SUMMARY REPORT

JUSTICE FOR ALL: CIVIL SOCIETY ENGAGEMENT IN BHUTAN
THIMPHU, 29-30 MAY 2019

A workshop for civil society organisations and practitioners

Aims of the workshop

The workshop provided an opportunity for civil society organisations and actors working in or around the justice space in Bhutan to come together. The theme of the workshop, *Justice for All*, was chosen because it reflects well the UN's Sustainable Development Goal 16 (SDG16) which aims to achieve peaceful, just and inclusive societies everywhere. The workshop allowed CSOs to exchange ideas and discuss current and future developments around the idea of justice for all, what that means and what challenges it might pose. The primary 'agenda' for the workshop was to understand how the goal of providing justice for all Bhutanese can be supported by CSOs. It also considered how recent initiatives, both local and global, increasingly recognise the importance of civil society in working toward justice goals. This integral role of CSOs was seen as especially important in respect of the justice needs of protected and vulnerable groups in society, including women and girls, minority groups and those with other vulnerabilities.

Key insights provided by the workshop

Perhaps the primary insight and conclusion of the workshop was that CSOs in Bhutan recognise the enormous challenges that SDG16 ideals – such as justice for all – pose for them and for Bhutanese society and government more broadly. The CSO representatives who gathered for the workshop represented a wide range of interests. Yet they were united in their desire for support in their work and for further guidance in how their organisations can develop justice-related activities in their planning and programming.

Over two days the workshop traversed a range of themes on justice and SDG16. Over the course of these discussions several broad themes emerged. These represent important conclusions from the workshop and have the potential to set the direction for CSO engagement with justice and rule of law in Bhutan in the years ahead. The next section highlights the two most important of these themes, before a final section provides an annotated list of insights, observations and views from CSOs connected to specific themes or

questions, such as where justice gaps are to be found or how to create empowered communities in Bhutan.

An important caveat

It is important to recognise that this document aims only to summarise and to collect together points raised in the discussions and deliberations that occurred during the workshop. It neither endorses them nor subjects them to critique or analysis. The purpose of the workshop and indeed this summary document has thus been to promote open dialogue. It is hoped that, together, the workshop and this document mark the beginning of long discussions and engagement with the ideas of doing justice, of justice for all and of leaving no one behind that lie at the heart of the UN's Sustainable Development Goal 16.

Two key themes emerged

Two themes, both of great importance, emerged and were constantly returned to in the workshop discussions. The first of these concerned information, specifically: (i) the importance of good information and data to every aspect of CSO engagement with justice issues, and the current lack thereof; and (ii) the difficulty, or indeed barriers, that lack of good information and data poses to effective CSO work. The second theme concerned how CSOs understood their own role and purpose.

The importance of good information and data

Participants described unmet information and data needs across a wide variety of contexts. These included:

- Lack of information on government performance, activity and decisions. Discussion of this cycled back constantly to the (apparently now defunct) Right to Information bill;
- CSOs' need for good data in many areas in order for them to inform government of where justice needs lie, and who are the most left behind or vulnerable groups;
- How the notion of grass-roots data, and CSOs' potential role in collecting and making such data available for decision making and policy, offered a new way of thinking about their work;
- Recognising that central government has limited capacity to collect good data and that there is an absence of anyone else coming in to fill the gap;
- The importance of information at the citizen level for expanding awareness of people's rights (eg, to freedom from physical violence) and of the government's statutory obligations (eg, in police officers' conduct toward citizens);
- How citizens' lack of information and awareness of what constitutes injustice – and what their rights might be to redress – means that determining 'unmet justice needs' is more easily said than done; and
- The many ways in which information provides transparency and such transparency – ranging from the reasons for judicial decisions to how certain public monies were allocated and spent – improves faith in and the legitimacy of government, and so is of crucial importance to democracy in Bhutan.

The barriers unmet information needs pose to effective CSO work

Participants cited particular and quite distinct ways in which unmet information or data needs hindered their capacity to work effectively, including:

- The important role of data in providing CSOs with credibility and authority in their interactions with government, the judiciary and other powerful stakeholders;
- Yet also the threat that better data – such as in the form of social accountability auditing of government performance – might pose, and thus the need to proceed carefully; and
- The as-yet unexplored potential of digital platforms such as social media for CSOs contacting, engaging and communicating more effectively with communities and with particular target groups.

The role and purpose of CSOs in Bhutan

Participants telegraphed very clearly a conclusion of great importance: that they wished to be seen as more than simply competent agencies for delivery of already-decided government policy. At the same time, however, they also recognised that the space/form/role they wish to occupy remains under developed. The workshop's discussions were felt to offer some pointers, including:

- That a Bhutan-context-specific model of engagement with government is needed;
- That such a model would recognise the very special dynamics of the country's civil and political situation, such as, that it is a young democracy without a history of CSO-government engagement;
- That risks of friction with government, such as for example might be produced by social accountability approaches, need to be recognised and managed;
- That the ideal model might be summed up as: Partnership with Independence;
- That while discussion of empowered communities was of course important, CSOs themselves also needed empowerment, which could come via different pillars of support, including good data to base their work and advocacy upon; and
- That empowered and effective CSOs in Bhutan would need clearer models of engagement at all levels, ranging from engagement with grass roots communities to engagement with government.

Beyond these key and salient points, participants at the workshop spoke, listened, challenged each other and the presenters over two solid days. On the second day we were all joined by the JSW Law students. Their presence lifted and enlivened discussions in many ways. Not least of these was their injection of youthful views and CSO participants' recognition that these students will be future leaders and champions of Bhutan in many and various ways. What appears below is a list of issues raised by participants over the two days and recorded by us as facilitators. Certain points have been marked with a *, which denotes a strong conclusion and a point often returned to. The comments below have been loosely grouped under themes, but very often the points associated with each theme were discussed at various times and points throughout the workshop. They are as follows.

- Yes, Bhutan does have a justice gap, and unmet justice needs;
- In Bhutan there is a culture of not complaining, of accepting the 'results' whatever they may be (eg, a prison sentence, an injustice of some sort);
- Complacency with one's lot was repeatedly mentioned, as it may provide a barrier to people understanding or claiming their rights; *
- For many people the concept of injustice is itself not understood, ie., people may not appreciate it even when they see it or experience it;
- People lack awareness of their rights (this was brought up multiple times in different contexts to explain persistent problems of injustice, eg, around sexual assault or harassment); *
- Communities require education and awareness of their just rights and to be sensitised to the idea of injustice;
- Justice delayed is justice denied;
- Injustice cascades and often the starting point is lack of formal legal registration/legal identity;
- Failure to provide legal aid for all is a form of injustice. This includes and is particularly so in civil cases where wealth can determine what kind of 'justice' the two parties will have access to;
- Access to justice is the lynch pin of justice for all; *
- Information is key to justice: there can be no justice, or no justice gap closed, without access to information, at all levels and for a variety of purposes (eg, accountable government, grass roots issues, etc). *

From a CSO perspective, what would an 'empowered community' look like in Bhutan?

- Most communities and 'the community' tend overall to be very passive and perceive themselves primarily as recipients of the beneficence of government, of CSOs, or donors, etc;
- Agency and autonomy would need to be built up in communities;
- An empowered community would be a less fearful community, where there was no threat of intimidation for speaking out or being different (claiming your place among the 'all' of justice for all); *
- A community where there are legal protections for those who speak out, or at least something like community legal defenders who would offer support and legal skills to those threatened with legal action for revealing inconvenient facts;
- Where the media could express views without fear of retaliation;
- Courtrooms are *nominally* open but, in practice, fear of the setting and the authority of judges means ordinary people do not attend to see 'justice in action'. So the community does not know what happens in courts, how they work and why certain decisions are made (this might be correlated with or explain common perceptions of judicial corruption – see footnote 1);
- Access to information is a key dimension of community empowerment;
- Empowerment is a nice word and a current catch phrase, but without evaluation of whether or not things have changed then it is just mere words;

- Need to be aware that tools like social accountability mechanisms might generate friction between government and civil society if it reveals that practice differs greatly from both legislation and policy/regulations – how should this be dealt with?
- Problems (eg., legal status of children with a foreign parent) persist because of lack of voice of those affected;
- CSOs would need good data on matters like legal status of children with a foreign parent in order to have the authoritative voice to advocate for such groups. *

What are the greatest barriers faced by the population and civil society?

- Lack of data and good information on many things; *
- Disadvantage and injustice are not spread evenly and tend to be concentrated in rural rather than urban areas and in the east rather than west of the country; *
- Public litigation, which might hold the government to account for unequal outcomes for different Bhutanese, does not exist. Examples of potential litigation included government rules aimed at curbing rural-urban migration that, by limiting the mobility of rural children, limit their ability to access better quality education by moving to attend urban schools;
- Deeply embedded gender norms that support behaviours that breach rights or might constitute crimes (eg., norms around value ascribed to work done by women, informal descriptions/insults using gender-pejorative terms, such as where men are accused of being 'like a girl');
- Huge gap between statutory entitlements (eg, of citizens) or norms (eg., of police conduct) and what is understood at grass roots levels, on both sides (ie., the awareness of an average citizen or average low-level government officer); *
- Potential of the education system to address issues of interpersonal and civic conduct restricted by a narrow focus on preparation for employment and career.

What are some of the main crime & justice problems faced by the populace?

- Corruption, impunity and rising organised crime associated with both;
- The National Corruption Barometer[1] indicates significant perceived corruption in the judiciary, but there is a need to distinguish between perception and fact. Thus, we need data on *how* these perceptions arise and what *experiences* they are based on;
- Corruption in government reduces the legitimacy of the government and its officers in the public eye; *
- Higher echelons of government (eg., Police) are supportive of vulnerable communities (eg., LGBTIQ) but lower orders are antagonistic and regularly and routinely violate rights, without adequate mechanisms for redress (cf., discussion of the Grievance Redressal System, but which is still seen as inadequate for systemic violations);
- Lack of adequate resourcing of juvenile justice diversionary measures focused on reintegration;
- Complete lack of such measures for adults post-prison;

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[1] *National Corruption Barometer Survey* (NCBS) 2016 http://bhutantransparency.org/wp-content/uploads/2016/03/NCBSR-2016-FinAL.pdf

- Access to justice is often provided for on paper but in reality there is no 'justice for all', only for some. One example, repeatedly raised, was how the failure to provide legal aid severely restricts access to justice, or a just outcome, for the poor; *
- Some important injustices reflect religious/cultural norms (eg., gender-based restrictions upon access to religious sites) and while reflecting Bhutanese history and culture, they are nevertheless sorely felt;
- Sexual offending against women and girls, including in institutions;
- Need for legal review of legislation related to justice since parliamentary oversight is lacking due to resource and personnel-capacity constraints.

What does 'justice for all' look like?

- Would require better understanding of what justice means, as different people will have different perceptions of a just outcome (speakers didn't really emphasise a specifically Bhutanese aspect to this, their comments were more about within-country than between-country differences); *
- Does justice simply equate to the law? What if the law lacks fairness, such as around LGBTIQ issues (eg., legal recognition and documentation) or around rules governing children's access to high quality schooling?;
- Who are the 'all' in justice for all? Certain groups are inevitably left out, such as LGTBIQ or those without legal identity, such as children born to foreign women where the Bhutanese father has decamped. *

Information theme * (ie., all points below are * importance)

- Civil society and CSOs need data that can be used to inform government;
- Having good data would give CSOs more authority & better confidence to speak and advocate;
- Government has limited capacity to collect good data and there is an absence of anyone else coming in to fill the gap;
- Media are the 4th Estate, a key pillar globally, and yet they are the weakest link in Bhutan's fledgling democracy;
- CSO shadow reports have been produced on CEDAW and the most recent UPR that might provide guides for further expansion of shadow/oversight work;
- The Right to Information Bill was killed and has never been brought back to the Parliament, and there is no sense that plans exist to do so.

How can CSOs best engage with government?

- Emphasised the need for a Bhutan-context-specific model of engagement that recognises the very special dynamics of the country's civil and political situation, such as, as a young democracy without a history of CSO engagement; *
- CSOs feel they have much to offer and to contribute if they were properly consulted and so they feel that claims by government to have engaged with the public or CSOs often don't hold water. Such 'engagement' is a 'for your information' briefing once decisions are taken and only provide window dressing for donors, etc; *

- CSOs must always reach out to government, they are never consulted by government with a genuine interest and desire for assistance;
- Consultation around the 12th 5yr Plan was non-existent and any statement that it occurred fails to reflect the reality that CSOs are not taken seriously as a partner sector;
- No CSOs present reported being engaged by govt for NKRA16;
- Need to be seen as more than simply competent agencies for delivery of already-decided govt policy; *
- Need clearer engagement expectations between CSOs and government;
- Definition? Partnership with independence; *
- CSOs themselves need to be empowered in order to empower others; *
- CSOs have a role as a medium of communication between the people and government;
- Power of data to support calls for change; *
- Need to encourage a view of change that forms a recursive loop. It can be described as a loop of: create>implement>measure>amend>implement …. Continue until measurement shows decline or elimination of targeted injustice.

Key justification for addressing these matters

- Justice and empowerment are logically and in practice fundamental aspects of GNH at the societal level and individual happiness and of the good life at the individual level. *

What threats or challenges face CSOs and how could they be supported better?

- CSOs have no good understanding of how best to challenge government in an ordinary non-antagonistic way, as occurs in more mature democracies;
- CSOs lack a strategic approach to their work that links activities from the grass roots all the way through to engagement with government (eg., in shaping policy or legislation) in this area of justice issues. *

Who are the most vulnerable, if we are to begin with farthest behind first?

- We don't have good information on that (cf., UNDP 2016 study);
- Who is vulnerable tends to be defined by government and their lens is primarily economic;
- Sense that one vulnerable group is women with unregistered children, but not enough good data to say if that is in fact correct, or how large the group is, or where it is located/distributed.

Possible approaches to increasing community awareness of justice/injustice issues *

- Work is already being done in remote communities using radio programming, though to date not on justice topics;

- Social media remains an important, expanding information source that has not yet been explored;
- Potential for apps around reporting of corruption, victimisation, etc;
- How can those in authoritative positions (eg., religious bodies) be recruited to assist and give credibility to reform or other CSO activities?

How might CSOs move forward in this justice space?

- Would be desirable to have all participants/stakeholders (CSOs) to agree a common approach or strategy. Perhaps consider a justice/SDG16+ platform?
- Transformative change is lasting change, which requires long term engagement both among CSOs and between CSOs and supporters. *

Possible follow up activities *

- Need ideas about/information exchange on court-media relations in a free society;
- Resource mapping and community mapping of grass roots justice needs and possible approaches to mitigating injustice;
- Awareness and advocacy on 'what is injustice?';
- Meeting again to continue and plan, perhaps a justice-focus group for CSOs.

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