.

Analyzing this complex relationship becomes even more complicated due to variations in the overall committee system. In some slums there is only one central welfare committee which plays a pivotal role in determining the slum dwellers' access to assets. In this situation different committees like mosque committees or service delivery associations work under the umbrella of the central welfare committee. This particular scenario creates a power structure that is too centralized resulting in increased opportunity for exploitation since only option available to the slum dwellers is to obey decisions made by the committee. As this single committee is the sole provider of all kinds of services, it can charge any amount of money it wishes in exchange for the service provided. In many large slums this dynamic is avoided because there are multiple committees each with its own interest in self-preservation. In this scenario power structures are more decentralized

and as the poor do not have to depend on one single committee, they eventually have some power to bargain.

A key characteristic of this committee structure is the influence of politics among different interest groups or associations. All political parties attempt to control the urban poor as well as the urban power structures and can best do so through these various committees. At the same time, the poor are constantly seeking out more powerful individuals or institutions to assist them in meeting their needs. This creates a situation where the urban poor often find themselves well-knit within an informal network on which they rely not only for their necessities but also for the resolution of their disputes. The dilemma is complex; it is not entirely clear whether poor people are being objectified by the local system or whether the system is being objectified by the poor people.

Due to the structure of these informal systems or processes, it often becomes difficult to explore them thoroughly. It is also very important to document the dispute resolution procedures because it is not common for urban informal institutions to keep records of either the dispute solving processes or the outcomes of those processes. Various procedural dynamics are dependant on the severity of a given dispute and the people who are involved in it. Without unveiling these dynamics, it will be very difficult to reach a complete understanding of the dispute resolution mechanisms at work.

In Bangladesh, the culture of dispute resolution in general serves both to satisfy participating parties and to maintain social harmony. Today, in urban areas where individualism is growing fast, it is not clear whether: a) contemporary urban dispute resolution reinforces social harmony ideals or not; b) power imbalances exist in the dispute resolution process; c) in the name of social harmony the poor become victims of injustice; d) the poor comply with resolutions despite understanding the inherent bias and finally; e) the poor remain satisfied with the resolution or not. Thus, in-depth research on these areas would be extremely valuable.

### **3. Research Methodology**

#### **3.1 Rationale for site selection**

In 2005, the Center for Urban studies (CUS) conducted a countrywide survey to identify urban slums. They listed 8700 slums across the country. Most of them are situated in six city corporations of six divisions. For the scoping study, this comprehensive list was used to help select one slum in Dhaka City Corporation area and one slum in Chittagong City Corporation area, both of which participate in the ADB-sponsored UPHCP-II project. An additional slum was considered in Chittagong that is not taking part in the UPHCP-II project.

In Dhaka, Korail slum in Mohakhali has been selected. The rationale to select this slum for the scoping study consists of the following:

- Slum dwellers are benefiting from the ADB-sponsored UPHCP-II project

- Very few slums, including this one, have not faced serious threats of eviction. There is only a dim possibility for an eviction in Korail because the High Court has ordered the government not to evict this slum.
- It is one of the largest and oldest slums in Dhaka
- Korail is easy to access to do research because many NGOs have a working presence in this slum.

In Chittagong, two slums – the *Aam bagan* slum and the *Agrabad Bastuhara* (homeless) *colony* have been selected. The rationale for selecting these slums for the scoping study consists of the following:

- Both of these slums are relatively older than most slums in the city and have interesting historical accounts regarding their establishment.
- These two slums have not faced any eviction drives since 1/11.
- In both slums the slum dwellers have succeeded in organizing themselves in order to resist eviction.
- Both areas are easy to access as a number of NGOs are working in both of these slums.

## **3.2 Historical Background of these slums**

### **3.2.1 Korail Slum, Dhaka**

In 1965, the then East Pakistan Telegraph & Telephone Board (T&T) acquired a piece of land in the Korail area of Gulshan from several landowners. During 1980s' a change of technology rendered the installations in the Korail area obsolete and most of the technical set-ups were withdrawn from the area. The Telephone Board sold the land to the Power Development Board (PDB). But, during this time one of the pre-1965 landowners filed a law suit against the T&T arguing that the T&T did not have a legal basis to sell the land as it was acquired for T&T's purposes only. In the meantime, the slum was established by several influential elites. The then ward commissioner and several other political leaders led the establishment of the slum. From the very beginning, tenure rights have been highly insecure for the slum dwellers. However on August 2, 2003 the High Court ordered an injunction against any eviction. This legal intervention has provided a certain level of tenure security in the Korail slum. At present there are 8,914 households and 32,725 people living in the area (BRAC Health Programme). Most are migrants from different districts of the country with many originating in Jamalpur, Barisal, Mymensingh and Kishoreganj. Recently the interim caretaker government has evicted many slums in big cities including Dhaka. Many of the evicted slum dwellers have subsequently relocated to Korail slum. This increase in population has affected living conditions and service delivery in the slum.

### **3.2.2 Aam bagan Slum, Chittagong**

After the independence of Bangladesh many new migrants from the villages built their houses on lands abandoned by Pakistani citizens who had migrated back to Pakistan. One

of these settlements was in the *Aam bagan* area. However, a daughter of the *Aam bagan* land owner was married off to Mr. Golum Rabbani, who was a Bangladeshi citizen. The Pakistani family transferred all their properties in the Chittagong area to this son-in-law. Golum Rabbani subsequently sold the land to local elites (Ilias Company). These powerful local elites then filed a law suit to demand the eviction of the slum. The new owners won the case and received control over the land in 1985. The three hundred families who were rendered homeless started living on the adjacent railway land. In 1986 these slum dwellers formed a committee named the Chittagong *Mahanagari Chinnomul Mojdur Colony Somobay Samitee Ltd* (Chittagong City Rootless Labor Colony Co-operative Ltd), the *Aam bagan* Branch. The committee registered itself with the social welfare ministry of the government as a legitimate organization. The objective of this committee was to resist further eviction and facilitate the process of rehabilitation. The committee filed a lawsuit against eviction by the railway authority in 1990. The high court issued a stay order against eviction in 1993.

There are now 20 acres of land with 600 households and a population of 10,000 in *Aam bagan*. The slum has two mosques, three schools including one UCEP school (vocational school for poor working children), eight NGOs and five different types of associations.

### **3.2.3 Agrabad Bastuhara Colony Slum, Chittagong**

The Agrabad *Bastuhara* Colony was established in 1950. WAPDA (Water and Power Development Authority) was the owner of this land. The total area is only 62,400 square feet. In 1991, the Chittagong City Corporation identified this slum as one of their working areas for the integrated Urban Slum Development Project. The government transferred the land ownership to the City Corporation. Thus, slum dwellers in this slum have the best tenure security among the three slums considered in this scoping study. According to slum leaders, the population is 4,983 in 496 households. There is one mosque, three schools, four NGOs and four different types of associations within this slum.

### **3.3 Identifying key informants and data collection methods**

In a Bangladeshi slum, dwellers are from various regions and categories (new and old, male and female); some have their own rooms and most pay rent to a landlord. These landlords are usually not the legal landowners, but they have somehow managed to successfully occupy the land and maintain control over the tenants. Like village communities, urban slums have various community institutions like market, mosque, *mazar*, Community Based Organizations (CBO), etc. Various NGOs are working with different programs in the slum areas. More importantly, as mentioned earlier, slums are vote banks for political parties. This leads rival political parties compete to establish control over the slums. This situation creates opportunities for the slum dwellers to access and interact with local government institutions and services. Like NGOs, the city corporations have conducted projects to develop the socio-economic condition of the people. When slum dwellers face severe problems like evictions, lawyers and court personnel are usually available to take sides. Diversified characteristics and problems in

urban slums often lead other actors like journalists and academics to get involved in slum issues. So clearly there are various stakeholders who are associated with urban slums. To understand the extent of disputes and conflicts and access to dispute resolution systems holistically the perspectives of this wide variety of stakeholders needs to be considered. To achieve this goal the following key informants were interviewed during the scoping study research:

Table 1: Types of Interviews/FGDs

Sl. no.	Types of Interviewees/FGD Participants	Dhaka		Chittagong	
		Interviews	FGDs	Interviews	FGDs
1.	Poor slum dwellers (old, new, male female)	8	2	15	3
2.	Land lord (old, new)	2			
3.	CBO / community leaders	2	2	2	1
4.	Political leaders	2		2	
5.	Religious leaders	2		2	
6.	Elected Local Government				
7.	Police	1		2	
8.	NGO activist	2		1	1
9.	Judge/Lawyer/ court personnel	1			
11.	Municipal bureaucrat			3	
12.	Academics	1		2	
<b>Total</b>		21	4	29	5

Note: Detail slum-wise lists of interviewees and FGD participants have been included in Annex 1

In Korail slum of Dhaka city, data was collected through 21 in-depth interviews and 4 Focus Group Discussions (FGD) with different stakeholders.

In *Aam bagan* and *Agrabad Bastuhara Colony* slums of Chittagong city data was collected from 29 individual interviews and 5 FGD's.

## 4. Key Findings

### 4.1 Types of disputes and complaints

The disputes, complaints and conflicts observed in urban areas may be divided into three categories–

- Asset related issues
- Personal and family matters
- Public or community security matters

#### **4.1.1. Asset related issues**

In the urban slum of Dhaka city, the poor as well as community leaders and institutions identified a range of assets which cause disputes and conflicts. These assets are land, electricity, water supply, sanitation, housing, surrounding water body and money leasing.

The nature and extent of disputes over the aforementioned assets are described below.

##### **4.1.1.1 Land**

Land related disputes in urban areas can be broadly categorized into two groups; first there are disputes between the original owner (in the case of the three slums studied, the government) and the slum dwellers. The second category consists of disputes among the slum dwellers themselves. The first type of dispute is a major source of tenure insecurity for the slum dwellers. Every now and then they have to resist an eviction drive initiated by the government. However, presently the inhabitants of these three slums enjoy a certain level of tenure security. There are three different reasons behind this tenure security. In Korail slum a High Court injunction against evictions has provided this security. In Aam Bagan slum a stay order against evictions has also been handed down by the High Court. In addition, after 1/11, when the government decided to evict slums from government land, the slum dwellers collected signatures on a mass petition that was sent to the DC, the railway authority and the police. The railway chief of Chittagong asked for a list of households in the slum and the railway promised not to evict those households placed on the list. The Agrabad slum is one of the working areas for the integrated Urban Slum development project undertaken by the Chittagong City Corporation, showing a government commitment to improve conditions in the slum instead of closing it down.

In both cities the slums contain two types of inhabitants; landlords holding the 'ownership' and people renting houses. The landlords are basically the 'elite' and powerful people among the poor who act as 'proxy landlords.' In the case of Aam Bagan and Agrabad slums, when the 'proxy landlords' work under one single association like a slum welfare committee, the chances of disputes among the landlords decreases significantly. In Chittagong these umbrella associations have in fact worked fairly well and have even abolished the system of proxy landlords, thereby making every household into proxy owners. These associations also make significant contributions in resolving landlord-tenure conflict. For instance, in Aam Bagan, in order to abolish the tenant-landlord division and to incorporate the tenants into the mainstream struggle for security of tenancy, the welfare committee leaders made an arrangement where the tenants could buy their houses from the landlords. Tenants paid Tk300 each in three equal monthly installments to buy the rooms they were living in. This brought an end to landlord-tenant conflict and every household gained ownership over their room. In Agrabad slum in an effort to minimize disputes over land the slum welfare committee conducted a survey of the households living in the slum and recorded the amount of land occupied by each of them. When disputes over ownership arise these records can be used to resolve them. For



example, after a 2005 fire destroyed much of the slum, the land record documents helped restore the correct portions of land to the residents without any conflict.

In the absence of such strong associations, as is the case in Korail slum, a situation exists where basic disputes over land are limited only to proxy landlords and are decided based on occupation of the land. In fact, five years ago, Korail slum was controlled by armed men (*mastaans*) who carried out illegal activities and were commonly called terrorists. Since the Rapid Action Battalion (RAB), a special police force, started working in this area, this problem has been minimized.

At present, the most common land-related dispute in these three slums occurs when a neighbor tries to expand his space by two or three feet when reconstructing a room or fence. In Agrabad slum the maintenance of permanent land records has brought an end to petty land disputes. Things are not the same in Aam Bagan slum where the residents frequently get involved in disputes over land. An example which may help us understand these common conflicts over land comes from an elderly slum dweller, Bhandary, a *jhal muri* (spicy puffed rice) seller. Bhandary explained that “The gap between my own and my neighbor’s room was one and half feet two years ago. But now it is six inches. Every time my neighbor renovates or reconstructs he extends his boundary line by inches. It could cause dispute. But I am old and do not want to get involved in conflict.”

It is interesting to note that even the presence of a strong slum welfare committee is sometimes not sufficient to resolve land-related disputes. For instance, Hasina, a female shopkeeper in Aam Bagan slum recounted a dispute with her neighbor, “In between my room and my neighbor’s room there was a puddle. My children usually jumped to the neighbor’s land from their room to go outside. This practice turned into quarrel between us which excavated severe conflict.” The neighbor complained to the committee and Hasina was summoned. The committee asked both of them to fill the hole that caused the puddle. Hasina filled it, but her neighbor did not participate or pay for the job as she argued that the hole was in Hasina’s land. Hasina believed that the hole was in common land. However, Hasina did not pursue the issue further as the disputant woman was very arrogant and her brothers were powerful.

### **2.1.1.2 Housing**

Conflicts between tenants and proxy landlords are only a problem in Korail slum of Dhaka as there are no tenants in Chittagong slums. Everyday new poor migrants are coming to Korail slum but new rooms are not being constructed accordingly. So, living space is becoming very scarce. This trend is occurring along with recent price hikes, meaning that rents are increasing while the quality of housing is deteriorating. Several landlords do not repair their houses even when repairs are clearly needed. When the poor refuse to pay rent because of the dilapidated condition of their rooms, disputes occur between the tenants and landlords. As there are many other people looking for housing, the tenants are in a disadvantaged position to bargain for better living conditions. One community leader said, “A few days ago one landlord complained to me and requested that I create pressure on his ‘tenant’ to pay the rent. I went to the house and saw that the

roof had been totally damaged. In the rainy season that room was simply not useable. I told the landlord that if he did not repair his house he would not be able to get the money.” There are also many tenants who leave their houses suddenly without paying any rent. These incidents cause disputes.

Another issue of disputes caused by overcrowded conditions involves the communal kitchens. One female slum dweller explained that “in a landlord house at least five poor households share the same kitchen.” Most people work all day long. Poor people get very little time to prepare food. Within the short time, completing all the necessary kitchen tasks is really tough. Frequently women engage in arguments over who will use the kitchen first and for how long.

### **2.1.1.3 Electricity**

Slum dwellers are not eligible for electricity services as they do not live on legally-owned lands. In Korail slum, there are registered associations called Slum Welfare Committees. These committees subscribe for electricity connections in their names. Also, several neighboring elites who have their own land subscribe for electricity delivery. They then provide electricity through these subscriptions to the slum dwellers. The cost of such service is too high for the poor and mainly elites, who control the associations, benefit from charging inflated rates for electricity. The situation is similar in the slums of Chittagong. Despite having a strong welfare committee (SWC), the poor have to pay a high price for electricity. The reason is that often one person or a small group of elites seize the opportunity to become intermediaries and supply electricity to all the slum dwellers. This power allows them to then charge the poor inhabitants for electricity according to their wish. Finding no other alternative, the slum dwellers have to accept this arrangement. For instance, in Aam Bagan, the SWC, after due discussion with the local electricity office undertook an initiative to supply electricity to the slum dwellers. Eventually a pre-paid meter was sanctioned in the name of the committee’s president. From that main connection, sub-connections were supplied to households. Thus the entire process of electricity distribution came under the control of one man. This new method of electricity service resulted in higher costs to get the service. A household has to pay Tk100 for a light bulb, Tk150 for a fan, Tk90 for a color TV set and Tk50 for a black and white TV set. Similarly in the Agrabad slum, four neighboring legal landlords supply sub-connections to the households of the slum. For each apparatus usage, a household has to pay Tk70. In this way the so-called legalized system actually created tension and hidden conflicts as well as increased expenses for the urban poor. Hasina of Aam bagan slum said, “I have sold my TV to reduce the electricity bill. Poor people like me have to pay an extra amount of at least Tk250 per month to adapt to the new system, making it beyond our capacity.”

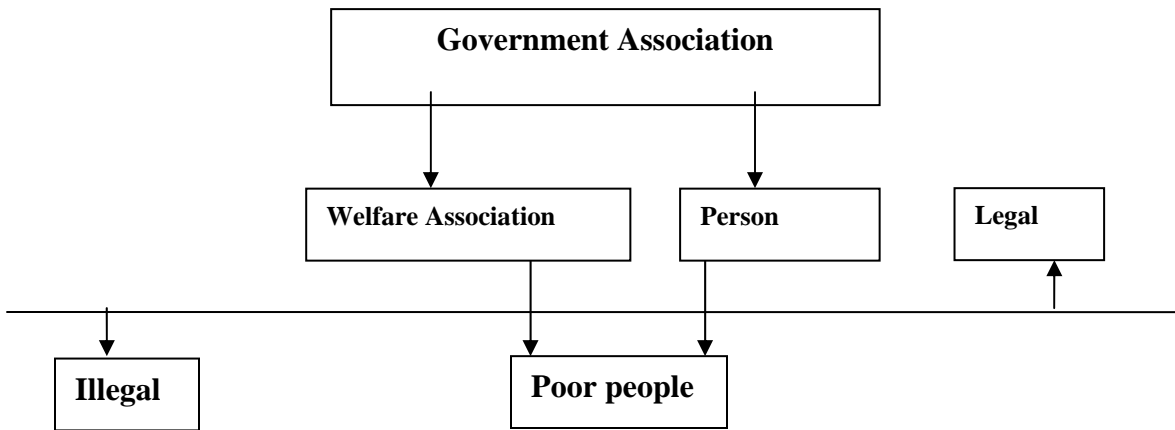
This legalization did bring good fortune for some people, providing crude examples of patrons’ exploiting poor clients. The following story presents a clear example of this type of exploitation.

**Box: Father and son nexus in making profit**

The president of the *Aam bagan* slum committee explained that “At the beginning of the month, I pay around Tk60,000 to activate the electricity connection and at the end of the month, through the collector of the committee, I collect the bill from each household.” He also said, “Compared to other suppliers, I charge at a lower rate because I am conscious about my social responsibility and commitment to the community.” But a group of poor mentioned in a FGD that “He regularly turns off the main connection from 7am to 1pm in addition to regular disruptions from load shading dictated by the government service. Despite this we are paying at the same fixed rate.” As in Korail slum, the president makes a surplus profit from the household bills. Akkas, a rickshaw garage worker, said “The committee president’s son is running a cable TV business in the slum. For each connection we now pay Tk150 taka. Starting next month the charge will be increased to Tk300.” These changes in service have led the poor to become anxious and begin resisting silently. Akkas expressed his grievances to interviewers vocally, saying “I’ll go back to the illegal connection and cut off the legal electricity line (sabotage).”

From these examples it can be seen that the president of the committee is the supreme boss of the slum by dint of his position on the committee. He is making a profit from the electricity connection and his son is also running a profitable business. Within the current the system the poor have no alternatives but to accept this injustice.

**Figure 1: Electricity supply system in slums**



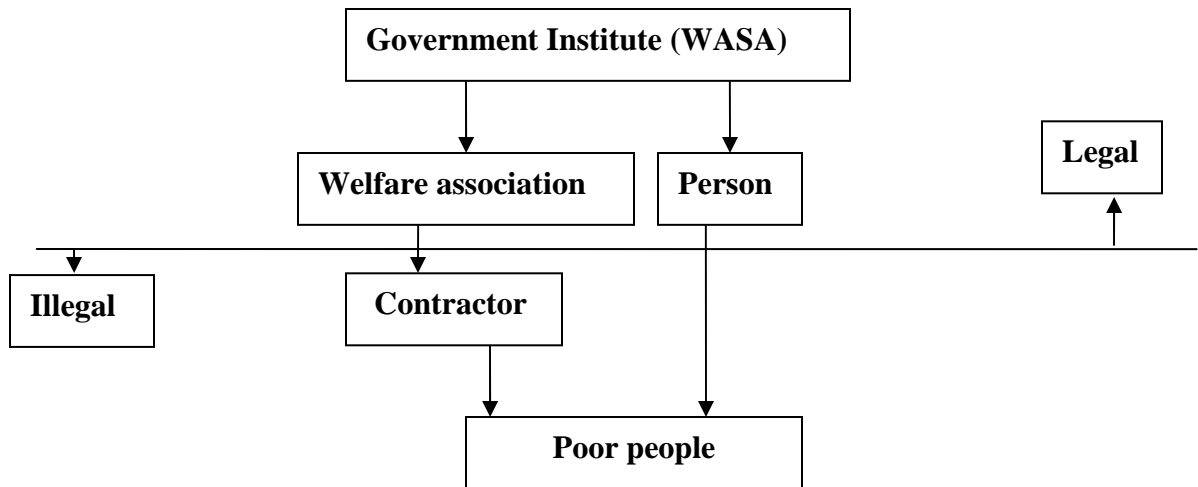
Another very common practice among electricity suppliers is the deliberate switching off of the connection several times a day using the excuse of load shedding by the authorities. By doing so they lower their electricity bills while collecting the same amount of money from the tenants. Thus, when it comes to urban service delivery, the tenants continue to suffer.

#### 4.1.1.4 Water

Like electricity, slum dwellers are not entitled to get a direct water supply because they do not have holding addresses. In all three slums groups of elites control the whole business of water supply. Interestingly these groups of elites are not necessarily the ones who control the electricity supply. New actors emerge and in particular cases the supply of water has a political dimension.

In Korail slum, using the name of associations, elites along with corrupt Water and Sanitation Authority (WASA) officials control the water supply. These associations hand control of the water over to an individual contractor. This contractor supplies houses in the slum with water for Tk50 per household. Again this rate is much higher than the actual bill paid by the contractor. For example, if a supplier provides service to 600 households, he receives Tk30,000 per month in payments while the actual bill comes at most to Tk5,000. Conflicts also arise between suppliers regarding this matter of payments and profits.

**Figure 2: Water Supply Management on Urban Slums**



Sometimes suppliers fail to supply the water properly, frequently supplying water for only an hour even when they are committed to supplying water for 2 hours every day. This form of cheating sometimes causes tenants to protest. The following case demonstrates how poor people become victims of disputes over water.

#### **Box: Dispute over water**

There were forty rooms “owned” by a landlord in the slum where the source of water comes from one water reservoir. He controlled the water distribution to all the people renting his rooms. The system generally worked quite smoothly, but once the landlord sold his rooms to fourteen people the water supply became problematic. These fourteen people became joint owners of the reservoir. Each landlord wanted to get more benefit from the water source. One day two garment workers quarreled while trying to get

water. Both of them were owners of the water source and they both had a very short time to collect their water because they had to get to their offices on time. In the midst of their heated argument one of them hit the other with a water pot and she was seriously wounded. A case was filed in the police station by the victim. Police came to the location and called on local community leaders to solve the case. Eventually, the case was solved within the community. The offender was made to pay the medical expenses incurred by the victim.

In Aam Bagan slum, during the last eight months a national NGO called DSK arranged for two water supply connections to be installed. They spent Tk130,000 to build a reservoir. To receive this service, the slum dwellers were supposed to repay Tk30,000 and DSK would bear the rest of the cost. The local welfare committee is in charge of maintaining the water source. To repay the amount every household is billed for Tk50 per month. As the water from the reservoir is not sufficient to meet existing demand, residents also have to look for other sources of water. The local ward commissioner has provided another source of water to supplement DSK's reservoir. Before the last election, the commissioner constructed a deep tube-well on his own land near the slum. He used this well to provide water to the slum dwellers free of cost. This helped him gain popularity and he eventually won the election. After six months he announced that because the maintenance of the water source meant that he was incurring costs, he would have to charge fifty paisa for one pitcher of water. Coincidentally the only government public tube-well near the slum was damaged and became non-functional at the same time. So the poor suddenly had no alternative but to buy water from the commissioner. After six more months the charge was doubled (Tk1 per pitcher). The ward commissioner and members of the slum committee seem to be collaborating in this slum as the slum committee members have explained that the maintenance cost is a vital issue to continue uninterrupted service, so this charge makes perfect sense. Selina, a shopkeeper, disagrees "We are spending on an average 10 taka per day, 300 taka per month for water." So while there is no open dispute over the water supply now, a hidden protest is clearly present.

The water supply situation is different in Agrabad slum. In this slum the residents engaged in a dispute with DSK. In 1991 the City Corporation supplied around 20 tube-wells in return of a one time fee of Tk1,000 per tube-well to the slum dwellers as a part of an urban development plan. This meant there was no scarcity of water in this slum. However, several months ago DSK constructed a deep tube-well in the slum and formed a committee to maintain it and repay a construction charge of Tk30,000 as was done in Aam bagan slum. This committee now claims that they have paid the Tk30,000 while the NGO claims that it never received the money. During this study we could not come any closer to understanding the roots of this problem but an important question remains; why did DSK decide to establish a tube-well in a slum where there is no scarcity of water? We could not interview any NGO personnel responsible for site selection because they were not available at the time of scoping study research.

#### 4.1.1.5 Sanitation

When comparing the sanitation situations in Dhaka and Chittagong, two different scenarios emerge. In Korail slum, toilet sharing is very common and frequently creates disputes among tenants. If someone becomes ill with dysentery or diarrhea, he or she has to use the toilet more often. This hampers other people's chance to use the toilet due to an overall shortage of toilets. At other times landlords lock the toilets in order to create pressure on poor tenants. These types of incidents create disputes and animosity in the community.

In both slums of Chittagong, DSK supplied a number of cluster toilets. Constructing this kind of toilet requires space, which is extremely scarce in both slums. The urban poor rarely look favorably on freeing space from their personal lands to construct common usage toilets. Amena, a housewife from the Agrabad slum, shared her experience with the DSK program; "The NGO people asked me to make some space available beside my room. But, the space was not sufficient. So I told my neighbor that we should do it jointly. But, she refused my proposal and I failed to convince her. We quarreled and sought the committee's help to solve the problem. In the end the toilet was not constructed."

The head teacher of Agrabad slum's school explained that when the poor are suffering from price hikes they would not spend money for sanitation or hygiene. He provided an example to help explain the problem and the solution, which is recounted below.

#### **Box: How hygiene practice is to some extent burdensome**

In the Agrabad slum starting in the 1980's there were two janitors keeping the slum clean by sweeping and cleaning the sewage drains. For this purpose every household paid Tk20 per month. The janitors' salary was Tk1,500 each and the rest of the money was kept by the committee for miscellaneous purposes. But last year many slum dwellers expressed reluctance about having to pay Tk20. This incident turned into a public dispute within the slum. The committee failed to resolve the dispute so the ward commissioner took charge of resolving the problem. He called the slum dwellers from both sides and heard about the dispute in detail. Hygiene was very important to one group, while the other group emphasized expenditures. They argued that every commodity price has increased beyond their capacity to pay, making this cost very burdensome. After listening to both sides the commissioner decided that only one person would work as a janitor instead of two and receive Tk2,500 per month. This meant that every household would only have to pay Tk10 per month for this service.

We also observed in the slums that because of the lack of hygienic toilets, the poor would instead use open spaces. Often small children defecate in other people's spaces, causing disputes between neighbors.

#### 4.1.1.6 Money lending

Disputes related to money lending are very common in all three slums. Sometimes people do not repay the borrowed money with interest. The secretary of Aam bagan slum committee said that “Normally people do not maintain documents for loan transactions. So the whole thing depends on verbal commitments and trustworthy relationships. This practice frequently causes conflict.”

Recently micro-credit provided by NGOs has had an interesting impact on slum dwellers in Chittagong. Whereas in Korail slum disputes arise when the poor fail to repay money they borrow, in Chaittagong the micro-credit has effectively been used to build a foundation for patron-client network. As poor slum dwellers can easily access micro-credit loans from different NGOs, rich patrons (who themselves are not eligible to receive such credit) often convince the poor to take out loans and invest in businesses run by the patrons in order to earn a high profit. In this way the poor fall into the trap of the patrons and give them their money to invest. These patrons maintain some visible business to convince the poor, generally have links with local political leaders and also have networks with other powerful actors creating a syndicate. These syndicate operators do not return the money and as a result, the poor become hostages of local politics.

#### **4.1.2 Personal or family matters**

Most interviewees told researchers that disputes over personal and family matters frequently occur. In most cases male household members dominate the females. Commonly a husband will get married a second time without informing his second wife that he has another wife in the village. When the second wife discovers the situation family disputes become inevitable. Problems such as verbal divorce, domestic violence and disobedient wives also cause family disputes.

Inter-personal physical violence is also an important cause of personal disputes. Generally these disputes are easily resolved on the spot. But sometimes it becomes complicated and takes longer to find solutions, especially when the conflict is between supporters and activists from different political parties. Interviewees claimed that “To establish political supremacy and social power, slum dwellers engage in interpersonal violence.” However community leaders mentioned that during the emergency period this type of conflict has mostly been absent because political activities have been ceased.

The community leaders group in the Aam bagan slum related the following story of an inter personal dispute in their community.

#### **Box: Conflicts over Petty issues becoming grave**

A, B, C and D live in the same slum. One day B took A’s cell phone and went to his own house to make a call, after which he didn’t return the phone to A. When A asked for his phone, B denied taking the phone in the first place. Then A went to C, who is his cousin and also a political leader in order to resolve the issue. Both A and C went to B’s house. C hit B on the neck and filed a case against him. Police came and arrested B. D, who is a relative of B and acts as a local political muscleman went to C’s house and destroyed his furniture in retaliation. He also filed an “attempted

murder” case against C. Everybody bypassed the slum committee during this process. After all these events took place the committee went to the police station and requested that the officer-in-charge drop the cases and let the committee resolve the dispute by itself. The police listened to the committee and eventually the committee resolved the dispute. B had to return the cell phone to A, C paid Tk3,000 to B for his medical expenses and D paid Tk5,000 to C so he could buy new furniture.

The female FGD participants mentioned that compared to male slum dwellers, women and children pass more time in the slum. Children wander around all day. Sometimes they fight with each other, damage someone’s assets and take things without permission. These incidents all cause disputes between mothers.

### **4.1.3 Public or community security matters**

#### **4.1.3.1 Petty crimes**

Because of the current state of emergency, crime rates have gone down but petty crimes like theft still occur. The stealing of cell phones and other goods is very common in the slum area. In Korail slum there are more than twenty *vangary* (pawn) shops. A religious leader told interviewers that “These shops encourage people to steal others’ goods. They get back up from corrupt police and some powerful people of the slum. So there is a syndicate controlling theft. Because of RAB things are better now than five years ago.” Previously, disputes over stealing were controlled by *mastaans* and local political leaders who frequently favored the thieves over the victims. Now that problem has been reduced. Though things have improved, fighting, stealing, eve teasing, etc. are still creating disruptive relationships.

In the slums of Chittagong some slum residents steal garment equipment, wristwatches, cell phones, etc and bring them back inside the slum. This practice often leads to disputes between slum dwellers and outsiders. A policeman said that “If we could evict slums, crime rates will be reduced by 50 percent.” He also said “Since the state of emergency we have been passing a very comfortable time because we do not face any political pressure. So criminals have changed their ways of life because they have lost all shelter. But of course there are still crimes like theft and mugging.”

#### **4.1.3.2 Illegal Drugs**

The Korail slum area was a market for illegal drugs before RAB started working in the area. One high official of the police said “Though slum dwellers sell drugs, local and political elites invest money in the drug business and they are the ones who control it. This business provides a 200 percent profit per day for an investor.” With RAB’s intervention it is now difficult for anyone to openly buy drugs in the slum. After 1/11 several drug dealers were arrested and both the RAB and the police increased their patrols in the area. Consequently most drug dealers have now left the slum. However, in



order to keep the businesses running women and children are now being used as drug carriers because it is more difficult for law enforcement authorities to perform physical checks on women and children.

Slum dwellers in both cities expressed the opinion that the drug trade is a nuisance in the slum. In fact community leaders in both slums in Chittagong argued strongly that their slum is free from drugs. Since the state of emergency has been in place, the leaders announced that if anybody gets involved in any kind of illegal drug dealings they will be handed over to the police. A rickshaw puller recounted that “One night RAB in civil dress arrived in the slum and asked me where they could get drugs in this slum. They asked me to make some arrangements and then they would give me enough money. I said that this slum is free from drugs. You can get alcohol and marijuana from nearby the slum but not here.”

#### **4.1.3.3 Political party coercion and criminals’ use of slum**

Slum dwellers are often used as pawns in political games. For them participation in political processions and meetings is like a second job as they can receive Tk100 for attending one political party meeting. In most cases the same people join in all the meetings and processions arranged by opposing parties. These people are known as “hired public”. In Korail slum conflicts and violence often revolves around these “hired public.” Often one party will try to prevent them from joining in on the meetings of the other parties. Conflict also occurs when multiple parties have events on the same day.

The secretary of the Aam Bagan slum committee provided an explanation of the political use of the poor. He argued that “Our previous leader, who is the founder of this committee, intentionally divided our poor people into two groups. He decided who would join which party. Our goal is to protect against eviction and aid rehabilitation. So we participate in politics or cope with political activities just to survive. Our poor people normally pass leisure time in the afternoon. At that time if they go to the party meeting or procession they can earn some money and enjoy the crowd. It strengthens their self-agency. So why wouldn’t they be involved with political parties? It’s true that these political activities sometimes create disputes, but we are able to resolve these problems because the committee always maintains a balance of power. ”

The slums are also used as safe houses for criminals, *mastaans* and political musclemen. One police official commented that “In the slum the density of population is so high that these miscreants can easily take shelter in the slum and it is very difficult to find them. If we want to prevent crimes in the city we have to evict the slums.” Often slum dwellers become the victims of mass arrest and block raids.

#### **4.1.4 Factors behind dispute and complaints:**

Based on our study of the three slums, we have identified some common factors that create disputes and complaints:

- Inter district biasness (particularly in Korail slum)
- Absence of smooth infrastructure
- Absence of better affordable social service
- Threat of eviction
- Absence of better governance
- Vulnerability of women especially single women
- Proxy citizenship
- There are some invisible person and informer of police who try to make small issues bigger to get some benefit (particularly in Korail slum)
- Absence of community tightness of cultural norms, values and respect (particularly in Korail slum)
- Division of class position is very high
- Culture of control of surrounding urban elite neighbors over slum dwellers

Most interviewees said that the formal security systems like the police, RAB, etc. are doing better to reduce disputes and insecurity matters. They get help from them. Though there are some negative sides, most interviewees said that regarding security they are enjoying more freedom with the presence of RAB. But some people also mentioned that though the *mastaans* have been removed, new strategies for exploitation have been developed. Extortion in the name of service charges is an example.

When asked to consider dispute resolution, respondents identified problems that are easy, difficult and impossible to resolve. Problems like trash disposal, fights among children, family matters, etc. are easy to resolve. If disputing parties have equally powerful connections or supporters or they do not listen to the local committee, disputes become more difficult to resolve. When there is a serious criminal offence, the problem is impossible to resolve at the local level.

In Chittagong we have also observed several positive factors which, compared to the Korail slum, are more effective in protecting poor slum dwellers from hostile relations. These are:

- Geographical homogeneity of slum dwellers (most slum dwellers are from Comilla region). In Korail, heterogeneity of slum dwellers creates a number of problems. For instance, there is distrust among the slum dwellers because they possess different community feelings based on their regional origins. As a result, slum dwellers are divided into a number of small groups based on their regional identity, which very often triggers disputes. Besides, it encourages individualistic attitudes causing people to become reluctant to help each other.
- Cultural harmony
- Relative security of tenancy
- Presence of a single strong committee—the single committees in both the Chittagong slums have been working to secure land rights and to maintain a very good relationship with the government for their purposes. Consequently, slum dwellers there frequently try to take a stand against illegal activities. For example, recently some robbers hijacked a patrol policeman's gun near the Aam bagan

slum area. The police sought help from the slum dwellers to search for the gun. At midnight more than 400 slum dwellers searched the slum and the surrounding area. Eventually they found the lost gun in the surrounding area as well as another unclaimed gun. For this action the police rewarded the slum committee.

#### **4.2 What institutions do the urban poor approach to resolve disputes over urban assets and why?**

In the resolution of disputes, the existence of a strong slum welfare committee is a key factor. In slums, the entire dispute resolution process is informal where a range of actors starting from neighbors to the police get involved. This informal process follows a certain chain. Disputes remain completely informal if they can be resolved through the help of neighbors, landlords, elderly persons, friends or relatives. On the other hand, if a dispute cannot be resolved by these people, the disputants seek help from slum welfare associations, district associations, mosque committees, market committees, community police, political parties, the local ward commissioner or his representatives, local elite/landlord etc. In these cases the informal process often becomes more formalized and structured so that it follows a certain procedure.

In areas where the slum welfare committees are not that strong, political elites play an important role in dispute resolution. The reason is that in such cases the formal institution (i.e the slum welfare committee) always tries to cope with the changing situation. Formation of the committee depends on the underlying government policy – ‘living in the slum without any interruption’. As a result, every committee engages the political leaders of main two parties – Awami League and BNP. So every committee exists in the shadow of the mutual relationship between the political parties. Interestingly, party leaders have multiple identities. While conducting our interviews in Korail slum, we spoke with a person who is at the same time the president of AL, BRAC School, Marie Stopes Clinic Delivery centre and also an adviser to the slum development committee. He also contested the last parliamentary election as an individual candidate. During the democratic regimes (1991-2006), the ruling political parties controlled the informal dispute resolution process in this slum. They usually arranged meetings at the party office. Now, as the political leaders hold different positions in different committees they are involved in dispute resolution in a different way. They do not use their political identity or linkages when it is inconvenient to do so. So the role of politics in dispute resolution through different committees has been evident in Dhaka slum.

The situation in both the slums of Chittagong is quite different. There, only one social welfare committee controls everything. If no solutions can be found by involving family members and neighbors, the urban poor generally seek assistance from these institutions. However the growth of a single, strong social welfare committee in both the slums was only achieved through the presence of two charismatic leaders. In the Agrabad slum there was a dynamic non-political leader named Makshud Ali who controlled the slum from the very beginning. The slum dwellers supported him and somehow became dependent on this charismatic leader. He used to clean the slum area by sweeping and cleaning drains by himself free of cost. He also established a mosque and if anybody became sick

he ensured medical treatment. Though this man was a rickshaw puller, he established a school for the children. When anybody faced any crises Ali was there for them. From 1950 to 1982 he was the only person who performed all benevolent philanthropic activities in this slum. In 1982 the slum welfare committee was established. For 15 years Ali was the president of the committee. As the president, he maintained all the political and government connections to prevent slum eviction. He had strong connections at the police station as well, so any case which bypassed the slum committee to the station was usually sent back to Ali and his committee by the police. In these ways, Ali looked after the slum.

Similarly, in the Aam Bagan slum a person named Jahangir played a prominent role. He formed the committee to keep the rehabilitation movement alive and to ensure the land rights of the slum residents.. To attain these objectives, he used many strategies. In a *shalish* he would physically punish the offender to create a deterrent effect. In both cases strong leadership in the slums' early stages helped to develop one single institution. There were other factors that helped these committees establish their legitimacy, including the following:

- As these slums are small in size, there is a relatively stronger sense of community. In these slums, unlike Dhaka slums, residents know each other like they would in a village. This helps the committee to monitor the social security aspects of community life.
- There is a common platform among the dwellers to establish the slum as being 'free from drugs.' This is due to the fact that if there are drugs in the slums, the residents believe that the government may evict them from their living space. So, with the leadership of the committee they are protecting their image. However, some of the interviewees expressed that there are still some illegal activities going on inside the slum. Furthermore they said that the illegal activities were being controlled by the committee members themselves. Control over these activities actually gives the committee a certain type of legitimacy and authority in the eyes of an ordinary slum dweller.
- These committees maintain stringent rules. If anyone challenges or violates the rules then the slum authority takes the necessary steps against her or him. For example, recently the Agrabad slum committee members have fired their president for not taking steps according to the set rules. The committee accused the president's daughter of becoming a prostitute, violating the slum's cultural norm. The president was unable to expel his daughter from the slum to avoid the consequences. In this situation, the other committee members jointly signed an application against him, sent it to the commissioner and requested him to take action. Accordingly, the commissioner fired the president and formed a new committee.

The local commissioner and the administration depend on the committee to resolve disputes involving slum dwellers. They are very supportive of these committees. Sometimes if disputes remain unresolved, the poor and the committee then seek assistance from the commissioner or police.

Despite the ups and down of the political parties, the committees remain the same. For this reason they maintain their relationships with both the ruling and opposition political parties. “Political biasness is balanced within the committee and therefore has no impact on the dispute resolution process,” said the president of one slum committee.

In both Dhaka and Chittagong, the female inhabitants are visible in the slum area but they are almost absent from the dispute resolution process, even if they are one of the affected parties. Nonetheless, examples of symbolic female representations have been found in the committees. Also, the participation of women as witnesses is very common in *shalishes*.

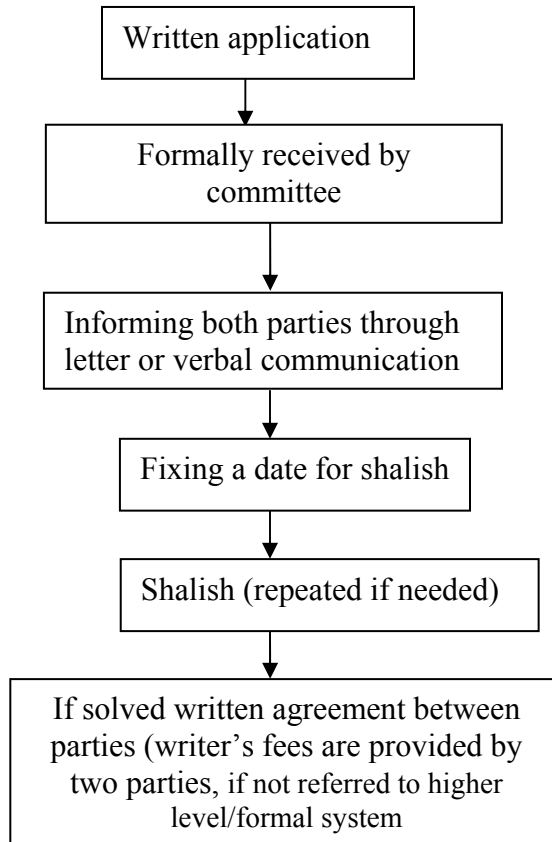
#### **4.3 What are the institutions’ prescribed procedures or customary practices for resolving disputes?**

In the slum areas two kinds of procedures are followed to solve a dispute -

- On the spot *shalish*
- Formal procedure

In order to resolve trivial matters, many institutions prefer to solve the problem on the spot by instant *shalish*. Common disputes like arguments between husband and wife, children’s quarrels, etc. are commonly dealt with in this manner. Formal procedures have more regular steps that take place before they reach a result:..

**Chart 1: Steps of dispute resolution**



The application fee to apply to a formal committee in Korail is Tk10 per case. The application fee to apply to a formal committee is Tk100 per case in the Agrabad slum and the Aam bagan slum committee does not take fees. After filing the case, the procedures mentioned above are followed. Sometimes people go directly to the police for resolution, but they are usually referred back to the community committee to take preliminary steps.

During the *shalish*, in Korail and Aam Bagan slum, both the disputant parties attend the *shalish* with some supporters like friends, neighbors, relatives etc. The disputants have to spend money (approximately Tk70-80) for light refreshments and tea to entertain the members of the committee. Members of unit welfare committee, bazaar committee, community police etc act as *shalishkars* (who perform the process and deliver the resolution.) In the Aam Bagan slum committee the disputants have to pay Tk20 each for the resolution-writer's remuneration. They also have to pay for typing, stamp papers, light refreshments and tea to entertain the members of the committee. In this slum female committee members conduct the *shalish* by themselves if both disputants are female. During the scoping study we observed a formal *shalish* trying to resolve a situation involving a second marriage. During the proceedings we found female participation and a lively debate involving both male and female participants.

Most cases are solved by one *shalish*. However, if the *shalish* fails to solve a dispute after three consecutive *shalishes*, the committee members recommend the case to a higher level which might include the police, RAB, local commissioner or local elite landlords.

Beyond these more formalized proceedings, there are some customary procedures which are used on the spot. One of our respondents recounted a very interesting strategy to resolve a dispute which is sometimes employed in the community.

A husband and wife argued over some family matters and eventually decided to be separated. They went to one of the study respondents, who is a community leader, and requested that he take necessary steps for their separation. After listening to their complaint, he went to their room and set up two separate beds. He asked each of them to sleep in separate beds for three days while he arranged a formal separation. The couple agreed and after three days they returned to the mediator and requested that he not take steps to initiate a separation.

In addition to these positive stories, we also found some coercive practices that are sometimes controlled by thugs connected with political parties. These men usually receive bribes and then favor one party over the other.

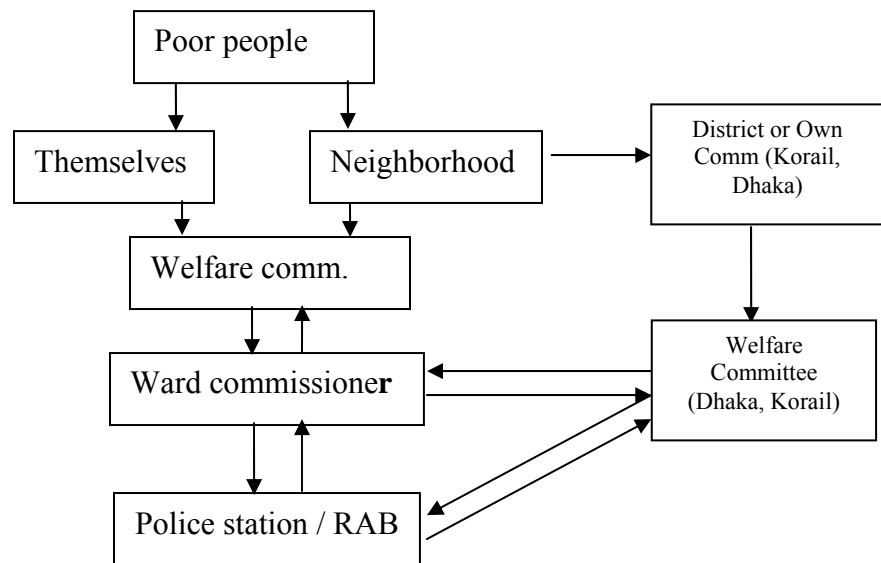
#### **4.4 How do the urban poor actually resolve disputes over assets?**

For the urban poor, the most well known procedure used to resolve disputes is *shalish* (justice conference). *Shalish* is mainly a dispute resolution procedure where, "the parties to a legal dispute are summoned before the presence of ... powerful elites. The main aim of this assembly is to discuss the problems and to reach a peaceful conclusion (The Asia Foundation, 2007, p.21). A *shalish* tries to achieve reconciliation by blending arbitration and mediation. *Shalish* emphasizes reaching a decision and in that sense, it is a form of

arbitration; however, whereas arbitration focuses on imposing the decision on the disputant parties, *shalish* prefers not to do that. Rather following principles of mediation, it aims to make the decision agreeable to both the disputant parties as much as possible. Thus the *shalish* process involves reaching a solution which is acceptable or satisfactory to both the parties. While decisions made through *shalish* are not legally binding, since they tend to satisfy both parties, in general people obey the outcomes.

Generally the poor do not want to go to the police. They are scared of government agencies. There are various institutions around the poor. So when an incident takes place, they explore possible solutions using very familiar connections. As one participant of the poor male FGD in Chittagong said, “We go to the committee with any kind of problem, but sometimes we call our relatives and neighbors before that.” Generally the poor have a common procedure, preferring to keep the conflict within their community. Usually they follow the process shown in Chart 2 in order to resolve their disputes. Sometimes this initial process satisfies them. But if gradually other actors become involved and try to gain some benefit for themselves out of the dispute, things become complicated.

**Chart 2: Flow chart of dispute resolution**



The flow chart shows that that the urban poor are very dependent on their kin relationships. This includes close family members as well as wider kin and regional kin. The significance of regional kin relationships is much more evident in Korail. One possible reason may be that in Korail people from different regions reside together and the slum dwellers generally do not trust people who come from different regions. As one of the respondents in Korail slum explained “People are here from different regions. They have no community bondage like what we see in a village. They don’t care about anyone’s interest except their own. So everyone is trying to make some money somehow, that is what they have come to the city for.” So in Korail, before going to the welfare committee, the slum dwellers try to resolve disputes with the help of the people from



their own districts. On the other hand, in the slums of Chittagong there is geographical homogeneity among the residents. As a result, their welfare committee is strong and is generally perceived to be trustworthy.

Formal state system and procedures are alien to the slum dwellers. Though it should be explored more, the general perception of the poor is that it takes more money to use the formal system. One slum dweller explained, “We are poor. Providing for daily expenses is sometimes quite difficult for us. As we live in slums, various disputes may happen but we are not able to go to police and court to solve these disputes because it means spending more money. So we prefer the cheaper way where we get justice free of cost or at very low cost and in short amount of time.” Their perception is that police or other government agencies do not regard the poor as respectable citizens and rather try to exploit their class position.

Discussing with different interviewees, we found three underlying principles which lead the poor to prefer informal dispute resolution systems.

- Process costs a lump sum amount
- Process ensures acceptable justice
- No perceived harassment

The slum welfare committee members said that they always try to settle disputes based on reaching a mutual agreement between both the involved parties. They do not delay in responding to problems and quickly call a *shalish*. The treasurer of the Aam Bagan slum committee said, “If the process becomes delayed it causes monetary damage and gets complicated as different stakeholders get involved.”

The president of one committee said, “During the decision making process we try to ensure that the victim receives monetary compensation.” He explained, “The poor are always fighting to earn money. Receiving monetary compensation is the most acceptable form of a just outcome for a poor victim. So most of the time we try to measure punishment or justice through money and then turn the figure we set into a decision.”

#### **4.5 How satisfied are the urban poor with the dispute resolution processes they access?**

In all the slums studied, we found that satisfaction depends on disputants’ self-defined moral judgment, community judgment and the pressures created through collective decision making. In most of the cases the aim of satisfying both parties is emphasized. In informal processes this ideology works effectively.

When the association or committee takes charge to solve a problem, the first thing that they do is get commitment from both the parties that they will obey the decision, which generally ensures compliance. The following case from the Korail slum might help an observer to understand the satisfaction process.

### **Box: Process of Satisfaction**

One day a rickshaw puller and a shopkeeper argued with each other over the fare of a rickshaw ride. After some time, the shopkeeper punched the rickshaw-puller and he was seriously wounded and admitted to the hospital. While he was in the hospital, he became more ill with severe appendicitis pain and had to undergo surgery. The total bill for his hospital stay was Tk25000. His relative complained about these events to the local welfare committee. Through an informal procedure it was decided that the shopkeeper would pay the hospital bill. The shop keeper complied with the decision and both parties were satisfied. The rickshaw-puller was convinced to accept the decision because the expenses for his surgery, which were not related directly to the punching were paid off. On the other hand, the shopkeeper was convinced to comply because he believed that if the case was handed over to the police and the courts he would have had to pay even more.

In many cases people said that if they are not satisfied with informal decisions they just have to cope as they have no better alternatives. Sometimes coping with decisions and the feeling of being satisfied overlap. As one interviewee in Aam Bagan slum narrated, “One day, a young boy stole a cell phone from an elderly person and was caught. The decision of the *shalish* was obviously against him. He had to pay a monetary penalty which was more than the actual price of the phone. He didn’t say anything in front of the *shalishkars* but expressed his dissatisfaction with this punishment when he came out of the room.” Sometimes, offenders as well as slum dwellers feel that an injustice has been caused by the *shalish* decision. A young woman recounted a story in which “A male person married a second woman without the permission of his first wife. He then started to live with the second wife. When the first wife complained to the committee, they arranged a *shalish*. According to the decision the second wife was given Tk5000 to leave the place and the male was ordered to live with his first wife. Didn’t this decision leave the second wife in an insecure position?”

Though the process and satisfaction levels with the *shalish* process are almost the same in the slums of Dhaka and Chittagong, in Korail slum there is another dimension to the outcome of the *shalish*. Here, the same disputes occur repeatedly. Most of the resolutions take effect immediately, but longer-term effects depend on various dimensions. The culture of individualism sometimes influences someone to attempt to get revenge for a previous failure in the *shalish process*. So that person tries to create problems whenever possible to gain some political support. These kinds of incidents are quite rare in the slums of Chittagong. Here, though there may be some dissatisfaction with the outcomes of the *shalish*, people normally obey them. Besides, a dissatisfied disputant can take his complaint to a higher level of mediation. As the Aam Bagan slum committee president said, “If any disputant does not obey us, we do not continue with his/her case. But this usually does not happen. Sometimes parties cannot be satisfied and we refer their cases to the commissioners.”

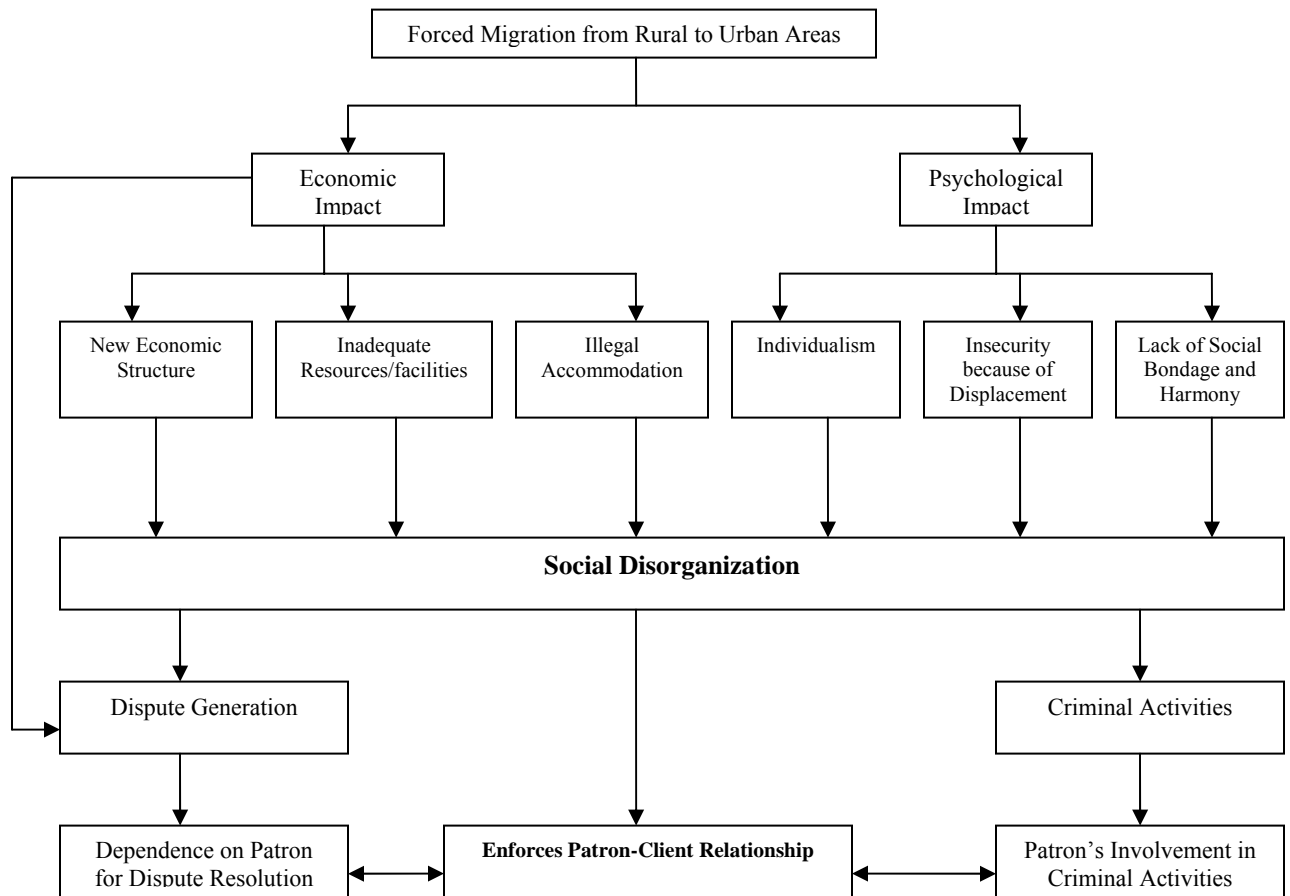
During interviews different people expressed their opinions on how the dispute resolution process might be strengthened. A summary of the recommendations made by the key informants is provided below:

1. Involving government authorities like the police, ward commissioner and city corporation officials in the primary resolution process along with slum people will ensure that people would not have other options except for a formal court. This would encourage a definite decision to be made very quickly.
2. Local governance units (sub-wards) should be introduced into slums and be given the option of a direct election system. If it happens, like union parishads, poor people will derive more benefits through this local government unit.
3. Proper rehabilitation or better facilities for education, health, and income generation as well as improved security support would reduce the number of disputes.
4. Forming a permanent 'shalishi board' which includes slum dwellers, NGO representatives and government actors would be a positive step. The board members should be given training on the existing laws so that they can resolve disputes efficiently.

## **5. Recommendations and Conclusion**

In this section, based on the scoping study findings, we attempt to develop a conceptual framework for the second phase of the research which will include in-depth case studies in Dhaka and Chittagong slums. An important dimension of the process of rural to urban migration is that it is a journey from homogenous social organization which relies heavily on ethnic bondage and kinship to a heterogeneous society. This journey, at the same time, denotes a movement from the agro-based economy towards a monetary economy, where social structure is more individualized and relations are more rational and impersonal (Whyte, 1943). As Makenzie wrote, "Slums have been characterized as 'areas of lost souls and missions,' areas where individuals and family groups are living in enforced intimacy, with people whom they naturally shun and avoid; areas where there are no standards of decency or social conduct except those imposed by the outside authority. In such an environment the individual has no status; there is no representative citizen, the human desire for recognition and security remains unsatisfied" (Makenzie, 1922). Thus, their normal set of beliefs and understandings suffers a set back and they find themselves in a vulnerable condition.

**Chart 3: Proposed Conceptual Framework for the second phase of the research**



The urban poor living in slums, experience the realities of ‘patron-client’ relationships every day. In the rural domain, most of them were landless and had to rely on the mercy of the local landowners. They were clients in the patron-client relationship and the patronage system worked on their behalf, as an ‘adaptive response’ to hostility (Stein, 1984). Undoubtedly, this relationship was nurtured for the sake of exploitation; however, the patron remained known to them, the mode of exploitation was clear and they actually had an escape route from this chain of exploitation. Upon migrating to the urban areas they are faced with a completely different scenario.

Low income status, heterogeneous social structures and residential insecurity force them to seek out other patron-client relationships (Shaw and McKay cited in Sampson et al, 1989). To them a patron is someone who will offer them much-needed protection from menace; would avail them with resources and would be a source of reliability in a deceitful world. As Stein put it, “...if you can not rely upon anyone else, at least you can count on the patron” (Stein, 1984)

Today the state remains blind to the living conditions of slum dwellers. State resources are available only through illegitimate means and insecurity had turned out to be a common phenomenon. This situation has led the slum dwellers to seek out and enter into new patron-client relationships. This patronage system allows them to get basic necessities while bypassing formal and official structures.

However, as it turns out, this new 'panacea' is more versatile, more complex and more lethal for the urban poor. There are a number of possible reasons behind this.

**First** is the urban patronage system's lack of transparency and clarity. Kaufman identified three key characteristics of patron-client relationships; it takes place between actors of unequal power; its sustainability depends on the return that each actor expects to obtain by providing services to the other; and the relationship is mainly based on community norms (Kaufman, 1974). To the rural poor the patron is quite visible; they are aware of the power structure and the exchange relation is also simple. In the urban slums the scenario is different. The slums are, in fact, an extension of Frank's 'Metropole-Satellite' model, where the ultimate patron always remains out of the reach. The existence of different patrons for different services is very much possible and the same person does not always remain the patron. Moreover the patron for the slum-dwellers, in a hierarchical structure often becomes a client to the patron of upper echelon. Also unclear is what exactly the slum-dwellers have to provide in return for patronage. The return-of-service may range from something materialistic to becoming an active member of a criminal gang. Thus, once they enter into this patron-client relationship the urban poor find themselves in a well-knit web which is almost impossible to escape.

**Second**, the existence of a patron-client relationships requires the very gap which the patrons assist the client in bridging. In simple cases, this gap refers to a system of inequality which ultimately helps the patron to remain powerful. However, where social structures are disorganized and the client is in a susceptible position, the patron tends to assist the clients in bridging the gap of uncertainty through creating a greater uncertainty. Thus, in urban slums, the poor, while searching for the route to escape from insecurity, find themselves in a greater insecurity (Sampson et al, 1989; Stein, 1984).

**Third**, the slum dwellers suffer from psychological setbacks. Due to their volatile situation and their helplessness in the web of their patron/patrons, they find themselves in a position where they have nowhere to go. As they are 'fugitives' in the eye of the formal or official social/legal structure, they cannot demand more than 'nothing'. They can neither complain about nor share their burden with their neighbors. At the end of the day, they start living in Plato's 'Allegory of Cave, where they try to satisfy themselves with the images and remain blind-folded to the outside world.

The existing literature on slum dwellers mainly focuses on the living condition of the urban poor. It provides a vivid picture of the inhuman conditions that slum dwellers suffer through.

At the same time, the existing literature has so far put little emphasis on the reasons behind this condition. Scholars have provided proof to confirm the existence of patron-client relationships, so far no detailed study has been conducted on the nature, dimension and impact of this patron-client relationship which exists in the urban slums.

Therefore the qualitative research for the in-depth study phase of this project might focus on:

- A detailed analysis of the growth of the 'patron-client relationship' in urban slums.
- The nature and dimension of these relationships and how they relate to national politics.
- How this relationship is hindering people's access to equitable dispute resolution systems (both formal and informal)?
- The impact of these relationships on the urban poor's livelihood and quality of life
- Whether it is possible to replace the patron-client relationship through active NGO interventions?
- What role the state *should* and *can* play to minimize the exploitation of the urban poor by their patrons?

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Annex 1

**List of Interviewees and FGD participants**

**Dhaka:**

Sl. no.	Types of Interviewees	Name	Occupation
1.	Slum dweller	Md. Abyed ali	Shopkeeper
2.	Slum dweller	Shobhan Miha	Rickshaw puller
3.	Slum dweller	Mahbub	Shopkeeper
4.	Slum dweller	Fuzlur Rahman	Unemployed
5.	Slum dweller	Tareq	Unemployed
6.	Slum dweller	Md. Harun	Rickshaw puller
7.	Slum dweller	Kader	Rickshaw puller
8.	Slum dweller	Basher	Garments factory worker
9.	NGO activist	Md. Rafiq	BRAC (program organizer)
10.	NGO activist	Faruk Hossen	BRAC (quality controller)
11.	Religious leaders	Abdul Halim	Immam (Goznobi jamy Mosque)
12.	Religious leaders	Maoulana Shobhan	X Immam
13.	Land lord	Abu Hanif	Shopkeeper
14.	Land lord	Shelina Beggum	House wife
15.	Community leaders	Mamun	Advisor, unit welfare committee
16.	Community leaders	Abdul Malik	President, unit welfare committee
17.	Police	Ruhul Amin	Officer-in-charge (Airport police station)
18.	Lawyer	Kalam	Lawyer
19.	Political leaders	Moklesh Miah	Awami League leader
20.	Political leaders	Habib mistri	Bangladesh Nationalist Party leader
21.	Academic	Dr. Sabina F Rashid	BRAC University, School of Public Health.

Sl. no.	F.G.D-1 (Slum dwellers)	Name	Occupation
1.	F.G.D-1 (Slum dwellers)	Md.Akkas	Shopkeeper
2.	F.G.D-1 (Slum dwellers)	Shipon	Unemployed
3.	F.G.D-1 (Slum dwellers)	Hyder ali	Rickshaw puller
4.	F.G.D-1 (Slum dwellers)	Osman Goni	Shopkeeper
5.	F.G.D-1 (Slum dwellers)	Yushuf Sharif	Rickshaw puller
1.	F.G.D-2 (Slum dwellers)	Zalal	Garments factory worker
2.	F.G.D-2 (Slum dwellers)	Rashid Ali	Shopkeeper
3.	F.G.D-2 (Slum dwellers)	Akter Hossen	Unemployed
4.	F.G.D-2 (Slum dwellers)	Zabid Hashan	Garments factory worker

Sl. no.	F.G.D-3 (Community leaders)	Name	Occupation
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1.	F.G.D-3 (Community leaders)	Boro Miha	Member,unit welfare committee
2.	F.G.D-3 (Community leaders)	Imran Miah	Member,unit welfare committee
3.	F.G.D-3 (Community leaders)	Taizul Islam	Member,unit welfare committee
4.	F.G.D-3 (Community leaders)	Md. Babul	Member,unit welfare committee
1.	F.G.D-4 (Community leaders)	Badal Master	Community leaders
2.	F.G.D-4 (Community leaders)	Shukur Ali	Member. Community Police
3.	F.G.D-4 (Community leaders)	Md. Shalam	Member. Community Police
4.	F.G.D-4 (Community leaders)	Nuzrul Islam	Community leaders
5.	F.G.D-4 (Community leaders)	Hosen Doctor	Member,unit welfare committee
6.	F.G.D-4 (Community leaders)	Kalam Ali	Member,unit welfare committee

### Chittagong

Sl. no.	Types of Interviewees	Name	Occupation
1.	Poor slum dwellers-A	Shahidul Islam	Shopkeeper
2.	Poor slum dwellers-A	Raficqul Islam	Business
3.	Poor slum dwellers-A	Abdul Berek	Ric: Business
4.	Poor slum dwellers-A	Zakir Hossain	Sand Supplier
5.	Poor slum dwellers-A	Md. Giru khan	Ric: Business
6.	Poor slum dwellers-A	Md. Akkas Ali	Ric: Garaje
7.	Poor slum dwellers-A	Selina Begum	Shop keeper
8.	Poor slum dwellers-A	Shahanaz Begum	Leader- Showhardo
9.	Poor slum dwellers-B	Md. Khalilur Rahman	Small business
10.	Poor slum dwellers-B	Shak Ahmed	Shop keeper
11.	Poor slum dwellers-B	Md. Shalim	Business
12.	Poor slum dwellers-B	Md. Ozid Ullah	Teacher
13.	Poor slum dwellers-B	Zahanara Begum	House wife
14.	Poor slum dwellers-B	Aklima Begum	House wife
15.	Poor slum dwellers-B	Gofur Ali	Rickshaw puller
16.	Police	Nirmolendu Bikash	O.C (Hali shahar)
17.	Police	Moniruzzaman	S.I (Hali shahar)
18.	State Officer	Ahmedul Haque	City corporation
19.	Officer	Md. Nasher Chowdhury	City corporation
20.	City planner	Razul Karim	City corporation
21.	Community leader-A	Md. Shahidul Islam	
22.	Community leader-B	Md. Abu taheyr	School Teacher
23.	Political leader-A	Md. Omer	AL
24.	Political leader-B	Foyzul	BNP
25.	Religious leader-A	Ali kodor	Immam
26.	Religious leader-B	Yunus ali	Immam
27.	NGO Activist	Md. Ariful Rahman	CEO, YPSA
28.	Academic	Mamtaj Uddin Ahmed	Assistant Professor, Chittagong University
29.	Academic	Amir Mohammad NASrullah	Assistant Professor, Chittagong University

Slum A= Aam bagan slum

Slum B= Agrabad slum

Sl.	F.G.D	Name	Occupation
	F.G.D-1 (NGO activist)		
1.	F.G.D-1 (NGO activist)	Probal Bayoura	APO (YPSA)
2.	F.G.D-1 (NGO activist)	Md. Masud Rahman	PM (YPSA)
3.	F.G.D-1 (NGO activist)	Shamoshry Dus	PO (YPSA)
4.	F.G.D-1 (NGO activist)	Md. Shazahan	ES (YPSA)

Sl.	F.G.D	Name	Occupation
1.	F.G.D-2 (Women Slum dwellers)	Shohida	House wife
5.	F.G.D-2 (Women Slum dwellers)	Yanur Beggum	House wife + Shopkeeper
1.	F.G.D-2 (Women Slum dwellers)	Mrs. Moriyoum	House wife
2.	F.G.D-2 (Women Slum dwellers)	Amayana	House wife
3.	F.G.D-2 (Women Slum dwellers)	Ambaya	House wife
4.	F.G.D-2 (Women Slum dwellers)	Rezaya	House wife
5.	F.G.D-2 (Women Slum dwellers)	Hazara	House wife
6.	F.G.D-2 (Women Slum dwellers)	Yesmen	House wife

Sl.	F.G.D	Name	Occupation
1.	F.G.D-3 (Community leaders)	Bishu ali	Member,unit welfare committee
2.	F.G.D-3 (Community leaders)	Moynuddin	Member,unit welfare committee
3.	F.G.D-3 (Community leaders)	Alfaz uddin	Member,unit welfare committee
4.	F.G.D-3 (Community leaders)	Md. Hannan	Member,unit welfare committee

Sl.	F.G.D	Name	Occupation
1.	F.G.D-4 (Men Poor slum dwellers-A)	Hazrat Ali	Shop keeper
2.	F.G.D-4 (Men Poor slum dwellers-A)	Hayat Mahmud	Shop keeper
3.	F.G.D-4 (Men Poor slum dwellers-A)	Omar miah	Rickshaw puller
4.	F.G.D-4 (Men Poor slum dwellers-A)	Md. Amin	Ric: business

Sl.	F.G.D	Name	Occupation
1.	F.G.D-5 (Men Poor slum dwellers-B)	Shona miah	Ric business
2.	F.G.D-5 (Men Poor slum dwellers-B)	Kalam Uddin	Shop keeper
3.	F.G.D-5 (Men Poor slum dwellers-B)	Araj ali	Besiness
4.	F.G.D-5 (Men Poor slum dwellers-B)	Abu alim miah	Shop keeper
5.	F.G.D-5 (Men Poor slum dwellers-B)	Alim khan	Shop keeper

### Types of work in Korail slum

Serial No	Working places at the urban slum	Starting from	Number of working places at the beginning (Approx)	Number of working places at the present (Approx)
1	Bhangari	1995	2	54
2	Laundry	1994	1	12
3	Small convenient store	1992	6	250
4	Hair salon	1992	2	60
5	Video games shop	2003	1	8
6	CD shop	2004	1	20
7	Grocery shop	1993	6	150
8	Fish shop	1993	6	35
9	Fire wood shop	1993	2	100
10	Hot food shop	1992	3	20
11	Tailor shop	1993	2	20
12	Tea stall	1992	12	150
13	Mobile phone shops: for recharging credits and making calls	1995	1	100

Source: Employers' perceptions of changing child labour practices in Bangladesh, SK Tariprzaman and Elma kaiser (December-2007) BRAC research monograph series, No-35

### Service institutions in the Korail Slum:

#### Schools

Serial No	Name of schools	Number of schools	Year of establishment	Number of students	Age of the students	No of shifts	Classes	Benefits
1	BRAC							
2	Bangla-German Pothokoli	1	2006	120	6+	2	Nursery-2 <sup>nd</sup>	Books, note books, pencil, snack, slate, health service
3	Intervida	1	2001	60	Children of all age	-	-	Toys, art classes, educational elements
4	Working children project	2	2001	80	9 - 12	2	3 Years long project	Vocational training is provided after 2.5 years
5	Intervida		2001	292	6+	2	1st to 8 <sup>th</sup>	

	Path shala-1							
6	Intervida Path shala-2		2001	252	6+	2	1st to 8th	
7	Child and elderly learnign center	1				2	1st to 2nd	chocholates at the begining, milk, banana, egg, bisckites
8	Urban developmen t center	2	2000		4-6		Play group	Books, note books, pen, toys
9	Fulki Community based Project for Girls'	1	2007	45	7 - 18	2		Books, note books, pen, slate, music lessons, vocational training
10	Madrasatul Madina Al Manwara	1	2003	121	Various age	2	Moktob	-
11	Nurani Hafezia Islami Madrasa and Orphanage	1	1996	120	Various age	1	Hafezi	-

Source: Employers' perceptions of changing child labour practices in Bangladesh, SK Tariprzaman and Elma kaiser (December-2007) BRAC research monograph series, No-35

#### NGO's in the Korail Slum area and their activities

Sl.no.	Name	Time of starting	Activities
1.	BRAC		Education, micro-credit and health program
2.	Intervida	2006	Education and Health program
3.	Fulki	2007	Education program
4.	UTPS	early 90's	Health program
5.	Marie stopes	2000	Health program
6.	IDR	2003	Sanitation
7.	WaterAid Bangladesh	2006	Sanitation and hygiene

8.	Resource Integration Centre	2006	Education program
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Source: FGD with community leaders

### Religious Institutions in the Korail Slum area

Sl.no.	Name	Number
1.	Mosque	3
2.	Madrasha and Orphanage Centre	3
3.	Eid yard	1
4.	Market	3
5.	Graveyard	2
6.	Mazar/Dargah	2

Source: FGD with slum dwellers

### Different Associations in the Korail slum area

Sl.no.	Name	Establishment
1.	No.1 unit wale fare committee	2003
2.	No.2 unit wale fare committee	2005
3.	Bou bazar businessman wale fare cooperative committee	98
4.	Policing club	2005
5.	Festive committee of pir	
6.	Mymensing cooperative Committee	2000
7.	Field/ Eidyad committee	
8.	Rickshaw garage employers committee	2006
9.	Boat employers committee	1995
10.	Mosque/Madrasha/graveyard Committee	

Source: FGD with community leaders

## **Appendix F – Indonesia Scoping Study Report**

This Scoping Study Report submitted by our consultant in Indonesia was deemed inadequate. We are in the process of hiring a new consultant to conduct the research in Indonesia. Further measures are being taken to ensure that the final report from Indonesia will be of a similar quality as the reports from our other consultants.

### **Scoping Study Report**

## **Access to Justice for Urban Poor in Indonesia**

**By**

**Yacobus Kunharibowo**

**Revised following Project Inception Meeting  
In Manila, the Philippines  
24-26 July 2008**

## **I. Problem statement**

Jakarta and Tangerang are promising cities which have become destinations for migrants coming from all over Indonesia. The rate of urbanization in Indonesia has rapidly increased, leading to more populous cities experiencing new economic, political and social issues. Rapid development of urban infrastructure has been taking place without thought for the urban residents of the city. The impact of the physical development of the city and the process of urbanization have increased the economic value of everything in the city centers. On the other hand, the cities are also known for their high rates of corruption, dehumanizing living conditions. Some have dubbed the cities as lawless metropolises in which the conditions are in fact worsening as opposed to developing into ideal places to live.

The cities have enormous economic potential, but at the same time they are faced with the challenges of rapid and unplanned development. With Jakarta's population amounting to 9 million inhabitants<sup>17</sup> and a density of 12.738 occupants per square km. This immense size explains some of the problems the cities have been facing. Many of the problematic disputes and complaints that have emerged have resulted from the state's inability to provide a secure environment for its inhabitants. This paper examines how urban poor communities have sought access to justice when disputes arise and have attempted to defend their rights despite being marginalized from the justice system.

## **II. Description of the rationale**

Given the focus of this study, ethnographic research methods were used to collect data regarding participants' experiences and participation in urban dispute resolution. Research methods included participant observation, interviews with informants, stakeholders and administrators, and a literature study of relevant documents. I visited informants' settlements, and observed their living arrangements, economic conditions, and relations with their family and other community members. Focus group discussions were also held to examine cases of significant disputes or complaints.

### *Site Selection*

The research was conducted in two cities with high populations, namely Jakarta and Tangerang. The urban poor in these two kampungs are mainly concentrated in areas such as river banks, along the sides of railway tracks and under highway bridges. These areas are densely populated and are well known for their poverty. In Greater Jakarta, the specific research sites were North Jakarta city, particularly those areas bordering West Jakarta and East Jakarta. These areas have large urban poor settlements. The research sites chosen consisted of two kampungs, Warakas and Kamal Muara. Both kampungs

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<sup>17</sup> Based on Census 2005.

were chosen because they have more slum residents compared to other administrative territories considered.

Tangerang city is part of Banten Province, which borders the Greater Jakarta area. Tangerang is strategically located between Jakarta, which is the capital city of Greater Jakarta and Tangerang Regency. Tangerang city serves as a buffer zone for the capital city. From an economic point of view, the geographical position of Tangerang has led to rapid development. To some extent Tangerang accommodates over flow activities from Greater Jakarta. Its rapid development has also been accelerated by the presence of Soekarno-Hatta International Airport, which is partly located within the administrative territory of Tangerang. The airport, which is air travel gate of Indonesia, has broadly opened up opportunities for developing trade and service activities in the city.

The specific site chosen for the research is Babagan kampung. Babagan was chosen as it is an area where industrial laborers are concentrated. Most of the laborers work in Tangerang city, where industrial activity is concentrated. The strength of real estate developers has increasingly bought up land in the areas surrounding Tangerang. The rapid growth of the real estate business has had economic impacts on the labors. The building of new and expensive housing complexes led by the real estate developers has gradually reduced the amount of land available to provide laborers with low cost housing. Besides the increases in housing costs, the prices of other daily necessities were also spiking, meaning that laborers had higher expenses. Beyond these economic explanations for the development of slums there were also social reasons. In fact many laborers, as immigrants, also encountered ethnicity-related conflict with the local ethnic groups. With such tense condition in many neighborhoods, living in Babagan often seemed to be a better choice for the labors. Expenses were lower and most of the community was immigrants so there was little ethnic tension. In the end many laborers moved to the place. The fact that the location of Babagan, which is in the suburb of Tangerang, did not add any significant transport expenses since transportation could still be covered by their wages made Babagan an attractive option. So most of Babagan's population consists of industrial laborers.

### *Identifying interviewees*

Interviews were conducted with parties with experience and knowledge of urban poor problems. They are:

- a. NGOs, namely the Urban Poor Consortium, Institute for Ecosoc Rights, and Fakta (Forum Warga Kota Jakarta) organizations that have advocated some kampungs where the urban poor are concentrated.
- b. The urban poor community members who work as pedicab drivers, motorcycle taxi driver, woman worker, steet vendors and street singers.
- c. Researchers/ academics. There were two researchers we encountered who were in the middle of conducting research on police reform in Indonesia.



- d. A religious leader who has devoted his life to work with the urban poor through the Sanggar Ciliwung organization.
- e. Police and court staff
- f. Local leaders. These are people who are often asked to act as mediators when internal disputes among community members occur; head of kampung and staff members.
- g. Journalists, particularly city desk ones, of national newspapers agencies and research and development personnel. They have a comprehensive knowledge of problems in the city. I visited the Kompas Daily newspaper which is the biggest newspaper agency in Indonesia. I also considered it important to visit Harian Jakarta, a newspaper which specifically concentrates on issues affecting Jakarta and its surroundings.

There are more interviews needed, namely with those working for formal institutions, such as local government staff, members of the House of Representatives, prosecutors, judges etc. Some of these potential subjects are from institutions that have been directly dealing with society members in disputes. In addition, there are also some other locality based social organizations, such Betawi Communication Forum (Forkabi-Forum Komunikasi Anak Betawi), Betawi Brotherhood Forum (FBR-Forum Betawi Rempug), Kelompok Banten (Banten Community), and some ethnicity based hoodlums that would be informative for this study. Religious leaders of different groups also need to be interviewed since they are often treated as community patrons by local residents.

*Techniques used to interview and observe the dispute resolution process*

Jakarta is a large city that can be hard to navigate. Heavy traffic jams are not uncommon. It was not always easy to meet informants and interview them. It was often even more difficult to meet bureaucrats that required appointments far in advance of the meeting day. Daily schedules had to be made rigidly and carried out strictly. In depth interviews were recorded and later transcribed in verbatim.

Within the scope of this study, visits for interviews and observations were done during the primary stage with the assistance of some local NGOs. These initial meetings also served as a means of self introduction to the communities. This process was designed to build mutual trust for later stages of research. Self introductions were also done with some key persons at the sites. This initial assessment was used as an entry point which will allow for wider research on dispute resolution. It has also enabled me to conduct this research more easily in terms of learning from initial observations.

The literature study was done by reviewing available literature from research published by international institutions, NGOs, and other sources. In order to investigate cases occurring in the field, reading materials from newspapers and magazines were explored to obtain a real picture of events that have occurred in the past.

### **III. Findings of the Scoping Study**

Local governments, including the provincial government of Greater Jakarta, try to reserve land for general housing complexes, not particularly for housing complex for the urban poor. With the issuance of the Law No. 4 year 2004, the government, in fact, intends to control the development of housing complexes, both by restricting the establishment of housing complexes and limiting the provision of land. With the same law the government also intends to prevent land speculation by private estate developers. Despite this intention there are Governmental Regulations on the subject. It means that the urban poor have limited opportunities to obtain their rights to proper settlements.

The failure to prevent land speculation, inefficient land utilization, and the prioritization of formal and massive housing developments have resulted in a negligence to genuinely promote significant self-funded housing programs like the Kampung Improvement Program (KIP.) KIP, in fact, has been implemented by the Greater Jakarta provincial government since 1969 when the Muhammad Husni Thamrin Project was initiated. At the time of program creation, 60% of Greater Jakarta's population settled in slum areas as squatters. The program was considered a 'leaping program' as it intended to relocate slum residents to low cost apartments. At the time Kampung in Jakarta had been growing rapidly, reaching a growth rate of 100-150 hectares annually. With time the populations in existing kampungs had also become extremely dense. Unfortunately the rapid growth of kampungs was not followed by the development of proper urban public services. KIP had been chosen as a program that improved the quality of life in slum areas by providing public facilities, social facilities and promoting togetherness among kampung members. Limited budgets combined with growing problems within the urban communities and the rapid growth of slum populations were all challenges being faced by the provincial government at the time. KIP is currently considered a positive program in managing urban settlement problems but many of the same shortcomings still exist.

#### **a. What types of disputes and complaints over urban assets are arising?**

Problems of disputes and complaints over urban assets are greatly varied, especially when considering big cities like Jakarta and Tangerang. These big cities serve as melting pots for people from various backgrounds along with their interests, so big cities have come to embody the complexity of problems found throughout Indonesia. Problems of land and settlement, jobs, availability of facilities and the like all limit the welfare of society at large.

The urban poor generally earn their living in the informal sector. Their jobs are greatly varied. Some work as three in one jockeys, motor cycle taxi drivers, street singers or musicians, street vendors, laundry cleaners and the like. Normally their working places are not far from their houses, or sometimes they even work in them. Many of them live along the river banks, beside railway tracks, and are commonly seen as illegal settlers since they do not have any legal ownership documents for their land. They usually

occupy government property, *damija*,<sup>18</sup> that is not being used. The specific areas belonged to Bina Marga<sup>19</sup>, Jasa Marga<sup>20</sup>, railway sides belonging to the Indonesian Railways (PT KAI), and other lands belonging to private sectors. It is clear that the urban poor couldn't afford to live in legal settlements, especially in Jakarta, which is the place with the most expensive land in Indonesia. Residents simply occupied a pieces of unoccupied land by establishing simple houses. Other people would soon follow. By joining the earlier groups the settlers became a community. As this community became larger and larger public facilities, such as water, electricity were eventually provided.

Mr. Dadang is one of the residents who lives in a *damija* area. He previously rented a house in Warakas legally. This means that he could gain citizenship. He has an identity card, and a family card. All the members of his family have legal documents and renew the documents regularly. Increasing rental charges made Mr. Jajang unable to extend his lease. He then decided to move to an illegal area by first finding a piece of land with a low price and then building a house where he lived.

These informal residents were treated like consumers by the service providers, such as *Perusahaan Air Minum* (Drinking Water Company), *Perusahaan Listrik Negara* (State Electricity Company) and the like. In addition to the monthly fee they for the delivery of water and electricity, they were also asked to pay retribution fees. It sounds terribly ironic since they were also asked to pay *Pajak Bumi dan Bangunan* (Land and Building Tax), for the illegal land they settled in. Legal recognition of the illegal settlements was hard to obtain.

In Warakas village an illegal settlement has been there for 10 years now. The land near the river used to be unoccupied and belongs to the Directorate General of Bina Marga. The Directorate General of Bina Marga had been planning to develop the community by adjusting the curving river to create a straight river flow. Unfortunately those illegal settlers came faster than the plan. Now at least 100 families, both owners and renters, have settled down next to the river. This became a problem when the authorities wanted to carry out their suspended plans for creating a straight river flow. This plan would force out the people who had settled down there. It is obvious that there would be massive evictions and an illegal settlement demolition soon after the issuance of a *Surat Perintah Bongkar* (Letter of Demolition Order) by the mayor. This Letter of Demolition Order compelled the inhabitants to move to another illegal location. Similar situations have occurred in many other places. One similar incident took place in Kampung Rawa, the

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<sup>18</sup> *Damija* is abbreviated from *daerah milik jalan*, which literally means areas belonging to streets. It is an area along the street which is bordered by a certain length and width and is under the control of the government authority; this area serves as a part of the street, is used for widening the street, adding traffic lines and spatial need for the security of the street.

<sup>19</sup> Directorate General of Bina Marga carries out some duties that belong to the Public Work Department in policy formulation and enforcement and technical standardization in toll road affairs.

<sup>20</sup> Jasa marga is the first toll road company in Indonesia with more than 30 years of experience in developing and operating toll roads.

demolished slum had a width of close to 9.5 hectares and had accommodated 1,203 families.

The dispute which emerged concerned land affairs, implying a vast problem for the occupants. In Tangerang, people have disputes with real estate developers due to the high prices of land imposed on them by the developers. Eviction of illegal settlements has been on the agenda of the authorities for years. It was recently found that plans for the evictions of 54 kampungs in Jakarta are currently on the agenda of the authorities. The relationships among community members who might become the victims of eviction becomes crucial. Therefore, organizations can play an important role in articulating their views. Community members planned to participate in a hearing with the members of the Regional House of Representatives, expecting that the local government of Jakarta would not evict them unfairly without involving them in the process as the occupants.

In many evictions, the government has attempted to provide compensation, called *uang kerohiman* or *tali asih* (literally means *compassion money*), amounts distributed are usually between Rp 500,000 and Rp 1,000,000 for each entrance door in one house. The amount given per entrance door varies, depending on the location of the house. Rp 500.000 per entrance door is offered for houses located far from the city center, and Rp 1,000,000 is for houses near the city center. Given the standard living costs of Jakarta, the amount of compensation is much too low, hence it is viewed unfavorably by the community members. This amount is only worth two or three months rent in a small room. The two phrases used by the government to describe the compensation suggest that in their view the money is aid given as an expression of compassion for those in need. For some people, the aid means nothing more than a public humiliation.

Some of those who agreed to the compensation offer have already left the place. Unfortunately some of those had taken advantage of the compensation system to gain extra money by claiming one house twice. This was possible because of weak and disorganized administration by the government. These problems were worsened by the deceitful attitude of some government officers who claimed some houses to be their own, although in reality they didn't own them. Those who refused the compensation were allowed to settle in a shelter built by the UPC. One community organizer working for the UPC was offered Rp 20,000,000 by government officers to leave the area quietly. He refused the offer and decided to settle in the UPC shelter.

Residents who had built permanent houses generally expected that they would be allowed to stay there. There was of course some fear that there was always a chance that the owners of the land would ask them out. In their minds the land they were using had not been used for the public so building there houses there was not inconveniencing anyone. Many of these residents with permanent houses are waiting for the government to give their houses legal status.

When evictions are undertaken the urban poor are removed by various security personnel, such as the resort police, sector police, Municipality Civilian Security Guard, District Military Command or Administrative Civil Police. More troubling in the past have been the participation of informal groups such as hoodlums and gangsters in the evictions. In some cases both these legal and illegal organizations would chase residents from the slums, demolish their settlement and act violently towards them. These kinds of activities led one organization, COHRE (Centre on Housing Rights and Evictions), to give the Indonesian Government the “Housing Rights Violator Award” in 2003. According to their assessment Indonesia as a country had evicted a very high number of residents relative to other countries. Residents of Jakarta suffered the most as their city had the highest number of demolished house. Between 2000 and 2005 Jakarta has experienced the country’s most massive eviction drive ever, During this period 78,000 poor people lost their residences and 65,000 street vendors lost their jobs.

Other problems that cause disputes are related to those residents who have jobs that are considered to be undesirable by city. Some examples might include beggars, street singers, street vendors and the like. Those working these jobs were considered illegal citizens by the Greater Jakarta Administration. In an attempt to resolve problems concerning the legal status of the urban poor, the government has often carried out identity card operations. It is assumed that those lacking identity migrated from other areas outside of the cities and had not transferred their administrative affairs to their new residences. ID Card are required for all citizens, so a lack of identification can have serious consequences for the urban poor.

The economic struggles of the urban poor have been worsened following the fuel-price-hikes. Fuel subsidization for the poor was replaced by the provision of direct cash aid (BLT - *Bantuan Langsung Tunai*), which often led to disputes between the poor and the local government. In many places the amount of aid that should have been granted to the poor was reduced by the government apparatus at the sub district levels for various unacceptable reasons. The program has, in fact, fueled entirely new problems: on one hand, the poor are in need of the aid, on the other hand the government carried out their job reluctantly as they felt that they might be at risk of becoming the victims of the poor. Disputes between the poor and the government emerged since some of the poor thought that they deserved the aid but were refused it. These events led to protests from the poor. It was this violent response that led some of those in government to feel like they are actually victims of the program.

The charms of Jakarta have undeniably become a magnet for immigrants from various ethnic groups. There are diverse ethnic groups in Jakarta that use clearly ethnic-based names to refer to themselves, like the Ambon group, Banten group, Madura group and so on. This ethnic grouping was clearly seen in the domination of certain traditional markets by specific ethnic groups. Certain ethnic identities were connected to certain traditional markets, such as Pasar Minggu which was dominated by the Madurese, Pasar Rumput which was dominated by Makasarese, or Tanah Abang which was dominated by

Ambonese. These ethnic groups have not only influenced the economy and trade, they have also have acted as informal security gangsters in their territory. There have even been organizations like FBR, which clearly acted as a security agency which had control over security in their area. This type of organized crime can easily lead to disputes between the gangs and community members.

Life in big cities can hardly be separated from the presence of hoodlums and gangsters. These types of people have spread out all over the capital city, traditional markets, small side streets, bus terminals and streets. They usually earn a living by blackmailing street vendors, bus drivers or traders in traditional markets. The hoodlums have clearly been ruling the city amidst weak law enforcement agencies and the half-hearted efforts of government officials in performing their duties. These incidents of blackmail have continued to spread and have created an insecure atmosphere for community members.

Other disputes that have occurred involve misunderstandings among groups within the communities. There was a case of a group of people who intended to form a Banten ethnicity-based group. Other groups strongly rejected the intentions of the group to occupy a certain area in the neighborhood. Another notable case involved the demolition of places of religious worship. Both disputes were eventually resolved with the assistance of the elders of the community. Problems related to religion and ethnicity were common and often triggered disputes within the community.

How can these problems be solved? Community members have the most confidence in putting their disputes in the hands of the community elders to resolve. These elders are often able to understand how the disputes might be resolved in a way that is acceptable to the community

The Administrative Civil Police is the governmental agency given the duty of keeping security and public order as well as enforcing local ordinances. They are at the front lines when dealing with disputes between the urban poor and the government. Repressive actions, such as the demolition of illegal settlements and the dismissal of street vendors, are undertaken by the police with authority granted by the government. The police have always hidden themselves behind the regulations they made. Regulations have often been made to improve public order at the local level. Many of those regulations, however, do not serve the welfare of the public at large. Local Regulations are often “weapons” used by the government to overcome technical problems in the field. According to regulations processes become easier to undertake. The process of eviction only requires three Letters of Demolition to be issued before action can be taken.

**What institutions do the urban poor approach to resolve their disputes?**

If we consider formal dispute resolution, there are three pillars of law in Indonesia, namely the police, prosecution, and court. Among the three, the police is the only institution that directly faces the society at the sub district level. The police acting at the sub district level are called *polisi sektor* (sector police), abbreviated as *polsek*. Institutional reform has actually taken place in the past few years, particularly in formal legal institutions. The Supreme Court and Police Departments have been carrying out the reforms and it is greatly expected that they will be able to improve society's trust of the legal process. So far the realities have been far from what was expected.

The many legal problems of Indonesia have made people reluctant to lay their disputes at hands of the government for resolution. The low levels of trust from the society towards the Indonesian legal institutions may indirectly prevent the eradication of poverty. The Police Department has long been seen as an institution which is full of corruption since everything is measured by sums of money. Such a stigma also clings to perceptions of the Supreme Court. Recent scandals of so called "case trade in" and bribery of attorneys by the local business people clearly demonstrate the weakness of Indonesian law enforcement.

Another formal effort that might be undertaken by the urban poor is to report their disputes to independent institutions which have some powers similar to those exercised by the state. The number of such institutions began mushrooming after the 1998 crisis. Some of them are the National Commission on Human Rights, National Commission on Violence Against Women, Indonesian Commission on Child Protection, Ombudsman Commission and so on. People's enthusiasm towards these institutions is not high as many believe that the institutions receive reports but do nothing to resolve the problems uncovered in them.

**What are the institutions' that prescribe procedures or customary practices for resolving disputes?**

The Police Department and the courts are the institutions that prescribe formal procedures for disputes resolution. Formal resolution processes require a significant amount of money and a lengthy period of time. Unfortunately these formal procedures, which already seem complicated in the eyes of the urban poor, are not always followed by the Municipality Civilian Security Guard who often intimidate people and generally have a cruel and uncooperative manner. This formal institutions often makes use of hoodlums to accomplish their goals through violence. Violence has always become a part of evictions.

**How do the poor resolved disputes over urban assets?**

The procedures of formal dispute resolution have been stated clearly. However most urban poor residents do not want to follow the procedures since they have strong prejudices against the formal procedures, believing that formal institutions cannot guarantee fair proceedings and never will genuinely supports them. Such a prejudice has emerged due to the fact that formal institutions have proven to be corrupt. The urban poor keep in mind that partitipating in formal proceedings will only consume their money in vain. Therefore, informal processes of dispute resolution, which usually involves prominent figures of their community, is still the best choice for them to resolve disputes. This informal process is cheaper and takes less time. In addition the informal mechanism is also done in peace and without the coercive force so often used by the government.

#### **How satisfied are the urban poor with their dispute resolutions for they access?**

Informal dispute resolution mechanisms can greatly satisfy the urban poor as they themselves are involved in selecting mediators. However, there are some cases in which informal procedures cannot resolve the disputes. This is clearly the case in disputes involving land ownership, these problems unavoidably have to go through formal procedures. The urban poor are usually far from satisfied with the results of dispute resolution undertaken through formal procedures. Again, the reasons for this dissatisfaction are related to the high costs and long lengths of time formal proceedings require. On the other hand, the urban poor are also aware that participating in formal procedures with the assistance of NGOs, such as UPC, has helped them develop a better understanding the law and law enforcement

#### **IV. Analysis of Findings**

Land seizures have become crucial matters for many urban residents since land and space has become scarce. Communities have had to persistently fight for their land until they failed.

Mediators used in informal processes are generally people with considerable amounts of influence. They are usually the oldest members of the community and are often religious leaders. Disputes have frequently been handed to these elders since informal dispute settlement is the cheapest, fastest, fairest and most straight forward resolution available. For the community these kinds of resolutions are much preferred since they are not required to put their trust in formal institutions that have proven to be corrupt. They are all aware that this kind of informal resolution will put those who are found guilty in situations involving social sanctions. Such types of resolutions show a democratic, grassroots process taking place.

The absence of trust among the urban poor for formal legal institutions has made the institutions dysfunctional. All of the difficulties with using the formal legal institutions, such as costly expenses charged in every case and complicated bureaucratic



requirements, have led them to conclude that the legal institutions are corrupt and never side with the poor. Many of the urban poor even seem to believe that the formal legal institutions have been purposefully corrupted so that mechanisms will entrap people using the law, and then benefit from all the costly expenses charged to them. There are many ways in which formal legal mechanisms take advantage of participants in dispute cases, or even blackmail those involved. These facts all indicate that dispute resolution at the formal level can be a terrible vicious circle. Positions in the Police Department, National Land Agency, Immigration Department, prosecutors and courts are lucrative fields which make a lot of money for those involved. These institutions need to be carefully monitored so that they will become more accountable.

If disputes are widespread and are left unresolved at the local, informal level, they will eventually be brought to formal legal institutions. However, if the community members have assumptions about the formal legal institutions, the dispute resolution process becomes increasingly complicated. It is a well known secret in Indonesia that justice can often be bought. The biggest problem for the urban poor is that they can't afford to buy it. The presence of some NGOs has helped communities eliminate some disputes. Capacity building programs can help the communities resolve some basic disputes. Some success stories of dispute resolution within the communities are the results of such programs. There are also legal empowerment programs that have produced paralegals to fight against professional lawyers for the benefit of the urban poor.

There are three types of laws in Indonesia, national law, customary law, and Islamic law. The national laws are part of the legacy left by colonial (Dutch) law. This national law applies to the life of the public at large. Problems occurring in customary communities can normally be solved with customary law, particularly those communities in rural areas. Islamic law, which is more commonly called as *shariah law*, has prevailed in some regencies. The number of regencies applying shariah law has been growing from day to day, one of those regencies is Tangerang.

Disputes in communities are common and mediators are needed to help solve the disputes as well as problems related to day to day life such as small quarrels among community members, petty crimes, theft and the like. For more serious problems community members usually leave them in the hands of prominent figures in the community, who usually perform their role in solving disputes fairly and with wisdom. These figures usually hold certain positions in the community that are considered respectable, such as teachers, kampung chiefs, or religious figures. When it comes to evictions, however, people usually seek help from local NGOs. Mr. Ujang, for example, started to contact UPC after receiving his first Letter of Demolition Order from the government. He could have chosen to first approach some other professional, like a lawyer. Instead though he decided to seek assistance from the NGO.

The decentralization law of 1999 devolved power over most functions of government to district governments, including the power to re-establish traditional village practices. The law also contains provisions for village governance structures that are intended to make villages more democratic, to facilitate these changes wide leeway has been given to district legislatures in determining how these changes might take place. Decentralization thus has created the potential for greater variance in local governance structures and the way people use customary law (World Bank, 2004.) In a metropolitan city like Jakarta or Tangerang, however, informal methods are already preferred to solve problems. The disappointment felt by people dealing with formal legal procedures has led many to turn away from the formal procedures. The credibility of law makers and those that enforce the laws is extremely low.

At present urban poor communities generally do not have any awareness about legal aid, although some have held legal trainings with the assistance of NGOs like the Legal Aid Institute.<sup>21</sup> It is necessary to promote a model of legal empowerment and capacity building among urban poor residents. Such a program will serve as a seed for the growth of paralegal activity within the community. Such training is a must, particularly regarding legal skills. Training participants in the future might act as legal agents in dispute resolution proceedings which is preferable to professional lawyers who require considerable fees. Such an empowerment will also help the urban poor become more confident in resolving their disputes through their own actions. With good legal skills they will be able to act as defenders of their communities. This, of course, has to be done with cooperation from the local government and the elders. From these activities democracy might spring up at the grassroots level.

It is necessary to strengthen the initiatives of CSOs at the local level in order to improve the quality of their personnel. Knowledge of legal affairs should be improved among the CSOs so that no overlapping programs are undertaken. Legal empowerment interventions are needed for the communities to be able to organize their legal skills and work for justice in their communities. If necessary, foreign institutions should establish cooperative arrangements in the form of training programs for local CSOs and comparative studies to improve our understanding of the problems. Empowerment efforts should be aimed at creating a democratic process among the poor.

It remains difficult for the urban poor to obtain legal status in their settlements, at the same time their lives are consumed by service providers. There is no integration between formal civil administration institutions and other formal institutions. It is necessary to redefine our concept of “citizens” through the establishment of one integrated institution that links the relevant departments.

Institutions able to receive complaints, such as hotline services, need to be developed in order to ensure problems of urban poor involving urban assets are made clear to the

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<sup>21</sup> The Legal Aid Institute, known as Lembaga Bantuan Hukum, is the largest and prominent legal service in Indonesia.

government. So far the mass media is the only agent working as a whistle blower by writing columns for readers or opening up hotline services on radio programs. Service providers also need to integrate themselves to provide an integrated medium where people can post their complaints and problems under one umbrella of service. The mass media can serve only as whistle blowers, an integrated medium organized by service providers might help find resolutions for problems faced by the urban poor.

The duty of formal institutions is to serve the citizens. Such services should be provided in accordance with the existing regulations. In principle, the urban poor are willing to deal with formal institutions as long as it is clear what expenses they will have to bear. Currently they fear having to pay a big sum of money in an illegal way without achieving any clear results. This is one of the obvious types of corruption the urban poor want to avoid. If regulations are clear, particularly on rewards and punishments, the services provided by government officials will actually be carried out in accordance with prevailing regulations. Transparency is one of the main demands of the citizens so that they can deal with a clean bureaucracy. The most effective solution to these problems will be an effort to integrate all law enforcement institutions through public participation.

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## **Appendix**

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**Appendix G – Philippines Scoping Study Report**

**Scoping Study Report**

**Access to Justice for Urban Poor  
in the Philippines**

**by  
Emma Porio**

**Revised following Project Inception Meeting  
In Manila, the Philippines  
24-26 July 2008**

## Acronyms and Abbreviations Used

ADB	Asian Development Bank
ADB-JFPR	Asian Development Bank-Japan Fund for Poverty reduction
ADB-MMUSP	Asian Development Bank-Metro Manila Urban Services Project
ADB-DUCP	ADB Development of Urban Communities Sector Project
AHRC	Ateneo Human Rights Center
CIDA	Canadian International Development Agency
CPADUL I	C. Padilla Homeowners Association
CPADUL II	C. Padilla Homeowners Association !!
CMP	Community Mortgage Program
DENR	Department of Environment and Natural Resources
DINA	Duljo-Fatima Neighborhood Association, Inc.
DPWH	Department of Public Works and Highways
DSWD	Department of Social Work and Development
DWUP	Department of the Welfare of the Urban Poor (Cebu City)
GK	Gawad Kalinga (Catholic NGO)
GSHAI I	Golden Shower Homeowners Association I Inc.
GSHAI II	Golden Shower Homeowners Association II Inc.
GSSAI	Golden Shower Neighborhood Association, Inc.
HJHA	Hospicio de San Jose Homeowners Association
HLURB	Housing and Land Use Regulatory Board
HUDCC	Housing and Urban Development Coordinating Council
MWSS	Metropolitan Waterworks, Sewage and Sewerage System
NHA	National Housing Authority
NSO	National Statistics Office
PhilDRRA	Philippine Partnership for Development of Resources in Rural Areas
PHRIC	Philippine Human Rights information Center
PAHRA	Philippine Alliance of Human Rights Advocates
SALIGAN	Sentro ng Alternatibo Lingap na Panligal
SPEED	Squatters Prevention Encroachment Enforcement and Demolition Team (Cebu City Government)
UPA	Urban Poor Affairs (an NGO)
UPAO	Urban Poor Affairs Office (Quezon City)
VMSDFI	Vincentian Missionaries Social Development Foundation, Inc.

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**Dispute Resolution Mechanisms and Access to  
Justice in the Philippines: A Scoping Study<sup>22</sup>**  
**By Emma Porio<sup>23</sup>**

## **Introduction**

This report is based on an initial scoping study conducted for the Access to Justice for the Urban Poor project. This scoping study report is largely based on the project overview and scoping study guidelines prepared by the Asia Foundation for the Asian Development Bank.<sup>24</sup> The first section of this report briefly summarizes the problems and research questions of the study. The second section reviews the literature, while the third presents the study findings and analysis. The final section identifies some issues for future research.

## **Problem Statement**

As in other developing countries, Philippine cities have been undergoing rapid population growth and urbanization over the past few decades. Economic growth and development, however, have not kept pace with population growth and urbanization. The past decades have seen increasing poverty; social inequality; and shortages of housing, employment, and basic services such as water, electricity, education, health, and infrastructure (e.g. roads, drainage systems, etc.).

In 2000, 44.2 million (54 percent) of Filipinos lived in urban areas. Of these, 22 percent lived below the poverty line (Laquian 2004). In 2006, the National Statistics Office (NSO) reported that 33 out of every 100 Filipinos were poor or roughly 27.6 million people, an increase of 3.8 million compared to the number of poor people in 2003. In 2007, 27 (compared to 24 in 2003) out of every 100 Filipino families were below the poverty line. Roughly, one-fourth of the 12 million plus inhabitants of Metro Manila do not have security of tenure on their home/home lot (PhilDRRA 2008). According to Laquian (2004), these figures will become more meaningful if we consider that poverty has other dimensions, namely 1) lack of means to achieve a decent level of social being, 2) inadequate personal capabilities such as poor health, malnutrition, low levels of education, lack of skills necessary for gainful employment, inability to provide education and training for children, 3) disempowerment arising from lack of opportunity to participate in public and community decision-making, 4) lack of access to information that can guide personal decisions, unresponsiveness of public officials to the demands of the poor, and lack of accountability to the poor by public officials, 5) insecurity and

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<sup>22</sup> This scoping study is part of the Access to Justice Research of the Asia Foundation (AF), with funding support from the Asian Development Bank (ADB). This report shall be presented in an initial scoping study workshop at the ADB, July 24-26, 2008.

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<sup>24</sup> Project Overview and Scoping Study Guidelines: Access to Justice for the Urban Poor (Project No. 39301), prepared by Debra Ladner and Associates of the Asia Foundation for the Asian Development Bank (ADB).

exposure to external shocks such as sudden loss of income, serious illness, natural and human-caused calamities and disasters, including fires, floods, earthquakes, epidemics, strikes, riots, civil disorders, and terrorist acts, and 6) a sense of relative poverty arising from the wide gap between the rich and the poor in urban areas that can cause apathy, hopelessness, despondency, lack of initiative, dependency, and fatalism as well as aggression, anger, rebellion and anti-social behavior.

The Philippine 2000 census identified 239,026 households as living on lots “rent free and without the consent owner” for the whole country. But this classification does not really capture most informal settlers, who pay rent and live with explicit or implicit consent of the owner. The Housing and Urban Development Coordinating Council (HUDCC) reported in 2000 that there were 726,908 informal settler households in Metro Manila alone. In 2008, The Philippine Asset Reform Card reported that 61 percent of these households do not have access to basic services (PhilDRRA 2008). They live in government-owned lands, danger zones/areas (beside creeks/rivers, coastal areas, or under bridges/overpass, easements of roads and waterways, etc.), and privately-owned properties. To rectify this situation, the Philippine government initiated several programs that were designed to change the distribution of resources between the rich and the poor (PhilDRRA 2008). For the urban poor, the major asset reform program is the Community Mortgage Program (CMP), a land acquisition and housing program established together with the Presidential Commission for the Urban Poor (PCUP) in 1989. This was followed by the Urban Development and Housing Act of 1992 (UDHA). Reinforcing this was the Local Government Code of 1992 (LGC), which devolved functions and powers from the central government to local governments. As provided by these two laws, local government units (LGUs) play a central role in the provision of land, housing, and basic services to their constituencies in collaboration with national agencies like the Housing and Urban Development Coordinating Council (HUDCC), National Housing Authority (NHA), Social Housing Finance Corporation (SHFC), and the Housing and Land Regulatory Board (HLURB). These agencies have also been granted quasi-judicial functions to address issues pertaining to the implementation of the above housing and land acquisition programs.

The Philippine for the Development of Human Resources in Rural Areas (PhilDRRA) in its recent report card on asset reform concluded that the Urban Development and Housing Act of 1992 (UDHA) seemed to have strengthened the urban asset reform programs such as the Community Mortgage Program (CMP) and the resettlement and presidential land proclamations. Yet, the access of the urban poor to land, housing and services has not progressed very much since the enactment of the laws and the formulation of these programs.

The Canadian International Development Agency reported that in the Philippines, weak segments of the population like poor women/children and the urban poor have less access to justice in the courts (CIDA Monitoring Report 2006).

## Research Questions<sup>25</sup>

The research will address the following key 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 for resolving disputes?; 4) How do the urban poor *actually* resolve (or attempt to resolve) disputes over urban assets?; 5) How satisfied are the urban poor with how their disputes, cases and complaints have been resolved?

## Review of Literature

The following review of literature covers three sets of topics, namely: (1) description of the barangay justice system (BJS) and related issues, (2) perspectives informing the Philippine judicial system, (3) justice needs of urban poor communities.

The Philippine government, recognizing the backlog of cases in the legal system, decided to decentralize the judicial process by creating a barangay-level body to resolve conflicts that otherwise would be brought up to the regular courts (Pe and Tadiar 1984). Through Presidential Decree No. 1508, issued by President Marcos in 1978, the *Katarungang Pambarangay Law* (Barangay Justice Law), in effect, established a new legal system at the lowest political-administrative unit of the country. The law recognizes the traditional modes of resolving disputes within communities and mandates that every barangay creates a *Lupong Tagamapayapa*<sup>26</sup> (henceforth, *Lupon* or Peace Committee) that settles disputes through mediation and conciliation (Etemadi 2005). As provided by this law, the BJS should be composed of at least 10 (but not more than 20) respected members of the community, chosen and headed by the barangay captain (BC). Disputes and cases that are brought before the *Lupon* can be settled by the barangay captain through simple mediation. But if this step fails, he submits the case to the *Lupon*, who in turn, constitutes a *Pangkat Tagapagkasundo* (Mediators Group or Cluster, henceforth to be referred as *Pangkat*), composed of the barangay captain, the barangay secretary, and three members of *Lupon* to be chosen by both disputing parties. This body acts as a reconciliatory board among the disputants.

The above law also provides that no individual can go to court or any government office to adjudicate a case without having passed through the BJS. Three stages define the mediation process: (1) The barangay captain exercises simple mediation; (2) Should he fail to settle the dispute within 15 days, s/he convenes a *Pangkat* who has 15 days to settle the case. If the mediation is successful, the parties sign a compromise agreement;

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<sup>25</sup> From the Project Overview and Scoping Study Guidelines: Access to Justice for the Urban Poor (Project No. 39301), prepared by Debra Ladner and Associates of the Asia Foundation for the Asian Development Bank (ADB).

<sup>26</sup> Payapa means peace in Pilipino. Thus, the *Lupon Taga-Mapayapa* is like a peace-keeping force that ensures peace in the community through their mediation efforts.

(3) If the mediation is unsuccessful, the disputants may ask for a certificate to file the case in the municipal court (Zialcita 1992:1-2).

Zialcita (1992) studied the success of the *Katarungang Pambarangay* System or the barangay justice system (BJS) in two barangays in Ilocos Norte, Northern Luzon (Ilokano speaking) and Bulacan, Central Luzon (Tagalog speaking). He found that the understanding and interpretation of justice and the law varied by income, class, ethnic composition, and the level of economic development of the communities. Enriquez (1988) in his study in Cabuyao, Laguna noted that *katarungan* (justice) is often used interchangeably with *katwiran* (reason). Zialcita also noted that *kapayapaan* or largely the absence of conflict is highly valued among Filipinos. Community-based or village-based mediators are often known as peace mediators, thus, the name, *Lupon na Tagapamayapa*. His study, however, was only concerned with commutative justice (i.e., restoring justice by means of payment or exchange) rather than distributive justice (i.e., allocation of benefits and burdens in society across groups).

Meanwhile, the Ateneo Human Rights Center (AHRC) argues that most of the laws and the litigation of cases in the Philippines hold a retributive justice perspective where there is a high concern for assigning responsibility and punishing the violator rather than a restorative justice perspective. The latter perspective as defined by Tony Marshall and adopted by the Working Party on Restorative Justice of the Alliance of NGOs on Crime Prevention and Criminal Justice states that “restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future” (Marshall 1999 cited in PHRC-PAHRA 2006).

Utilizing Immarigeon’s (1999) definition, the Philippine Human Rights Information Center of the Philippine Alliance of Human Rights Advocates (PHRIC-PAHRA), described restorative justice as “a process that brings victims and offenders together to face each other, to inform each other about their crimes and victimization, to learn about each others’ backgrounds, and to collectively reach agreement on a ‘penalty’ or ‘sanction’”. This is reinforced by Wundersitz and Hetzel (1996, cited in PHRC-PAHRA 2006) who argued that “appropriate reparation is holistically arrived at through negotiation involving not only the offender and the victim but the respective families and social networks who have also been harmed by the criminal act, with the aim of healing and achieving community harmony”.

According to PHRIC-PAHRA (2006), the following four values characterize restorative justice programs:

1. **Encounter.** Create Opportunities for victims, offenders, and community members who want to do so to meet to discuss the crime or violation and its aftermath;
2. **Amends:** Expect offenders/violators to take steps to repair the harm they have caused;
3. **Reintegration:** Seek to restore victims and offenders as whole contributing members of society; and

4. **Inclusion:** Provide opportunities for parties with a stake in a specific crime or violation to participate in its resolution.

The above literature challenges fundamental assumptions that guide the operation of the judicial system and the character of the litigation process. In particular, these issues raise fundamental questions regarding the justice system and its limitations to respond to the justice needs of ordinary citizens like the urban/rural poor who do not have the means to fully engage the judicial system in resolving their disputes, complaints, and cases.

To a certain extent, the *Katarungang Pangbarangay* (or the BJS) had incorporated some of the characteristics of a restorative justice program. But the problem is that the BJS has limited jurisdiction; it only has jurisdiction over cases with small damages/penalty (P1,000 in rapidly urbanizing areas like Cebu City and P5,000 in Metro Manila) and with less than one year imprisonment.

In practice, the *Katarungang Pangbarangay* (or BJS) has been mainly applied to domestic matters (Etemadi, Ye, and Bermudez cited in Etemadi 2005). But in a study done by the Philippine Human Rights Center, they found that several BJS mediate cases beyond domestic matters like housing, property disputes and the like (PHRIC-PAHRA 2004). The NGO, Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc. (FREELAVA) explored the potential of expanding the BJS to include mediation and diversion in cases involving children in conflict with the law with relative success (Etemadi 2005). FREELAVA, in fact, piloted this project in one of the study sites of this coping study, Duljo Fatima in Cebu City.

The Ateneo Human Rights Center (AHRC) found that the BJS in their mediation practice utilized the following approaches to facilitate the mediation or conciliation process: 1) the use of a *padrino* (godfather or influential person) to influence disputing parties to agree on a compromise agreement, 2) selection of highly respected members of the community to be part of the *lupon*, 3) discussion among the *lupon* to compare the merits of the cases, 4) thorough explanation of the process to the disputing parties and emphasizing the primary goal of arriving at a “win-win situation”, 5) scheduling of hearing dates far apart to provide a “cooling time” to encourage the healing process among the parties, 6) providing counseling to the parties, and 7) discussion with the disputing parties regarding the disadvantages of going to court.<sup>27</sup> These processes as illustrated later by the cases in this scoping study have been used by the BJS and/or the housing associations to address disputes over urban assets such as housing, land, and basic services.

Alternative lawyers (e.g. SALIGAN) found that most litigation cases involving the urban poor pertain to: 1) local and national government’s lack of accountability in ensuring just and humane eviction and demolition procedures; 2) land acquisition rights

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<sup>27</sup> When appropriate, the discussions or hearings are injected with jokes or humor to diffuse tensions and create a more informal environment conducive to settlement as well as to make the parties of the more fundamental issues and values that are at stake.

of the urban poor, 3) the fight against squatter syndicates that undermine the credibility of the urban poor; and 4) unjust and unlawful accusation of squatting (SALIGAN 2003).

The complaints of the urban poor in Payatas, Quezon City were mostly related to insecurity of tenure to their land, inadequacy of basic services, and the unresponsiveness of the government agencies to their complaints ((Veneracion and Ignacio 2006). Narayan (1996) found that formal institutions of the state and market lack sensitivity and relevance and are abusive to the poor, who often feel powerless to negotiate their access for basic services that they need in everyday life. Thus, they turn to informal institutions and networks of relatives, friends, and neighbors to gain some access to these institutions. Moser (1996) largely reinforced these findings in her study of Quezon City households and how they responded to personal, community, and national crisis.

## Research Methodology

**Study sites, selection criteria, and unit of analysis.** The study was conducted in one of the cities of the national capital (Quezon City, Metro Manila) and in Cebu City, the second primate city in the Philippines (see Figure 1 in appendix 1). Quezon City has the highest number of urban poor population among the 17 municipalities and cities comprising Metro Manila. Meanwhile, Cebu City's urban poor population is one of the highest among secondary cities and its local government unit (LGU) has recently been recognized for its support of alternative community-based justice for the poor.<sup>28</sup> The *barangay*, the lowest administrative and political unit of the Philippine government, is the unit of analysis of the study.

In Quezon City, the study was conducted in Barangay Payatas (population in 2000 was 112,690 which grew to 117,001 in 2007), one of the communities in the national capital with a high concentration of urban poor who lack security of tenure (see Figure 2 in the appendix). Prior to the garbage slide in 2000, it was also the major garbage dumpsite of the metropolis. The study focused on two areas of Payatas: 1) Golden Shower, a recipient of the ADB-Japan Fund for Poverty Reduction Fund (ADB-JFR), and 2) Barangay Trece or Payatas Trece, an adjacent area which has not received ADB support.<sup>29</sup>

In Cebu City (population in 2000 was 718,821 which grew to 798, 809 in 2007), the urban poor community of Barangay Duljo Fatima (see Figure 3) was selected for the study. This choice was based on discussions with the *Liga ng Lupon Taga-Mapayapa* (League/Federation of Community-Based Mediators of Cebu City). Both areas

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<sup>28</sup> In 2007, Cebu City was awarded the Galing Pook Awards (Excellence or Best Practice/Innovation in Local Governance) for its alternative village justice system established in 80 upland and lowland barangays.

<sup>29</sup> The project site, Payatas received US\$ 1 million grant from the Asian Development Bank 's Japan Fund for Poverty Reduction (ADB-JFPR) for land acquisition, site development, and livelihood components (2001-2004). This site was chosen instead of the nearby National Government Center, Commonwealth, Quezon City, one of sites of the Development of Poor Urban Communities Sector Project and the Metro Manila Urban Services for the Poor of ADB because the latter has mainly obtained their security of tenure in housing, water, electricity and other services. A short case box about the NGC is appended in this report.

(barangays in Payatas, Quezon City and Cebu City) fulfill the following criteria set by the study:

- **Presence of organizations and NGO involvement.** The barangays in Payatas, Quezon City and Cebu City have medium to high levels of engagement with non-government organizations (NGOs) and people's or community-based organizations (POs/CBOs). In Golden Shower, Payatas, the NGO, Vincentian Missionaries Social Development, Inc. (VMSDFI), has been working with the community in slum upgrading and livelihood projects since 1991, assisted by people's organizations such as the different chapters of the Golden Shower Homeowners Association, Inc. (GHAI I, GHAI II, GHAI III). Meanwhile, in Barangay Trese, Payatas, the NGO, Gawad Kalinga Foundation, Inc., has been working with Barangay Trese Homeowners Association, SANDIG. In Duljo Fatima, Cebu City, FREELAVA and other NGOs have been working with the barangay council and the housing associations (Hospicio de San Jose and Duljo Integrated Neighborhood Association) in addressing land, basic services and urban security issues. The community has always been a site of engagement by NGOs focused on street children/child labor, women, nutrition and health services, land/housing and community organizing.
- **Infrastructural development.** In both areas, major slum upgrading initiatives (housing, roads, water pipes and electricity lines) have been initiated by the national or local government in partnership with the NGOs and CBOs. These infrastructure developments often have resulted in conflicts over land use and the distribution of the resources (such as water, electricity, health, education, etc.) among community residents and between communities and outside entities (e.g. government agencies, realtors/developers, NGOs/PO, etc.).
- **Existence of innovative dispute resolution.** The *Lupon Tagamapayapa* (Barangay Mediation or Justice System) is part of the barangay political structure but their level of efficiency and effectiveness vary from almost non-existent to very high. The Marcos authoritarian regime introduced the barangay justice system in the late 1970s, but little is known about the barangay political structure of Payatas (which consists of several areas, with area 1 as the site of the 15 hectare dumpsite). Until the closure of Smokey Mountain in 1992, most of the Metro Manila's garbage was dumped at this site. The communities in Payatas, Quezon City and Cebu City have a mediation system which was established by the barangay council. The mediators and *tanod* (barangay police) in the community-based justice system of Cebu City barangays seem to have a high level of effectiveness. They have participated in a number of capacity building and training programs provided by the local government in partnership with NGOs and legal groups. In addition, these groups have organized themselves into a city-wide federation.
- **Increased economic development and changes in land use/price.** Both cities have experienced high levels of economic development and an escalation of land

prices because of population growth, infrastructure development, increasing quality of urban basic services and investment. These forces have resulted in commercial, real estate and other private interests (e.g., better-off residents or investors from outside) joining the competition for resources (i.e., land, business opportunities, urban services, etc.) in this area. These forces have re-configured the asset structure in these cities in terms of access and distribution among different segments of the population, often to the disadvantage of the urban poor (PhilDHRRA 2008).

**Field Activities Prior to the Scoping Study Proper.** The researcher examined secondary data regarding urban poor communities in the Philippines, particularly those in the sample cities of Metro Manila and Cebu City. This included reports from the Asian Development Bank (ADB), World Bank (WB), research reports, and urban poverty/development profiles of the sample cities.

Preliminary fieldwork was also conducted in order to facilitate the following activities: (1) pre-testing of the research instrument and adapting it according to particular translations into local languages, the flow of interviews, and the manner of inquiry and techniques of probing the research issues; (2) finalizing the interview guides; (3) and preliminary meetings and discussions with academics, lawyers, bureaucrats, and NGO/PO leaders. At these meetings a variety of topics were discussed including the focal points of the study, selection of study sites, identification of key informants, and the general conduct of the study.

For each city two experienced research assistants were trained to conduct interviews with the urban poor respondents. This orientation included project background, mock interviews, observation of the researcher conducting initial interviews and other helpful exercises. While these assistants focused on interviewing the poor, the researcher interviewed city officials, NGO/PO leaders, bureaucrats, academics and other non-poor or high-status respondents.

The project team attempted to examine the record of cases filed before the barangay justice system in order to classify the types of complaints/cases filed regarding urban assets as well as the patterns of resolution. However the recording system and data on cases resolved or unresolved by the barangay justice system (BJS) is rather dispersed and/or not well-documented. Several employees of the BJS explained that they submit their records to the Department of Interior and Local Government (DILG), but do not retain any copies of these reports at their office.

**Key Informants and Respondents.** The project interviewed a total of 60 key informants (academics, lawyers, bureaucrats, city officials, politicians and local leaders) and 30 urban poor residents (10 respondents at each site.) Those interviewed in one way or another (1) knew of cases/complaints regarding urban assets in the community and (2) had cases/complaints and were party to disputes regarding urban assets (some interviewees were litigants in a dispute resolution process.)



## **The Research Setting**

**Quezon City and Cebu City.** Quezon City, with a population of 8 million, is the largest of the 17 cities and municipalities comprising Metro Manila (see figure 1 in the appendix.) As was mentioned earlier, Quezon City has the highest urban poor population in Manila. During the last few years, the local government unit (LGU) has been quite aggressive in promoting the commercial and industrial development of the city. Because of this economic growth, the LGU was recognized as one of the country's top high revenue generating LGUs in 2007.

Meanwhile, Cebu City is the second largest city in the Philippines. In terms of commercial development, Cebu City has been growing rapidly over the past two decades. It is the growth center in the Central Visayas region and attracts large investments both from local and international investors. Because of the high growth rate, the city is a magnet for migrants who want to take advantage of the expanding economic opportunities.

**Payatas, Quezon City.** The study was conducted in two areas of Payatas, namely, Golden Shower (with ADB input) and Payatas Trece. Both areas are near the edge of the La Mesa Dam. La Mesa Dam is the watershed and reservoir used by the Metropolitan Waterworks and Sewerage System to supply water to the whole city.

Not much was known about Payatas until the closure of the infamous "Smokey Mountain" in 1993. By the mid-1990s, the Payatas dumpsite, a 15-hectare open pit, was the biggest and oldest operating open dumpsite in Metro Manila. This enormous dump is generating high levels of public concern that with the mounting garbage crisis in Manila, Payatas might become the next 'Smokey Mountain.' (Carcellar 1997). The infamous garbage slide in 2000 that killed over 100 people and displaced several hundred families in Payatas brought a significant increase in attention and development initiatives to the community.

The first few residents of Payatas came in the 1970s because of the "green revolution" project of Imelda Marcos. Population pressure and a shortage of affordable land and housing in the metropolis caused the population of Payatas to grow to 117,300 in 2008. Barangay Payatas has three sub-areas (area 1, 2 and 3), each with a barangay hall.

In 2001, Golden Shower in Area 1 received a \$1 million grant from the ADB-JFR. From 2001-2004 this grant was executed by the VMSDFI, in partnership with the Golden Shower Homeowners Association I and II. The grant was used to finance land acquisition, site development and livelihood assistance for the residents. The land was acquired through the CMP.

Meanwhile, a small portion (about 2 hectares) of Payatas Trece acquired housing assistance from the Gawad Kalinga Foundation in 2003. This housing program has since been stopped because of the insecurity of land tenure and conflicts emanating from the

first housing project. Ongoing conflicts include land ownership and housing disputes between residents and outside claimants.

**Duljo Fatima, Cebu City.** Composed of 36 *sitios* (subdivisions of a barangay), Duljo Fatima is located in the South District of Cebu City. Its southern boundary is the Kinalumsan River, while north is Carlock Street, to the east lies the seashore and barangay Labangon is immediately to the west (see Figure 3 in the appendix.) In 2000 Duljo Fatima had a population of 15, 233 which grew to 17,500 by 2007. Because of limited economic opportunities in the area, most residents derive their income from selling, vending, pedicab driving, and other informal sector activities. A survey in 2000 showed that about 65 percent of the residents in Duljo Fatima might be classified as urban poor.<sup>30</sup>

This study focused on two areas of Duljo Fatima. The first area was Hospicio de San Jose, a privately owned land. Also studied were the areas composing the Duljo Integrated Neighborhood Association (DINA), which are owned by the national government. In 2000 this land was declared by President Arroyo to be available for land distribution initiatives. As is the case in the Golden Shower area of Payatas, the members of DINA in Duljo Fatima are also leading the process of land acquisition and site development. Activities include organizing residents for community mortgage applications, re-blocking, and other site development initiatives. Most of the ongoing disputes here pertain to these processes.

### **Key Findings of the Scoping Study**

The following section discusses the findings of the study according to the five research questions: 1) types of disputes and complaints over urban assets arising in rapidly urbanizing areas, 2) institutions approached by the urban poor to resolve these disputes, 3) prescribed procedures or customary practices for resolving disputes, 4) how the urban poor actually resolve disputes, and 5) the level of satisfaction regarding the resolution of the disputes and the factors or features surrounding it.

#### **I. Types/Range of Disputes, Cases,<sup>31</sup> and Complaints<sup>32</sup>**

As can be seen in the detailed Table 1 and Appendix 2, the most common disputes, cases, and complaints at the study sites pertain to (1) land acquisition, housing, and security of tenure, (2) site development and basic services, (3) urban infrastructure development, and (4) security. These categories are not mutually exclusive and they often overlap. All of these disputes are linked to the urban poor's marginalization within the political-economic structure of the community and the city. This is reflected in the lack of tenure security, and severely limited access to basic services (water, electricity, health, education) and infrastructure development (roads, bridges, culvert and drainage systems).

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<sup>30</sup> Unpublished survey conducted by the Fellowship For Organizing Endeavors, Inc. (FORGE).

<sup>31</sup> In both Pilipino and Cebuano, the word case literally means a serious case, i.e., legal case.

<sup>32</sup> Please see appendix for an exhaustive list of cases, disputes, and complaints in each site.

These problems demonstrate Laquian’s dimensions of urban poverty cited earlier in this report.

Land acquisition, housing, and security of tenure disputes include eviction by the landowner (public/private) for failure to pay rent or to make space for plans to develop the land for commercial and industrial purposes. If land happened to be going through the process of acquisition by the urban poor through the CMP program, the accompanying disputes and cases generally pertain to 1) recalcitrant members (i.e., those refusing to join in paying the community mortgage but continue to enjoy the privilege of living on the mortgaged land, 2) defaults in payment of mortgage or contribution, 3) the selling of rights by members or nonmembers of housing associations or by land syndicates. Other housing disputes taking place involve incidents of encroachment, like when housing extensions encroach on public spaces (e.g., to the city/barangay road, foot path, community plaza, barangay hall, health center; private toilet built over drainage channels, etc.) or the house or premises of a neighbor.

Disputes related to site development include re-blocking issues such as the refusal of some housing association members to re-align/move their housing structures or to reduce their lot size. Disagreements also arise due to the construction or widening of access roads/footpaths or the building of facilities like health centers or day care centers. Conflicts often occur because of the difficulties that the urban poor experience in trying to comply with standards defined by housing-related agencies and LGUs regarding lot size, roads/footpaths, and services. Sometimes the process of complying means a reduction of their lot size or the dismantling of their housing structures. When the consequences are so significant, the urban poor refuse to follow the guidelines spelled out by the housing authorities. Another common type of complaint are those against structures obstructing of public spaces. Examples of obstructions include vending stands in the sidewalks or extensions of houses (e.g. veranda, kitchen, etc.) jutting out into the streets, footpaths or alleyways. These complaints reflect the general shortage of space in urban poor areas and the stiff competition among the poor and non-poor to appropriate public/private spaces.

Table 1. Types of Complaints, Cases and Grievances by Study Site			
Types of complaints, cases and grievances	Golden Shower, Payatas, Q.C.	Barangay Trese, Payatas, Q.C.	Duljo-Fatima, Cebu City
1. Land and related issues (eviction and demolition, land syndicate claims and other competing claims of landowners, etc.)	√	√	√
2. Housing and related issues (eviction for failure to pay rent, mortgage defaults, recalcitrants in CMP areas, selling of rights, encroachment in	√	√	√

public/private lands or spaces, etc.)			
3. Site development and related issues (re-blocking, road right of way (RRW), footpaths/access roads, obstruction of public domain spaces, etc.)	√	√	√
4. Basic services (electricity, water, health, education)	√	√	√
5. Urban infrastructure, appropriation of public domain areas and services	√	√	√
6. Sanitation and environmental cases (obstruction of drainage, waste disposal, etc.)	√	√	√
7. Security inadequate (drugs, drunks, thefts)	√	√	√
8. Administration of community assets ( <i>estafa</i> cases about livelihood funds, association funds)	√	√	
9. Others but related to asset control (a. Defamation and/or Physical Injury, b. Illegal Logging/firewood theft)	√ a	√ ab	√ a

In Payatas Trece, for example, re-blocking necessitated the removal or realignment of certain houses on some blocks. The affected residents refused to comply with the demands of the housing association and NGO. This dispute caused the site development project to be stopped. In another instance the housing association and the NGO demolished some of homes of the recalcitrant residents. Some of the displaced families filed a case of child abuse (children harmed during the demolition) against the housing association and NGO before the Regional Trial Court. The housing association and the NGO won because the Urban Poor Affairs Office deemed the demolition legal. In reality the displaced families had only filed the case to harass the housing association officers.

A major category of cases studied were related to the appropriation of public domain spaces by the urban poor resulting in summary eviction and demolition (see case boxes 5 and 6.) Most of the national and local government officials interviewed in this study asserted that the urban poor often get in trouble with the law because of their obstruction of public spaces like streets, railways, danger zones (e.g., beside creeks/rivers, along coastal areas.) In Metro Manila road widening projects and clearing operations have victimized many informal settlers, vendors, and hawkers.

This study also found that several cases seemingly caused by personal disputes like physical injury (e.g., see case box 1) and *estafa* (malversation of funds, etc.) are actually related to distribution and control of urban assets like water. This is also illustrated by the illegal logging incident presented in Case Box 2, which highlights how an asymmetrical relationship between an urban poor resident/neighbor and a powerful institution (MWSS) can cause disproportionate responses to a dispute. This case demonstrates how an institution can manipulate the law in order to vindicate their position regarding access to water and other resources to the community around the watershed area.

The problem of competing land claims where each side's argument is informed by a different legal base demonstrate one of the array of complaints and disputes that are hard to resolve. In Payatas, for example, competing land claims from several landowners and land syndicates have severely affected the claims of the current urban poor residents. Similarly, boundary disputes in Payatas Trece, while seemingly a political-administrative issue, also affect the urban poor residents' claim to housing and other basic services like schooling and health services.

The interconnectedness of the complaints and disputes about land, housing, infrastructure, and site development cannot be overemphasized. The relationships of these cases to environmental, sanitation, and security issues also should not be overlooked.

For example, in Duljo Fatima, one of the most excruciating cases cited by residents was the building of a private toilet and bath by a group of ethnic fishermen group. They built their toilet over the community drainage channel, which led to the blockage of the drain, resulting in the flooding of the area. Another persistent dispute between neighbors (between those who have and do not have toilets) that often reaches the BJS of Duljo Fatima is being caused by some households throwing their wastes into the canal/drainage or onto their neighbors' premises. The impact of this practice on the community drainage system is tremendous because a little over 700 households out of the 3,800 households in the community do not have toilets.

Among the disputes identified by the urban poor as easily resolved are electricity and water thefts. Once a theft is reported, the utilities personnel will simply come and settle it. While cases of electricity theft seem easy to resolve in these communities, for the residents in Duljo Fatima, the constant tampering with electric meters leads to a more fundamental problem -- the threat of fire and community security. For these residents this danger is really important because when fires occur (as it happened in 1998), fire trucks cannot reach and save the houses in the interior neighborhoods because they can only be accessed by narrow footpaths that can only allow people to walk through single file. In a similar manner, other types of complaints before the BJS about noises from the computer shop, drinking brawls of neighbors and drunks, and drug cases, articulate issues of urban security while also reflecting the neighborhood, social and political ecology of poverty, misery, and congestion.

The competition for space in poor urban communities can also lead to problems of neighbors encroaching on each others' premises, lot boundaries, private premises and/or on public domain spaces. In Duljo Fatima, some walls of houses are built or attached to public utility structures (telephone poles, electricity posts, etc.). Certain residents sometimes ask city officials to intervene in order to "discipline" their neighbors.

The range of disputes found in these communities shows that disputes reflect the blurring of boundaries between personal, household, and community assets among the urban poor. This blurring of boundaries gets extended (and becomes magnified) to trying to understand which government agency has the jurisdiction over cases and complaints.

These situations get further complicated if any of the informal and formal community leaders side with the agencies or officials.

The cases identified by the urban poor pertain to them both as individuals and as a group. From the interviews, it is clear that the poor do not engage the services of the formal court system in order to resolve their disputes and complaints. While most of the disputes and complaints described here have been addressed and remained at the barangay level, the following case boxes highlight some of the disputes that reached the formal judicial system. The first four case boxes pertain to individually lodged cases while case boxes 5-6 are collective in nature. These cases highlight the fact that disputes between the urban poor with seemingly little power imbalance between the two parties also often do not result in genuine access to justice.

### **Illustrative Cases**

#### **Case 1. Urban Asset Issues Embedded in Physical Injury and Estafa Cases**

Angelita, 42 years old, has lived in Area B, Barangay Trece (Payatas, Quezon City) for the past 33 years. She migrated from Eastern Samar (A Waray-speaking province in Central Philippines) and settled in Payatas because her family could not find a place to live in the city. A high school graduate, the Barangay Trece residents elected her as auditor of their association, the Samahan ng Nagkakaisang Damdamin, Isip at Gawa or SANDIG (roughly translated, The Association of Residents United in Thought, Word and Deed.)

As auditor of SANDIG, Angelita was also assigned to be the water tender or monitor by the barangay captain. According to her, this is where her troubles started. Being the water monitor, she makes sure that people line up to get their water and get only the amount allotted for each household. Three years ago, Delia, a former community association officer (who is part of the estafa case that the old officers brought against the new set officers, including Angelita) refused to line up to get her water. A fight ensued followed by a brawl involving her, the former officer, and some residents who cordoned Angelita so she wouldn't be hurt. The former officer (whom Angelita described as her enemy) accused her of causing physical injury before the barangay. They underwent three hearings, but they could not arrive at a settlement. Delia wanted Angelita to pay her a huge sum of money supposedly for physical and moral damages. Angelita refused to pay because she had not done anything wrong and she knew that the former officer just wanted to harass her. She also knew that Delia even had undergone a medical examination long after the incident and the results were negative.

Angelita says she does not know how the case got filed right away in the Quezon City Municipal Trial Court. She thinks her enemy bribed the *Lupon* so to make sure the complainant certificate was filed immediately. Angelita wished that her case did not get out of the barangay justice system. She said the barangay captain

tried to issue a certification that she was the assigned water monitor, but it did not help resolve the case. It also did it prevent the case from being elevated to the higher court.

The case has been in court for three years and Angelita has yet to sit on the witness stand. She believes the complainant wants the case to drag on so that Angelita will suffer. She learned that her enemy had mortgaged her billiard hall in order to finance the case. Last year, she was told by the court clerk that her hearing was on the 19<sup>th</sup> but the date happened to be Holy Thursday, so she did not go. But actually, the hearing was on the 18<sup>th</sup>, Wednesday. So the following day when she was out in Cubao (commercial shopping center in Quezon City), her relatives sent her a text message telling her not to go home as several policemen were waiting for her at home to arrest her. Angelita thinks the complainant bribed the court clerk to misinform her of the date of hearing.

She is quite frustrated with the whole process as the case has caused her so much money, time, and heartaches. According to her, she was just doing her official duties as the water monitor. In fact Angelita did not even need the water as she has her own water tank. Angelita explained that she had not realized before that by doing her duties she will end up with a lot of legal hassles.

### **Case 2. Petty Theft Turned into Charges of Illegal Logging: A Case of Institutional Harassment**

Maximino is 42 years old, but looks like more like 55 he says this his appearance was caused by the harshness of his life. He works as intermittently as an extra hand at construction sites. Formerly, a barangay *tanod* (police) of Barangay Trece, in March of 2008 he was charged with illegal logging by the Metro Manila Waterworks, Sewage, and Sewerage System (MWSS.) This charge resulted from Maximino getting caught gathering firewood in the MWSS woodlot adjacent to the community with two other residents. MWSS personnel caught the men and brought them to the Munoz clinic for medical treatment, which is required prior to incarceration. MWSS personnel charged all three of them with illegal logging (this crime has a higher penalty than petty thievery which would be the logical charge for gathering firewood) and had them imprisoned in the Quezon City jail. The other men with Maximino were released from prison earlier because they were able to raise the necessary bail two weeks after the arrest. But Maximino was imprisoned for a month as it took time for his nieces, nephews and other relatives to raise the money (P20,000) for his bail.

Maximino did not understand why his complainant (MWSS) was given a certificate to file the case. He believes the complainant had to have bribed the *Lupon* and the police for this to happen. He does not know what will happen to him in the future because he does not have any money for the trial hearings.

**Note:** Residents in Barangay Trece have heard through the grapevine that the MWSS is making an example of Maximino to deter other residents from gathering firewood. Gathering firewood from the MWSS lot has been a practice among the residents ever since they settled in the area, but lately this has become an irritant between the residents and the MWSS. Community leaders think that MWSS is flexing its authority over the urban poor communities around La Mesa Dam as it is a protected eco-zone. More significantly, several incidents of water theft from the MWSS perpetrated by Payatas residents may have irritated MWSS personnel who now want to discipline the poor communities in the area. A lawyer opined that since harsher laws govern protected areas, the institution may have chosen to charge Maximino with the law on cutting trees (as logs instead of firewood ) because it carries a higher penalty. Selective interpretation of the law can have terrific consequences for the litigants, he said.

**Case 3. Connivance of Barangay Authorities and Community Association Officers**

Grace, a 54 year old resident of Golden Shower in Payatas, has lodged several complaints before the homeowners association, the barangay captain and the *lupon* regarding floods that constantly bring mud and sludge to her kitchen whenever it rains. These floods occur because a road/footpath near her house was left incomplete. The barangay had not finished construction of the path because of a resident in front of Grace's house who officials wanted to move. Unknown to Grace, both the barangay officers and the homeowner's association decided not to complete the road and the footpath because they did not want Grace's recalcitrant neighbor to benefit from the barangay road project. They simply told Grace that they could not complete the project because of a lack of funds.

Grace has also filed several other complaints before the association and the barangay, none of which resulted in satisfactory resolutions. Her other complaints were that: (1) Her neighbor cut down a tree in front of her house and when it fell it hit and damaged part of her kitchen; (2) She wants to have her own electric meter reader but could not get it; (3) She wants to be secure about her home and lot, but the homeowners association still has not made her status clear. Her level of satisfaction with the barangay/city officials and other government agencies is very low. She thinks these entities do not act at all without constant follow-ups and money to finance every action or paper that is needed.

**Case 4. Selective Interpretation of the UDHA Law**

Moises is a 46 years old barangay information officer in Duljo-Fatima. Moises was evicted from the lot where he and his family have been residing for the past 40 years. The landowner (living abroad) wanted to develop the lot into a gasoline station as it is near the South Reclamation area which is experiencing strong



commercial and industrial growth. Moises sought the help of the mayor to avoid eviction, but the mayor explained that the project will benefit a lot of people through employment generation and the like. Moises wanted at least to be compensated for the improvements he had made on the property (reclaiming of land and its development) but both the *encargado* (overseer) and lawyer of the landowner told him: “Who asked you to do it? We did not tell you to do it, so why should we pay for anything!” Moises says he cannot afford a lawyer and his chances of winning the case were slim since higher officials were supporting the landowner.

Moises says that even though the law (i.e., UDHA of 1992) requires landowners to compensate evicted occupants, the city government interprets the law as applying only to those occupying government lots, not to those in privately owned ones.

### **Case 5-6. Summary Evictions/Demolition Cases**

In 2005 during the worst of typhoon Chedeng, the residents of Sta. Rita Community under the Quezon Bridge were evicted and their housing structures demolished by operatives of the Metro Manila Development Authority (MMDA.) The two MMDA regulations that justified those demolitions were that: 1) housing/building structures should be built at least 10 meters removed from roads, rivers or creeks.<sup>33</sup> 2) Secondly, obstructions in public places can be summarily removed in the name of public order and safety.

Together with the evicted dwellers of Sta. Rita, the Sentro ng Alternatibong Lingap Panligal (SALIGAN, or The Center for Alternative Law) filed a case in April 2005 before the Quezon City Regional Trial Court. In order to do so they first had to prepare the paperwork and fees required to obtain a certified copy of the MMDA resolution and file affidavits of witnesses among other things. Three years later they have undergone a pre-trial hearing and three other hearings but the case remains far removed from resolution.

**Case 6.** In May 2008 in cooperative action with an NGO (Urban Poor Associates (UPA), SALIGAN filed a case with the Supreme Court on behalf of hundreds of residents who had been evicted for the North Rail Project (a multi-million dollar central government project funded by loans from China.) The case has been filed, but they are still waiting for comment from the MMDA’s counsel and the Supreme Court. They say this process can take several months to years.

## **II. Dispute Resolution Mechanisms: Formal/Informal Institutions**

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<sup>33</sup> Instead of a three meter easement as defined in the Civil Code.

There are three major formal institutional mechanisms in the Philippines which can settle or address complaints, disputes and cases about urban assets; 1) the barangay justice system, 2) the formal courts (see organizational chart in the appendix), and 3) government agencies with quasi-judicial functions. These agencies include the Housing and Urban Development Coordinating Council, Housing and Land Regulatory Board, Metro Manila Development Authority, and the National Housing Authority.

As specified in national legislation, the barangay justice system is the first recourse that the resident can avail to redress their complaints and grievances. The law prescribes that complaints and disputes must be resolved at this level as much as possible and that only complaints incurring penalties of at least P5,000 and 1 year imprisonment can be elevated to the formal courts. In general these prescribed procedures have been followed. There have, however, been cases in which the complainant has increased the estimated value of the damages or the severity of the charge so the *lupon* has no choice but to provide the complainant with a certificate to file to the courts.

In Duljo Fatima, the operation of the BJS sometimes only superficially followed the prescribed procedures. This system was often influenced and supported by local elders. These figures were generally former barangay officials, and were both highly respected, and economically better-off relative to most community members. The same pattern was observed in the Golden Shower and Payatas Trece areas.

**Economic capacity, connection and power.** In urban poor communities, one's capacity to lodge or file a case against your neighbor or complainant and how the case is resolved by barangay officials is seen as proof of political power, connections, and economic capacity. If a person lodges a case before the BJS, community members are likely to interpret that action as evidence that the complainant does not have the money to finance the case. This explains why some litigants bribe the *lupon* or the barangay captain to give them a certificate to file their case in courts. This certificate is used as a demonstration of power to intimidate an opponent in a dispute. This problem has been somewhat reduced by the upper courts demanding that cases undergo mediation before being filed. This has meant that communities are starting to take the BJS more seriously.

**Illustrative Case.** In a Cebu City case, the complainant, Luis, asked his neighbor, Dino to make a building plan for a small rental place (a small vending stand/store with a restroom.) For drawing up the plan and applying for the proper permits at city hall, the neighbor asked for P20,000 outright as a fee. After the construction of the extension and the toilet, some neighbors filed a complaint because the surrounding houses had their drainage systems blocked. During the hearing, Luis discovered that his neighbor had overcharged him because the city engineer's office only charges P6,000 for the creation of building plans and the approval of permits. Luis filed a complaint before the barangay against Dino. Luis was denied a reimbursement because Dino said the rest of the money was used to bribe personnel at city hall. Meanwhile, the neighbors are angry about the flooding caused by the construction. Barangay officials said that a solution other than destroying the construction has to be sought as too much money has already been invested in the structure. Some barangay residents think that this interpretation of the law

seems to be inclined to tolerate structures if a lot of money has been invested in them, even if those structures cause problems for poorer community members. NGO/CBO officers in the area support this perspective on the law.

### **III. Procedures for Dispute Resolution: Formal/Customary**

1. The complainant files his/her case before the barangay. The barangay secretary or a clerk (who is also the *Lupon* server) gives the complainant a filing form to fill out. The filing fee averages P20.00.<sup>34</sup> In other urban areas, complainants go to the police station and have their complaints recorded (i.e., police blotter.) These reports are then handed over to a mediation body like the BJS. If evidence of mediation can be presented by the complainant, a certificate to file in a higher court will be granted. This part of the law has been used by some complainants who just want to seek punitive actions for their neighbors with whom they had a dispute.
2. The *Lupon* server sends a subpoena or notice to the parties concerned requiring them to appear in the barangay hall for mediation before the barangay captain. The barangay captain then has 15 days to resolve the case.
3. The barangay captain presides over the case with the assistance of one of the councilors.
4. If the dispute is resolved, the barangay captain makes the parties sign a compromise agreement with the details of the resolution, including each party's obligations.
5. If this process fails to resolve the dispute, the case is endorsed to the *Lupon* who also has 15 days to resolve the case.
6. If the case remains unresolved, they are given a certificate needed to file the case in the formal courts.

While the barangay justice system is a more formal mediation process, the traditional mechanism for resolving disputes involves a more informal mediation process. The customary process is for the aggrieved party to seek counsel and mediation from a respected relative or elder in the community. This practice has been described in the following section.

Cases regarding land/housing acquisition and site development (e.g., complaints about recalcitrant residents, defaultees, re-blocking issues, selling of rights, etc.), are first lodged with the homeowners or neighborhood association. Often, the latter is in a better position to address these types of grievances. This is the experience of the Golden Shower Homeowners' Association and the SANDIG Homeowners' Association in Payatas and that of the Duljo Integrated Neighborhood Association and the Hospicio de San Jose Homeowners Association.

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<sup>34</sup> The filing fee in Duljo-Fatima used to be P20.00 but the new barangay captain waived it because it was one of his campaign promises during the last election.

While the officials and informal leaders are more familiar with the details of the cases presented to them, more often than not, there are limits to the kinds of disputes they can settle at their level. Disputes they have success in resolving involve things like certain residents's refusing to pay mortgage fees, default payments by members and boundary disputes between housing association members. Larger issues like competing land claims, land syndicates, or petitions for accessing basic services that involve parties outside of the community are beyond their capacity to resolve. These kinds of disputes require documents from different government agencies and will be referred to agencies with quasi-judicial functions.

If a homeowner's association is known for its inefficiency, then urban poor complainants from the community will tend to go directly to the barangay, the government office concerned and/or their mayor or local politician.

In general, cases regarding land and housing are directed to the those government agencies with quasi-judicial functions like the NHA, HUDCC, DENR, and HLURB because these agencies have specifically been tasked with addressing these issues.

#### **IV. Dispute Resolution Practices**

In general the urban poor follow the BJS's prescribed procedures when filing cases or complaints. But in the urban poor communities studied, a handful of deviations from to the prescribed procedures were observed.

Aside from the formal institutions, the urban poor also employed the help of influential intermediaries like local officials, politicians and NGO or CBO officers. The Cebuano term, *mangama*, literally means to find a "*padrino* or a godfather." An equivalent term in Pilipino is to seek somebody with *may kapit* (great influence.) These phrases describe well the mechanisms that people employ in order to get access to services or favorable settlements from formal institutions.

As shown in the case of Angelita in Payatas Trece (see case box 1), she believed that her case got summarily elevated to the Quezon City Regional Court because the complainant bribed the *lupon*. In the same manner, the charge of illegal logging against Maximino (see case box 2) deviated from the normal procedures because of selective application of the Anti-logging Law. Instead of petty theft Maximino was charged with illegal logging only because the MWSS allegedly wanted to demonstrate its authority and power to the surrounding urban poor community by making an example of Maximino.

In Duljo Fatima, when a dispute occurs complainants first seek the help of influential people in the community like Councilor Calero or Councilor Cherry. If this does not resolve the problem, the complainant is advised to file the case before the barangay captain. At this stage in the process the summons server said that the litigants prefer to be invited to participate in the process instead of summoned: "Mas mayo man nga imbitahon sila kay sa "summon" o subpoena kay maora man sila ug malipay mao nga motunga sila sa barangay hall" (The litigants prefer "to be invited" by the barangay

official to the barangay hall rather than be summoned or issued a subpoena!). Dulo Fatima's summons server has found that using this softer language is more effective because parties to the dispute don't find it to be threatening or oppressive to be "invited" by the barangay captain to the barangay hall.

Prior to the hearing, the barangay captain and his *lupon* councilors gather information about the case from both parties and from other residents. After a few days, or sometimes weeks (depending on the availability of the officials as well as to give time for the parties to cool off), the hearing is conducted. The hearing emphasizes the goal of bringing harmony and resolution to the disputing parties and to the community. The resolution of the case is recorded in a "Compromise Agreement" document that each of the disputants and the officers must sign. This signals the importance of this agreement.

### **Preferred Institutions**

**Influential Persons/Informal Networks and Housing Associations.** In the study sites, residents preferred to ask influential personalities like Councilor Cherry Padilla and Councilor Clotilde Calero in Duljo-Fatima to help them resolve their complaints about land, housing and basic services. Going to these leaders is preferred because they are respected and also have experience managing urban assets (unlike other male councilors.) The poor also perceived these women as having empathy for their impoverished conditions. Aside from the barangay captain, who was often cited as helping them in settling their complaints to the barangay, the names of those whom the poor cited as being helpful in resolving their complaints were city offices and their officials (e.g., DWUP personnel, the mayor, Tomas Osmena) and the city administrator (Bimbo Fernandez.) In several instances the wife of the mayor, Margot Osmena, was also mentioned. This is because the barangay has been a recipient of several programs focused on children and women (street children, child labor, nutrition and health, gender sensitivity trainings) in which the first lady has been very active.

In Quezon City many similar type of people and institutions were mentioned as being useful to resolve disputes by interviewees. The Quezon City mayor, Hon. Sonny Belmonte was often cited as a person with whom residents will seek recourse. Several lawyers like Atty. Respicio of Gawad Kalinga in Payatas Trece were also mentioned. Surprisingly, the Urban Poor Affairs Office of the Quezon City government was viewed rather positively by the residents of Payatas.

In Payatas, long time community leader Julie Iral was named as being helpful to the Golden Shower Homeowners Association in sorting out the issues arising from recalcitrant residents, fraudulent land claims, and encroachment incidents.

In Golden Shower, the Vincentian missionaries and the officers of the Homeless Peoples Federation of the Philippines were also mentioned as having helped people resolve their complaints and disputes. These organizations were often mentioned by residents who were satisfied with the activities of VMSDFI and HPFP. Other residents of Golden Shower actually expressed complaints about the latter organization. Most of their

grievances pertained to the administration of livelihood and site development funds from ADB-JFR. It is interesting to note that complaints involving NGOs do not seem to end up being formally filed or resolved by institutions like BJS, HUDCC or city hall.

In Payatas Trece, the officers of Gawad Kalinga Foundation, Inc., and Couples for Christ are also sought for help and assistance in resolving disputes involving urban assets (mostly for disputes about their land tenure, water, health, and education).

Among the formal institutions the urban poor seem to prefer taking their disputes to some of the intermediate institutions created by the cities. For example, respondents from both Payatas communities perceive UPAO lawyers working for the Quezon City government as helpful in attending to their cases and grievances. Beyond these lawyers they seek assistance from the office of Mayor Sonny Belmonte, followed by the office of Atty. Respicio of the Gawad Kalinga Foundation, Inc.

In Cebu City, the residents of Duljo-Fatima prefer to go to female councilors like Councilor Calero, Councilor Cherry and the wife of the city mayor, Margot Osmena. Actually Councilor Calero had been performing services to the community for years as an “elder” (counseling, guiding and helping the poor.) People in her community trusted her, so they asked her to run as a councilor in the last election. Officials from the homeowners association, DINA, said that they always work with “Maam Clotilde.” Those from the Hospicio de San Jose side of the barangay first refer their disputes to the president of their community association who then tries to settle disputes among the neighbors. There is a comparable process among residents of the Duljo Integrated Neighborhood Association, Inc. (DINA).

## **V. Dispute Resolution Mechanisms and Level of Satisfaction among the Poor**

The BJS is regarded by residents with a high level of dissatisfaction when it hears cases pertaining to key urban assets like land, housing, public domain spaces, infrastructure, and site development. But there is a high level of satisfaction with BJS resolutions when the cases filed are disputes among neighbors concerning loans and debts, gossip leading to defamation, and cases of physical injury. Respondents or parties to these cases often express satisfaction because the mediation system emphasizes the preservation of peace and harmony in the community.

Cases concerning water theft from the pipe lines and electricity theft by meter tampering are the easiest to resolve according to the urban poor respondents. These incidents are reported to concerned authorities and the latter will come and simply cut off the illegal supply line and charge the thief with penalties. This does not prevent quarrels between the owner(s) of the meter and the neighboring thieves, because after a couple days the latter will tamper with other meters for his energy consumption. Tampering with electricity meters is of paramount importance to everybody in urban poor communities because these illegal connections cause fires. These disputes seem personal and not related to key urban assets like security and land. In reality this issue is related to economic capacity and to land and security of tenure. Without land and tenure security a

resident cannot obtain water and electricity services because s/he cannot apply for the legitimating papers that are needed (e.g., title to the land or contract from the landowner.)

With the exception of water and electricity theft, several factors make cases concerning key urban assets very hard to resolve. In the case of evictions, demolitions as well as other land and housing acquisition issues, successful resolution involves complicating factors like: 1) questionable ownership of land or a landowner who does not reside in the community, refusal to sell or an asking price beyond the capability of the urban poor to pay; 2) inconsistent and overlapping jurisdictions of relevant government agencies and their lack of resources and political will; 3) the urban poor themselves are unable to mobilize the necessary resources and prepare the necessary paperwork to take advantage of government programs; 4) internal fragmentation and competition between the urban poor themselves for the scarce urban assets often work to their advantage.

The absence of an effective information base among the urban poor regarding the nature and workings of the formal justice system (i.e., courts like the Public Attorney's Office or PAO) often makes the process of trying to access justice quite frustrating for the litigants as well as those working in the justice system (e.g., judges, defense lawyers, prosecutors, court clerks and interpreters.)

There is also a lot of frustration among the urban poor regarding the inaccessibility of affordable legal services. For example, in order to qualify as a PAO 'pauper litigant' an applicant has to go through a rigorous process of proving to the DSWD that they do not have a proper source of income. One informant described this process as being put on trial in order to gain a certification of poverty.

To summarize, there is a high level of dissatisfaction among the urban poor and the CSOs working on these issues. This sentiment is caused by the costs, length of time and resources involved in a successful process. Despite all these necessary inputs, the positive outcomes of these processes for the urban poor are generally low. In short, the efficiency and effectiveness of the institutions (BJS, local/national governments and their agencies like the NHA, HUDCC, HLURB, UPAO, DWUP, etc.) remain far from the desired level. This is especially true for the formal court system which is very inefficient and ineffective in resolving the issues faced by the urban poor. Relative to the widespread dislike of the courts, the urban poor are moderately satisfied with services rendered by local government units and their special service offices like the Urban Poor Affairs Office in Quezon City and the Department of the Welfare of the Urban Poor in Cebu City. Unfortunately these are special offices under the jurisdiction of the mayor, meaning that they might disappear under the next political administration.

Also generating moderate levels of satisfaction among the urban poor are the more informal systems used to resolve disputes. Support provided by informal leaders and the housing association officers is relatively effective in threshing out their complaints regarding urban assets, especially if the problems relate to boundary disputes between neighbors or defaults on mortgage payments by housing association members.

## Analysis

### Urban Development, Poverty, and Disputes, Cases and/or Complaints.

Because the urban poor communities studied do not enjoy security of tenure, most of the disputes, cases, and complaints largely pertained to; 1) housing and land issues (e.g. threat of eviction/ejection, lot boundary disputes, land acquisition issues like titling, processing or selling of rights by an unlawful beneficiary, etc.), 2) inadequate access to basic services (e.g. thefts of water/electricity, sanitation, garbage disposal and solid waste management), and 3) infrastructural development and asset appropriation issues ( e.g. road/footpath right-of-way, encroachment, obstruction and unlawful use of public space, etc.). These cases are organically rooted in the urban poor's lack of legal entitlement to their homes and undefined occupancy rights combined with severely limited access to basic services and site development services.

In Barangay Duljo-Fatima, while the urban poor respondents came from two types of informal settlements (Hospicio de San Jose, a privately owned property and the Duljo-Fatima Integrated Neighborhood Association (DINA), a national government property that has been proclaimed for distribution/acquisition to the residents), there was no discernible difference in the types of cases, disputes, and complaints lodged by the residents against their neighbors, the barangay or against city government offices (e.g., City Engineering Department or the Squatters Prevention, Encroachment and Enforcement Demolition or SPEED office.) The only significant difference was that cases from the DINA included more complaints about evictions and demolition of illegal structures and structures obstructing roads (because of their proximity to the South Reclamation Project)<sup>35</sup> as well as re-blocking and payment of fees for housing and land equity.

Most of the complaints of Hospicio residents centered around threats of eviction and the illegal construction of housing structures and extensions by incoming migrants. The BJS and the city government's DWUP office ultimately could not do much about these problems. According to the DWUP, they could not do very much for settlements on privately owned land properties. Owing to the congestion of the area, problems of drugs and drunkenness also pose serious threats to the security of residents in this informal settlement.

Meanwhile, in Payatas, disputes and complaints about land, security of tenure and the inadequacy of basic services seems to be quite intense because of the presence of land syndicates. But the kinds of complaints did not vary much between Golden Shower (with ADB input) and Payatas Trece. In both communities the land syndicates were quite active in pressuring the urban poor residents through the municipal courts, the local government (mayor's office and the Urban Poor Affairs Office) and national agencies (National Housing Authority or NHA, Housing and Land Use Regulatory Board (HLURB), Registry of Deeds and the Fiscals/Prosecutors Offices.) These agencies often

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<sup>35</sup> This is a 350 hectare reclamation project of the city government and envisioned to host an export processing zone and other commercial/industrial entities.



had inconsistent interpretations of the laws pertaining to land and other assets (like the UDHA of 1992, land proclamations, repeal of anti-squatting law in 1997) and also have overlapping jurisdictions, resulting in confusion and frustration on the part of the urban poor residents. For example, one of the land syndicates in Molave (next to Golden Shower) filed a case before the Quezon City Registry of Deeds against the residents who were building their houses with the aid of the Gawad Kalinga Foundation. This action resulted in the arrests of three residents, who were fortunately, able to get out of prison on bail. According to the barangay captain the arrests were only possible because the Registry of Deeds is unaware that the Payatas area was proclaimed by the government as an area for programs benefitting the urban poor.

Other interesting cases discovered pertained to illegal logging and physical injury (see case boxes 1 and 2.) While on the surface these cases appear to be personal and unrelated to urban assets, a closer examination shows that the physical injury case is related to access to water and other community assets (i.e., *estafa* case filed by the old officers against the new officers.) The illegal logging case filed by MWSS should just have been a case of petty theft, but the MWSS wanted a demonstration case to instill fear among the urban poor residents. While the urban poor residents have always gathered firewood from the nearby MWSS property, this has been an irritating intrusion from the perspective of the MWSS authorities. They filed the case to demonstrate their control over the property within the larger context of ongoing land claims in the area. Since La Mesa Dam is a protected watershed and eco-zone area, MWSS personnel could take advantage of this situation and elevate the case to illegal logging, which carries a much higher penalty (up to 10 years in prison.)

Clarity of land ownership and governance factors seemed to play a significant role in the different types of cases and complaints found in Duljo-Fatima in Cebu City and Payatas in Quezon City. Owing to the proximity of Duljo-Fatima to a major industrial and commercial development project, the 350 hectare South Reclamation Project, more complaints about demolitions connected to road rights of way, boundary disputes, and road obstruction cases were reported here.

It also appears from the interviews that the urban poor in Cebu City have better access to their city offices and city officials. Perhaps this difference can be attributed to their location near city hall in a smaller city. Cebu City has only 1.3 million residents while Quezon City is home to around 8 million people.

**Formal and Informal Mediation Systems.** The formal mediation system in the communities studied is the barangay justice system (BJS.) The BJS seems to possess varying levels of efficiency and effectiveness, as assessments by the different stakeholder groups produced different opinions.

In theory, the BJS is integrally linked to the judicial system. In practice, the *Lupon* in the BJS submits their record of cases to the Department of the Interior and Local Government (DILG) and not to the municipal courts, which **should** be the next level of authority above the BJS.

Meanwhile, the informal mediation (i.e., informal leaders and officers of housing associations) system is the first recourse for most of the urban poor complainants when resolving disputes regarding urban assets. But these informal processes can only attend to small matters and issues like recalcitrant resident's refusal to join the housing association and make mortgage payments, boundary disputes among lot owners and other similar problems. The larger issues of land access and basic service delivery are often beyond their competence and jurisdiction.

### **The Great Divide Between the Urban Poor and the Justice System.**

**Orientation(s) of the Justice System.** According to lawyers interviewed in this study, the current judicial system has a retributive justice orientation rather than being oriented towards the restoration of justice and the dignity, rights and claims of the aggrieved and accused in the litigation process. Courts do not have a rights-based orientation and instead focus on proving who is right and wrong and exacting upon the wrongdoer a correct punishment. Because of the system's orientation the poor feel they have a great 'debt of gratitude' (*utang-na-loob*) when they are helped by their barangay captain, mayor or politician. This leads the poor to feel beholden to these officials, when actually it is their right to receive those services from the leaders and officials. Patron-clientalism is actually fed by the retributive justice orientation of the courts. A rights based orientation would be preferable.

**Costs, Time, and Resources.** As seen in the summary of disputes most cases and complaints reported by the urban poor, lawyers, and NGOs/POs involved with urban poor concerns, have not been introduced into the formal court system. In fact one of the key informants for this study, a high-ranking official from the National Housing Authority declared: "The courts are only for the moneyed! Not even for us middle class professionals. It entails a lot of expenses over a long period of time!" These fees include filing fees (which can start at P5,000 depending on the penalty involved), lawyers acceptance fee (average cost in Metro Manila: P20,000-P50,000), and fees for the appearance of a lawyer at trials and hearings even if they are postponed (P3,000-P5,000.)

**Perception and Trust in the Judicial System.** Based on the respondents' evaluation, engaging the court or judicial system in order to gain justice is a very expensive and inefficient proposition. Even components of the judicial system which are designed to assist the needs of poor litigants, such as the "pauper litigant" services of the Public Attorney's Office (PAO), are not trusted by the urban poor because of their strict requirements and lack of sensitivity towards the inability of the poor to produce the paperwork requirements and to completely understand the legal processes.

**Language, Terminology, and Legal Knowledge Base.** The retributive justice orientation of the courts is reflected in the language and terminology they use. For example, in the legal cases involving the urban poor the term 'squatter' is popularly used to refer to the homeless or informal settlers occupying the land without security of tenure. The latter term is more appropriate (because most of these settlers are not squatting on

the land but have the permission of the landowners to whom they pay rent) and preferred by rights-based oriented lawyers and NGO advocates.

**Initiatives in Increasing Access Justice to the Weak.** Current initiatives in reforming the justice system to accommodate the interests of the weak segments of population can be seen in the orientation and capability building programs of the judicial system on children and women's rights. This initiative includes the JURIS program of the Supreme Court, CADRE for alternative law (e.g., SALIGAN). Because of the problems of eviction and demolition encountered by the urban poor, a number of NGOs in Quezon City have organized the creation of the Urban Poor Legal Fund for Housing Rights. The latter is especially important as the urban poor are so vulnerable to legal pressure, especially if they are unorganized.

### **The Barangay Justice Systems (BJS): Advantages and Disadvantages**

The major advantage of the BJS is that it can be fast, efficient, and cost-effective in resolving disputes. It is quick to verify the evidence and the mediators possess the necessary contextual (especially, socio-cultural and political-economic factors) knowledge, background character and profile of the litigants. These factors can expedite the resolution of the case, but can also potentially dilute the integrity of the dispute resolution process. A major shortcoming of the BJS is that it can only hear to cases pertaining to violations that might be punished by no more than P1,000.00 in Cebu City and P5,000.00 in Metro Manila, and where the punishment handed out is one year or less of imprisonment. Also the BJS process cannot hear cases involving government personnel and officials or those which pertain to parties with a corporate identity. In fact, the PAO will always advise urban poor groups to get their own lawyers if they have complaints about urban assets.

**Competence of BJS.** With the exception of Cebu City, the *Lupon* or community-based mediators have not been provided any systematic training or capacity-building programs. So, like the barangay captains, often they are perceived as lacking legal knowledge and therefore ineffective at performing their mediation function. Therefore, most of the litigants do not have faith in the capacity of those leading the BJS process. The actual and potential success of the BJS hinges on the contextual knowledge more than legal training. An intimate knowledge of the character and capacities of the concerned parties and the history of the issues informing the case are the most important factors that help in successfully mediating a case. In short, the political-economic and socio-cultural contexts of the cases are crucial factors in arriving at satisfactory compromise agreements among all parties to the dispute.

But the BJS is perceived as a justice system for the poor only (i.e., those who cannot afford to pay the costs involved in court litigation.) In fact there are cases where the BJS system has not been taken seriously by the richer segments of the population. Given the current strength and capacity of the BJS, the following initiatives can be undertaken to strengthen and maximize its potential:

1. Build a systematic and ongoing training of the BJS members.
2. Build the legitimacy and strength of the institution by making them an integral part of the judiciary. This will elevate the status of the BJS (not just as a **court for the poor**) before its constituents and increase its effectiveness as well. Right now, it is accountable to the Department of Interior and Local Government, rather than to the Department of Justice. By vertically linking it with the formal court system it will help de-clog the courts.
3. Increasing the jurisdiction of the BJS to include cases that pertain to urban assets when the penalty is higher than P5,000.

**Disadvantages and Limitations.** Aside from the defined jurisdiction of cases above, the BJS cannot tackle cases to urban assets like land, housing and basic services because resolution of disputes in this area require access to documentation (e.g., Registry of Deeds) outside the jurisdiction of the barangay. Cases involving rights or access to property have to be resolved using documents, titles, and contracts from other offices and institutions involving intricate laws that are beyond the technical competencies of the mediators.

Inefficiencies due to the inconsistent and overlapping jurisdictions of the different government agencies (e.g., weakness of the Registry of Deeds or the National Land Registry) and laws regarding eviction and demolition also contribute to the internal fragmentation among the urban poor.

### **Issues for Further Study**

**Costs and Effects of litigation on the economic situation of the household.** The costs of litigation or participation in both the formal and informal justice system is not completely known. We know that the formal justice system is very costly but we do not know how these costs really affect the economic conditions of the poor.

**Resolution of cases and patterns of resolution.** What is the pattern of dispute resolution among various income levels of households in urban poor communities? Which system is most efficient and effective? We know that income is a critical variable in accessing justice, but there is not much known about the effects of intra-social differentiation (income, ethnicity, migrant status, gender, age, etc.) among the urban poor on dispute settlement within this segment of the population.

**Governance and other contextual factors.** The role of governance-related factors and processes in accessing justice is known. But not much is known about how varying contextual factors surrounding local and national government offices force certain localities and local governments to shape their responses and efforts to bring justice to the poor according to their local context.

For example, the MMDA has selectively used the power of eminent domain present in the civil code and the building standards to conduct summary evictions and demolitions while ignoring UDHA provisions (e.g., 30 days notice, alternative relocation site.) But the MMDA's ability to execute its demolition programs in urban poor areas varies according to the different local governments within the metropolis. Meanwhile in Cebu City, the LGU implementation of the UDHA has been quite remarkable<sup>36</sup>.

**Interaction of formal and informal structures of justice.** Not much is known about the relationship between the formal (barangay justice at the community level vis-a-vis the formal judicial or court system at higher levels) with informal systems of justice (informal mediations by elders and other influential persons.) This relationship might have a considerable effect on the process of addressing complaints, disputes and cases brought about by the poor.

While a number of studies have focused on human rights issues among women and children, this topic has not been examined in relation to access to justice among the poor with a specific focus on urban assets and urban development issues. We also need to examine the efficacy of the current mediation system for poor complainants and the conditions that facilitate access to justice, in particular to urban assets.

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<sup>36</sup> According to several NGOs focused on urban poor concerns like SALIGAN, AHRC and UPA. Sometime in 2002, Cebu City government got recognized as one of the LGUs with high compliance of UDHA requirements (i.e., listing of urban poor residents, inventory of land for social housing among others).

## **Appendix 1. Map of Study Sites**

(removed for file size)

**Figure 1. Map of the Philippines and Sample Cities**

**Figure 2. Map of Payatas, Quezon City**

**Figure 3. Map of Duljo-Fatima in Cebu City**

## Appendix 2. List of Disputes, Complaints and Cases

The following list exhausts the range of disputes, cases and complaints identified by the respondents:

### Cebu City

1. Eviction by landlord for failure to pay the rent.
2. Eviction from the land demolition of structures by either a private landowner or by the government (local/and or national). The landowner (whether private or public) needed the land to develop it for commercial purposes, or sell it because the land has acquired high value over the years because of rapid urbanization and urban development.
3. Encroachment on public or private property
  - a. building of house extension and cutting across the neighbor's roof or eaves, yard
  - b. building a restroom over the back drainage of the neighbor resulting in the blockage of the drainage and of the latter's restroom
  - c. extending his veranda or store to the road so it must be demolished by the barangay but resisted so the city has to do it and the urban poor wants compensation for the damaged property and goods
  - d. encroaching on public utilities like electricity or water (e.g., attaching one's wall to the electric post)
  - e. encroaching on public domain space (vending/selling in sidewalks and streets, erecting his own living quarters by the sidestreet, etc.)
4. Road right of way in general by the city and/or barangay
5. Footpath/access road right of way among *sitios* and/or resident groups
6. Sanitation and/or environmental cases: building a toilet over the back drainage of neighbor.
7. Boundary disputes between home lots
8. Water/electricity use violations (tampering the meter through a jumper by a resident vs. the neighbors which increases threats of fires)
9. Security-related issues (drugs, drunks, thefts).

### Golden Shower, Payatas

1. Land related issues
  - a. land claims by various land syndicates
  - b. appropriation of land rights by non-members of the associations
  - c. boundary lot disputes between neighbors
  - d. recalcitrants and selling of lot rights
2. Housing
  - a. defaulting in their mortgage payments
  - b. selling of housing rights to non-members of the association
3. Access road/footpath
4. Site development
  - a. disagreement between the Housing associations and the NGO

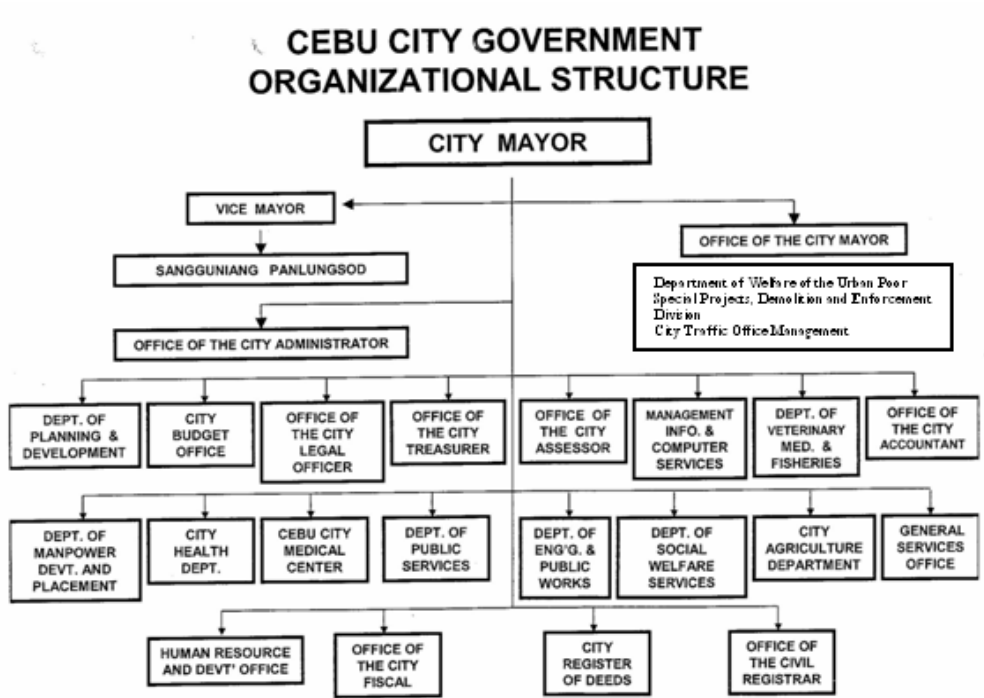
- regarding the development of the water system
  - b. construction of the road
  - c. re-blocking and their housing structures have to be moved or part (s) of it have to be destroyed and reconstructed
5. Water access—stealing of water from the association by a realty group (e.g., Violago Homes accessed water from the community without permission)
  6. Drainage, sanitation and health--throwing garbage into the premises of the neighbor or in the creek resulting to drainage blockage and floods to the houses
  7. Electricity/water tapping
  8. Administration of site development and livelihood grants by the NGO
  9. Security-related issues like drugs, drunks, thefts. Complaints by the residents to the barangay officials and the police has not resolved the issue.

**Barangay Trece, Payatas**

1. Land, housing and security of tenure—competing land claims, selling of rights by both the syndicates and the rightful housing beneficiaries
2. Basic services—water and electricity thefts
3. Community Security—drugs, drunks, public nuisance
4. Physical injury (but actually quarrel over community resources)
5. Illegal logging (actually petty theft for gathering firewood)

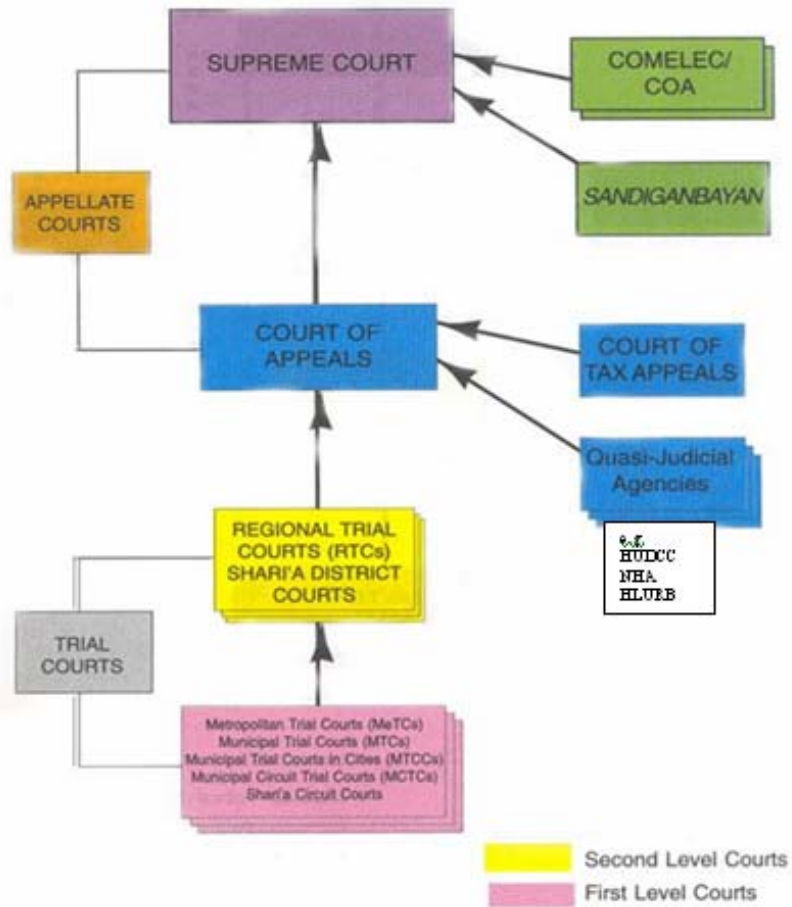


Appendix 3. Organizational Chart of Cebu City Government



## Appendix 4. Court System in the Philippines

**THE HIERARCHY OF COURTS IN THE PHILIPPINES**  
(Relationships between and among the courts in terms of jurisdiction)



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**Appendix H – Thailand Scoping Study Report**

**Scoping Study Report**

**Access to Justice for Urban Poor  
in Thailand**

**by**

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**Revised following Project Inception Meeting  
In Manila, the Philippines  
24-26 July 2008**

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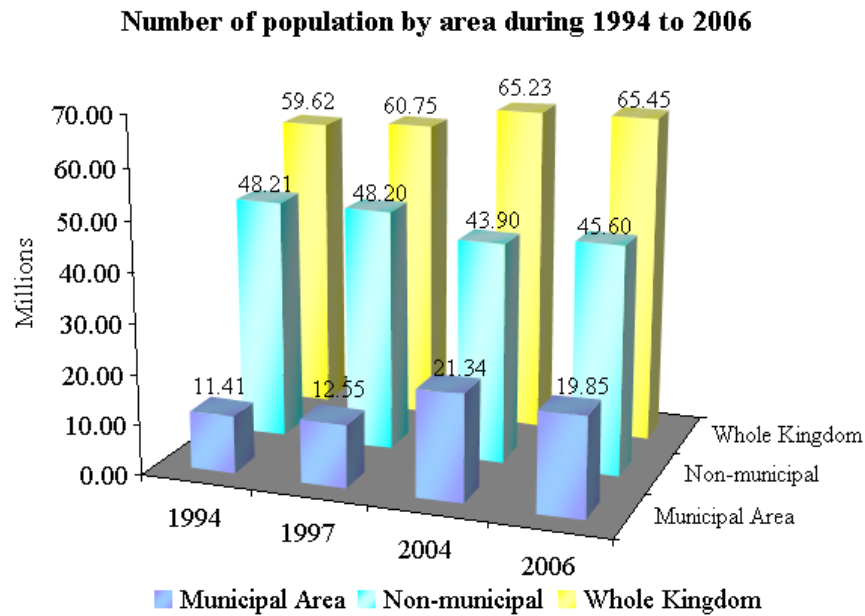
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## 1. Statement of the Problems

Thailand, like many other Asian countries, has faced the pressures of rapid rates of urban growth. Between 1994 – 2006, the population of the Thai kingdom as a whole increased from 59.62 to 65.45 million, but this growth mainly occurred in urban areas (Figure 1.) The urban population, as a percentage of the total population of Thailand has increased significantly (Figure 2), rising from 19% in 1997 to 30 percent in 2004. While there has been a slight decline in the urban population since 2004, the annual rate of urban growth between 1997 and 2004 was staggering. Within the context of this dynamic process of rapid urban growth, conflicts and disputes over urban assets are likely to have increased.

**Figure 1**



**Source:** Report of the Migration Survey, National Statistical Office

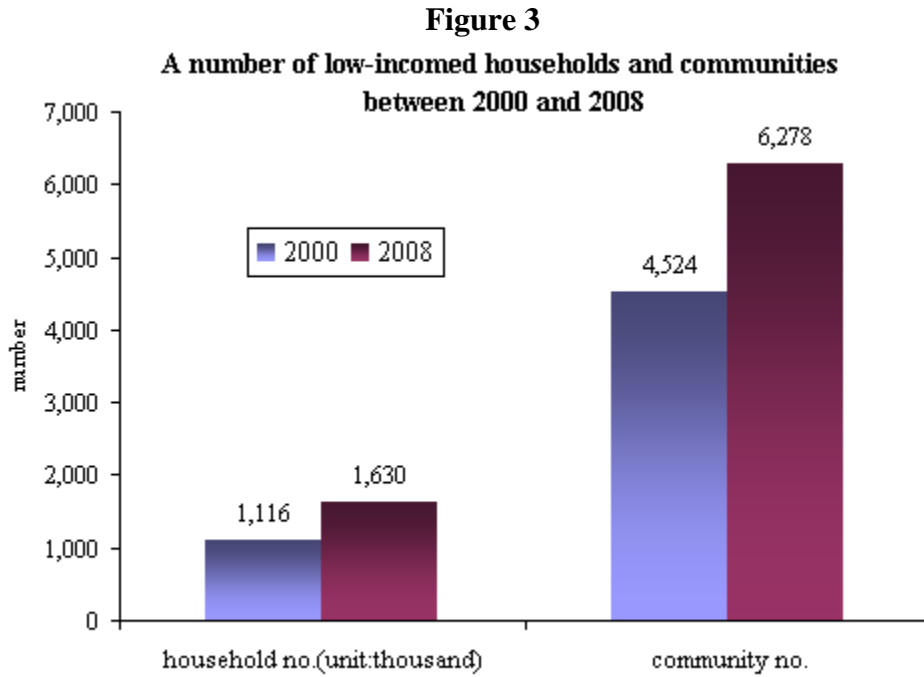
**Figure 2**





**Source:** Report of the Migration Survey, National Statistical Office

The data<sup>37</sup> collected in another survey demonstrates that the absolute number of low-income urban households and communities have increased (see Figure 3), resulting in increased demand for access to urban assets.



**Source:** Community Organization Development Institute (CODI)

<sup>37</sup> Data from different survey agencies; that is, low-income households survey which is from the Community Development Organization Institute (CODI) survey, but overall urban poverty ratio is from the national Statistical Survey.

Since poverty rates for the entire country have been declining over the last decade, the ratio of the urban poor population has also dropped. The latest data from the National Statistical Office indicates that Thailand's poverty ratio was 9.55% and the urban poor ratio was 3.62% in 2006.<sup>38</sup> However the increasing number of low-income households paints a contrasting picture. Of the low-income households, 44.7% are having trouble with settlement issues.

These statistics indicate that a significant proportion of the people is facing problems, particularly with housing issues. As an increased urban population leads to increased demands for urban resources, disputes over urban assets become inevitable.

By reviewing relevant literature, this section aims to introduce an overall picture of the causes of urban poverty as well as problems facing the urban poor including unequal access to justice. Finally models of alternative dispute resolution occurring in Thailand will be discussed.

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<sup>38</sup> Source: NESDB. Poverty ratio calculated from expenditure.

### *Causes of urban poverty and problems faced by urban residents*

To explain urban growth and rural-urban migration, academics generally refer to the earlier National Economics and Social Development Plans, which directed the country's development. Both Rabibhadana et. al. (1997, p.4)<sup>39</sup> and Pintoptaeng and Boonchai (2003)<sup>40</sup> offer the theory that national economic and social development plans since the First Plan have changed the country's social and economic orientation from a predominantly agricultural society to an industrial country. This trend has resulted in a massive rural to urban migration. As a result, the urban population has grown rapidly, especially in Bangkok which was one of the primary cities in the world. Unbalanced development has pushed poor people from rural areas to the cities where they become the urban poor, resulting in an increased number of urban poor communities.

Thailand's rapid economic growth has been associated with increasing regional inequality between Bangkok and more peripheral regions. Bangkok was the undisputed center of economic development. During the 1980s and 90s, the trend of urbanization and industrialization gradually dispersed to Bangkok's surrounding provinces. Today, Bangkok and the five surrounding provinces, often referred to as the Bangkok Metropolitan Region (BMR), has become the center of rural-urban immigration. Bangkok remains the country's most prominent urban center which benefits from the advantages of both substantially urbanized economies in addition to localization economies in many economic sectors (Kittiprapas, 1999.)<sup>41</sup> This high concentration of activity and change in Bangkok has inevitably led to high costs including congestion, pollution, rising land prices, social problems, etc.

In an attempt to decrease congestion problems in Bangkok and to decentralize economic development to other regions, the concept of regional growth poles, or secondary cities, was implemented. It was assumed that growth would trickle down to underdeveloped provinces after these regional centers were developed. However, it was unlikely that these growth pole cities could solve the problems resulting from high levels of urbanization and inequality. A study of two provinces which were designated as regional growth poles by Glassman and Sneddon (2003, p.101)<sup>42</sup> found that rapid economic growth has increased economic inequality and environmental damage in the North of the country without substantially lessening national income disparities or environmental problems within Bangkok. In addition they argue that while these policies had helped induce some growth in the designated secondary cities, in doing so they had induced new

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<sup>39</sup> A. Rabibhadana, M. Mitprasat, P. Sang-Kong, N. Tantuvanit, N. Srikasikul, P. Lapanun, A. Sattayanurak and S. Boonyabancha (1997), "Slum Development and Reconstruction Program (in Thai)", a research supported by Thailand Research Fund (TRF).

<sup>40</sup> P. Pintoptaeng and K. Boonchai (2003), "The strategy of the poor fighting at policy level: lessons and experiences of social movement of people politics after economic crisis (1997-2002) (in Thai)", paper in Midnight University website, no.273, downloadable at <http://www.midnightuniv.org/midfrontpage/newpage82.html>

<sup>41</sup> S. Kittiprapas (1999). *Regional Development in Thailand: Divergence and Recent Deconcentration*, Thailand Development Research Institute Foundation.

<sup>42</sup> J.Glassmand and C.Sneddon (2003), "Chiang Mai and Khon Kaen as Growth Poles: Regional Industrial Development in Thailand and Its Implications for Urban Sustainability", *Annals of the American Academy of Political and Social Science*, Vol. 590, Rethinking Sustainable Development, p. 93-115.

problems of sustainability to the secondary cities and their surrounding rural areas without alleviating problems of sustainability in Bangkok (Glassman and Sneddon 2003, p.93).

The fact that rapid urbanization leads to many problems has been indicated by many studies. For example, Mutakar (1995)<sup>43</sup> explained that rural poverty pushed villagers to the cities, which had no plans to accommodate immigrants. This unexpected arrival of rural immigrants leads to various public health and social problems, lowering the quality of life overall. Communicable diseases among the urban poor cause health crises. Problems of pollution, crime and chronic morbidity have increased. Many NGOs support relief efforts for the poor and needy, which are short-term strategies that do nothing to create the necessary infrastructure for balanced and sustainable development.

In a study on urban poor housing in developing countries, Rondinelli (1990, p.263)<sup>44</sup> demonstrated that rapidly rising land values had a series of harmful effects. Rapid increases in land value raises costs for small enterprises in cities, pushes people from the center to the fringes of urban settlements, accelerates the conversion of land from agricultural to urban, promotes sprawl, increases the costs of acquiring land usage rights for public utilities and raises the prices to buy property for schools and other public facilities. Lasserre (1983, cited in Akin 1998, p.4)<sup>45</sup> supported this thesis in his study of a case in Thailand. His study focused on the land conversion process during the 1960s which was caused by the granting of excessive land development permits to speculative real estate businesses. This caused land prices to increase in both the urban center and at the fringes of large cities. Increased land prices in turn caused the displacement of people from crowded urban communities.

In trying to assess potential structural resolution to these problematic trends, Pintobtang and Boonchai (2003, p.3) found that although the problem of the displacement of the urban poor does not seem to be as serious as it used to be, the poor continue to face insecure housing situations. So far the government has not given much attention to resolving the root causes of the poor's problems and do not seem to consider the poor as deprived of access to resources. Since the government does not view the poor as lacking in self-sufficiency, they expect it is enough for the poor to simply receive equal treatment to rest of the population.

Pintobtang and Boonchai (2003, p.5-6) explained that in Thailand, the public movement for the urban poor consists of two main networks: the labor network and the network of slum dwellers, which is called the Four Regions Slum Network. The Four Regions Slum Network is an important network that supports the urban poor in negotiations with the government to try and resolve their problems. The network uses a number of flexible

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<sup>43</sup> R.K.Mutatkar (1995), "Public health problems of urbanization", *Social Science and Medicine*, Vol.41, Issue 7, p.977-981.

<sup>44</sup>D.A. Rondinelli (1990), "Housing the Urban Poor in Developing Countries: Other Policy Options for National Shelter Strategies Are Examined since Conventional Ones Are Inadequate", *American Journal of Economics and Sociology*, Vol.49, No.3, p.257-270.

<sup>45</sup>He studied "the land conversion process in Bangkok and the predominance of the private sector over the public sector" in a part of "Land for Housing the Poor".

strategies. The network also understands the complicated politics surrounding problems and so many of its actions deal directly with the government and the private landlords to rent land for the communities, including land located beside the canals. These undertakings have led to government support for these organizations. For example, *Baan Mankong* is a government project that was set up specifically to support the processes designed and managed by low-income households and their community organizations and networks (CODI 2006, p.15-18)<sup>46</sup>.

Solving problems for the poor in the long run is a massive challenge. It has proven difficult to help the poor escape the poverty circle. The Duang Prateep Foundation (DPF),<sup>47</sup> an NGO which works for the urban poor in Klong Toey, the biggest slum area in Bangkok, has found that there are three vital disputes leading to a vicious cycle of poverty: low levels of education, poverty and sickness. The lack of educational opportunities leads to the poor having fewer job opportunities. In the end they mostly work insecure jobs, with low incomes and no chance to build up their savings. Insufficient or no access to basic facilities and health services lead to chronic sickness and poor health among the urban poor. These three conditions have forced the poor into a cycle of chronic poverty.

As long as these problems continue it is unlikely that the poor will escape the vicious cycle of poverty without solving structural problems that exist in Thailand. Structural problems related to the economy, society, politics and institutional development have affected the poor and attempts to solve the poverty problem. Unequal access to the justice system is one example of the structural issues affecting the poor.

#### *Unequal Access to the justice system*

The poor have long faced injustices and unequal treatment from people in the mainstream society. One obvious phenomenon is that the poor are often jailed because they do not have the money to pay for fines and fees which rich citizens can pay easily. Insufficient income means that the poor often have no choice but to accept periods in jails. This fact suggests that the current justice system is not fair to the poor. 'Poverty' by itself is 'social inequality' regardless of whether it is poverty starting from birth or poverty resulting from social structures or if it is absolute or relative poverty(Kittiyarak 2003.)<sup>48</sup>

Kittiyarak's study also demonstrates Thailand's feudal background which still influences the system of patron-client relationships, which cause disparities between the rich and the poor. This feudal structure has been adjusted by a growing materialism spreading from the western cultures. These trends have ensured the continuation of a significant gap between the rich and the poor.

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<sup>46</sup>In "Urban development towards sustainable cities and housing for the urban poor in Thailand (in Thai)", downloadable at [http://www.codi.or.th/downloads/english/Paper/Urban\\_Poor\\_in\\_Thailand\\_062006.pdf](http://www.codi.or.th/downloads/english/Paper/Urban_Poor_in_Thailand_062006.pdf)

<sup>47</sup> In "Duang Prateep with correcting urban poor problems (in Thai)" a paper by Kanokwan Raluek, downloadable at <http://www.dpf.or.th/node/418>

<sup>48</sup> K. Kittiyarak (2003), "Strategies of justice development for the poor (in Thai)", paper presented at Academic Conference on 'Direction for Equal Justice and Law for the Poor', Bangkok, 2 July 2003, organized by Ministry of Justice and the Thai Bar and funded by Thailand Research Fund.

The injustice, inequality and inconsistent treatment suffered by the poor are important problems which must be urgently solved. These problems have directly affected the status of rule of law in terms of equal justice under the law. In Kittiyarak's opinion, the paths to legal remedies in a complex justice system become too expensive for the poor who are less educated and are not aware of their own rights and possible courses of action.

A study by the Office of the National Human Rights Commission of Thailand explained that the principle problem of the urban poor is land rights and land ownership. The land used by the poor for informal settlements is either government land (about 80 percent) or private land (about 20 percent). As the government has not instituted policies for correcting the problems of land ownership and land use, in many cases the urban poor occupy land illegally and without permission. As a result, the urban poor face problems related to basic rights such residence registration, health services, and education. They pay more for facilities such as piped-water and electricity because they must buy these services from private houses near their communities. Municipal and district offices are not authorized to provide basic facilities such as piped-water and electricity to the urban poor because their settlements are considered illegal under the Building Control Act of B.E.2522 (1979). The government will not change this policy because they fear that providing basic facilities to these communities will be seen as tacit approval of such informal settlements. (Pintobtang and Boonchai 2003, p.5.) In addition, crowded, urban communities have been the center of activities involving drugs and other crimes. This often leads outside assistance agencies to avoid getting involved in or even visiting many urban poor communities. This lack of engagement and aid can leave some communities with great difficulties in accessing services.

#### *Thailand's Alternative Dispute Resolution*

A study on community disputes in Thailand and the US, explored dispute resolution mechanisms for a rich mélange of property disputes, automobile incidents, minor thefts, drunkenness, and noise pollution. This investigation found that the mediation approach has been more effective in Thailand than in the US. Thai mediators are more apt to be assertive in their mediations; they put disputants together, demand concessions, criticize disputants, and threaten them more frequently than do U.S. mediators. Thai mediators also more often seek harmony by asking disputants to forgive each other and apologize. (Callister and Wall 2004, p.573)<sup>49</sup> This research supports the findings of our current survey in that the Thai urban poor's preference for and success with alternative dispute resolution (ADR) has been documented. The urban poor in Thailand clearly choose to use ADR over going to the courts for resolution.

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<sup>49</sup> R.R.Callister and J.A. Wall Jr. (2004), "Thai and U.S. Community Mediation", the Journal of Conflict Resolution, Vol. 48, No.4, p.573-598.

The Central Intellectual Property and International Trade Court of Thailand (2002, P.7-25)<sup>50</sup> has investigated the status of ADR methods in Thailand. This study categorized ADR mechanisms as having two distinct groupings, those that deal with disputes involving the public sector and then those exclusively private sectors disputes.

Considering those disputes relating to the public sector and communities, it is first important to consider the Interior Ministry's position expressed in the Local Administration Act of B.E. 2457 (1914.) This Act stipulates the duty of administration officers to facilitate justice for the people. Also relevant is the Interior Ministry Regulation pertaining to conciliation through community committee of B.E. 2530 (1987) which was enacted by Section 5 of the Local Administration Act of B.E. 2457 and Section 5 of the Voluntary Self Development and Protection of the Village Administration Act of B.E. 2522 (1979.) These two pieces of legislation empower the community committees in remote areas to act as conciliators in settling any disputes arising among members of the community. The mechanism serves to settle disputes in two particular ways: (1) civil dispute settlement under the authority of the district head officer, and (2) reconciliation directed by the community committee.

A second method of dispute settlement is for the Ministry of Justice to settle disputes out-of-court using the Arbitration office. This office established an arbitration procedure made legal by the Arbitration Act of B.E. 2530 (1987.) This regulation was enacted for parties who were seeking remedy for disputes over contracts that had arbitration clauses. Besides managing arbitrations, the office also serves as a center for conciliation and mediation. Any disputes either before or after court filing could be submitted to the center for conciliation. The center provides an expert conciliator or mediator to handle the disputes, which are submitted voluntarily by parties seeking an amicable settlement.

The Court of Justice, after separation from the Ministry of Justice, has been developing a more active role in alternative dispute resolution. The Arbitration Office, which used to be overseen by the Ministry of Justice, is now under the umbrella of the Court of Justice. It is interesting to observe some of the details of this office's development, which has now changed its name to "the Alternative Dispute Resolution Office." This office still provides two main types of out-of-court dispute settlements; arbitration and conciliation. It is interesting to detail the differences between these two different channels of dispute resolution provided by the Court of Justice.

Notwithstanding the development of the Court of Justice, arbitration is still in its early stages in Thailand. At present most people still do not really understand what it is and how it works. Considering environmental disputes for example, it is likely that the public may hesitate to enter into agreements reached through arbitration with industrial firms unless they have a better understanding of what arbitration is. Because of this lack of understanding, and given that arbitration requires all parties concerned to agree to enter into an arbitration process, the use of arbitration as a means of settling environmental

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<sup>50</sup> Central Intellectual Property and International Trade Court Thailand (2002), "Alternative dispute Resolution in Thailand," paper in "Dispute Resolution Process in Asia," IDE Asian Law Series No. 19.

disputes is not as popular as negotiation or mediation. (Central Intellectual Property and International Trade Court Thailand 2002, p.195)

There are legal aid services available in the formal judicial system. As discussed earlier, the court system is treated as a public service in Thailand. Therefore, to make sure that everyone in the country has access to justice, many laws provide legal aid for those who are not able to afford the court fees. According to the civil procedural code, if any party can prove that he or she is too poor to pay for the court fees, he or she will be exempted from the fees. This system is called 'legal proceedings for the poor'. Importantly, the exemption of court fees is not available in similar measures such as arbitration. (Central Intellectual Property and International Trade Court Thailand 2002, p.196)



## **2. Description of the Sites Selected Approach**

The scoping study approach follows the project's framework. Research sites selected for qualitative analysis, as required by the project guidelines, are located in Bangkok and Nakhon Ratchasima. Within these provinces communities have been selected based on their special characteristics and the variety of problems present.

The Klong-Tuey area of Bangkok was selected because it is the largest urban poor area in town and has a long history of struggling for the protection of their settlements. Moreover, the area encounters various problems ranging from the spread of drugs and drug addition, unstable employment and income, as well as other social and economic problems including conflicts among various groups within the community. Two communities in Klong-Tuey site were selected for study. The first site selected was the 70 Rais Pattana Community and the second one was the Log 4-5-6 Community. The former settlement has a better economic status and is larger than the latter community.

In contrast to Bangkok, in Nakorn Ratchasima Province there are not many choices of urban poor communities to select. This is because most of the province's settlement disputes have already been resolved. This lack of an ideal study area led to the selection of a very poor urban community called the Two Sides of Railway. This area is facing various social and economic problems and seems to be an extreme case. While problems vary between communities, the main dispute cases among all of them are likely to be settlement cases.

People with different socio-economic backgrounds and different views were chosen as key informants for interviews. Interviews in each community normally started with community leaders in order to get an overall picture of the community and to understand the role of community organizations. Then, representatives of the different groups in each community were selected to get general information from different perspectives. If a community has a significant internal or domestic conflict, an attempt has been made to interview some of the opponents on both sides of the dispute in order to get a balanced opinion and attempt to discover what the facts are.

To get a better understanding of the relevant macro-level context behind the research questions, institutional interviews were undertaken by first selecting the most relevant institutions that are either associated with the problems of the poor or those that assist the poor with resolving their problems. Interviewees included a lawyer, an advisor, manager, data informant, academic, as well as an organization's deputy-director.

Interviewing techniques employed combined, open-ended and guide-listed questions. This allowed for flexibility in specific situations, and adjustments based on the interviewees' responses, while also gaining the information necessary to answer the main research questions. Notes were taken and a small IC recorder was used.

In addition to conducting direct interviews, information was also obtained by making observations on the characteristics and personal backgrounds of the interviewees. Some

important issues to consider were careers, relationships with neighbors, how much money was invested in their children, assets owned in their residences, openness during the interview, etc.

### 3. Findings of the Scoping Study

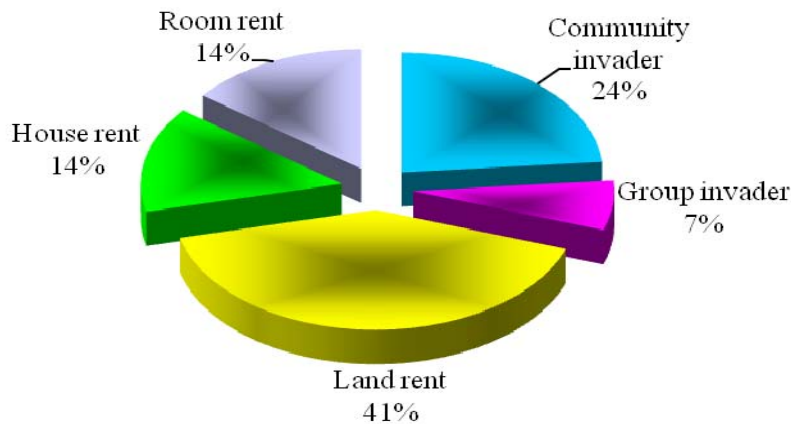
This section aims to provide general information at the country level and also specific information from the survey. This section begins with an overall picture of the secondary data. Then, it presents a background of the selected urban poor sites in Bangkok and Nakorn Ratchasima, follow by summary of the findings from primary data. These findings will answer the questions on what the main disputes and problems are; what institutes the urban poor approach to resolve them; what some of the institutional procedures available for resolving disputes are; how the urban poor actually resolve disputes; and how much are they satisfied with the dispute resolution processes they access or have access to.

#### 3.1 Background from a Macro Survey

There are numerous kinds of disputes over urban assets today, but collecting systematic data to present them may be difficult. One of the obvious categories of disputes are those over the vital assets of land and housing issues. Secondary data collected from CODI shows that almost half of the low-income households face some problems with their settlements.<sup>51</sup> Of these households, about 41% of them rent their land and 30% occupy their land without permission (Figure 4.) Considering land ownership statistics, land owners in Thailand can be divided into the following categories: the government owns the most land (47%) and the private sector ranks second (29%), followed by religious organizations (19%), the Crown Property Bureau (2%) and other unclassified owners (3%).

**Figure 4**

**Proportion of troubled households in Thailand**



<sup>51</sup> CODI survey data.

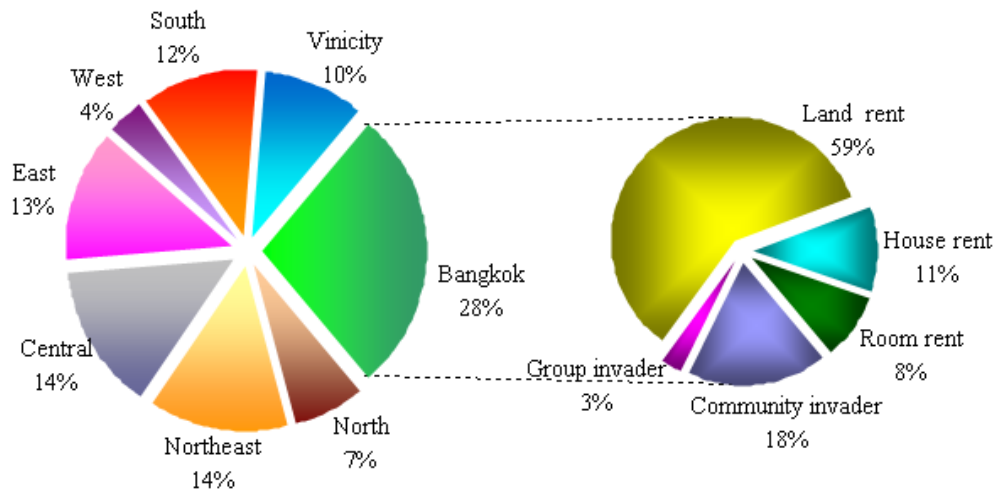
**Source:** Community Organization Development Institute

**Note:** Community invaders are defined as an entire community that resides on the land of some non-resident owners without explicit permission; group invaders are defined as a part of a community (less than 50%, not the whole community) that resides on the land of others.

Figures 5 and 6 illustrate the proportion of households with settlement problems by geographical regions and then by the kinds of settlement problems that households in Bangkok and the Northeast are facing. These results indicate that there is a possibility of similar disputes in each of the cities. In Bangkok, households with the most settlement problems (60 percent) are those that rent land (while land invaders represent the group of households with the second most housing problems at 21%.) In the Northeast, the households with the most settlement problems are the group and community invaders, which accounted for 38% of all land related disputes (households that rent land participated in only 17% of the community's land disputes.)

**Figure 5**

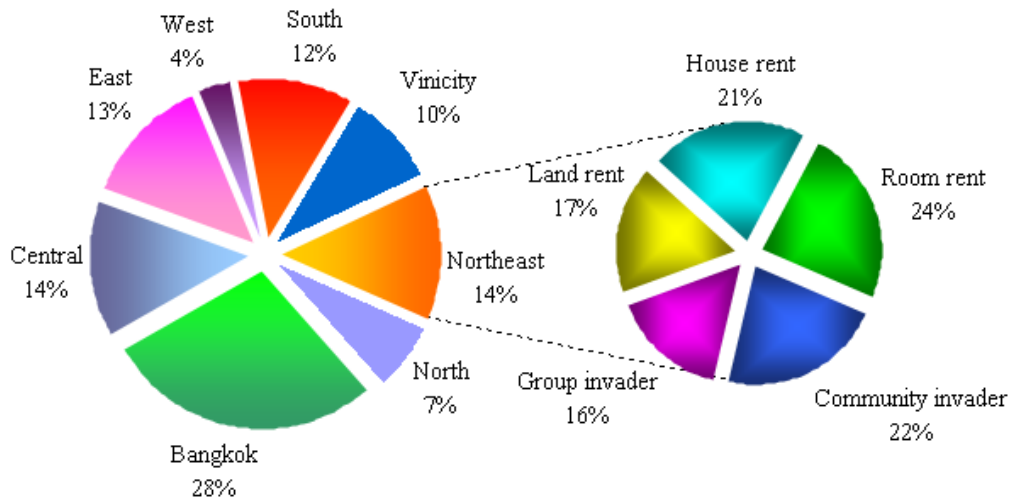
**Proportion of troubled households by regions and kinds of troubled household in Bangkok**



**Source:** Community Organization Development Institute

**Figure 6**

**Proportion of troubled households by regions and kinds of troubled household in Northeast**



**Source:** Community Organization Development Institute

These figures are consistent with what we found in our survey from selected sites in Bangkok and Nakorn Ratchasima. The most troubled urban poor households at the Bangkok site rent land, while the most troubled households at the site in the Northeast occupy their land without permission. Given these findings, it is not a surprise that most of the significant current disputes found during the interviews, are related to these same causes.

### 3.2. Background of the Selected Sites and Interviewees

One of the activities required for the scoping study was to conduct interviews in Bangkok and Nakorn Ratchasima. The two communities selected in Klong-Toey in Bangkok included: 70 Rais Pattana and Log 4-5-6. One community was selected in Nakorn Ratchasima: the Two Sides of the Railway Station. These three communities are representative of big (and higher income), medium (and middle-income), and small (and poorer) communities respectively. A total of 27 urban poor residents of these three areas were interviewed. In addition, six institutional interviews were conducted with the staff of three different NGOs. Staff interviewed included a deputy director, a lawyer, and an academic.

Among the NGOs where interviews were conducted was the Duang Prateep Foundation. Also selected was the Human Settlement Foundation Thailand. These foundations are non-government organizations which focus on problems of habitation. The Human Settlement Foundation Thailand also acts in an advisory role to the 4 Region Slum Network, which is a network of NGO committees from urban poor neighborhoods. The Grassroots Development Institute is another NGO that was interviewed, their work focuses on problems with illegal drugs. The Community Organization Development Office (CODI), a semi-government organization, was also interviewed to get information

about the organization's general role in assisting the urban poor with legal matters. An interview with an academic working for CODI's Baan Mankong Project in Nakorn Ratchasima also provided a complimentary specific picture of the real situation in the field.

### **3.2.1 A summary of the first site: Klong Tuey, Bangkok**

Two slums in the Klong Toey area, which is the biggest urban poor community in Bangkok and also in Thailand, were selected for the initial survey. The Klong Toey area is an area with an extensive and prolonged history of fighting for their settlement; this struggle has lasted for more than 30 years. Most of the land the community is built on belongs to the Port Authority of Thailand (PAT.) There are about 41 urban communities in the area, and more than 120,000 people (Rupkumdee etc 2007, p.3-3.)

Many NGOs, both national and international are located in the Klong-Tuey area. Some prominent examples include the Grassroot Development Institute, the Duang Prateep Foundation, the The Human Development Foundation (Mercy Center), etc.

Interviews conducted in this area included conversations with representatives from various organizations such as the Duang Prateep Foundation, the Grassroot Development Institution, local leaders of the communities, and the general population residing in the area.

In addition to interviewing the local organizations that work with the communities, we interviewed about 14 (poor) people from the two communities. These interviewees represent a mix of socio-economic backgrounds. Some have high incomes or are educated, while others are very poor and seem to be excluded from receiving public services. Some play an important role in the community committees or are natural community leaders, while others lack social relations, are powerless and have no access to public services. Like any other Thai communities, the urban slums are faced with problems of inequality between the upper, middle and lower status even within their own communities.

So, what does this imply? People of different status have different kinds of difficulties and concerns. The types of disputes they report depend on what they would consider priorities or problems in their lives. In brief, these two communities in Klong Toey encounter enormous problems ranging from disputes over land, safety and security, lack of or no access to public utilities and educational opportunities, unemployment, and unequal distribution of goods provided by external sources.

Two slums within Klong Toey were surveyed: the first one is the 70 Rais Pattana Development Community,<sup>52</sup> and the second one is the Log 4-5-6 Community (Zones 4-5-6.) These are big and moderately crowded communities with over 1,000 and 700 households respectively (about 8,000 persons and 2,000 persons.) Community governance structures and welfare systems are summarized in Table 1.

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<sup>52</sup> A Rai is a unit of area equivalent to 1,600 square meters or 0.4 acre.

## 1. Comparison Structure of 70 Rai Pattana and Log 4-5-6 Communities

Content	70 Rais Pattana	Log 4-5-6	note
<b>1. Community Committee Structure</b>			
1) number of elected committee	25 people	25 people	Same structure follows regulation by district office
2) key positions	1 Chairman, 2 Deputy, 1 secretary, 1 treasurer	1 Chairman, 2 Deputy, 1 secretary, 1 treasurer	
3) term of election	2 years	2 years	
4) Voters	People with resident registration in 70 Rais Pattana community	People with resident registration in Log 4-5-6 community	
<b>2. Administration of community assets</b>			
1) Income categories from formal government organizations	Baht 5,000 per month	Baht 5,000 per month	It is a support by District Office, the Bangkok Metropolitan Administration, for community development.
2) Income categories from community assets	Two community market has generated income as below details: The 1 <sup>st</sup> market opens every day, and its income is about Baht 700-1,000 per day, or about Baht 21,000-30,000 per month (30 days). The second one open only Tuesday to Friday, or 4 days per week, and its income is about Baht	No	70 Rais Pattana community has the public areas because the community area is a new land occupied for the last 20 years after moving from other invaded land area, and National Housing Authority was a supportive organization which had planned this town. Whereas, Log 4-5-6 has never moved and invaded land here since the past and a connected land at this moment is without any town plan, and then it is more scatter and crowded.

Content	70 Rais Pattana	Log 4-5-6	note
	2,000 per day, or about Baht 32,000 per month (four weeks).		
3) other subsidies	No	Projects from Office of Narcotic Board for Prevention and Red Cross	As Log 4-5-6 has no market places to collect money (no regular income) to cover their public service expenditure, they use parts of project funds for public expenditure in the community.
4) Expenditures of basic facilities such as sanitation and environment management, public electricity and pipe-water, etc. per month	1. for garbage collection 11,000 baht 2. street cleaner 11,000 baht 3. water and electricity fee in public area 8,000 baht 4.Others About 10,000 B Totaling about 40,000 baht per month		
<b>Welfare</b>			
1) Health	Community Drug Rehabilitation Center. Health Center with visiting doctor once a week.	Health rehabilitation center	
2) Education	Yes at common area of Klong- Tuey community	Yes at common area of Klong-Tuey community	
3) Public Infrastructure			
- electricity in public places such as roads, center	Yes	Yes	
- sanitation and environment management	Yes	Yes	



Content	70 Rais Pattana	Log 4-5-6	note
4) Saving group	Yes, Saving group for settlement	no	
5) Security guard	Yes. Local Voluntary guard. Office police come every Saturday	Yes. Local Voluntary guard and office police comes everyday	

The first community seems to have a higher income level compared with the second one. The first community used to experience evictions about 20 years ago, but now residents can have legal rental land. Most of the community land (about 90%) is owned by the Port Authority of Thailand who rent out the land for 3 year terms at the rate of 5 baht per square wa.<sup>53</sup> Unlike the first community, the second community has no land rented legally as they have yet to experience evictions that might force a change in the situation.

### **3.2.2. A summary of the second site “Two Sides of the Railway” Community, Mueng District, Nakhon Ratchasima**

The Two Sides of the Railway Community is built on an illegally occupied area that belongs to the State Railway of Thailand. This community is composed of two smaller communities: Biley and Hung-Jung. This community is located between two railway stations: Nakhon-Ratchasima and Jira and consists of an area of about 38 rais with 256 households. The total population is about 400 people, of which 13 were interviewed for this study.

This community may be the poorest in Nakhon-Ratchasima and perhaps even the poorest in Thailand. The poverty in this community is not only economic, but also might be described as social. Residents face exclusion and lack capacity, influence and power. These problems stem from a very basic problem – many residents do not have birth certificates, resulting in an inability to claim certain rights and services which require legal identification. One out of every ten community members has no basic legal identity documents such as birth certificates, ID cards, or residence registration documents. They live in informal settlements and have severely limited rights over their land and homes. As a result, residents are unable to access basic services and assets such as health services, higher education (over Grade 6), water and electricity. As a result, residents are forced to pay inflated prices for utilities (water and electricity) provided through intermediaries if they do not want to live in the dark. This community also faces various social problems such as the use of inhalants and drugs, prostitution, gambling, crimes, murder, HIV/AIDS, physical handicaps, abandoned senior citizens, etc. Many people in this community are alcoholics and lack ambition. They seem to live their life

<sup>53</sup> “Wa” is a sub-unit of Rai which 1 Rai is equivalent to 0.4 acre or 400 square wa; therefore, 1 acre equals to 1,000 square wa.

day by day and are not concerned with long-term livelihood development. Recently there have also been conflicts occurring within the community. Two main groups of residents have been struggling against each other.

Originally people came to this area to use this place to store garbage illegally. The development of a residential community is relatively new phenomenon and so there are no community leaders who have led its development for many years. Most of the residents migrated from provinces in the north-eastern region for a variety of reasons. The main reason seems to be the difficulties faced by farmers, which has pushed these people to migrate into the cities for work. Other reasons explaining why people ended up in this community are social and severe family problems. Some residents went through divorce, some are orphans, and others are the victims of sexual abuse in their families that prompted them to run away from their families and start a new life in this community. Despite these varied reasons for coming to the community the end results are largely the same. The people residing in this community are homeless or short-term migrants who mostly earn their living as garbage collectors.

There are many reasons why the people in this community can not solve their problems. With low educational backgrounds and family breakdowns, as a community they have not been able to concentrate on developing their community since most residents have enough trouble earning a daily living. Due to a lack of education and access to other formal public services, residents do not know their basic rights such as the rights to health services, education, basic infrastructure, etc. Adding to the challenges is the fact that the Municipality has not accepted them as a community and, therefore, regular assistance has not been provided. There also is no formal community governance structure. So despite its 30 history this settlement has not been recognized as a legitimate community and residents were not involved in developing their own community or building networks until CODI's Baan Man Kong project was implemented about 5 years ago. In order to get assistance from this project, the residents had to develop a community savings fund. This fund would be used to create a mechanism to train local management skills, strengthen community groups, inform the people about their rights, and provide other basic and necessary information. The head of the savings group (a woman) was selected by CODI. She has since also become the head of the community.

Once the community network has improved their capabilities, CODI will provide a loan to the savings group which can be lent to its members to help them build houses on their land. However, the land belongs to the State Railway of Thailand. CODI and the community savings group started negotiations with the land owners to improve tenure security within the community. Through this process community members started to participate in a dispute resolution process, which they never thought about doing before. Residents were not at all familiar with this process. Currently this community is still unable to lend money for building houses because there are ongoing negotiations, supported by CODI, with the State Railway of Thailand to rent the land they currently occupy. Negotiations to legally rent the land have gone on for more than 3 years. The State Railway of Thailand has been offering them a different piece of empty land, which is 5-10 kilometers from the present area. The people in the community do not want to

move there because their occupation as garbage collectors requires them to be in an area close to the city. Another local community group which did not join the community savings group and did not join the CODI project, cannot move and do not want to move. Many of the poor simply do not want to pay for rent, while some others do not trust the saving group.

### **3.3 Findings**

Findings from interviews with institutional representatives and the urban poor as well as observations from the surveys have been summarized within the structure of the 5 main research questions:

#### A: What types of disputes and complaints over urban assets are arising?

##### *(1) 70 Rais Pattana Community*

The majority of the disputes and complaints over urban assets are related to land, since most of the residents(90%) do not have legal rights over their land. The community leaders rent the community land on behalf of the community from the Port Authority of Thailand for 3 year terms. This relatively short term lease makes people feel insecure. In addition, since land is rented on behalf of the community, at times conflicts arise between community members and with other neighboring communities. It is also difficult when the community needs to ask the landlord for more public space for organizing community markets. However, this community has been settled here for a long time and does have access to some public spaces such as a children's playground. For many other communities in the area these types of public spaces are not easily requested. This community has been through a long history of disputes over their community land. These kind of disputes are further explained in box 1.

### **Box 1: Dispute over land and conflicts within community**

The community had struggled as a result of an eviction more than 20 years ago. After the eviction, the community got assistance from the National Housing Authority to help them rent some land legally from the Port Authority of Thailand. This land would give all the community members a place to move to. The National Housing Authority paid a rental rate of 1 baht per square wa and then leased the land to the community at the rate of 8 baht per square wa. The National Housing Authority helped to manage the landscape, create design plans, and provide public utilities. Community members were expected to build their houses by themselves. With legal rents, these houses were granted permanent resident certificates. With this status they are eligible to request public utility connections.

After the National Housing Authority finished its lease term in 2006, a community organization would be allowed to rent the land directly from the Port Authority of Thailand for a three year term. At the time of this transition there was no legal community group or a community saving group that was eligible to rent the community land on behalf of the community. In the end it was the community leader's company, as a legal body, that could rent the land on behalf of the whole community. This led to conflicts within the community. Some of the committee members resigned and there were also some protests.

The community leader paid rental fees of five baht per square wa (totaling 132,000 baht per month), and from rent received from the local community the leader expected to get a three baht margin for each square wa. However, some people and organizations do not accept this arrangement and refuse to pay for rent. As about half of the community does not pay, the community leader takes a loss from collecting community rent, as the amount received is not enough to cover expenditures. Many residents expect a lack of transparency to worsen in managing community resources because the community head may wish to transfer some community funds to cover the losses resulting from his renting the land. This suspiciousness is also caused by the undisclosed community funding account of which the public is not told any details.

There have also been disputes over land and rent among community groups. Local NGOs such as Duang Prateep Foundation and Mercy Center have acted as mediators in the past. There have been at least four meetings with stakeholders in the community. A resolution was introduced that the rent renewal set for June 2009 must be legally rented by a savings cooperative. A savings group was later established after this decision was made, and now the group has about 140,000 baht, which is enough to apply for the group to be upgraded into a savings cooperative. However, there has been no progress in pushing the group forward towards becoming a cooperative. At the moment it is expected that the same problems will return next year when the community rental term ends and must again be renewed.

Another important category of community problems relate to security. The spread of drugs and robberies has been very important in affecting the daily life of the urban poor, particularly since the economy is presently suffering from a down turn. The problems are very complex and hard to resolve because they also involve beneficiaries who are sometimes powerful persons.

Public utilities such as pipe water and electricity are no longer big problems because most households can access these public services. Only few residences do not have utilities using a common connection and a meter or connections taken from other legal connections. However, households with temporary housing certificates have to pay a higher rate for utilities than households which have permanent housing certificates.

Issues with education in these communities are no problems of access to education, but are more about the cost of education, particularly for families with children at the higher levels of education. Most children in the community can access education up to Grade 9 in Klong-Tuey if they want to. However, some children do not want to continue their studies, especially those who are addicted to drugs. Problems arise because some youths do not go to school and are unemployed. If there is more livelihood development and employment creation, this problem may be lessened.

The types of problems reported varied significantly according to the interviewees' socioeconomic status. For the higher income class, the most important disputes seem to come from disputes over land entitlement as they are more concerned with their settlement's security. For the lower income households, problems of housing sanitation and environment, especially affected by flooding are more pressing issues. New households in the community that lack resident certificates mostly complain about limited access to education and health services. Also, the very poor face problems of unstable incomes, unemployment, unequal access to goods, public services and assistance from the government and organizations such as the elderly living allowances. The poorest of the poor also suffer from social exclusion, not having residence certificates, powerlessness or no relations with powerful community members and unequal access to public services. This group also has not been receiving free supplies provided by charitable organizations. They generally complain about the unequal distribution of goods and services and note that residents who are close to members of the community committee often did receive them.

## *(2) Log 4-5-6 Community*

The Log 4-5-6 Community is a community located next to the 70 Rais Patana Community. This community has not gone through the experience of being evicted and does not now rent land legally from the Port Authority of Thailand. Residents of the Log 4-5-6 community remain as illegal occupants of an informal settlement and therefore their situation is more insecure than the first community. For this reason the community has less conflict over land and rent, since there simply is no rent. The community is crowded and has no designed plan. To date they have never received assistance from the National Housing Authority. Their complaints are mostly related to drugs, which affect their daily life. This focus reflects the different priorities of households or communities with different economic situations. This community is poorer than the first one, thus the people in this community are more concerned with drug related problems rather than worrying about having their own land or long-term rental agreements. They believe that although they cannot own the land, the PAT will not evict them as the community has settled here for many years. Also settlements in the Klong-Tuey area have long histories

of fighting over property and managing to stay there. Residents of the Log 4-5-6 accept their current legally insecure tenure situation. However, for better-off households in this community, priorities should be focused on security in their settlement and improving their living environment. These residents would prefer to move out of the community if they have the chance. For those who are extremely poor, they are more concerned about more fundamental questions of how to earn enough money for basic expenses like food and tuition fees for their children.

It appears that there is no religious conflict within the community because different religious leaders have devoted themselves to cooperatively working for human development. This community has several dedicated leaders. Although they are not rich, they seem satisfied with their lives and are willing to work for the society. Community internal conflicts seem to be rare too. Similar to the 70 Rai Pattana community, most households here no longer see access to public services as a serious problem now. Even minor households that are not directly provided public utilities can always connect to the utilities through other households (although they have to pay a higher rate.)

### *(3) Two Sides of Railway Community*

The Two Sides of Railway Community encounters all the serious problems. However, real dispute cases seem to result from land issues. Community problems start from a very basic problem; residents do not have birth registration certificates, residential certificates or any of the rights derived from these identities. One tenth of the community members, and sometimes entire families, have no ID. This leads to an inability among these residents to access basic rights and services such as health and higher education services. Considering its illegal and informal status, this community does not have water pipes or electricity connections. This results in the residents having to buy expensive utilities. Another problem in the community has been recent conflicts between two groups within the community. One of the opposing groups is connected to the community savings group led by the head of the community. The other group consists of residents who did not join the savings group and are being led by the former head of the community.

As a consequence of these economic, legal and political problems this community now faces many kinds of social problems such as the use of inhalants, drugs, prostitution, gambling, crimes, murder, HIV, physical handicaps, abandoned senior citizens and internal community conflicts. Many people in this community are alcoholics and lack ambition. Those who are very poor seem to live day by day and cannot seem to focus on long-term development issues in their lives.

Presently, the majority of the disputes in this community relate to land arrangement. There are both disputes among community groups and also between the community and the land owner (State Railway of Thailand.) By engaging the community with a formalized system of settlement resolution (i.e., Baan Mankong project), the community has actually experienced conflicts internally and with the outside land owner. Some of these disputes are detailed in box 2.

## **Box 2: Disputes over land and the participation in a government resolution project**

The community has occupied this piece of land, which belongs to the State Railway of Thailand, for over 30 years. Recently, they were asked to relocate. The presently occupied land will be used to build a local road and the community has been asked to move to a new piece of land also belonging to the State Railway of Thailand. At this new location they will have legal rent and will be eligible to build houses under Baan Monkong project. However the residents do not want to be relocated as they currently live close to the provincial railway station and are not paying rent.

Several agencies have been trying to solve the problems of insecure housing tenure, one example is CODI's Baan Mankong project. Since the arrival of the Baan Mankong project<sup>1</sup> about 5 years ago, this community has been in disagreement over occupied land. Today, many households are willing to move and want to build their own houses on legal land. However, of the groups participating in the Baan Mankong project some are for (65 households) and some against (73 households) the relocation through the community saving group.

The community was asked by the State Railway of Thailand to move to an area about 20 meters further away, which can only absorb 65 households. The other 76 households would have to find another place to settle. This second group does not want to move or may not be able to move (because the new space is limited and some households are not eligible because they have not joined the saving group.) Not all households are always in agreement about how the community is being developed. There have been regular protests regarding many of the community development plans and many households refuse to participate in the community savings group. These residents are not interested in moving to the newly allocated land.

The group that is willing to move to the newly assigned land also have some complaints. They feel the owner of the land, the State Railway of Thailand, is really not pushing for progress as their procedures have been taking a long time. After negotiation for about three years (with help from the CODI coordinator), the State Railway of Thailand now has agreed in principle to a plan to move the community to the other area. Despite this they have not yet provided specific information about the rental rate. The implementation of the plan is still in question at the moment and parts of the community do not seem to be prepared to move. Fragmentation within the community is obvious. Many of the poor do not want to pay for rent, while some do not trust the savings group. This may be the result of past experiences in the community where a savings group might not have been managed with transparency.

From our interviews we found that there are some reasons behind the opposition group's dislike of the project. We observed that members of the Baan Makong project tend to have a better economic and social status than the 'con' group. The latter feel insecure and they lack sufficient income and savings to make the move. They are poorer than the 'pro' group and do not believe that they will be able to pay back the loans they would be given. They do not want to move to a new location because it will increase their cost of living by adding expenses such as rent. Therefore, they would prefer to live as informal residents without having to pay any fees. In addition, many do not trust the local committee in managing the savings fund, especially the savings group run by the current community leader. Internal conflict seems to be a reason behind their decision not to participate. Most of the people against joining the saving group and moving to new land rely on their connections with the former community leader or another man who is the area's main money lender.

To sum up, Table 2 summarizes and compares types of disputes, complaints and grievances found in the three communities.

**Table 2. Types of Complaints, Cases and Grievances by Study Site**

<b>Types of complaints, cases and grievances</b>	<b>70 Rais</b>	<b>Log 4-5-6</b>	<b>Two Sides of the Railway</b>
1. Land 1. Land tenure (a. Legal rental land and b. Invaded land) 2. Experience of eviction	Yes (a) Yes	Yes (b) No	Yes (b) Will be
2. Security inadequate (drugs, drunks, thefts)	Yes	Yes	Yes
3. Public utilities (pipe water and electricity)	No (90%)	No (90%)	Yes
4. Access to education and health services	No	No	Yes
Note 3,4 may still have problems of quality and affordability to public services			
5. Disputes between community groups	Yes	No	Yes
6. Inequality of getting public services and assistances	Yes	No	Yes
7. Personal Legal Status	No	No	Yes
8. Environmental, sanitation, and site development	Yes	No	Yes

B: What institutions do the urban poor approach to resolve their disputes?

In general, if the problem is not too big, the people in the community can rely on the community organizations or leaders to solve their problems themselves within the community. If the dispute is considered to be a big issue, they primarily seek assistance and advice from local NGOs. Sometimes NGOs organize fora for related agencies and stakeholders to meet and discuss problems in order to find some solutions. Which agencies or institutions disputants approach largely depends on the issues. Similarly, which government organizations the poor can rely on and approach for dispute resolution and problem solving depends on the specific issues that need to be addressed.

More specifically, for disputes over land and settlement issues, the involved institutions consist of NGOs and the Community Organization Development Institute (CODI.) CODI is a semi governmental organization which is funded partially by the government but is still managed by a non-government administration. CODI is overseen by the Ministry of Human Security and Social Development, which is mainly responsible for human security issues. CODI works through the people's network of the National Urban Poor Community Development Union, while the Human Settlement Foundation works through the Four Region Slum Network. CODI is responsible for dealing with issues of housing



and land in 80 percent of Thailand's urban communities and the Human Settlement Foundation will be responsible for the remaining 20 percent.

The district office and municipal governments are more directly associated with issues concerning rights and basic facilities in the urban slums, such as housing registration, electricity and waterworks. However, government assistance generally lacks a community strengthening element within the program. For example, the municipality designs housing models without analyzing the people's demand. In the end these models generally do not serve the life styles of the urban poor. CODI emphasizes long-term, sustainable housing solutions undertaken through community demand-driven mechanisms.

CODI has been playing a prominent role in Thailand's urban communities through its Baan Mankong Project (meaning stable house.) It assists the poor through developing a group savings process, providing some advice, negotiating with land owners, and lending money to the poor's savings groups. This money is used for building their houses with a legal rental status. The loan ceiling is 300,000 baht for a house and land; and 150,000 baht for housing only. The loan term is 15 years with 4% interest rates. The loans are made to the community savings groups and the groups take care of their members. The committee members of the groups decide on interest rates to use when lending money to their members. In addition, CODI provides support for housing renovations, households can receive up to 20,000 Baht. CODI's additional role is to provide advice and coordinate negotiations with the land owners in the name of the urban poor. Their initiatives try to ensure the urban poor have legal rental agreements which allow communities to continue living in the same places with their community ties.

For problems regarding basic rights caused by a lack of identification, the urban poor should contact the district office (specifically the Community Development Unit), under the Ministry of the Interior, and municipal governments for birth and resident certificates. For assistance with unemployment and elderly living allowances, citizens have to contact their district offices. For public utilities and infrastructure issues, they also should approach the district office and government service agencies or the state enterprises responsible in each area or municipality

Municipal offices have been trying to provide remedies for the very poor local communities through special assistance programs. These remedies are usually barred by the formal bureaucratic system based on legal frameworks. This structure requires formal documents such as census records for budget approval. Therefore, many development budgets or external assistance funds do not reach the very poor communities, like the Two Sides of Railway settlement.

Community mechanisms have been used in case people lack IDs to identify themselves with in order to access health and education services from local providers. In the Two Sides of Railway community, for residents without documentation to get access to the local hospital, the community leader has to guarantee that the patients are real community members so that they can get services. The local hospital does, however, provide them with special assistant cards to disadvantaged residents.

Regarding drugs and security, it is the police who are called in to handle these cases. In addition, so called community guards who are neighborhood watchers, are also called in to help with these problems. The Office of the Narcotics Control Board has also been providing support in terms of training and implementing projects to help prevent drug trafficking. The Narcotics Control and Prevention Office as well as the police are responsible for drug related issues and come into the community as “visitors” to take complaints and help address grievances.

In these communities the most influential organizations among the urban poor residents seem to be the local NGOs who have been working in the communities and understand them very well. Local households seem comfortable relying on these organizations. In the Klong-Tuey area, the Duang Prateep Foundation has been offering advice and assisting the local people in coordinating with relevant agencies when land dispute cases arise. The Foundation also helps provide general assistance to poor community members in areas such as education, community development, and food. Other prominent local institutions in the Klong Tuey area include the Merci Center that does all kinds of social work and charity, the Grassroots Development Institute that focuses on drug prevention, and Wat Sapan (a temple) that provides drug rehabilitation services. Religious and international NGOs, such as the Merci Center and World Vision Foundation, mostly focus their work on social and human development and work closely with poor communities. The Human Settlement Foundation with the 4 Region Slum Network and the National Urban Poor Community Organization Union are helpful to the poor in advising on dispute cases pertaining to land settlements and public movements. Other institutions involved include the Lawyers Council, the Human Rights Commission, the Dispute Settlement Office of the Ministry of Justice, etc.

C: What are the institutions’ that prescribe procedures or customary practices for resolving disputes?

In general, government offices require formal procedures. Individuals are required to identify themselves and their settlements before they are eligible to receive further assistance. These are very typical procedures. However, as most of the disputes in this case study relate to land and settlement issues, this section will focus mainly on the related institutional procedures - particularly those of CODI for dispute resolution in land and settlement cases.

During its process of finding solutions for housing problems, CODI often allows the community members to conduct their own processes while the organization will play a more background role. In these cases CODI provides the funding and facilitates or coordinates with relevant agencies and institutions that are involved. CODI’s process as implemented during the Baan Mankong project begins by establishing a savings group in order to help the community generate enough savings for the required loan. In order to justify the loan, a community must have savings equal to 10% of the amount they need to borrow. The ceiling is set at 300.000 baht. This process also helps ensure that the

community learns how to save and has some measure of discipline before they can request a loan. CODI's programs to develop housing models for urban communities vary depending on the members' demands regarding where they want to be and size of public spaces , etc.

In the event that there are problems with the land owners, CODI will often act as a mediator to negotiate with the owners. CODI's procedures for legal assistance generally focus on supporting its network in assisting the poor instead of trying to directly solve the problems by themselves. This approach is part of the organization's strategy. Usually CODI will intervene or assist in cases where the disputes are between groups of people/networks/organizations. For individuals CODI would generally recommend that the individual seek assistance from within the community or NGO networks.

The Human Settlement Foundation with the 4 Region Slum Network and the National Urban Poor Community Organization Union are also important organizations in resolving disputes over land settlements. They operate specifically to support public movements during negotiating processes. The 4 Region Slum Network's strategy tends not to reach compromises as they aim to pressure owners through public movements or by using connections with individuals in authoritative or powerful positions.

In the cases where landlords (the private sector, state agencies or state enterprises) evict residents, the first thing that agencies and NGOs consider is the aim of those evicted communities. If the target is to sustainably develop long-term housing, CODI will provide support.

When assisting in cases, the objective is generally to stall court cases, which usually results in negotiated settlements. In cases involving public lands, the disputing parties can negotiate if there are other vacant lands which might be developed. When dealing with private lands parties to the dispute can negotiate arrangements in which the land can be partly rented from the owner.

In general, when the poor or the public have been sued and no lawyer is present, this usually results in a lack of follow-up by the poor communities. This usually ends in the execution of a judgment within 3-4 months. This puts the poor at a disadvantage. The end result of this process is that the poor will be evicted leading to the rupturing of their community. What follows is new informal and illegal settlements develop as the poor are forced to encroach on new lands.

As for the process of arbitration, since CODI does not have that many lawyers, it usually has to contact the Lawyers' Council in order to render assistance. There are, within the Lawyers Council, two concerned offices. The first is the office to extend legal assistance to the people and the other is the human rights office. The human rights office has a sub-committee that extends assistance upon request, by taking into account a problem-solving process that is likely to be sustainable, before coordinating with the Council to assign lawyers to look after each particular case.

Normally, it takes about 1-2 months for the Council to proceed after CODI has been notified. But in cases where the residents were late in approaching CODI and court warrants have already been received, it might be too late to assign lawyers. If this happens, CODI will solve the problem by suggesting that the people help themselves by requesting the court to postpone the case. If their request is accepted then CODI and the Council will be able to arrange for lawyers to help in their dispute.

Poor people often ask CODI for help after receiving court notices (warrants.) In some cases it might not be necessary to ask for help from the Lawyers' Council outright, since CODI may succeed in arbitration. Usually landlords do not like to evict since it is very costly due to legal fees, this is especially true when dealing with large communities. For this reason the landlords appreciate it when the government agencies intervene to solve the problems or to plan for the movement of the people to a new site.

In the end, arbitration normally leads to agreement on all sides. In some cases though the landlords may, out of haste to use the land, opt to use violence in order to evict the residents.

The arbitration process normally lasts 2-3 years, but cases with private land owners may last longer and may be more difficult since owners do not want to discuss or negotiate but rather to evict as soon as possible. From CODI's experience, there are no cases in which eviction precedes arbitration. Negotiation normally comes first, and it is only when discussions fail that legal proceedings start.

In the case of threats or events of forceful eviction the Human Rights Commission members have the duty to check on matters. Residents seek out their help at times since it is only natural that people in trouble seek help from whichever avenue is available for them. The Human Rights Commission would help by arranging for both sides to negotiate and transmit its findings to the state agencies concerned. In reality the Commission cannot help much because of structural limitations placed on its duties.

A question remains about expenses that may arise when asking for help from these organizations and institutions. In principle there are no expenses since the Council's lawyers receive their per diems and expenses from the state budget. Normally the lawyers deal only with the legal proceedings and it is up to CODI to help make the lawyers understand the poverty structure and situation within the communities.

Negotiation processes normally take a long time and face difficulties, especially when dealing with land disputes. It seems that none of the existing organizations play a key role in helping in negotiation process forward. To effectively do so involves real costs that may be either monetary or non-monetary.

Another informal mechanism which often deals with drug addicts is the community justice system. This process of justice is a system of reintegration that takes place within the community. It starts with helping the former drug abusers to make acquaintances among community members and looking around the neighborhood. This approach aims

to succeed in the behavioral control of the youth who are on probation and to enable them to return to a normal life within the community which should hopefully give them the chance to become good citizens. This system is better than bringing them into the government treatment process in a specially arranged place or taking them to a juvenile detention hall. This approach would put them on record and alienate them from society, while the former, the community justice process, will put them into community care and thereby provides comfort to their parents.

#### D: How do the poor resolved disputes over urban assets?

The urban poor normally seek help in solving their day-to-day problems from those who have a better economic and social status. For example, when they lack food or money, they will borrow from the community member who are in a position to help them. When borrowing money from other community members, the lender may or may not charge an interest rate, depending on the kind of relationship the two parties have. This type of lending demonstrates that the presence of patron-client relationships in urban poor communities.

For disputes with outsiders (i.e. land owners), the urban poor usually contact community officials or community networks that can recommend a legal expert or a lawyer to help them. In some cases the people will contact the lawyers directly if they already are familiar with them. Initially, the poor normally seek assistance from the closest NGO, local NGOs or networks that they are familiar with or have received assistance from before. Then, advisors to those NGOs refer them to the persons (lawyers) or organizations that can assist them further. Currently there is no formal process that they go through, particularly during the negotiation process. Many times when the urban poor are dislodged by the landlords, they first seek assistance from NGO officials at organizations like the Human Settlement Foundation, the 4 Region Slum Network, Duang-Prateep Foundation, and CODI before approaching other related government organizations.

Generally the poor dislike the court process due to their limited knowledge about it and power in it. They know that they would be in a disadvantaged position to negotiate once legal proceedings begin. Also, most laws and the justice system seem to favor the rich (the landlords) over the poor. The urban poor only use the long court process for delaying the process (which they know they will never win.) This strategy buys time to solve their problems and find new possible places for relocation.

#### E: How satisfied are the urban poor with their dispute resolutions for they access?

In general the urban poor are not very satisfied with the formal dispute resolution processes. They seem to prefer the support of NGOs and working processes which are less formal. Community groups are more comfortable and familiar with requesting help

from local NGOs, religious leaders or other related organizations and are pretty satisfied using these channels.

Government services and assistances only reach the extremely poor who have social problems in a very limited manner. Responses to the needs of the urban poor are very slow and restricted by various regulations. For example, government officials can not assist those with no identification, no census record, and no legal status to access to basic services and public utilities. In these cases, people will have to resort to other mechanisms such as seeking assistance from the community organizations. Community organizations have to establish a system of ensuring that these people are actual community members who are eligible for special assistance from public agencies. These community organizations also have some weaknesses. When conflicts between groups within the community arise, some community members usually complain that goods and services are distributed unequally. District offices are accused of being inefficient and providing unequal services or allowances to the poor. Local public services such as hospitals and schools have to pay special attention to the disadvantaged groups.

Drug and inhalant problems affect daily life and generally lead to conflicts, especially among addicted youth and between beneficiary groups. The problem is complex and very difficult to solve. A police mechanism alone may not be sufficient and effective enough to solve the problem. Community watch and family care are important components to a solution and are the closest institutions to the individuals. Supportive projects implemented by the Office of the Narcotics Control Board as well as rehabilitation facilities run by Buddhist temples are very useful.

In big dispute cases over settlement, many of the urban poor feel that existing government procedures to resolve the problem are ineffective because they lack a comprehensive plan to coordinate and integrate responsible organizations. Sometimes, special connections with authoritative officials are needed. Allowing the communities to make use of public land owned by the government is an issue that many agencies want to cooperate on, but the rules and regulations governing these uses have made the process inefficient. The authority of many government agencies may overlap at some levels and there sometimes is more than one rule or regulation governing the land. In addition, these regulations and processes are viewed as not being supportive of the poor or taking into consideration the lifestyles of the poor.

It is clear from the surveys that disputes over land and settlement problems will mostly involve NGOs working to help the poor in the negotiation process. The poor, particularly those who participated in the Baan Mankong project, seem satisfied with CODI's assistance. However, the urban poor also complain about short term rental periods which lead to feelings of insecurity. They want the government to provide long-term rental agreements. In this regard, CODI may be successful in negotiating with some agencies for long term rental contracts, but this might not be the case with all agencies.

For serious cases that may be brought before the courts, the urban poor first consult their NGOs and networks for advice before deciding how to move on. They do not like going

to court which involves high costs in terms of time and money. The urban poor also know that they are in a legally disadvantaged position. Other mechanisms to help the negotiation process and the justice system should be initiated.

Currently the Dispute Settlement Department within the Ministry of Justice has too many cases to handle. The Department tries to link up with the community's justice network, but due to the huge workload this link has not been very successful. However, the community justice system is one possible alternative which will be studied further in Phase 2.

### **3.4 Analysis of the Findings**

In addition to the analysis provided in section 3.3, there are some important points that have to be addressed in this section.

*Different prioritized problems based on who the interviewees are:*

The very poor households cannot seek formal assistance from institutions because they do not have any forms of official identification documents, they do not have enough income to participate in savings groups, they are not affiliated with any powerful or authoritative groups, they are socially excluded from society, and they live to survive day by day and never think about long term security issues.

In reality, very poor people do consider their rights such as having legal land and housing or access to health care and other basic services. Their main concern is having enough income for their basic needs, such as food for each day. They may not be concerned with long-term developmental issues or rights as they live on a day to day basis. Also, they do not understand the dispute resolution process. The issue of how to access the justice system is way out of their concern and not an important question to them since they know so little about it or often do not know what it is at all. This might result from a lack of knowledge about basic rights and the extremely poor conditions they live in. When people have more knowledge about their basic rights they demand their rights more clearly. In general, unstable and insecure occupations influence their lives as it results in uncertain income which directly affects their status. The day-to-day problems of the urban poor include not earning enough money, a lack of basic rights (since they do not have official identification), insecure settlement and limited access to public utilities.

For people with a higher level of income, they are more concerned with their security and stability of settlement and in life. They generally have a better understanding of how to deal with conflicts and are more eager to learn how to seek assistance in order to resolve their conflicts. Most of them have more authority and are generally the people that the poor rely on when they need help securing food, money or loans. This fact indicates that patron-client relationships exist in these communities.

New generations who are better educated and have more knowledge are mostly concerned about their social opportunities as well as their basic rights and services. Therefore obtaining official personal identification and a residential registration document are very crucial issues for them.

*In general, the poor normally face injustice*

In general, researches indicate that the poor normally face injustice since they are being discriminated against by people of different socio-economic statuses. The poor are in a disadvantaged position during legal processes due to a lack of money and a lack of knowledge. They have to be jailed when they commit a misdemeanor since they do not have the money to pay for the fine. Sometimes they have to face difficulties in a complex system to prove that they are poor. They are also incapable of finding lawyers or qualified lawyers to help. They lack negotiation power with government officials, and generally have to endure long processes during legal cases. The system seems to be unfair to the poor. In addition the current legal system has limited options for misdemeanor crimes. The only option is to endure jail time if you cannot pay required fines. The community justice networks utilizing the local community culture of dispute resolution should be initiated to settle disputes as the poor can more easily access this system.

The poor seem to face inequality in getting services and assistances provided to them within their communities. This might be considered as an “injustice” and unfair treatment. Sometimes there are biases within the community. Among the very poor households, which are normally not well-connected to more powerful group or the community committee members, there are complaints that they do not receive public services and assistances. In fact the problem might actually be that the extremely poor may not know how to or do not contact assisting centers themselves.

*The poor and insecure in settlements have to pay higher costs for public utilities*

The fact that temporary residences are charged higher rates for public utilities (i.e, electricity and water) than permanent residences, and considering that those who not have resident certificates have to buy electricity and water at higher costs than those with temporary residence permits, the more insecure in land and housing residents are, the higher the price they have to pay for public utilities is. As those who live in insecure land and housing situations are normally the poorest of the urban poor, this situation implies that the poorer a household is, the higher cost of public utilities they will pay. This higher cost of using public utilities also reflects the higher cost of accessing public utilities for the poor.

**4. Recommendations:**

With the limitations of formal systems, alternative dispute resolution is recommended.



There are several options available, for example mechanisms involving the government, joint community-government mechanisms, and internal community mechanisms.

For the first option there should be a neutral government agency to mediate grievances. This might help reduce the process of having to go to the courts. The court process is usually concerned only with legal issues and this puts the poor in a disadvantaged position. The poor will generally lose court cases. Such mediation mechanisms should bring in the committee from both the government and the private sector with representatives from the poor people so as to really serve the needs and the demands of the people.

The second option is developing community-governmental linkages. One example of the government and the community cooperative working together is the community justice center from the Ministry of Justice. This office is managed by government officials and lends support and information to the urban poor. Should there be quarrels, the officials will try to pacify the situation. Should the situation be serious, community members will be asked to help. As for the collection of debts, such as debts to the community fund, collection will be undertaken through the use of acquaintances.

For dispute resolution process in cases involving both the community and outsiders, there are two options. For direct disputes between parties, engaging the committee at the local government or provincial level is desirable. For other disputes engagement at the national level and involving high level policy makers and those who have authority is required. The latter option seems to be more difficult.

The third option comes from community empowerment approach. While there are many different government agencies that work to assist the poor in resolving their disputes, these agencies may not always help the local people in the long run. A long-term solution needs to be embedded in the local people themselves. Nonetheless, the government system and procedures should also be changed. The state needs to develop the “thinking” of its personnel and the mechanisms that are most efficient at solving the problems. Such mechanism should begin with helping the people to understand their own rights and assisting the communities to resolve their own disputes. Such mechanisms should treat people equally, lessen the number of court cases and can also be expanded into networks. This type of mechanism should emphasize the role of the community and address the weaknesses of the community. While the people in the community understand their own rights, state officials should also understand the rights of the community. In addition, lawyers have to be familiar with human rights issues and how networks work. Lawyers must work in harmony with the concept of networks. At the same time, the community has to pull together and try to brainstorm on how to solve their community problems and prevent them from reoccurring. Government agencies should not be too strict with regulations and should lessen the long formal processes which cause difficulties for the poor in accessing such systems. For example, if people do not have any official ID with which to receive basic services, the system should allow the community leader to certify them as one of the community members.

Nonetheless, because unequal treatment and internal conflicts exist within the communities, having the community wholly manage all problems may be not a perfect option. Like many other Asian and developing countries, the patron-client relationship, unequal socio-economic status, and internal conflicts within the communities exist in Thailand. These sometimes weaken the advantages of the community mechanisms. However, an appropriate prevention system can be planned and monitored. Some pilot programs may be launched and evaluated on a continual basis for improvement.

One of the suggestions from this study is that community mechanisms should play a more significant role. Today there is a Community Organization Council Act, 2008, which has recently been put into effect, that emphasizes the role of the grassroots community in participating in problem-solving together with local organizations in every region. The local communities should play a larger role in managing and designing solutions to their own problems.

From the initial stage of study it can be concluded that it is likely that the community mechanisms of dispute settlement are more suitable to the needs of the poor than the formal mechanisms. Although the community mechanism may possess some weaknesses, it is important to try and fix those problems and to strengthen informal community procedures. For example, for transparency and fairness, a checks and balances system within the community or group could be applied. Besides the community initiative a joint government-community managed system combining the advantages of both systems, such as a community justice center, may be a suitable mechanism. However, further study is required in the second phase before arriving at specific recommendations.

After all, changes for improvement are needed in the system, work procedures, attitudes of the people involved with these disputes. Changes must occur within actors ranging from government officials, lawyers, NGOs, community leaders, to the poor themselves.

**Appendix A: Pictures from the survey**  
(removed for file size)

## **Appendix B**

### **Bann Mekong: The national programmed for upgrading and secure tenure in Thailand's cities**

#### **About Thailand's City Wide Slum Upgrading became the Bann Mekong Programme:**

##### **Background:**

In January 2003, the Thai government announced an important policy to address the housing problems of the country's urban poor citizens which aims to provide secure housing to one million poor households within five years. This ambitious target will be met through two programs. In the first, the *Baan Ua Arthorn Program* ("We care" in Thai), the National Housing Authority is designing, constructing and sell ready-to-occupy flats and houses at subsidized rates to lower-income applicants on a "rent-to-own" basis. The second *Baan Mankong Program* channels government funds, in the form of infrastructure subsidies and soft housing loans, directly to poor communities, together with local collaborations for land tenure security negotiations and arrangements, community then plan and carry out improvements to their housing, environment and basic services and manage finance for all aspects of development including social economic by themselves collectively. Instead of delivering housing units to individual poor families, the *Baan Mankong Program* ("Secure housing" in Thai) puts Thailand's existing slum communities - and their networks - at the center of a process of developing long-term, comprehensive solutions to problems of land and housing in Thai cities.

**The principle objective** of the *Baan Mankong Program* (which translates as "*secure house*" in the Thai language) is to upgrade the housing, infrastructure and living environment of 300,000 households, in 2,000 urban poor communities in 200 towns and cities across Thailand by 2008.

The upgrading work for the slum in Thailand will be carried out primarily by urban poor communities themselves, who will be the key actors in initiating, planning and implementing the housing and infrastructure improvements in individual communities, in close collaboration with their community networks, municipal and district governments, NGOs, universities, professionals and other local development organizations.

*The Bann Mankong Program* is being implemented by the Community Organizations Development Institute (CODI), Public Organization under Ministry of Social Development and Human Security, poor communities work in close collaboration with their local governments, professionals, architects, universities and NGOs to survey all the communities in their cities.

##### **Implementing Agency:**

**The Community Organizations Development Institute (CODI)** is a Thai government agency formed in 2000 through the merging of the Urban Community Development Office (UCDO) and the Rural Development Fund. CODI is an independent public

organization under the Ministry of Social Development and Human Security. CODI is implementing *Baan Mankong*, the Thai government's ambitious national programme for upgrading and secure tenure and then plan an upgrading process which covers all the communities in that city over the next three to four years. Once these city-wide plans are finalized, CODI channels the budget (both infrastructure subsidies and housing loans) directly to communities. This housing experiment in Thailand is the result of a process which has been developing over the past ten years, starting with the building of large-scale community savings and credit activities, then the formation and strengthening of large-scale networks of poor communities, and finally to using these people's managerial skills to deal with housing problems at a much larger scale.

But the Baan Mankong Program is only possible with the commitment on the part of the central government to allow people to be the core actors and to decentralize the solution-finding process to cities. In August 2005, the Thai Government have approved 4 year plan to improve slum communities and develop housing in 200 cities in the country with about 240 US\$ Million subsidy from the government budget. As such, the program has become an important large scale implementation and learning experience for governments, housing activists, NGOs, bilateral and multi-lateral aid institutions and community federations.

As the **UN Habitat** mentioned that the Baan Mankong Program in Thailand is an extremely important imitative which will have a great impact on regional as well as global efforts to solve urban community housing problems around the world. So the *Baan Mankong* is **an innovative housing program** which involves much more than simply providing improved shelter and basic services to Thailand's urban poor. The program puts poor community organizations - and their city-wide and province-wide networks - at the center of a process of finding long-term, comprehensive, city-wide solutions to the problems of low-income housing in Thai cities. Instead of being passive recipients of somebody else's idea of what they need, the *Baan Mankong* program makes room for community people to study the physical problems in their settlements, develop their own plans to resolve those problems and then to carry out those plans, using a per-household infrastructure subsidies and access to special low-interest housing loans.

The upgrading of individual communities under the *Baan Mankong* program will not happen in isolation, but will be part of a collaborative, city-wide development process which brings together poor community organizations, municipalities, public and private landowners, non-government organizations, academics, architects, students and other local development actors. Forging new working partnerships between these local groups is an important goal of the Baan Mankong program, and will be the key to establishing local mechanisms in each of the 200 cities for resolving housing problems in the future and ensuring that those cities provide decent living conditions for all their citizens - rich and poor alike - long after the *Baan Mankong* program has officially ended.

**Source:**[http://www.codi.or.th/index.php?option=com\\_content&task=view&id=930&Itemid=52](http://www.codi.or.th/index.php?option=com_content&task=view&id=930&Itemid=52)