European Commission

Tools and Methods Series
Reference Document N° 15

Support to Justice
and the Rule of Law

*Review of past experience
and guidance for future
EU development
cooperation programmes*

2012

*Development and
Cooperation Policy*

Reference Document N° 15

Support to Justice
and the Rule of Law

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Foreword and acknowledgements

This reference document is addressed to EU staff working at the headquarters and in delegations, and to national partners and donors engaged in promoting and supporting reform in the justice sector.

It is based on experience of support for the justice sector provided in the past 10 years by the EU in a rapidly growing area of cooperation in all countries benefiting from cooperation with the EC.

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Executive summary

Support for the justice sector and justice sector reform is one of the principle avenues for promoting democratic governance, the rule of law, citizen security, gender equality and respect for human rights, and thereby socio-economic development. For this reason the European Union has been working alongside many other international and national institutions over the past few decades to implement justice sector interventions. This work has been carried out on a global scale, utilising a number of different funding mechanisms and aid modalities, in cooperation with a wide array of government officials, project partners, counterparts, and beneficiaries, on the basis of different bilateral agreements, strategy papers, and planning documents.

Programmes and individual projects aiming to support the justice sector have clearly made a significant contribution to progress in many countries, and this has contributed to the realisation of many crosscutting objectives which depend upon progress in the justice sector. Nonetheless, the results have also been somewhat mixed, and a number of serious obstacles to support for the justice sector and justice sector reform have emerged. **The process is complicated, politicised, context-specific, and not fully suited to reaping the full benefits from technical assistance provided by outside parties.** Legal and institutional reforms require time, and must overcome resistance to change. It also takes time to build public trust in the justice system. Weak and failed States, fragile countries, conflict and post-conflict situations, impunity, systematic and wide-spread human rights violations, corruption, insufficient financial and human resources, lack of a social contract between the people and the state, and limited information resources pose inter-connected challenges.

Most donor-supported rule of law programmes have primarily focused on strengthening state justice sector institutions through capacity building and transfer of know-how. This has also sometimes encouraged transplants of foreign legal frameworks and institutional setups, which might not be appropriate in all contexts. There is, however, a rapidly emerging consensus that this approach has led to limited results for people living in poverty, either because state justice sector institutions are of limited relevance for them in obtaining justice, or because legal and institutional arrangements cannot easily be imported, or because national elites often resist or capture reform agendas.

For these reasons, the European Union has conducted evaluations ([1]) in a process that aims to improve its aid delivery approaches. The outcomes of these evaluations include recommendations for an increased **problem solving and service delivery approach in support to the justice sector. This will include a combination of support to institutional building and support to legal empowerment of people. It will also include strengthened support to accountability aspects of the justice sector, by increasing support to oversight mechanisms.** A more strategic identification and formulation process that takes a sectoral approach is needed, in order to move beyond individual projects, carefully selecting entry points, combining optimal categories of interventions, effectively including crosscutting objectives, and efficiently sequencing and timing interventions.

These recommendations indicate several issues that require attention when entering into justice sector support:

Move beyond institutional support to an increased service delivery approach. There is a need to strike a better balance between strengthening justice institutions and addressing constraints to service delivery to the intended beneficiaries. The main aim should be to anchor the assistance in national justice strategies and processes, however only if it is a potential resource for reform. A balance between alignment with partner government priorities, and the need to promote democracy, human rights, gender equality and the rule of law, is required. The design goal should not merely be such alignment, but rather to examine on a case-by-case basis whether priorities as defined by national authorities are appropriate and if not, advocate a different approach. Programme design should be grounded on a firm evidence base, reflecting the views of a wide range of stakeholders.

Empower people to demand services from institutions. Justice support has to date largely focused on reinforcing state provision of justice services, and does so primarily by supporting capacity building efforts. This can enhance the ability of justice personnel to deliver improved services to citizens, though this will not necessarily occur, in many cases, without fundamental transformation of organisational cultures within the justice sector that

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([1]) Sources: Thematic Evaluation of European Commission Support to Justice and Security System Reform, November 2011; Thematic Evaluation of the European Commission Support to Conflict Prevention and Peace Building, October 2011; Thematic evaluation the EC support to human rights and respect of fundamental freedoms (including solidarity with victims of repressions), December 2011

are long-term in nature. It is therefore important to make people aware of their rights and the services to which they are entitled, as well as enabling them to enforce such rights, and make justice institutions accountable and strengthen equal access to justice.

Include support to oversight mechanisms to hold justice institutions accountable for their commitments to change. To date, EU support has placed more emphasis on civil management bodies than oversight. However oversight mechanisms for the justice sector are essential to democracy and the rule of law. Further focus on this mechanism is therefore needed to hold institutions accountable for their regulations and policies for reform. This can include support to the Parliament for improved oversight capacity, and support to Ombudsman to strengthen complaints procedures.

Utilise comprehensive studies, including analysis of local, regional and global players to understand the local situation, and include mechanisms to measure results and impact of the assistance on people's lives. Sound analysis of the justice sector and its key components and entry points is a pre-requisite for sector support and the successful implementation of individual projects. Understanding impact is key to striking a better balance in programmes between state institutional capacity development, and fostering service delivery that directly benefits citizens. A baseline study should therefore be developed, for use as the basis of all support within the justice sector, incorporating the tools and mechanisms required to measure the results of the programmes, in particular its impact on the quality and availability of services to citizens.

Apply a system-wide perspective in analysing and addressing the justice sector, including civil, criminal, public and international law as well as traditional justice mechanisms. As weaknesses in one part of the justice chain can effectively undermine improvements in other parts of the chain, a system-wide perspective that recognises that the justice system is made up of several interlinked sub-sectors should be applied.

Develop realistic objectives and expected results, taking into account absorption capacity and political commitment, or indeed resistance. EU support needs to be based on realistic objectives, which are achievable in light of the actual country context, the political will of national authorities, the demands and interests of counterparts, the services that should be delivered, and the available time and financial resources. Justice sector initiatives require a suitably long timeframe for successful implementation.

Effective use of equipment can improve justice sector operations if it is combined with capacity building. It is important to establish balance between a) the procurement of goods or provision of facilities, and b) the delivery of technical assistance. Initiatives that focus excessively on the construction of buildings (courthouses, prisons, police stations) in order to facilitate management and disbursement, or which provide large amounts of equipment such as computers, tend not to provide comprehensive benefits or lead to sustainable results. It is important to carefully link procurement with objectives relating to court reform, institution building, professional qualifications, access to information, transparency, etc. in order to produce sustainable and comprehensive results.

Justice sector projects are often focused on national institutions that operate from capital cities, whereas in reality rural inhabitants may be most vulnerable and deprived of information and access to justice. Through improved communication, information management and outreach, it is easier to achieve broader and more sustainable results. Geographical outreach is also important for protecting human rights on the ground, in particular for women, children, minorities, migrants and indigenous peoples.

Combine dialogue with financial support and technical assistance. Institutional reform initiatives have little chance of success if national stakeholders are not convinced of their benefits, or political power holders are not prepared to accept the limitations to and accountability for their power that come with adherence to the rule of law. Due attention must therefore be paid to the political aspects of justice sector interventions, and the need for strategic political and policy dialogue. Building political will and sectoral ownership at the outset is therefore not enough. Rather, these must be maintained, re-invigorated, and exercised through implementation and oversight mechanisms, in order to keep initiatives on track and achieve meaningful results.

Human rights and gender equality should be included as crosscutting issues and working perspectives in all support to the justice sector. Protection and promotion of human rights and gender equality should be ensured in all EU justice support projects and programmes, and very often the objectives and expected results include references to these issues. While reference should be specifically made to these crosscutting issues in all projects, human rights and gender equality can also be used as a basic perspective in support by using a *Human Rights Based Approach*, grounded in international and regional human rights instruments. This approach helps ensure that interventions focus on empowering people based on the principles of non-discrimination, participation, transparency, and accountability.

Ensure donor coordination, as well as complementarity with new donors and South-South cooperation. Donor coordination and joint programming should be used to increase aid effectiveness, and in particular to avoid scattered, duplicated and contradictory legal and institutional frameworks. EU Delegations should ensure that the timing and delivery of support and services closely matches the capacity and work schedules of project counterparts, so that assistance can be integrated into their work and put to long-term use. Donor coordination should include a review of the overall demands being placed on justice sector entry points, as well as joint efforts to facilitate absorption.

Introduction

One of the objectives of EU external action is to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms. The EU has, with Article 21 of the Lisbon Treaty, received a clear mandate to support democracy and human rights worldwide, and has a key role to play in supporting the reform processes in such countries.

With the entry into force of the Lisbon Treaty, the EU Charter of Fundamental Rights is binding on the European institutions in internal and external policies and on the EU Member States when implementing EU law. This translates into a legal obligation to ensure that in all its actions, the EU promotes and respects the human rights and fundamental freedoms enshrined in the Charter.

In May 2011 the revised approach to the European Neighbourhood Policy introduced the "more for more" principle by which the EU is ready to offer further concrete support to third countries in implementing reforms, if the national authorities are able to show more progress and focus on good governance, rule of law, respect for democracy and human rights, while the Agenda for Change Communication (October 2011) highlighted human rights, democracy and good governance as the guiding principles of future development cooperation.

The justice sector is directly influenced and affected by the overall political governance agenda, given that the justice and security sectors cannot be dissociated from the overall human rights, democracy and rule of law situation at the country level, as they are the key vehicles for the protection and realisation of citizens' rights in democratic regimes, or the key repressive actors in the case of authoritarian regimes. Human rights, gender equality, democracy and governance issues therefore need to form the very basis of justice support. The EU needs to align and build on what already exists in development cooperation with partner countries, but at the same time be true to these objectives.

This publication is designed to serve as a practical tool and reference guide for designing, supervising, and evaluating European Union initiatives to support justice and the rule of law. It follows upon a previous analysis that looked specifically at European Union support to justice reforms in African, Caribbean, and Pacific countries, mainly under the European Development Fund. [2] It is designed to examine the global results from different EU justice sector initiatives using various assistance modalities, and provide guidance and recommendations for EU Delegations engaged in designing, supervising and assessing programmes related to the justice sector and justice sector reform.

The structure of the document is as follows:

Chapter 1 examines the justice sector and how it relates to the rule of law, security and good governance. It also highlights the fact that the justice sector is an integral and integrated component of the nation-state as it is configured under the current international system, and affects all aspects of national development.

Chapter 2 reviews different tools for analysing and assessing the justice sector. It also presents key components for justice support, modalities of European Union support for the justice sector, aid effectiveness and donor coordination, as well as specific issues regarding fragile situations.

Chapter 3 presents findings and recommendations on designing justice sector support and reform programmes, including identification and formulation processes, crosscutting issues, the use of indicators, and dialogue with national counterparts.

Chapter 4 presents findings and recommendations on implementation, monitoring and evaluation of justice support, including: project oversight, project management, reporting requirements, interim monitoring, outreach and information dissemination, donor coordination and institutional memory and information management.

Chapter 5 includes general lessons learned and recommendations.

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[2]   *Support for justice reform in ACP countries*, Tools and Methods Series, Reference Document no. 9, EuropeAid/European Commission, September 2010

1. The justice sector

1.1. What is the justice sector and access to justice?

The justice sector

There is general consensus that the justice sector is a key part of national governance, that it has a strong influence on international and legal relations, and that it plays a crucial role in many aspects of people's lives. However, there is no standard definition or single unified application of the concept. The justice sector is often considered in the general context of the third branch of state, or with specific reference to the judiciary (and court system), even though its reach is much broader.

The lack of a precise definition does not compromise efforts to support the justice sector and justice sector reform. However before taking a closer look at the nature and essential elements of work in this area, and the results of EU initiatives, it is helpful to illustrate what justice and the justice sector is, including its main components and entry points.

For example, the United Nations considers the concept of justice as **substantive and procedural protections and guarantees for civil, political, economic, and social rights, and protection from unjust penal sanctions.** (³) This definition encompasses formal state mechanisms such as the judiciary, and informal non-state mechanisms administering traditional and customary justice. Under this approach, the justice sector includes several administrative structures that establish and enforce frameworks for rights and obligations, in the criminal, civil, administrative, and customary spheres. This includes courts and tribunals, law enforcement and prison services, institutions that protect human rights (such as ombudsmen and human rights institutions), administrative departments, and legal professionals (judges, prosecutors, lawyers, court officials, and traditional authorities).

The European Union does not have its own definition and has not yet developed a specific policy for justice sector support and reform. (⁴) However, the European Union approach in development cooperation is reflected by the European Consensus on Development, and more recently by the Agenda for Change (⁵). As developed further below, respect for the rule of law, and universal access to an independent and impartial justice system, are also characteristics of democratic governance. (⁶)

Rule of law programmes have usually taken as their starting point an assessment of state justice sector institutions, and on this basis remedies have been developed as to how institutional weaknesses could be addressed to ensure that the rule of law is upheld. Lately, more attention has been paid to the primary justice needs and perspectives of vulnerable people or marginalised groups and the obstacles they encounter in seeking justice. This problem-solving and service delivery perspective focuses on ensuring that people living in poverty are empowered to utilise and demand reform of those state and non-state institutions that are most relevant for them in obtaining justice, while at the same time stressing the importance of strengthening the capacity of relevant institutions to deliver justice. It also includes oversight of the justice system so as to ensure its accountability to the public. In other words, it regards top-down institutional reforms as necessary, but emphasises that citizens and civil society actors must be empowered to have access to and benefit from justice services, and play a role in oversight, thereby holding institutions accountable. **Key components of support to the justice sector should therefore include a combination of support to institutional reform, legal empowerment of people and strengthened oversight bodies.**

(³) See the Guidance Note of the Secretary-General: The UN Approach to Rule of Law Assistance, 2008 http://www.unrol.org/files/RoL%20Guidance%20 Note%20UN%20Approach%20FINAL.pdf

(⁴) Apart from the EU Concept for Justice Missions within the rule of law framework, within the Common Security Defence Policy (CSDP)

(⁵) COM(2011) 637 final Increasing the impact of EU Development Policy: an Agenda for Change http://ec.europa.eu/europeaid/what/development-poli-cies/documents/agenda_for_change_en.pdf

(⁶) COM (2006) 421 final, Governance in the European Consensus on Development – Towards a harmonised approach within the EU http://ec.europa.eu/ development/icenter/repository/european_consensus_2005_en.pdf

Access to justice

The **Access to Justice Approach takes as its starting point the primary justice needs of vulnerable people or marginalised groups** (rights holders) and the obstacles they encounter in seeking justice.

The approach has three core features, or immediate objectives:

- To empower rights holders to access and utilise those state and non-state institutions (duty bearers) they consider most relevant for claiming a right, obtaining redress for a grievance or settling a dispute;

- To empower rights holders to effectively demand necessary reforms of duty bearers they consider relevant;

- To strengthen the capacity of relevant duty bearers to deliver justice.

It should be recognised that there may be many paths to justice, and that different justice needs may be addressed through different institutional structures. An access to justice intervention may be directed towards customary, traditional or religious justice systems, provided that the intervention's primary purpose is to increase their compliance with international human rights norms, and to reaffirm through dialogue, or others means, that the state is ultimately responsible for ensuring that they conform to such norms.

The following issues are particularly pertinent to access to justice:

- *The number of courts*, types of courts, and their geographic distribution. Greater territorial coverage and specialisation make it easier for parties to take their cases to court.

- *The number and distribution of legal professionals*, and possibilities for outreach. Court proceedings depend upon the availability of judges, prosecutors, lawyers, and in some instances court officials. In certain countries, legal professionals work on a rotation basis in rural areas, or deploy on special occasions (mobile courts).

- *The length and costs of proceedings*. If filing fees and court expenses are too high, without mechanisms for relief, and the legal remedy is only available after many years of procedural and other delays, this creates a serious impediment for people of limited means, and affects the efficiency and credibility of the Court system.

- *The availability of legal aid services*. Access to legal counsel is a pre-requisite for access to justice for criminal defendants, parties to civil and other proceedings, and occasionally witnesses. Therefore, it needs to be financed by the State, and be delivered by lawyers acting in an ex officio capacity, or through institutional arrangements such as public defenders or Bar Associations. Legal aid is very important for women and vulnerable social groups, so their specific status, needs and constraints should be taken into consideration.

- *The role of civil society*. Civil society organisations often provide legal information, legal services, and support for disadvantaged parties facing the criminal justice system (such as detainees, abused women, juveniles, minorities, and indigenous peoples). This is often at least partially facilitated by donor support. However an important role of civil society is also to monitor and ensure institutions are held accountable for their commitments regarding access to justice.

- *Access to information*. Access to justice is invariably compromised by lack of access to information. To overcome this, information resources must be generated and disseminated. Courts can play an important role in providing information, through bulletin boards, transparency of court fees, public access to computer terminals, making employees available to answer questions, etc. Different media can also play a crucial role, depending on the circumstances. For example, in countries with high levels of illiteracy and rural poverty, radio can have a considerable impact.

- *Alternative dispute resolution*, traditional justice mechanisms, and religious authorities. These parties can be actively engaged in enhancing access to justice, particularly when the jurisdiction of official courts is limited by time, subject-matter or geography.

Initiatives supporting access to justice can be designed through a **problem-solving approach**. Instead of focusing on particular entry points and looking at their needs, it is possible to assess the obstacles to access to justice in a particular country context, and then designate entry points and activities accordingly. To ensure access to justice, it may be necessary to change specific laws, strengthen specific institutions, reform specific court practices,

build specific skills on the part of legal professionals, improve specific practices of associations representing legal professionals, improve specific alternative dispute resolution (ADR) possibilities or traditional justice mechanisms, create awareness etc. This approach is most effective for handling overall objectives or crosscutting issues, such as gender mainstreaming or human rights.

In line with the above criteria and approaches, European Union initiatives supporting access to justice often include:

Protection of human rights through the creation of and access to remedies for violations, including legal reforms and institution building;

- Expanding access to legal information;

- Providing access to legal assistance and counselling;

- Increasing access to legal representation for criminal defendants;

- Public advocacy and outreach, and awareness-raising.

Access to justice also depends greatly upon cultural, anthropological and religious practices. People's interaction with justice sector entry points is essentially an aspect of human behaviour, which ultimately depends upon customs, traditions, and values. For example, there may be certain issues that women will not talk about with men, even if they are acting in the capacity of legal representative. In addition, certain practices (such as domestic violence or female genital mutilation) may be tolerated in certain communities, despite national laws or the official position of governmental officials. The behaviour of vulnerable groups, who often depend on informal mechanisms to obtain access to justice, is often influenced by social factors.

1.2. How is the justice sector related to rule of law, security, and good governance?

The rule of law

The rule of law is a set of laws, policies and practices based on the principle that the law is supreme, and that therefore government and the people should act according to the law. The concept can be traced back into the early history of many cultures around the world, for example Aristotle in ancient Greece, who wrote that *"Law should govern"*, and that those in power should be *"servants of the laws"* [7]. The rule of law is fulfilled by establishing that: a) Constitutional or fundamental laws have supremacy over regular laws; and that b) Law has priority over the power of individuals, including leaders and officials.

Supremacy of law means that no person is, or can be, above the law, and is conceptually closely related to equality before the law. It is usually ensured through procedural rights and responsibilities, which are categorised as due process of law. An often-referenced formulation established by the United Nations [8] describes the rule of law as:

"A principle of governance in which all persons, institutions, and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency." [9]

The EU Treaty places rule of law amongst the values upon which the European Union is founded, and makes it a guiding principle for external relations. Although the rule of law concept has been developed in EU Member States, a uniform definition at the EU level has not yet been developed. In its cooperation with third countries to date, the EU has been providing support to the following priority areas:

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[7]   Aristotle, "Politics" Book Three, Chapter XVI: "It is more proper that law should govern than any one of the citizens: upon the same principle, if it is advantageous to place the supreme power in some particular persons, they should be appointed to be only guardians, and the servants of the laws".

[8]   U.N. Secretary-General Kofi Annan, "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies" (S/2004/616 of 3 August 2004) http://www.unrol.org/files/2004%20report.pdf

[9]   See http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/395/29/PDF/N0439529.pdf?OpenElement

- Promoting and protecting human rights and fundamental freedoms;

- Establishing an independent judiciary and modern justice system;

- Strengthening the institutional and administrative capacity of justice institutions, often as part of structural reforms;

- Promoting good governance and accountability through fighting corruption, illegality and abuse of power by authorities;

- Modernising the criminal justice system, through enhanced respect of parties' rights; improved prison conditions and treatment; effective reforms resulting in liberalisation of sanctions; and introduction of alternatives to imprisonment that in turn reduce prison overcrowding;

- Enforcing the principle of civilian control and oversight over the functioning of the justice system, through strengthening the capacity of national parliaments, ombudsmen, independent human rights institutions, civil society organisations and other non-state actors.

The principle of the separation of powers, included in the above definitions, deserves special mention, in particular the inter-linkage and separation between the executive (government), legislative (parliament) and the judiciary (courts). An independent and impartial judiciary is a priority under international standards and best practices. (10) At the same time, the rule of law is crucial for the sound functioning of the justice sector. Only if the third branch of state (the judiciary) has basic guarantees of autonomy and independence can it fulfil its role in the protection of human rights. When checks and balances do not exist or function improperly, the executive branch, or occasionally the legislative branch, can exert undue influence over the judiciary. This invariably compromises its impartiality, effectiveness, efficiency and credibility.

The rule of law and the operation of the justice sector are fundamentally inter-connected. The justice sector should both uphold the rule of law, and function according to its principles. The justice sector, and all professionals working within it, benefit from consistent application of, and respect for, the rule of law from all governmental authorities and bodies. Clearly, the rule of law cannot exist if the justice sector does not comply with, apply, and enforce its principles. However, the rule of law applies beyond the justice sector, and thus is a much broader concept.

Security

The most cited definition of the security sector, sometimes referred to as the security system, is provided by the Development Assistance Committee of the Organisation for Economic Co-operation and Development (OECD). It refers to all institutions and entities that play a role in the security of the State and its people. (11) This encompasses:

- State institutions with a formal mandate to ensure safety of the State and its citizens against violence and coercion. This includes armed forces, police, paramilitary forces, presidential guards, intelligence services, coast and border guards, customs authorities, etc.;

- Elected and appointed civil authorities responsible for control and oversight of these institutions. This includes the parliament, ministries of defence, interior and foreign affairs, national security agencies, and certain non-state actors;

- Criminal justice agencies. This includes ministries of justice, prosecutorial and investigation services, the judiciary and courts, human rights bodies such as ombudsmen and independent commissions, and traditional and customary justice authorities;

- Unofficial security forces. This includes non-state bodies, private forces, and militias.

Development objectives for security system reform (SSR) are appropriately extended to cover the creation of a stable environment for democracy, development, and poverty reduction. This requires the State to not only overcome vulnerabilities and prevent security threats, but to also supplement military strength with support for human wellbeing, sound public policy, and good governance, working with a variety of legal and social institutions and private enterprises.

In a May 2006 Communication to the Council and the European Parliament, *"A Concept for the European Community Support for Security Sector Reform"*, the European Commission advocated that the concept of security should be extended beyond territorial integrity of States and institutions, to include the status of people. (12) This is reflected in the concept of "Human Security", first presented by UNDP in its 1994 Human Development Report. **"Human Security" places people at the heart of security sector concerns, using a broader social perspective. (13)** It implies that the State should guarantee not only law, order, and strategic security interests, but also fundamental freedoms, including protection against violations by the State itself. Simply stated, there is no development without peace and security, in their most holistic sense.

More recently, the Commission Communication **Agenda for Change (October 2011)** reiterates the development-security nexus, considering that **'the objectives of development, democracy, human rights, good governance and security are intertwined'** and that 'the EU's development, foreign and security policy initiatives should be linked so as to create a more coherent approach to peace, state-building, poverty reduction and the underlying causes of conflict'.

Citizen security is also a concept used to describe both **freedom from physical violence and freedom from fear of violence**. Applied to the lives of all members of a society (whether nationals of the country or otherwise), it encompasses security at home, in the workplace and in political, social and economic interactions with the state and other members of the society. Similar to human security, "citizen security" places people at the centre of efforts to prevent and recover from violence. (14)

Thus, measures to fight national crimes and transnational crimes (such as terrorism, organised crime, drug trafficking, human trafficking, and money laundering) must also respect human rights. The security apparatus cannot become a threat or obstacle to key liberties, such as protection from arbitrary arrest or detention, and due process of law in criminal cases. In this regard, it is noteworthy that Article 5 of the European Convention on the Protection of Human Rights and Fundamental Freedoms covers both the right to liberty and the right to security, and that the same approach is followed in Article 6 (Right to liberty and security of person) of the Charter of Fundamental Rights of the EU.

The security sector, as described above, is closely related to the justice sector. Both focus on and include several of the same institutions and actors (mainly criminal justice authorities), such as the judiciary, courts, prosecution, investigation services, law enforcement bodies and the penitentiary system. Many of these institutions combine security and justice functions, and both sectors share functional duties, such as securing the rights of state and of individuals in criminal cases.

EU initiatives supporting security system reform have therefore often included justice related components, and vice versa. Complementarity between security actors is most likely to be achieved through:

- Strengthening judicial and prosecutorial institutions;

- Improving the court system and case management for criminal cases;

- Human resources development and training, for example for legal professionals, law enforcement and penitentiary personnel;

- Rehabilitation of the legal system in fragile or post-conflict countries; and

- International judicial cooperation in criminal matters.

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(10) See the Universal Charter of the Judge (adopted by the International Association of Judges on 17 November 1999 in Taipei), the Judges' Charter in Europe (adopted by the European Association of Judges on 20 March 1993 in Wiesbaden, Germany), the European Charter on the Statute for Judges (through the Council of Europe, adopted on 10 July 1998), Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (adopted by the Economic and Social Committee in Resolution 1989/60 and endorsed by the General Assembly in Resolution 44/162 of 15 December 1989), Recommendation Number R (94) 12 of the Committee of Ministers to Member States on Independence, Efficiency, and Role of Judges (adopted on 13 October 1994), the Bangalore Principles of Judicial Conduct (adopted by the Judicial Group on Strengthening Judicial Integrity in 2001 and revised in 2002), and the Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence (adopted 19 June 1998).

(11) The DAC Guidelines on Security System Reform and Governance, 2005 can be found at http://www.oecd.org/dataoecd/8/37/31785341.pdf

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(12) COM (2006) 253 final, 24 May 2006. See also the Council Conclusions on a Policy Framework for Security Sector Reform, Number 9967/06 of 6 June 2006.

(13) See report of the United Nations Commission on Human Security, available at http://www.humansecurity-chs.org

(14) World Development Report 2011, Conflict, Security and development, The World Bank

In spite of their commonalities, security and justice are still distinct concepts and their exact relationship often depends on the specific country context, particularly whether justice institutions are fragile, or transitional measures are required, such as in post-conflict situations.

Governance

There is no internationally agreed definition of governance. The European Commission definition presented in its 2003 Communication on Governance and Development, and reiterated in the 2006 Communication on Governance in the European Consensus on Development ([15]), stresses that governance concerns the state's ability to serve its citizens. It highlights that governance refers to the rules, processes, and behaviours by which interests are articulated, resources are managed, and power is exercised in a society. The way public functions are carried out, public resources are managed and public regulatory powers are exercised are major issues to be addressed in that context.

This broad and holistic approach recognises that there is no particular institutional model for governance. More specifically, the concept of democratic governance is increasingly favoured in EU support. This concept is anchored in basic universally agreed principles (entrenched in UN human rights and anti-corruption instruments) such as transparency, accountability, participation, inclusion and anti-corruption, considered as essential factors for sustainable development. This approach takes into account all the dimensions of governance (political, economic, social, cultural, environmental, etc.), and the need to integrate governance into each and every sector programme, while considering governance as a dynamic process that grows into good and ultimately democratic governance, as the values of democracy and human rights are progressively entrenched into a society.

In the European Commission's approach, democratic governance (as well as good governance) includes the following universal principles: respect of human rights and fundamental freedoms; support to democratisation processes and the involvement of citizens in choosing and overseeing those who govern them; the rule of law and equal access to an independent justice system; access to information; a government that governs transparently and is accountable to the relevant institutions and to the electorate; human security; effective institutions; access to basic social services; sustainable management of natural and energy resources, and the promotion of sustainable economic growth and social cohesion in a climate conducive to private investment. It recognises the need to work at different levels, such as local, national and international. It also recognises the importance of an efficient public sector at the central level, and of cooperating with effective local governments, which in turn promote local democratic governance. These are indeed critical elements of the democratic governance process.

The European Commission supports democratic governance through a partnership-based approach, which entails dialogue with partner countries' governments and civil society, EU Member States and other donors, and the use of various financial instruments, thus promoting ownership and sustainability of its interventions. While recognising that if there is no political will inside the country, outside support is unlikely to deliver results, the European Commission considers that donors have an important role to play by developing incentive-based approaches and sustaining an adequate level of political and policy dialogue in all dimensions of democratic governance. In countries in fragile situations, such as post-conflict and post-authoritarian countries, a lack of political legitimacy is often compounded by very limited governance capacities. Addressing governance in these countries demands a step-by-step approach aimed at gradually raising governance standards. Many countries must first achieve basic stability and a minimum of institutional development before they can start implementing long-term development policies.

Democracy, good governance, the rule of law, and the protection of human rights are primary development objectives and key components of sustainable development under the European Consensus on Development, the Agenda for Change and the Communication on the Future Approach to EU Budget Support to Third Countries. Good governance is a "fundamental element" of the European Union partnership with ACP countries under Article 9 of the Cotonou Agreement, ([16]) and included in the European Neighbourhood Policy and European Union relations with Latin America and Asia. For programming purposes, and in order to break the concept of good governance into more manageable components, the **European Union** identifies **six good governance clusters.** ([17])

1) Support for democratisation, the establishment of democratic systems, and free and fair electoral processes, with emphasis on participation, representation, and accountability;

2) Promotion and protection of human rights, as defined in international instruments;

3) Reinforcement of the rule of law and the administration of justice, with emphasis on the legal framework, dispute resolution, and access to justice;

4) Enhancement of the role and capacity of civil society, so it better promotes and protects human rights, provides services, and helps develop and implement public policy;

5) Public administration reform, including management of public finances, public procurement, and strengthening civil service;

6) Decentralisation, including reform and capacity building for local government institutions, to promote and institutionalise sound practice and public participation at the local level).

The third cluster most directly involves the justice sector. However, it is clear that all of these aspects of governance are affected by, and in some instances depend upon, the sound and efficient functioning of the justice sector.

1.3. What is the context for support for the justice sector and justice sector reform?

The justice sector cannot be considered in isolation. It is an integral and integrated component of the nation-state as it is configured under the current international system, and it affects all aspects of national development. It is therefore important to carefully consider the context for justice sector support and reform through the following **key aspects**:

- The justice needs of the people;

- The type and nature of the legal system;

- The level of development;

- The political situation;

- National priorities;

- The socio-cultural context;

- The international and regional dimension.

It is important to understand these aspects of the context before considering specific initiatives that support the justice sector and justice sector reform.

(1) The justice needs of the people

The reasons why people living in poverty are denied access to justice vary from one community and context to another, but may typically be related to underdeveloped legal frameworks and discriminatory norms, poor legal awareness, insufficient legal services, problems relating to capacity and corruption within existing justice sector institutions, or a general inability of the justice system to reach beyond the interest sphere of the more influential members of society. It is important to identify these types of obstacles, as well as identify support mechanisms for such obstacles to be removed. In preparation for such an intervention, a system-wide assessment should be undertaken.

The first step is to **identify the primary beneficiaries of an intervention, as well as their perspectives and justice needs**. Issues of discrimination and the need to ensure the rights of marginalised individuals and groups should guide the assessment, as well as any eventual interventions. It should be noted that formal and informal justice may discriminate against, or pay insufficient attention to the situation, interests and protection of women, children, minorities, people with disabilities and other marginalised groups in society. These groups also tend to be disadvantaged in mediation and adjudication processes, as well as in the enforcement of decisions handed down by courts and other conflict resolution mechanisms.

([15]) Communication on Governance and Development, COM (2003) 615, available on http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0615:FIN:EN:PDF and Communication on Governance in the European consensus on development: towards an harmonised approach within the European Union, COM (2006) 421, available on http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0421en01.pdf

([16]) See http://ec.europa.eu/europeaid/where/acp/overview/cotonou-agreement/index_en.htm

([17]) Analysing and Addressing Governance in Sector Operations, Reference Document No, EuropeAid, 4 November 2008

The next step is to identify what obstacles people face in seeking justice or redress. These obstacles may relate to the capacity or willingness of existing justice sector institutions and actors to deliver justice, as well as to the ability of people to utilise the existing justice system and demand reforms that serve to better protect their interests.

In order to be able to identify the set of interventions that are most relevant **to overcome obstacles to justice, it is necessary to maintain a system-wide perspective**. Even though resource constraints may prove it impossible to try to address all relevant aspects of a justice system, individual reform initiatives should not be considered in isolation, since improvements in one part of the justice system may be effectively undermined by existing weaknesses in other parts of the system. Maintaining a system wide perspective is also necessary to avoid duplication of reform efforts.

(2) The type and nature of the legal system

The justice sector is part of the overall legal system of a country. The legal system encompasses the three state powers and all judicial institutions, and it structures the wide range of legal relationships between the government and the governed and between the people themselves. Within this context, the justice sector operates on the basis of laws, practice, customs and principles. These are fundamentally hierarchical in nature, in accordance with the concept of supremacy. In countries with single national systems there is normally one set of legal norms, whereas under federalist systems there are concomitant sets of norms applying to different territorial jurisdictions.

The justice sector is integrated into the specific context of each country. It is therefore affected by all of the other factors which influence national development, including history, politics, geography, climate, national resources, demographics, religion, values, culture, and personalities. In the present context, it is most **important to consider legal traditions**. They set the stage for the legal framework, and thus the specific conditions and challenges faced by the justice sector in any given country.

Every country and every legal system is in some ways unique. Nonetheless, it is possible to identify principle categories of legal systems, and compare and contrast them. This exercise increases understanding of the parameters for justice sector interventions, and the possible means for achieving concrete outputs and results. Broadly speaking, there are five main legal traditions at the national level:

- The common law system;

- The civil law system (including the Socialist system);

- Traditional and customary law systems;

- Religious law systems;

- Mixed systems.

In order to be successful, support for the justice sector and justice sector reform must take careful account of the structure and nature of both the justice sector and the legal system, and their inter-relationship.

The roles, interests, policies, procedures, and practices of the components and entry points for the justice sector are greatly affected by the legal system. For example, the type of legal system directly affects the legal framework, the roles and operations of institutions, the structure of the court system and tasks of its personnel, the working practices of legal professionals, the functioning of the penal system, and the role of non-state actors and civil society.

At the same time, these components of the justice sector can and do influence the legal system. Further, inter-relationships between components depend greatly upon the legal system. Here are some concrete examples:

- Initiatives to reform the legal framework for the justice sector can only take place within the context of specific legal traditions, historical influences, and sources of law. It is therefore important to take full account of these issues when planning support to the justice sector.

- Initiatives to improve the skills of legal professionals must fully take account of their education, career path, historical traditions, working conditions, access to information, and representative institutions. Professional training needs to be integrated into the work of the institutions that provide it, and form part of a system, involving skilled instructors, good materials, electronic libraries and databases, and modern interactive training techniques.

- Initiatives to enhance access to justice must take account of where people go to seek justice, who they prefer to talk to, and which mechanisms they trust. It is difficult to enhance access to justice by improving case management in the courts, or training lawyers, if the majority of the people rely upon and prefer to use traditional mechanisms in their community.

These examples highlight the importance of a) understanding different types of legal systems, b) understanding the relationship between the justice sector and the legal system, and c) applying this information to specific national contexts, in order to define needs and required services, and thereby carry out sound and effective programming. Legal traditions are further described in Annexe 1.

(3)   The level of development

The justice sector is directly affected by many aspects of the level of development in each country. It is important to understand the national development context, in order to design and implement realistic and effective justice sector interventions. The following issues can be highlighted:

a) Historical origins. The colonial past continues to influence the justice set-up and operations in many developing countries. Colonial powers drew borders, built the economic infrastructure, organised industrial and agricultural production, and set up the transportation, communication, and education systems, without taking into account local traditions, boundaries, cultures and systems. In addition, circumstances surrounding the struggle for independence have had a profound impact on the organisation of official institutions, and the identity of political parties.

b) The economy and resources. The economic infrastructure has a direct impact on the lives of people, and thus the rights that need to be protected. This makes it important to look at issues such as the concentration of land ownership in the hands of a small percentage of the population (which is pervasive in certain regions), control over the business sector by elites, over-reliance on extractive resources (such as oil and minerals), agricultural production, and so forth. At a basic level, geography, transportation, and communications also affect whether the State can exercise its powers over all parts of the country, and extend operation of the court system and the work of legal professionals nationwide. In fact, the economy has a direct impact on the justice sector.

The level of economic development and the taxation system affect government revenues and influence the amount of financial resources available for the justice sector. Justice sector finances and the prioritisation of limited resources must therefore be considered. It is not constructive to assess a justice sector purely on the basis of what should be done, without considering the relationship between what is being done and how it is financed.

c) Sociological factors. The operation of the justice sector can be affected by a number of sociological factors. Besides the influence of traditional justice and religious law, which are based on social mores and values, some ethnic and cultural differences, particularly when combined with geographical factors, can affect how and where justice institutions function, how and where legal professionals carry out their work, and how legal information is managed. Linguistic diversity can have profound importance in terms of access to justice and justice delivery in countries having more than one official language or where the official language is under-represented compared to dialects.

d) Strength of the State. The State is often minimalist or weak in many developing, fragile, and post-conflict countries. This can transform the State into either a prize or a "bone of contention" for different political or military interests. This in turn adds to the stakes of the political process, and inevitably has significant consequences in the operation of the justice sector. In fact, the level of development has a decisive effect upon the strength and resources of the State, and weakness of the State has a major impact on the operation of the justice sector, and the nature of the political process.

What are the key characteristics of a weak State?

- *The State may not be fully able to control national territory.* Instead, clandestine groups, organised criminals, or paramilitary organisations may control a significant percentage of the land. This territorial control may be used to further illicit activities, harm certain social sectors, or even provide social services normally under the responsibility of local government.

- *The State may have minimal control over the economy.* A high percentage of economic activity may be unregulated, informal, untaxed or even illegal. Powerful and concentrated business interests or a few select families may control a large percentage of the land, wealth, and economic activity.

- *The State may be unable to generate the resources it requires.* The tax base may be low, or tax revenue not fully collected, and there may be problems generating income from other sources.

- *The State may have difficulty providing social services.* This can be manifested in a high incidence of poverty, unemployment, malnutrition, illiteracy, and poor health. This is particularly problematic in rural communities and marginal or peripheral zones of urban areas.

- *The State may lack a professional and independent civil service.* Public employment may be subject to political control, and there can be high turnover when governments change. This a) reduces capacity, professionalism and performance, b) harms institutional memory, c) undermines training programmes, and d) creates incentives for short-term approaches and opportunism. The State and justice sector should rely on a professional service, with career prospects, job security, fair remuneration, a sound evaluation system, clear accountability mechanisms and consistent training.

(4) The political situation

The justice sector is at the heart of the power structures of society. Efforts to support the justice sector and justice sector reform therefore need to take full account of its political sensitivity, and the forces that may resist judicial independence.

The judicial branch a) depends upon funding delivered by the executive branch and approved by the legislative branch, b) enforces laws enacted by the legislative branch (often under the leadership of the executive branch), c) lacks its own enforcement mechanisms, d) often depends upon the executive branch for administrative and operational support, e) in many countries depends upon both the executive branch and the legislative branch for the nomination or validation of its members, and f) is managed by judicial institutions (such as a high judicial council) which may be subject to influence from the executive branch.

Further, **it is useful to take a look at what judicial independence means, in reality**. If judges make rulings based only on the law and the facts of each case, then they are more likely to, for example: a) find a defendant not guilty, regardless of whether the prosecution wants imprisonment, b) set a defendant free in cases of prosecutorial misconduct or if improperly obtained evidence has been used, c) rule in favour of a citizen taking legal action against the state in an administrative case, d) rule in favour of a small business taking action against an oligarch, and e) rule in favour of a landless peasant in a dispute with a powerful landholding family. These examples indicate why powerful interests will naturally seek to influence the course of justice, and preserve their impunity whenever possible.

Many developing countries are protective of their sovereignty, and view the justice sector as crucial for their independence and the stability of the governmental regime. In this context, priority could be placed on the principle of "non-interference in internal affairs". However, experience shows that insular justice systems are more prone to abuse. Common forms of abuse include:

- *Failure to respect judicial independence.* This includes efforts to a) control or influence the appointment, promotion or discipline of judges, b) influence or manipulate court operations, c) increase the chances of victory in specific civil cases and of impunity in specific criminal cases, and d) limit access to justice.

- *Control over the courts and judicial institutions.* Particularly in fragile and post-conflict countries, politicians and military leaders may try to influence the justice sector, courts or specific legal institutions. They may wish to protect powerful political or economic interests, gain impunity for certain actions (often gross violations of human rights), or prevent the implementation of mechanisms and practices that support the rule of law.

- *Under-resourcing of the justice sector.* Justice systems may be under-funded, deprived of adequate facilities and equipment, or hampered by limited human resources. This compromises their operations, and increases their susceptibility to outside influence.

- *Failure to respect human rights.* Particularly in penal cases, curtailment of human rights can be used to prejudice and incarcerate disfavoured persons. Torture and other abuses may also occur.

- *Selective enforcement.* Inconsistent application of the law and violation of the principles of supremacy of law and equality before the law can be used for political purposes. Administrative agencies and law enforcement bodies can be subverted for political goals.

- *Corruption and cronyism.* The justice sector can be undermined through improper influence from a number of sources. This can take the form of favouritism or bribes, whether to influence the outcome in specific cases or simply to process administrative requirements. Corruption is linked to impunity, which undermines the sector and its public image.

The political situation is greatly affected by the level of development and the strength of the State. Weak States without resources or an unprofessional civil service are much more susceptible to influence, and so is their justice sector. This has significant ramifications on the relationship between the justice sector and the security sector.

(5) National priorities

National priorities set the parameters and framework for the operation of the justice sector and reform initiatives. National priorities depend greatly upon the overall development context in a country (political, economic, social, geographical, and security) and its specific circumstances. In addition, national priorities and the development context are greatly affected by a) fragility, b) post-conflict situations, c) transition processes, d) emerging statehood or nationality. These circumstances should be carefully considered, so that justice sector initiatives can be placed in perspective, and take full account of comparative factors.

From the outset, it is important to highlight the fact that national priorities in many different areas affect the justice sector. Thus, **it is important to look beyond justice sector strategies and priorities to find other sources of influence and guidance**. For example, priorities in the following areas can be highly relevant: a) poverty reduction, b) economic development and direct foreign investment stimulus, c) small and medium-sized enterprise development, d) civil service reform, e) crime prevention f) health care reform, g) environmental sustainability, h) gender equality, etc. Reform in each of these areas (plus others) has a legal component, and depends to differing degrees on the organisation and operation of the justice sector.

As a result, the full range of national development priorities and strategies must be – and are – taken into account by the European Union for project design and implementation. They are carefully reflected in Cooperation Agreements, Country Strategy Papers (CSP), and National Indicative Programmes (NIP). Furthermore, the relationship between national priorities and the development context must be considered.

(6) The socio-cultural context

The national justice sector is affected to different degrees by the socio-cultural context. This includes **social values, cultural practices and traditions, working habits, demography and personal mores**.

These influences are likely to be tempered in urban settings, where international influences are more pervasive, where communication and transportation options are usually more developed, and where national leaders and legal professionals tend to be more cosmopolitan. Geography can also play a role, since maritime countries and those with good river transportation systems tend to be more influenced by external contacts and trade.

Nonetheless, socio-cultural influences are always present, and are more likely to be a factor affecting the justice sector and its institutions for a) indigenous peoples, b) minority religious groups, c) minority ethnic and linguistic groups, d) rural and isolated communities, e) land-locked areas lacking good transportation and communication, and f) communities which depend heavily upon agriculture, and particularly subsistence agriculture, and are therefore less mobile.

Socio-cultural influences upon specific entry points include:

- Legislation cannot contravene socio-cultural factors without causing non-compliance and incurring significant costs for enforcement and application;

- Institution building must account for socio-cultural factors that affect and influence human resources development, such as working practices, family customs, requirements for social protections, etc.;

- The operation of justice sector institutions, and in particular the court system, must take account of socio-cultural factors and religion, which can affect everything from documentation practices to the handling of evidence to religious holidays and rites;

- Legal professionals must consider socio-cultural factors that affect the way their clients relate to them and give evidence, present their cases, and interact with official institutions;

- Mechanisms for alternative dispute resolution, and most particularly those which apply to private parties in non-commercial disputes, must account for socio-cultural influences on the ways that people approach different kinds of disputes;

- Access to justice can only be enhanced with careful attention to the socio-cultural influences on how individuals protect and assert various rights;

- Corruption, and particularly petty bribery for administrative action, also depends on the socio-cultural orientation of individuals, and in particular civil servants;

- Transparency, accountability, and information dissemination depend on socio-cultural preferences and practices, which can affect everything from family size to literacy rates.

The assessment that precedes justice sector interventions should look into and take careful note of all socio-cultural factors that influence the sector, and that may affect reforms. If certain practices need to be changed, the most suitable and sensitive means for doing so must be carefully elaborated. Unfortunately, education and sensitisation, which are intensive and time-consuming practices, may be the only way to promote reform in this area.

(7) The international and regional dimension

All of the components and entry points of a national justice sector are affected by their relationship to international law and international organisations. For example, national legislation may have to comply with international and regional obligations; governmental institutions interact with multilateral organisations and neighbouring countries (e.g. legal assistance, cross-border criminality); legal professionals and non-state actors are part of international and regional networks and information exchanges; alternative dispute resolution mechanisms are crucial elements of transnational commerce; and transitional justice mechanisms often rely upon foreign support. Indeed, only traditional authorities in rural areas, and to a limited extent certain local religious institutions, could be considered isolated from external influences.

The above examples show that most components of national justice sectors are part of a complex web of multilateral connections with the international community, and bilateral relations with other national institutions. The full ramifications of these connections must be considered in the context of each justice sector initiative.

International law is broadly composed of an ever-expanding series of treaties, conventions, agreements, and other international legal instruments of a multilateral, regional, or bilateral nature, in addition to a number of principles that are binding on all states, even in the absence of any written commitment (jus cogens).

The status of international law and its transposition and enforcement under national law are generally addressed in constitutions. The general procedure is for signature by an official representative of the State, followed by formal ratification, usually by the legislature. [18] Signature of international treaties by a State does not impose obligations to the State, other than that it is obliged to refrain in good faith from acts that would defeat the object and purpose of the treaty. Ratification refers to the act undertaken by a State whereby a State establishes its consent to be bound by a treaty.

Once a treaty is ratified, it is important to look at the relationship between international and national law in a specific country. The incorporation of international law into national law depends on the national system, which can be of a monist or dualist nature. Monist systems assume that the national and international legal systems form a unity, not requiring specific implementing legislation. Dualist systems emphasise the difference between national and international law, and require the translation of the latter into the former. While such a distinction may seem theoretical, and not particularly useful when analysing the justice sector, it can nevertheless be important,

in particular concerning the national implementation of international law. For example, in a monist system the international treaty may still be invoked directly before the national courts if the provisions of the treaty are considered directly applicable, in contrast to a dualist system in which the international law needs to be specifically incorporated into national law. The jurisprudence of Supreme or Constitutional Courts often contain useful elements to better understand this dimension.

Almost every country is now a member of several multilateral organisations, at the international or regional level. The **United Nations** is the largest multilateral organisation, composed of various bodies, including the Security Council, the General Assembly and the International Court of Justice. The International Court of Justice is the main judicial organ of the UN and is mandated to settle, in accordance with international law, legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by authorised United Nations organs and specialised agencies.

Since the adoption of the Universal Declaration of Human Rights on 10 December 1948 by the UN General Assembly, **a series of international human rights treaties have been adopted which have given a legal form to inherent human rights**, and developed the body of international human rights. Respect for human rights requires the establishment of the rule of law at the national and international levels. International human rights law lays down obligations that States are bound to respect. By becoming a party to international treaties, States assume obligations and duties under international law **to respect, to protect and to fulfil human rights**. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights. The **main UN human rights treaties** are the following:

- International Convention on the Elimination of All Forms of Racial Discrimination (CERD);

- International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols;

- International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional Protocol;

- Convention on the Elimination on All Forms against Women (CEDAW) and its Optional Protocol;

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol;

- Convention on the Rights of the Child (CRC) and its Optional Protocols;

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW);

- International Convention for the Protection of All Persons from Enforced Disappearance (CPED);

- Convention on the Rights of Persons with Disabilities (CPRD) and its Optional Protocol.

An important milestone at the multilateral level was the creation of the **International Criminal Court (ICC) (**[19]) after the entry into force of the Rome Statute on 1 July 2002. The principles of the Rome Statute, which governs the functioning of the ICC, are fully in line with the principles and objectives of the EU, and the EU has been a staunch supporter of the ICC, as recently confirmed by Council Decision 2011/168/CFSP on the ICC. ([20])

The main features of the ICC can be summarised as follows:

- **Independent:** The ICC was established in 1998 by an international treaty, the Rome Statute; it has no special mandate from the UN or from any State;

- **Without universal jurisdiction:** The Rome Statute empowers the Court to exercise jurisdiction only with respect to crimes (1) committed within the territory of a state-party, (2) committed by a national of a state-party, (3) referred to the Court for prosecution by the UN Security Council, or (4) committed within a non-state-party's territory or by one of its nationals, if referred to the Court by that non-state-party;

([18]) See the 1969 Vienna Convention on the Law of Treaties, which is available at http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

([19]) See also http://www.icc-cpi.int/Menus/ICC?lan=en-GB
([20]) http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:076:0056:0058:EN:PDF

- **Jurisdiction is limited for the most serious crimes of concern to the international community as a whole:** namely, genocide, crimes against humanity and war crimes;

- **Individual criminal responsibility, reflecting all features of domestic criminal code:** The ICC prosecutes and tries individuals, including heads of State or government, not groups or States. Amnesties granted at the national level cannot be used to prevent the Court from exercising its jurisdiction, in line with the increasing focus of the Office of the Prosecutor to investigate and prosecute those who, on the evidence obtained, bear the greatest responsibility for such crimes, including governmental and other leaders;

- **A court of last resort:** it is important to underline that the ICC is complementary to national criminal jurisdictions. This means that only when a State Party to the Rome Statute is unwilling or genuinely unable to carry out the investigation or prosecution of such crimes shall the ICC have jurisdiction. The ICC is a court of last resort (see also Section 2.7 for more information).

Since the 1990's, the international community has created other international, special and hybrid tribunals including the UN International Criminal Tribunal for the Former Yugoslavia (ICTY), the UN International Criminal Tribunal for Rwanda (ICTY), the Special Court for Sierra Leone, the Special Tribunal for Lebanon, and the Extraordinary Chambers in the Courts of Cambodia, all of which are ad hoc in nature, having a territorially and temporally limited jurisdiction, contrary to the ICC.

Many countries have also become members of regional organisations, such as the African Union (AU), the Council of Europe, the League of Arab States, the Association of Southeast Asian Nations (ASEAN), the Organisation of American States (OAS), and the Caribbean Community (CARICOM). In addition, there are also many sub-regional bodies. In Africa, for example, the justice sector of individual countries can be affected by their participation in the Economic Community of Central African States, the Economic Community of West African States, the Common Market for Eastern and Southern Africa, the Southern African Development Community, etc.

Some of these regional and sub-regional organisations include decision-making tribunals that can have a direct effect on national justice sectors. These include the European Court of Human Rights, the Inter-American Court of Human Rights, the Caribbean Court of Justice, the African Court on Human and Peoples' Rights, the East African Court of Justice, etc. The jurisdiction and authority of these institutions vary greatly; for example, rulings of the European Court of Human Rights are taken extremely seriously by the 47 Member States of the Council of Europe. However the High Court in Zimbabwe rejected the legitimacy of the Tribunal of the Southern African Development Community when it issued a ruling against the country's controversial land reform policy.

Various human rights instruments have been adopted at the regional level reflecting the particular human rights concerns of the region, and providing for specific mechanisms of protection, including but not limited to [21] :

European Convention on Human Rights. Following article 6 of the Lisbon Treaty, the European Union shall accede to this Convention;

- European Social Charter;

- African Charter on Human and Peoples Rights;

- African Charter on Democracy, Elections and Governance;

- American Convention on Human Rights.

2. Support for the justice sector and justice sector reform

2.1.   How is the context for justice sector support and reform analysed and assessed?

The type and nature of the legal system, and the level of development, can usually be assessed through a review of available information resources, investigation, and consultations with informed parties. During this process, issues pertaining to the role of and interactions with global and regional justice actors can be considered. As this is standard procedure during project design, it does not need to be covered at length. However, issues relating to national priorities and the political situation require much deeper investigation, through dialogue with key actors. This is a sensitive process which must be carefully organised and carried out, and therefore deserves additional explanation.

Before discussing the different kinds of dialogue, it is useful to take a look at the European Union Sector Governance Analysis Framework (SGAF) [22]. Another model that can be useful for analysis, in particular sector support, is **Political Economy Analysis**. The central contention in this model is that the public authority and public goods required for development arise through domestic political processes and contestation between interest groups. This can be seen as a process of **bargaining between state and society actors**, and through the interaction of formal and informal institutions. For further guidance, please visit the EU Capacity4Dev webpage.

Application of the sector governance analysis framework for the justice sector

The Sector Governance Analysis Framework, as adopted and used by the European Commission, treats governance and administration of the justice sector as an essential component of governance, focusing on three dimensions, namely the context, actors, and accountability relations, each of which presents a set of specific questions. This process takes into account principles of good governance, and requirements for legitimacy, accountability and transparency. It also reflects the "accountability triangle" established in the World Bank Development Report of 2004, which considers the relationship between clients, providers, and policy makers in the definition and delivery of required governmental services.

The four-step process for the Sector Governance Analysis Framework is set forth in "Analysing and Addressing Governance in Sector Operations", Reference Document Number 4 in the Tools and Methods Series, of November 2008. [23]

Step One: Analysing the context of sector governance. In the justice sector, the context includes:

1) Independence of the judiciary, and its relationship to the other state branches and the political system, including democratic processes, party politics, and citizen participation;

2) The legal framework (constitution, codes, laws, administrative acts, key court cases, etc.);

3) Organisational capacity (management, policies, and procedures);

4) Resources (budget, facilities, equipment);

5) Personnel (education, skills, status, benefits and immunities, advancement, training);

6) Ratification of international treaties, and membership of international, regional, and organisations;

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[21]   A comprehensive overview is available at http://unesdoc.unesco.org/images/0021/002126/212642m.pdf

[22]   Analysing and Addressing Governance in Sector Operations, EuropeAid, November 2008, http://ec.europa.eu/europeaid/infopoint/publications/europe-aid/documents/149a_en.pdf
[23]   http://ec.europa.eu/europeaid/infopoint/publications/europeaid/149a_en.htm For additional information on governance in the context of the European Union, please consult:
   1)   The White Paper on European Governance, COM (2001) 428 final of 25 July 2001
   2)   The Communication from the Commission on Governance and Development, COM (2003) 615 final of 20 October 2003
   3)   The Communication from the Commission on Governance in the European Consensus on Development, COM (2006) 421 final of 30 August 2006

7) Socio-economic and socio-cultural factors;

8) The human rights situation at the country level.

It is important to consider the human rights situation in detail, and adopt a broad perspective, covering security, legality, and the full range of economic, social, and cultural rights.

Step Two: Mapping the actors. Six clusters of actors are identified:

1) Non-state actors;

2) Supervisory institutions that create checks and balances;

3) Government and politicians;

4) Core public agencies;

5) Frontline service providers; and

6) International, regional, and donor organisations. In the justice sector, this includes the components and entry points discussed above.

Mapping covers their:

● Legal status and statutory mandate;

● Powers and resources;

● Roles and responsibilities;

● Interests, incentives, and motivations;

● Ability to meet obligations and deliver services;

● Linkages and interconnections with other actors; and

● Past, current and planned activities in the justice sector.

Step Three: Analysing governance and accountability relations. Once the context and key actors are mapped, it is necessary to analyse relationships between the actors, and specifically the governance mechanisms through which authority and power are exercised.

Step Four: Analysing and summing up readiness for governance reform. This step brings together the first three steps, and synthesises them to analyse the governance reform readiness in the sector. The table below helps summarise characteristics of sector governance, overall trends, strengths, weaknesses, opportunities, and threats (SWOT Analysis). This should serve as the basis for consultation, and be regularly updated.

	Key features	Key strengths/ Opportunities	Key weaknesses/ Threats	Major trends
Context beyond the sector				
Actors interests and incentives				
Governance/ Accounta- bility relationships				
Other aspects				

The Sector Governance Analysis Framework can also be used to delineate the content of justice sector initiatives, design indicators, and facilitate monitoring and evaluation.

2.2. What are the entry points for the justice sector?

When approaching the justice sector it is important to consider the whole system. This could be done from a system perspective looking at the legal chain, from police and courts to the correctional service. It could also be regarded from an access to justice perspective from the actual legal problem of, for example a poor woman seeking property rights, to the implementation of the court's remedy.

However it is also useful to consider entry points that reflect the justice system, and serve as counterparts for reform-oriented interventions. It is important to understand that working with one entry point will not guarantee an impact, since every entry point is simply one element in a larger chain of results. Nevertheless they are useful, and include frameworks, components, institutions, and categories of actors. The following nine entry points are considered of relevance and importance for justice reform-oriented interventions:

1) The legal framework

2) The governmental and administrative framework

3) The court system and court personnel

4) Legal professionals and their representative institutions

5) Law enforcement and penal institutions and their personnel

6) Alternative dispute resolution mechanisms

7) Traditional, customary, or religious justice

8) Transitional and restorative justice actors and processes

9) Non-state actors and civil society organisations

Naturally, these nine components are closely inter-related, and in certain contexts can overlap. However, they are functionally and conceptually distinct. Thus, it is imperative to understand their specific nature/identity and roles in order to understand the justice sector. It is also important to understand their relationship with international and regional judicial institutions, which despite being separate still have a major impact on the national justice sector.

(1) The legal framework

The legal framework sets the stage for the operation of the justice sector, and establishes the parameters for enforcing the rule of law and protecting human rights. In general, the legal framework includes the constitution, primary legislation (laws), secondary legislation (regulations), subsidiary legislation (such as decrees, statutes, and ordinances at the regional or local level), and case decisions and doctrine having the force of law.

In general, laws are categorised according to several criteria:

● According to their legal force, there are fundamental laws (e.g. Constitution); organic laws (second place in the legal hierarchy); ordinary laws (regulating most areas, except for those dealt with by organic or constitutional laws);

● According to their scope, there are general laws; special laws and exceptional laws;

● According to their content, there are substantive laws (defining rights and duties) and procedural laws (comprising the rules for enforcing the rights and duties);

● According to their regulatory nature, there are civil laws, criminal laws, administrative laws etc.

The legislative branch has an important role to play in establishing the legal framework. It usually shares these duties with the executive branch, to the extent that ministries lead or participate in the legislative drafting process. However, in many developing countries, the legislature is not efficiently managed, lacks expertise, suffers from difficult material conditions, and operates in an inefficient fashion. In consequence, the legislative and control role of the Parliament is compromised and the executive becomes stronger to the point that its rule-making authority extends without any limits.

(2) The governmental and administrative framework

The institutional framework for the justice sector is the overall structure within which individual institutions operate. By framing their responsibilities and interactions, it sets the stage for their specific work. The governmental and administrative framework for the justice sector is characterised by a large number of institutional actors, with complementary but sometimes competing functions, that offer a significant number of entry points for reform.

The role of executive bodies varies, and there are many different approaches concerning administration and oversight of the courts, prosecution, law enforcement agencies, and prison system. In fact, generalisation can be difficult.

- In many civil law countries, ministries of justice have a leading role in management and operation of the judiciary and court system. Law enforcement and penal institutions are likely to be under the auspices of the ministry of justice, but may be placed under other bodies (the current trend is to transfer authority for penal institutions away from security-oriented bodies, such as the ministry of interior, often to the ministry of justice). They may also have a certain degree of operational autonomy.

- In many common law countries, the judiciary is self-managing, with significant authority vested in the highest-level court or judges. Under the common law approach, when the judiciary is self-governing and autonomous, the prosecution can be treated as an executive function, but often with considerable operational autonomy, to ensure professionalism. Law enforcement and penal institutions are more likely to be administered separately.

- Nonetheless, even in countries with independently run and operated judiciaries, where judges have significant autonomy over their own affairs, ministries of justice or a comparable executive authority may be responsible for management of the courts (including physical facilities) and the employment of administrative staff, and also prosecutorial functions. In addition, ministries of finance or related bodies are still likely to have overall responsibility for the budget.

- Further, in many civil law countries judges and prosecutors are regulated by semi-autonomous bodies, such as high judicial and high prosecutorial councils. Such bodies play a major role in selection, retention, promotion, initial and continuing education, and professional discipline. Their managerial boards may be structured in a corporatist fashion, with representatives from ministries, different judicial bodies, judges, the legal professions, scholars, and even independent experts.

CASE STUDY – Empowering the Palestinian judicial system

The Seyada Projects in the West Bank and Gaza Strip are strengthening the Palestinian judicial system, through legal reform, institution building and training, in accordance with the Basic Law. This includes work with the High Judicial Council, efforts to establish a constitutional court and administrative courts, training of judges, prosecutors and court personnel, and providing information technology to several institutions. However, in part due to the volatile development context and the division between the West Bank under the Palestinian Authority and the Gaza Strip under Hamas, issues have arisen concerning constitutionality, legitimacy, authority and jurisdiction. Some institutions selected for strengthening could not be trained, or were unable to fully benefit from technical assistance to help meet their obligations.

Despite these limitations, Seyada I and the follow-up Seyada II projects managed to a) support the High Judicial Council, the Prosecution Office, the Palestinian Judicial Training Institute, and the Palestinian Bar Association, b) provide training and technical assistance to government officials and legal professionals, c) support legislative drafting, d) assist with operations at a number of governmental institutions, e) provide information technology to the courts, and f) help build the legal aid system. Work towards establishing a constitutional court however remains problematic.

Success in the above areas shows that technical assistance and capacity building can achieve objectives, even in challenging development contexts. However, larger scale problems concerning the political and security context, and issues relating to legitimacy of the legal system, inevitably have great impact on this work. In such a context, it is very important to consider the relationship between sectoral reform and the strengthening of individual components and entry points of the justice sector.

The official institutional infrastructure outlined above may be complemented by various non-executive bodies, such as human rights institutions, and ombudsmen. These may play an important and independent role in investigating, monitoring and bringing to light violations of human rights and administrative procedures. They can also act as a safety valve for publicising issues and specific cases that have been overlooked by official governmental mechanisms.

The executive branch can also play a major role in the definition and implementation of governmental/official policy for the justice sector. This includes drafting legislative proposals, negotiating international treaties, managing relations with international and multilateral institutions (including law enforcement bodies which try to control cross-border criminality), designing strategies for sectoral reform, and implementing reform plans and action plans.

When considering governmental and administrative institutions as entry points for the justice sector, it is crucial to assess their operational independence and autonomy. Sometimes, the ministry of justice, cabinet/council of ministers, or head of the executive (president or possibly prime minister) may exercise considerable (and potentially undue) influence. Such influence can be:

- *General and pervasive.* For the judiciary, this may affect the appointment of judges, and their working conditions, assignments, promotions, and discipline. For prosecution and law enforcement officers, this might lead to selective prosecution, inconsistent enforcement of laws and judgments, arbitrary arrest and detention, and impunity.

- *Focused and explicit.* This affects rulings and handling of specific or priority cases, often high-profile commercial or criminal cases, or those involving important or connected people.

While it is important to look at the organisational chart for governmental institutions within the justice sector, the key question is whether sufficient independence and autonomy exist in practice. Because there are always some checks and balances, it is possible for justice sector institutions to be nominally under the auspices of executive bodies but still carry out their functions, if the dominant culture includes respect for the rule of law and professionalism. On the other hand, justice sector institutions may appear autonomous, but be subject to surreptitious practices that undermine their work. For example, judges may face professional discipline through their own high judicial council for particular judgments they make, or for making too many acquittals in criminal cases. Often there is a dichotomy between theory, appearance, and practice.

The motivation for such interference and corruption is clear. The justice sector is integral to the political and developmental context, powers of the elite, and the rights and obligations of the people. In developing and authoritarian countries in particular, the sensitive nature of judicial decisions creates incentives to interfere or exercise influence. Furthermore, certain parties benefit greatly from impunity. Meanwhile, ministries often lack financial resources, capacity, organisational infrastructure, and human resources to properly carry out their functions, thereby facilitating interference by powerful outside interests.

Practices that undermine the autonomy and professionalism of the justice sector also compromise the rule of law and good governance, and damage the legitimacy of the entire governmental system, with severe repercussions for national development.

Another example is that, unfortunately, the enforcement of judgments does not feature very prominently in court reform initiatives. However, this is essentially the sine qua non of an effective justice service. Statistics in many countries indicate that only a small proportion of court judgements are actually enforced. This means that the ultimate objective of litigation, namely a favourable judgment, is often nothing more than a piece of paper. What is the ultimate benefit of legal and institutional reform, training, and improved court and case management, if litigants are provided with an unenforceable judgement? Such uncertain enforcement threatens economic development by reducing investment, lowers esteem for the legal system and judiciary, prevents people from protecting their rights, and undermines the rule of law.

Therefore oversight mechanisms, such as parliamentarian oversight, the ombudsman system, or media or civil society lobbying, need to be supported to keep institution accountable for service delivery and reform.

(3) The court system and court personnel

The court system involves the formal and official institutions and mechanisms for persons and institutions to settle disputes and obtain redress for violations of rights. The court system should be **based on fundamental principles of justice, such as impartiality, due process of law, equality of arms, and adversarial proceedings**. This makes it a natural focus for justice sector reform and initiatives to protect human rights.

Court systems are hierarchical in nature, usually consisting of:

- Courts of first instance;

- Courts of appeal; and

- A single final court (usually a Supreme Court).

Sometimes there are additional lower level courts below the courts of first instance, such as municipal courts, small claims courts, or justices of the peace. These handle cases involving small monetary amounts, or those having a purely local or community nature.

In addition to these three levels, and particularly in civil law countries following continental traditions, there may also be a Constitutional court. It serves as the final arbiter of all issues relating to constitutionality, and is sometimes considered to be outside the formal court system. In most common law countries, and select civil law countries, Supreme Courts have jurisdiction over constitutional matters.

In order to handle a case, courts must have jurisdiction. **Jurisdiction** is the authority and power to adjudicate. Generally speaking, courts require three kinds of jurisdiction, covering:

Subject matter. Courts of general jurisdiction handle all subject matters. However, the trend is towards specialisation, either formally (different courts for different subject matters) or informally (different benches within the same court). It is common to differentiate between matters that are criminal, civil, administrative, commercial, labour, family, or juvenile in nature. There can also be separate systems for highly specialised matters, such as military courts. Some countries also have courts that handle misdemeanours, bankruptcy cases, probate, environmental cases etc. In addition, there may be tribunals or forums under the auspices of the executive branch of government that handle issues regarding welfare, pensions, taxes, immigration status, bankruptcy, etc., operating as de facto administrative courts. Such administrative cases are becoming more prominent in many countries, and they can significantly impact a wide variety of rights.

Parties. Courts must have the authority to require parties to litigation to attend and submit to judgements. This is usually on the basis of citizenship, residence, or the locus of the behaviour and its consequences. However, some offenses are considered universal crimes, such as genocide, war crimes, crimes against humanity, and piracy. In such cases, perpetrators may be tried anywhere, subject to the individual country having accepted universal jurisdiction for such crimes. Further, under certain circumstances trials can be conducted in absentia. It is therefore important to include efforts to complement the ICC, by strengthening the capacity of domestic institutions to bring international war crimes cases to the domestic court system. [24]

Territory. In federal/regional/ decentralised systems and where smaller administrative units exist, the jurisdiction of courts may be limited to a defined geographical area. This could be a state, region, province, district, or municipality. Naturally, there is no territorial limitation for universal crimes.

Courts which lack jurisdiction in any of the above respects cannot lawfully address a matter. Any action that they take would be without legal foundation from the start (void ab initio).

It is important to consider the specific characteristics of courts and their personnel under different systems. Key issues include court management, case management, human resources management, working conditions and salaries and pensions, physical infrastructure, asset management, equipment, information management and record keeping, archiving, and public interface/service provision.

In many developing countries the courts are underfunded, are rarely receiving more than one per cent of the national budget. Personnel such as court administrators and clerks may lack civil service status, be underpaid, and be obliged to carry out their functions under difficult conditions and in an antiquated fashion. Training (both initial and continuing) may be insufficient, and information and communication technology may be limited. These circumstances cause inefficiency and delay, reduce transparency, facilitate corruption, and compromise the quality of the entire judicial process (including the decisions that are rendered). This in turn undermines the entire justice sector.

[24] See EU Toolkit on Advancing the Complementarity Principle: Bridging the gap between international & national justice

Computerisation of court operations is a recurrent feature of justice sector support. However, computerising courts is a long and complex process, and fraught with pitfalls, since it requires abandonment of earlier practices and routines, establishment of new internal procedures and a comprehensive planning including compatibility of record keeping, encoding, and archiving from the bottom to the top of the court hierarchy. Preparatory activities to strengthen institutions and develop human resources are strongly recommended before installing computers and developing software. These can be performed during the implementation phase. They include:

- Comprehensive records management and archiving plans;

- Statistical operations;

- Security and data protection systems;

- Procedures for handling evidence;

- Court recording systems;

- Inter-connectivity with other institutions (WAN to complement the LAN); and

- Training.

Implementation of database and case management information systems combines different priorities, and should account for several aspects of court operations:

- Computerisation initiatives must provide access to databases of laws, official acts, and case decisions, where available. This improves the application of legislation and judicial decision-making.

- Software for court records management should be linked to a database that receives new civil and criminal cases as well as a word processing system that allows inputting and editing documents, preferably with "templates" for those which are most commonly used.

- Computerisation eliminates or reduces paper records, and downsizes manual document storage and retrieval systems, which has a dramatic impact on the working practices and job requirements for court staff.

- Software must be tested, and preferably introduced on a trial or pilot basis. It is important to resist demands for immediate or premature computerisation.

- Significant staff support is required to input data from new cases. Due to practical limitations, it is not usually possible to input existing cases, which means that new and old systems operate in parallel, for a transition period.

- Software must provide for automatic statistical functions and data analysis.

- Searches for information and precedents should be possible through simple queries, and user-friedly techniques.

Technical architecture that allows courts to communicate and exchange data with each other and with other institutions, such as the ministry of justice and prosecution, is extremely beneficial, but this can lead to technical obstacles such as compatible local area networks, and requires multi-institutional protocols and procedures.

(4) Legal professionals and their representative institutions

The justice sector includes a wide range of personnel. The main categories of legal professionals are **judges, prosecutors (and public defenders where they exist), and independent lawyers**. However, it is important to include other groups when appropriate, such as **judicial assistants, notaries, bailiffs, paralegals, lay (civilian) magistrates, and even law professors and scholars**. Finally, a wide range of police and law enforcement personnel, including employees of police facilities, probation and penitentiary institutions, are often included.

Well designed laws and institutions still require knowledgeable, skilled, competent, effective, well-trained, and ethical legal professionals and civil servants in order to secure the rule of law. Clearly, human resources are at the heart of the justice sector. Representative and professional bodies for legal professionals are therefore important

CASE STUDY – Continuous Courts in Guatemala

The Continuous Penal Courts (Juzgados Penales de Turno) are an excellent example of how EU support can reform the institutional structure of the court system, create a new dynamic in the relationships between key parties, and promote human rights in a number of ways. The Continuous Penal Courts bring together five key justice sector institutions in a single location, to provide quality twenty-four hour a day court services. In one place, at any time of the day or night, accused persons can a) have their background checked, b) have their case reviewed by a prosecutor, c) receive support from a public defender, d) have an impartial adversarial hearing which is recorded (with copies provided to all parties), and e) pay fines through the banking system. There are currently five Continuous Penal Courts. The first was opened in Guatemala City in 2006, followed by Villa Nueva (2007), Mixco (2007), Escuintla (2008), and Antigua (2009).

The Continuous Penal Courts provide prompt hearings, enabling accused persons to be brought before a judge within the six-hour period mandated by the constitution, and thereby reduce instances of extended pre-trial detention, promote and protect numerous human rights, and raise standards of performance for legal professionals such as prosecutors and defence counsel. They promote several crosscutting objectives, through significant impact on the protection of women, juveniles, vulnerable groups, and indigenous peoples. At the same time, they expedite certain priority matters for the prosecution, for example by making it possible to secure and execute warrants in a matter of hours.

In addition to these substantive benefits, the Continuous Penal Courts serve as an excellent example of sector support that has brought key institutions together, and developed a new dynamic of cooperation to achieve sustainable reform. Under the parameters of the National Agreement to Promote Security and Justice in Guatemala, and under the auspices of the Coordinating Body for Modernisation of the Justice Sector, the Continuous Penal Courts mandate and develop a cooperative and functional approach from five key institutions, namely the Judiciary, General Prosecution, Public Defender, National Civil Police, and National Institute of Forensic Sciences.

entry points for the justice sector. Professional associations of judges and prosecutors can improve their status and working conditions, and assume responsibility for establishing and enforcing ethical standards. They may also play a strong role in the design of Justice Policy, and their influence on law and policy makers is considerable, whether actively solicited or at their own initiative, and needs to be taken into consideration.

Given that the skills and status of legal professionals are key factors within the justice sector, **training initiatives** are frequently supported by the European Union. They can be divided into two categories:

Developing the existing training system. This includes capacity building and operational strengthening for training institutions, curriculum development, expanding delivery and geographical outreach of their work (through local facilities), creating a pool of professional trainers (and training of trainers), arranging virtual communication (distance learning and video conferencing), supporting preparation and publication of training materials, organising internship programmes, networking, etc.

Improving the knowledge, skills, or attitudes of defined target groups. This requires specialised training for specific audiences on priority subjects. Subjects should be defined through a Training Needs Assessment (questionnaires, interviews, examinations, consultations with partners, beneficiaries and other stakeholders), which identifies the gaps between actual and desirable competencies.

Training can be further sub-divided into *a) substantive training* (specific important topics) and *b) technical training* (skills and techniques required for job performance). The most common modalities for human resources development are training seminars, job mentoring, technical assistance from international and national experts, enhanced access to information resources (court decisions and legal databases), and direct experience via study tours, twinning arrangements, and internships. Trainers and instructors need to understand the nature of professional training, and be able to use modern, interactive, and learner-centred methodologies. In many countries, traditional techniques (such as lectures from senior figures followed by occasional question and answer sessions) still predominate.

In order to **promote the sustainable development of legal professionals**, it is best practice to:

- Integrate training into other types of initiatives, such as legal reform, institution building, improving court and case management, and expanded use of information technology;

- Base training on a full Training Needs Assessment, which is an initial investment that yields major dividends, such as greater relevance, higher quality, more interest, and wider participation;

- Carefully tailor training to the local context, and actual knowledge and skills required;

- Utilise training of trainers to build further capacity and promote ownership and peer-to-peer development;

- Utilise mentorships and internships to provide longer-term and more in-depth exchanges than training events;

- Decentralise training, so that it takes place in the context where legal professional live and work, and is not always concentrated in the capital and major urban areas;

- Involve local institutions and the regional branches of national institutions;

- Use electronic media, such as distance learning, videoconferencing, electronic databases, and electronic document management systems whenever feasible;

- Involve law faculties and legal education institutions, in order to reach the next generation of professionals, and link research and trainee positions

- Ensure mainstreaming of human rights, through research, curriculum design, information dissemination, the provision of training, and mentoring processes;

- Ensure full coverage of professional ethics and responsibility, including legal obligations, moral obligations, and procedural issues.

Work with legal professionals and institutions should include more efforts to promote equal or proportional representation based on gender, age, and ethnicity, since it is often the case that the legal professions are not fully representative of the population at large. Disparities are often more pronounced in senior positions. This analysis can be complemented by consideration of how the legal and penal justice systems disproportionally affect different social groups.

CASE STUDY – Initial training for judges in Kazakhstan

From 2003-2005, the European Union helped establish an initial training programme for judges in Kazakhstan, in cooperation with the Supreme Court, and subsequently the Academy of State Administration under the President of the Republic. Two framework contracts were used to set up and then strengthen a magistrate programme, based generally on the French system, including two years of both theoretical coursework and practical training/internships. The two projects helped the Judicial Academy, which became the Institute of Justice, through curriculum development, preparation of core courses (in both Russian and Kazakh), training of the instructor team (including training of trainers), design of the internship programme, purchase of library materials, support for the candidate selection process, and establishment of the information management system.

At the start of the first project, in October 2003, Kazakhstan was only providing continuing professional formation to sitting judges. At the end of the first project, in September 2004, the magistrate programme formally opened, and 47 participants, selected through a competitive process, began their two-year preparation for the judiciary. The establishment of the first formal programme for magistrates in the Former Soviet Union with European Union support demonstrates how successful an institution building and strengthening programme can be when it is highly aligned with national priorities, and is well administered. The Institute of Justice continues to be an integral component of the justice sector in Kazakhstan, and it is now the primary mechanism for entering the judiciary.

Lawyers are normally organised into Bar Associations, which can be mandatory or voluntary. They can be organised at the national level, or have specific territorial status. They may also have sub-sections that represent select categories of lawyers, such as commercial lawyers, in-house counsel, young lawyers, etc. Bar Associations are often actively engaged in training lawyers, providing legal aid services to promote access to justice, developing and disseminating information, raising public awareness, and so forth.

Prompt access to effective **defence counsel** is one of the best ways to prevent serious violations of human rights in the criminal justice system. The right to counsel is secured under many international instruments, such as Article 14.3 (d) of the International Covenant on Civil and Political Rights ([25]) and Article 6.3(c) of the European Convention for the Protection Human Rights and Fundamental Freedoms. ([26]) See also the Universal Declaration on Human Rights and the Convention on International Access to Justice ([27]). This is a constitutional or legal requirement in many countries.

The best practice is to require or actively provide representation at any time there is a possibility of incarceration. This standard is established by the European Court of Human Rights, and implemented by 47 Member States of the Council of Europe. The right to counsel should be assured from the time of arrest, and during all stages of the criminal process, through to the final appeal.

Effective mechanisms for facilitating prompt contact with a private or a legal aid lawyer include:

- Making this a legal requirement, and putting in place adequate funding and enforcement mechanisms;

- Putting up notices in prominent locations at police stations and law enforcement institutions, which explain basic defence rights and provide contact details for counsel;

- Working with public defender institutions to engage in outreach;

- Working with the Bar Association to establish a list of defence counsel serving ex officio who are on-call on a rotating basis;

- Providing training for law enforcement officials;

- Engaging in outreach and public education; and

- Engaging organisations or individuals to provide monitoring and reporting.

Pre-trial or preventive detention should be a) imposed only as a last resort, b) used only when the prosecution have proved specific and definitive criteria (such as risk of flight, destruction of evidence, or harassment of witnesses), and c) accompanied by procedural safeguards (most importantly a prompt hearing before an impartial judge). ([28]) In addition, alternatives to detention, such as release subject to reasonable conditions being met by the defendant, should be applied at the earliest possible juncture.

Sometimes it appears that pre-trial detention is used as a form of "preliminary sanction". This is of greatest concern when prison conditions themselves violate human rights, due to insecurity, lack of hygiene, or overcrowding. According to the International Centre for Prison Studies of King's College in London, prison occupation rates exceed 100% in 114 countries ([29]); in many prisons, the rate of overcrowding is over 300%. Added to this, in some developing countries the average daily expenditure on food per inmate is less than one euro; often prisoners' families are expected to provide all food. In extreme cases, inmates have been known to starve to death. In addition to suffering appalling conditions of detention, prisoners are often required to spend significantly longer periods of time in detention awaiting trial than the maximum penalty allowed for the offence with which they have been charged.

In order to reduce the incidence of pre-trial detention, it is important to a) ensure that only judges are empowered to decide this issue (never prosecutors acting on their own initiative), b) ensure that all detainees are promptly brought before a judge (by making this a legal requirement and taking practical steps to require compliance), c) establish clear criteria for pre-trial detention, d) train judges, prosecutors, defence counsel, and law enforcement officials concerning these criteria and how to apply them, e) establish non-custodial alternatives to incarceration and provide the technical means to make them work, f) set up hotlines and complaint procedures, g) work with the Bar Association and civil society organisations to establish procedures for handling pre-trial detention, h) empower organisations or individuals to monitor the situation and report violations, and i) establish and apply penalties for violations of rights, which serve as a valid deterrence to potential misconduct.

CASE STUDY – Reducing pre-trial detention in Madagascar

The EU funded project on "Community Support in the Area of Good Governance and the Rule of Law" devoted € 9.5 Million between 2004 and 2008 to support reform of the judiciary, prisons, police, and customs. It provided training, equipment, support for forensic science, and grants to civil society organisations. One area of success for the project was reducing the use of pre-trial detention, through increased coordination between the judiciary and law enforcement institutions. An inventory of extended pre-trial detentions was made, leading to instructions from the Ministry of Justice to expedite the adjudication of cases involving pre-trial detainees, and to release detainees whose cases had fallen through cracks in the system. Finally, it was possible to reform legislation concerning pre-trial detention, and thereby limit its utilisation and duration.

Improved detention conditions and defence rights in Cameroon

Phases I and II of the PACDET programme were intended to improve the conditions of detention of prisoners, and reduce the time spent in detention. One of the key results was an agreement with the Bar Association to provide legal counsel for vulnerable people. Several partner civil society organisations participated in an initiative to monitor and humanise conditions of detention. This resulted in a reduction in the number of inmates in participating correctional facilities, better collaboration between civil society and the State, and better overall management of the prison population by prison authorities. The project showed how Bar Associations and civil society organisations can serve as excellent entry points for protecting rights and improving the penal system

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(5) Law enforcement and penal institutions and their personnel

Law enforcement and penal/penitentiary institutions and their personnel **(including police, investigators, forensics, penitentiary, probation and other penal officers, customs officials and immigration officials)** are crucial for both the justice sector and security. They ensure law and order, by investigating, apprehending, and incarcerating individuals who represent a threat to the public. They support prosecutorial functions and ensure that penal sanctions are carried out.

At the same time, law enforcement and penal institutions and personnel are dealing with citizens in situations of extreme vulnerability. This places them at a crucial junction between upholding the law and protecting human rights. As a result, governmental and societal oversight and control of law enforcement and penal institutions and personnel is absolutely indispensible for preventing violations of many human rights, and ensuring the proper functioning of the justice sector.

Governmental oversight may be within the remit of the ministry of interior or justice, security and financial oversight bodies, prosecution services or judicial authorities (investigating judges). If mandates and jurisdiction overlap or are unclear, this causes infighting and ineffective or inconsistent enforcement, and compromises the justice sector.

Codes of Criminal Procedure and implementing regulations are designed to set parameters for the work of prosecutorial, investigatory, and law enforcement institutions and personnel. They need to find an appropriate balance between control functions (prosecution, investigation, and enforcement) and upholding the rule of law (securing the right to defence and preventing violations of human rights, discrimination, and gender-based crimes). After all, the State has both a paramount interest in enforcing the law and an absolute obligation to uphold the law, and upholding the law means respecting human rights.

External support for law enforcement and penal institutions can be crucial for meeting the challenges outlined above, and thereby securing the rule of law and protecting human rights.

([25]) "In the determination of any criminal charge against him, everyone shall be entitled… to have legal assistance assigned to him in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it".
([26]) Everyone charged with a criminal offence has the right to "Defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".
([27]) Hague Convention of 25 October 1980 on International Access to Justice, the Hague Conference on Private International Law
([28]) See Rule 6 of the United Nations Standard Minimum Rules for Non-custodial Measures
([29]) See http://www.kcl.ac.uk/schools/law/research/icps

Law enforcement and penal institutions and their personnel play an important role in the justice and security sectors. Interventions in this area are noteworthy for protecting some of the most fundamental human rights, which are also subject to the most serious violations. They include the right to liberty, security, due process, access to counsel, and access to justice. Due attention must be given to the rights of vulnerable groups, which often face persistent violations, particularly from law enforcement personnel.

Measures for **preventing the torture and inhuman or degrading treatment of detainees** and rehabilitating victims of torture is of great importance. This includes reform of the regulatory framework, better designed and managed procedures for handling complaints, improved monitoring, better designed and more systematic investigations, and enhanced mechanisms for the collection and dissemination of information. In addition, the protection of defendants' rights in general, including for example access to defence counsel at the earliest opportunity as described above, plays a crucial role in preventing situations in which torture may occur.

The **criminal justice system for juveniles** should ensure appropriate responses, either through diversion from prosecution or custody, or through separate and specialised court proceedings and correction regimes, managed by parties having specific skills and expertise related to juvenile justice. Minimum requirements are a) a separate or specialised procedure and court system and facilities, b) specialised skills and training on the part of judges, prosecutors, lawyers, law enforcement personnel, psychiatrists, psychologists, social workers, teachers, and vocational trainers, c) means for ensuring anonymity and protecting the identity of juvenile offenders, d) alternative sentencing regimes, and e) dedicated penal institutions, which ensure that juveniles are segregated from adult offenders, and are provided with educational, vocational, psycho-social and other rehabilitative facilities.

Juvenile justice systems must find a suitable balance between protecting the rights and needs of juvenile offenders and meeting other societal interests such as crime control and freedom of information. While the rights of children are given special protection under international law, many countries are lowering the age of criminal responsibility, from sixteen to fourteen, at least for certain kinds of crimes, and trying and punishing younger offenders within the adult legal system. This is due to a) public pressure to reduce criminality, b) the general perception that juveniles are committing more heinous crimes, and c) publicity and media focus on sensational cases. Criminal cases involving juvenile offenders and victims can be amongst the most challenging to handle, due to the specific legal obligations, and the need to balance competing interests.

Improvement of the penitentiary system can result in better and more humane prison conditions, better respect of prisoners' rights and duties, their access to work and education, as well as to social reintegration programmes. Prisons are exposed to the breeding and transmission of some of the most serious diseases, such as tuberculosis, HIV/AIDS, and pneumonia. Furthermore, prisons are not isolated places; in addition to the large numbers of detainees who enter them, and are subsequently released, there are many employees, part-time specialists (such as doctors and social workers), and of course visitors (lawyers, friends and family). By reducing overcrowding, improving sanitary conditions, providing medical care, and controlling exposure to outside parties, penitentiary reform can reduce the incidence of disease in the general population, and thereby promote socio-economic development.

In criminal cases, it is useful to look at the balance between confessional and testimonial evidence, on the one hand, and physical evidence, on the other hand. In developed countries, great emphasis is placed on physical evidence in criminal cases, and testimony from witnesses and experts is often used for corroboration. In many developing countries, however, police and investigative bodies lack the manpower, skills, resources, and facilities required to collect, process, analyse, document, store, and verify physical and forensic evidence. Laboratories may not be able to reliably perform sophisticated analysis of weapons, biological specimens, chemical samples, etc. This can lead to excessive reliance on confessions to obtain convictions. Compared to physical evidence, confessions may be easier, faster, and less expensive to obtain. And, unfortunately, confessions are more readily secured in the absence of procedural safeguards (such as prompt access to counsel), when detainees are incarcerated under poor conditions, or when detainees are subject to physical or psychological pressure, including torture.

In order to increase the use of forensic evidence and reduce reliance upon confessions, it can be beneficial to:

- Improve criminal procedures for securing the chain of evidence, and firmly establish the legal principle that confessions secured under questionable or illegal circumstances will not be admitted as evidence;

- Improve the capacity of forensic institutions through upgrading infrastructure, equipment and training staff;

- Improve analytical skills enabling high volumes of information to be processed quickly and efficiently;

- Train forensic specialists on how to effectively testify in court;

- Train police and investigators in collecting and preserving evidence and specimens;

- Train judges, prosecutors, and lawyers concerning the admissibility and use of forensic and other evidence;

- Prosecute law enforcement officials who use illegal means for securing confessions.

The **protection of women and children** should be ensured by law enforcement agencies and their personnel as a priority. However this often remains problematic, due to insufficient budgetary resources for the protection of victims, failure to apply existing laws, perpetuation of discriminatory practices, and insufficient training and sensitisation. In fragile contexts in particular, women and children remain vulnerable to many form of abuse, including violence, exploitation, trafficking, recruitment by armed groups, and so forth.

(6) Alternative dispute mechanisms

There are a number of Alternative Dispute Resolution (ADR) mechanisms that parties may choose instead of the regular court system for settling disputes. ADR usually involves civil cases, predominantly economic and commercial disputes, but also criminal cases (for example petty or juvenile offences) and family disputes.

The three most prominent models of Alternative Dispute Resolution are arbitration, mediation and conciliation, with the definitions for each varying between countries and legal traditions.

Arbitration is a method where the parties to a disagreement refer to an arbitrator or a panel of arbitrators who act in a private, independent and professionally qualified capacity. The arbitrator(s) determine the outcome of the case and the decision is enforceable.

Mediation is an ADR method where a neutral and impartial third party, the mediator, facilitates dialogue to help parties reach a mutually satisfactory agreement. A mediator assists the parties in identifying and expressing their own interests, priorities, needs and wishes to each other. In mediation, the parties play an active role in identifying solutions, while the mediator facilitates their discussions. The compromise is voluntary in nature and acceptable to all parties.

Conciliation aims at building a positive relationship between the parties of dispute, who are assisted by an impartial person – the "conciliator" – leading their negotiations and directing them towards a satisfactory agreement. In conciliation, the conciliator plays a key role in the actual resolution of a dispute, by identifying the right that has been violated, and even proposing the best solution for settlement.

Alternative Dispute Resolution mechanisms often contribute to the reduction of case backlogs in the courts, and serve as a convenient and expedited means for handling legal disagreements. They can also contribute to economic development, and help protect human rights in their widest sense, for example by promoting employment and sound labour relations. ADR is often favoured by economic operators, who find commercial arbitration effective and efficient for resolving disputes, and who choose to place appropriate clauses in their business contracts.

CASE STUDY – Penitentiary reform in Colombia

A project on penal reform and prison conditions in Colombia, carried out from 2003-2006, worked with the Office of the General Prosecutor, the Ombudsman, and the Ministry of Justice to strengthen the penitentiary system at the national level and promote, and defend the rights of detainees. Activities included a) technical assistance and training for the Ombudsman, b) technical support for the Office of General Prosecutor, c) organisation of a visitor programme for several detention facilities, d) the design and implementation of a training programme on human rights for the national penitentiary school, e) workshops for detainees and prison guards on human rights, and f) regular monitoring and reporting by the Ombudsman and Office of General Prosecutor. Institutional reforms were successfully carried out, and inter-institutional relations were clearly strengthened. However, it proved difficult to verify and quantify changes in the level of protection of civil and human rights achieved in each detention centre.

CASE STUDY – Improving forensics in Guatemala

The importance of international support for the use of forensic evidence in criminal cases is clearly indicated by the successful work of the EU Delegation in Guatemala in support of the National Institute of Forensic Sciences (Instituto Nacional de Ciencias Forenses or INACIF), under its Programme to Support Justice Reform. Prior to the establishment of INACIF in 2007-2008, forensic functions were dispersed amongst other institutions, in an unsystematic manner. This led to jurisdictional disputes and questions concerning undue influence and the quality of results. Located in its own premises, with a wide range of modern laboratory and diagnostic equipment, INACIF has centralised and professionalised forensic services. It encompasses chemical analysis, pathology, ballistics testing, genetic testing, signature verification, detection of counterfeiting, etc, while ensuring the proper handling of scientific evidence. In addition, it provides testimony and verification to support investigation and prosecution.

The EU Delegation clearly understood that the role of INACIF goes well beyond scientific analysis, supporting investigation and prosecution, and combating impunity. First, by raising the standards for physical evidence, it reduces the need and incentive for prosecutors to rely excessively on testimony and confessions, and helps protect human rights. Second, INACIF now plays an important institutional role in the justice system. It is an integral part of the Coordinating Body for Modernisation of the Justice Sector, and is integrally involved in the Continuous Penal Courts (discussed above). Thus, support for INACIF has altered the dynamic of investigation and prosecution in Guatemala, and caused positive change in the institutional framework for the justice sector, thereby promoting human rights and reducing impunity. This is an excellent example of how institutional support promotes sectoral reform.

This leads to the involvement of chambers of commerce, business organisations, and on the international level the United Nations Conference on International Trade Law (UNCITRAL). [30]

However, ADR systems require their own infrastructure to function effectively. They depend on an appropriate legal and institutional framework, sufficient and qualified human resources, access to legal information, and public outreach. Support from international donors in these areas promotes economic development and enhances access to justice.

It is important to consider the **mutual relationship between ADR and the regular court system**. Certain characteristics of ADR can be successfully borrowed by the official court system. It is not uncommon for settlement conferences to be integrated into official case handling guidelines, using statistical analysis to determine the most appropriate categories of cases and the most advantageous timing. It is therefore important for ADR mechanisms and the official court system to study and learn from each other, so that both can improve their services and promote access to justice.

Projects working on ADR often follow a highly standardised approach, working with a few selected institutions, and thus fail to take advantage of creative opportunities. This is unfortunate, since by its very nature ADR can be flexible and adapted to specific contexts (including the characteristics of traditional justice mechanisms, local conditions, social values and mores, and cultural and linguistic specificities). Therefore, ADR initiatives should be carefully related to specific difficulties with litigation through the official court system.

ADR initiatives should:

- Be carefully related to specific difficulties with litigation within the official court system, as well as to possible entry-points allowed by the national legislation and regulations on Court procedures and practice;

- Be extended beyond commercial disputes to cover other issues that affect the daily lives of people;

- Take full account of the advantages for people of community-based mediation and traditional practices;

- Consider issues affecting the enforcement of decisions and awards (including those of the official court system);

- Look into human resources constraints which invariably influence how well ADR works in practice;

- Consider innovative means for developing skills, such as work with paralegals in ADR;

- Include components dedicated to information dissemination and public outreach, which are crucial for ensuring the success of ADR initiatives.

(7) Traditional, customary, or religious justice

CASE STUDY – Mediation in Ukraine courts

Under the EU-funded project "Transparency and Efficiency of the Judicial System", implemented and co-financed by the Council of Europe, a system has been put in place to provide mediation services to parties litigating in court. The project has provided intensive and highly practical training to judges and lawyers, so that they are able to participate in court-sponsored mediation. The mediation is carried out by specialised judges who act as focal points in four courts, in an effort to settle cases and reduce workloads. Settlements are reached on a voluntary basis, with the assistance of the judge. To extend the system and generate publicity, "mediation week" events with quantified objectives for settling cases have been held, and public relations materials (brochures and videos) have been prepared. As a result, mediation through the courts has become a legitimate and accepted procedure, and the National School of the Magistracy is creating a mediation institute that will prepare and provide materials, and deliver regular training to judges.

Traditional, customary, or religious justice mechanisms are amongst the main entry points for the justice sector in many developing countries. This is because they handle a large number and percentage of disputes, and in many countries even a majority. The authorities include traditional judges, tribal or community chiefs, local elders, and religious or lay leaders. They are sometimes called "non-state justice institutions" or "non-state authorities", because they provide access to justice and security through unofficial dispute resolution.

Traditional, customary, or religious authorities are more likely to play a leading role in the resolution of disputes between parties who are related to each other, live near each other, are located in smaller communities, or share common customs, languages, and beliefs. They are often **favoured by the parties, since they provide streamlined procedures, familiarity, proximity, low cost, speed, common language, community involvement, and the likelihood that decisions are based on community values.**

While religious authorities may have exclusive or shared jurisdiction over certain subject matters, institutions of traditional justice and their legal principles are not usually recognised by the official legal and court systems. This is partly due to the potentially discriminatory nature of decisions regarding mainly women and minorities, but also the possible overlap between the power of the State and the power of religious authorities. However this does not diminish their importance in practice, particularly at the community level and for specific groups such as indigenous peoples.

The United Nations Declaration on the Rights of Indigenous Peoples adopted by General Assembly Resolution 61/295 on 13 September 2007 states at Article 34 that indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, where they exist, legal systems or customs, in accordance with international human rights standards.

In this respect, there has been increasing national and international support of the socio-political and legal protection of collective rights. In Latin American countries, and in particular in the Andean Community, this trend has been reflected in the constitutional recognition of the multicultural nature of indigenous territories, with the gradual provision of related collective rights. One of these is the right to have separate systems of justice. This recognition means that **the state accepts the existence of legal pluralism**, that is to say the validity of other legal systems other than the state. This recognition led to consideration of the necessary coordination between the indigenous justice system and the civilian/ordinary justice system, which resulted in the development of laws in this regard (some of which are still under discussion in national parliaments). [31] In countries such as Bolivia, Colombia, Ecuador and Peru there is a genuine system of administration of justice that has a set of standards

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[30] See http://www.uncitral.org

[31] The International Labour Organisation Convention 169 (Convention concerning indigenous and tribal peoples in independent countries, 1989), The United Nations Declaration on the Rights of Indigenous Peoples

and rules (Indigenous law), specific authorities (either an assembly or communal authority), and the existence of justice mechanisms (procedures and sanctions).

It should be noted that in certain contexts traditional, customary, or religious justice is considered an alternative form of dispute resolution. To the extent that they are alternatives to the regular court system, and designed to resolve disputes, this approach is conceptually justified. However in certain national contexts, traditional, customary, or religious authorities exercise so much influence, over such well-defined geographical areas, and for so long, that they can be considered primary rather than alternative forms of dispute resolution.

Traditional and customary justice systems tend to:

- Lack documented laws and rules of procedure;
- Be informal by nature;
- Lack strict scheduling mechanisms;
- Be carried out orally;
- Take place in rural areas;
- Take place outside of the purview of the official legal system; and
- Be strongly influenced by socio-cultural factors and mores.

In studies dealing with customary justice mechanisms, especially regarding land issues, the danger of "elite capture", a form of *de facto* social cronyism, has been widely recognised. A second issue of importance is that customary justice mechanisms may violate human rights standards and constitutional provisions. A third problem is the customary systems may have limited effect in stimulating economic development. However in the same time it is **often more legitimate and more accessible in regard to geographic, financial, cultural, language and understanding of the proceedings**. Thus, while there is growing recognition of the importance of customary justice systems, there are a number of issues regarding their operation that need to be addressed, including elite capture and human rights protection.

Religious justice, which can be part of both formal and informal justice systems, is often hierarchical, well structured, and well documented. The strict authority of religious stakeholders is a fundamental characteristic of religious justice, which can cause it to be isolated from other value systems and legal institutions and resistant to outside influences. However, in spite of this, religious justice is not always uniform. It may vary according to geographical location, and depend upon highly localised cultural conditions, particularly in countries that are ethnically heterogeneous and diverse.

It is important to emphasise how cultural and anthropological characteristics can affect traditional, customary, and religious justice. This is particularly noteworthy with respect to indigenous peoples, and isolated communities, but it can occur in other circumstances as well. Popular acceptance is a crucial attribute of traditional, customary, and religious institutions and authorities, which tend to have an extremely close relationship with their constituent groups.

Furthermore, traditional, customary, and religious justice are not usually amenable to reform, particularly a) when they try to codify, document, and standardise, or b) when they are delivered through technical assistance and foreign expertise. Traditional leaders often combine a number of executive, legislative, and judicial functions, enabling them to resist intervention. Religious authorities and institutions benefit from the principle of strict adherence to the belief system. As a result, these entry points for the justice sector receive considerably less attention and support from outside parties, both national and international.

Many of these obstacles result from the informal nature of some principles and procedures of traditional, customary, and religious justice. This is in sharp contrast to the official justice sector and court system, which is usually based on legal justification, and careful documentation of all action, combined with the retention of comprehensive information about all aspects of operations (in a format which facilitates access by legal professionals and the general public).

Nonetheless, there **may be ways to work with traditional, customary, or religious justice by giving them a defined place in the official court system**. This can be linked to efforts to support the rights of indigenous peoples or rural communities. Obviously, it is not possible to apply any laws or practices that directly contradict the official legal framework and basic human rights and fundamental freedoms, even in isolated communities. This would violate the basic premises of the rule of law, supremacy of the law, and equality before the law. However, the official legal framework can include the recognition of alternative jurisdiction in specified circumstances, and there can be some room for compromise through a practical approach that takes account of special circumstances.

The need to engage with the informal justice sector is acknowledged in many societal and cultural milieus, most notably when linkages and bridging mechanisms with the official justice system are appropriate or imperative for justice reform. Projects should not undermine state institutions when reinforcing traditional justice mechanisms.

Studies (^{32}) on traditional and customary justice reveal that interventions to "fix" this informal system so that they reflect human rights and criminal standards does not reflect a broad and deep understanding of how customary and traditional systems function, and hence is unlikely to yield sustainable impact. While customary/traditional and state systems are both set up to respond to conflict, their *raison d'être* is profoundly different. **The principle objective of most customary justice systems is to restore intra-community harmony and repair relationships, whereas state justice processes are usually structured around notions of individual rights.**

Projects should therefore move beyond such "fix it" approaches by examining alternate strategies that have been trialled in other locations. Three different options can be explored. The first is to support the reform of customary systems from the inside, with the aim of increasing procedural and substantive protections. The second option is to explore the creation of new institutions that offer alternative forms of dispute resolution. The third is to consider the interface between the customary and formal legal systems, and how states can modify, regulate or use this interface to influence the manner by which justice is dispensed at the customary/traditional level.

A key message is that approaches need to be grounded on a broad and deep understanding of the customary system, and adapted to the goal of improved access to justice. In recent years, the European Commission has started to fund studies or undertake mapping exercises to increase knowledge concerning informal justice systems prior to engaging in any further support in these areas. In other European Union projects strengthening the justice system, attempts to bridge formal and informal justice mechanisms have yielded mixed results.

(8)   Transitional justice actors and processes

Transitional justice actors and processes play a very important role in fragile countries or those emerging from conflict. In such cases, the formal justice sector institutions may be unable to maintain law and order, administer the court system, or protect human rights. This may be due to lack of capacity, excessive influence on the part of powerful parties, or corruption. Such circumstances can necessitate extraordinary measures, such as new institutions that assume State obligations that cannot be fulfilled, or which take temporary jurisdiction for an interim period, until longer-term measures can be put in place.

The EU does not have a common definition of **"transitional justice"**, despite its support for and engagement in transitional justice processes in Europe and beyond. Nevertheless for the purpose of this study it is useful to refer to the UN Secretary-General's Guidance Note on the *'United Nations Approach to Transitional Justice'*. (^{33}) It describes transitional justice as *"the full range of processes and mechanisms associated with a **society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation"*.

Ten principles are outlined which should guide the design and implementation of a transitional justice strategy:

1) Support and actively encourage **compliance with international norms and standards**, such as international human rights law, international humanitarian law, international criminal law and international refugee law;

2) **Take into account the political context**, bearing in mind that peace and justice should be promoted as mutually reinforcing imperatives;

3) Base assistance on the **unique country context and strengthen national capacity** to carry out community-wide transitional justice process;

(^{32}) Customary Justice: From Program Design to Impact Evaluation, Erica Harper, IDLO, 2011
(^{33}) Available at http://www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf

CASE STUDY – Access to justice and traditional justice in the Philippines

The overall objective of the project "Improving Governance to Reduce Poverty: Access to Justice for the Poor" (2006-2008) was to increase access to justice for poor and vulnerable groups of society. It was conceived together with a parallel anti-corruption project. Focusing on vulnerable groups, such as poor women and child victims of trafficking and domestic violence, the project worked to increase knowledge of basic rights and the justice system, and instituted measures that would make the justice system more responsive and accessible. The project helped establish a decentralised information system for municipal courts, strengthened the traditional Barangay Justice System (BJS), institutionalised legal information desks that inform vulnerable groups about their rights, trained police, judges, prosecutors and lawyers about the rights of women and children, and reviewed existing laws regarding the rights of women and children, to assess their compliance with international conventions.

The project achieved positive results by equally supporting five institutions involved at the central and local levels. It enhanced coordination between official municipal courts and the traditional Barangay Justice System (including mediating in civil cases), through training on each system, establishment of information services and desks at both levels to advise poor litigants on how to use free legal assistance, and by providing assistance to victims of abuse. Improved documentation of cases by the police, and more organised case management by social workers, plus counselling and pre-trial proceedings in select communities helped resolving cases and promoting the recovery of victims.

4) Strive to **ensure women's rights**;

5) Support a **child-sensitive approach**;

6) Ensure the **centrality of victims** in the design and implementation;

7) **Coordinate transitional justice programmes with broader rule of law initiatives** so they can positively reinforce each other;

8) Encourage a comprehensive approach, **integrating the full range of judicial and non-judicial mechanisms**, including **truth-seeking, prosecution initiatives, reparations programmes, institutional reform including vetting processes or an appropriate combination** thereof;

9) **Take account of the root causes of conflict** and repressive rule, and address violations of all rights, including economic, social and cultural rights;

10) Engage in **effective coordination and partnership**.

Transitional measures should only be provisional, in order to fill gaps in the functioning of existing justice sector institutions, until their operational capacity is built or restored.

Large-scale atrocities lead to a prevailing culture of impunity, where no one is held accountable for committing gross violations of international humanitarian and human rights law. While it is realistic to expect that only a limited number of perpetrators can be held accountable in judicial proceedings, it is of paramount importance to devote sufficient attention and resources to the investigation and prosecution of perpetrators, in particular where genocide, crimes against humanity or war crimes have occurred.

The international community has established a number of specific (international and hybrid) *ad hoc* tribunals to deal with crimes that have taken place in a particular region, including the International Criminal Tribunal for the Former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), the Extraordinary Chambers in the Courts of Cambodia (ECCC), and the Special Tribunal for Lebanon. It has also undertaken to provide long-term assistance to national courts, for example in Bosnia and Herzegovina, and East Timor.

The creation of the International Criminal Court (ICC) as a permanent tribunal established to investigate, prosecute and try individuals who are accused of committing the crime of genocide, crimes against humanity and war crimes has been an important step in the fight against impunity. In a context of designing a transitional justice

strategy, one should keep in mind that the ICC is a court of last resort, and only has jurisdiction when country is unwilling or unable to carry out investigations or prosecution (**see more in the Annexe on Fight against impunity**).

Transitional mechanisms can also include human rights commissions and other protective bodies, law enforcement institutions, and investigative institutions. Truth and reconciliation commissions are the most known example of transitional justice, with the South African model being considered the most successful. Vetting commissions, which apply pre-established criteria in line with due process to prevent specific categories of individuals from assuming official positions, are another example. Reparation programmes are other type of measures that have been adopted in many countries as an attempt to repair and compensate victims and victim communities from the harm suffered. Finally the particular harm and abuse suffered by the victims, especially women, children and other vulnerable groups (such as indigenous peoples) should be acknowledged. This public recognition and apology can help strengthen inclusive citizenship, and more generally enable the excluded and marginalised to become fully rights-bearing citizens who participate in a common political project.

Latin America pioneered the application of transitional justice mechanisms. Since the 1980s, several countries have established truth commissions, granted reparations to victims, and in some cases prosecuted those who violated human rights. Many other initiatives, such as memorials, have operated as another important part of the reconciliation process. ([34])

Restorative justice is a related concept which refers to a process for resolving crime by focusing on redress for harm done to the victims, holding offenders accountable for their actions, and engaging the community in the resolution of conflict. Restorative measures are designed to address issues related to past events.

CASE STUDY – Fighting post-conflict impunity in Guatemala

The International Commission Against Impunity in Guatemala (Commission Internacional Contra la Impunidád en Guatemala or CICIG) is a specialised institution, administered by the UN, with support from the EU and other donors. It is a direct response to dysfunction in the post-conflict national justice system. Specifically, illegal armed groups and structures, clandestine security organisations, and illicit political and economic interests infiltrated and undermined national justice and security institutions, causing corruption and impunity. In other words, national prosecutorial and investigatory institutions were unable to fully carry out their mandates.

The CICIG is designed to a) investigate illegal security groups and clandestine security organisations, identify their structures and operations, find their links to established institutions, and determine how they undermine human rights, justice, and security, b) support governmental institutions involved in prosecution and the delivery of justice, and provide recommendations concerning policies, procedures, and legal reforms, and c) provide technical assistance to justice sector institutions, so they develop capacity and generate resources necessary to carry out their tasks.

The CICIG has some seventy investigators, who work closely with a liaison unit at the General Prosecutor's office, which takes the lead in prosecutions. Strengthening this unit and developing its human resources is a major objective of the CICIG, and central to its exit strategy. In addition to supporting witness protection and submitting legislative proposals to the Congress, the CICIG also addresses many crosscutting issues, by protecting vulnerable groups, women, and juveniles, and fighting cross-border criminality. The CICIG thus plays a key transitional role in the justice system, which will hopefully be phased out alongside the development of national capacity.

(9) Non-state actors and civil society organisations

Non-state actors (NSAs), including civil society organisations (CSOs, also known as non-governmental organisations or NGOs) are not part of the justice sector. However NSAs are nonetheless a major entry point, with a very significant role to play in their own right and vis-à-vis governmental authority. They tend to be more active in States with pluralistic traditions, and to assume additional functions (such as the provision of legal aid) when the

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([34]) At least 10 Truth Commissions have functioned in America Latina, "La Comisión Nacional de los Desaparecidos" in Argentina was the first, two Truth Commissions have operated in Peru (in 1991 and 2005), and Guatemala and El Salvador constitute other examples. Brazil, Guatemala and Peru have established reparations mechanisms and in Peru, El lugar de la Memoria (an initiative supported by EU) has been recently inaugurated. See the document of ICTJ " Justicia transicional en America Latina: enfrentando los dilemas del presente a partir de los legados del pasado", 2009

State does not fulfil them. NSAs are often involved in the protection of human rights, by working with women, juveniles, children, minorities, immigrants, detainees, indigenous peoples, and other vulnerable and marginalised social sectors. This work is vital for access to justice.

Because of their vital role, **NSAs should be integrally involved in justice sector initiatives**. They can assist with needs assessment, design, establishing objectives and indicators, implementation, and monitoring and evaluation. Grant-making mechanisms are one of the best ways to support the participation of civil society in the justice sector. However, the challenges and limitations faced by NSAs must also be considered. They may be underfunded, *ad hoc* in their approach, reliant upon volunteers, in conflict with authorities or with each other, not optimally managed, dependent upon external sources of funding (and thus the priorities and implementation mechanisms selected by those external sources of funding), and lacking stringent quality control and accountability procedures. The following activities affecting the justice system are traditionally or potentially carried out by NSAs:

- *Research, analysis, and policy development.* NSAs (and in particular think-tanks) often collect information, perform analysis, and assist with the development of public policy. This can be through publications, attendance at public forums and events, and networking.

- *Legal expertise.* NSAs (and in particular think-tanks) are an important source of legal expertise on numerous subjects. Their inclusion in the legislative drafting process, via working groups, direct consultation, or public events, can a) support policy development, b) help with drafting, and c) generate comments that make draft laws practical and effective.

- *Provision of services.* NSAs provide various forms of legal assistance and social support. In civil and criminal cases, NSAs provide legal information, advice and representation. In countries that do not provide legal aid or operate public defender offices, NSAs engage in litigation to protect social rights, and provide defence services in criminal cases. Essentially, they fill gaps in the official justice sector. Target groups for services include indigent, vulnerable and marginalised social groups, women, children, and indigenous peoples, often at the community level. This work is often supported by international donors.

- *Advocacy.* NSAs engage in different kinds of advocacy, raising issues related to justice and the justice sector in official and unofficial forums, and acting on behalf of different target groups that may find it difficult to represent themselves, particularly women, juveniles, indigenous peoples, refugees/migrants, etc.

- *Monitoring and oversight.* NSAs can conduct various kinds of monitoring and oversight. This includes compiling information and reporting on violations of human rights, attending and commenting on trials, visiting and reporting on conditions in prisons, analysing and reporting on corruption, providing information to international organisations, etc.

- *Training.* NSAs can support various kinds of training for government officials and legal professionals. This includes preparing materials and delivering seminars and other events.

- *Information dissemination.* NSAs are actively engaged in public outreach and awareness-raising. This enables people to learn about their rights and how to enforce them. All media and outreach mechanisms are engaged in the process, including newspapers, magazines, television, radio, internet, and social media. Informational publications on various aspects of human rights, and how parties can protect themselves, are customary, along with official reports and training manuals. Canvassing and personal contact are also widely utilised.

More information on key areas for assessment and indicators for the justice sector is provided in Annexe 3.

2.3. How is the European Union supporting the justice sector and its reform?

The European Union, through the Commission, uses a set of geographical and thematic financial instruments to carry out justice sector initiatives in partner countries. Within these instruments, support modalities differ depending on the type of programme agreed upon with partner governments.

Geographical instruments

In the justice sector, geographic instruments have been used to support institutional reforms to strengthen the independence, impartiality and professionalism of the judiciary, the strengthening of the national judicial frameworks guaranteeing a fair trial within the time limits prescribed by law, the improvement of prison conditions and prison management, introducing alternative sentences to imprisonment and improving the efficiency of the judiciary. In the geographic programmes, civil society is often mobilised to provide services (legal consultations, etc.) or to monitor institutions. ([35])

All the relevant financing instruments are being reviewed for the new multi-annual financing period of 2014-2020, also mirroring the EU policy commitments to the fundamental values of human rights, democracy and rule of law.

a) **The European Development Fund (EDF)** has been used constantly since its first launch in 1959, through a series of five-year financing protocols. These were framed by the Lomé Conventions, and since June 2000 the Cotonou Partnership Agreement between the European Union Member States and the Africa, Caribbean, and Pacific (ACP) countries. The programmatic focus of justice sector interventions under the EDF has evolved over time. An important trend can be observed since 2002. Under the Ninth EDF, the majority of the projects which have been reviewed emphasise: a) institutional reforms to strengthen the independence, impartiality, and professionalism of the judiciary, b) formulation and implementation of justice sector strategies, c) enhancement of judicial efficiency and frameworks which guarantee a fair trial within the time limits prescribed by law, d) improved prison management and prison conditions, e) alternative sentencing and arrangements that avoid imprisonment, and e) outreach and raising people's awareness.

However, under the Tenth EDF, there has been more pronounced focus on access to justice. This is exemplified by a) focused work on legal aid systems, b) decentralisation of the delivery of legal services through greater availability on the local level, c) greater involvement of non-state actors and civil society organisations in providing a wide variety of legal services, d) improved oversight and monitoring of the justice system on the part of both the State and civil society, e) enhanced structural management of human resources in the judiciary, and f) supporting gender equality and respect for the rights of minorities and vulnerable social segments.

b) **The Development Cooperation Instrument (DCI)** has covered geographic programmes supporting cooperation in five regions since 2007. They are Latin America, Asia, Central Asia, the Gulf Region (Iran, Iraq, and Yemen), and South Africa. The Development Cooperation Instrument replaces the previous ALA and TACIS Programmes. The DCI continues to fund actions focusing on governance, democracy, human rights, and support for institutional

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([35]) For a summary of different European Union frameworks and financial arrangements, see http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/index_en.htm

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CASE STUDY – Civil society in Zimbabwe

Funded under the Instrument For Stability and implemented through a grant to a European-based NGO registered in Zimbabwe, this project aimed at strengthening the contribution of Zimbabwean civil society to the constitutional reform process, building on public input from all provinces of the country, including urban and rural areas. The overall objective of the main partner and the eight other Zimbabwean partners is to anchor the democratic reform process as set out in the Global Political Agreement (GPA) throughout Zimbabwean society, thereby bringing together this divided society, consolidating reforms, and making them visible. This ambitious goal necessitates the active participation of civil society at each stage of implementation of the GPA, enhancement of its advocacy role at the highest levels, and engagement of the general population through civic education initiatives at the grassroots level. The main partner is managing and coordinating the project by facilitating contributions from Zimbabwean civil society to a series of activities that build an inclusive and participatory constitutional reform process. This initiative responds to a request from the EU Delegation in Harare, prompted by urgent demands from the Ministry of Constitutional and Parliamentary Affairs, democratic institutions, and civil society representatives.

Specific activities designed to achieve the goals listed above include: 1) public meetings at the provincial, district, and ward levels, including women and juveniles, 2) civic education and civic information community workshops on the constitutional reform process, including production and dissemination of information materials, 3) mapping of civil society organisations and donor programmes, 4) civil society coordination meetings and joint events on constitutional issues, 5) consultative meetings between representatives of civil society and the Ministry of Constitutional and Parliamentary Affairs and local government officials, to share information, and 6) the provision of informational materials to the Parliament. This combination of activities was specifically arranged in order to enhance results.

reforms (including the justice sector). The DCI also covers global thematic programmes supporting actions in the field of rule of law and justice sector, mostly under the following instruments: the Non-State Actors and Local Authorities (NSALA) and the Asylum and Migration Programme (AMP).

c) **The European Neighbourhood and Partnership Instrument (ENPI)** funds seventeen countries in the Mediterranean region and Eastern Europe, replacing the previous TACIS and MEDA cooperation programmes.

The European Neighbourhood Policy constituted a significant step towards creating a new relationship between the European Union and bordering countries. The Action Plans prepared by partner countries in the framework of Association Agreements are political documents that set forth strategic objectives for cooperation with the European Union. They have a three-year timeframe, and their implementation helps fulfil requirements of the Partnership and Cooperation Agreements. This in turn leads to further integration into European economic and social structures.

In addition, implementation of the Action Plans advances the approximation of laws, norms, and standards towards those of the European Union. This also includes a) building the foundation for further economic integration based on rules and regulations that enhance trade, investment, and growth, and b) promoting sustainable development through economic growth, poverty reduction, social cohesion, and environmental protection.

New forms of technical assistance have been extended to ENP partners. Legislative approximation, regulatory convergence and institution-building are being supported through mechanisms which proved successful in transition countries that are now EU Member States i.e. targeted expert assistance (Technical Assistance and Information Exchange - TAIEX), long-term twinning arrangements with EU Member States' administrations – national, regional or local – and participation in relevant EU programmes and agencies. Since the first demonstrations in Tunisia in December 2010, a wave of popular discontent has shaken the Arab world, with people calling for dignity, democracy, and social justice. Despite the unexpected magnitude of these uprisings, the EU has been quick to recognise the challenges of the political and economic transition faced by the region on the whole. It has also recognised the need to adopt a new approach to relations with its Southern neighbours.

The EU's strategic response to the Arab Spring ([36]) came as early as 8 March 2011, with the joint communication of the High Representative/Vice President Catherine Ashton and the Commission proposing "A partnership for democracy and shared prosperity with the Southern Mediterranean". This communication stresses the need for the EU to support wholeheartedly the demand for political participation, dignity, freedom and employment opportunities, and sets out an approach based on the respect of universal values and shared interests. It also proposes the "more for more" principle, under which increased support in terms of financial assistance, enhanced mobility, and access to the EU Single Market is to be made available, on the basis of mutual accountability, to those partner countries most advanced in the consolidation of reforms. This approach was further elaborated in another joint communication on 25th May, which initiated the launch of "a new response to a changing Neighbourhood".

The EU is committed both in the short and long term to helping its partners address in particular two main challenges:

— First, to build "deep democracy", i.e. not only writing democratic constitutions and conducting free and fair elections, but creating and sustaining an independent judiciary, a thriving free press, a dynamic civil society and all other characteristics of a mature functioning democracy.

— Second, to ensure inclusive and sustainable economic growth and development, without which democracy will not take root. A particular challenge is to ensure strong job creation.

While recognising a number of challenges that are common to all partner countries, the EU will support each country on a differentiated basis, thus ensuring individual needs and priorities are accounted for.

Thematic instruments

a) **The Instrument for Stability (IFS)** is specifically designed to address crisis situations through a rapid and flexible response. This includes a) supporting the development of weakened institutions required for maintaining public order or enhancing independence of the judiciary, b) assisting international criminal tribunals and judicial mechanisms that are required for investigation, prosecution, or reconciliation, c) promoting and protecting human rights and fundamental freedoms, and d) implementing obligations created by international agreements and practices.

([36]) See The EU's response to the 'Arab Spring', 16.12.2011, http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/11/918

Measures taken under the Instrument for Stability during crises are limited in time, usually to a maximum of eighteen months, and they can include, for example, support to the harmonisation of national legislation with international requirements, or to increased capacity of judicial authorities or law enforcement personnel. Therefore, monitoring and structural reforms generally take place in the context of the geographic programmes. Nevertheless the Instrument for Stability also enables the EU to help build long-term international, regional and national capacity to address pervasive transregional and global threats and it can be fruitfully employed as a way of preparing for a structural long-term intervention, for example through needs assessment or base line documentation.

b) **The European Instrument for Democracy and Human Rights (EIDHR)** can be used to provide assistance in the absence of established development cooperation or as a complement to it, without the approval of national governments. It can support non-state actors or civil society organisations that are working to protect human rights in their widest sense, or channel funding to international or inter-governmental organisations that have a mandate and mechanisms to work in this field.

The EIDHR is noted for its flexibility, which allows interventions: a) under highly sensitive circumstances, such as documenting or denouncing violations of human rights, including torture, suppression of freedom of speech, and lack of due process, b) in countries that are not meeting requirements for justice, c) where disadvantaged groups are facing violations of human rights, d) where interventions are required on a local or community level, and e) to support international or regional institutions, such as the International Criminal Court.

From a cross-section of projects selected for study, covering some eighteen countries, it was determined that the majority of EIDHR projects in support to justice focus on: a) access to justice and the facilitation of legal services for the poor, women, minorities, and marginalised/ disadvantaged social sectors, b) the protection and legal defence of detainees, c) rehabilitation of victims of conflict, violence, and violations of human rights, d) the application of international legal standards, particularly in criminal cases, e) fighting impunity, f) promoting transparency, g) legal reform and the preparation of draft laws, h) peace-building, conflict prevention, and conflict resolution, i) capacity building for legal professionals, j) monitoring of judicial, administrative, and penitentiary institutions, and reporting upon the results, and k) raising awareness of human rights and providing information on legal issues.

The majority of these initiatives were managed and implemented by non-state actors, such as civil society organisations, community groups, and professional associations (such as Bar Associations). Many initiatives complement work under other instruments or service contracts implementing technical assistance projects. It is expected that this trend will continue.

2.4.   Modalities of European Union support for the justice sector

European Union assistance is provided to counterpart governments through specific projects via a) a project approach, or b) budget support.

a) **The Project Approach and the "Rethinking Project Approach".** The project approach is adopted where a focused intervention is pursued or when conditions for a sector's eligibility to budget support are not yet met. This is the most frequently used aid modality for interventions in support to justice reforms.

A number of limitations and weaknesses have been noted in the project approach. It tends to be donor/ supply driven, somewhat *ad hoc* in nature, and more difficult to coordinate. This undermines ownership and buy-in on the part of national counterparts, and thus a) affects management, implementation, and monitoring and evaluation, b) reduces incentives and momentum for achieving results, and c) limits sustainability. Lack of commitment and support from national counterparts is particularly harmful for work in the justice sector, where much depends on political will and follow-through over time. This is even more the case for sensitive initiatives involving legal reform, institution building, and the training of legal professionals.

In addition, the project approach is often based upon a narrow needs analysis, rather than a strategic orientation. As a result, it may not take full advantage of other paradigms for design and implementation, such as a Human Rights-Based Approach or a sector framework approach.

Consequently, European Union support is progressively shifting towards sector development. This is accompanied by coordinated policy review processes, which form the basis for a sector approach, taking full account of human rights issues, even before it evolves into a sector strategy or programme, or eventually budget support. When the macro-economic and public finance management pre-conditions for sector budget support are met at country

level, EU Delegations have often made use of the rethinking project approach in preparing a sector intervention, by supporting the government in preparing a sector strategy and establishing a sector coordination mechanism, together with multi-annual sector budgeting.

b) **Budget support.**

I. **Sector budget support**
The methodology for Sector Policy Support Programme (SPSP) is set forth by the Commission in its Guidelines No. 2, Support for Sectoral Programmes, covering the three financing methods: sectoral budget support, pooled funds, and general procedures of the European Commission. [37] All three methods take a strategic approach, and place greater emphasis on national financial means and accountability for financing reform.

A SPSP involves sectoral management systems based on national objectives, with overall implementation under the auspices of national authorities. The key elements are a) development of a sector policy and strategy, b) establishment of a multi-annual sector budget, and c) a sector coordination framework. In addition, an appropriate institutional setting and performance monitoring are required.

Best practices for international support for strategy development include:

- *Providing advice and expertise for developing a sectoral strategy*, taking into account the overall human rights situation at country level, and how the sector promotes and respects minimum international human rights standards. This starts with explaining the rationale for a sector approach, and highlighting its advantages and benefits for national development and overall national objectives. Technical assistance can then be provided for consideration and preparation of draft strategy documents.

- *Building institutional capacity.* Technical assistance can help ministries and key justice institutions develop capacity to design, and later implement, a sector strategy. This includes strategic planning for the sector and key institutions, based on analysing problems, designing solutions for those problems, and identifying means for achieving those solutions.

- *Setting concrete objectives.* In order to achieve results, the sector strategy must include concrete objectives and specific indicators for measuring them. This provides for an information collection and management system. Technical assistance and even the procurement of information technology equipment may be crucial in this regard.

- *Involving civil society.* With support from international donors, non-state actors and civil society organisations can play a key role in developing, implementing, and monitoring sectoral strategies. They are in a position to provide highly valuable input, and to make sure that results are achieved. [38]

- *Establishing a collective process.* Design of a sector strategy should take place in a collective and highly consultative fashion. A sector strategy, by definition, cannot represent the interests of only select or powerful justice institutions. In such cases, it is unlikely to solve sectoral or national problems. Further, it is even more unlikely to be successfully implemented. Coordinated external assistance is often appropriate and required for brokering this process.

- It is important to *establish a budget for the sectoral approach*, and financial means must be taken into consideration during the process of strategy development. A viable system for collecting, analysing, storing, and disseminating statistical data to serve as the basis for developing a budget in line with the needs of different justice sector institutions, and which rationally allocates resources, should be established.

The final result of this process should ideally be a guiding strategy which: a) establishes a vision for the justice sector, b) sets concrete objectives for achieving this vision, c) identifies the roles of all key parties in management, implementation, and monitoring of results, d) sets a timetable for achieving results, e) identifies target groups and beneficiaries, f) provides a budgetary framework g) presents key indicators for measuring results, and h) identifies the external assistance which will be required to support national efforts.

Because these eligibility criteria are difficult to fulfil, the use of sector budget support is still limited. Examples from which lessons can be learned include E-Justice in South Africa in 2000, the Legislative Sector Policy Support

Programme in South Africa in 2007, Access to Justice in South Africa in 2008, Justice, Reconciliation, and Law and Order in Rwanda in 2009, and Support to Criminal Justice in Georgia in 2008 and 2010.

Pool funding (joint co-financing). The pool fund is intended to receive contributions from the European Union and other donors, and if necessary from the partner country government, in order to fund activities which are defined through mutual agreement within a sector programme. This modality is chosen when it is likely to be the most cost-effective option and is compatible with governmental sector and budget planning.

Under the applicable EU budget and European Development Fund (EDF) financial regulations, there are four possibilities to manage pool funds: a partner country, an international organisation, an international and national public sector body, or the European Commission itself.

This management mode demonstrates advantages in presenting a united and cohesive front before national authorities, economies of scale that can be achieved through joint implementation, and possibilities for co-financing and contributions from the partner country.

II. General budget support that includes indicators for the justice sector: The general budget support (GBS) is designed to support the Poverty Reduction Strategy in the country concerned, that is, its development strategy as a whole and not a particular sector. In this context, if this strategy also provides for reforms in the justice sector, without necessarily having a specific policy or strategy for this sector, it may be agreed between the EU and the government concerned to include indicators to measure the progress made by the partner country in the justice sector, according to the cooperation priorities agreed between the national authorities and the EC, and the place for strengthening of the judiciary in the governance dialogue [39].

The political dialogue that takes place in this context with the government will not logically be a sectoral policy dialogue, but must take place in the forums covering the GBS. If developments related to the indicators included in GBS are discussed within this framework, one must however ensure that on the part of both the EU and the government, there is enough expertise to be able to discuss the content of justice reform.

The new Communication on Budget Support (October 2011) has introduced a strategic shift in EU development policy towards stronger conditionality on human rights, democracy and the rule of law, the role of civil society and other elements of good governance.

General budget support is seen, by its very nature, as an implicit recognition that the partner country's overall policy stance and political governance is on track. Therefore, general budget support should be provided where there is trust and confidence that aid will be spent pursuing the values and objectives to which the EU subscribes, and on which partner countries commit to move towards meeting international standards.

When providing EU general budget support, the Commission aims at fostering domestic accountability and strengthening national control mechanisms as a basis for improving governance and adherence to fundamental values. In cases where the partner country's commitment to fundamental values shows a significant deteriorating trend, an adequate and coordinated response strategy at the EU and Member State level needs to be defined and implemented. Unless there is a clear cut-situation where EU financial interests and its reputation need to be protected, in which case general budget support can be suspended immediately, the response to deterioration should be progressive and proportionate. Where appropriate, measures to limit impact on the poor should be designed jointly by the EU and Member States, in cooperation with other non-EU donors.

This could include making adjustments to the size of any fixed tranche and/or reallocating funds to sector programmes, channelling funds to target groups via non-governmental organisations, or reinforcing other aid modalities such as projects. In order to better reflect these fundamental changes, EU general budget support will become in the future "Good Governance and Development Contracts". In cases where fundamental values concerns arise, they must be carefully balanced against the basic needs of the population when choosing the most appropriate aid modality. Sector budget support remains an option, except in sensitive areas, such as where justice and security are inherently linked to the state apparatus committing or accepting the violations. Therefore these sectors should be also subject to political conditions on human rights, democracy and good governance.

In early 2012, EuropeAid is reviewing the guidance on budget support operations to reflect these changes.

Role of civil society organisations. Non-state actors and civil society organisations should be closely associated with the preparation and implementation of justice reform interventions, particularly when a sectoral approach is applied. From the outset, they can provide useful guidance concerning sector priorities and the most effective means for achieving them. They can then be supported either through a specific component of a sectoral programme, or under a separate grant-making facility complementing the sectoral budget programme, to reinforce their capacity to act as a watchdog or monitor the achievements of the bilateral cooperation programmes, to provide specific services (for example paralegal activities, and reporting to UN treaty bodies), or to be part of the governance structure of EU funded programmes.

2.5. Other donors

The international assistance community has an important role to play in the support and reform of the justice sector. A coordinated approach between international assistance providers is indispensible. When assistance is a collaborative effort, which is integrated into national priorities and realities in a sound manner, the results are greatly enhanced. However, each international assistance provider has its own a) mandates and priorities, b) areas of focus and specialisation, c) administrative and financing mechanisms, d) implementation and reporting requirements, and e) programming and project cycles. To overcome this, coordination should include information sharing on policies and programmes, plus identification of areas of common action such as assessments, strategies, tools, evaluations, and reporting. *Further information on prominent multilateral institutions and donors is provided in Annexe 4.*

2.6. Aid effectiveness and donor coordination

The Aid Effectiveness Agenda traces its current roots to the Paris Declaration of 2005, followed by the Accra Agenda for Action of 2008. (40) The Paris Declaration is a blueprint for a) strengthening the delivery of assistance by donors, and b) improving the utilisation of assistance by national partners.

Under the **Paris Declaration**, donors undertake to: a) strengthen development strategies, b) better align assistance with partner country priorities, systems, and procedures, c) utilise national institutions and systems in order to strengthen them and promote sustainability, d) enhance accountability to citizens and governmental institutions, e) eliminate duplication of efforts by donors and rationalise activities to make them more efficient, f) reform and simplify assistance procedures to ensure more effective collaboration, g) define measures and standards of performance and accountability, h) use specific indicators covering the effectiveness of aid delivery, i) harmonise their efforts to achieve progress on key crosscutting objectives and issues, etc.

Under the Paris Declaration, partner countries undertake to: a) exercise leadership over development strategies and policies, b) prioritise results, and assess their capacity and needs for achieving them, c) focus on strengthening their capacity and include capacity development in national programmes, d) build capacity to plan, manage, implement, and account for results, e) mobilise domestic resources, f) strengthen fiscal accountability and sustainability, g) take the lead in coordinating aid, improving communication, and assessing the comparative advantages of different donors, etc.

Signatories agreed to specific indicators, and promised to use them to promote national ownership of initiatives, alignment, harmonisation, management for results, and mutual accountability.

The Accra Agenda for Action focused on the means for accelerating the above processes, through a) strengthening country ownership, b) broadening country-level dialogue, c) enhancing capacity to lead and manage development, d) making maximum use of national systems and processes, e) building more effective partnerships for development, f) harmonising aid, g) working more effectively with civil society organisations, h) better accounting for development results, i) carefully addressing the needs of countries in fragile situations, and j) taking joint action to achieve progress on key crosscutting objectives and issues. The European Commission's implementation of the Aid Effectiveness Agenda is guided, to a large extent, by the European Court of Auditors' Special Report No. 6/2007 on the effectiveness of technical assistance in the context of capacity development, and the formal reply. (41) The Court of Auditors recommended that the Commission:

- Take a more systematic and comprehensive approach towards technical assistance for capacity development, and thereby move beyond individual project implementation;

- Create greater ownership and leadership on the part of national counterparts in capacity development projects, including greater involvement in design, management, implementation, and evaluation;

- Focus on improving existing institutional capacity;

- Set more realistic objectives, and better define the role and utilisation of technical assistance;

- Improve delivery of technical assistance by simplifying implementation procedures, expanding implementation time, employing a wider range of expertise (including public institutions), and utilising coordinated programmes;

- Improve the monitoring and evaluation of technical assistance and the results it achieves;

- Establish better information management, directed towards promoting sustainability.

The Busan Partnership for effective development co-operation emphasised the agreed international commitments on human rights, decent working conditions, gender equality, environmental sustainability and disability as the foundation for effective development cooperation, including:

- *Ownership of development priorities by developing countries.* Partnerships for development can only succeed if they are led by developing countries, implementing approaches that are tailored to country-specific situations and needs.

- *Focus on results.* Investments and efforts must have a lasting impact on eradicating poverty and reducing inequality, on sustainable development, and on enhancing developing countries themselves.

- *Inclusive development partnerships.* Openness, trust, and mutual respect and learning lie at the core of effective partnerships in support of development goals, recognising the different and complementary roles of all actors.

- *Transparency and accountability to each other.* Mutual accountability and accountability to the intended beneficiaries of development cooperation, as well as to respective citizens, organisations, constituents and shareholders, is critical to delivering results. Transparent practices form the basis of enhanced accountability.

These shared principles will guide global actions to:

- Deepen, extend and render operational the democratic ownership of development policies and processes.

- Strengthen efforts to achieve concrete and sustainable results. This involves better managing for results, monitoring, evaluating and communicating progress, as well as scaling up support, strengthening national capacities and leveraging diverse resources and initiatives in support of development results.

- Broaden support for South-South and triangular cooperation, helping to tailor these horizontal partnerships to a greater diversity of country contexts and needs.

- Support developing countries in their efforts to facilitate, leverage and strengthen the impact of diverse forms of development finance and activities, ensuring that these diverse forms of co-operation have a catalytic effect on development.

Another important EU document in regard to the Aid Effectiveness Agenda and the Special Report by the Court of Auditors is the Guidelines on Technical Cooperation, also known as the "Backbone Strategy". (42) Key elements of this Strategy include:

- Fifty per cent of technical cooperation is implemented through coordinated programmes consistent with national strategies by 2010;

- Use of parallel Project Implementation Units is reduced by two-thirds by 2010;

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(40) See http://www.oecd.org/dataoecd/11/41/34428351.pdf
(41) See http://eca.europa.eu/portal/pls/portal/docs/1/673583.pdf

(42) "Reforming Technical Cooperation and Project Implementation Units for External Aid Provided by the European Union" (July 2008), http://ec.europa.eu/europeaid/how/ensure-aid-effectiveness/documents/backbone_strategy_on_tc-pius_final_en.pdf

- Use more general and sector budget support and sector approaches to deliver assistance;

- Use multi-donor approaches to deliver assistance (European Union Target Number 2).

In line with the above, and to implement the **Backbone Strategy**, the Commission has made a concerted effort during recent years to a) provide quality technical assistance that supports country-led programmes, based on strong partner demand, b) provide support through partner-managed implementation arrangements, which include managing for results and utilising indicators to measure results, and c) focusing on achieving sustainable results.

Specific measures to implement the Backbone Strategy include:

- Focusing more on capacity development;

- Taking a demand-led approach to technical assistance;

- Enhancing strategic dialogue and direct communication with national counterparts;

- Orienting assistance towards concrete results that are aligned with national priorities;

- Taking full account of country and sector-specific requirements;

- Working through harmonised and aligned initiatives that utilise the widest range and most appropriate choices of assistance modalities;

- Improving the design, management, and accountability of technical cooperation;

- Improving procurement and contracting;

- Simplifying aid delivery regulations and procedures;

- Choosing the best possible experts, taking into account their level of experience and relative cost, the effectiveness and efficiency of involving public institutions instead of consulting firms, and the comparative advantages of "South-South" transfers of expertise and national expertise.

Finally, it is necessary to put in place internal quality assurance measures and standardised training programmes, to ensure application of the Backbone Strategy and improve technical assistance.

The final goal for initiatives carried out according to this strategy should always be capacity development and sustainable results. This cannot be donor (supply) driven, and it cannot be based on donor objectives. Further, it cannot be based purely on a gaps analysis, which identifies interventions through focus on the weaknesses in national systems and capacities, without taking full advantage of existing strengths and the advantages of their mobilisation.

Instead, **the assistance process must start with a determination of what the partner country requires in the way of services, whether it is feasible to deliver these services, how this can be achieved, what the partner country can do by itself, what the partner country cannot do by itself, and why this is the case**. Only at this point is it possible to decide precisely what supplemental forms of assistance or services should be delivered, how to provide them through joint and collectively managed development initiatives, and the most effective ways to define outcomes and results.

Several challenges to full implementation still remain. There may be a difference between what national counterparts want and what they really need. This issue touches upon one of the main distinguishing features of the justice sector, namely its political nature. Since the justice sector touches the heart of power relationships in a society, there are bound to be obstacles to generating consensus and implementing collective national management of reforms.

A concrete example illustrates this problem. The principle of judicial independence is enshrined in international instruments, constitutions, scholarly articles, and reports, and is a guiding principle for many assistance initiatives. But what does the independence of judges really mean, concretely and in practice? An independent judge, who bases rulings exclusively on the law and facts of a case, would be more likely to do the following:

- Allow different kinds of freedom of association, communication, meetings, and protests, even if this exposes the fragility of the ruling party or prominent officials;

- Rule in favour of a small business or an individual who challenges a large business owned by an oligarch or powerful interests;

- Rule in favour of an individual who sues the State or a governmental body for violation of administrative rights or procedures.

These are fairly regular, and at least partially accepted, practices or occurrences in countries that respect the rule of law. This is because political and economic interests understand that they face limits when involved with the justice sector, even if they enjoy certain advantages, such as being able to afford the best possible legal team.

However in developing countries, and particularly those which are fragile or emerging from conflict, it may not be easy to convince the government that it should allow direct challenges to its rule, or convince land-holding or land-grabbing elites that courts should entertain challenges to the land-titles system.

These differing political and economic interests are likely to manifest themselves when strategies are being developed that address the source of authority, structure, and operations of judicial institutions involved in the appointment, training, promotion, and discipline of judges. They are also likely to compromise efforts to jointly manage, implement, and evaluate a reform strategy.

Accordingly, the aid effectiveness methodology needs to take full account of the specific context for judicial reform, and in particular the political nature of many aspects of the justice sector. Therefore, a collective approach based upon information sharing and collaborative programming would be required so that it presents a united front towards upholding and applying international standards.

2.7.   Fragile situations

Fragile countries: According to the European Commission, and based on the OECD criteria, fragile countries are those whose organs "lack capacity or political will to assume the core functions to reduce poverty or promote development or ensure public safety and respect for human rights". [43] Characteristic signs include a) weak governmental structures, b) inability or unwillingness to deal with basic functions, c) lack of capacity to meet obligations regarding service delivery and management of public resources, d) inability to control all of the national territory, e) inability to uphold the rule of law and provide safety and security, and f) insufficient protection of human rights. In a very real sense, the "social contract" has broken down.

Fragility is related to, but not necessarily accompanied by, conflict with neighbouring countries, or internal conflict. However, the risk of internal conflict is exacerbated by circumstances associated with fragility, such as poverty, inequality, instability, organised criminality, or being an "orphan state". [44] Fragility is often accompanied and exacerbated by political instability. This can have origins in ethic and regional differences, unequal regional development, and natural or human disasters.

The European Consensus on Development provides guidelines for a comprehensive response to fragility. [45] It establishes a set of actions for meeting key needs and preventing security threats and conflict. Following this approach, European Union interventions in the justice sector of fragile States generally take a broad approach towards establishing the rule of law, overcoming political divisions, building governmental institutions, strengthening the economy, generating revenue that can be used to support the public sector, reforming the civil service, promoting democratisation processes (and free and fair elections), protecting human rights, and restructuring the justice sector.

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[43]   COM (2007) 643 final – 25.10.2007 - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the committee of regions "Towards an EU response to fragility situations – engaging in a difficult environment for sustainable development, stability and peace". See also "Principles for international involvement in fragile states and precarious situations", available at: www.oecd.org-dataoecd-61-64-38368761.PDF

[44]   See: http://www.institut-gouvernance.org/docs/note3.pdf "Orphan states" are those who receive little or no technical and financial support from the international community.

[45]   Joint Statement of the Council and representatives of the governments of Member States meeting within the Council, the European Parliament and the Commission on the development policy of the European Union entitled "The European Consensus" [Official Journal C 46, 24.2.2006].

In addressing fragility, the 2011 EU Agenda for Change mentions that "specific forms of support should be defined to enable recovery and resilience, notably through close coordination with the international community and proper articulation with humanitarian activities. The aim should be to maximise national ownership both at state and local levels so as to secure stability and meet basic needs in the short term, while at the same time strengthening governance, capacity and economic growth, keeping state-building as a central element".

The new Communication on Budget Support (October 2011) considers that situations of fragility call for action to help partner countries ensure vital state functions, to support the transition towards development, to promote governance, human rights and democracy and to deliver basic services to the populations. These situations require a global, coherent and coordinated response for which budget support can be instrumental. Together with other aid modalities (humanitarian aid, pooled funds, project aid, technical assistance etc), it has to be accompanied by reinforced political and policy dialogue.

The decision to provide EU budget support in situations of fragility will be taken on a case-by-case basis and supported by an assessment of the expected benefits and potential risks. The Commission will ensure that these decisions take into account the overall political and security situation, the financial risks, and the potential cost of non intervention. The dynamics of change should be assessed on the basis of a joint analysis by the EU and Member States wherever possible. This should serve as the basis for coordination with the main development partners. A gradual and sequenced approach to EU budget support should be favoured, to best adapt to specific circumstances, and to manage risk. This should be referred to in future as "State Building Contracts" to better reflect these elements.

Post-conflict countries: Countries that are emerging from internal strife or civil war face specific development challenges and requirements, in addition to justice sector reform. This in turn affects the work of international organisations and donors. In order to address the challenges in a post-conflict setting, European Union interventions focus on establishing and maintaining peace and security, fighting impunity, meeting emergency needs (food, shelter, clothing), ensuring disarmament, demobilisation and reintegration of former combatants (DDR), supporting economic recovery, preventing further violations of human rights, and promoting reconciliation.

With specific regard to the justice sector, interventions traditionally include:

- Reinforcing the legal framework, including drafting a new Constitution and transposition of international human rights obligations;

- Institutional capacity building, often starting with transitional justice mechanisms, such as truth and reconciliation commissions, human rights commissions, special tribunals or hybrid courts, and similar bodies involved in investigating or prosecuting violations of law and rights;

- Criminal justice reform, in order to prosecute violations of rights and reduce criminality and impunity;

- Training for legal professionals concerning reconciliation and respect for human rights;

- Building the capacity of civil society organisations to promote and protect rights, support reconciliation, expose corruption, and monitor the work of justice sector institutions;

- Community outreach and work with local government and municipal authorities, to ensure that the rule of law is not limited to urban areas;

- Promoting access to justice and legal aid for vulnerable people;

- Mediation services and rehabilitation for aggrieved parties, including victims of human rights violations, who are often vulnerable groups such as women, children, and marginalised groups;

- Rebuilding physical infrastructure and facilities.

Traditional justice mechanisms also receive support to overcome fragility in the aftermath of conflict. They can provide rapid justice delivery on the ground and in local communities, help rebuild people's trust, expand the use of mediation and similar approaches, and promote reconciliation. They are particularly valuable for conflict resolution and resolving local disputes. The United Nations Secretary General has acknowledged the important role of peacekeeping operations and specialised courts in fighting gross violations of human rights, such as extra-judicial

killings and eliminating impunity. ([46]) Nonetheless, civilians (and in particular vulnerable segments of society such as women, juveniles, and indigenous or minority groups) often bear the brunt of what takes place in conflict zones, while belligerents may get favoured treatment. The use of child soldiers, and rape as a tactical weapon, stand out amongst violations of human rights taking place in fragile countries with internal conflict.

The following questions are highly relevant in post-conflict situations:

- What is the role of the international community in protecting the security and justice interests of the people in post-conflict States?

- How should the international community respond to States that threaten global or regional security by failing to act against terrorists, criminals, or parties who violate human rights?

- What kind of support should be provided to post-conflict States that do not respect their legal framework or justice sector institutions, or that use them for ulterior motives?

- How should the international community respond to political instability and lack of political legitimacy, as manifested in operational stalemates and electoral disputes?

- How can the public address peace and reconciliation agreements that overlook State obligations to prosecute perpetrators of serious offences? ([47])

- What is the proper balance between peace and justice? Is it true that there cannot be peace without justice, or do efforts to obtain justice create or prolong conflict? ([48])

Transition countries: Countries that are emerging from authoritarian rule are often described as undergoing a "transition process". There are indeed many similarities between countries that are moving towards democracy in the aftermath of authoritarian rule. They relate to: a) building democratic political systems, b) opening up economies, c) integrating into the international system, d) establishing the rule of law, e) adopting and respecting international obligations and standards relating to the protection of human rights, f) reforming the criminal justice and penal systems, and g) preparing the legal professions to work independently and according to modern standards.

Major challenges in the transition process are:

- Not only making the third branch of state independent, but changing it from an openly acknowledged arm of the government (and more particularly the ruling party);

- Not only reforming written laws, but making them implementable and respected, so that they do not merely exist on paper;

- Not only strengthening judicial institutions, but creating a culture of institutionalism, whereby independent but inter-related institutions function collectively as a justice sector;

- Not only improving the skills of judges, lawyers, and prosecutors, but turning them into dedicated professionals who understand, respect, and carry out their roles in a justice sector which utilises adversarial or accusatorial processes to promote respect for human rights;

- Not only improving the delivery of justice and justice services to the population, but also ensuring access to justice for ordinary citizens and disadvantaged social groups.

Systemic transition and middle income countries: National priorities for the justice sector in these countries tend to focus on standard elements of support, including international integration, transition to a market economy, strengthening democracy and the rule of law, improving the legal framework, institution and capacity building, modernisation of the courts (including court management and case management), raising the qualifications of legal professionals, criminal and penitentiary reform, anti-corruption, addressing inequalities and entrenching a

([46]) Sixth report of the Secretary General of the United Nations on the Protection of Victims, 2007; http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/573/59/PDF/N0757359.pdf?OpenElement

([47]) Resolution of the UN General Assembly (A/59/2005), http://www.un.org/fr/ruleoflaw

([48]) For further information and analysis of the relationship between peace and justice, and the role of the security sector, see: www.ssrnetwork.net/document_library/detail/4980/selling-justice-short-why-accountability-matters-for-peace

human rights culture, and promoting transparency and accountability. China presents an interesting example, where under the Country Strategy Paper the above initiatives have been prioritised, under the framework of promoting the sustainability of economic and social reforms, to support the transition process, reduce poverty, and enhance international integration.

"Failed states": In extreme situations of fragility, the basic structures of governance have failed, leading to loss of control of territory, erosion of authority, inability to provide essential services, and inability to interact with other States. The consequences on citizens can be catastrophic, including food and water shortages and widespread disease leading to mass migration, and the emergence of serious and uncontrolled human rights violations. Such situations are sometimes referred to as "failed states", and present enormous challenges for every sector of society. Justice sector interventions, while extremely difficult in such contexts, can nevertheless help re-establish the rule of law, which can have dramatic impacts on all other areas of governance, and therefore on people's lives.

The strategy proposed by the Commission in its Communication "Towards an EU response to situations of fragility" focuses on the openings offered by transitional periods to address key human rights issues, including the protection of women and minorities, through commissions, investigative bodies, legislative reform initiatives, training, and civil society engagement. Development of a coherent and appropriate strategy in response to precarious conditions must start with a diagnosis of the governance capacity of the State, and the status and functioning of institutions guaranteeing security and the rule of law (both formal and informal). Crisis situations must be viewed in a holistic fashion, in order to determine the appropriate mixture of diplomacy, humanitarian aid, security support, and development cooperation in order to successfully address issues such as security violations, the role of paramilitary groups, corruption, impunity, and use of the death penalty.

In order to adequately respond to development challenges in fragile countries, several analytical frameworks and strategies have been developed. For example, the Development Cooperation Directorate of the OECD has created an analytical framework, which can be found in "Supporting State-building in Situations of Conflict and Fragility: Policy Guidance". (⁴⁹) The concept of state-building is crucial, because it distinguishes reform from reconstruction.

The following list summarises the 10 DAC principles for "International Engagement in Fragile States and Situations": (⁵⁰)

1) Take context as the starting point.

2) Do no harm.

3) Focus on state-building as the central objective.

4) Prioritise prevention.

5) Recognise links between political, security and development objectives.

6) Promote non-discrimination as a basis for inclusive and stable societies.

7) Align with local priorities in different ways in different contexts.

8) Agree on practical coordination mechanisms between international and local actors.

9) Act fast, but stay engaged long enough to give success a chance.

10) Avoid pockets of exclusion.

Transitional justice has a major role to play in fragile and post-conflict countries. Transitional justice should involve the full range of processes and mechanisms available in order to determine responsibility for abuses, render justice, and set the stage for reconciliation. (⁵¹) It should therefore extend beyond the regular court system, to include various kinds of truth and reconciliation commissions, mediation and reconciliation services, traditional justice authorities, religious leaders, and so forth.

(⁴⁹) See http://www.oecd.org/document/12/0,3746,en_2649_33693550_46623180_1_1_1_1,00.html

50   See: http://www.oecd.org/dataoecd/35/13/47278529.pdf and http://www.oecd.org/dataoecd/61/45/38368714.pdf

(⁵¹) Report of the Secretary General of the United Nations before the Security Council, "Restoring the rule of law and administration of justice during the period of transition in societies experiencing conflict or emerging from conflict," Doc. S/2004/616, August 2, 2004, Page 7, Paragraph 8.
      See http://www.undemocracy.com/S-2004-616.pdf

3. Designing justice sector support and reform

This chapter looks at the methodologies and best practices to apply during the identification and formulation of projects, in order to improve the definition of priorities for justice sector initiatives.

When designing a justice support programme, several tools and guidelines developed by the European Commission (Aid Delivery Methods) need to be consulted by the EU Delegation Task Managers and external consultants recruited for this purpose. (⁵²)

3.1. Identification

The identification phase mainly aims to analyse the problems in the sector, and identify stakeholders and different responses to address these problems. In this process it is important to use an integrated approach, and examine the overall justice sector, taking to the extent possible a service delivery approach.

It is important to collect information from all possible stakeholders, including government officials, representatives of legal institutions and the legal community, academics, social workers, representatives of civil society organisations, traditional leaders, other donors, etc. It is advantageous to obtain the widest range of input from all potential sources of expertise, harmonise perspectives about the justice sector with other donors and authorities, and seek common strategies and joint actions that can be effectively aligned with national priorities.

Justice support projects are long-term endeavours. Circumstances can change dramatically during the significant lead-time between project design, approval, tendering, and launch. This makes it important to have a solid inception phase, and update all strategies and service delivery planning. Second, it is not possible to achieve many objectives set for justice sector initiatives (such as reforming laws, strengthening institutions, and raising the skills of legal professionals) in a matter of months. Third, project implementation must reflect realities concerning the pace of reforms. For example, activities such as legislative drafting and implementing strategic plans do not proceed at a constant pace, or according to a project reporting schedule, but rather alternate between periods of intense activity and consolidation. Finally, project partners and beneficiaries have their own busy schedules, and cannot always accommodate project timetables. For these reasons, EU support should look towards longer time frames and more flexible delivery schedules, to make technical assistance more effective over the long run.

Problem analysis

Project identification missions should initiate the identification process, based on the key assessment tools, and according to the PCM operational guidelines. While consultants can be mandated to identify and recommend appropriate initiatives for support, it is very important that EU Delegations devote the necessary time and resources to lead the identification process.

In identifying and analysing the main problems that would be addressed and supported through the project, special attention should be paid to the needs of the people seeking justice and where are the main gaps in proper justice delivery. Furthermore, the extent to which the capacity-building support requested by the national authorities reflects the demand side of justice should be verified. The same approach should be taken for the identification of project beneficiaries and target groups.

(⁵²) Project Cycle Management (PCM) Guidelines, Guidelines n°2 for EC support to Sector programmes, Guidelines n° 3 on the Programming, Design and Management of General Budget Support, The Practical Guide to Contract Procedures for EU external actions, Reforming Technical Cooperation and Project Implementation Units for External Aid provided by the European Commission (The Backbone Strategy), Guidelines: Making technical cooperation more effective, The Toolkit for Capacity Development, Guidelines n°6., Institutional assessment and capacity development, why, what and how?, Analysing and addressing Governance, The Handbook on promoting good governance in EC cooperation and development, The Handbook on concepts and methods for mainstreaming gender equality, Guidelines on the Gender Impact Assessment Form.

Depending on the local context, available data may prove insufficient for determining the main project priorities during the identification phase. This is why additional pre-feasibility or diagnostic studies could be undertaken.

Some countries, in cooperation with the European Union and other donors, proceed with legal needs assessments, organisational audits of their judiciary, or participatory evaluation missions. Capacity and organisational assessments of justice institutions are particularly recommended to plan the framework of an institutional building exercise. These assessments are crucial for identifying potential capacity development strategies for targeted institutions.

Strategic analysis and orientation

The strategic analysis and orientation for a justice sector intervention rely on lessons learned from the country context, and previous and current projects involving the justice sector. The EU Delegation, and if need be consultants, initiate a consultative process involving national authorities, stakeholders, and other donors during the identification phase, making it possible to specify the strategic approach for support to the justice sector and justice sector reform. At this stage, the EU Delegation needs to consider how to identify political, developmental, and institutional responses.

At the political level: It is important to a) understand the specific characteristics of political influence upon the sector, and b) identify how to work with and through the challenges that this creates.

The following practices and techniques are helpful:

- Assess the national political context affecting justice sector reform, and in particular the country's position on human rights and fundamental freedoms. This is crucial for anticipating how political factors will affect the design and implementation of interventions.

- Identify which institutions, interest groups, and individuals are likely to take an interest in justice sector reform, and how they will react to different initiatives.

- Determine whether there are any external or international standards or practices that can influence national practice, and create pressure or a constituency for change. Examples include a) membership of the European Union, b) acceptance of the jurisdiction of super-national tribunals (such as the European Court of Human Rights or the International Criminal Court), c) membership of other multinational or regional bodies, d) participation in international organisations or standards setting bodies, etc.

- Carefully assess the resources available to the country, and specifically the justice sector. Determine whether international funding sources can exercise leverage, and if so what level of funding is required.

- Engage the EU Member States and other donors in strategising and coordination. This is important for presenting a united front, overcoming political resistance to justice sector reform, and reducing the risk of aid fragmentation.

- Involve experts who come from countries facing comparable circumstances, or who share legal traditions and practices.

- Scale down expectations and avoid being over-ambitious.

- Take account of absorptive capacity, and how it is affected by political interests.

- Assess how political considerations affect different stages of the project cycle. Support initiatives that will feed the political debate on the need for reform (awareness raising, campaigns, advocacy, etc.).

- Identify allies, catalysts and agents for change, and work with them to develop political will over time. Examples include associations of judges and lawyers, judicial training centres, civil society organisations, etc. ([53])

At the development and institutional level, the following recommendations can be made:

- Different project components should be conceptually inter-linked, mutually supportive, and likely to create synergies, even if there are different implementing partners;

- Projects should focus on key selected justice institutions or legal professionals, and avoid a "shotgun approach" with too much diversity and plurality, that spreads resources too thinly;

- Projects should build on coordination and complementarity of justice sector support from EU Member States and other key donors;

- Broad ownership and buy-in from governmental and non-state actors supports all stages of the project cycle;

- Policies and activities that take an incremental and long-term approach, without trying to achieve too much too fast, are more likely to achieve sustainable results;

- Use contingencies and monitoring tools to create incentives, striking a sound balance, so that contingencies are strong enough to be meaningful, yet not so onerous as to block progress;

- The approach to capacity building needs to take leadership, management, incentives, organisational behaviour, and culture into account;

- Strong monitoring and evaluation tools for measuring the effectiveness of initiatives need to be designed from the start, and be fully incorporated into interventions.

The sector approach

The overarching goal of EC support to a justice sector programme is to achieve a better realisation of people's rights and fundamental freedoms through sector objectives, e.g. structural reforms, improved access to justice, efficiency and quality of sector services.

The design of the SPSP should actively take sector policy characteristics into consideration. However, there is a risk if no real baseline is available for measuring results in the areas specified by the sector policy, particularly in matters related to oversight of judicial institutions, institutional responsiveness, effectiveness and efficiency, and areas related to operational performance: organisation, management, systems, and staffing.

Without clear initial benchmarks, the identification of achievable results and Objectively Verifiable Indicators can be problematic. It is recommended that baseline surveys predetermine the framework of programme execution to ensure more sustainable and coherent results. Profound dialogue is required for development of sector policy. The deficiencies or inaccuracies in this process are likely to affect the quality of sector support being carried out.

3.2.   Formulation

The formulation phase focuses on feasibility and sustainability of the project idea, based on lessons learned and best practices.

The project approach

Participatory approaches: It is recommended that local stakeholders are fully involved in the project formulation phase. This helps ensure ownership and commitment. Participatory and broad consultative processes should be promoted again at this stage, to further involve all relevant stakeholders in finalizing the project design.

To maintain momentum for this practice, the terms of reference for formulation missions should systematically include consultations and the organisation of at least one workshop with the beneficiaries and counterparts, ideally with other donors in attendance. The workshop(s) can be used to a) define objectives, policies, and programmes, b) identify potential activities and initiatives, c) design Objectively Verifiable Indicators, d) test the feasibility and sustainability of the proposed interventions, e) make preliminary arrangements for implementation such as the

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([53]) These recommendations were proposed and debated during a workshop organised by the European Commission on Justice and Security Sector Reform in EU External Aid, on 17 May 2011 in Brussels

governance structure of the project or sector coordination mechanisms, and f) settle issues related to information collection and dissemination.

Adequate balance between components: Some projects are adversely affected by a disproportionate balance between different components. Given the need for political will to carry out initiatives, components and activities that are over-ambitious exacerbate these imbalances. The effectiveness of a project aimed at strengthening the legal and institutional framework depends not only on efficient management, but also overcoming resistance to change, which may be stronger than the will to reform.

A balance between soft and hard components (e.g. institutional strengthening, and equipment or infrastructure) needs to be established during the formulation phase, in order to reduce potential political influence on activities during the implementation phase. However infrastructure and equipment should not become goals in and of themselves. They should never be provided without operational changes and reforms that put them to optimal use, and create positive change in the justice sector.

It is also recommended to focus programmes on key sub-sectors when appropriate, depending on the country context. If a support programme for the entire justice sector cannot be arranged, then it may very well be advantageous to focus on a sub-sector or defined entry point. For example, it may be optimal to direct support towards the criminal justice system, access to justice, the commercial courts, administrative justice, the enforcement of judgments, or strengthening a single institution (taking into careful account their role, contributions, and inter-relationships with the entire sector).

Capacity development: Support for capacity development includes the inputs and processes that external actors – whether domestic or foreign – deliver to catalyse the process. Capacity development support is a recurrent feature of European Union justice sector interventions. It is predominantly provided through technical assistance, training activities, informational materials, jointly implemented activities, and study tours. This approach reflects the principles of the Backbone Strategy, which emphasises that capacity development should be government-driven.

Many obstacles and challenges arise during the capacity development process. The absorption and acceptance of international expertise provided through justice sector projects is often problematic. This is particularly the case for decentralised operations, in which private sector operators manage the technical assistance unit, and recruit the experts to be deployed. New procedures to improve the selection of international and local experts, such as greater transparency, more intensive vetting, and approval of experts by beneficiaries, have ameliorated some of these concerns. In addition, the implementation arrangements and the governance structure of the project selected during the formulation phase should be well thought-out and fully discussed with project partners and beneficiaries.

Focus on service delivery: Recognising the various problems associated with past efforts to promote rule of law, and the fact that these efforts have not always had a direct focus on vulnerable people or marginalised groups, alternative approaches focusing on the impact for these final beneficiaries have emerged. The service delivery approach focuses on the ability of institutions to deliver improved services to the people most in need, which in many cases will not necessarily occur without fundamental transformation of organisational culture, within a sector that is long-term by nature. By improving people's legal awareness and ability to demand services and use existing legal structures, this long-term organisational transformation is strengthened.

Justice sector interventions and service delivery should preferably take place at both the central or national and local levels. This ensures that the chain of beneficiaries is complete, that local capacity is developed, and that more systematic and integrated results are obtained.

Although there is certain logic in strengthening higher level and national institutions in the first place, it is important not to overlook links with effective service delivery to local target groups during the design and formulation of justice sector interventions.

Best practices and sound concepts concerning the delivery of services in the justice sector which emerge from a review of projects include:

- Setting up information points in courts, and making personnel available to answer queries from litigants and the general public;

- Strengthening courts of first instance, and community, municipal, or small claims courts;

- Opening continuous courts, which provide full judicial services around the clock or at least for extended hours;

- Developing mobile courts that visit isolated regions, where formal justice services are not available, or where law enforcement personnel and legal professionals are less available;

- Training paralegals and mediators to orient people towards appropriate service providers, and serve as liaisons between authorities and informal justice mechanisms;

- Building the capacity of lawyers handling legal aid cases and protecting human rights;

- Carrying out research and reporting on the state of the justice system and access to justice;

- Developing legal assistance and protection mechanisms for victims of human rights violations and vulnerable groups suffering discrimination;

- Establishing oversight and complaint mechanisms;

- Support legal awareness and empowerment of people's ability to demand and use services from justice institutions.

The logical framework matrix: The use of the logical framework matrix should be made more effective, and its design should be further improved, given that far too often Objectively Verifiable Indicators (OVIs) are general and not quantifiable, or only tenuously linked to project objectives. This makes the logical framework less valuable as an on-going management tool, and compromises monitoring and evaluation. In addition, logical framework matrices are less likely to be put to continuing use, through on-going consultations with project partners and target groups.

It must be recognised that there are many difficulties inherent in the design of quantifiable indicators for the justice sector, which often appear unrealistic, arbitrary, ill-defined, or inconsistent with the expected results of the intervention. For this reason, excessive emphasis is placed on outputs, rather than results. For example, OVIs may look at the number of people trained in seminars, the amount of equipment supplied, and the types of materials being produced and disseminated. However, a listing of outputs does not reveal whether any concrete results have been achieved. Results are manifested by changes in the operations of institutions, improvements in the working practices of legal professionals, improvements in the services received by target groups, and greater protection of human rights on the ground. Qualitative indicators can also measure the support provided and the reform process more adequately.

Assumptions and risks, as presented in project documents and reports, are also often criticised by monitors during Results Oriented Monitoring (ROM). Usually the assumptions and risks are considered insufficiently precise and inadequately formulated. In many cases, the exercise of identifying risks is carried out on a pro forma basis and lacks substance, and risk management is not systematically incorporated into the proposed actions.

CASE STUDY – Good governance in the Indonesian judiciary (2004-2008)

The main national stakeholder (Supreme Court) was not sufficiently involved in the design of this project, and hence the inclusion of a component on access to justice raised a few challenges due to insufficient ownership on the part of the Supreme Court, as well as due to unclear regulations concerning the Supreme Court's supervisory powers with respect to paralegals and mediators. Different stakeholders considered that this component, although legitimate, did not constitute a priority for the Supreme Court, since access to justice needed to be considered a State responsibility. Moreover, while it was positive to rely on specialised CSOs for the implementation of training activities, the government had to certify that there was a clear policy guaranteeing sustainability. The project also had to make several adjustments of activities, due to quality considerations. For example, the number of judges and court registrars to be trained was reduced in order to extend the subjects covered in the training. Several reports, especially the ex-post external evaluation conducted in February and March 2009, stated that the Supreme Court did not have the financial, technical and managerial capabilities to implement a decentralised project of this scope and financial volume.

Results Oriented Monitoring also indicates that the expected results from justice sector interventions are far too ambitious, and are often framed in general terms that defy measurement. The designation of results often does not take sufficient account of the sensitive nature of legal reform, institutional reform, and work with legal professionals, and the amount of time and sustained initiative required for achieving results. Institution building and restorative justice, in particular, rarely take place according to project time schedules. These issues are exacerbated when too many activities are planned, when obstacles to rural outreach and work in marginalised communities are under-estimated, when obstacles to absorption are underemphasised, and when the diverging interests of different players are insufficiently assessed.

The sector approach

General considerations: Sector support is part of a long-term reform process. Solutions start with the definition of priorities, depending on the country context, and advance in stages, in a dynamic manner. Sector policy dialogue is essential at this point, preferably in a coordinated manner with other donors, in order to increase the chances of obtaining firm commitments from the government.

Dysfunctional aspects of the justice sector (such as the improper exercise of influence, impunity, corruption, excessive use of pre-trial detention, torture, inhuman prison conditions, and the use of the death penalty) can lead to questions about the merits and basis of providing external support, even if eligibility criteria are met in a technical sense. When violations of human rights are exacerbated or left uncorrected by such dysfunctions, yet all of the conditions for sector budget support are met, political conditionalities should apply if entering into this mode of assistance. This approach is both constructive and firm, and demonstrates the commitment and vigilance of donors regarding the principles of rule of law, good governance and human rights.

However, if systematic and widespread human rights violations are committed with government approval, whether expressly (as State policy) or tacitly (through lack of oversight or failure to address impunity), sector budget support should not be an option. To do otherwise would amount to condoning, or perhaps even subsidising, such violations. This principle presents difficulties with respect to support for criminal justice reform and the security sector. The conservative nature of certain entry points cannot be allowed to block support entirely. Human rights might be better served by carefully calculated interventions, which isolate and focus on the most appropriate targets, to achieve progress towards concrete but more limited goals.

Thus, with regard to law enforcement personnel, capacity building can incorporate training on human rights, and how to carry out operations while still respecting due process and the rights of defendants. Similarly, the supply of law enforcement equipment and support for forensic sciences enables police to focus on the search for evidence and material proof, without undue recourse to testimony that might be obtained in violation of human rights. Support for legal empowerment of people to claim their rights as well as to demand services of institutions is also possible in these contexts.

In relation to providing support to prisons, improved living conditions for detainees, accessible medical care, education and vocational training, as well as the delivery of rehabilitation services are key concerns to be examined, as is the reduction of prison populations, which is an objective of many interventions. It is also important to improve policies and operational procedures, which can have a positive impact on the human rights of detainees.

The seven key assessment areas: The purpose of a Seven Assessment Study is to assist in the identification and formulation of a project or programme, using the Sector Policy Support Programme as an implementation modality, in line with the EC Guidance for SPSP. In compliance with the terms of reference, a consultant team works in two phases with designated representatives of the Sector Working Group on SPSP:

- Phase I is devoted to confirming that conditions for an SPSP are met, and identifying any areas where improvements are necessary for successful application;
- Phase II is devoted to developing recommendations covering a) conditionalities for payment, b) indicators, c) targets, d) the payment calendar, and e) disbursement arrangements.

The seven assessment areas covered in a study to confirm the conditions for an SPSP are:

- Area 1: National and macroeconomic framework
- Area 2: Sector policy and overall strategic framework
- Area 3: Budget and medium term expenditure framework
- Area 4: Public financial management systems
- Area 5: Donor co-ordination
- Area 6: Performance measurement
- Area 7: Institutional and capacity development.

The assessment study formulates options for implementation, such as proposed operating and financial modalities, combined with performance indicators, targets and conditions, disbursement arrangements, and a calendar covering actions that are required to qualify for the envisaged SPSP.

CASE STUDY – The e-justice programme in South Africa (2000-2007)

Sectoral Budget Support was used in South Africa for "Support for the Transformation of the Justice System: the e-Justice Programme", which was implemented between 2000 and 2007, which was initially planned until 2004. A total budget of €25 million was used to connect individual courts, computerise the management and operation of criminal proceedings, organise the budgeting for juvenile justice, etc. Change management procedures were employed, training was provided, and communications were improved. The sector budget support was requested by the authorities, who found the project approach, used for the previous project, unsuited to their reality.

This large and ambitious programme resulted in major advances in computerisation, and automation of business processes and management information systems, thereby improving the work of the Department of Justice and the courts, and promoting transparency. However, deficiencies were observed at the implementation level, which resulted in several drawbacks: the system is not sufficiently integrated and coordinated, since other key institutions such as prosecutors and police offices did not benefit, and are still not connected to the court system (except in one pilot area). The overall objective of the programme, to ensure better access to justice and a more effective justice system, in particular for the poor and isolated groups, could not be prioritised, due to cost and delays in the technology roll out. Although the programme was based on the Integrated Justice Strategy, there was no real sector approach at the time, and the performance framework was weak. Therefore, the strategy had to be revised, and monitoring of results had to be strengthened. It appears that the use of sectoral budget support was premature. This is corroborated by circumstances surrounding the first business plan prepared by the Department of Justice, which did not meet the EC procedural requirements, causing a two-year delay before release of the first tranche of funding.

Regional programmes

The design of regional projects for the justice sector in several countries is challenging. The main obstacle is the need to harmonise concepts and planning according to a common perspective, in the light of different justice sector contexts. Additional challenges arise during the process of implementation, and in transnational cooperation. To address this, the European Union supports projects based on regional cooperation partnerships, and association agreements.

Despite different levels of progress in justice reform, this multilateral framework offers the possibility of identifying and carrying out a coordinated approach towards common problems affecting the sector that impede objectives such as consolidating the rule of law and protecting human rights. While legal systems of the different countries may share common characteristics, major differences can arise as a result of different political and socio-economic factors, as well as different legal and institutional frameworks. The level of independence of the judiciary, transparency in the administration of justice, and customary or religious laws can also differ from country to country.

European support for change in the legal systems at the regional level has been focused on training legal professionals, in order to improve the management and administration of justice, creating opportunities for dialogue, facilitating mutual exchanges of working practices and knowledge, and strengthening mutual aid in criminal and civil matters.

Measures financed under regional programmes are complementary to bilateral activities and other actions financed under the EIDHR and other thematic instruments.. They also search for mechanisms that facilitate the role of key figures within justice systems. Linkages with regional institutions and transnational bodies can facilitate these processes.

3.3. Crosscutting issues

This section looks at a representative sample in order to demonstrate how they can assist with the design of justice sector interventions, and set the stage for their successful implementation.

Gender mainstreaming

To include a gender perspective is of fundamental importance, since gender inequalities are specifically problematic in the justice sector. Women face often higher barriers in access to justice, both in the formal and informal system. Women also have heightened vulnerability, in particular illiterate women, widows, divorcees and the girl-child. Hence integration of gender issues in justice sector interventions makes reform more relevant, thorough and sustainable. Gender equality has positive effects on the protection of other vulnerable segments of society, and also benefits the population at large. Gender issues are crucial for any justice sector reform that truly aspires to promote human rights standards, good governance, and democracy. Every project needs to ensure that gender issues are appropriately integrated, and form part of all stages (dialogue, problem analysis, stakeholder analysis, definition of objectives and activities, design, implementation, and monitoring and evaluation).

The protection of gender rights in justice sector interventions is an important way to:

- Ensure that countries meet their responsibilities under international treaties;

- Ensure equal access to justice and support the rights of all segments of the community;

- Reform discriminatory laws and practice and promote the protection of human rights;

- Reduce and potentially eliminate impunity for gender-based violence;

- Ensure balanced representation of different groups within the justice sector;

- Strengthen the legitimacy of the justice sector, and build confidence and trust in it;

- Strengthen monitoring and supervision of the justice sector. ([54])

The Toolkit for mainstreaming gender equality in EC development co-operation ([55]) recommends the use of several tools during the stages of problem analysis, stakeholder analysis, identification, and formulation. The gender impact assessment form is an essential tool at the design stage, and facilitates integration of gender perspectives, so that they are considered throughout the intervention. It can help identify and analyse data on gender equality, support mainstreaming of gender issues, and facilitate the formulation of relevant indicators.

During the design phase, emphasis should be placed on the evaluation and analysis of:

- Rights of women under the Constitution and other laws (family code, succession law, etc.);

- Compliance with ratified international instruments related to gender rights;

- Disaggregated data on gender balance and the inclusion of women in governmental institutions, the civil service, justice institutions, and the legal professions;

- Gender sensitivity in practice, including the handling of domestic violence and sex crimes, and in particular in the court environment, defence rights, the availability of separate prison quarters and facilities, gender discrimination, unequal payment practices, equal opportunities in employment, etc.;

([54]) Extract: "Place of Gender in the reform of the justice sector" by Shelby Quast
([55]) http://ec.europa.eu/europeaid/sp/gender-toolkit/index.htm

- The role of women in the society and community;

- The role of women in decision-making.

Designed activities should integrate and engage women, to the extent possible, by:

- Ensuring gender equality in legislation and regulations;

- Advancing gender equality in governmental operations, such as public procurement;

- Promoting equal numbers of women in the public sector and judiciary;

- Advocating inclusion of gender rights in law enforcement and penitentiary operations;

- Ensuring representation of women in project management and decision-making structures;

- Ensuring equal participation of women in project activities, such as training, outreach, etc.

Children's rights

It is also important to mainstream children's rights in parallel to gender issues while designing a justice support or reform programme, due to the European Union commitment to promoting children's rights and responding to their basic needs as an integral part of both its internal and external policies.

Despite the international obligations contained in the United Nations Convention on the Rights of the Child (UNCRC) and its optional protocols, **children's basic needs and rights continue to be violated in many countries**, and their protection constitutes a key issue for the justice sector. This protection should be ensured by law enforcement agencies and their personnel as a priority. However this remains problematic, due to insufficient budgetary allocations for the protection of victims, failure to apply the law, discriminatory practices, and insufficient awareness, training, and specialisation of staff. In contexts of fragility in particular, children remain vulnerable to all forms of abuse, including harmful traditional practices, corporal punishment, violence, exploitation, child labour, trafficking, recruitment by armed groups, etc.

Regarding justice systems, **children face also persistent barriers to the fulfilment of their rights**, such as non-existent or partial access to justice (or access that does not take into account their specific needs), diversity and complexity of procedures, possible discrimination on various grounds (in particular the girl-child or children belonging to minority groups or those with disabilities), and lack of access to services. The risk of secondary victimisation of children by the justice system, that is, the risk of children being victims and then additionally also being treated unfairly in the justice process, in procedures involving or affecting them, is pervasive. Another important concern is the lack of adequate legal protection mechanisms and procedures for child victims and witnesses in most countries, coupled with insufficient social protection services to ensure the social reintegration of child offenders or the counselling and recovery of the child victims.

On the other hand, and despite the fact that deprivation of liberty should be a measure of last resort, many children are still detained for petty offences, frequently with adults and/or in appalling conditions, and often in pre-trial detention. Detention facilities generally lack proper sanitary facilities, adequate food, educational, vocational and recreational programmes, or psychosocial support. Children in detention are at heightened risk of violence, including sexual abuse. The consequences of incarceration on children are deep and long-lasting, and prevention and rehabilitation measures are limited.

In many developing countries, children are often not registered at birth, and hence cannot benefit from protection rights to which they would otherwise be entitled. They cannot, for instance, prove their age when legally required, or when it is in their best interests to be able to do so.

Also important to take into account is that in many countries the formal system coexists with informal systems, and that in many countries religious systems, such as *sharia law*, also play a crucial role, in particular in family matters. The recognition of informal and traditional justice systems existing in many countries can be harnessed and developed to ensure children's access to justice, whilst maintaining respect for their rights.

The implementation of children's rights in the justice sector remains challenging, both within the formal and informal justice systems. Priority attention should be given to children in need of special protection, including those deprived of their liberty, those with disabilities, those living or working on the streets, those belonging to linguistic, ethnic and religious minorities, and other vulnerable groups.

As an integral part of the **European Union** fundamental rights policy (specifically pursuant to Article 24 of the European Charter of Fundamental Rights), the protection of children's rights is given particular prominence in human rights and democratisation policy towards third countries. A number of recent European Union policies have established a framework for a comprehensive approach towards the protection and promotion of children's rights in third countries, particularly in situations involving a) child trafficking and prostitution, b) children being affected by armed conflict, c) violence against children, d) discrimination and social exclusion affecting children, and e) child labour. [56]

European Union-funded programmes, under different instruments, promote and safeguard the civil, political, economic, social, and cultural rights of children, through:

- Lobbying and awareness-raising on various international and regional legal instruments related to children's rights;

- Advocating and supporting legal reforms to ensure compatibility of national laws with international and regional instruments, declarations and related guidance from United Nations and other regional bodies, particularly legal reforms that prohibit all forms of violence against children, combating forced marriage, genital mutilation, and combating impunity;

- Developing and implementing country-specific strategies and plans to protect and promote children's rights, namely to combat and prevent all forms of violence;

- Developing and implementing national juvenile justice frameworks, in line with international norms and standards, in particular the "Beijing Rules". [57] Assisting in the field of family law: advocating and supporting birth registration, supporting the resolution of family conflicts (concerning custody and visitation rights), obtaining nationality, tracing family members in displacement situations, etc.;

- Monitoring cases of violence against children and cases of children in detention;

- Providing protection and assistance to child victims or witnesses in criminal proceedings;

- Empowering children to participate in decision-making policies that affect them;

- Enhancing children's participation in disarmament, demobilisation and re-integration (DDR) programmes, and transitional justice frameworks;

- Supporting reintegration and rehabilitation programmes focused on child victims of violence or human trafficking (including sexual exploitation and child labour).

Human rights

The justice and security sectors cannot be dissociated from the overall human rights situation at the country level, as they are the key vehicles for the protection and realisation of citizens' rights in democratic regimes or the key-repressive actors in case of authoritarian regimes. Therefore a strong focus on human rights is needed in all support initiatives within the justice sector.

In a Human Rights Based Approach (HRBA) the starting point is the individual as the subject of human rights while States and other duty-bearers are answerable for the observance of human rights. This is different from

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[56] The EU Guidelines on Children and Armed Conflict, the EU Guidelines on the Promotion and Protection of the Rights of the Child, COM (2006) 367 final – 4.7.2006 – Communication from the Commission "Towards an EU strategy on the rights of the Child", SEC (2006) 889 – 4.7.2006 - Commission Staff Working Document accompanying the above communication "Preliminary inventory of EU actions affecting Children's rights"; COM (2008) 55 final – 5.2.2008 – Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee, and the Committee of Regions "A special place for Children in EU External Action". All available at http://www.eeas.europa.eu/human_rights/child/index_en.htm

[57] http://www.child-abuse.com/childhouse/childrens_rights/dci_bei1.html

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> ### CASE STUDY – Probation for juvenile offenders in Georgia
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> A project on penitentiary reform in Georgia, including probation for juvenile offenders, was implemented from 2008-2010 by UNICEF, with EU support. The project worked to create a comprehensive juvenile justice system, focused on the rehabilitation and reintegration of juvenile offenders, in accordance with the United Nations Convention on the Rights of the Child (ratified by Georgia). The project directly responded to the needs of multiple target groups and beneficiaries, including convicted juveniles, child probationers, staff of detention facilities (including teachers), probation officers, representatives of civil society organisations, judges and policy makers. The project managed to create a highly collaborative atmosphere, making it possible to engage in policy dialogue, and strengthen links between the penitentiary and probation systems. Achievements included establishing a system of individual reintegration of juveniles at Avchala prison, helping juveniles develop interpersonal and communication skills, providing sports and recreation activities, involving civil society organisations in the rehabilitation process, and generating acceptance of child-centred reintegration models involving trained coaches.

a needs-based approach where there is no duty-bearer. The HRBA makes the accountability clear, since it identifies the rights holders (people) and the duty bearers (the state/ institutions) and enables development cooperation to support the capacities of "duty-bearers" to meet their obligations and/or of "rights-holders" to claim their rights. It also emphasises the importance of the governance principles of inclusion, participation, transparency and accountability.

A Human Rights-Based Approach consists of a) assessing the requirements for applying and enforcing international human rights standards, and b) building the capacity of prime actors, on both the demand and supply side of justice services, so that they can engage in dialogue, meet their responsibilities, and hold justice delivery mechanisms and state institutions accountable for their shortcomings with respect to the promotion and protection of human rights. [58]

While analysing the context and designing a project supporting the justice sector, the Human Rights-Based Approach can be developed by:

- Reviewing the adequacy of laws, policies, and strategies addressing human rights issues;

- Identifying the core human rights and discrimination problems facing each vulnerable group;

- Assessing and prioritising human rights problems affecting operation of the justice sector;

- Assessing human rights problems affecting operations of each justice sector entry point;

- Defining human rights issues and violations related to specific objectives, such as enhancing access to justice, providing information resources, ending discrimination, legal empowerment, etc.;

- Identifying services and service providers that can promote and protect human rights;

- Identify and involve checks and balance institutions/actors that could ensure civilian control and democratic oversight over the operation of the justice sector (e.g. Ombudsman, Parliament, independent Human Rights Commissions, Court of Auditors, civil society organisations).

Once these issues are identified, the project design should focus on:

- Legal and institutional reforms that enhance the promotion and protection of human rights;

- Capacity building regarding human rights for justice institutions (formal and informal);

- Awareness and capacity raising activities for officials and members of the legal profession;

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[58] The United Nations has a web portal on Human Rights Based Approaches, available at: http://hrbaportal.org/?page_id=3197 See also "A Practitioner's Guide to a Human Rights Based Approach to Access to Justice" prepared by UNDP, available at: http://hrbaportal.org/wp-content/files/1233230279_8_1_1_resfile.pdf

- Advocacy activities directed towards promoting and protecting human rights;

- Education and empowerment of vulnerable groups facing human rights violations, discrimination, and obstacles to access to justice;

- Developing provision of services and legal assistance to vulnerable and marginalised groups;

- Creating mechanisms to ensure inclusion and participation of vulnerable social sectors;

- Synergies, interrelationships, and linkages between different categories of interventions;

- Accountability and ethics of justice sector professionals.

CASE STUDY – Support for the justice system – activating village courts in Bangladesh

The overall objective of the project (implemented 2007-2012) was to improve access to justice for disadvantaged and marginalised groups, and enhancing human rights systems and processes in Bangladesh. The project used a Human Rights-Based Approach to programming and delivery in order to promote and protect human rights and security.This project illustrated sound use of a Human Rights-Based Approach because it linked the consolidation of Village Courts (formal institutions established at the rural level in Union Parishads) with legal reform, capacity building for elected governmental officials and policemen, and raising awareness of citizens, including concerning gender issues. The project also included evaluation of court performance through the development of monitoring, inspection, and evaluation procedures on the part of the Ministry of Local Governance.

Anti-corruption

Corruption can undermine the functions of any entry point within the justice sector, and diminish the operation and credibility of the sector as a whole. Furthermore, corruption in the justice sector undermines its capacity and moral authority for addressing and fighting corruption in other sectors of society. This in turn has a highly detrimental effect on national development, economic activity, and the welfare of the people. Therefore, the design of justice sector interventions should a) consider how to reduce or eliminate corruption in the selected entry points, whenever this is relevant and feasible, and b) identify ways to use selected entry points to fight corruption in the wider society.

Corruption should be addressed in a holistic manner, which includes the related themes of transparency, accountability, participation and access to information. Corruption flourishes where there is an absence of transparency, lack of accountability, and restrictions on access to information. Corruption can therefore be reduced, for example, by a) computerised information management systems that promote transparency and the non-selective distribution of Court cases to judges, b) human resources reforms that improve management and enhance accountability, and c) freedom of information acts or consultative processes that enable citizens to learn about what government officials are doing, and express their views.

International standards are important for these purposes, and a great deal of information and assistance can be obtained from international and multi-national institutions. The principal areas of focus include court operations and the work of legal professionals. Ethical codes and mechanisms for ensuring professional responsibility and integrity can play an important role. Project design can build anti-corruption measures into activities, which could then be mirrored as Objectively Verifiable Indicators.

Other crosscutting issues, such as the environmental impact, can be used to help design and improve the effectiveness of justice sector interventions. The choice should be made on the basis of the development context, the characteristics of the sector, national priorities, etc.

3.4. Use of indicators and factors for sustainability

Indicators are factors or characteristics of the justice sector that can be measured. They play a crucial role in the design, implementation, monitoring, and evaluation of justice sector interventions. In fact, it is not possible to successfully carry out programming without understanding and utilising a wide range of concrete indicators, depending of course upon the exact nature of the intervention.

In its Project Cycle Management Guidelines the European Commission identified four types of indicators for assessing project performance:

- *Input Indicators* measure the financial resources injected into the project. They establish a direct link between these resources and the results achieved, in order to better assess the effectiveness and efficiency of the interventions carried out, and their added value. Examples include technical assistance, financing for activities, funding for premises or operations, support for personnel, and the purchase of equipment and supplies. It is important to consider results in terms of changes in capacity and operations, to assess the links between inputs and results. For this purpose, liaisons for beneficiaries should be established in advance, and their work should be governed by protocols and set criteria.

- *Output Indicators* measure the immediate and concrete results of the resources used and the measures taken. Examples include the number of training courses provided and personnel trained, the number of buildings constructed or renovated, the amount of equipment provided, the functionalities of software designed/provided, the nature of training or documentary materials prepared, the number of laws drafted and passed, etc.

- *Outcome Indicators* measure results with respect to the beneficiaries of interventions. They cover the use of and satisfaction with products and services. Examples include the number of inmates receiving legal aid, and the number of people accessing services delivered by the judiciary. In order to measure outcomes, it is necessary to have baseline data, which is not always available through official sources. Monitoring reports regularly mention the lack or insufficiency of Objectively Verifiable Indicators (OVIs) in logical frameworks.

- *Impact Indicators* measure the consequences of outcomes based on programme objectives. Examples include reductions in the proportion of people in custody in relation to convicted prisoners, improved decision-making by judges, shortening of the time required for handling lawsuits, reductions in judicial backlogs, fewer defendants being sentenced without access to a lawyer, etc.

The first category focuses on inputs, while the latter three categories focus on outputs. Since indicators depend upon the objectives and results of a given intervention, their categorisation may vary slightly. For example, the modernisation of a training curriculum may be a direct output of the provision of expertise from a project, or it could be the outcome of institutional strengthening which improved the system and procedures for curriculum development by a national committee. Similarly, increased use of alternative dispute resolution mechanisms is an outcome indicator if the mechanisms were created by the project, but can be an impact indicator if they result from specialised training programmes for legal professionals or outreach campaigns.

It is also possible to characterise indicators on the basis of the level of measurement. Under this paradigm, indicators can measure strategic objectives, institutional objectives, or activities. ([59]) The source of information could depend upon the level of indicator, and also the time frame involved.

It is important to employ sound methodology for identifying and prioritising indicators. Civil society organisations, when included in this process from the beginning, can play an active and valuable role in collecting data and evaluating compliance. It can be considered a best practice for EU Delegations to insist that projects focus more on indicators and make them the basis for consultative processes during the inception and implementation phases.

As a general rule, **indicators should be SMART:**

- *Specific.* Indicators that are aspirational or general are difficult to measure and of little practical use. Justice sector indicators frequently suffer from lack of precision. This is despite the fact that only specific objectives

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59 See *"Measuring Progress Towards Safety and Justice: A Global Guide to the Design of Performance Indicators Across the Justice Sector"*, prepared by the Vera Institute, available at: http://www.vera.org/download?file=9/207_404.pdf and http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/VeraDFIDSummaryPaperNov2003.pdf

reveal progress towards achieving objectives and provide valuable guidance concerning corrective measures when they are required.

- *Manageable.* Indicators need to be practical and suitable for utilisation by the parties that rely on them. Special efforts, including consultations with counterparts, are required for making justice sector indicators manageable.

- *Attainable.* There is little point in employing unattainable indicators. However, since the objectives of justice sector interventions tend to be general and ambitious, indicators often follow suit. If an indicator is not attainable within the project context, it should not be used.

- *Relevant.* Indicators must measure progress towards actual objectives. Far too often, indicators measure factors which are only peripherally related to objectives, or which do not demonstrate whether objectives are being achieved.

- *Time-Oriented.* Due to the duration of justice sector reforms, indicators can and should be categorised according to their time frame. It is important to be realistic and specific when it comes to timing for achieving goals. Reasons for changes should be elaborated. Only indicators that correspond to the timeframe of the intervention serve for tracking progress.

Lessons learned from EU experience indicate that several factors can improve the definition of specific objectives and requirements for technical assistance at the design stage. The list of patterns presented below specifies best practices to enhance ownership and leadership by justice partners:

- Avoid overly complex implementation structures, be realistic in terms of objectives to be achieved, and plan longer implementation periods.

- When there is insufficient understanding of EU procedures on the national side, invest in consultations and explanations, and build support into the project management structure, allowing time and flexibility so capacity development is achieved.

- Adapt the institutional set-up of the project to legal realities, and identify possible obstacles in national law (such as labour, immigration, taxation and customs regulations) that could interfere with staffing, management and procurement.

- Project schedules should allow sufficient time for establishing necessary technical management capabilities and securing required financial commitments from project partners.

- Project components should be linked with each other, and take advantage of crosscutting elements.

- Projects should foresee regular internal and/ or external evaluations concerning impact and sustainability.

3.5.   Dialogue with national counterparts

Dialogue with national counterparts can be divided into two facets, taking place at: a) the political level, and b) the sectoral level. The links between political and sectoral dialogue need to be strong in order to maximise impact. Individuals taking part in political dialogue meetings must be informed by technical/sectoral inputs, and they must also subsequently feed back to technicians on the deliberations in the political dialogue meetings.

a) Political dialogue. The European Consensus and the 2006 Communication from the European Commission on Governance as well as the 2011 Agenda for Change stress the importance of regular and in-depth dialogue between EU institutions and Member States and political leaders in partner countries and regions. In this context, respect for good governance, human rights (including gender rights, the rights of the child, and protection of minorities), democratic principles, and the rule of law must be regularly assessed and addressed, to build consensus and identify appropriate supportive measures. The participation of civil society and gender equality are identified as two of the five essential elements of development cooperation.

Political dialogue may cover more than one area of cooperation, according to the preferences of leaders. The judiciary and human rights are usually encompassed. Relevant crosscutting themes, such as poverty reduction, fighting corruption, gender equality, rights of the child, and controlling cross-border and organised crime, are often included.

European Union approaches to political dialogue with partner countries have been harmonised according to the regional context, and reflect the financing instrument(s) being utilised. For example, political dialogue is explicitly provided for under Article 8 of the Cotonou Agreement, for ACP countries. It is also featured in the Association Agreements with Mediterranean countries, the Partnership and Cooperation Agreements with the Newly Independent States, and association or cooperation agreements with Latin American countries. Other agreements with Asian countries include human rights clauses.

The use of performance tools to measure progress towards democratic governance is designed to structure and deepen the political dialogue. It also provides incentives in the form of additional funds when progress is demonstrated, and necessary reforms are adopted.

Under the ENPI and Association Agreements with Mediterranean countries, political dialogue is conducted through sectoral subcommittees, with one specifically focused on judicial reform. Donor coordination and the inclusion of a broad range of stakeholders have proven helpful for establishing incentives and benchmarks, and thus strengthening political dialogue.

In fragile countries, different strategy responses have been utilised by the European Union, depending upon the specific nature and gravity of the circumstances:

- After conflict or a *coup d'état*, political dialogue has been used to engage transition governments in processes leading to the restoration of democratic institutions, strengthening of the rule of law, and greater respect for human rights. Further, the justice sector has been prioritised in the context of transition and institutional reform, specifically including defence and security organs.

- In countries with weak economies, the European Union generally focuses political dialogue on the relationship between governance and the justice sector, and socio-economic development issues. Strategies may be centred on structural poverty and the delivery of public services to the people, especially the poor, including access to justice and administrative justice at the local level.

- In unstable or vulnerable countries, political dialogue has been based on mutual commitment to promote participatory and democratic governance, strengthening compliance with international human rights obligations and standards, and internal dialogue that promotes reconciliation and harmonisation of the justice system, including traditional elements.

Political dialogue is extremely important for ensuring ownership, commitment, and accountability on the part of senior national counterparts. Through dialogue, it is possible to lay the groundwork for national level buy-in and ownership for justice sector initiatives. Continuing the dialogue enhances the chances of successful implementation, and improves oversight, monitoring, and evaluation, in accordance with overall development objectives.

b) Sector policy dialogue. Sector policy dialogue is performed by EU Delegations before and during interventions in a specific sector. It is often intended to define and design a sectoral strategy, and transform it into an action plan with an appropriate and implementable budget. Key features include a structured exchange of views, formulation of positions and perspectives, and agreement on respective and mutual commitments by the EU and host government.

Dialogue should be *regular*, and continue throughout the entire period of an intervention, that is from its design to its final completion, notwithstanding personnel changes in counterpart ministries. Dialogue should also be *inclusive*, to ensure that all relevant stakeholders participate and contribute in as many ways as possible.

In this respect, particular attention should be paid to including civil society organisations and other non-state actors (such as Bar Associations and paralegal organisations) as part of the sectoral dialogue, in order to have a balanced overview on the needs of the state and the needs of the people when it comes to the functioning and deliverables of the justice sector, and to help monitor the progress and outcomes of the intervention. Whilst ideally the needs of the state and its people should coincide, often the justice system, due to structural weaknesses and vulnerabilities, does not meet the expectations of the population (in terms of fairness, effectiveness and timeliness), and people's needs or legitimate interests are not reflected in Governmental policies or response strategies.

Sector policy dialogue can utilise a number of specific mechanisms, in accordance with needs and preferences in specific countries. In Vietnam, for example, strategic dialogue was structured through a Sub-Group on Cooperation

in Institution Building, Administrative Reform, Governance, and Human Rights, created under the EC-Vietnam Co-operation Agreement. The major justice sector initiative, the Justice Partnership Programme, carried out in cooperation with the Governments of Sweden and Denmark, follows the sector policy dialogue, and is based on the Legal Systems Development Strategy and the Judicial Reform Strategy for Vietnam.

It is important to build consensus and obtain commitments concerning as many objectives as are feasible, and engage as many parties as possible in results-oriented justice sector planning. It is well established that when governments commit to a consultative framework involving all relevant stakeholders, especially those who are involved in carrying out reforms, the sector policy dialogue leads to more effective design and implementation of specific initiatives.

This process always works best when governmental counterparts are interested and able to elaborate a sector strategy plan or plan of action for justice reform. In order to make this happen, it is appropriate and often advantageous to use a "re-thinking project" prior to a sector policy support programme (SPSP), to help identify strategic priorities and develop interventions tailored to the priorities identified by counterparts . Basing a sector policy support programme on national priorities and initiatives greatly enhances the degree of national ownership over the process, and thereby achieves more sustainable results.

Dialogue on both the political and sectoral levels must be coherent, continuous and meaningful. It cannot take place on a one-time basis, as it is not enough to build political will and sectoral ownership at the outset. Rather, they must be maintained, re-invigorated, and exercised through implementation and oversight mechanisms, in order to keep initiatives on track and achieve meaningful results.

4. Implementation, monitoring and evaluation of justice programmes

4.1. Project oversight

Project oversight includes an overall range of actions such as regular review, examination of work plans/ programme estimates and budgets, quality assessment of project progress, collection of information, facilitation of communication between stakeholders, suggestions on corrective measures of operational plans, and other tasks to promote effectiveness and efficiency. For the justice sector, regular oversight is extremely relevant and necessary, due to the political and technical nature of the work. EU Delegation Task Managers need to periodically verify that planning documents are serving as reference tools for the implementation and evaluation of the project, that they are followed, implemented, updated regularly, and fully adapted to the situation.

1. General Issues. The main responsibilities of EU Delegation Task Managers in other sectors of cooperation and development are also valid for the justice sector. These include:

● Maintaining a policy dialogue with stakeholders during project implementation and evaluation is particularly important in justice sector interventions. This engages them in the workflow and progress, and ensures their commitment to objectives. Regular meetings with key actors working for project partners and beneficiaries, at both senior and working levels, keeps them advised of developments, obtains their input, and demonstrates commitment.

● It is equally important to maintain dialogue with stakeholders in the period between project formulation and project implementation. This period can often be lengthy, and the goodwill and momentum developed in the project design phase can be significantly eroded. Updating counterparts and other stakeholders serves to reassure stakeholders, and helps maintain interpersonal relationships, which in many contexts are a determining factor in project success. In addition, on-going dialogue will provide advance notice of any emerging political, economic and other developments that could potentially have an impact on the project, and allow for corrective measures in a timely and strategic manner.

● Reviewing the use of resources (financial and working days), expenditures, the implementation of activities, and delivery of results, through analysis of project documents submitted to the NAO and EU Delegation and consultations. Assessment of project progress also includes regular visits to the project implementation unit (PIU), technical assistance unit, or national executing agency in charge of project management.

● Carrying out internal project monitoring, to ensure that a viable project implementation framework is in place and that basic operational and reporting requirements are met.

It is recommended that:

● Internal project monitoring and evaluation be conducted parallel to project procedures. Terms of Reference for recruiting technical assistance should systematically include monitoring and evaluation mechanisms. Senior sector counterparts should be actively involved in management.

● Service delivery results and capacity enhancement be made consistent with inputs and outputs. The need for international consultants should be demand-driven and justified by insufficient expertise from other sources. Tools and methods that can enhance institutional capacity at lower cost (such as institutional networks, Twinning/ TAIEX arrangements, Sigma instruments, or domestic resources such as CSOs, think-tanks, universities, and local consultancy groups) can provide significant benefits to justice sector entry points.

● Reports focus on results, since justice sector reform is not achieved by delivering outputs.

- Management, coordination, and financial arrangements are rigorous and appropriately reflect the political climate and institutional context for justice sector interventions.

- Sound information-sharing mechanisms include the project team, partner institutions, beneficiaries, target groups, and other donors, according to the specificities of access to information and public awareness-raising for justice sector reform.

- Project implementation focuses on results, ownership, and sustainability.

2. Specific Issues: The integration of crosscutting issues in justice sector interventions should be rigorously monitored during the implementation and evaluation phases. Too many projects omit crosscutting issues during implementation, even though they were foreseen during design. To achieve results in justice sector interventions, it is necessary to integrate crosscutting or overall goals in joint work with entry points. EU Delegation Task Managers should remind management units, technical assistance units, and partner institutions to incorporate crosscutting objectives in their operational and evaluation plans, or programme estimates.

a) Increase gender equality and mainstreaming:

- Integrate a gender equity policy in the operation and monitoring plan. Encourage counterpart institutions to establish and implement a gender equity policy. This includes integration of gender awareness in operational guidelines, equitable inclusiveness in activities such as training, promoting full access to legal and other services, ensuring full participation in governance mechanisms, and equal representation in project management structures or technical assistance units.

- Consult with gender specialists during the intervention. Involve representatives of governmental bodies having jurisdiction, such as ministries of social development or women's affairs, in both design and implementation, and particularly with respect to strategy development, information sharing, and outreach.

- Apply a gender-sensitive approach during the intervention. Establish and publicise an official project policy of non-discrimination against vulnerable groups, in the form of a protocol or code of conduct, to be respected by all counterparts.

- Monitor and address gender-based violence issues. Consider benchmarks established in national action plans or evidence collected by CSOs or official institutions involved in the delivery of gender-sensitive services. Follow-up procedures should provide both legal and psycho-social assistance or services. Providing justice to victims of violence must be adequately coupled with healing processes, to facilitate recovery and reintegration, and avoid re-victimisation. This process should involve transitional or regular institutions performing inquiries and assessments.

- Include a strong advocacy component. This is the only way to facilitate legal reform and improve judicial procedures, and eliminate discriminatory provisions and loopholes, which often obstruct the rights of victims of violence. It is also extremely important to take measures to promote community empowerment. Communities need to be mobilised, through CSOs and service providers, to address and redress violence against women. Capacitating activities should target parties that require sensitisation, such as legal professionals and law enforcement personnel. There should also be adequate budgetary allocation for case monitoring and implementation of laws.

b) Apply human rights-based approach.

The above-mentioned human rights-based approach can be used to complement gender mainstreaming, and promote other crosscutting issues. It should incorporate participation, accountability, non-discrimination, and empowerment. Participation is particularly important in justice sector reform projects, to ensure that human rights are enjoyed in practice, not just in theory. Accountability is the sole manner of ensuring that justice sector entry points fulfil their obligations. Non-discrimination must apply throughout justice sector interventions; otherwise their raison d'être is undermined. Empowerment of communities must be included in justice sector projects, since citizens can only enjoy their rights and receive adequate legal protections and services when they are informed, engaged, and mobilised. ([60])

([60]) Key concepts of this approach are presented by the International Human Rights Network, at www.ihrnetwork.org

Crosscutting issues should be systematically integrated in work plans, programme estimates, technical assistance plans, capacity building exercises, training curricula, indicators, oversight mechanisms, and standards for outreach and awareness-raising. The logical framework matrix indicators regarding crosscutting issues should be regularly assessed and updated.

4.2.   Project management

Management structures should be established during the Inception Phase, and become operational upon project start-up or without significant delay. Project management institutions for justice sector interventions often have the following arrangements:

- *Technical Assistance or Technical Facilitation Unit (TA or TFU).* This structure is mandated to assist and support the project, and includes an advisory and capacity building role for the partner institutions and other justice sector stakeholders. Since the Aid Effectiveness Agenda and Backbone Strategy recommend progressive removal of all parallel Project Implementation Units, new projects are engaging technical assistance to advise national executing bodies on project management and coordination, without substituting or replacing these functions.

- *Project Steering Committees (PSC).* Project Steering Committees can play a key role in justice sector interventions, by bringing key parties together, promoting strategy development, generating consensus, and building momentum to overcome political obstacles or institutional inertia. They can provide crucial guidance for project implementation, validate objectives and activities, promote coordination, and build sustainability. To do so, they should be inclusive, bringing together the NAO, ministry stakeholders, courts, justice institutions, representatives of parliaments, Bar Associations, law faculties, and CSOs), plus independent experts or representatives of target groups if appropriate. The PSC should be well managed, operational rather than ceremonial, and guided by a Protocol. Backstopping should be provided by the project.

- *Technical Project Committees (TPC).* TPCs are flexible structures, capable of meeting monthly, which have shown great effectiveness in justice sector interventions. They can resolve specific problems, advance activities, address implementation issues, facilitate coordination, engage in consultation, and monitor results. TPCs usually include working level representatives of beneficiary institutions, the NAO, and the EU Delegation Task Manager, as well as some stakeholders. The technical assistance team leader and component experts should attend meetings, to clarify specific points. It can be helpful to have a TPC meeting just before and in preparation for PSC meetings.

- *Working Groups.* Working Groups composed of technical experts and representatives of national counterparts, including civil society, can address specific project components or activities (such as legislative drafting and capacity building), or handle key tasks (such as monitoring and evaluation). Inter-institutional structures promote transparency and accountability, and expose counterparts to international expertise and information concerning best practices.

- *Local Committees.* Local committees can perform similar functions to Working Groups, but on a local level, and with a focus on local concerns, such as providing access to justice or delivering legal services. Local committees can include representatives from local government, regional representatives of justice institutions, district police, community CSOs, local media, and representatives of women and disadvantaged groups. Local committees can perform outreach and get involved with conditions on the ground, which is particularly valuable in justice sector interventions, and prevents them from becoming overly focused on urban areas. Occasionally, work to improve access to justice, expand the reach of alternative dispute resolution mechanisms, and provide key services, needs to take place at the local level, and requires local committees to maintain momentum.

In order to ensure proper management of justice sector interventions, it is important to:

- *Refine the project activities.* Updating and finalisation of project activities is particularly important in justice sector interventions. It must be based on an assessment of the entry points and carried out through consultative processes. Failure to account for changes that have taken place in the gap period between design and implementation must be scrupulously avoided in justice sector interventions.

- *Match the Terms of Reference of the PIU or TFU and expected results.* When a PIU or TFU is established for a justice sector intervention, its Terms of Reference must be in line with the expected results. Criteria for expert profiles should be accurate, and the timing and content of reporting should be precise. Capacity development

and training on EU procedures should be systematically included in Terms of Reference when sufficient experience is not available.

- *Maintain institutional relationships.* Through regular consultations with authorities and entry points and components of the justice sector, the EU Delegation, the NAOs and the line ministry need to establish and then maintain an effective political and technical dialogue. There should be close coordination between the TFU and the planning unit of the main project partner. This helps to establish sound implementation procedures, and clarify institutional relationships.

- *Enhance country ownership.* It is often the case that the management of a justice reform project remains mostly dependent on a few key persons. As country systems are now the first choice to implement aid delivery programmes, including justice reform projects, the European Union has largely promoted the use of national institutions, departments or agencies as implementing partners. Most of the management structural mechanisms include a national director or coordinator, seconded by a ministry or the government. Other arrangements included a multi-disciplinary team to manage project execution bodies, with one interlocutor coordinating the others. Their background should be mixed, but with a preference for persons coming from the judiciary, Bar Associations, or CSOs.

- *Involve CSOs in sectoral coordination and project management.* The inclusion of NSAs and CSOs in management and coordination mechanisms is crucial in justice sector interventions, however this may be sensitive for authorities. Dialogue and consultation are required to enhance understanding and acceptance. CSOs should be included in workshops defining sectoral policy, and be allowed to help define objectives and implementation mechanisms. They should then have a meaningful position in project committees, particularly for monitoring and evaluation. To ensure this, indicators within the policy matrix or logframe can include regular consultation.

4.3. Reporting requirements

Reporting requirements are set forth in the Terms of Reference of service contracts or Technical Administrative Provisions. Reporting conditions are often requested by executing or Technical Cooperation units in order to facilitate implementation and evaluation.

The inception report in justice sector interventions should clearly set forth the most up-to-date information concerning the objectives and functional status of key partner entry points, and explain how work with them will achieve overall objectives. It should document what has changed since project design, how this has been determined, and what is being done about it.

It is extremely important to include a risk management strategy in justice sector interventions. Far too often, inception reports take a *pro forma* approach to listing risks, and stating that they will be monitored. Justice sector interventions depend upon genuine risk analysis, and a proactive approach to risk management, in order to succeed. Risk analysis facilitates implementation and can be seen as an integral part of strategic planning. Assumptions that need to be fulfilled and risks that need to be avoided should be carefully identified and documented in a risk assessment matrix.

Deficiencies in this regard are regularly noted in ROM reports. The risk assessment matrix should integrate realistic mitigation strategies, and describe preventive and remedial measures for every type and level of risk. Risks that need to be considered include a) political influence and the level of commitment, b) obstacles to legal and institutional reforms, c) difficulties in carrying out capacity development and human resources development, d) turnover of staff in justice institutions and CSOs, e) technical impediments to improving court operations and information management, f) difficulties working with traditional and transitional justice mechanisms, etc.

This approach should be applied and carried out through the logical framework matrix, and the establishment of meaningful OVIs. In other respects, inception reports for justice sector interventions should apply best practices applicable to other sectors.

Interim or Progress Reports should move beyond summarising outputs, and explain what progress has been made, and how it will be made sustainable. Sustainability is an on-going concern with EU support for the justice sector and justice sector reform. Terms of reference for the recruitment of technical assistance sometimes ask for explanations and planning for the transfer of competences and continuity of project initiatives for each component. This strategy is, however, rarely integrated in progress or interim reports, due to the focus on project achievements. The

assessment of programme sustainability is therefore more developed in ROM reports. However, the sustainability strategy and mechanisms for building ownership and long-term commitment should be defined in the inception report, and be a point of focus in the interim or progress reports.

A Phase-Out Strategy should be included in later progress reports. Justice sector interventions are often followed-up, due to the long-term nature of the reform process and the flexibility necessary for achieving impact. However, due to the long project time-line, there may be a gap even when planning proceeds on pace. Therefore, interventions should always establish a phase-out strategy, document it in project reports, and discuss it with counterparts, including at the PSC Meetings.

Ideally, the phase-out strategy should be developed at least one year before the end of the project, and the last six months should be devoted to its realisation. It is important to set the stage for follow-up, transfer responsibility for on-going activities to national counterparts, and finish up activities such as the preparation of training curricula and information materials for later dissemination.

Continuity is the main objective, and sound methodology is the only way to achieve this. The methodology should incorporate risk analysis, capacity assessments, and resource requirement estimates, but in the special context of project termination and the transfer of responsibility. Phase out strategies should always be designed with the full participation of counterparts, since it is ultimately their strategy, and will only be fulfilled if they embrace it.

4.4. Interim monitoring

Monitoring is defined in the PCM guidelines as the on-going analysis of project progress towards achieving planned results, with the purpose of improving management and decision-making. Interim monitoring of projects is critical, since it creates an opportunity to determine if work is on track, and if necessary take remedial measures, which increase the likelihood of achieving results.

1. Bilateral cooperation projects with a project approach

a) Regular monitoring of multi-donor programmes managed by other agencies. Contributions to initiatives implemented by other agencies can only give conclusive results under certain conditions, including a) proper planning with realistic objectives, particularly in governance programmes, b) sufficient financial and human resources, and c) regular monitoring of European Union contributions. For these purposes, it is essential that the European Union secure a place in the PSC and technical programme-monitoring group, and play an active role in monitoring implementation.

b) Ensuring participation of CSOs in oversight and monitoring of project implementation. Regarding operational support and monitoring of implementation by NSAs, several types of arrangements are possible. NSAs can be included via a specific component of the project, or through an independent and complementary initiative such as the EIDHR. In each case, the sensitive nature of their work requires care to preserve independence and integrity.

c) Using the Logical Framework Matrix as a management and monitoring tool. It should be updated at least every six months by the project team, with the presentation of operational plans and budgets, and be considered during consultations with beneficiaries and stakeholders.

d) Setting up an integrated and comprehensive monitoring and evaluation system. Monitoring and evaluation are critical for quality and impact assessment of services delivered in justice sector interventions. They should be encouraged and supported through inclusion of process and impact indicators. This facilitates tracking of services delivered by justice sector institutions and helps resolve constraints for the efficient and effective management and evaluation of their operations. The system can also integrate experiences and best practices observed in other countries.

2. Bilateral cooperation projects with a sector approach

In Sector Policy Support Programmes, specific conditions are attached to the fixed tranche, covering sector management and coordination, sector strategy and action plans, and monitoring and statistics systems. Compliance with these conditions is a prior requirement for consideration of the degree of fulfilment, and hence level of disbursement, under the variable component.

Review Missions are the key instruments of the EU Delegation in implementation of the SPSP and have been used efficiently and effectively, by combining "interim" and "final" missions. They provide the possibility of promoting timely and appropriate fulfilment of the SPSP conditions by the government. Such Review Missions usually encompass:

- The reviewed compliance of the governmental actions with the conditions for the first instalment of the SPSP (usually managed internally by the EU Delegation);

- The reviewed compliance with the conditions for the second instalment and the preliminary assessment of this compliance, and the identification of areas of potential difficulty;

- The final review updates the status of compliance with the General Conditions and with the Specific Conditions, and remarks on some criteria under these conditions.

The review missions also provide recommendations and assess how many expected results of the SPSP have been achieved.

In SPSP, monitoring is more than simply examining progress with the Action Plan. It should include monitoring of the impact of reforms on the effectiveness of the justice system, not just its efficiency. Progress in the implementation of the reforms needs to be assessed against these broader outcomes every one or two years, and the Strategy and Action Plan needs to be adjusted or modified if it is not being achieved. Some conditions can also refer to establishment of a sound statistical base to support evidence-based policy decisions, and to enable effective monitoring of impact and modification of the Strategy and Action Plan to improve performance.

4.5.   Outreach and information dissemination

Transparent access to information concerning project activities and results on the part of stakeholders is crucial for justice sector interventions. Crosscutting objectives such as transparency, accountability, access to legal information, and access to justice depend on this. All stakeholders should have direct access to information concerning project outputs and services through a wide array of mechanisms. In order for projects to include outreach and information dissemination they should consider the following techniques, with guidance from EU Delegation Task Managers:

1) Transparency and communication strategy. Embody outreach to stakeholders and the general public in a communication and public relations strategy developed within a project activity (such as promoting human rights or providing training). The strategy can be used to transfer information, improve communication, and promote networking. Counterparts can be engaged in the process. Websites, brochures, and networking events can be utilised.

2) Access to legal information. Legal databases and publications, case management systems, and electronic libraries of training materials can be used to provide information, deliver services, and inform legal professionals, litigants, CSOs, target groups, and the general public. Computerisation and improved information management for the court system and various justice institutions can be incorporated into this process.

3) European Union Visibility. The Technical Assistance Team and national executing agency are responsible for ensuring compliance with the "Communication and Visibility Manual for EU External Actions" during the implementation phase. ([61]) EU visibility in justice sector interventions is usually accomplished through the use of project brochures, the placement of logos and official statements on all publications, manuals, stationery and business cards, and use of the European flag at events. Representatives from the EU Delegation should be invited to all events, and have an opportunity to make opening remarks and comments, whenever appropriate. However, it is possible and advisable to move beyond these customary measures.

Practical Tip: Promoting EU visibility

- Prepare a brochure entitled "Know Your Rights", providing basic information about key rights and contact information for parties which can promote and protect those rights, and distribute this brochure through counterparts, CSOs, and at project events;

- Generate publicity for project activities and the role of the European Union and its technical assistance through the media, relying whenever possible upon project counterparts to take the lead and engage in outreach;

- Consider media campaigns (television spots, radio shows, newspaper articles, press conferences, interviews, public hearings, etc.) to complement project activities, particularly those that include crosscutting themes that benefit from publicity (such as gender rights, access to justice, transparency, etc.);

- Use the project website as an outreach tool, and publicise it at every available opportunity;

- Send out electronic newsletters on a regular basis, to advise counterparts and target groups about what the project is doing and what it has achieved.

4.6.   Donor coordination and collaboration

Both internal and external donor coordination mechanisms prevent duplication and overlapping of activities in justice sector interventions, and create synergies and complementarity. Different coordination processes have proven effective during the implementation phase.

1. Project approach. Partner countries receiving support in the framework of a project approach often do not develop formal coordination mechanisms. The elaboration of a coordination framework therefore relies on joint initiatives involving the government and donors, and is of paramount importance in harmonising justice sector interventions. Given the diversity of initiatives being supported at any one time, PIU, TFU, or the national executing agency should always undertake a primary assessment of previous, current, and proposed donor assistance initiatives. If different approaches from different projects send conflicting messages to justice sector entry points, this can seriously undermine reform efforts. Projects need to coordinate with each other, and EU Delegations should oversee this process.

2) Sector approach. Countries that have adopted the Sector Budget Support mode need to set up a formal government-led mechanism for coordination and dialogue at the sector level. It is important for the government to maintain a broad overview of the entire sector and provide central coordination among the diverse stakeholders, from public institutions to civil society to international donor organisations.

4.7.   Institutional memory and information management

Justice sector interventions should rely on partner demand, and ensure that counterparts are equipped to complete successful and effective activities. This requires institutional memory and a sound information management system, to build upon previous results and set the stage for future results. This requires capacity development and expertise on the part of the National Executing Agency, and the ability to focus on achieving sustainable results in line with national priorities and strategies.

Technical assistance should provide flexible guidance and support for the creation of institutional memory, while ensuring compliance with project implementation requirements and EU regulations. This is usually focused on supporting the development of annual work plans and related budgets as a pre-condition for Programme Estimates, procurement and grant implementation. However this should be facilitated through use of an integrated information management tool for contracts, grants and financial management, which is a combined system for procurement, accounting and reporting adapted to EU rules. Technical assistance should guide the National Executing Agency to operate this tool to assess performance and measure results. Close attention should be paid to the transfer of information between the Technical Assistance Team, the executing body, project partners, and counterparts. Training tools and techniques, such as coaching and mentoring, have proven effective. Joint training and exchange of information on lessons learned are crucial. Individual capacity development plans for the staff of counterpart institutions can be established, with consent from the main partner.

Technical assistance should encompass a participatory and support–oriented managerial approach to information management and dissemination. As local ownership and buy-in are essential, close inter-relationships should be fostered with all stakeholders and partners throughout the project. For this purpose, technical assistance should promote dialogue and communication structures for engagement and smooth interaction with all stakeholders, including government institutions, civil society, and donors, as well as other related EU-funded programmes.

([61]) http://ec.europa.eu/europeaid/work/visibility/index_en.htm

EU Delegation Task Managers should ensure rigorous organisation and retention of project information. Reports on project implementation and evaluation (from TFU or EU Delegations) are not regularly registered in the CRIS system. Too often, project reports are unavailable, and occasionally only an inception report can be located. However, the most important document for future initiatives is the final project report. Record-keeping seems to be more systematic for projects handled by international organisations under Contribution Agreements, or those covered by monitoring missions. Clearly, EU Delegations must establish special mechanisms for ensuring that final project reports are archived and available at any time. The importance of complete access to final reports for future work with the justice sector cannot be understated. Setting up an integrated information management system for justice sector interventions is critical for collecting and preserving records of what has been done, and making use of prior experience and lessons learned.

Finally, in order to improve justice sector performance and implement an incremental policy of building upon reforms, European Union justice sector interventions should help authorities develop and disseminate information on a) the administration of justice, b) judicial reform strategies, c) budgetary allocations, d) the work of public officials, e) court procedures and decisions, f) how to obtain legal assistance, g) alternative dispute resolution mechanisms, etc. It is highly advisable that international donors take a systematic and comprehensive approach to institutional memory and information management, and ensure that specific interventions include this as both an output and as part of the monitoring and evaluation system. This will help obtain best results and the maximum level of sustainability for work within the justice sector.

5. Lessons learned, conclusions and recommendations (62)

5.1. Lessons learned

In order to implement the Aid Effectiveness Agenda and engage in sound operations, donors need to constantly identify and apply best practices and lessons gained from experience. Reviews and evaluations of European Union justice programmes have revealed the following key areas:

The Commission has substantially increased its engagement in justice sector reform globally through increased funding, development of its policy concept, and utilisation of a wide range of financial and non-financial instruments. There has been growing international policy consensus on the need to strengthen justice and security provision as part of wider state responses to poverty, conflict and insecurity. Most Commission programmes focused on individual sub-sectors, often adopting a technical focus to the detriment of policy dialogue with national authorities. Overall EU country support strategies anchored on partner government plans to improve service delivery were rarely developed.

The design of justice sector reform assistance programmes has not been adequately underpinned by local knowledge. The amount of additional analysis undertaken to guide programme design, including strategic security, governance and political assessments, varies greatly. Although efforts are made to consult national actors, the Commission relies heavily on external consultants to develop projects and frame approaches. This information problem is however, somewhat mitigated by the increasing use of Justice Sector Budget Support (JSBS). However programmes have been generally weak in terms of their use of baselines and indicators to measure progress and assess impact.

Commission assistance has heavily focused on building institutional capacity within state justice bodies, rather than on addressing the constraints to service delivery from the perspective of the intended beneficiaries. The overwhelming focus of assistance has been on technical solutions to justice problems delivered through training, advice, provision of capital equipment, and infrastructure development. This assistance helped to build capacity within, and strengthen governance of, these sectors, however this has often had limited impact in terms of improved service delivery. Insufficient emphasis has been placed on involving end-beneficiaries in addressing the constraints to service delivery.

The Commission has placed strong emphasis on national ownership at both policy and programming levels. However, the **ability to tailor assistance effectively to the differing needs and priorities of stakeholder groups has been constrained by the focus on state institutions and the inflexible programming procedures**. The Commission's justice support is often provided in challenging environments. In practice, the Commission has usually aligned its assistance programmes with partner governments' priorities, even though these were not necessarily responsive to the expectations and needs of citizens and other interest groups. The slow and inflexible nature of Commission programming procedures has also hampered efforts to make assistance responsive to the needs of different stakeholder groups.

It has been evident that **the Commission has made positive contributions to either getting justice sector reform on government reform agendas or, with other donors, helping to strengthen the institutional frameworks and capacities necessary for effective justice delivery**. This assistance reinforced the governance of justice sector in some cases, though this has not in itself resulted in more access to justice or security for people. Commission assistance has generally not been geared to enhancing service delivery, which would require a greater focus on integrating end-beneficiaries into reform processes.

Decision-making procedures within long-term geographical assistance are lengthy and complex. It has not been possible to make major changes to a project without submitting it for re-approval at the Headquarter level, a time-consuming process. In general, interventions financed by short or long-term instruments have not been sustainable once funding has ended. The move from project approaches to JSBS in several countries has helped to overcome some of these shortcomings, suggesting JSBS has important potential, which needs to be carefully assessed and enhanced.

The experiences regarding the linkage between the support to justice and promotion of human rights have been mixed over the past decade. On the positive side, the EC has sought to place human rights more firmly on the map as an integral part of the EU external action. Yet EC action has also been structurally hampered in terms of results/impact by several systemic **constraints** including:

- Insufficient use of high-level EU political leverage (particularly in countries where major interests are at stake);

- Lack of a clearly spelled out and effectively implemented "joint" strategy between the EC and Member States, adapted to different country contexts;

- A tendency to "ghetto-ise" human rights;

- Limited Commission leadership at the political and managerial level to push for the mainstreaming of human rights in all aspects of cooperation;

- A wide range of downstream implementation problems (including at the procedural level);

- Insufficient knowledge, capacities and incentives to act effectively on sensitive matters such as human rights.

This has major consequences for the effectiveness and efficiency of the overall EC actions in the field of human rights. The EC/EU does not use its potential power and leverage in an optimal manner when it comes to promoting human rights. High-level political statements and declarations in favour of human rights are not systematically and consistently translated into effective implementation strategies. The positive dynamics generated by EC supported programmes and projects are often not taken further and/ or strategically linked to other reform processes (e.g. in the justice sector) that could enhance the overall impact on human rights. Opportunities to support societal forces struggling to localise human rights (beyond legalistic and normative approaches) are not fully exploited.

There are however findings of **EC action in favour of human rights** – undertaken directly or within broader EU framework – which has **generated positive effects**, including:

- At the macro level, the sheer presence of the EU as a global player promoting a human rights agenda, albeit with various levels of consistency and conviction, has helped to protect and enlarge the space to address human rights issues in partner countries;

- In several contexts, including highly restrictive environments, the EC has been able to strategically mobilise the different instruments at its disposal with a view to pushing for legal change or effective application of ratified conventions;

- EU political demarches have helped to prevent a deterioration of specific human rights situations (e.g. when contributing to halt legislative reforms that would re-introduce the death penalty);

- EC support to human rights defenders and civil society organisations has repeatedly been described as a lifeline for the actors involved;

- Several EC-supported programmes have contributed to promoting joint action between state and non-state actors on human rights;

- EC support to justice sector reforms and the fight against impunity have contributed to improving the overall environment for the protection of human rights;

- There is evidence of impact achieved through capacity building initiatives (to which a large proportion of EC support to human rights is devoted).

On the other hand, the findings clearly indicate that the overall EC/EU potential to support human rights remains all too often untapped. Many opportunities are missed to build on promising local dynamics, to structurally support drivers of change, or to promote human rights through other cooperation programmes and instruments that have not been optimally utilised.

5.2. Special lessons learned for situations of fragility

The European Union position on conflict prevention and the fight against impunity starts with the consensus on development. The consensus on development sets the foundation for a comprehensive response to fragility, with the potential to prevent conflict and respond to emergency needs.

The strategy proposed by the Commission in its Communication **"Towards an EU response to situations of fragility" focuses on the openings offered by transitional periods to address key human rights issues**, including the protection of women and minorities, through commissions, investigative bodies, legislative reform initiatives, training, and civil society engagement. Development of a coherent and appropriate strategy in response to precarious conditions must start with a diagnosis of the governance capacity of the State, and the status and functioning of institutions guaranteeing security and the rule of law (formal and informal). Crisis situations must be viewed in a holistic fashion, in order to determine the appropriate mixture of diplomacy, humanitarian aid, security support, and development cooperation. It is also important to combine flexibility with firmness, in order to successfully address issues such as security violations, the role of paramilitary groups, corruption, impunity, and use of the death penalty.

The ambition of the Commission regarding its role in **fragile and post-conflict countries** and regions has not been always clear and its support often remained bound to a developmental perspective rather than fostering a shift towards a genuine Conflict Prevention and Peace Building perspective with a clear and prioritised strategy. The findings indicate that the precise role the Commission aimed to play in such contexts was not always clear. **Only rarely was support directly geared towards resolving the conflict or addressing the root causes of conflict.** In most cases it aimed – at best – at mitigating the consequences of root causes or at addressing development needs in a specific conflict context. [63]

In order to implement a holistic and sustainable approach, it is **necessary to integrate and link relief, crisis management, rehabilitation, and support for reconstruction and development**. This needs to be extended beyond humanitarian needs, to include issues relating to security, good governance, the rule of law, and institutional development. Fragile States, in turn, must respond by trying to strengthen their governmental functions, and meet all of their international and legal obligations, starting with human rights and the protection of civilians from all kinds of discrimination and violence. This also includes a more flexible approach in fragile situations.

With regard to **human rights, it is necessary to take special care of specific target groups**, particularly women, juveniles, minorities, and vulnerable people (who are often specifically targeted victims during civil conflicts and in fragile conditions). For example, see the "EU Guidelines on Violence Against Women and Girls and Combating all Forms of Discrimination Against Them", [64] the "EU Guidelines on Children and Armed Conflict", etc.

The **fight against impunity** under fragile conditions requires law enforcement reforms, penal process reforms, advocacy and legal aid, protection of victims and witnesses, good forensics, and communication and education. The following principles emerge from a review of recent conflicts:

- Giving amnesty to war criminals and persons who have committed serious crimes during conflict does not guarantee the success of peace processes. Avoiding justice in favour of reconciliation constitutes a denial of justice for aggrieved parties and will undermine the support of the peace process.

- There can be negative results from pardoning crimes that are well-established under international law. In Sierra Leone, for example, a general amnesty provision failed three times, and did not achieve lasting peace. In Angola, there were six such attempts.

- In contrast, investigating and taking legal action may produce better results in a shorter time span, and produce a greater deterrent effect. For example, the indictment brought against Slobodan Milosevic by the Prosecutor of the International Criminal Court for the Former Yugoslavia facilitated agreement on terms for the international peace plan for Kosovo.

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[63] Source: The Thematic Evaluation of the European Commission Support to Conflict Prevention and Peace Building, October 2011
[64] Available at http://www.consilium.europa.eu/uedocs/cmsUpload/16173cor.en08.pdf

- Judicial proceedings (investigations, prosecutions, trials, and presentation of evidence) restore dignity to victims and recognise their suffering. Judgements based on proven facts give victims a sense of legitimacy, and protect against revisionism. Preservation of evidence and memories has an important educational value, particularly for future generations.

- Bringing international criminal justice machinery into action activates national responses. For example, the arrest of General Pinochet in the United Kingdom opened the door to creating national courts to hear cases in Chile.

Taking the above into consideration, in conjunction with the DAC Principles for working in fragile countries, it is important to:

- Address and document the experiences and needs of victims and witnesses;

- Empower special investigators and mechanisms in order to establish an historical record;

- Bring local authorities, traditional justice authorities, and religious leaders into a dialogue that helps build understanding of what occurred, and identify ways to prevent recurrences;

- Utilise appropriate transitional justice mechanisms;

- Engage civil society organisations in information collection, analysis, reporting, civic education programmes, public awareness raising initiatives, and reconciliation activities.

Transitional justice has a major role to play in fragile and post-conflict countries. Transitional justice should involve the full range of processes and mechanisms available in order to determine responsibility for abuses, render justice, and set the stage for reconciliation. [65] It should therefore extend beyond the regular court system, to include various kinds of truth and reconciliation commissions, mediation and reconciliation services, traditional justice authorities, religious leaders, etc.

Transitional justice is often closely linked to the rights of women, juveniles, and indigenous peoples. Conflict situations are often characterised by violations of the rights of these groups, including violence against women, the use of child soldiers, and massive abuses against indigenous groups in rural areas. In addition, fragile states are less able to protect the human rights of these groups. The design of transitional justice mechanisms, and their mandates and activities, should reflect the kinds of violations that have occurred, and the specific requirements for reducing impunity and promoting reconciliation. In Colombia, under the Instrument for Stability, the EU supported a victim-oriented assistance programme as part of transitional justice under the Justice and Peace Law. Victims of conflicts (rural and indigenous populations, women, human rights defenders) received legal assistance for pursuing reparations for paramilitary activities before national courts and the Inter-American Court of Human Rights. [66]

Finally, the possibilities for restorative justice should be investigated and considered. Unlike the traditional justice system, which relies upon sanctions as a means of punishment and to protect society, restorative justice focuses on solving problems, and on the right of offenders and victims to express their positions. The goal of this type of justice is to allow the reintegration of offenders and victims within their community, giving the community responsibility for deciding the parameters of pacts with perpetrators of crimes, taking into account the needs and wishes of victims. Restorative justice can rely upon mediation or reconciliation led by professionals such as lawyers, traditional leaders, religious authorities, or community elders. The goal is the resolution of the conflict, while allowing the rapid reintegration of offenders into society at the lowest cost. The concept of restorative justice has resulted in numerous research projects, particularly in countries willing to use community service as an alternative to incarceration. [67]

In conclusion, initiatives of the international community and fragile or post-conflict countries should include the widest possible range of analytical tools, strategies, institutional mechanisms, and personnel to achieve an integrated approach to strengthening the justice sector. Particular attention should be paid to the choice of implementers

and catalysts working in conflict situations, and their level of "conflict-sensitivity". [68] A state building approach which takes into account best practices and experience from previous work in this area is highly recommended, and much more likely to promote security, fight impunity, resolve conflicts, and achieve sustainable results.

5.3. Recommendations

Move beyond institutional support to an increased service delivery approach. There is a need to strike a better balance between strengthening justice institutions and addressing constraints to service delivery of the intended beneficiaries. Building institutional capacity in the security and justice sector does not automatically translate into improved justice for people. In keeping with policy commitments regarding human rights, gender equality and the rule of law, and to place people at the centre of their approach, EU support needs, to the extent possible, to adapt a "hybrid" strategy of programmes, driven by service delivery outcomes. What this means in practice is striking a better balance between seeking to remedy institutional deficits in justice institutions, and fostering the ability of pro-reform constituencies to negotiate the improved service they are seeking.

Anchoring assistance in national justice strategies and processes and building on what already exists is the foundation, *provided* it is a solid foundation for reform. A balance between alignment to national objectives of justice reform and the need to hold on to the objectives of democracy, human rights, gender equality and the rule of law is required. The design goal should not be mere alignment with partner governments' priorities, but rather to examine on a case-by-case basis whether priorities as defined by national authorities are appropriate and in line with minimum International standards, *and if not*, advocate a different approach. Programme design should be grounded on a firm evidence base, reflecting the views of a wide range of stakeholders.

Empower people to demand services from institutions. Justice support has largely focused on enhancing state provision of justice services and does so primarily by supporting capacity building efforts. This can enhance the ability of justice personnel to deliver improved services to citizens, though this will not necessarily occur – in many cases – without fundamental transformation of organisational cultures within the justice sector, which are long-term in nature. An engagement with state actors through a capacity building approach does not exclude working more closely with the intended final beneficiaries of state services.

Access to justice can and should be incorporated into justice sector initiatives. Indeed, it can be used as a framework for refining objectives, defining activities, establishing Objectively Verifiable Indicators, and carrying out monitoring and evaluation. This requires taking a comprehensive and integrated approach to access to justice, including access to justice in work with all justice sector entry points, relating access to justice to crosscutting objectives (such as gender equality, protecting the rights of children, protecting the rights of vulnerable groups, etc.), and making access to justice the axis for information management and public outreach initiatives.

Focus on reforms and oversight mechanisms to hold justice institutions accountable to their commitments of change. To date the EU support has placed more emphasis on civil management bodies (responsible for policy management and service delivery) than oversight (accountability and control). However oversight mechanisms of the justice sector are essential for democracy and the rule of law. Further focus on this mechanism is therefore required to hold institutions accountable for their regulations and policies for reform. This oversight function can be conducted by the parliament, judicial mechanisms, independent Human Rights Commissions and Ombudsman, civil society and media, but also include transparent, accountable and participatory processes, policies and administration of the sector. Constant interaction with the various actors and institutions is key to effective oversight of the justice and security sector, as well as overall democratic governance of the sector. For example, it is important to engage in very careful consideration of assumptions and risks associated with legal reform, in order to ensure implementation, and integrate reforms into project activities. Major challenges include predicting the content of legislation and the timing for its enactment. There should therefore always be secondary objectives or contingency plans that take account of risks inherent in working with the legislative drafting process.

Hence oversight mechanisms, such as parliamentarian oversight, the ombudsman system, or media or civil society lobbying, need to be supported to keep institutions accountable for service delivery and reform.

Utilise comprehensive studies including analysis of local, regional and global players to understand the local situation. Sound analysis of the justice sector and the key components and entry points is a pre-requisite for sector support and the successful implementation of individual projects. Interventions should be tailored to the

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[65]   Report of the Secretary General of the United Nations before the Security Council, "Restoring the rule of law and administration of justice during the period of transition in societies experiencing conflict or emerging from conflict," Doc. S/2004/616, August 2, 2004, Page 7, Paragraph 8. See http://www.undemocracy.com/S-2004-616.pdf

[66]   Project "Integrated Legal Assistance to victims of paramilitaries in demobilisation process in conformity with the legal framework of the justice and peace law" IFS-RRM/2007/143-969, 2007-2009

[67]   For resource materials, see http://www.restorativejustice.org/university-classroom/02world/africa3/africa

[68]   See http://www.conflictsensitivity.org

specific context in which they are to be implemented. It is essential to not only look at what is needed to ensure better access to justice, but also to carefully consider what is socially, culturally, politically and practically feasible in a particular situation. It is also important to analyse regional and global relations in this regard.

Apply a system wide perspective in justice sector support, including civil, criminal, public and international law as well as traditional justice mechanisms. As weaknesses in one part of the justice chain can effectively undermine improvements in other parts of the chain, a system-wide perspective, which recognises that the justice system is made up of numerous interlinked sub-sectors, should be applied.

Justice sector interventions can achieve greater results by strategically combining different kinds of activities with different entry points. Conversely, poorly structured or haphazard combinations can create bottlenecks that diminish results.

Develop realistic objectives and expected results, taking into account absorption capacity and political commitment (and resistance). EU support need to include designed projects with realistic objectives, which are achievable in light of the actual country context, the political will of national authorities, the demands and interests of counterparts, the services that are to be delivered, and the allocated time and financial resources.

The feasibility of objectives must be a) addressed from the project design phase, b) tackled when Objectively Verifiable Indicators are set, and c) tested through fully integrated monitoring and evaluation arrangements.

Managing for results requires that monitoring and evaluation carefully distinguish between results and outputs. Results are measurable achievements that relate to project objectives and constitute an improvement in the justice sector. Outputs are consequences of a specific activity. In justice sector projects in particular, where objectives are broad and difficult to measure, evaluating consultants often report that seminars were delivered, reports were drafted, recommendations were made, etc. without indicating *what has changed as a result, and how these activities helped realise objectives.*

Sustainability needs to be treated as a primary goal of justice sector interventions, especially institutional strengthening and capacity building. With suitable support from project partners, projects can aim for structural reforms and incorporate sustainability strategies in their design and implementation. For this purpose, work-plans, organic documents, and technical assistance should be directed towards long-term results. In addition, sustainability should receive special emphasis during the latter stages of projects. It is advisable to require a separate miniphase for sustainability, when future planning and approval of further activities and collaborative agreements between counterparts should be carried out during the latter stages of justice sector interventions. They set the stage for follow-up work, and build bridges between successive interventions. While there is now greater focus on sustainability than some years ago, the benefits of justice sector initiatives, especially legal reform and institution building, often end with the project and its financial support.

Justice sector initiatives require a suitably long timeframe for successful implementation. Many justice sector projects work towards a series of objectives without carefully delineating their respective timeframes for achievement. This practice is often found in institution strengthening and training projects, and work with court systems. The inevitable result is insufficient prioritisation, and lack of attention to the optimal ordering and sequencing of activities. Even single objectives may be oriented towards short, medium, and long-term results.

To achieve better results, it is important to tailor initiatives and activities to the nature and time frame of different objectives. For example, strategic planning needs to be carried out regularly over time (not once and for all), and improvements in human resources management always go through stages of design, implementation, and consolidation.

Equipment can improve justice sector operations if it is combined with capacity building and strengthened accountability. It is important to establish balance between the procurement of goods or provision of facilities, and the delivery of technical assistance. It is preferable that this be in a context of a programme linked to legal reform. Initiatives that focus excessively on the construction of buildings (courthouses, prisons, police stations) in order to facilitate management and disbursement, or which provide large amounts of equipment such as computers, tend not to provide comprehensive benefits or lead to sustainable results. It is important to carefully link procurements with objectives relating to court reform, institution building, professional qualifications, access to justice, access to information, transparency, etc. in order to produce sustainable and comprehensive results.

The justice sector depends upon transparent access to different kinds of information. Therefore, access to information is frequently incorporated into justice sector interventions working with most of the key entry points. While work in this area is highly beneficial, it is not always carried out in a precise and focused manner. This is due in part to links between information management and technological solutions. In addition, it results from discrepancies in the design and implementation of activities.

To overcome these challenges, it is important to carefully assess the precise needs for information resources, determine which kinds of information are required by which parties, through meaningful consultation and careful analysis, include end-users in designing and setting up information management systems, obtain firm commitments regarding end-use and access etc. The main recommendation is however to align the support to a national framework of legal reform, and to strike a balance between support to capacity building and equipment and infrastructure.

Justice sector projects are often centralised, and focused on national institutions which operate from capital cities, despite rural inhabitants often being those who are most vulnerable, and deprived of information and access to justice. EU support need to extend geographical outreach to build institutional capacity and elevate professional qualifications in regions and local communities. This should be done by working through regional or local affiliates of national institutions and professional associations, local and municipal authorities, community based CSOs, and local expertise. Geographical extension of projects should also include greater linkages with traditional justice authorities, ADR mechanisms, local leaders, and representatives of indigenous peoples.

Through improved communication, information management, and outreach, it is easier to achieve wider and more sustainable results. This is particularly the case for institution-building exercises and training, which are often based in capital cities, and focused on the most accessible target groups (which, it should be noted, usually already have international contacts). Geographical outreach is also extremely important for protecting human rights on the ground, which is of greatest importance for women, juveniles, children, minorities, migrants, and indigenous peoples.

Combine dialogue with financial support and technical assistance. Institutional reform initiatives have little chance of success unless national stakeholders are convinced of their benefits, and political power holders are prepared to accept the limitations to their power that come with respecting the rule of law. Attention therefore must be paid to the political aspects of justice sector interventions, and the need for strategic political and policy dialogue.

Political dialogue is important for ensuring ownership, commitment, and accountability on the part of senior national counterparts. Through dialogue, it is possible to lay the groundwork for national level buy-in for justice sector initiatives. Continuing the dialogue enhances the chances of successful implementation, and improves oversight, monitoring, and evaluation, in accordance with overall development objectives.

Sector policy dialogue is performed by EU Delegations before and during interventions in a specific sector. It is often intended to define and design a sectoral strategy, and turn it into an action plan with an appropriate and implementable budget. Key features include a structured exchange of views, formulation of positions and perspectives, and agreement on respective and mutual commitments by the EU and host government. Dialogue should be regular, and continue despite personnel changes in counterpart ministries. Dialogue should be inclusive, to ensure that all relevant stakeholders participate and contribute in as many ways as possible.

It is important to build consensus and obtain commitments concerning as many objectives as feasible, and engage as many parties as possible in results-oriented justice sector planning. It is well established that when governments commit to a consultative framework involving all relevant stakeholders, especially those who are involved in carrying out reforms, the sector policy dialogue leads to more effective design and implementation of specific initiatives.

Dialogue on both the policy and sectoral levels must be continuous, meaningful and mutually reinforcing. It cannot take place on a one-time basis. Sectoral dialogue, in particular, must be performed during the course of interventions. National and sectoral ownership are crucial for responsibility and accountability. They make it possible to use monitoring and oversight to identify and apply corrective measures and recruit additional parties whenever necessary. In contrast to work in other areas, justice sector initiatives are noteworthy for encountering resistance from established interests during the course of implementation, and frequently require renewed impetus and re-focusing. Therefore, it is not enough to build political will and sectoral ownership at the outset. Rather,

they must be maintained, re-invigorated, and exercised through implementation and oversight mechanisms, in order to keep initiatives on track and achieve meaningful results.

Strengthen monitoring of results and lessons learned. Systematic results oriented monitoring, despite some limitations, is one of the best tools for determining how well projects meet their goals. The results from these exercises also reveal development trends. For example, monitoring reports frequently conclude that project objectives are overly ambitious, prospects for rapid legal and institutional reforms tend to be overestimated, obstacles posed by the political nature of justice sector reforms and resistance to change on the part of the legal profession are underestimated, technical assistance tends to be donor driven, projects tend to be overly complicated, with too many objectives and activities, leading to the dilution of energy and results, particularly over the short term, and limited coordination and absorptive capacity on the part of project partners and beneficiaries reduce the sustainability of results.

To date, Commission programmes have not been systematically underpinned by the use of baseline studies, indicators and other appropriate tools to allow for the monitoring and measurement of programme results. Baseline studies should therefore be developed and used as standard practice, as the basis of all support within the justice sector, and incorporate tools and mechanisms required to measure results, and in particular impacts upon the lives of people, into the programmes.

Human rights and gender equality should be included as crosscutting issues and working perspectives in all support to the justice sector. It could easily be stated that in all EU justice support projects and programmes, protection and promotion of human rights and gender equality are relevant. Very often the objectives and expected results include references to these issues. However human rights and gender equality can also be used as a basic perspective in support by using a *Human Rights Based Approach* grounded in international and regional human rights instruments. Interventions will then be guided by, and aim to enhance, the principles of non-discrimination, participation, openness and transparency, and accountability.

The concept of people as rights-holders and institutions as duty-bearers also contributes to an enhanced understanding and focus on the service delivery of justice institutions. Linked to the core feature of enhancing the capacity of rights-holders, is the need to support national reform constituencies, including human rights organisations, women's groups, professional associations and media outlets, to develop their agendas for reform, conduct public consultations, raise public awareness, and take part in public discourse about the functioning of the justice system.

Ensure donor coordination and complementarity, including with new donors and South-South cooperation. Donor coordination and joint programming should be used to increase aid effectiveness in general and to avoid scattered and contradictory legal and institutional frameworks and setups in particular.

Project activities invariably create additional responsibilities on the part of project partners, and require time from their employees. When there are too many donors working with the same institutions, natural obstacles to absorbing technical assistance are exacerbated. The need to learn about and adapt to different donor modalities and procedures creates further challenges, particularly when projects have short timeframes associated with artificial deadlines or reporting requirements. EU Delegations should ensure that the timing and delivery of support and services closely matches the capacity and work schedules of project counterparts, so assistance can be integrated into their work and put to long-term use. Donor coordination should include a review of the collective demands being put on justice sector entry points, and joint efforts to facilitate absorption.

Annexes

Annexe 1: Different legal traditions

a) The common law system

Common law is derived from the English legal system that emerged after the Norman Conquest in 1066, and efforts to establish uniform standards for the King's courts. Judicial decisions and case law (precedent) form the basis for jurisprudence, and great emphasis is traditionally placed on their publication, accessibility, and utilisation. Procedures are adversarial, oral, and continuous. In criminal cases, the approach is accusatorial rather than inquisitorial. Judicial reasoning is based on principles and solutions previously applied to similar circumstances (stare decisis), with dissent allowed. While not an initial focus, constitutional law, statutory law (enacted by the legislative branch), and administrative/regulatory law (often applied by the executive branch) continue to gain importance, especially in the twentieth century, and are applied according to strict jurisdiction.

Until the latter part of the nineteenth century there was also a parallel legal system, called "equity", which was enforced by the courts of chancery. Whereas the common law was restricted to financial awards and primarily recognised property interests, equity (with jurisprudence based upon principles of justice) recognised moral interests (trusts) and could offer injunctive relief. Although the two systems have been merged, some procedural nuances remain, particularly in specific areas of law such as civil liability. The common law system was exported to most British colonies, and is a prominent feature of the legal system of many Commonwealth countries.

Common law countries applying adversarial procedures place great emphasis on the right to legal representation. Under an adversarial system, the judge is a neutral and impartial arbiter who sets the rules for hearings but does not interfere in the substance of the cases. It is the parties themselves who must advance and prove their own cases, through a) their own evidence and testimony (factual and expert), on the record, and b) their own legal argument. The burden of proof is by the preponderance of evidence in civil cases, and beyond a reasonable doubt in criminal cases. The right to have a lay jury determine issues of fact is protected, most particularly in criminal cases.

In many Commonwealth countries, the representation of private parties is basically divided between solicitors, who work directly with clients, and barristers, who handle court proceedings. However, the distinction is becoming less prominent, and the trend is for solicitors to handle some routine court matters. The interests of the State and public in criminal cases are represented by state lawyers, who perform prosecutorial functions working through institutions that are either formally placed within the executive branch or semi-autonomous (and in either case rigorously separated from the judiciary and judges). The current trend is to institutionalise prosecution. For example, the Crown Prosecution Service for England and Wales, founded in 1986, was designed to insulate and professionalise all prosecutorial functions.

As mentioned above, the judges in common law countries with adversarial systems are neutral arbiters, who oversee proceedings without becoming involved in the presentation of cases. Judges decide cases by applying the law to the facts of the case, in comparison with how the law was previously applied to similar cases. Judges can be appointed or elected. Their tenure can be for a fixed term, but it is usually for life, particularly for higher-level judges. Under a prominent model, applied in the federal courts of the United States, the president makes appointments, the senate confirms them, and appointments are for life. In England and Wales, the Constitutional Reform Act of 2005 established a Judicial Appointments Commission to select candidates on the basis of objective criteria and merit, and recommend them to the Lord Chancellor.

Under common law systems, in contrast to most civil law systems, judges are selected from amongst experienced legal practitioners with demonstrated careers and track records. They can have virtually any prior career path, as long as they are qualified to assume a judicial post. Further, new judges do not undergo any systematic specialised educational or training programmes.

b) The civil law system

The civil law system (as it will be designated herein, instead of using "continental law" or "Romano-Germanic" law) traces its origins to Roman law, the Codes of Justinian (mainly the Corpus Juris Civilis), and to a lesser extent ecclesiastical/canon law and natural law. It was reformulated during the Reception of Roman law into medieval and renaissance Europe, adapted to the needs of nation building in the European context, and then heavily influenced by French legal traditions (most notably the Napoleonic Civil Code of 1804). Other prominent codes include those of the Netherlands (1838), Italy, (1865), Portugal (1867), Spain (1888), Germany (the Bürgerliches Gesetzbuch of 1900), and Switzerland (1912).

Civil law focuses on creating a coherent and comprehensive legal system based on a corpus of legal texts (codification), arranged in thematic order. Judges must base decisions on these texts, which are considered the primary source of law. In other words, law is applied, not interpreted. Accordingly, judicial reasoning is based on the application of legal text and principles to relevant facts, while case law, doctrine, and custom lack the force of law and can only serve as a source of interpretation when applying the law. As common law was transported to many British colonies, and in particular those where no native system of law was recognised, civil law was transported to the majority of the continental European colonies located in Africa, Asia, Latin America, and the Pacific. In the Soviet and Eastern Bloc countries, civil law a) was the standard approach prior to Socialism, b) heavily influenced operation of the justice sector under Socialism (except for the official ideology and the practice of party control), and c) became the preferred approach after the fall of the Berlin Wall and the dissolution of the Soviet Union. At this time, the civil law system is probably the most widespread in the world, applied to varying degrees in some 150 countries.

Civil law court proceedings are more likely to be inquisitorial, written, and not continuous. Juries are less likely to be allowed, but sometimes lay judges participate alongside professional judges. Experts are more likely to be retained by the court and considered impartial, rather than being selected and presented by the parties and subjected to cross-examination by the opposing side. Under inquisitorial procedures, an investigating or examining magistrate can a) develop the case and organise the investigation and prosecution, and b) present a dossier to the court or court president. Judges are more likely to play an active role in the trial, and can interview the parties. Prosecutors and lawyers may play a more subsidiary role. Testimony, gathered during the investigative phases, is commonly presented in writing.

In some countries (and particularly in Latin America), written procedures are applied during non-continuous proceedings that take place piecemeal over long periods of time. In some countries, following the French model, the prosecution (parquet) is effectively part of the court system, and judges are divided into those who preside from the bench and those who prosecute from the floor (with both sharing a common career path, with the possibility of alternating functions).

In contrast to common law countries, judges in civil law countries tend to have a career path. It can begin soon after graduation from the law faculty, following a minimum period of practical experience (usually two years). Judges must usually complete a special preparatory programme (magistrature school) that can last up to three years (including internships). Under this system, and particularly when the magistrature programme is mandatory, entry into the judiciary is effectively controlled by the parties that organise the specialised training programme and its admission policies and procedures. In some civil law countries, judges and prosecutors share this career path, and take both their initial professional training and continuing legal education together.

Convergence between common law and civil law

It must be pointed out that many of the above-highlighted differences between common law and civil law systems are less relevant in modern practice:

- The number of laws in common law countries and the number of codes in civil law countries have increased exponentially. Thus, judges in common law jurisdictions are heavily involved in statutory interpretation. Meanwhile, in order to standardise practice and prevent inconsistencies that undermine sound application of the law, judges in civil law jurisdictions are increasingly likely to refer to precedents or seek guidance from higher-level courts concerning the reconciliation of previous decisions.

- International law and the rules and procedures of multi-lateral and multi-national institutions (such as the European Union, Council of Europe, and World Trade Organisation) must be applied by member states regardless of their type of legal system. These institutions rely upon a combination of statutes, principles, practices, and decisions, without distinguishing between common law and civil law approaches. Thus, the European Court of Human Rights (ECHR), for example, places great emphasis on case precedent.

- Many countries, from the Balkans (Macedonia) to the Caucuses (Georgia) to Latin America (Mexico), are moving towards adversarial court proceedings that are accusatory, oral, and continuous. In Mexico, in particular, the changes are dramatic and taking place extremely rapidly, revising centuries of practice in only a few years. The rationale for this process is that adversarial and accusatory practices are understood to provide greater protection of human rights in certain development contexts.

c) Traditional and customary law systems

In many developing countries, the majority of cases are resolved according to traditional and customary law. Traditional and customary law continue to play an important role in the majority of African countries, much of Asia (particularly China, India, and Thailand), in Pacific countries (such as Vanuatu, East Timor, and Papua New Guinea), and in indigenous communities in the Americas (particularly Guatemala and Bolivia). In some countries, customary law is officially recognised by and integrated into the official system. In Niger, for example, customary courts adjudicating property disputes use one professional judge and two customary assessors who know local customs. And in Benin, the courts of first instance utilise assessors who are familiar with the customs of the parties as a kind of expert witness.

Traditional and customary law are diverse and difficult to categorise. This is because they usually a) correspond to specific social mores and practices, b) are based on unique historical circumstances and cultural/ethnic characteristics, and c) have limited territorial application. Further, customary law arises from general acceptance of the validity of repetitive practices, which over time obtain the status of a "usage". Therefore, customary law requires a certain degree of consensus and respect for a specific authority in order to become binding. Under these circumstances, traditional and customary law may not actually reach the level of structure and formality or the degree of applicability to be considered true "systems".

Generally speaking, and in comparison to the official court system, traditional and customary law are often applied locally, even at the tribal or village level. They may be based on un-codified or unwritten principles. Proceedings are usually swift, informal, oral, public, and conducted without legal representation by lawyers. But the absence of procedural safeguards associated with the official court system does not render traditional and customary law inherently unfair. To the contrary, many parties prefer to solve matters directly and expeditiously at the community level, without the (relatively long) delays and expenses associated with the official court system.

This can enable informal justice mechanisms to exert a major influence on the resolution of disputes and the protection of individual rights for major segments of the populace. Under such circumstances, their legal and cultural significance must be carefully assessed. Further, their relationship to the formal justice sector and court system must be taken into account during justice sector interventions. Obstacles such as limited access to authorities and the lack of information and solid statistics need to be overcome.

It is also important to take account of how the lack of procedural safeguards and variability of traditional and customary law may constrain human rights. Traditional and customary legal systems sometimes perpetuate historical inequality and discrimination, particularly concerning gender rights and the rights of juveniles and children. Forced child marriages are a perfect example. Prohibited by official court systems, they are often tolerated in communities as a way to protect young girls, and upheld by traditional justice institutions.

In addition, the absence of checks and balances in traditional justice institutions may lead to arbitrary results. In addition, there are few formal mechanisms for incorporating new legal principles.

d) Religious law systems

There are many different religious legal traditions. The most prominent include (by ranking of estimated adherents worldwide) Christianity, Islam, Hinduism, Chinese Traditional, Buddhism, Sikhism, Judaism, Baha'i, Jainism, Shinto, etc. The relationship between religion and law and the legal nature of religious systems are subjects of debate. However, it is clear that all religions (and many philosophies) present ethical or deontological standards that have the moral authority of law for followers, even if there are no formal mechanisms for enforcing sanctions.

Religious law systems are usually based on a single authoritative text or group of texts (prominent examples include the Bible, Koran, Upanishads, and Talmud). They are then interpreted in different types of commentaries, which are sometimes prepared and collected over long periods of time. Obligations are explained and authenticated by religious leaders, operating through institutional arrangements that are often structured in a hierarchical order based on territorial jurisdiction. Some religions even develop a kind of "common law", through the collection of and regular reference to precedents for dealing with specific recurring situations.

Few if any countries in the world are true theocracies, where religious authorities actually exercise full governmental authority in the name of the religion. It can be argued that under a strict definition only the Vatican is a true theocracy. Nonetheless, religious law exercises influence in many ways, even in nominally secular countries. Three main models can be identified:

1) *Official religion.* Some countries recognise an official religion. Although it may not necessarily be universally applied throughout the official court system, it is likely to be established as the prevailing approach, especially regarding certain subject matters. In religiously or ethnically homogenous countries, the dominant religion may achieve a prominent status even though it is not officially sanctioned. In some countries, religious councils and institutions exercise considerable authority, albeit indirectly.

2) *Defined religious jurisdiction.* Some countries grant definite but limited jurisdiction to religious law. For example, there could be parallel court systems that deal with the subjects most salient to religious law, normally family relations and personal conduct. This is the case in certain Middle Eastern countries (such as Bahrain), where litigants have a degree of choice between secular and religious courts having concurrent/simultaneous jurisdiction. Even secular societies recognise religious jurisdiction over certain subjects, for example by sanctioning marriage according to religious tradition.

3) *Religious influence.* Some countries deny religion official status or separate jurisdiction, but nonetheless incorporate religious influences, sometimes by combining principles that are common to several religions. In practice, almost all legal systems include precepts of canon law and religious morality in their legislation, going back to the Ten Commandments or even earlier. Indeed, the historical roots of law and religion are intertwined. Thus, it is not surprising that even the most secular countries often include references to divine authority in preambles to laws, oaths taken in court, etc.

Considered in the context of traditional and customary legal systems, religious law systems are not exempt from perpetuating inequality and discrimination. In particular, most of the codes concerning personal status in the Middle East and North Africa (MENA) region, which are derived or based upon various religious texts, form the basis for discrimination against women in both family relations and the public sphere. Due to their subordinate dependence and control by male family members (under legal guardianship), women are often deprived of their rights to marry freely, seek divorce without authorisation, inherit property equally, object to polygamy, or travel without permission.

Despite some progressive legal amendments in MENA countries, discriminatory provisions in criminal laws, nationality laws, and other laws affecting status still persist. This is perhaps most noteworthy in the spheres of "honour crimes", adultery, transfer of nationality to children, and the right to denunciate human rights violations committed against them. [1]

Given the diversity outlined above, the specific role and influence of religious law and religion in general must be determined in each country and legal system, on a case-by-case basis.

e) Mixed Systems

Mixed or hybrid systems combine different sources of law. They may apply a combination of principles and practices from common law, civil law, religious law, and traditional and customary legal systems. "Legal pluralism" can result from a) the juxtaposition of colonial and national legal systems, b) multiple foreign influences at different times or the same time, or c) national diversity (due to geographic, ethnic, or religious differences). There are two main models for mixed systems:

First of all, *multiple influences can be integrated into a unitary legal system*. For example, jurisprudence and practice could be based upon a mixture of common law and civil law. In Ethiopia, substantive law is based on written codes following French traditions, while procedural matters are handled according to common law practice. Or, judicial reform processes could combine a number of influences. In many of the previously Socialist countries, reforms over the past decades have incorporated influences from many different countries, resulting in novel combinations of legal texts and juridical institutions. Countries where multiple models co-exist but are separated on the basis of subject matter jurisdiction also fall under this category.

Second, multiple systems can co-exist within a single country. In such cases, jurisdiction is usually differentiated on the basis of territory. This is the case in federal countries. In Canada, for example, Quebec has a civil law system, while the remainder of the country is firmly rooted in the common law (with the exception of indigenous communities, where traditional law also applies). This is also the case of Cameroon, where two of the ten provinces retain strong English influence, and in Nigeria. Several countries in Africa have a predominantly Arab north that is heavily influenced by Islamic law, and a Christian-animist south that is more Anglophone and influenced by common law. This distinction is most pronounced in Sudan, which in July 2011 separated into two countries. A comparable situation arises when the official legal system applies in major cities (where most courts and lawyers are located), while traditional justice applies in rural areas (where the official legal system does not reach).

Annexe 2: Fight against impunity

During the twentieth century and the last decade, mass atrocities have taken place causing the death and great suffering of millions of people. It has been estimated that since the end of World War II, 244 armed conflicts have been recorded in 151 locations worldwide. ([2]) Contemporary conflicts have caused far more civilian than military casualties: in modern warfare it has become more dangerous to be a civilian, especially a woman, than a soldier.

The 2011 World Development Report of the World Bank clearly states that more than 90 per cent of civil wars in the 2000s occurred in countries that had already experienced a civil war in the previous 30 years. The **lack of accountability has led to great levels of impunity and repeated cycles of violence**. The Report also points out that:

"One-and-a half billion people live in areas affected by fragility, conflict or large scale, organised crime. People living in fragile and conflict-affected states are more than twice as likely to be undernourished as those in other developing countries, more than three times as likely to be unable to send their children to school, twice as likely to see their children die before the age of five and more than twice as likely to lack clean water. Repeated cycles of conflict and violence cause human, social and economic costs that last for generations". ([3]) Other findings are equally striking: *"A country making development advances,..., loses an estimated 0.7 per cent of GDP every year for each neighbour in conflict. The average cost of civil war is equivalent to more than 30 years of GDP growth for a medium-size developing country. Trade levels after major episode of violence take 20 years to recover...In other words, a major episode of violence, unlike natural disasters or economic cycles, can wipe out an entire generation of economic progress."* ([4])

A prevailing culture of impunity not only fails to hold perpetrators accountable but also hampers the development of countries on a much broader scale. The most serious crimes do not only damage the victims directly affected by the violence, but also causes many indirect effects with disastrous consequences for the entire population.

Without political will, fighting impunity is bound to fail. Large-scale atrocities and the most serious crimes, such as genocide, crimes against humanity and war crimes, often involve state authorities and rebel groups, and have profound effects on the entire functioning of the state system and imply an underlying political dimension. One should **emphasise the importance of genuine political will** to address these issues. All too often the lack of adequate political will hampers investigations, prosecutions and fair trials. Short-term power battles often prevail over seeking justice. An independent justice system is unlikely to exist in a country that has been confronted with large-scale violence. It is crucial to keep monitoring political will throughout the entire process and for a long time. Rebuilding the justice system in post-conflict situations is a lengthy process that is more likely to take several decades rather than several years. Political momentum and good intentions at the aftermath of the conflict might fade away quickly if the political pressure is not maintained.

The concept of political will is, of course, not easy to describe in detail let alone to quantify, but **answering the following concrete questions helps indicate whether impunity has been properly addressed**:

- Has amnesty been provided to combatants?

- Can military personnel be judged only by superiors, thus creating de facto immunity for the highest military commanders?

- Has a vetting procedure within the police and armed forces been put into practice?

- Has a truth-seeking process been established with genuine will from power holders?

- Is the independence of the judiciary guaranteed by law and respected in practice?

- Is the existing normative framework (Constitution, criminal code, procedural code etc.) in line with international standards on justice and fair trials?

- Have high-ranking commanders been brought to justice or only lower-level suspects?

- Have all sides of the conflict been equally put under investigation, prosecution and on trial?

- Are sufficient financial resources allocated to the justice sector?

When sufficient political will exists in principle, the EU should seize the opportunity by remaining engaged and assisting wherever it can. Most of the countries affected by the most serious crimes are often unable to rebuild the justice system without assistance from the international community. **To achieve sustainable and tangible results, diplomatic and political action must be combined with development assistance.**

It must be recognised that a justice system cannot be set up overnight, since several areas need to be addressed in order to have an effective functioning justice sector, including for example the legislative framework, the separation of powers (executive, legislative and judicial), the role of police forces especially during the investigation phase, the independence of the judiciary, as well as the enforcement of court decisions. **Despite the necessity of a long-term approach, there is always a sense of urgency to provide justice** due to the suffering of the affected population, and possible residual hatred and internal division. It is often the case that the focus lies in bringing the perpetrators to justice and to a lesser extent addressing victims' needs, and introducing reconciliation mechanisms that may pave the way towards restoring public trust in the justice system. In a post-conflict context, many former combatants will undergo DDR (Disarmament, Demobilisation and Reintegration) programmes, however local populations need to know that the worst perpetrators will not be inserted in such programmes. Without meaningful justice, countries are likely to encounter new violence in the near future. No magic formula exists, but rapid assistance to countries should always be combined with more long-term efforts aimed at reinforcing and consolidating the justice system on the whole.

Even in countries where the criminal justice system is still functioning, it is unrealistic to expect that each perpetrator will be held accountable, especially where there have been a great number of human rights violations and crimes. *A fortiori*, this becomes more evident in a post-conflict setting. Hence, the **importance of a global transitional justice strategy as a useful entry point** to engage in the justice sector in a post-conflict or fragile situation, as outlined in the section focusing on transitional justice (see main text above). Given the often large-scale nature of crimes in fragile situations, addressing these crimes cannot be processed through the ordinary criminal system, **generating an impunity gap**. Effective prosecution strategies for large-scale crimes often focus on the planners and organisers of crimes, rather than those of lower rank or responsibility. Hence prosecutions cannot achieve meaningful justice in isolation. Implementing prosecution strategies with other initiatives, such as reparations programmes for victims, institutional reform, including vetting procedures and truth seeking mechanisms, can help fill the impunity gap by addressing crimes with large numbers of victims and perpetrators.

Holding perpetrators of genocide, crimes against humanity and war crimes accountable contributes to bringing about justice, sustainable peace and security. All legal systems of the world have a criminal law branch, and criminal justice is inherently linked to moral values and has a deterrent effect. The investigation and prosecution of crime of genocide, crimes against humanity and war crimes should fall within the remit of the formal criminal justice system. National justice proceedings are closest to the victims and affected communities and enable more easily the participation of victims in proceedings. Evidence-gathering is also easier given territorial proximity between the investigative and prosecutorial offices and the crime scenes. National proceedings also tend to be faster and cheaper. Enforcement of arrest warrants is easier and less complex than in international justice cases. Given these various practical and financial reasons, the number of proceedings at international tribunals will always be rather restricted.

Reinforcing the national capacity to investigate, prosecute and try the crime of genocide, crimes against humanity and war crimes can have several spill-over effects. These crimes often affect large number of victims and affected communities, and tend to be committed by high-level individuals, from the government's side and/or the armed opposition. Ending impunity for these powerful individuals can play a significant role to strengthening a culture of the rule of law and legality, without which other crimes, such as corruption, drug trafficking, and political violence, may continue to prosper. For example, the International Criminal Tribunal for Rwanda (ICTR)

([2]) Lotta Harbom & Peter Wallensteen (Uppsala Conflict Data Program), "Armed Conflicts, 1946–2009", Journal of Peace Research, 2010 - 47(4), p. 501–509. An armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar year.

([3]) 2011 World Development Report of the World Bank, p.11.

([4]) 2011 World Development Report of the World Bank, p.5-6.

referred for the first ever time a case to the Rwandan national justice system, since it was convinced that Rwanda had the capacity and willingness to enforce the highest standards of international justice.

The International Criminal Court (ICC) became an important player in the fight against impunity, as it is a permanent international court established to investigate, prosecute and try individuals accused of committing the crimes of genocide, crimes against humanity and war crimes. The principles of the Rome Statute as well as those governing the functioning of the ICC are fully in line with the principles and objectives of the EU. Furthermore, all Member States of the European Union ratified the Rome Statute and the EU was the first regional organisation to sign an agreement on cooperation and assistance with the ICC in April 2006. **The Council Decision of 21 March 2011 on the ICC sets out the strategic objectives of the EU policy towards the ICC.**([5])

The ICC is already often raised in political dialogues and demarches, and the EU systematically seeks the inclusion of a clause supporting the ICC in negotiating mandates and agreements with third countries, such as the Cotonou Agreement, Partnership and Cooperation Agreements, Trade Cooperation and Development Agreements and Association Agreements. ([6]) The ICC clause in the Cotonou Agreement ([7]) which applies to 76 African, Caribbean and Pacific countries, is of particular relevance, as it is legally binding and outlines the need for an effective two-way communication: *"In promoting the strengthening of peace and international justice, the Parties reaffirm their determination to: share experience in the adoption of legal adjustments required to allow for ratification and implementation of the Rome Statute of the International Criminal Court; and fight against international crime in accordance with international law, giving due regard to the Rome Statute. The Parties shall seek to take steps towards ratifying and implementing the Rome Statute and related instruments."*

The crime of genocide, crimes against humanity and war crimes always inflict such large-scale violence that they do not occur without catching the attention of the international community. Whenever such dramatic events take place, two scenarios are possible: the events take place in a country which has ratified the Rome Statute or not. In the first case, it can lead to a referral to the ICC by the State Party or upon the initiative of the Office of the Prosecutor. In the latter case, the UN Security Council acting under Chapter VII (*"action with respect to threats to the peace, breaches of the peace and acts of aggression"*) can refer the case to the Prosecutor of the ICC. When the ICC is able to exercise its jurisdiction, two phases can be distinguished before the trial stage: **a preliminary examination may be opened by the Prosecutor, which may then be followed by an investigation**.

It is crucial to understand that the Rome Statute, the founding treaty of the ICC, provides that it is the duty of every State to exercise its criminal jurisdiction over those responsible for the crime of genocide, crimes against humanity and war crimes. Effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation. ([8]) **The ICC is complementary to national criminal jurisdictions.** ([9]) Only when a State Party to the Rome Statute is unwilling or genuinely unable to carry out the investigation or prosecution of these crimes shall the ICC have jurisdiction. **The ICC is a court of last resort**, which is understood as **the "principle of complementarity"**. Thus even when a country has ratified the Rome Statute, **national criminal jurisdictions should continue to be at the centre of attention**, and the ICC should be regarded as a possible safety net. A more effective and efficient interplay between national justice systems and the ICC is pivotal to fight impunity, however without strengthening domestic prosecution of the most serious crimes there is a high risk that the culture of impunity will prevail and victims will not see justice.

Efforts to fight impunity for genocide, war crimes and crimes against humanity can be built into general rule of law programmes, but **no results will be achieved without consistently working on fighting these crimes**, which is complex due to the following reasons:

The legal framework: the applicable law differs and the definitions of crime of genocide, crimes against humanity and war crimes need to be integrated into national criminal codes. In addition to the Rome Statute, several other international treaties are of particular relevance in this context, and existed long before the entry into force of the Rome Statute, including but not limited to: the four Geneva Conventions and their Additional Protocols which are at the core of international humanitarian law, which regulates the conduct of armed conflict and seeks to limit its effects; the Convention on the Prevention and Punishment of the Crime of Genocide, which imposes inter alia the prevention and punishment of genocide; the International Covenant on Civil and Political Rights, including

Article 14 regarding the right to a fair trial. **The Rome Statute should ideally be translated into the national level through comprehensive national legislation, adapted to the national context.** National implementing legislation often requires changing the criminal code and criminal procedure. Another important element is to examine the penalties in the implementing legislation. The maximum penalty defined under the Rome Statute is life imprisonment. The ICC can never impose the death penalty, and one can argue that genuine implementing legislation of the Rome Statute should follow this principle. The Rome Statute makes it clear that an official capacity as Head of State or government or member of Government or Parliament shall in no case exempt a person from criminal responsibility. Implementing legislation should equally apply this same principle, since there should be no exceptions in the fight against impunity. This point is particularly sensitive, as very often high-level officials are involved in crimes of genocide, crimes against humanity and war crimes.

Investigation and Prosecution: High security risk often arises because of the spheres of power at stake, not only for victims but also for suspects and prosecutors themselves. In addition, forensic evidence tends to be very fragmentary because of the time lapse between crimes and their investigation, and physical infrastructure and documents may be destroyed. As a consequence, witnesses must often play an exclusive or major evidentiary role, despite having been traumatised by the horrific crimes under trial.

Independence of prosecution is often limited because the power dimensions related to such crimes, which are often more difficult to prove. For example, a high-ranking official will have often not committed the crimes themselves, but may be nevertheless "linked" to them. In addition, cross-border legal cooperation may be required, as these crimes may have a regional dimension, or suspects may be residing in far-flung jurisdictions.

Possible prosecution of suspects of crimes of genocide, crimes against humanity and war crimes always implicates political interests, given the very nature of crimes provoked by large-scale violence. **The independence of prosecutorial offices is therefore crucial.** Both in the investigative and prosecutorial phase, case management and management of information becomes crucial, as there is always more information available than can be realistically processed.

After having collected sufficient information during the investigative phase, prosecutors will need to decide which cases will be put forward and selected for prosecution. It would be naive to believe that all cases can be handled by the national legal system, which is often impossible within the context of crimes of genocide, crimes against humanity and war crimes, given the scale of violence involved. Faced with this difficult situation, prosecutors should think carefully about the criteria to be employed in the selection of cases, rather than simply adopting a "first come, first served" stance. The specific criteria depend on the specific situation, however **the prosecutor's discretion should prevail**. Criteria can however include: the strength and scope of available evidence, the hierarchical position of the suspect, the likelihood of execution of arrest warrants and so forth. It is essential to stress is that prosecutors should be aware of the length of legal processes, and where prosecutorial criteria and strategy are established, they should be communicates to the public, as a method of fostering common understanding and acceptance.

Judges: Given the high profile of such cases, judges are often under considerable pressure. Judges often lack experience in dealing with the substantive law related to crimes of genocide, crimes against humanity and war crimes, and the case-management of trials that may be very long. Peer-to-peer exchanges, or the assistance of international experts, have shown impressive results in the past. For example, the EU sponsored two international experts to advice the judges in a trial chamber in Colombia responsible for implementing the Justice and Peace Law (Law 975). These experts offered advice on substantive, procedural and evidentiary elements that distinguish the investigation and prosecution of these crimes in scenarios of mass atrocities, as well as on issues related to reparation for victims of crimes. The project resulted in a substantial improvement of the quality of the chamber's decisions.

Court management, and management of detention and prison facilities: Many different linguistic communities are often affected by the conflict, which require more translation than in other criminal cases. In addition, the long duration of trials, the high number of witnesses, and substantial media attention necessitate detailed court management and sufficient infrastructure. **The lack of effective enforcement of sentences can quickly lead to general distrust of the justice sector, in particular concerning high-level persons convicted of the crimes of genocide, crimes against humanity and war crimes.** Support to detention and prison facilities has often been limited to providing the necessary physical infrastructure, and side-lining necessary training and education programmes for penitentiary guards. It is advisable that a detention facility be available a short distance from the court itself, which helps facilitate transport and reduces security risks. In many countries, detention

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([5])   Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court and repealing Common Position 2003/444/CFSP
([6])   See also for an overview The European Union and the International Criminal Court, General Secretariat of the Council, May 2010, p.12 -13, available at http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/ICC_may_10_internet.pdf
([7])   Article 11 of the Cotonou agreement
([8])   Preamble of the Rome Statute of the ICC
([9])   Article 1 of the Rome Statute.

and prison facilities have been severely underfunded, and are in an appalling situation, which leads to *inter alia* severe overcrowding. Appropriate salaries for prison personnel are also important, since they help reduce the risk of corruption. The UN Standard Minimum Rules for the Treatment of Prisoners provides a very general framework outlining some of the basic rights of prisoners.

<u>Rights of victims and witness protection:</u> Victims of genocide, crimes against humanity and war crimes are almost invariably deeply traumatised. In many civil law countries, victims play an active role in legal proceedings, but are nevertheless often unaware of their rights. **The right to reparation is a well-established principle of international law**, and as such is an integral part of the justice sector. In line with the UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Law ([10]), States have the obligation to provide reparation, which can be provided in the form of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repeti-tion. Witnesses at national proceedings are exposed to very high security risks, whereas many countries have not established adequate witness-protection measures, which tend to be very expensive. Witnesses often play a cru-cial role in obtaining overall justice, however threats to security, or the death of a single witness, can intimidate or demoralise all other witnesses.

<u>Outreach:</u> Larger segments of a population will have been affected by such crimes, whether directly or indirectly, in comparison to other types of crimes. This underscores the importance of **reaching out to the population at large from the outset of proceedings**, through to the completion of the trial and any subsequent appeal.

<u>Defence counsel and the legal profession:</u> The stakes in such cases often go beyond the mere defence rights of the suspect; the legitimacy of the entire justice system may be in question. Legal professionals may lack training to deal with such complex cases. Additional resources may therefore be required to provide adequate counsel, since existing legal aid systems may make no distinction between the complexity of cases, and simply award flat fees to lawyers.

All these different components are mutually reinforcing and are cumulative. A comprehensive approach is ideal, however since resources tend to be limited, prioritisation should be undertaken following a comprehensive needs assessment.

Annexe 3: Key areas for assessment and indicators for the justice sector

1. The legal framework

Areas for assessment:

- The legal system in question and its fundamental characteristics

- The constitutional framework and level of independence of the third branch of government

- Fundamental rights enumerated in the Constitution and other legal acts

- The correlation between human rights under national and international law, compliance with international obligations, and the handling of cross-cutting issues

- International judicial and legal cooperation, particularly regarding cross-border criminality

- Ratification of international conventions and standards, and their application by tribunals

- Key aspects of civil and criminal law and procedure, including the right to due process and representation by counsel, impartiality of the court system, the nature of penalties for specific crimes (including application of the death penalty), and whether penalties are in accordance with international standards

- Procedures for investigating criminality and prosecuting, and for using forensic evidence verified through proper laboratory analysis in accordance with rules for the chain of custody

- Operation of the penitentiary system, the use of pre-trial detention, alternatives to imprisonment, the handling of juvenile offenders, rehabilitation services, etc.

- Complementary systems of law, including traditional and religious justice, and their relationship to the official court system

- Issues relating to access to justice, particularly for women and underprivileged groups

- The nature of the legal profession, its education, training, and working practices

- Laws and legal standards relating to gender equality, juvenile justice, the rights of children, persons belonging to minorities, and of indigenous peoples, as well as social inclusion

- National strategies, policy documents, agreements, white papers, etc. that document objectives, priorities, or consensus regarding operation of the justice sector and its reform

Indicators:

a) whether the necessary legislation is in force,

b) whether or not the legal framework establishes sufficient independence for the judiciary,

c) how well the laws create an appropriate institutional framework, and define the roles and responsibilities of key bodies that oversee the justice sector,

d) how well the laws structure the court system, its operations, and the different kinds and levels of courts,

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10 See http://www2.ohchr.org/english/law/remedy.htm

e) whether key codes (such as criminal law and procedure, civil law and procedure, administrative law and procedure) uphold key human rights and apply international standards,

d) deficiencies in specific legislative acts. Indicators should focus on the specific requirements for legal reform.

It should be acknowledged that laws and amendments to laws can only be fully assessed once they are being implemented. This makes it difficult to determine whether legal reforms achieve their intended objectives during a project cycle. Nonetheless, Regulatory Impact Analysis provides a framework for conducting this kind of assessment, and it should be used.

All these different components are mutually reinforcing and have multiplier effects. A comprehensive approach to all of these issues is ideal, however since resources tend to be limited, prioritisation should be undertaken following a comprehensive needs assessment.

2. The (governmental and administrative) institutional framework

When assessing the governmental and administrative framework the focus should be in the following :

How administrative law and the enforcement of secondary legislation can impact human rights:

- Administrative rulemaking determines who is entitled to carry out economic and social activities, and who can receive governmental services and benefits. Administrative rules which are unfair or which are applied inequitably can violate human rights.

- Administrative hearings and decision-making determines how rules will affect specific target groups. Target groups can find their rights curtailed by administrative decisions. Denial of due process in administrative proceedings can curtail human rights. This can affect target groups or individuals.

- Selective enforcement of administrative actions and application of sanctions (such as fines and denials of licenses) can leave target groups and individuals without recourse for asserting their human rights.

How administrative law and the enforcement of secondary legislation can impact human rights:

- As to judiciary, such influence may affect the appointment of judges, and their working conditions, assignments (many times it affects rulings and handling of specific or priority cases, often high-profile commercial or penal cases, or those involving important or connected people.) promotions, and discipline.

- As to prosecution and law enforcement officers, this might lead to selective prosecution, inconsistent enforcement of laws and judgments, arbitrary arrest and detention, and impunity.

The sensitive nature of judicial decisions creates incentives to interfere or exercise influence. Furthermore, **certain parties benefit greatly from impunity**. Meanwhile, ministries often lack financial resources, capacity, organisational infrastructure, and human resources to properly carry out their functions, thereby facilitating interference by powerful outside interests.

Practices that undermine the autonomy and professionalism of the justice sector also compromise the rule of law and good governance, and damage the legitimacy of the entire governmental system, with severe repercussions for national development.

In order for the judiciary to carry out its functions, **administrative and managerial institutions** must be properly structured and operated. The key factors to look at include:

a) institutional duties and responsibilities,
b) organisational structures,
c) the level of independence from political and other forms of interference,
d) the influence and role of judges (to the extent that they make the judiciary self-governing),
e) the role of representatives of other juridical institutions ,
f) human resources (sufficiency, quality, and management issues), and
g) budgets and financial resources.

Significant comparative information is available concerning the **roles and functions of judicial councils**. [11] Standard criteria covering institutional viability and operations are the best place to start. Functional analysis is the preferred methodology for setting and evaluating compliance with indicators in this area. Although they are certain to have an element of bias, it is still very important to include representatives of juridical institutions in the design and evaluation of these indicators.

The budget for the judiciary is a crucial factor affecting its administrative viability. When the judiciary is underfunded, it cannot meet its obligations and operational requirements. The key factors that need to be covered include:

a) the total budget for the judiciary,
b) its percentage of the national budget,
c) how it is divided between the court system and the security sector (law enforcement bodies and penitentiary institutions),
d) how much is devoted to different budget categories (such as physical facilities, equipment, supplies, salaries, etc.), and
e) how these figures have changed over time.

In addition, it is possible to look into the **mechanisms and procedures for determining and setting the budget**, and whether **they are subject to political pressure**. The number of budget lines is also relevant, since in some countries each court has individual responsibility.

Budgetary figures are a solid indication of the priority given to the judiciary, whether it receives the resources required to operate effectively, and how those resources are utilised. In this light, it is important to remember that the court system also generates income, through various kinds of fees and expenses that litigants must cover. Unfortunately, this income is often considered to be and utilised as general revenue for the State instead of being used to fund the Courts or the justice system. Thus, when it comes to the national budget, the court system is both a contributor and a recipient.

3. The court system and court personnel

Characteristics of the court system which require assessment prior to interventions include:

- The different categories of courts (general jurisdiction, penal, civil, administrative commercial, labour, juvenile etc.)

- The different level of courts (Supreme Court, appeal courts, courts of first instance, small claims courts, etc.) and whether or not there is a separate constitutional court.

- The territorial jurisdiction of courts (national, regional, or local)

- The location of courts, and whether there is sufficient decentralisation of court services (geographical accessibility),

- The statutes, mandates, and competencies of bodies which supervise and manage the courts

- Court administration, including all aspects of financing, management, and asset control

- The powers and roles of court presidents, including their administrative responsibilities

- The system for distributing cases to judges (whether random, computerised, or controlled by court presidents), and whether issues of undue influence or excessive prerogative arise

- Powers and duties of court administrators and other parties managing individual courts

- The different categories of court employees, and their roles and functions (job descriptions)

- Human resources management, and policies and procedures relating to hiring, evaluating, promoting, training, transferring, dismissing and retiring court personnel (plus employee turnover issues)

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11 For a collection of information resources on judicial councils developed by the World Bank, see: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/
EXTLAWJUSTINST/0,,contentMDK:20752938~menuPK:2035362~pagePK:210058~piPK:210062~theSitePK:1974062,00.html#Integrity_Measures

- The case management system (including level of automation, information technology and software, filing procedures, calendaring, systems to notify parties, statistics generation, etc.)

- The information management system in the courts (including automation and computerisation, communication, and access to legal databases)

- Asset management and systems for tracking court property (buildings, cars, equipment, etc.)

- Statistics and reporting requirements (obligatory for modern and efficient management of the court system and sound case management)

- The archiving system, and storage of information concerning closed cases

- Service provision (building layout, information technology, access to staff for questions, possibilities for confidential consultations in sensitive cases regarding women, children, and minorities).

- Cultural accessibility (capacity to respond to demands)

- Socio-cultural and religious factors that affect human resources and job performance. (Cultural accessibility)

- The level, kinds of corruption and procedures for responding to this

- The level of transparency, accountability, and public access to information

- The role of non-state actors and civil society organisations in monitoring and oversight of court operations in general, and the handling of specific cases

- The system for enforcing judgments (since there is little point in pursuing legal interests through the courts if the judgments which are rendered cannot be enforced)

- Compliance with international standards and best practices for operating court systems

- The fees (financial accessibility)

- Quality of decisions

- Efficiency/productivity (number of cases received, processed, back log)

- Collaboration with other actors of the legal chain?

Indicators:

Primary focus is on the **structure of the court system**. This has a major effect on operations and the delivery of justice. Key factors include:

a) whether or not there is a separate constitutional court,
b) the types of specialised courts established for handling specific categories of disputes and the clarity of their jurisdiction), ([12])
c) the geographical location of different courts,
d) the degree of specialisation required for judges, prosecutors, lawyers, court officials, and other professionals involved in proceedings,
e) designated channels for the appellate process, and
f) court financing and budgeting. Work with the structure of the court system should include indicators covering these factors.

Court management and operations can be assessed through functional analysis and statistics. Key factors include:

a) the role of court presidents,
b) the role of court administrators,
c) budgeting and accounting procedures,
d) the level of financial autonomy,
e) the handling of human resources (including civil service status, recruitment, job descriptions, working protocols, performance reviews, criteria for promotions, and career prospects),
f) archiving, and
g) physical assets management and inventory control. It is useful to take a close look at the work of the court administrators, who play a key role in court management. In addition, documentation for court operations and procedural manuals are pre-requisites for effective performance.

Case management procedures have a great affect on the efficiency of the courts and the services that are provided to users. Criteria which should be measured and for which statistical data should be available include:

a) the number of cases being handled,
b) the breakdown of cases according to category or type of case,
c) the case backlog (numbers and percentages of cases in the system for different lengths of time),
d) average length of time required for different kinds of cases ([13]), and
e) the types of cases that are most subject to backlogs.

It is also important to assess:

a) whether flow charts accurately indicate the procedural steps for different kinds of cases,
b) the amount of information available concerning specific cases,
c) whether that information is for the legal professionals, litigants, and the general public),
d) the efficacy of computerised case management systems and software solutions,
e) possibilities for electronic filing of documents and access to case records on line, and
f) the efficiency of appellate procedures. Automated case management systems generate a wealth of statistical data, but court user surveys and interviews should also be employed. ([14])

Court personnel are responsible for operation of the court system, from accounting to case management to asset control. Unfortunately, in many developing countries there is insufficient attention to funding for and management of court personnel. This compromises the quality of court operations, and plants the seeds for corruption. Further, in many developing countries and countries in transition, the position of court administrator is still being developed. Courts require competent management to oversee the diverse aspects of their work. ([15]) Whether judges have administrative autonomy or whether the ministry of justice is responsible for court management, qualified administrators are indispensible. Thus, it is important to assess:

a) job functions and descriptions,
b) hiring and retention procedures,
c) the level of salaries,
d) training and professional formation,
e) the existence and adequacy of manuals and policy guidelines,
f) evaluation procedures,
g) record-keeping procedures,
h) internal communications, etc.

Operation of the court system depends greatly upon its physical **infrastructure**. Key aspects of infrastructure include:

a) the conditions of physical facilities such as court buildings (which have a marked impact on the way courts operate),

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12 For a collection of information resources on specialised courts developed by the World Bank, see: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTINST/0,,contentMDK:20754262~menuPK:2035375~pagePK:210058~piPK:210062~theSitePK:1974062,00.html#specialized_courts

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([13]) For a Time Management Checklist prepared by the European Commission for the Efficiency of Justice, see: http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CEPEJTimeManagementChecklist.pdf

([14]) For indicators on case management developed by the World Bank, see: http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/FourteenQuestionsforCourtCaseManagementEvaluatorsBarryWalsh15Sept08.pdf

([15]) For a Comparative Study on Monitoring and Evaluation of Court Systems in several different countries, prepared by the European Commission for the Efficiency of Justice, see: http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/Etudes6Suivi_en.pdf

b) the architectural layout of court facilities (including important issues such as whether judges have secure quarters and whether defendants and victims are forced to mingle),
c) furnishings and furniture,
d) office equipment,
e) the quantity and quality of computer equipment,
f) transportation and the use of vehicles,
g) communication modalities,
h) access to the internet (and thereby databases),
i) facilities and means for handling and transporting detainees, and
j) facilities to receive the public and provide information (including access to computer terminals to obtain information).

It is necessary to develop **statistical resources** for the judiciary in order to design and evaluate compliance with indicators. The areas to be covered include:

a) which institution(s) has/have responsibility for keeping statistics concerning the judiciary, b) what kinds of statistics are being collected,
c) how these statistics are being collected,
d) how these statistics are being organised and stored,
e) how these statistics are being distributed,
f) who has access to them (particularly for litigants, legal professionals, interested official parties, and the general public),
g) how statistics are being utilised,
h) the accuracy of statistics,
i) security issues, and
j) backstopping of information.

In addition to budgeting and human resources, judicial statistics concerning how cases are handled, how long they take, and the comparative work of different judges generate crucial information for rationalising case management and reducing backlogs. Some statistics should be broken down according to gender and other characteristics, in order to detect and eliminate discrimination. Finally, the transparency of statistics and its contribution to accountability should be considered.

4. Legal professionals and their representative institutions

1. Status

- the total number and their location (whether concentrated or dispersed),

- personal characteristics (such as gender and ethnicity, and whether they are representative of the general population),

- professional qualifications,

- levels of specialisation,

- professional formation (initial and continuous), [16]

- distribution throughout the country,

- levels of remuneration,

- tenure (particularly whether appointments are for life, for a limited term, or for an initial term followed by possibilities for retention),

- degree of independence,

- possibilities for advancement,

- whether there are judicial assistants, m) access to legal databases, n) access to computer equipment and the internet,

- the roles and representative services provided by the association of judges,

- ethical obligations (nature and source), [17]

- disciplinary mechanisms and how they are applied.

2. Recruitment/entry requirements:

- requirements for obtaining an appointment according to the constitution and laws (usually relating to citizenship, age, and experience, but also sometimes linguistic abilities and other factors),

- academic qualifications,

- professional experience,

- special examinations,

- the application process,

- the authority or body making decisions and appointments, and its level of independence or autonomy,

- whether appointments are discretionary or based on merit,

- whether elections are held,

- whether there are measures to promote equitable gender and ethnic representation (and their effectiveness).

3. Performance:

- whether they handle cases within prescribed time limits,

- whether their cases have an excessive number of continuances or postponements,

- whether they take into account international/European law and jurisprudence;

- what percentage of their cases are settled through work with litigants and counsel,

- how many of their cases are over-ruled on appeal,

- the number of complaints concerning their performance, etc.

4. Supervision:

- the functions and powers of supervisory institution(s),

- their level of operational independence and professionalism,

- how board members and executives are selected,

- governing statutes and policies,

- operational procedures,

(16) For an extremely comprehensive listing of links to institutions which train judges around the world, see: http://web.worldbank.org/WBSITE/EXTERNAL/ TOPICS/EXTLAWJUSTINST/0,,contentMDK:20756081~menuPK:1990328~pagePK:210058~piPK:210062~theSitePK:1974062~isCURL:Y,00.html

(17) The Consultative Council of European Judges Opinion Number 3 On The Principles and Rules Governing Judges' Professional Conduct can be found at: http://siteresources.worldbank.org/INTLAWJUSTINST/Resources/CCJEJudicialEthics.pdf

- criteria for appointments, assignments, and promotions,

- criteria for discipline, and their documentation in a code of ethics or professional responsibility,

- how disciplinary criteria are applied, particularly for ethical violations and corruption,

- the nature and numbers of disciplinary cases,

- whether disciplinary procedures are fair and transparent,

- whether the results of disciplinary proceedings are public (which generates confidence in the integrity of the judiciary and its procedures),

- avenues for appealing disciplinary decisions,

- whether the disciplinary process is used for purposes unrelated to ethics (for example to punish or discourage decisions that threaten the interests of powerful parties).

5. Training:

- whether there is a specialised training institution,

- whether it also serves other legal professionals (possibly prosecutors, but almost never lawyers),

- whether there is initial professional formation before judges assume their duties (such as a magistrature programme),

- how continuing professional formation is organised and delivered,

- whether is it mandatory or optional,

- if it is mandatory, then how many seminars or hours are required on an annual basis, the background and characteristics of instructors, whether they are full time or part time or a combination of both,

- how are they selected, trained, deployed and remunerated,

- training materials prepared,

- how training materials are distributed,

- whether there are electronic libraries/databases of training materials,

- who can access training materials and under what conditions.

Associations of legal professionals can serve as excellent partners and implementers for activities which strengthen and reform the justice sector. Indicators can focus on the associations':

a) statutory basis, constituency and representation,
b) mission and objectives,
c) internal governance mechanisms and managerial bodies,
d) financial viability and dues structure,
e) human resources,
f) information management practices,
g) programmatic activities, as well as on
h) how effectively they advance the interests of the profession (and engage in lobbying),
i) the services that they provide for members (newsletters, databases, networking and communication opportunities) etc.

Associations of legal professionals **should be engaged in promoting professional responsibility**. Indicators can address:

a) whether they have codes of ethics and their quality,
c) whether there is a committee addressing ethics,
d) whether they provide training on ethics,
e) whether they have fair, documented, and transparent disciplinary procedures,
g) how many disciplinary procedures are initiated annually,
h) what kinds of decisions or sanctions result and their percentages,
i) whether decisions are documented and analysed,
j) whether decisions and results are released publicly, etc.

5. Law enforcement and penal institutions and their personnel

Official statistics should be available concerning many characteristics of the law enforcement and penitentiary systems, and the work of their personnel. They can form the basis for indicators which can be monitored via regular oversight mechanisms. Statistics regarding criminality and the work of police can also be helpful in determining how the justice and security sectors are functioning, and whether human rights are being respected in practice. While the trend is towards statistical transparency, some sensitive and confidential information is not generally made available, and may require official requests or recourse to procedures established under freedom of information laws.

Key issues include:

a) the number and types of police stations, detention facilities, and prisons,
b) the conditions at such facilities, including living arrangements, food, access to health care, hygiene, work and recreation facilities, visitation rights,
c) the number and types of staff, and whether or not they are representative of society, including gender equality,
d) the level of professional skills of staff and their training regimes,
e) the numbers of prisoners (absolute and per capita) and their specific categories,
f) conviction rates,
g) the relative number of convicted prisoners and pre-trial detainees (a relatively large percentage of detainees indicates shortcomings in the penal process),
h) respect for the right to counsel in practice and mechanisms for obtaining counsel,
i) procedures for authorising pre-trial detention and the role of judges in the process,
j) criteria for imposing pre-trial detention,
k) whether abuse, ill-treatment or death occur during detention, and what is being done about it,
l) whether forced confessions are a persistent problem,
m) which institutions and parties are responsible for carrying out criminal investigations,
n) the usual length of time for different kinds of investigations,
o) linkages between investigation and prosecution,
p) whether physical evidence on the basis of forensics is regularly used in criminal prosecutions or whether excessive reliance is placed on confessions,
q) possibilities for alternative sentencing,
r) the provision of food, clothing, social services, and recreation for prisoners,
s) health conditions and access to medical attention in prisons,
t) rehabilitation for prisoners,
u) possibilities for parole,
v) reporting concerning penal institutions,
w) generation and utilisation of statistics on criminality, law enforcement, arrests, and incarceration.

6. Alternative dispute resolution mechanisms

Indicators in this area refer to a) court-sponsored settlement procedures and b) truly alternative mechanisms outside the court system.

For court-sponsored mediation designed to settle cases, it is necessary to look at a) quantitative factors such as the numbers and percentages of cases which are subject to settlement procedures and the percentage of settlements achieved, and b) qualitative issues such as the adequacy and fairness of settlement procedures and whether or not the rights of litigants are protected. Flow charts for handling cases and case management statistics can form the basis for this analysis.

For mechanisms that operate outside the court system, it is useful to look at:

a the availability and accessibility of different kinds of arbitration and mediation,
b) the types of cases handled through these mechanisms,
c) the absolute numbers and percentages of cases handled through alternative dispute resolution (ADR) ([18]),
d) the success rate for reaching final decisions,
e) the availability of sufficient numbers of skilled arbitrators and mediators,
f) the accessibility of institutions of traditional, customary, or religions justice,
g) the enforceability of decisions rendered through ADR,
h) the relationship between ADR mechanisms and the official court system.

Where possible, it is advisable to go beyond statistics to assess whether the interests of justice are being served, and whether the rights of parties are being protected. Generally speaking, chambers of commerce and arbitration bodies handling commercial cases tend to have more qualified personnel and more accurate statistics, while informal and traditional bodies tend to be more difficult to assess through quantitative indicators.

7. Institutions of traditional, customary, or religious justice

Key criteria for traditional, customary, or religious justice include:

- The basis of authority and the means by which authority is exercised

- The jurisdiction and mandate (based on either subject matter or geographical location)

- The relationship with and effect upon human rights, particularly for women, minorities, and indigenous peoples

- Substantive law or legal principles

- Procedural rules or practices

- Whether there is codification of any kind

- The relationship to the official justice system and regular courts (including a comparison of legitimacy and accessibility of both systems)

- The potential involvement of legal professionals

- The prevention of conflicts of interest and corrupt practices

- Cultural, social, and anthropological traditions, characteristics, and circumstances

- Mechanisms to ensure that international human rights standards are met, and that customs, traditions, or religions do not end up compromising the human rights of specific groups

Although it is difficult to perform quantitative analysis, which relies upon documentation and statistics, it is still possible to assess or estimate:

a) the numbers and volume of cases being handled,
b) the subject matters being addressed,
c) the percentages of different types of cases,
d) how quickly decisions are rendered,
e) the identity of the litigants (gender, age, ethnicity, etc.)
f the percentage of decisions which are recorded.

Nonetheless, most indicators are likely to be qualitative. They can look into:

a) how effectively procedures are organised,

b) the background and qualifications of the leaders,
c) whether parties are satisfied with and accept the outcomes,
d) whether parties comply with the outcomes,
e) whether parties end up referring cases back to the official court system, for any reason.

It is also important to assess the relationship between the unofficial and official justice sectors. The most likely sources of information are direct observation and interviews with litigants (when possible), consultations with community leaders and outside experts, and research.

8. Transitional and restorative justice institutions and processes

Transitional justice institutions a) have special objectives, and b) operate within limited timeframes.

Special institutional objectives and responsibilities arise from the specific circumstances leading to their establishment, such as social conflict, gross violations of human rights, extra-judicial killings, impunity, and the breakdown of official justice sector institutions. Under such circumstances, typical indicators include:

a) the number of investigations carried out,
b) the number of investigations concluded,
c) the average duration of investigations,
d) the number of cases raised with governmental bodies,
e) the number of cases filed with the courts,
f) the number of prosecutions carried out,
g) the number of reports issued,
h) the number of laws or amendments to laws proposed,
i) the number of amendments to administrative procedures proposed, and
j) the number of hearings held, etc.

Information concerning many of these criteria should be available from the institutions themselves, the media, and official or public sources. It is also possible to obtain qualitative information concerning levels of satisfaction with the work of these institutions from interviews with individuals who have petitioned for support.

Transitional justice institutions are transitory, and designed to fulfil a special function for a limited time period. Although their timeframes vary according to their functions and the specific national context, they should consistently focus on setting the stage for the post-transition period, after their mandate expires. In addition, temporary institutions replacing or supplementing the work of official bodies need to work in a collaborative fashion to help develop their capacity, so that they can re-assume their proper functions.

Under these circumstances, indicators can cover:

a) planning for sustainability,
b) the number and nature of capacity building exercises,
c) reforms which set the stage for improved operation of the justice sector,
d) human resources development and work with the legal profession,
e) strengthening of mechanisms for protecting human rights, etc.

9. Non–state actors and civil society organisations

There are many different kinds of NSAs and CSOs, fulfilling different functions with regard to the justice sector. Thus, a wide range of indicators can be developed. They depend upon whether the NSAs and CSOs are engaged in a) information collection and management, b) delivering general services, c) providing legal assistance, d) protecting human rights, e) protecting minority rights, f) monitoring and reporting on human rights violations, g) advocacy, h) outreach and awareness raising, i) legislative drafting, j) policy development, k) providing training, l) dispute and conflict resolution, etc. In each of these areas, specific quantitative and qualitative indicators can be developed. It is best practice to work directly with the NSAs and CSOs, individually and in coalitions, to develop indicators and set plans for gathering information and tracking compliance.

([18]) For a collection of comparative studies and approaches to ADR developed by the World Bank, see: http://web.worldbank.org/WBSITE/EXTERNAL/
TOPICS/EXTLAWJUSTINST/0,,contentMDK:20745989~menuPK:1990313~pagePK:210058~piPK:210062~theSitePK:1974062,00.html

Annexe 4: Prominent multilateral institutions and donors

- **The Council of Europe** (COE) is a multilateral institution, founded in 1949, with 47 Member States, based in Strasbourg, France, which supports democracy and application of the European Convention on Human Rights and Fundamental Freedoms. In 2002 the COE established the European Commission for the Efficiency of Justice (CEPEJ), whose aim is the improvement of the efficiency and functioning of justice in the member States, and the development of the implementation of the instruments adopted by the COE to this end. See: www.coe.int

- **The Development Banks**, such as the African Development Bank, the Asian Development Bank, the European Bank for Reconstruction and Development, and the Inter-American Development Bank, finance development and economic growth, and fight poverty, through investments, loans, project implementation, and other similar mechanisms. See: www.afdb.org, www.adb.org, www.ebrd.com, and www.iadb.org

- **The European Union**, (EU) including the European Commission implementing the development aid budget, is one of the largest supporters of the justice sector worldwide, implementing numerous projects directly, and working through international institutions such as the Council of Europe, OECD, IMF, IOM, UN, World Bank, and the other development banks. It has published many studies. See: http://ec.europa.eu/europeaid/index_en.htm and http://capacity4dev.ec.europa.eu/

- **The International Monetary Fund** supports the international financial system, monetary cooperation, and macro-economic development, in order to promote financial stability, trade, economic growth, and poverty reduction. See: http://www.imf.org/external/index.htm

- **The International Organisation for Migration** (IOM) is an intergovernmental organisation founded in 1951 to support the rights of migrants around the world. See: www.iom.int

- **The Office of the United Nations High Commissioner for Human Rights** (UNHCHR) is the principal human rights institution of the United Nations system, and is active worldwide. See: www.ohchr.org

- **The Organisation for Economic Cooperation and Development** (OECD) is a multilateral institution founded in 1961, with 34 Member States, based in Paris, France, which promotes economic and social development around the world. See www.oecd.org. Support for Improvement in Governance and Management (SIGMA), a joint initiative of the EU and OECD, has produced a number of highly valuable studies. See: www.sigmaweb.org

- **The Organization for Security and Co-operation in Europe** (OSCE), with 56 Member States, is the largest regional security organisation in the world, and is active in conflict prevention, crisis management, and post-conflict rehabilitation. See: www.osce.org. The Office for Democratic Institutions and Human Rights is a global player in justice sector reform. See: http://www.osce.org/odihr

- **The United Nations Development Programme** (UNDP) is the global development network for the UN, working in 166 countries to promote all facets of socio-economic development, including initiatives and publications on democratic governance. See: www.undp.org

- **The United Nations Office on Drugs and Crime** (UNODC), formed in 1997, is dedicated to fighting cross-border criminality (including drugs, organised crime, human trafficking, and terrorism), promoting penal reform, and conducting research. See: www.unodc.org

- **The United Nations Children's Fund** (UNICEF), working through country programmes and national committees in 190 countries, is dedicated to promoting the rights of children and the application of international standards in this area. See: www.unicef.org

- **The United Nations Entity for Gender Equality and the Empowerment of Women** was created in 2010 by combining four institutions specifically dedicated to the protection of women's rights, including the United Nations Development Fund for Women (UNIFEM). See: www.unwomen.org

- **The World Bank** includes several institutions dedicated to fighting poverty and improving living standards around the world, through loans, investments, policy advice, and technical assistance. These include the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the International Centre for the Settlement of Investment Disputes. The World Bank Group has produced an extensive library of materials. See: www.worldbank.org. [19] The World Bank Justice for the Poor (J4P) initiative focuses on social justice for the disadvantaged. [20]

Prominent bilateral institutions/donors include:

- **The Australian Agency for International Development** (AusAID) is the governmental body responsible for managing the country's overseas aid programme. See: www.ausaid.gov.au

- **The Belgian Development Agency** (BTC) is a public law company owned by the Belgian Government, which supports sustainable development in 20 countries. See: http://www.btcctb.org/

- **The British Council** is the United Kingdom's international organisation for educational opportunities and cultural relations, and a registered charity in England, Wales, and Scotland. See: http://www.britishcouncil.org/new/

- **The Canadian International Development Agency** (CIDA) is Canada's leading body for providing international assistance. See: www.acdi-cida.gc.ca

- **The Department for International Development** (DFID), formed in 1997 under a cabinet minister, fights world poverty on behalf of the British Government. See: www.dfid.gov.uk

- **The Danish International Development Agency** (DANIDA) provides overseas assistance through the Ministry of Foreign Affairs. See: www.um.kk/eng

- **The Deutsche Gesellshaft für Internationale Zusammenarbeit** (GIZ) is a federally owned enterprise formed in 2011 to consolidate German international assistance. See: www.giz.de. For the Federal Ministry for Economic Cooperation and Development, see www.bmz.de

- **The Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit** (IRZ) is a foundation that promotes international legal and judicial reform. See: www.irz.de

- **The Kuwait Fund for Arab Economic Development** provides loans and technical assistance for development. See: www.kuwait-fund.org

- **The Netherlands Development Assistance** (NEDA) administers foreign assistance under the Ministry of Foreign Affairs, in cooperation with the Minister for Development Corporation. See: www.minbuza.nl or www.onderzoekinformatie.nl/en/oi/nod/organisatie/ORG1234952/. For the Netherlands Development Organisation, see www.snvworld.org

- **The Spanish Agency for International Development** (AECID) is a public entity managing overseas aid with the Ministry of Foreign Affairs and Cooperation. See: www.aecid.es

- **The Swedish International Development Cooperation Agency** organises and administers Swedish foreign aid, to fight poverty and promote development. See: www.sida.se/English/

- **The Swiss Agency for Development and Cooperation** (SDC) administers development aid from within the Federal Department of Foreign Affairs. See: www.sdc.admin.ch/en/Home

- **The United States Agency for International Development** (USAID) is the official development agency of the US Government, and a significant supporter of legal and judicial reform. See: www.usaid.org. For a number of extremely useful publications, see http://www.usaid.gov/our_work/democracy_and_governance/ [21]

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[19] For example, see the 2007 "Justice Sector Assessment Handbook", available at: http://web.worldbank.org

[20] http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTLAWJUSTICE/EXTJUSFORPOOR/0,,menuPK:3282947~pagePK:149018~piPK:149093~theSitePK:3282787,00.html

[21] For example, for a guidebook on conducting rule of law and justice sector assessments, see: www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/ROL_Strategic_Framework_Sept_08.pdf

- **The United States Department of Justice** (USDOJ) supports legal reform, with particular focus on international cooperation and criminal matters. See: www.justice.gov

In addition to national governmental institutions, foreign embassies and consulates often provide assistance to specific projects and initiatives, depending upon the country context. They should be consulted for specific information.

Prominent transnational institutions and independent organisations include:

- **The American Bar Association Rule of Law Initiative** has been supporting legal and judicial reform around the world for the past twenty years, and prepares comprehensive assessments of legal and judicial reform in many countries. See: http://apps.americanbar.org/rol/

- **Amnesty International** is an independent organisation dedicated to promoting human rights around the world, and is actively engaged in advocacy, monitoring and outreach. See: www.amnesty.org

- **The Danish Institute for Human Rights** (DIHR), formerly the Danish Centre for Human Rights, is a prominent supporter of human rights worldwide. See: www.humanrights.dk

- **The Ford Foundation** is an independent institution founded in 1936, actively engaged in democratic reforms and poverty reduction worldwide. See: www.fordfoundation.org

- **The Federal Judicial Centre** is the education and research agency of the United States Federal Courts, and supports judicial reform worldwide. See: www.fjc.gov

- **Freedom House** supports democratic development worldwide, and publishes many assessments such as Freedom in the World, Freedom of the Press, Nations in Transit, and Countries at the Crossroads. See: www.freedomhouse.org

- **The International Development Law Organisation** promotes good governance and the rule of law in developing countries. See: www.idlo.int

- **The International Security Sector Advisory Team** (ISSAT) works to improve security and justice, primarily in post-conflict and fragile states, on behalf of parties such as the European Union. See: http://issat.dcaf.ch/

- **Lawyers without Borders** is a not-for-profit corporation that works to improve legal processes and operation of the legal profession. See: www.lawyerswithoutborders.org

- **The Open Society Foundations** form a network of in-country institutions working to support democratic development and the rule of law, with considerable financing from George Soros. Funding for initiatives is also provided through grant-making institutions such as the Open Society Institute, with offices in New York and Budapest. See: www.soros.org

- **PILnet** is a global network for public interest law, which supports the protection of legal rights and the strengthening of important practices such as legal aid. See: www.pilnet.org

- **Transparency International** is a civil society organisation based in Berlin that works through some ninety national chapters to assess and address corruption, and develop and publish informational materials and rankings. See: www.transparency.org

- **International Centre for Transitional Justice** (ICTJ) is an international organisation mainly focusing on transitional justice processes. See: www.ictj.org

- **International Legal Assistance Consortium** (ILAC) is a consortium of legal associations for assistance in legal reform and support. See: www.ilac.se

- **RCN Justice & Démocratie** is a Belgian non-governmental organisation working in the area of good governance & rule of law in post-conflict countries. See: www.rcn-ong.be

- **Search for Common Ground** (SFCG) is an international conflict transformation and peace-building NGO seeking to transform adversarial conflict into cooperative action. See: www.sfcg.org

- **Penal Reform International** is an international non-governmental organisation working on penal and criminal justice reform worldwide. See: www.penalreform.org

- **Human Rights Watch** (HRW) is an international organisation working on the protection of human rights on a global scale. See: www.hrw.org

- **International Federation for Human Rights** (FIDH) is an international NGO defending all civil, political, economic, social and cultural rights, set out in the Universal Declaration of Human Rights. See: www.fidh.org

Significant support and assistance for legal and judicial reform are also provided through regional institutions such as:

- **The African Union**.
  See: www.au.int

- **The Association of South-East Asian Nations (ASEAN)**.
  See: www.asean.org

- **The League of Arab States**.
  See: www.arableagueonline.org

- **The Organisation of American States**.
  See: www.oas.org

Finally, a very large number of private consulting companies implement projects on behalf of donors, usually through participation in competitive tendering processes.

For additional international institutions and sources of reference materials regarding human rights, please refer to Annexe Number Two.

It is very important to consider all of the potential international donors and assistance providers who might be available to contribute to or participate in efforts to support the justice sector and justice sector reform.

Annexe 5: Resources and links

This list of international institutions and sources of reference material regarding justice sector reform and human rights is intended to supplement the list of donors and institutions presented in Chapter IV (E). It provides a sample of available institutions and materials, and should not be considered exhaustive. Additional information and links can be found using these sources.

1. The Anti-Corruption Resource Centre provides support for donor anticorruption initiatives, through research and strategy formulation. See: www.u4.no/

For a handbook on monitoring corruption in the judiciary, see http://www.cmi.no/publications/file/3483-monitoring-judicial-integrity.pdf

Transparency International – the Global Coalition Against Corruption provides recommendations on fighting corruption world wide, as well as the annual corruption perception index. For more details see: http://www.transparency.org/

2. The African Commission on Human and Peoples' Rights promotes and protects human rights throughout Africa, according to the African Charter on Human and Peoples' Rights, under the auspices of the Organisation of African Unity. See: www.achpr.org/english/_info/news_en.html

For information concerning the current status of the African Court on Human and Peoples' Rights, see www.aict-ctia.org/courts_conti/achpr/achpr_home.html

For reference and background materials on human rights in Africa, see: http://library.stanford.edu/depts/ssrg/africa/hurights.html

3. The Consultative Council of European Judges (CCEJ) is an advisory body of the Council of Europe working on issues related to the independence, impartiality and competence of judges. See: www.coe.int/t/dg1/legalcooperation/judicialprofessions/ccje/

4. The European Academy for Law and Legislation (EALL) provides a wide range of courses concerning legislative drafting. See: http://www.eall.eu/

5. The European Commission for the Efficiency of Justice (CEPEJ) works through the Council of Europe to improve the efficiency and functioning of the justice sector in Member States, implement best practices, and develop information resources. See: www.coe.int/t/dg1/legalcooperation/cepej/

For a CEPEJ Checklist for promoting the quality of justice and the courts see http://www.courtexcellence.com/pdf/2_2008_CEPEJ_checklistQualite_en.pdf

6. The Department for International Development (DFID) issued a report on Non-State Justice and security Systems providing safety, security, and access to justice. See: http://webarchive.nationalarchives.gov.uk/+/http://www.dfid.gov.uk/Documents/publications/non-state-justice.pdf

7. The European Union offers a wide range of materials and reports on human rights. See: http://eeas.europa.eu/human_rights/ and http://eeas.europa.eu/human_rights/docs/index_en.htm

The Council of the European Union offers a wide range of background documents and informational materials. See: www.consilium.europa.eu/showPage.aspx?id=1&lang=EN

For studies and evaluations on human rights, see http://ec.europa.eu/europeaid/what/human-rights/studies_evaluations_en.htm

For information on indicators under the European Instrument for Democracy and Human Rights, see http://ec.europa.eu/europeaid/what/human-rights/documents/impact_indicators_channel_en.pdf

8. The Geneva Centre for the Democratic Control of Armed Forces is an international foundation that focuses on security sector issues relating to the armed forces. See: www.dcaf.ch

9. Human Rights Watch is an independent organisation that works to promote and protect human rights worldwide. See: www.hrw.org

10. Human Rights Web provides a comprehensive listing of human rights organisations at international, regional, and national levels. See: www.hrweb.org/resource.html

11. The Inter-American Commission on Human Rights is an autonomous organ of the Organization of American States (OAS), part of the inter-American system for the promotion and protection of human rights. See: www.cidh.org/DefaultE.htm

12. The Inter-American Court of Human Rights is an autonomous judicial institution of the Organization of American States (OAS), whose objective is to apply and interpret the American Convention on Human Rights and other related human rights treaties. See: www.corteidh.or.cr/index.cfm?&CFID=1012740&CFTOKEN=72514740

13 The International Centre for Transitional Justice (ICTJ) helps post-conflict and developing countries to establish accountability for human rights violations and overcome injustice and abuse. See: www.ictj.org

14. The International Commission of Jurists (ICJ) is an independent institution that for the past 50 years has been working to support international law and human rights and the development of important informational materials. See: www.icj.org

The ICJ publishes materials on a wide range of legal topics. For the publication "International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors" see www.unhcr.org/refworld/type,HANDBOOK,ICJURISTS,,4a7837af2,0.html

15. The International Council on Human Rights Policy performs research and policy analysis that supports human rights initiatives around the world. See: www.ichrp.org

16. The International Federation for Human Rights (*Fédération internationale des ligues des droits de l'homme* (FIDH)) is an umbrella organisation with 164 members, founded in 1922, which works to promote and protect human rights on a global scale. See: http://www.fidh.org/-english-

17. The International Institute for Democracy and Electoral Assistance (IDEA) is an intergovernmental organisation which supports democratic development through fair and participatory political and electoral processes. See: www.idea.int

IDEA also engages in outreach and prepares a wide range of publications. See: www.idea.int/publications/

18. The International Legal Assistance Consortium (ILAC) is a consortium of NGOs carries out post-conflict assessments and reports on ways to rebuild justice systems. See: http://www.ilac.se/

19. The Office of the United Nations High Commissioner for Human Rights (UNHCHR) provides a large library of human rights treaties and instruments. See: http://www2.ohchr.org/english/law/

For comprehensive information on human rights monitoring institutions and mechanisms, see www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx

For information concerning mapping the justice sector in post-conflict states, under the UNHCHR rule of law tools, see http://www.ohchr.org/Documents/Publications/RuleoflawMappingen.pdf

20. The Organisation for Economic Cooperation and Development and its Development Co-operation Directorate provide numerous publications.

For the OECD-DAC Handbook on Security System Reform, see: http://www.oecd.org/document/6/0,3343,en_2649_33693550_37417926_1_1_1_1,00.html

For information concerning the OECD International Network on Conflict and Fragility, see www.oecd.org/document/57/0,3746,en_2649_33693550_42113657_1_1_1_1,00.html

21. Penal Reform International is an international non-governmental organisation working on criminal justice reform, including alternative sanctions, abolition of the death penalty, etc. See: www.penalreform.org

For a publication on Access to Justice in Sub-Saharan Africa - the role of traditional and informal justice systems, see: http://www.penalreform.org/files/rep-2001-access-to-justice-africa-en.pdf

22. The United Nations human rights website provides links to international bodies, treaties and instruments, thematic materials, and forums. See: http://www.un.org/en/rights/

For information about the UN and the rule of law, see: www.un.org/en/ruleoflaw/index.shtml and www.unrol.org/

For the United Nations Basic Principles on the Independence of the Judiciary (1985), see http://www2.ohchr.org/english/law/indjudiciary.htm

For the United Nations Guidelines on the Role of Prosecutors (1990), see http://www2.ohchr.org/english/law/prosecutors.htm

For the United Nations Basic Principles on the Role of Lawyers (1990), see http://www2.ohchr.org/english/law/lawyers.htm

For the United Nations Standard Minimum Rules for the Treatment of Prisoners, see http://www.unodc.org/pdf/compendium/compendium_2006_part_01_01.pdf

For the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, see http://www2.ohchr.org/english/law/res45_113.htm

For the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), see http://www.unodc.org/pdf/compendium/compendium_2006_part_01_02.pdf

For the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), see http://www.unodc.org/pdf/compendium/compendium_2006_part_01_03.pdf

For the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, see http://www.unodc.org/pdf/compendium/compendium_2006_part_01_04.pdf

For the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, see http://www2.ohchr.org/english/law/executions.htm

For the United Nations Code of Conduct for Law Enforcement Officials, in the context of good governance, see http://www.unodc.org/pdf/compendium/compendium_2006_part_04_01.pdf

For the United Nations Approach to Justice for Children (2008), see http://www.unrol.org/doc.aspx?n=UNCommonApproachJfCFinal.doc

For a United Nations Development Program Practice Note on Access to Justice, see http://www.unrol.org/files/Access%20to%20Justice_Practice%20Note.pdf

For a United Nations Development Program document on the functions of the informal justice system, see http://www.undp.org/oslocentre/docs07/DoingJusticeEwaWojkowska130307.pdf

For UNHCR materials on rule of law and transitional justice, see www.unhcr.org/4a2cc2e26.html

For a UNODC Handbook on restorative justice programmes, under its criminal justice handbook series, see http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf

For the UNODC Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice, see http://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html For the UNODC Bangalore Principles of Judicial Conduct of 2002, see http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

For the UNODC Criminal Justice Assessment Toolkit, see http://www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html

For the UNODC Manual for the Measurement of Juvenile Justice Indicators of 2006, see http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf

23. The Vera Institute of Justice combines research, demonstration projects, and technical assistance to help leaders and civil society improve the justice and security sectors. See: www.vera.org

For the publication "Developing Indicators to Measure the Rule of Law: A Global Approach", see http://www.vera.org/download?file=1807/Developing%2BIndicators%2Bto%2BMeasure%2Bthe%2BRule%2Bof%2BLaw%2B%25280nline%2Bversion%25292.pdf

24. The World Justice Project (WJP) is an independent organisation dedicated to strengthening the rule of law. See: www.worldjusticeproject.org

For the WJP Rule of Law Index, see http://www.worldjusticeproject.org/rule-of-law-index/

Annexe 6: Table of acronyms and abbreviations

ACRONYM	FULL DESCRIPTION
ACP	African, Caribbean, and Pacific Countries
ADR	Alternative Dispute Resolution
COE	Council of Europe
CRIS	Consolidated Relex Information System
CSDP	Common Security and Defence Policy
CSO	Civil Society Organisation
CSP	Country Strategy Paper
DCI	Development and Cooperation Instrument
DDR	Disarmament, Demobilisation, and Re-Integration
EC	European Commission
ECHR	European Court of Human Rights
EDF	European Development Fund
ENPI	European Neighbourhood Policy Instrument
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
GBS	General Budget Support
HRBA	Human Rights-Based Approach
ICC	International Criminal Court
IFS	Instrument for Stability
LFM	Logical Framework Matrix
MDG	Millennium Development Goals
MTEF	Medium-Term Expenditure Framework
NGO	Non-Governmental Organisation
NIP	National Indicative Programme
NAO	National Authorising Officer
NSA	Non-State Actor
OECD	Organisation for Economic Cooperation and Development
OVI	Objectively Verifiable Indicator
PCA	Partnership and Cooperation Agreement
PCM	Project Cycle Management
PIU	Project Implementation Unit
PSC	Project Steering Committee
ROM	Results Oriented Monitoring
RRM	Rapid Response Mechanism
SGAF	Sector Governance Analysis Framework
SPSP	Sector Policy Support Programme
SSR	Security Sector Reform
TACIS	Technical Assistance to the Commonwealth of Independent States
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
USAID	United States Agency for International Development

This document belongs to the **"Tools and Methods series"** launched by EuropeAid in 2007. This collection aims to structure the presentation of the methodological documents produced by Directorate on "Quality of Operations". The collection includes three sub–collections: Guidelines, Reference Documents and Concept papers. Other titles in this collection include:

Guidelines

Reference documents

Concept papers

Publications Office