

2. GETTING STARTED: PRELIMINARY CONSIDERATIONS

The aim of this chapter is to help the user begin *planning* the assessment. Early attention to the assessment's possible risks and uncertainties will make the process run more smoothly and save time and resources. This chapter provides guidance on constructing a work plan by (1) describing the main stages of the assessment and (2) highlighting the tasks and considerations that should be addressed at each stage during the planning process.

In this case, an assessment investigates and analyzes the condition, situation, or problems in a justice system. The assessment is an iterative process: information gathered to answer questions will uncover unforeseen results and issues that will give rise to new questions. This may even lead to a shift in the focus, or alter components, of the assessment as it progresses. Spelling out the objectives and scope of the assessment and planning the assessment's other phases from the outset will help to guide choices, providing for a margin of maneuver while keeping the assessment on track.

Box 1. Main steps in assessment

Defining objectives scope

- Building assessment team/expertise
- Identifying stakeholders
- Determining assessment design and methodology
- Performing research
- Report writing
- Dissemination

Among all of the considerations influencing the design of the assessment, the need to *generate support for the assessment* stands out. It will have to be taken into consideration both at the outset and at each stage of the assessment. Other general considerations will each have a direct impact on defining the objective, scope, and focus of the assessment. They are included in Table 1.

Table 1. Factors with an impact on the assessment process

<i>Reform environment</i>	<i>Assessment process</i>
<ul style="list-style-type: none">▪ Level of development▪ Other urgent priorities (political stability, curbing violence, ending extreme inequity)⁵▪ Existing reforms and reform actors▪ Receptivity or fatigue for reform or assessments▪ Local capacity▪ Available donor and local resources	<ul style="list-style-type: none">▪ Any initial instructions from the funders or counterparts on content or methods⁶▪ Time▪ Budget▪ Availability of local resources, support, or participants▪ Team composition▪ Logistical obstacles: size of country, areas that cannot be visited for security reasons

1. Defining Objectives, Scope, and Problem-Set of the Assessment

The challenge in defining the objectives of an assessment is to be *realistic*, in other words, to balance what would be the ideal outcome with what can realistically be hoped to be accomplished in the given context within the time, resource, and other constraints of the assessment. The ultimate role of assessments is to guide the reform process and feed into discussions over how to prioritize and direct reform efforts. The *general* objectives of assessments include developing a knowledge base to:

- a. Identify or verify perceived areas in need of reform or deeper analysis
- b. Tailor and sequence reforms more effectively
- c. Establish an empirical baseline against which the outcomes of reform interventions can be measured.

Beyond these general types of objectives, the objectives of an assessment will be very much *case specific*. In all instances, a main concern in setting more specific yet realistic objectives will be deciding how general or narrow the focus of the assessment should be and how deeply to go in performing the research. A main choice is between whether (a) to attempt to evaluate the justice sector as a whole, or (b) to narrow the focus to a narrower and discrete set of issues or problems.

Choosing the *focus* or *topic* of an assessment is a bit of a “catch twenty-two.” The general aim of assessments is to identify and analyze problems for reform. How then to choose the topic without having already performed the analysis? As a basic guide: a more general focus would attempt to cover a wider set of issues, institutions, and actors. The risk with this type of broader focus is a more superficial evaluation.⁷ In a more specific focus, it is easier to deepen the enquiry. The risk in this case is that the assessment will

⁵ These additional priorities may either reduce the attention and resources for justice reform or set the goals that it will be asked to address.

⁶ Aside from instructions on what is to be covered, funders often insist on certain methodologies (a survey, workshops, use of local NGOs or research groups). They also may have instructions as to what should not be covered, due to political sensitivities or other reasons.

⁷ The World Bank’s Legal Modernization Initiative notes that the “lack of focus on a particular problem or problems may explain disappointing outcomes.” The initiative suggests a shift to a more tailored, problem-centered approach. Bank-Wide Legal Modernization Initiative Justice Sector Action Plan, 8 (Draft, March 8, 2005).

miss key problems or causes outside the narrower focus. In some respects, the distinction between broad and narrow is a false one. As the research goes deeper, a focus on the justice system as a whole likely will lead the assessment to focus on a few priority issues. A more specific focus will likely lead, at some point, to an analysis of how a specific topic or set of issues relates to and is shaped by the system as a whole. Chapter 3 will provide detailed guidance on how to choose.

Table 2. Guidance on various assessment models

<i>Model</i>	<i>Time & cost of study</i>	<i>Pros/cons</i>	<i>Practical tips</i>
#1 Super-deluxe, bells and whistles	6–12 months collecting data (additional time always to produce report) Ample budget (\$200,000 +)	Very rich research, broad scope, and potential to go very deep. Opportunity to build/enhance in-country data collecting and survey capacity. Information may be out of date by the time it is reported. May lose interest of stakeholders or opportunities to use report as a vehicle for generating interest in reform.	Have individual members present interim findings and reports to the rest of the team so that collective decisions can be made on areas to explore further. Keep the team on track via an initial plan and set of objectives. This structure can discourage members going off on tangents that, in the end, may not be useful. Provide interim reports to outside stakeholders to get feedback and maintain interest.
#2 Bare-bones, emaciated	2–4 weeks collecting data (additional time always to produce report) Very small budget (\$30,000–\$50,000)	Problem or situation examined may only require a quick and more limited investigation. May be the only opportunity provided for doing an assessment. Useful as preliminary assessment to identify existing sources of data and possible further stages of diagnosis. Drawbacks: Results may be overly superficial and not rich enough to enable recommendations or action based on findings.	Be upfront about limitations of coverage in the report and highlight need for and map areas of potential follow-up research. Start with a solid plan and avoid diverging from it. When time and resources are scarce, tangential investigations are more risky. Local expertise is always important, but arguably more essential here because of the time it can save. However, where local experts are not versed in assessment methodologies, they may have to be given additional guidance or training. Although likely more cost-effective, local expertise should not be used just to cut cost, but primarily to add value and build capacity in the country.

Desk Reviews

A desk review or stocktaking of existing written and electronic material relevant to the assessment should be performed as an initial step. The desk review will feed into all components of the assessment and planning for it. The review should, where relevant, take stock of: country conditions; the structure and history of the justice system; and existing reports and assessments on the justice system, existing projects, reform efforts

and actors. One main reason for performing desk reviews is to assist in refining the scope and topic of the assessment. Albeit a painstaking task, the review will provide an idea of which assessments and reforms already have been performed or attempted. This knowledge can help to avoid duplicating existing work, to identify stakeholders and other donor actors, and to identify the types of questions and data to target.

Within the last several years, much has been written about particular legal systems and their problems. In some cases, background information about judicial and legal systems is readily available.⁸ In addition to the literature on legal and judicial systems and studies from both international and domestic sources, numerous online resources exist. Many countries now maintain their own official websites on the basics of their legal systems.⁹ Increasingly, there also are websites devoted to compiling regional statistics and basic overviews.¹⁰

The review should take stock of existing *legislation* that has a bearing on the assessment's topic. Obvious starting points include constitutional provisions and any law regulating judicial services. Local counterparts are the best source to identify additional pieces of legislation that have a less obvious connection to the assessment's focus. The main reason for reviewing legislation is that it can help to clarify why a current state of affairs exists, for example, bad legislation might be hindering sector performance. The review also guides thinking, from the beginning, of what reforms could more practically or realistically be achieved and thus recommended in light of the later findings of the assessment. Anchoring diagnostics in pre-existing law, for example, guarantees of judicial independence or criminalization of bribes, also can be a source of authority and legitimacy for the assessment. Legislative provisions can serve as benchmarks against which to evaluate conditions; that is, compliance with or fulfilment of legal standards could serve as one mark of the performance of the justice system. However, relying on legislation should be done with extreme care because prevailing conditions quite often are shaped by extra-legal considerations and external circumstances. In many contexts, the laws may be too far removed from real practice to serve as a useful guide, in which case their value is at best as an official expression of aspirations of how things should be.

Desk reviews have *limits*. First, many relevant documents are not easily available. More in-depth studies or those containing empirical data might be accessible only locally through personal contacts and with persistence. Second, preexisting assessments and other documents can be hard to use or unreliable. There may be no way to verify the quality of these documents; their data and conclusions may be inaccurate, out of date, and hard to evaluate. That said, existing documentation on the systems that will be assessed

⁸ For example, Herbert Kritzer's collection, *Legal Systems of the World: A Political, Social, and Cultural Encyclopedia*, offers a good starting point.

⁹ If an analyst is looking for a judicial opinion to evaluate from Papua New Guinea, s/he can find it at www.paclii.org/pg/cases/PGSC/2005/1.html. If a consultant wants to learn about Bhutan's legal system, s/he might click on www.country-data.com/cgi-bin/query/r-1521.html

¹⁰ For example, CEPEJ features information on 46 European countries. CEJA is producing annual reports on the situation in Latin America and the Caribbean.

provides the team with useful starting points. The team should keep in mind that the review stage is too early for conclusions¹¹.

Building Assessment Team and Expertise

Assessment teams ideally should be *multidisciplinary* and draw on a good mix of expertise and skills. Ideally, all team members should be able to function in the local language, although in some cases this may simply be impossible. At a minimum, some or all team members should possess an understanding of the legal system or the substantive areas of focus in the assessment. Research and social science skills are crucial to ensure the integrity of the assessment results. Depending on the focus, it might be useful to have specialists who have a more general foundation in institutional reform or human resources management; governance and anticorruption; social work; anthropology; and human rights. Again, the composition of the team will depend to a large extent on the focus and depth intended for the assessment.

Local expertise offers many advantages, not the least of which is an ability to work in the local language(s) and an understanding of terms and concepts that could be lost in translation. Local experts can provide more nuanced insight drawn from on-the-ground experience with realities and problems. Depending on the context, employing local experts will build local research capacity and exposure to issues while being more cost effective. Where needed, an initial stage of an assessment might provide a training session on survey techniques to team members. On the one hand, drawing on local expertise can increase the perceived legitimacy and reception of the assessment by not making it appear to be imposed from the outside. On the other hand, a possible tension is that local experts also might have a stake in the assessment's outcomes, in which they or their organization are already players in the reform process and internal politics of the justice system. This could undermine the assessment's perceived legitimacy. The initial identification and analysis of stakeholders can help guide the choice of the appropriate local experts. Where a country expert is unavailable, an expert in a similar system can save a great deal of time in getting up to speed.

International or *comparative expertise* is also valuable: it provides a broad perspective combined with an appreciation of multiple justice systems and reform experiences. International experts also can bring skills and outlooks that are not available in the assessed country, such as court administration, information and communications technology (ICT) applications to judicial operations, or the construction and interpretation of judicial statistical systems.

Successful teams share some common factors apart from their technical expertise:

- Shared understanding of the assessment's purpose, as reflected in their terms of reference
- Agreed set of norms and ground rules

¹¹ "A User's Guide to Poverty and Social Impact Analysis" (World Bank 2003c, 16–17).

- Commitment of all members to the collective task and a willingness to put it before any individual agendas
- Coverage of all necessary roles in the team.

The primary role to be fulfilled is that of moving the team to accomplish its task. The environment and the resources that help the team get its work done must be assured. This is the role of the team leader, who also keeps the team on track. Since the team leader is ultimately responsible for the product, when the team fails to reach agreement by consensus, the team leader ultimately has the last vote. However, team leaders are well advised to never "pull rank" or apply undue influence on the team.

A role that tends to be overlooked is that of *process facilitation*. In small teams, the roles of both leading and facilitating will be done by the team leader. However, the role of facilitator is distinct from that of leader. While the leader's responsibility is the team's result, the facilitator's primary focus is the team's process. The facilitator keeps all team members on track, makes things happen with ease, and helps the group with the process, for instance by moderating discussions. The role of facilitator also may rotate from member to member, thus enabling the team leader to participate fully in the substantive discussions. In large teams with complex processes, the facilitator sometimes is not a team member but is contracted specifically to perform this role to facilitate the process.

Another necessary role in the team is that of *record-keeping*. Notes, documents, and decisions must be kept. The team's key points, ideas, and decisions must be written down and kept for future reference. The team's process, discussions, and decisions need to be documented and kept. Thorough, accurate, and well-organized record-keeping will help produce a good report.

If funding permits, having a *research assistant* for the desk review and possibly later research tasks can be a great help. The role of the research assistant is discussed in more detail in Chapter 3.

Although not absolutely essential to the team's success, other roles also can be very helpful. In a busy team meeting in which members are considering ideas, brainstorming, and prioritizing, time-keeping is very helpful. Teams can be helped with other, more informal roles, too. These include experts who can clarify technical issues, a "big picture" person who helps to summarize items, people who are good at keeping a group together, and experienced negotiators who can help bring opposing views together. If there is a choice among candidate team members, taking such skills into account in the choice may enrich the team and, by adding to its diversity, make for greater success in performing the assessment.

Box 2. The impact of who performs the assessment

Who does the assessment obviously has enormous consequences for its contents. Unfortunately, team membership usually must be decided before the needs are fully understood. If the problem is that a critical expertise was not included because it was identified after the assessment began, the reasonable alternatives (getting the other members to try to fill in or adding another member) may not be feasible. The "hole" will remain identified but not filled. Team members

also can insert biases that, if they are in fairly specialized areas, others may not notice. An example is the software, bankruptcy, or human resources expert who believes that there is only one reasonable way to do things, regardless of costs, local capabilities, or incompatibility with national practices.

The composition of the team also may affect how the assessment is received politically—especially where there is a perception that team members have a vested interest in the outcome of the assessment. Careful selection of members, assurance of a reasonably wide representation of skills and experience, and review of their prior work is always advisable. Nevertheless, if mistakes are made, the team leader will need a variety of skills to overcome them.

Identifying Stakeholders and Political Support

From the beginning of the assessment, the involvement of key stakeholders, the local legal community in particular, will help to generate and maximize political support for the assessment. For instance, support will be needed when approaching people to provide input, for example, as interviewees or making administrative data available; for the reception of the assessment results at publication; and for subsequent reforms based on the assessment. This is particularly the case when the assessment is performed with the longer-term intent of improving institutional performance. Thus, from the beginning, it is important to reach out to and involve a broad range of constituents, including ministry officials, court personnel, legal professionals, nongovernmental organizations, advocates of underrepresented groups, business interests, users of the courts, and the press.

There are a number of basic ways by which people have a “stake” or are stakeholders in the assessment, such as being:

- Part of the community of practice affected by the issues being assessed
- Interviewees or providers of input to assessment
- Members of the assessment team (discussed above)
- Subjects of the assessment (viz. being assessed)
- Recipients of eventual recommendations or actors to bring forward the recommendations
- Funders of the exercise.

The following are some examples of stakeholders in an assessment:

- Ministry of Justice officials or members of judicial councils, where one exists
- System-users such as plaintiffs and defendants, and the organizations that represent them
- Legal aid providers: lawyers, paralegals, community-based organizations (CBOs)
- Prosecutors
- Leadership and members of the judiciary
- Court management and staff
- Providers of non-court dispute resolution
- Legal training providers
- Individuals with legal issues not reached by the justice system

- Other donors in the justice field.

Box 3. Assessment fatigue

Care needs to be given not just to whom to consult but when to consult them, how much, and for what purposes. Many of the stakeholders targeted by the assessment will have been interviewed or part of earlier assessments by other donors and may suffer from “assessment fatigue.” In this sense, consideration regarding stakeholders should be given not just to generating political support, but also to avoid poisoning good will toward the assessment which could occur if people feel that they are being consulted, or that the assessment is being performed in a needless or duplicative manner.

For more information on stakeholder analysis, see “A User’s Guide to Poverty and Social Impact Analysis” (World Bank 2003c, 49).

Choosing Assessment Methodologies

The choice of methodologies will largely be shaped by the design of the assessment, particularly where the assessment’s length, scope, and cost are predetermined. Most assessments will rely on a variety of data sources (1) because no single one will provide all the information needed, and (2) because in combination, they can be used to corroborate findings and check against the biases inherent to any single method. Chapter 3 treats how to combine findings from different sources of information. Chapter 4 discusses the nature and relative merits of various soft and hard research methods, and provides pointers for using them.

For planning purposes, the choice of methods will give shape to the assessment and help consolidate the planning to that point. The preliminary identification of problems to investigate and stakeholders will help to determine which tools to use and in which context. At the same time, the mechanics of using a particular method, and its relative strength and practicality in harnessing information, will help shape the order and planning of the research, that is, what tasks can be done when. For example, to garner input from legal aid clients, a focus group discussion could be more effective in terms of cost, time, and breadth of information collected than would be individual interviews with each. Similarly, individual interviews with court administrators will help to add context to, but can also be tested or verified with other quantitative administrative data where these are available.

Box 4: Patience sometimes pays off

In a country in South Asia, the Chief Justice of the Supreme Court had many roles. Not only did he preside over his court, he also chaired the Judicial Services Commission which is in charge of managing the lower courts, and he was regarded as the head of the judiciary as a whole. Thus, there were many good reasons to interview him for the assessment of this country’s justice institutions.

Initially, however, the Registrar’s Office let it be known that it was not considered proper for a World Bank assessor to actually meet with the chief justice himself. After visiting most of the courts and other institutions on my list, including the registrar in question, and simply exercising patience, two weeks later, I was invited to come and meet the Chief Justice. By that time, I was able to share some preliminary conclusions at what was primarily a ceremonial visit.

In all cases, furthermore, use of the individual method will require specific preparations. For instance, individual interviews or focus group discussions require scheduling and securing the presence of the participants. The discussions also require preparing and testing, to the extent possible, a standardized set of interview questions. Similarly, trying to access administrative data requires an initial idea of how easily accessible the data are, both in terms of physical location (for example, centralized electronic files versus handwritten ledgers and haphazard filing systems) and securing the relevant permission to review the data.

Reporting and Dissemination

Writing and disseminating the assessment report mark the culmination of the assessment process. While the actual writing of the report might not begin until after the field research has been completed, constructing the report or thinking about how it will be written often begins during the research phase, as findings are evaluated and tested. The main task in writing the report is to assemble all of the findings and analysis and distill them into written form. The goal is to narrow down the data collected—choosing what to leave in and out—to present the most relevant findings in the most effective way. This exercise is part organizational, part analytical, and part political. Chapter 6 provides advice on all of these fronts. It explains both how best to organize the report's content and how to navigate political pitfalls that arise at the reporting and dissemination stage.

One factor to be considered when producing the report is that *conclusions are time sensitive*. The assessment already may be influencing the existing state of affairs before the final report is produced. The longer it takes for the report to be disseminated, the more likely the report will lose its relevance. This caveat underscores the importance, from the beginning, of planning how to draft and then disseminate the report. For planning purposes, a main task is to devise an effective system to compile information during data collection which will enable easy retrieval and analysis at the report-writing stage.

Dissemination serves a number of purposes: fostering dialogue in the country that informs reform choices, generating ownership of eventual reforms, and public accounting of the assessment. Conclusions and recommendations in the report may easily be taken as criticism. A degree of skepticism in the face of what is perceived as criticism from “outsiders” is to be expected. Involving all stakeholders in all stages of the assessment process will promote positive reception of the assessment. Suggestions on involving stakeholders are included in each chapter. Other ways to increase receptivity include the language used to present the results, solicitation of comments on multiple drafts, and the sequencing and media used to distribute the final report. Chapter 6 describes possible dissemination strategies and techniques.