

APPENDIX 1. SUGGESTED OUTLINE FOR ASSESSMENT DATA COLLECTION AND ANALYSIS

(More information on types of data and collection methodologies is given in chapter 4.)

I. Background Material

In this preparatory stage, the following types of information can be collected from published and internet material; agency reports; and personal, telephone, and electronic interviews with country experts.

A. Political and socioeconomic characteristics of the country that encompass:

1. Population and population density; major ethnic, religious, and other divisions; location; geographic dimensions and main characteristics; size and composition of economy; brief history
2. Political characteristics: Current regime type, brief history of how it got there, any ongoing political strife, other factors affecting stability
3. Characterization of developmental situation: Per capita income; economic trends, sources of growth; level and distribution of poverty (regional? ethnic? rural and/or urban?); basic economic, social, and political challenges faced.

B. Preliminary overview of justice system to identify:

1. State system: Major legal tradition(s), general structure, and component organizations
2. Other “modern” auxiliary or informal organizations: Mediation centers, bar organization, nongovernmental organization and university service providers, registries, private bailiffs, notaries
3. Traditional nonstate system: Less formally recognized religious courts and community justice
4. Inventory of basic legal framework.

C. Identification of high-profile conflicts and the extent to which they appear addressed by the sector agencies:

1. Crime
2. Land disputes
3. Ethnic cleavages.

II. Preliminary Problem Identification

Problem identification usually takes place at the beginning of the in-country field work. However, relevant information also may be gathered prior to the mission, especially from experts residing outside the country or from written sources that the team has identified in the preparatory work.

- A. If the problem is preassigned, then a short exploration of its nature, drawing on documentary sources and informant interviews, preferably from a variety of sources, but not yet organized as formal surveys or focus groups
- B. If the search is more open ended, use of available documents and surveys and a series of unstructured interviews with a variety of sources to begin to define and rank perceived problems
- C. Some initial testing of hypotheses derived from either A or B against evidence collected in part I and initial observations to determine whether they are on track or whether additional work is needed.

III. More In-Depth Review of Justice Sector Institutions

The selection of the institutions and the extent of attention to each are guided by the problem definition(s). Sources of information include documents (including laws and published, internet, and unpublished reports); informant interviews, observation, statistics (official databases and, if necessary, statistics generated by the team), focus groups, and less formal participatory exercises.

A. Formal institutions:

- Courts or court systems, administrative tribunals, prosecution, defense, police, state-managed mediation services, other
- Details of organization (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, if any; skill levels and training programs
- Geographic distribution of work units, employees, and workloads
- Budgets, sources, how set, functional and geographic distribution
- Other resources—infrastructure, ICT equipment, vehicles—and their distribution
- Law/rules (“normative framework”) governing operations, process required to change them, and a brief summary of their known or likely impact on real operations
- Rules for accessing their services and likely impact of the above on access; potential barriers such as geographic distribution, payment of fees, need for legal representation

B. Nonstate (for example, private or NGO-run mediation services; private security services and bailiffs) and traditional institutions involved in conflict resolution:

- When relevant, many of the categories under III.A and information sources can be used.
- Additionally, information will be needed on nonstate entities' legal and real interface with the state system—are they recognized? If so, is their jurisdiction further defined? How are conflicts of jurisdiction handled? Who is entitled to use them and who actually uses them?
- What types of conflicts usually are handled; types of rulings made; if possible, some estimate of workload and growth or decline in recent years.

C. Related state and nonstate institutions affecting operations of A and B, the private bar and any bar associations, government legal services (those representing the government in litigation and providing legal advice), notaries, registries, credit bureaus. Selection and extent of focus will hinge on the problem definition(s).

- A truncated version of the information collected for III.A can be used. Basic data on organization, governance, size, and workloads always will be relevant for any entities covered. Additional data will depend in large part on the types of problems being explored.
- Additional information for the institutions covered will focus on the type of inputs provided to the conflict resolution process, its adequacy, and its impact on the quality of outcomes.

IV. Review of System Operations

Again, the problem definition(s) will guide the focus. If the issue is delay, the team will attempt to verify and measure its existence and dimensions and begin to track possible explanations for the impressions or reality of its existence. If the initial identification has identified two or more problems, the focus will broaden, but the problems still will provide some guidance as to emphasis.

To review system operations, somewhat different sources of information are used. While interviews, documents, and official statistics may help, surveys, focus groups, observation, legal analysis, and reviews of actual cases will be more important. The sophistication of the methodology will depend on the resources available.

A. Workloads and productivity

Initial questions are what exactly the system and its organizations do and how the work is distributed. Where available, organizational databases can be a primary source of this information, supplemented by documentary sources, observation, and interviews. In the absence of statistical data, the latter three sources, or work unit records and registries, may have to suffice. Among the issues that can be explored at this global level are:

1. Match between geographic distribution of work units and demand

2. Composition of demand (and if time series data exist, changes over time) globally and by geographic area
3. Gaps between supply of services and demand, globally and by functional area.
4. Signs of problems originating in insufficient inputs from key actors and organizations; for example, significant differences among number of crimes reported, investigations completed, and cases taken to trial; or between amounts awarded in judgments and payments

B. Case trajectories and outcomes

It always will be useful to track actual case processing (“cases” here to be understood as the organizational product—which for police might be an investigation; for defense, a case defended) by using organizational records, interviews, and observation. As this is time-consuming work, selection of case types should be based on findings from part IV, section A above and areas identified in the problem analysis. Whether working with a few cases or some sort of sample, four steps are recommended:

1. Development of a flowchart of normal steps in the cases studied. Flowchart may include a comparison of legally defined steps and those actually occurring.
2. Identification of alternative routes and outcomes, and the reasons for each.
3. Qualitative evaluation and, if possible, some quantification of the likelihood of different routes and outcomes.
4. Identification of areas of poor performance, obstacles, and bottlenecks; and of desirable changes in the patterns identified.

C. Exploration of problems identified

Where the above steps do not provide sufficient information, the following methods can be added to expand the explanations for an illustrative set of typical problems (see also chapter 5).

1. Delay: Use of aggregate statistics, case file analyses, surveys, observation, informant interviews, and focus groups
2. Quality of decisions: Observation, informant interviews, analysis of legal provisions, legal analysis, review of a sample of actual decisions
3. Enforcement: Court records, informant interviews and focus groups, legal and procedural analysis
4. Corruption: Surveys, informant interviews, observation. While actual corruption may not be observed, vulnerable points can be identified. As a consultant once said, “The man who sits by the door gets the first chance at the bribes.”
5. Access: Informant interviews, surveys, aggregate statistics (to draw inferences from geographic origin and types of issues covered), legal and procedural analysis (to identify such obstacles as filing and attorney fees, rules that may

add other costs or work against certain parties, or informal practices that may have similar effects), case analysis to determine who usually wins.

V. Comprehensive Analysis of Partial Findings, Prioritization of Problems and Their Causes, and Identification of Areas for Interventions

In this stage, additional data will be collected only to fill gaps. Instead, the entire team must compile its findings to determine (1) whether the problems initially selected are the correct ones; and if not, which should be substituted; (2) what the principal causes are; and (3) what types of measures might be introduced to improve the situation.

Among the factors to be considered in identifying causes and devising remedies, the following usually are most important:

- A. Legal framework: May complicate or obstruct conflict resolution, impede access, or alter actors' incentives.
- B. Organizational weaknesses: Inadequate resources; poorly prepared, motivated, or under-supervised staff; structural factors that facilitate external pressures and influences.
- C. Failures of interorganizational coordination or inadequate input from one or more actors.
- D. Societal or cultural practices or conventions not based in the law that may nonetheless affect sector operations. These commonly include biases against certain groups, but they also extend to certain unwritten standards (for example, "protection" of women or of one's honor, the responsibility to honor kinship ties).
- E. Incentives: The factors, usually drawn from one of the above sources, that determine how actors actually perform their officially defined duties.

VI. Recommendations

Recommendations will be based on a prioritization of problems and on a series of short-, medium-, and long-term corrective measures.

APPENDIX 2. INTERNATIONAL INSTRUMENTS WITH STANDARDS FOR JUSTICE INSTITUTIONS

Universal Declaration of Human Rights

10 December 1948, General Assembly Resolution no. 217A(III), U.N. Doc. A/3

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he [or she] has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Conventions

International Covenant on Civil and Political Rights (ICCPR)

16 December 1966, General Assembly Resolution no. 2200A (XXI), U.N. Doc. A/6316

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and 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;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) [To not] be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Convention Against Torture (CAT)

10 December 1984, General Assembly Resolution no. 39/46 U.N. Doc. A/39/51

Article 1

1. Any Torture means any act by which severe [pain](#) or suffering, whether physical or mental, is intentionally inflicted on a [person](#) for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an [official capacity](#). It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

4. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

3 September 1981, General Assembly Resolution no. 34/180 U.N. Doc. A/34/46

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

African Charter on Human and Peoples' Rights

June 27 1981, OAU Doc. CAB/LEG/67/3 21 I.L.M. 58 (1982)

Article 7

Every individual shall have the right to have his cause heard. This comprises:

- The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;
 - The right to be presumed innocent until proved guilty by a competent court or tribunal;
 - The right to defence, including the right to be defended by counsel of his choice;
 - The right to be tried within a reasonable time by an impartial court or tribunal.
- No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

American Convention on Human Rights

Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969

Article 8

Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. The right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. Prior notification in detail to the accused of the charges against him;
- c. Adequate time and means for the preparation of his defense;

- d. The right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
- e. The inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
- f. The right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
- g. The right not to be compelled to be a witness against himself or to plead guilty; and
- h. The right to appeal the judgment to a higher court.

3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.

5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

European Convention on Human Rights

Convention for the Protection of Human Rights and Fundamental Freedoms CETS No.: 005 Open for signatures Rome 4 XI 1950, Entry into force September 3, 1953.

Article 6

Right to a fair trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

Everyone charged with a criminal offence has the following minimum rights:

to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

to have adequate time and facilities for the preparation of his defence;
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;
to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Other instruments

The Bangalore Principles of Judicial Conduct

Adopted by the Judicial Group on Strengthening Judicial Integrity, endorsed by UN Economic and Social Council Resolution 2006/23
http://www.unodc.org/pdf/corruption/corruption_judicial_res_e.pdf

Draft Principles of Conduct for Court Personnel

Adopted by the Judicial Group on Strengthening Judicial Integrity
http://www.unodc.org/pdf/corruption/publication_jig4.pdf

Council of Europe documents

on standards for legal professionals, including lawyers, judges, and court clerks
This collection includes the 2003 Opinion of the Council of Europe's Consultative Council of European Judges (Conseil Consultatif de Juges Européens, or CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behavior and impartiality

Code of Conduct for Law Enforcement Officials

Adopted by United Nations General Assembly resolution 34/169 of 17 December 1979

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Guidelines on the Role of Prosecutors

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)

Adopted by General Assembly resolution 45/110 of 14 December 1990

**United Nations Standard Minimum Rules for the Administration of Juvenile Justice
("The Beijing Rules")**

Adopted by General Assembly resolution 40/33 of 29 November 1985

Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

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