

### 3. ASSESSMENT PROCESS

The following discussion draws on the authors' experience and on a review of the body of assessments done by the World Bank, as well as examples from other donors, most notably, DFID, IADB, USAID, and the UN agencies.<sup>12</sup> The desk review provided excellent examples of innovative methodologies and insights. It also suggested common shortcomings for which the authors have posed solutions. These weaknesses include:

- Tendency of many assessments to stick to a largely descriptive, formalistic narrative about sector organization. While such a narrative is useful to those not familiar with the system, it probably is the primary cause of the common complaint by counterparts that “the study doesn’t tell us anything we do not already know.”
- Tendency to focus on the state sector, especially the courts, with minimal attention to how their functions are complemented, or even replaced, by informal, non-state institutions. Given the difficulties of reviewing or assessing the latter, this focus is understandable. However, it provides a very incomplete picture of how societies resolve conflicts and enforce rules and may yield unnecessary or counterproductive recommendations.
- Tendency to go soft on criticisms even of fairly blatant, widely voiced problems, such as corruption, and political interference. The likely negative reaction from highly placed counterparts may explain this soft-pedaling, but it puts into question the validity of the entire assessment exercise.
- Failure to prioritize the problems that are discussed so that inadequate equipment or rundown buildings get the same attention as corruption or delay.
- Inadequate explanations of methodologies used to collect assessment data, of the relative importance of different data sources in reaching conclusions, and of the standards against which findings are evaluated.
- Over-reliance on conclusions drawn from informant interviews and surveys, with little attempt to validate them with other types of data. “Hard data” (chapter 4) may be difficult to collect; but intuition, anecdotes, and conventional wisdom are notoriously inaccurate so need to be checked.
- Minimal analysis or interpretation of quantitative data, either contextually or against international standards.
- Tendency to offer cafeteria lists of recommended actions, some of which seem to have little basis in the analysis, with minimal attention to prioritization, sequencing, or urgency.

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<sup>12</sup> Many of these other donors have relied on outside contractors, including NGOs such as ABA/CEELI or the National Center for State Courts; universities, such as Florida International University; or for-profit firms, such as Chechi or Chemonics.

Some of these shortcomings do not have easy remedies, especially those arising from the anticipated sensitivity of counterparts or the limited resources available for the assessment. Others might be addressed by a stronger focus on the assessment's purpose—a principal input to an eventual reform—and by closer collaboration among team members. The following discussion recommends a several-stage approach; it emphasizes problem-identification, analysis, and remedies. These emphases do not markedly change the usual assessment activities but do reorient their target. Only the final stages of comprehensive analysis and recommendations transcend the usual format because these are the areas in which most assessments seem weakest. Stage 4, an analysis of actual operations, is a partial novelty because most assessments do not consider it separately, and many do not include it at all.

### **Preliminary Considerations of the Assessment's Purpose and Approach**

A reform program or project's purpose is to improve sector performance; the purpose of the assessment is to provide a better understanding of what is wrong and why. Determining what the problem is can be as difficult as identifying its causes or devising remedies. What people believe to be wrong may not be entirely validated by the assessment, and the findings also may indicate additional performance shortcomings.

Typically, justice reforms are requested because of perceived problems in one or more of the following areas:

- Court or other sector agencies' failure to resolve disputes fairly, effectively, and conclusively<sup>13</sup>
- Slow, costly processing of "cases"<sup>14</sup>
- Limited access to sector dispute resolution and related services, especially for the poor, women, or other marginalized groups
- Corruption or politicization of services
- Biased decision-making
- Impacts of one or more of the above on such extra-sector goals as economic growth, poverty reduction, and citizen security and civil peace.

The positive values implicit in these complaint statements provide a preliminary definition of the characteristics of a well-functioning system: timeliness, honesty, broad and equitable access, and impartiality. These same values also are reflected in an increasing number of international conventions as well as in statements by the World Bank and other donors as to their objectives in supporting justice sector reforms.

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<sup>13</sup> "Other agencies" may include mediation centers, administrative tribunals located outside the judiciary, and various traditional dispute resolution bodies. They also include certain auxiliary agencies (police, prosecutors, registries) that provide input to the judicial process or are authorized to make specific decisions (in the case of police or prosecutors in some countries, to levy fines or impose community service), thus diverting disputes from courts. Whether their performance in either area is covered in the assessment depends on the problems being investigated.

<sup>14</sup> "Cases" here denotes the basic output of each agency, which may be a judgment (for the courts), an investigation (for the police), or a title (for a registry).

However, it may be still more significant that these are the problems mentioned most often by national citizens. This fact suggests that even if a full-blown sector model is missing, citizens hold certain widely shared expectations as to what the sector does and how it does it.

These problems are listed above in their broadest forms, and it is not uncommon for an assessment to investigate several or all of them. Alternatively, the assessment may be directed at a subcategory of only one problem. Examples are delayed contract enforcement in debt collection cases heard by civil courts, the judiciary's impact on credit availability, ineffectual handling of cases of alleged administrative corruption, or the impact of judicial services on poor women seeking child support.

However broadly or narrowly its initial aims were defined, the diagnostic's approach should be institutional. In other words, it should focus on the formal and informal norms, organizations, actors, and their incentives as they shape justice sector outputs.<sup>15</sup> Many assessments use a detailed analysis of the legal framework as their point of departure in addressing these questions. However, starting with the existing legal system generally is not a good idea. Existing legislation is important in understanding official aspirations and some constraints on system performance, but it is not everything. If it were, the considerable efforts invested in changing laws throughout the developing world would have produced far more positive results. In fact, the law is one of several institutions that shape sector output, but to understand why output is perceived as inadequate, much more must be considered.

This handbook defines the justice sector or system most broadly as:

*The institutions that are central to resolving conflicts arising over alleged violations or different interpretations of the rules that societies create to govern members' behavior; and that, as a consequence, are central to strengthening the normative framework (laws and rules) that shapes public and private actions.*

This definition is the one most commonly used by the World Bank. Admittedly, it is a mouthful. However, it is necessarily so to encompass the variety of institutions involved in rule-based conflict resolution<sup>16</sup> and to enable the inclusion of the non-state organizations and rules that may serve these purposes for a greater or lesser portion of a nation's population.

Justice, or legal and justice reform, concerns not only courts and state law. Nevertheless, the assessment ultimately may emphasize that part of the universe because it is most relevant to the problems addressed. The assessment also may focus elsewhere, especially

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<sup>15</sup> This should not be conflated with the neo-institutional or law and economics approach, which while also "institutional" in its analysis, incorporates additional assumptions about the sector's impacts on economic transactions. Some assessments (albeit none reviewed here) adopt this theoretical framework, but an institutional analysis does not require this step.

<sup>16</sup> Examples on the formal side are the courts as well as the legal profession and subcategories including notaries, prosecutors, and public defenders; registries; arbitration centers; and police.

in countries in which the formal state institutions have an extremely limited reach and the conflicts they do not cover contribute substantially to social unrest or negatively affect the poor. Thus, at least in the initial stages, it is best to keep options open, narrowing them only once additional decisions are made.

### **Getting Started: Defining the Focus and Scope**

Of course, the disadvantage to an institutional approach is that it does not establish an equally clear point of entry as starting with existing law. If the assessment does not start with the law, where does it start? There are two answers, both dictated by circumstances. The first is to focus on understanding a particular predetermined problem. This problem may be system specific, such as delay or insufficient access. Alternatively, it may be extra-system, involving the sector's presumed negative impact on developmental aims—poverty reduction, economic investment, or criminal and political violence.<sup>17</sup>

A second option would be to start the assessment with a more open-ended search for problems and their causes. The reason is that the “problems” first identified turn out often to be less important than others, or sometimes nonexistent.<sup>18</sup> Either starting point lends itself to an institutional analysis. The only difference is that between the search for answers to a predefined question, or the search for questions and then the answers.

For Bank staff, the choice is likely to be made by the Country Management Unit (CMU) or the country assistance strategy (CAS). Based on the CAS discussions, the CMU will request a project focusing on themes such as “judiciary’s impact on contract enforcement,” or “poverty reduction,” or a “justice reform project,” with no additional instructions. If the assessment team has the flexibility of this second option, it is advised to begin by canvassing opinions to define the major problems. The results will not be the final problem statement, but they can help in reaching it. As with the rest of the assessment process, determining an assessment’s focus is inherently iterative, and problem definition may be the most iterative aspect.

To avoid unnecessary confusion, the essential distinctions among *problems*, *causes*, *effects*, and *remedies* or *solutions* should be kept in mind. There are various ways to highlight these distinctions, but in this handbook, these terms will be defined as follows<sup>19</sup>:

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<sup>17</sup> Although criminal justice is presumed to affect crime levels, the many other contributing factors suggest that the incidence of crime should be considered a downstream or extra-system value on which the justice sector has an impact.

<sup>18</sup> This was the experience of ESW contracted by the Mexico CMU to investigate the impact of the judiciary on contract enforcement, especially in terms of excessive delays and pro-debtor biases. As it turned out, the creditor won more than 90% of the time; the delays were not in the prejudgment phase but in enforcement, and they were largely attributable to factors outside the judiciary’s control. Moreover, while the initiative started as a request from commercial bankers (interested in proving that the courts were responsible for high interest rates), banks were found to be minority users of the courts and to almost always win their cases. Any negative impacts of slow or inconclusive adjudication fell more heavily on individual users and small businesses. As for interest rates, anyone familiar with Mexico knows the courts are a minor contributor at most (World Bank 2002).

<sup>19</sup> The terminology used here is arbitrary, but the conceptual distinctions are vital.

- *Problems* will be reserved for unsatisfactory system outputs, such as delays, corruption, or limited access.
- *Effects* or *impacts* are the downstream societal consequences of these problems on extra-system values such as economic growth, poverty reduction, and political stability. The resolution of problems or improvement of effects provides the motive or justification for a reform and thus for the objective to which the assessment contributes.
- *Causes* are the reasons for the deficiencies named “problems” and “effects.” Causes are of two types. A *proximate* cause is the immediate factor that seems to trigger the problematic performance, for example, low judicial budgets and salaries, under-qualified judges and staff, or poorly drafted laws. The *underlying* cause is the more basic, structural explanation for both the problem and its proximate cause. Examples are resource poverty for the country as a whole, politicians’ desire to control the courts, or an experience-based expectation that laws will not be enforced and thus that their content is at best aspirational.
- *Remedies* improve outputs and impacts by attacking proximate and/or underlying causes.

The reason for stressing these distinctions is that many reform strategies seem to confuse or conflate the categories. It is not unusual, for example, for judges and ministries of justice to identify *candidate* proximate causes (not enough computers or training) as problems and to propose the provision of the missing element (the computers, the equipment, the infrastructure) as the solution.<sup>20</sup> This apparent tautology is not entirely illogical. From the respondents’ standpoint, insufficient equipment is problematic in that it can make their work more difficult. However, in terms of the above categories, it is only a potential proximate cause of the problems that really interest the analysts and system users: the quantity or quality of output.

Counterparts can be quite adamant about their analyses of a situation. Therefore, it is very important, even in the early stages of an assessment, for the team to (1) ensure that interviews about problems reach beyond high-ranking judicial staff and political leaders and (2) validate their initial appreciations, when possible, against empirical data.<sup>21</sup> Validation also guards against basing strategies on unrealistic expectations or erroneous perceptions. For example, system users may believe that every case should be resolved in a matter of weeks or simply may be misinformed as to the real times that most cases take. Conventional wisdom can be very powerful, but it often is in error. A good assessment is similar to a good medical examination. The latter often starts with the patient’s

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<sup>20</sup> “Candidate” is used because, for example, it is not always clear that too few computers are a proximate cause of a problem (such as delay).

<sup>21</sup> If validation is not possible, the assessment and final report should recognize them as hypothesized weaknesses, noting as well the extent to which the view is held, the types of groups or actors holding it, and the additional measure that might be used to test its validity. Assessments are likely to turn up many contentions of this type, and even if ultimately untrue, they are important in shaping how individuals deal with the legal system. Even if the problem (for example, judicial corruption) is far less prevalent than believed, the belief in its existence can be an explanation (cause) for other problems (for example, limited access or noncompliance with judgments).

complaints and self-diagnosis, but it may reach quite different conclusions as to what is wrong and why.

Whether it begins with a predefined problem or works off a short-list gleaned through preliminary interviews, the rest of the assessment has basically the same format. What is emphasized in each area depends on what is already known and what the team is seeking to do: whether it is, for example, exploring a list of candidate problems or investigating a predetermined topic to identify causes and alternative solutions

The discussion below and the outline in appendix 1 focus on the assessment process, rather than on the assessment as final report. This is another important distinction. The assessment team doubtless will collect more information than it will include in its final written product. In fact, trying to include all of the information is another common error. Part of the information collected is simply what team members need to better orient themselves. Part is essential to test the working hypotheses as to problems and to provide support for the conclusions reached. After the final analysis is done and recommendations are developed (stages 5 and 6 below), the team must make decisions as to what will be left in the report, what will appear as appendixes, and what will remain in the background papers or be discarded (chapter 6).

### **Assessment Stages**

The following discussion focuses on the stages in the assessment process, which often coincide with the chapters in the final assessment. While the intent here is not to provide an outline for the written report, suggestions appear below as to how information might be incorporated in it. The increasing number of assessment guidelines developed by other agencies often supply checklists of questions to structure fieldwork. While reviewing several of these lists may help teams organize their work, this handbook does not attempt to follow the checklist model because:

- a. Checklists inevitably include an impossible number of details, many of which will be irrelevant for a more focused exercise.
- b. The cafeteria approach provides little guidance as to how to process what is collected, either the significance of individual responses or their collective use to reach prioritized conclusions.
- c. In compiling checklists, it is extremely difficult to avoid inserting the authors' disciplinary and ideological biases.

Most checklists tend to stress formal rules and basic, largely quantitative data on resources, for example, the number of employees, cases, and computers, or the size and condition of infrastructure. While much of this data may be collected in stages 1 and 3 below, the format outlined here places more emphasis on problem definition (stage 2) and its role in orienting data collection, on the analysis of real outputs (stage 4), and on two additional steps: the formulation of composite conclusions and of prioritized alternative recommendations.

## **Stage 1. Preliminary background**

All assessments start with a “land, people, and justice sector” section that lays out basic details critical to interpret the rest of the material and also to decide on recommended courses of action. While this information can be gathered at any stage in the process, it will be useful for the team to collect and analyze some of it first. In and of itself, this information can provide initial ideas of where problems may lie. It also will be extremely helpful in interpreting the rest of the data collected and in identifying key stakeholders, informants, and partners who might collaborate in the research. Much of the background material can be taken from existing documents and usually can be reviewed before the team ever gets to the field (chapter 2).

This background should include at least two parts: (1) the political socioeconomic situation, and (2) the basics of the justice system. A suggested outline of key points to be considered is provided in appendix I, along with those for the rest of the assessment. Preliminary material on the justice system should include a brief overview that covers both state and non-state normative (laws and rules) and organizational frameworks, principal interactions among the components, recent changes, and major reforms under consideration. This material is useful even for assessments with a predetermined narrow focus. All or the relevant parts of this material can be fleshed out later with the field work, but having an initial sector map can be an enormous help in deciding where to focus subsequent research. Either in this or the country background portion, the team should attempt an initial listing of the most common and most important types of conflicts characterizing the society and the extent to which the justice system addresses them.

## **Stage 2. Preliminary problem identification**

Stage 2 begins the real assessment and the collection and analysis of information that constitute its value added. Aside from whatever instructions are provided by those requesting the assessment (WB, CMU), preliminary problem identification has two sources:

1. What people say, including information from written documents, existing surveys and opinion polls, and international ranking systems<sup>22</sup>
2. What the assessment team observes based in part on comparisons with the performance of other systems.

It is with the second source that expertise concerning justice systems elsewhere begins to pay off. A substantive expert with broad comparative knowledge can quickly identify anomalies that would be invisible to local experts who lack that comparative base. Many judiciaries that handle remarkably few cases claim overwork, and this impression may be

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<sup>22</sup> These ranking systems include composite scales such as the WBI rule of law (and other governance) indicators and independent indices such as that produced by the Bank’s Doing Business database (WB 2006). While both databases have their critics, they are nonetheless very powerful tools for identifying potential problems.

shared by citizens.<sup>23</sup> The same is true of statements about excessive or insufficient budgets, delays, and numbers of judges, courts, and support staff. There are no hard and fast rules on these statistics, but there is a normal range of variation for each that can be used to guide initial hypothesis formulation.<sup>24</sup> The increasing availability of international databases provides one set of standards against which to assess reported or observed problems. These databases also may be useful in fleshing out the more qualitative norms expressed in international conventions. Their application need not be limited to the obvious values such as delay or reasonable workloads. With a little creativity, they also could be used to explore qualitative issues including independence, access, or impartiality. The previous statement is not an invitation to convert the assessment process into an exercise in quantifying everything. However, when dealing with highly sensitive topics, some quantitative comparisons, such as turnover rates on the bench as an indicator of independence, can bolster what otherwise might be received as ideological or ethnocentric claims.

The results of these problem-identification exercises should be regarded as working hypotheses to be tested and refined against the findings from additional fieldwork. Teams may find it useful to rank problems and to associate them with different groups. The ranking and even the problems identified may vary considerably depending on the source. This stage also can include informants' and team members' preliminary identification of causes, which may be useful for the later work. Even if not validated by the rest of the process, these initial appreciations (or at least those from local sources) should be included in the final report to show that they have been taken into account and to allow a presentation of the counter-evidence.<sup>25</sup>

### **Stage 3. Collection of information on targeted sector organizations and actors: Resources, capabilities, formal and informal rules, and incentives**

Stage 3 is the meat of the assessment and incorporates the majority of the fieldwork. How much information is collected, how its collection is organized, and how much emphasis is placed on each part depend (1) on the problems targeted and (2) on the human, financial, and temporal resources available. This handbook assumes that contemporary assessments will not have the luxury of the \$250,000 budgets, 40-person national and international teams, and a year or more of time that USAID invested in the assessments done in Central America in the late 1980s (when, it bears mentioning, a quarter of a million

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<sup>23</sup> Several pieces of ESW conducted in Latin America have explored this topic in passing. See World Bank 2002; 2003a and b; 2005). On closer examination, even some apparently overloaded Latin American judiciaries, such as Brazil's, have been found to have a large number of fairly simple cases (summary debt collection or the correction of common administrative errors in readjustments to pensions) that did not require much attention from their judges.

<sup>24</sup> For example, if judges average 8,000 filings per year (far above the normal range), it could be surmised that an excessive workload could lead to problems such as delays. However, if the average filings are under 200 (below the normal range), delay (which may occur, but must be established separately) is unlikely to be a result of the sheer volume of workload.

<sup>25</sup> For example, in ESW on debt collection in Mexico, these initial complaints (most of which were invalidated) were used as working hypotheses and were discussed in the final report, which contrasted the conventional wisdom about judicial performance flaws with what the data revealed. (World Bank 2002).

dollars went a lot farther than it does today). These generous terms, which also characterized some early WB assessments, allowed for extremely comprehensive studies.

It is more likely that present-day teams will have a few weeks for fieldwork, a few more for the preparatory and final stages, and a budget far lower, even in nominal terms, than that mentioned above. These conditions argue for much greater selectivity of focus from the start. They also mean that both the team and those contracting the assessment should be clear as to what the resources will allow.<sup>26</sup>

Sometimes, the scope of the assessment is extremely narrow; the team might be asked to focus, for example, on delays in processing debt collection cases or obstacles to using courts affecting poor citizens in X country. Except for such situations, it is probably most practical to structure fieldwork around a one-by-one analysis of the major organizational actors and to deal with their staff or members within this context. In fact, even for assessments with a predefined problem focus, this structure still may be useful but in an abbreviated form.

As detailed in the outline (appendix 1), state or formal sector organizational actors commonly include the following:

- Ordinary judiciary; when relevant, separate constitutional or administrative tribunals; and where recognized, religious or other special courts
- When criminal justice will be considered, other criminal justice actors: prosecution, defense
- Private bar
- State attorneys
- Notaries
- Property registries
- Formally recognized arbitration services
- Other legal aid providers.

For these agencies and groups, the following categories should be covered in greater or lesser detail:

- Details of organization (again a chart may be most useful) and of overall powers and duties, as well as internal distribution of labor
- Body(ies) responsible for organizational governance and administration: composition, powers, focus of operations (day-to-day administration, policy setting, planning)
- Human resources: Overall number; major job categories and distribution of work force among them; employment conditions (salaries, tenure, career system, or not) means and conditions for selection; performance monitoring, disciplinary

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<sup>26</sup> The authors have avoided suggesting monetary amounts because so much depends on the quantity of information already available, size and heterogeneity of the country, scope of the work, methodologies used, nature of the problems explored, and local cost structures.

- procedures and removal or disqualification, if any; skill levels and training programs
- Geographic distribution of work units, employees, and workloads
  - Budgets: Sources, how set, how managed (and by whom), functional and geographic distribution
  - Other resources—infrastructure, ICT equipment, vehicles—and their distribution
  - Laws/rules (“normative framework”) governing operations (including any performance standards and required release of information), process required for changing them, and brief summary of their known or likely impact on real operations
  - Rules to access their services, likely impact of the above on access (geographic distribution, payment of fees, need for legal representation).

This is a short list of suggested topics. However, any one of them could keep the designated team specialist (in legal matters, ICT, human resources, or financial and administrative management) busy for months. The key is *selectivity*: a quick reconnaissance to collect sufficient information and, where available, statistics, to test working hypotheses and support emerging conclusions regarding weaknesses, but not an exhaustive review of all data. Shortcuts also can be taken by prioritizing certain agencies, most probably, the courts, and doing a much more cursory review of the others. Some groups of actors that are included in the organizational review either lack a formal organization or do not operate under the organization’s direct control. Examples include notaries, private bailiffs, and private attorneys. For them, some categories simply may be irrelevant.

For nonstate conflict resolution bodies and other informal “organizations,” the review will be similar but may be partial in its coverage. This is true, especially in cases in which a multitude of different, geographically limited structures exist. Additionally, some of the above categories may be irrelevant or have to be interpreted contextually, for example those on career structures, budgets, or “other resources” In these cases, the team may also add questions, for example, on these bodies’ official recognition by and linkages with state institutions. Should the assessment’s conclusions point to a greater emphasis on these organizations, work with them will obviously require another, in-depth assessment of their structure and operations.<sup>27</sup>

World Bank and other donor assessments increasingly recognize the importance of traditional or community conflict resolution mechanisms, but do not review them in depth and offer no methodologies for doing so. The few existing standalone studies (see Cooter 1989 on customary land law in Papua New Guinea) were very labor intensive and thus are no guide for a quick reconnaissance. Possibly, the heightened interest in non-state institutions will produce techniques that assessments can incorporate.

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<sup>27</sup> The authors are assuming that the initial instructions are not to focus on nonstate entities. If they are, those requesting the assessment need to consider two caveats: (1) the time and costs will be far greater owing to logistical problems and the likely lack of preexisting information, and (2) different and more costly methodologies will be required to collect the basic data.

One topic overlooked in most assessments but critical to this and the following section is the role of auxiliary organizations and informal institutions in complementing the actions of key state agencies. For example, the enforcement of judgments or the problem of contract enforcement in general hinges in part on the presence of effective property registries, credit bureaus, and bailiffs, *huissiers*, and other enforcement agents. They also depend on numerous informal rules and practices present even in the “modern” sector. In a study of contract enforcement in Brazil and Chile (Stone and others 1996), the authors argue that Brazilian entrepreneurs’ reliance on reputation and informal networks brings them results comparable to those in the more court-centered Chilean system. Conversely, in summarizing Hendley’s (1999) work on Russia, Dethier (1999, 40) concludes that the efficacy of the Russian court system is undermined by cultural norms (the tradition of nonpayment of debts) and “few reputational sanctions.”

An overview assessment could explore, however briefly, the role of formal auxiliary actors and agencies, but it is doubtful that it would go far in identifying these informal norms. Nonetheless, team members should be aware of the potential impact of informal norms in order to avoid recommending “reforms” that these norms make less necessary or that will not work unless exogenous practices and values also are changed. .

These cautions are especially relevant for the next step, the overview of sector operations, and may be more easily addressed there. Trying to identify cultural values in the abstract may be as futile as trying to analyze the “goodness” of law out of context. However, when the team turns to explain specific outcomes, the narrower focus makes more feasible both types of analysis.

#### **Stage 4. Summary overview and analysis of operations of sector organizations**

A certain number of tentative conclusions can be derived from the review of the composition, legal mandates, real powers, and resources of sector organizations/ operations. However, it is desirable to check these conclusions against what happens on the ground. This step is most often omitted in standard assessments. The best means for doing this analysis of random samples of “cases” is too expensive and time consuming for the types of assessments described here.<sup>28</sup> In some countries, academics or even the organizations themselves already may have done such work, in which case it can be incorporated in the assessment. Unfortunately, that is a fairly rare situation.<sup>29</sup> If organizations have kept any kind of statistics on their operations, these data may be used to develop an aggregate snapshot of performance: quantities of “cases” handled, rates of clearance, outcomes, and trends and differences in all by geographic or functional area.<sup>30</sup>

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<sup>28</sup> The authors retain the quotation marks because, for some organizations, “cases” may not be the correct term. What is meant is the basic unit of output, whether an investigation, a client defended or provided with information, or a title registered.

<sup>29</sup> In Latin America, for example, aside from WB-sponsored research and some spin-offs that it has inspired, the only countries in which such studies are available are Brazil and Colombia. Moreover, these studies are either outdated or very limited in their coverage.

<sup>30</sup> For an idea of what can be done even with fairly rudimentary national statistics of a somewhat dubious quality, see World Bank 2005. Figures 1 and 2 in chapter 4 give two examples. It should be noted,

This aggregate information can be supplemented by observation of case processing or examination of a few records. Thus, a recent Inter-American Development Bank (IADB) study in Mexico reviewed records of 80 judgments reached in 3 state court systems.<sup>31</sup> The sample was not scientifically drawn and looked at only a few trial courts in each state capital, but it was done quickly by 2 team members and provided valuable insights. Such supplementary information is to be regarded as illustrative, not representative. Nevertheless, it can be used to check for bottlenecks, for biases in results or in what gets into or through the system, and for problems originating in the required inputs from a number of organizations or organizational actors.

For example, in criminal cases, bottlenecks frequently originate in the police or prosecutorial investigation, or in inadequate coordination between the two. Delays may be party generated, involving a proactive defense or either party's failure to meet deadlines or court appearances. In noncriminal cases, delays also may result from the failure of the plaintiff to request forward movement. Certain procedural stages—notification or assets seizure—typically pose problems, either because of logistical obstacles or inadequate supervision of the responsible officials. One frequently overlooked bottleneck in analyses of civil and commercial cases in particular is enforcement of judgments. Tracking of processing should try to capture this as well.

The kinds of cases selected for this review will be dictated by the problem focus—rights, enforcement, child support, debt collection, bankruptcy, or some other topic. Aggregate or selective review of disputes resolved by traditional and other non-state mechanisms will be more difficult, because they are less likely to have statistics or written files and may not welcome outsiders' examination of their decisions. The team may substitute interviews with users may, although even here a problem of access or simple logistics is likely to interfere. The assessment may have to work with a few illustrative examples or depend entirely on what studies or written documents already exist.

Once information is collected, three kinds of further analysis can be attempted:

1. Graphic representations of case trajectories, noting different outcomes and likely bottlenecks, barriers, and biases.
2. Preliminary effort to relate performance variables to the normative framework (rules and laws) and resource endowments. Much of this material is collected in stage 3.
3. Identification of key actors whose inputs further shape the outcomes in ways not entirely attributable to the formal norms; and of the factors (skills, other resources, external controls, and probable incentives) accounting for these differences. (See chapter 4 for a brief discussion of incentive analysis.)

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however, that the process was facilitated by internet access to national and subnational databases. Even then, it took several person-months to collect, interpret, and process the information.

<sup>31</sup> The study is not included in the References because it has not been released.

It also may be useful at this stage to develop a tentative map or schematic chart of conflict resolution, showing at which point issues enter and are resolved, who accesses which entities, and which types of issues and clients seem to be excluded from treatment by any dispute resolution mechanism. At this point, the results from step 1 (outlining the major conflicts characterizing a society) and the interviews in step 2 (defining problems) can be referenced. While the most tentative of all (especially regarding what is not covered), the mapping exercise nonetheless is critical to address both access issues and questions about impacts on levels of social conflict, poverty reduction, and economic growth

Data collected here and their initial analyses are intended to link the information collected in step 3 on system characteristics to actual outputs, and so to problems already identified in step 2, or revealed and/or elaborated in step 4. The output analysis thus is critical to comprehend the real problems and identify their causes. Generally, the resources available will not permit a fully representative picture, nor even an investigation of all problem areas. Rather, the data and analysis from step 4 will provide the best means of testing initial impressions and conventional wisdom about performance failings and their causes.

#### **Stage 5. Comprehensive analysis of partial findings, prioritization of problems and their causes, and identification of areas for interventions**

The findings and partial analyses comprising the first four sections normally will generate:

- A list of performance and impact problems
- A variety of interrelated causes
- Initial ideas for solutions.

The challenge lies in consolidating and prioritizing these initial sets of conclusions. Even so simple an assignment as explaining the delays in certain types of cases or identifying the barriers to the poor faces this challenge.

Either starting point doubtless will identify a series of proximate and underlying causes and an initial idea as to which are:

- Most important because of the significance of the problems to which they contribute, for example, high incidence of perceived or real corruption, escalating levels of crime or social conflict
- Most urgent because the problem demands immediate resolution, for example, a vital service that is about to disappear due to lack of funding or other attention<sup>32</sup>

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<sup>32</sup> One example from Peru was the near abandonment of the state-of-the art judicial archives created under the Fujimori administration (1990–2000). With this kind of service, six months of inattention would have undone 5 years of work and a several-million-dollar investment

- Susceptible to easier resolution, thus generating quick wins, for example, providing services to populations in urban slums by buying a few buses to create itinerant courts.

However, where the assignment was more open-ended, the challenge can be enormous. Perhaps there are problems of delays, access, unfair decisions, high costs (for users and for the state), and corruption. *Proximate causes* may include deficiencies in the law; poor quality, motivation, and distribution of staff; absence of staff development programs; low and poorly utilized budgets; failure to monitor performance; poor record-keeping; various procedural bottlenecks owing to inadequate inputs from actors within the same or different organizations; and a variety of physical, financial, and cultural barriers to marginalized groups.

*Underlying causes* may include limited managerial capacity within the sector (or the country), high levels of political interference in internal operations, various legal restrictions on human and other resource use, deficiencies in the overall quality of the pool from which staff is drawn, governments' own financial limitations, population dispersion patterns, ethnic divisions and conflicts, levels of poverty and inequality, and poor law drafting capabilities.

Existing assessments offer little specific guidance on how to consolidate this data, and many do not make the attempt. The following suggestions and those in the next section are the authors' best approximation of what might be done in a problem-focused process. Although reforms usually work on the proximate causes, some may be less susceptible to change than others because of the reasons underlying their existence. If budgets are low because the country is poor, this underlying cause will not be changed rapidly.

Moreover, any one problem is likely to be backed by *several* proximate and underlying causes. The truism that delay or inefficiency derives from poor incentives and overly complex procedures hides a multitude of contributing factors at both causal levels.<sup>33</sup> The team may be tempted to start analysis with the underlying causes, which ultimately may be fewer than the proximate ones. However, starting from the opposite end with the problems is usually more practical. Doing so certainly will be the most diplomatic way to present the analysis. Following from this suggestion, five additional notes on analysis can be added:

1. Consolidate the candidate list into a few principal problems and rank them by importance by using stakeholder surveys from step 2, additional instructions from the agency requesting the assessment, and implied downstream impacts.
2. For each of these problems, list and rank the proximate causes and link them to the underlying ones.
3. Cross-check the lists to identify areas of overlap at the proximate and underlying causal levels, using the exercise to develop a schematic representation of problems and interrelated causes.

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<sup>33</sup> Botero and others 2003.

4. Based on the above, first distinguish (a) problems lending themselves to targeted improvements (because of the greater ease of addressing proximate causes, the lesser impact of difficult underlying ones) from (b) those requiring more complex, longer term remedies. Then identify proximate and underlying causes that, because of their impact on several problems areas, merit greater, if longer term, attention.
5. Finally, use this last step to outline a series of potential points of entry for change, noting their likely short- and longer term results, the difficulty of achieving them, and the sources of support and opposition for implementing them.

This comprehensive analytic overview completes the data collection and analysis. The results will be a first approximation of the problem or problems posed by the systems' operations and the identification of their interrelated causes.

### **Stage 6. Recommendations for reform programs**

The above exercise, in which the entire team will participate, is the basis for a reform strategy. The assessment focuses on problem resolution and is embedded in an analysis of the principal areas of poor performance, their causes, and the means recommended to address them. Ideally, and contrary to the usual practice, recommendations should have a short-, medium-, and long-term focus. While including some quick fixes, or at least targeted improvements achievable over the short run, the assessment also will incorporate the identification of areas requiring concerted attention but not amenable to rapid change.

Quick fixes might include changes to a law or procedure to eliminate obvious sources of delay. Examples are the substitution of an oral hearing for a lengthy exchange of written documents, or of a claims-filing form to facilitate processing and eliminate time-consuming irrelevant additions; or the reorganization of notification services. Other forms of quick fixes might enhance access. They could include the elimination of filing fees for certain types of cases or clients or the introduction of court interpreters or of mobile courtrooms. Staff training and public education programs also can be useful so long as they are targeted at resolving specific problems, such as informing citizens how to access specific services or correcting errors in the application of laws or procedural requirements. Most quick fixes still require a year or two for adoption. Nevertheless, where introduced, even on a limited geographic basis, they can produce visible and measurable improvements in output and also demonstrate the feasibility of change.

However, quick fixes should be seen as a reform tactic, not the ultimate solution for basic problems or their causes.<sup>34</sup> Basic problems generally will be addressed by medium- and long-term recommendations, based not only on findings about performance and impact

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<sup>34</sup> The short-, medium-, and long-term focus hinges on the ease with which contributing causes can be attacked. However, their application also requires a prior ranking of the importance of the problems addressed. Except to demonstrate the possibility for change, there is limited value in quick fixes for unimportant problems. In any event, if delay is a principal problem, the quick fixes mentioned here are unlikely to eliminate it, but they should make some measurable difference over the short run. It also bears mentioning that absent the medium- and long-range strategy, these initial improvements may well not be sustainable.

weaknesses but also on an evaluation of the various contextual obstacles. The medium- and longer term actions likely will be linked. Medium-term strategies can lay the groundwork for addressing problems that cannot be fully resolved even within that timeframe, and they should not in any case propose measures that would impede longer term solutions.

For example, one proximate cause for many performance problems may be the poor quality and excessive or insufficient number of support staff. A medium-term strategy might focus on improving support staff already in the system (via training, monitoring, performance evaluations), while a longer term goal might be to create a separate career for these individuals. Depending on local circumstances, the creation of a career could be a medium-term goal. However, in many countries, doing so would be impossible because of such factors as secure tenure, which prevents incumbents from being removed or even reassigned, quality of the pool of recruits, weight of political patronage, or simple budgetary constraints. In a similar fashion, if the long-term objective is a state system that reaches all citizens, the medium-term goal may have to rely on improving alternative services while considering how they might eventually be better linked to the state system.

This section will not lay out full-blown strategies but should identify likely short-, medium-, and long-term objectives with a series of alternatives to meet them. The team should draw heavily on experience elsewhere, especially regarding implementation obstacles and timelines. It bears emphasizing that short, medium, and long terms are not (as often appears to be the case) immediate, 1-year, and 3-year goals. Instead, this handbook describes goals that could be accomplished in 1 or 2 years versus those that might begin now but will require 5 to 10 or more years for reasonable, incremental implementation.