

Research Rationale

1. Past and present initiatives to enhance access to justice in Southeast Asia have focused on (a) providing legal aid for the poor, including poor women; (b) extending representation to collective interests of marginalized groups or sectors, such as women and children, indigenous peoples, the urban poor and migrant workers; (c) substantive law reform; (d) improving adjudicative procedures; (e) promoting alternative dispute resolution; (f) creation of special courts and other special mechanisms; and (g) capacity-building for judicial and quasi-judicial institutions. Some of these initiatives are part of broader rule-of-law promotion efforts. A number of NGOs have also focused on developmental legal assistance (DLA) instead of the traditional individual-focused legal aid which, in their view, does not contribute to either individual or group empowerment or to any structural change. DLA centers on community-based legal education and paralegal training programmes that are designed to create rights awareness among individuals, groups and communities, and thereby empower them to seek redress for rights violations and to work and mobilize for social reform and structural change. Until recently, access to justice programmes have focused only on state justice systems as the primary area of concern or referent.
2. The increasing inclusion of 'informal justice systems' or non-state justice systems in access to justice reform programs reflects a growing recognition of their significant role in legal regulation and dispute resolution in many societies. In some communities, indigenous, customary or religious justice mechanisms are the only mechanisms accessible to victims of rights violations. In others, they are chosen over state justice mechanisms. In others still, disputants selectively access state and non-state mechanisms depending on the dispute involved. There are assumptions that women prefer non-state over state justice mechanisms because accessing the former is not costly. It is also assumed that customary justice mechanisms are genuinely 'traditional' and representative of community values. The correctness of these assumptions has been questioned. It has been pointed out that women's choice of non-state mechanisms may be due to necessity and not out of genuine preference, customary justice mechanisms are generally male-controlled, interpretive authorities in communities are generally men, and the structure, character and practices of non-state mechanisms may have been shaped by the colonial or conflict experiences of communities.⁴⁴ Locally grounded research can expose these flawed assumptions and provide empirical basis for any programming involving non-state justice systems.⁴⁵

44. UN Women 2011, p. 73.

45. Ibid.