



INL GUIDE TO JUSTICE SECTOR ASSISTANCE



UNITED STATES DEPARTMENT OF STATE

Bureau of International Narcotics and Law Enforcement Affairs

Contents

Using this Guide	1
INL Justice Sector Assistance	1
Objectives of INL Justice Sector Assistance.	2
Guiding Principles of INL Justice Sector Assistance	2
Justice Sector Assistance Programming	3
A. Studying the Context.	3
B. Engaging Justice Sector Institutions and Actors	5
1. State Institutions and Actors	5
2. Non-State Actors	7
Justice Sector Interventions – Key Questions to Ask	8
Determining Entry Points for Appropriate Programming	9
A. Criminal Justice Legal Frameworks.	9
B. The Ministry of Justice	10
C. The Judiciary and the Court System	10
D. Prosecutorial Services	11
E. Criminal Defense and Legal Aid.	12
Partnerships and Coordination in Justice Sector Assistance.	14
A. U.S. Partner Agencies and Institutions	14
1. INL – Office of Criminal Justice Assistance and Partnership	14
2. The State Department.	14
3. Other U.S. Government Entities	15
4. State and Local Partners	17
B. International Organizations, Donors, and Implementers	17
C. Other Implementers and Actors	18
Conclusion	18
APPENDIX I: Legal Traditions	19
APPENDIX II International and Regional Standards	25
APPENDIX III: Key Justice Sector Terms	29
APPENDIX IV: Resources	35

Using This Guide

The “*Guide to Justice Sector Assistance*” is intended as a resource for the Department of State’s Bureau of International Narcotics and Law Enforcement Affairs (INL). It provides a general orientation to INL’s justice sector assistance and guiding principles and programmatic approaches commonly used in justice sector reform to aid INL staff in designing and administering assistance programs.

For the purposes of this guide, the term “justice sector” encompasses the core institutions and actors involved

in the prosecution, defense, and adjudication of criminal matters, e.g., the judiciary and court system, prosecutorial services, criminal defense counsel, legal assistance providers (including civil society), government entities such as the Ministry of Justice, and the legal framework.

INL encourages staff to use this guide in conjunction with other INL handbooks addressing law enforcement, corrections, gender, and project management in order to develop comprehensive program plans.

INL Justice Sector Assistance

INL works with partner countries to strengthen their criminal justice systems. Criminal justice systems that uphold law and order play a vital role in combating transnational threats such as organized crime, trafficking in persons and illicit trade, corruption, terrorism, and violent conflict. Systems that lack law and order provide a fertile ground for social discord and extremism, corruption, instability, criminality, and citizen insecurity. And in today’s interlinked world, those effects can easily spill over borders and affect the United States and countries around the world.

For over three decades, INL has been active in strengthening fragile states, supporting democratic transitions, and stabilizing conflict-affected societies by helping partner countries develop effective and accountable criminal justice systems. INL undertakes bilateral justice sector assistance in partnership with U.S. federal, state, and local justice sector actors and institutions, non-governmental organizations, including academic institutions, as well as private companies. INL also works closely with multilateral organizations, such as the United Nations.

INL and Criminal Justice Reform

“The Bureau of International Narcotics and Law Enforcement Affairs is responsible for the development, coordination, and implementation of U.S. Government policy and programs directed at U.S. Government abroad on international criminal justice issues.” 1 FAM 531.1



In cooperation with the Judicial Training Center in Montenegro and the Montenegro Bar Association, INL Montenegro hosted a former U.S. prosecutor to speak with law students about the U.S. judicial system with a focus on criminal investigations.

Objectives of INL Justice Sector Assistance

INL's foreign assistance programs support U.S. foreign policy objectives of achieving peace and security, and governing justly and democratically, based upon definitions and metrics included in the Standard Foreign Assistance Indicators (F Indicators) in nearly 80 countries.

The primary objectives of INL's justice sector assistance are to improve judicial and law enforcement effectiveness, bolster accountability and transparency of criminal justice agencies, and institutionalize respect for human rights and the rule of law. When conceptualizing and designing justice sector assistance programs, these objectives can be defined in the following manner:

- **Effectiveness.** Assistance that improves the capacity of relevant institutions and actors to address the

justice and security needs of all members of society successfully and efficiently.

- **Accountability.** Assistance that strengthens transparency and responsibility for ethical standards of conduct and performance, transparent processes and procedures, mechanisms to address abuse of authority and position, and structural safeguards for the independence and non-politicization of justice sector institutions and actors.
- **Respect for fundamental rights and freedoms.** Assistance that focuses on ensuring that justice sector institutions and actors play a central role in guaranteeing non-discrimination, equality before the law, access to justice, the right to a fair trial, and respect for other human rights expressed in international law as well as in national constitutions and legal frameworks.

Guiding Principles of INL Justice Sector Assistance

Several overarching principles, widely accepted in the international assistance community, guide INL justice sector programs and activities:

- **National ownership.** National authorities and stakeholders such as Ministries of Justice and Supreme Courts should play leading roles in the design and implementation of justice sector assistance programs to ensure their relevance, acceptance, and sustainability over the long term. Where feasible, INL programs should also seek to expand national ownership over assistance activities to include civil society actors and other non-state actors.
- **Contextual and responsive assistance.** Justice sector assistance programs should be informed and shaped by the partner country's legal and judicial traditions as well as the needs of the criminal justice system. It is also important to recognize the role of informal justice mechanisms and religious/ethnic tribunals.
- **National justice strategies and plans of action.** Assistance activities should reflect the priorities of national stakeholders and dovetail with any country-led national justice strategies or action plans.
- **Whole of system approach.** Justice sector-assistance programs should recognize the relationship between justice sector institutions and actors, and other pillars of the criminal justice system, including police and corrections.
- **Citizen engagement and participation.** Assistance programs and activities should respond to the needs and priorities not just of national authorities but also the criminal justice system's end users, i.e., the public. They should incorporate the participation of civil society and address the needs and priorities of society, including women, minorities, and other disadvantaged and vulnerable populations.

- **Managing for results.** Justice sector assistance programs should be managed and implemented to achieve specific desired outcomes. Qualitative change and results should be the overarching goal and measures of effectiveness should be incorporated into program plans to enable informed assessments of progress and decision making for future programmatic planning and funding.
- **Coordination of assistance.** In addition to host nation authorities, justice sector assistance should

be coordinated with other international donors and assistance providers, including national authorities and stakeholders who lead agenda-setting and decision-making for other state department bureaus and offices, and the interagency community.

- **Sustainability.** Assistance that is temporary in nature and enjoys the support and commitment of host nation counterparts, such that after a finite period, there is a lasting impact that the host nation itself is prepared to maintain and build upon.

Justice Sector Assistance Programming

A. STUDYING THE CONTEXT

Local context can affect many aspects of justice sector assistance. It is important to factor in the political, cultural, economic, and social issues at play in a country. The type of legal system is particularly relevant to programming decisions.

Political and Development Considerations

In conflict-affected and post-conflict environments, the need for all types of assistance typically is great and it can be a challenge to prioritize these needs and engage legitimate political actors in a rapidly shifting environment. A peace agreement ending the conflict may provide a roadmap for assistance. There often are many players in post-conflict reconstruction and so engagement with other bodies (like the UN and regional organizations) and other donors to avoid gaps and redundancies in programming is crucial.

Determining the appropriate assistance for countries under repressive or authoritarian rule can be difficult as it is unlikely that governments will have the political will for reform. Such regimes avoid scrutiny and transparency and often use organs of government to

control rather than serve the people. Consequently, justice assistance activities in this environment generally focus on building coalitions for reform, broadening and deepening civil society engagement and empowerment, and educating key groups about the importance of reforming the justice sector. In some circumstances it may be prudent to initiate limited programming or pilot programs with local or regional governments that have demonstrated some capacity for, and commitment to, rule of law reform, rather than with central authorities who lack the will for reform.

Assistance to more developed democracies usually focuses on enhancing efficiencies and capacities of existing host country institutions and empowering institutions and actors to implement the necessary reforms themselves. Also consider whether assistance may be needed to monitor governments' efforts in adhering to rule of law principles such as consistency, equity, and transparency.

Legal System Considerations¹

To determine what programmatic interventions would be beneficial, program officers need to know the type(s) of legal systems used in the country.

1. See the Annex for primers on common law, civil law, Islamic law, and customary law. Given the prevalence of civil law in the world, it is highlighted in the body of this guide.

Below is a brief summary of some of the typical elements found in civil and common law systems²

Summary of Civil and Common Law Systems	
Civil Law	Common Law
Inquisitorial system	Adversarial system
Strong investigative judge	No investigative judge
No case law precedent	Case law precedent
Traditionally no plea bargaining nor cooperative witnesses	Plea bargaining and effective use of cooperating witnesses
Prosecutor passive during trial	Prosecutor active during trial
No jury trials	Jury trials (a right in criminal cases)
Only defense attorneys members of the bar	All licensed attorneys are members of the bar (must be licensed to practice)
Appeals on acquittals permitted	No appeals on acquittals (Double Jeopardy)
Court-appointed Experts	Litigants Pay for Experts
Summary of Court Proceedings	Verbatim Transcripts

Common Law. In a common law system, the main hallmark of the system is the doctrine of *stare decisis*, which means the legal principles enunciated and embodied in judicial decisions is binding precedent and must be followed. Given the fundamental importance of case decisions in common law systems, court opinions are lengthy and well-reasoned. In common law systems, the trial process tends to be adversarial in nature whereby the defense attorneys and prosecutors play an active role in the trial and the judge serves as a neutral arbiter.

Civil Law. The majority of countries follow the civil law tradition. A main characteristic of the civil law system is that written codes serve as the primary source of legal authority. These codes are comprehensive in an attempt to cover all legal issues that might arise. Some civil law systems follow an inquisitorial trial process, whereby the main activities take place during the investigative stage and the judge plays an active role in questioning witnesses and defendants during the trial. However, a number of civil law countries are moving toward an adversarial trial process.

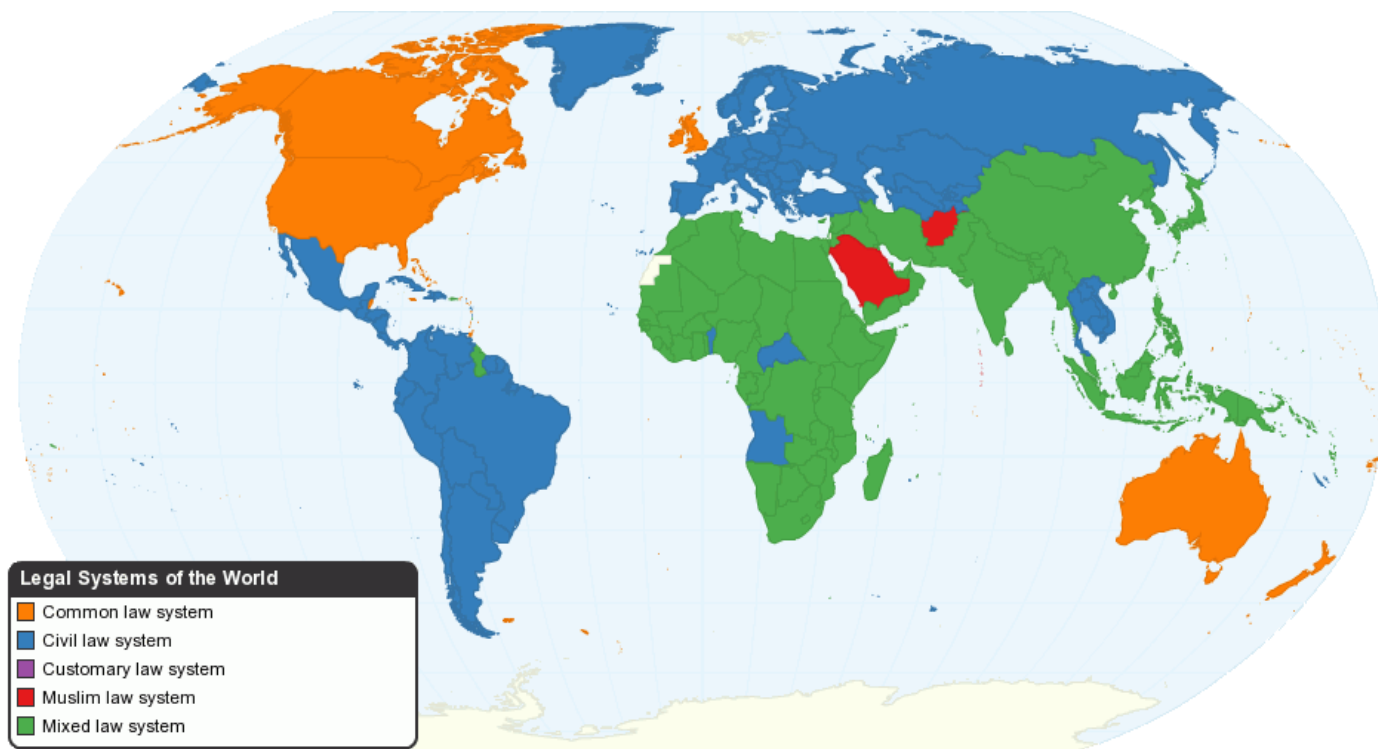
Customary Law. With customary justice, traditions, norms, and practices are used to resolve a dispute. “Customary law itself is not simply a set of rules and

sanctions, but a contextually defined process, involving flexibility, negotiation, and reinterpretation of a dynamic body of knowledge to reflect what is considered reasonable under the circumstances. Due to historical influences, it is often conducted with reference to rules, but the application of such rules is inherently contestable.”³ Some examples of customary law include the *rondas* in Peru, which are community-based organizations created to control crime; and street committees in South Africa, which seek to achieve reconciliation over retribution.⁴

Islamic Law. The other major legal system in the world is Islamic law or Sharia. There are two primary sources: the Quran and the Sunna, which contains the Prophet Mohammad’s sayings, teachings, and practices. An important feature of Islamic law is that there is no clear separation of religious institutions and the state. Only a handful of countries have a purely Islamic law system; a majority of countries that have significant Muslim populations have a legal system whereby certain types of cases, usually financial and/or personal status, may be brought to courts that apply some form of Islamic law. Kenya, for example, is a common law country, but has courts that rule on family law using applicable Islamic law, provided all parties to the case are Muslim and agree to the jurisdiction of the court.⁵

2. These are some general characteristics associated with these legal systems. Many countries introduced different elements into their system. For example, many civil law countries over the past few years have introduced plea bargaining for certain types of criminal offenses. Therefore, it is vitally important to understand the particularities of each country’s legal system.
 3. Cherry Leonardi, Leben Nelson Moro, Martina Santschi & Deborah Isser, “Local Justice in Southern Sudan” (2010) p.5.
 4. Department for International Development (DFID) Policy Brief, “Non-State Justice and Sector System Actors” (May 2004), www.gsdrc.org/docs/open/SSAJ101.pdf (last visited January 1, 2012).

Legal Systems Around the World



Source: ChartsBin, www.chartsbin.com/view/aq2

This map is accurate as of April 2011. However, it is important to note that legal systems are often in transition and thus this map may not accurately reflect more recent changes. The boundary representation shown on this map is not authoritative with regard to U.S. policy.

Note that legal systems are not always static. When democratic governments come to the forefront or authoritarian governments adopt democratic processes, countries re-evaluate their systems, often borrowing best practices from other jurisdictions.

B. ENGAGING JUSTICE SECTOR INSTITUTIONS AND ACTORS

Another early step in program design and implementation is the identification of roles, functions, and existing capacities of justice sector institutions and actors. In criminal justice contexts, this primarily includes those entities responsible for investigating allegations of illegal conduct, prosecuting the guilty, exonerating the innocent, and remedying the needs of victims in a fair and efficient manner.

The list below is by no means exhaustive, but identifies the main institutions and actors normally found in partner countries.

1. State Institutions and Actors

- **Formal justice institutions and actors.** These include prosecutors, defense counsel, judges, and court personnel such as clerks, court administrators, bailiffs, and security personnel. Many of these institutions and actors will be established by, and exercise their authority and independence on the basis of, constitutional provisions and statutory frameworks.
- **Other institutions and actors include, but are not limited to:**
 - justice and interior ministries responsible for the

5. Id.

- administration of justice and law enforcement;
 - high judicial and prosecutorial councils responsible for the oversight and day-to-day operations of judges and prosecutors, respectively;
 - training institutes and centers focused on criminal justice actors, i.e., police academies, judicial training institutes;
 - public defenders offices made up of attorneys that are appointed by the court to represent the indigent or those otherwise in need of criminal defense;
 - legal aid actors such as non-governmental organizations who engage in the advocacy and provision of civil and criminal defense in lieu of or in parallel to public defenders;
 - parliamentary committees in charge of drafting and/or revising legislation and codes;
 - ombudsman and national human rights institutions in charge of ensuring governmental compliance with human rights instruments and treaties;
 - religious and traditional leaders such as imams or tribal chiefs who undertake dispute resolution on a local level and civil society and media actors who help bring issues into the public domain, acting as watchdogs and advocates for the general public.
- **Associations of legal professionals.** Professional associations and voluntary organizations of legal professionals, including bar associations and similar bodies for judges, prosecutors, defense attorneys, court administrators, and paralegals that promote the interests of their members and the profession can contribute to justice sector reform. In some instances, they play a leading role in regulating the profession through training and licensing requirements and the establishment and enforcement of codes of conduct to enhance the status, independence, and integrity of the profession.
 - **Law faculties and clinics.** Law school faculties and legal clinics can contribute to the development of the legal profession and the functioning of the criminal justice system by educating and training lawyers and other legal professionals for the practice of law. Legal education programs should provide practice-oriented

training on case preparation and trial advocacy skills, court procedures, significant legal developments, ethics, and international law.

- **Anticorruption institutions, commissions, and actors.** Anticorruption bodies, whether government or civil society, help to ensure transparency and accountability in the criminal justice system. They often are vested with investigative as well as prosecutorial authority with regard to cases of governmental corruption. These actors are key to improving accountability and limiting corrupt practices within the justice sector. They also can strengthen the judicial application of international and regional conventions to disrupt transnational crime and dismantle illicit networks.
- **Law enforcement, corrections, and other justice and security providers.** The inextricable linkages between justice and security create a role for law enforcement and other security providers in efforts to promote the rule of law and administer justice in a fair and humane manner. Police are an integral part of any country's efforts to prevent crime and protect human rights. Other formal security sector institutions and actors can include the military, civil defense, customs, immigration, and intelligence services. Corrections institutions and actors also serve a core justice

Institutions and Actors

- Ministers of Justice and the Interior
- Attorney/Solicitor General and prosecutors
- Judges and court administrators
- Judicial and prosecutorial councils
- Judicial training centers
- Law schools and faculties
- Private defense counsel
- Public defenders and other legal aid providers
- Bar and judicial associations
- Parliamentarians and legislative staff
- Anticorruption institutions/commissions
- Civil society and media organizations
- Religious and traditional community leaders

function, particularly in matters of pre-trial detention. In reconstruction and stabilization operations, international security forces also can be involved in detaining, investigating, and prosecuting criminal actors and insurgents through military justice procedures.

2. Non-State Actors

- **Community-based customary justice and/or dispute resolution mechanisms.** In some communities, people turn to customary systems of justice to resolve disputes involving land, property, and family matters on the basis of customary norms and practices. These mechanisms are also sometimes used to address theft, violence, and other offenses against person and property. Customary mechanisms that function at the community level, such as tribal or elders courts, or neighborhood councils, may do so outside the purview of the state; in some instances, these processes can be linked to or be sanctioned by the state and its formal justice system. When engaging with these mechanisms, be aware that they can be discriminatory toward women and girls. INL assistance must be calibrated to improve the rights and well-being of all members of society, especially women and girls.
- **Religious courts and leaders.** Religious courts may also be an avenue for the adjudication of family and personal status issues (marriage, divorce, and inheritance), financial disputes, and even criminal conduct on the basis of religiously inspired principles, practices, and binding norms. In countries with large Muslim communities, a dual justice system allows separate religious courts to adjudicate family and personal status issues by applying Sharia law. Other variations of a dualistic system vest civil courts with the authority to apply Sharia law or secular law depending on the religious background of the parties to the dispute. As with customary mechanisms, pay particular attention to the needs of women and girls.
- **Civil society and public interest organizations.** An autonomous civil society in partner countries



Afghan defense attorneys, judges, prosecutors, and criminal investigators took part in an 8-week INL-funded intensive legal training seminar, the Advanced Continuing Legal Education Afghanistan (ACLEA). INL's implementing partners provided ACLEA courses for legal professionals in all 34 provinces.

will likely include public interest and human rights organizations that serve dual purposes: monitoring compliance with the law and international standards and treaties; and advocating on behalf of those who have had their rights violated and/or are victims of crime. In some countries, civil society organizations provide counseling and mediation services, as well as legal assistance. Where there is political space to do so, these types of organizations often contribute expertise and input in consultative legal reform and legislative drafting processes. They also can generate and channel public demands to improve the effectiveness and accountability of the justice sector.

- **Non-state security providers.** Non-state security providers, such as community militias, self-defense groups, and private security companies may play a role in the provision of justice and security but examine their role and the impact of their presence before engaging with them. These non-state security providers often step in when state actors cannot provide justice and security in the aftermath of conflict or in rural or outlying areas where the reach of the government is weak. While they may fill gaps, their involvement in the sector can have both positive and negative consequences, so engage with caution.

Justice Sector Interventions – Key Questions to Ask

While justice sector assistance is context-specific and there is no single model to follow, there are some fundamental questions program officers should ask to get to the objectives of justice sector assistance: effectiveness, accountability, respect for fundamental rights and freedoms, and sustainability.

- Are the various justice sector institutions and actors (especially at the senior levels) engaged and willing to work with INL in developing/reforming their justice sector? Has there been dialogue and consultation with justice sector institutions and actors to assess the will and capacities for justice sector reform, identify and prioritize needs for reform, and gather innovative ideas about opportunities and entry points for assistance activities?
- Are there adequate legal frameworks (i.e., laws, codes, decrees, and regulations) in place for the protection of substantive and procedural rights, including due process, and for the separation of powers in accordance with international standards?
- Are the justice sector institutions and actors able to investigate and prosecute criminal activities and deliver justice services in a responsive, fair, non-discriminatory, and timely manner? Do the justice sector institutions and actors have the human capital and financial resources to administer justice effectively?
- Is the public aware of their rights and is there public confidence in the justice system with regard to redress of those rights? Are the justice sector institutions and actors doing enough to build public awareness of their rights and responsibilities, while at the same time strengthening the integrity of the profession through the development and enforcement of codes of conduct and ethical frameworks for providing legal services?
- Are there normative frameworks, and judicial and quasi-judicial mechanisms to combat the use of public office for private gain, such as improper and

unethical conduct by judges, court personnel, prosecutors, and defense counsel?

- Are vulnerable groups, including women, juveniles, and those with mental and physical disabilities adequately included and protected by justice sector institutions and actors? For example:
 - Are communities, particularly those affected by conflict and mass atrocities, supported to prevent sexual and gender-based violence and to end impunity for human rights violations?
 - Are there mechanisms addressing discrimination against women and girls?
 - Are qualified women represented and/or do they participate in positions of leadership within the judiciary, prosecutorial service, and other aspects of the legal profession?
 - Are the procedural and substantive rights of all children guaranteed, including those who are victims of and witnesses to crimes and those who run afoul of the law?
 - Does the system address the justice and security needs of the poor, minorities, rural populations, and other disadvantaged groups including persons with disabilities, migrant laborers, and displaced persons who are victimized or marginalized because of their social and economic status and/or political views?



The INL-funded Justice Training Transition Program (JTTP) legal advisors at the courthouse in Farah, Afghanistan. JTTP is helping to reconstruct the Farah justice building and court records, which were damaged during an insurgent attack. JTTP is also using INL funds to purchase and donate computers and other office equipment as part of the reconstruction effort.

Determining Entry Points for Appropriate Programming

Justice sector assistance in partner countries takes many forms, responding to the specific conditions, needs, and priorities of partner countries. While it may not be possible, advisable, or appropriate to tackle all needs at once, program officers should consider at the outset the challenges that may need to be addressed during the life of a program. There is no need for INL to do everything. There are other agencies and partners that INL can work with to ensure a comprehensive approach to the sector. Conducting an initial mapping of the sector will determine agency responsibility; once that is complete, INL can determine how and where foreign assistance will lead to effective and sustainable substantive change.

After the initial analysis, the identification of priority areas of interest and the relevant institutions and actors, the next step is to determine the entry points for interventions. Below are some indicative and illustrative interventions, reflecting INL's areas of expertise and practice in varied contexts. Technical experts in INL can assist in adapting these types of activities to specific contexts and identifying other forms and modalities of justice sector assistance.

A. CRIMINAL JUSTICE LEGAL FRAMEWORKS

An effective and accountable criminal justice system, which is capable of investigating and prosecuting criminal offenses, ensuring civilian security, and guaranteeing fundamental rights, including due process, requires a comprehensive and enforceable legal framework.

Addressing gaps and deficiencies in criminal justice legal frameworks can be a first step toward promoting the rule of law and addressing the justice and security needs of communities. Entry points and types of programmatic activity for strengthening criminal justice legal frameworks can include, depending on country conditions, the following:

Types of Criminal Codes

Criminal Procedure Codes. These codes address the procedural aspects of the investigation and prosecution of criminal offenses. They regulate how those suspected and accused of a criminal offense should be dealt with by the justice system.

Criminal Codes. Sometimes referred to as “penal codes,” these legal instruments set forth the substantive aspects of criminal law and liability, including what constitutes a criminal offense, each element of the offense that must be proved, and the types of penalties that may be applied upon conviction.

- **Legislative drafting and code reform:** Includes support for drafting and/or revising legislation and codes, along with regulations, rules of procedure, and other instruments necessary for the administration of justice. A common intervention is to contribute expertise in drafting and/or revising criminal and criminal procedure codes that appropriately define offenses, while also guaranteeing the due process rights of defendants—including those in pre-trial detention—and protecting the interests of victims and witnesses. Assistance also may be directed toward developing or modernizing laws on money laundering, terrorism, organized crime, human trafficking, asset forfeiture, and freedom of information in order to combat transnational crime and corruption.
- **Dissemination and implementation.** To ensure that laws and binding instruments are implemented and effectively enforced, there must be a system for identifying and indexing changes in the law and resources. Official gazettes and legal databases where judges, prosecutors, and defense counsel, along with the general public, can obtain newly adopted laws and judicial decisions are valuable methods of dissemination. Implementation of new laws also can be supported by training judges, prosecutors, defense counsel, and civil society actors in both the substantive and procedural aspects of these instruments. Dissemination of laws

and other normative acts, including the use of public service announcements on citizen's rights, can lead to improved legal literacy among members of society and contribute to their empowerment.

B. THE MINISTRY OF JUSTICE

Since the Ministry of Justice (MOJ) is often the lead agency for the justice sector, INL may focus assistance on building the capacity of this ministry to develop and implement justice sector policies and programs—the focus should be on empowering the MOJ to organize and spearhead reform efforts. Assistance may include advising, mentoring, and training of ministry staff to formulate transparent policies, engage with the public and the media, develop statistics and maintain records, utilize information technologies management, ensure diversity in recruitment and human resources, conduct strategic planning, and other administrative functions.

C. THE JUDICIARY AND THE COURT SYSTEM

An independent judiciary that is adequately trained, financed, and equipped to administer justice in an objective, transparent, and efficient manner is a central pillar of the criminal justice system. Judges and courts are necessary to interpret the law, resolve disputes, and determine if specific conduct has violated society's agreed-upon rules. In addition to creating bench books and other reference tools for judges to better understand and apply substantive and procedural provisions of national and international law, assistance activities in this area may include:

- **Institutional and professional development.** For example, this can occur through advising, mentoring, and training of judges, judge-to-judge exchanges, and study visits.
- **Internal human resource management.** Assistance activities can support the establishment of objective criteria and transparent procedures for the selection and promotion of independent and well-trained judges.

Responsibility for judicial selection and promotion could be vested in, or at least involve the participation of, independent bodies such as High Judicial Councils. In many countries, these types of bodies are responsible for administrative supervision of the judiciary and court system as a whole, while judicial administrators and court presidents or chief justices may be responsible for administering the affairs of individual courts. Assistance programs also can contribute to the adoption and enforcement of judicial codes of conduct that address conflict of interest, *ex parte* communications, and inappropriate political and commercial activities.

- **Continuing judicial education:** The law is not static, particularly in partner countries that are transitioning from violence, conflict, and/or authoritarian rule. Continuing education informs judges of significant legal developments and better ensures the law is consistently discerned and applied. Support for judicial training centers and other institutions that provide in-service training and education for judges and court personnel, such as judicial associations can include building administrative capacities, training of trainers, developing curricula related to criminal investigations and transnational crime, and organizing workshops that include other justice sector actors such as prosecutors and defense counsel.
- **Judicial security.** Courthouses and other judicial facilities should have security equipment and

protocols to protect judges, court personnel, witnesses and victims, and the general public. Assistance in this area can include providing scanning machines for courthouse and witness security center security guards, security wands, alarms, and other hardware along with training to use this equipment. In some settings applying traditional measures and low-tech equipment may be more appropriate and sustainable. Special housing and protection for justice personnel—from the Minister of Justice to judges and their families—also may be advisable when they are routinely threatened by criminal networks, insurgents, or other actors.

- **Coordination with alternative and informal dispute resolution mechanisms.** The efficiency and responsiveness of justice systems as a whole, including in the criminal sphere, can be improved through assistance that focuses on alternative and informal dispute resolution mechanisms, such as negotiations, mediation, and arbitration. In many countries, these informal justice mechanisms are viewed as necessary and legitimate alternatives to formal courts and dispute resolution mechanisms, which can be plagued by corruption and inefficiency or simply inaccessible or nonexistent in a particular region. They also can be cost effective and timely alternatives to formal litigation. Assistance can promote appropriate linkages between formal and customary or informal justice mechanisms. Ensure customary and informal mechanisms comply with basic human rights standards, including due process and non-discrimination.
- **Efficient case management and court administration.** Less commonly, and in very specific cases, e.g., where there is a backlog of criminal cases or high rates of pretrial detentions, INL supports effective case management and court administration. For example, INL might equip courts with case filing and tracking systems to ensure that cases are heard in a reasonably efficient manner and that all information involved in trials is safely preserved and made readily accessible to judges, the parties, and others authorized to receive this information. In addition, INL

may help courts with developing uniform operating policies and procedures and providing training to administrative personnel to collect and file information, manage budgets, maintain the infrastructure, and perform public outreach and other services.

These and related activities that focus on the role of the judiciary in criminal justice matters often are executed in close coordination with the USAID and other donor assistance programs that promote the independence, accountability, and effectiveness of the judiciary and court system as a whole. USAID, in particular, has a rich legacy of strengthening independent judicial bodies (e.g., High Judicial Councils), improving court administration and the quality of court records, establishing model courts, and ensuring the enforcement of judgments.

D. PROSECUTORIAL SERVICES

Prosecutors play a key role in ensuring that violations of the law are punished. They generally are vested by law with the responsibility to represent individual victims and/or the state in bringing criminal cases to court effectively and to the full extent possible under the law. The role of prosecutors differs from country to country, depending on the legal system and political/development context.

One way to increase prosecutorial effectiveness and accountability is to establish fair and impartial procedures for prosecutor selection and career advancement based on objective and transparent criteria. Other programmatic activities include:

- **Case preparation in accordance with substantive law.** Prosecutors should be skilled in gathering evidence and securing it properly, and presenting case files in a manner that establishes all elements of the crime as defined by substantive law. Assistance activities can take the form of training and advising on the fundamentals of evidence gathering and case preparation such as understanding elements of criminal offenses, assessing evidentiary completeness and strength, and undertaking additional investigations.

- **Transparent case management and record keeping.** Prosecutors should have access to record keeping and case file management systems that maximize transparency in the collection and maintenance of information. Support for the design and implementation of these systems can enhance the ability of prosecutors and other justice sector actors to track, summarize, and analyze cases that are pending, dismissed, and completed.
- **Police-prosecutor relationship.** Communication and cooperation between prosecutors and police in the investigation of complex crimes, evidence collection, and case management are essential for successful prosecutions. Assistance activities can establish streamlined operations and joint task forces to improve police-prosecutor collaboration in undertaking criminal investigations and combating complex crimes.
- **Prosecutor selection and development.** To ensure the quality and integrity of prosecutors, assistance activities can support the establishment of objective criteria and transparent procedures for the selection and development of independent and well-trained prosecutors. The responsibility for the selection of prosecutors varies by country to country; the responsible body may need help with developing codes of conduct and training to ensure continuing professional and educational opportunities.
- **Disciplinary systems.** Improper conduct, unethical behavior, and abuse of authority and position by prosecutors can undermine the effectiveness and accountability of the criminal justice system. Prosecutors should perform their official duties in accordance with the law and ethical standards, and should be subject to independent and impartial disciplinary action for alleged wrongdoing and impropriety. Support for developing codes of conduct and disciplinary procedures that provide for internal self-regulation and external complaint mechanisms can improve prosecutorial conduct and instill public confidence.
- **Victim and witness services.** Assistance activities may address the participation of victims and witnesses in the investigation and prosecution of crime. Due regard also should be given to protecting their dignity, privacy, and security at all stages, including during and after judicial proceedings, especially for survivors of sexual and gender-based violence (SGBV). Types of services include protection services, psychological counseling, and advocacy regarding the provision of information about the process. Whether an individual is a victim or witness, the treatment that he or she receives should take into account whether they are members of a particularly vulnerable or disadvantaged group.

E. CRIMINAL DEFENSE AND LEGAL AID

Individuals must be afforded the right to counsel and the opportunity to defend themselves against criminal charges. In some countries there might already be legal provisions for court-appointed defense counsel and/or a public defender office; in others, such provisions might not yet be in place. In either situation, criminal defense may be provided by non-state actors such as bar associations and/or non-governmental organizations.

Technical assistance to both state and non-state actors engaged in criminal defense may be integrated into justice sector assistance programs. A key starting point is the development of legal frameworks that strengthen due process rights, including the right to a fair trial, and protect defense counsel from improper interference when representing their clients. Other programmatic entry points include:

- **Access to justice services.** In many countries, individuals are guaranteed the right to legal assistance, but are unable to realize this right in practice. Programs that support access to justice and legal services include establishing public defenders' offices, legal aid centers, and non-governmental organizations to address legal issues and disputes at the community level, as well as infrastructure, equipment, and information resources, and adequate salaries for those who staff these centers and provide legal services.

- In addition to improving access to justice and legal representation, legal aid programs and law school clinics help citizens navigate the criminal justice system. Law school clinics that offer legal assistance and information counseling services to the public are also a means by which the indigent and other disadvantaged groups can access justice, resolve disputes, and obtain appropriate remedies when their rights have been violated.

Where customary and informal justice mechanisms exist at the community level, justice sector assistance programs can focus on ensuring they comply with basic human rights and are complementary of formal justice institutions and actors.

- Paralegals. The creation or expansion of the paralegal profession can increase the capacity of the legal profession and the availability of legal services where private lawyers are few in number. Paralegals can be trained to support those licensed to practice law or to address matters within a particular sphere of activity independent of supervision. Given the small numbers of legal professionals in some countries and the high fees that they may charge, community-based paralegals can serve as a convenient and affordable alternative means by which the indigent and those living in remote communities can obtain legal services and access to justice.
- Continuing legal education. Those engaged in criminal defense work often do not have access to centralized state-sponsored training institutions. Bar associations or other institutions may be a mechanism through which to provide in-service training and education for criminal defense attorneys and paralegals. Assistance can include building the capacities of bar associations, developing curricula, and training of trainers, and organizing workshops that include other justice sector actors such as judges and prosecutors.

Partnerships and Coordination in Justice Sector Assistance

A. U.S. PARTNER AGENCIES AND INSTITUTIONS

In addition to working with other bureaus and offices within the Department of State and other sections at the Embassy, INL partners with a variety of agencies and institutions at the federal and state levels to support the rule of law in partner countries through justice sector assistance activities and programs.

1. The Department of State

Besides INL, several other Department of State bureaus and offices, including Conflict and Stabilization Operations (CSO); Democracy, Human Rights, and Labor (DRL); Education and Cultural Affairs (ECA); International Information Programs (IIP); Counterterrorism (CT); and the Office to Monitor and Combat Trafficking in Persons (TIP), fund and manage rule of law programs, coordinate visitor exchanges, and identify rule of law experts for specific projects. These entities may fund assistance implemented by other U.S. government agencies (e.g., DOJ) and international organizations (e.g., the United Nations), and/or issue contracts to private contractors and grants to nonprofit entities and universities.⁶

CSO is tasked with leading, coordinating, and implementing the U.S. government's civilian response to post-conflict situations—efforts that may include rule of law work. CSO supports the Civilian Response Corps (CRC), a pool of trained and ready-to-deploy civilian professionals, including lawyers and judges, who assist in overseas reconstruction and stabilization operations. When CRC professionals are not commissioned overseas, many work in the rule of law field for U.S. agencies such as USAID, DOJ, and the Department of State.

Through its Human Rights and Democracy Fund, DRL gives grants to U.S. organizations working on rule of law programs throughout the world, often through yearly grant competitions. DRL grants have been used to support human rights law clinics, women's rights programs, and legal education reform.

ECA promotes public diplomacy by funding academic, cultural, sports, and professional exchanges. ECA supports rule of law-related professional exchanges, including the Hubert H. Humphrey Fellowship Program, a 12-month academic study program for experienced professionals, including judges, from around the world. The Office of International Visitors within ECA is responsible for coordinating the International Visitor Leadership Program (IVLP), a professional exchange program that hosts (among others) judges and court administrators, arranging visits to state and federal courts as well as judicial branch agencies.

IIP's U.S. Speaker and Specialist Program deploys U.S. experts to countries throughout the world at the request of the State Department's diplomatic missions. These experts, including judges and court officials, participate in speaker programs. The bureau has a liaison to facilitate the judiciary's work with the Department of State.

CT coordinates and supports the development and implementation of all U.S. government policies and programs aimed at countering terrorism overseas. The Office of Trafficking in Persons leads the United States' global engagement on the fight against human trafficking by partnering with foreign governments and civil society to develop and implement effective strategies for confronting modern slavery. The Office has responsibility for bilateral and multilateral diplomacy, targeted foreign assistance, and public engagement on **trafficking of persons**.

6. After INL identifies needs and designs the program, it implements the program by either entering into a contract with a private firm or releasing funds by way of a grant to an organization with relevant expertise. When deciding whether to implement a rule of law activity through a contract or through a grant, INL will consider a number of factors, including the amount of funds available, whether the program must be initiated quickly, and how much oversight is needed. Contract mechanisms—used most often with private firms—tend to take more time to procure and are more costly. They also allow for more INL involvement through oversight of project implementation. Grants fund rule of law projects through a process that allows for less involvement and oversight. These types of agreements are awarded when INL has general objectives but is looking for a creative way to achieve those goals.

These various Bureaus also often work together to maximize the effect of their assistance.

2. Other U.S. Government Entities

The U.S. interagency community offers a particularly valuable reservoir of technical expertise that often intersects with and complements INL's efforts. Within this community, INL often collaborates with DOJ, DHS, and DoD, as well as USAID.

USAID is an independent agency that receives policy guidance from the U.S. Secretary of State. It is the government's primary development organization and works in a number of areas, including poverty reduction, promoting good governance, providing humanitarian assistance, improving health care and educational systems, and rule of law. USAID funds private contractors, nonprofit organizations, international organizations, and other government agencies to carry out projects based on goals identified by USAID development experts.

Where interagency partners have explicit international authorities, INL routinely seeks to coordinate and cooperate closely in those areas of mutual interest and activity. For example, USAID programs to increase democratic legal authority, guarantee rights and the democratic process, and promote the capacity and efficiency of justice institutions and actors frequently lend valuable field support for INL efforts to foster well-functioning criminal justice systems.

Similarly, INL values the experience and expertise that DOJ contributes to justice sector assistance efforts through its resident legal advisors and other personnel.

DOJ has two offices that focus on international justice sector reform: the Office of Overseas Prosecutorial Development, Assistance and Training⁷ (OPDAT) and the International Criminal Investigative Training Assistance Program⁸ (ICITAP). These offices are funded through interagency agreements with the Department of State, USAID, DoD, or the Millennium Challenge Corporation. In addition, INL often partners with the component agencies of DOJ, including the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the U.S. Marshals Service.

At post, these agencies are typically represented on the Law Enforcement Working Group (LEWG) and INL officers should work with them closely. The federal agents who are working directly with host nation criminal justice institutions and personnel on cases have a unique perspective on the strengths and weakness of those institutions and can/should contribute advice and recommendations to the development, implementation, and evaluation of U.S. criminal justice assistance efforts.

In addition, the Millennium Challenge Corporation (MCC) is an independent U.S. government agency created by the U.S. Congress in 2004 to provide development funds to countries demonstrating a commitment to reform.⁹ MCC's support of rule of law activities is usually provided through threshold programs used to help improve performance in specific areas, for example, judicial independence, access to justice, and court administration. MCC often provides funds to USAID to administer these programs.

Judicial Branch. Both the Federal Judicial Center and the Administrative Office of the U.S. Courts, working

through the International Judicial Relations Committee, engage regularly with foreign judicial officials, and can mobilize members and resources of the U.S. judiciary to contribute to INL assistance effort, e.g., study tours and site visits in the U.S. and peer-to-peer collaboration, advising, and training in the field.

Federal judges play an important role in many international rule of law projects carried out by the U.S. government. They provide commentary on constitutional law issues, assist with the drafting of judicial ethics codes, advise foreign judges on court management, and assist judicial councils with strategic planning. Judges usually become involved in these projects during program implementation when an expert is needed for a conference, workshop, or evaluation.

Legislative Branch. The Global Research Center at the Law Library of Congress serves the research needs of the U.S. Congress, judicial branch, and executive agencies related to foreign, international, and comparative law. The center has a staff of about 20 foreign law specialists, who are attorneys and legal scholars trained in the United States and abroad. These specialists developed jurisdictional expertise so they are able to locate and interpret almost any legal act of any country in the world, explain how a particular problem can be resolved in accordance with the laws of the country in question, or respond to an inquiry regarding implementation of a specific law in a foreign state. INL can draw on these specialists to prepare reports on all aspects of comparative and international law. In addition, the Law Library of Congress has the world's largest collection of law books and other legal resources, including all official publications available from all countries, which now comprises more than 2.5 million items.

7. OPDAT develops and administers technical assistance related to criminal justice reform, including prosecutor training and court reform projects involving terrorism, human trafficking, organized crime, corruption, and money laundering. OPDAT usually deploys a regional legal advisor (RLA) to carry out programs in a country. These legal advisors are assistant U.S. attorneys on leave from their district and usually have offices in the U.S. Embassy of their assigned country. OPDAT's Washington, D.C. office manages its programs around the world and often reaches out to U.S. judges and others with relevant expertise to assist with training or by attending conferences.

8. ICITAP's mandate is to work with foreign governments to develop professional and transparent law enforcement institutions that protect human rights, combat corruption, and reduce the threat of transnational crime and terrorism. ICITAP focuses on law enforcement personnel and correctional institutions (whereas OPDAT works primarily with prosecutors and courts). ICITAP and OPDAT often coordinate their efforts and pursue a comprehensive approach to criminal justice reform in countries with both an RLA and an ICITAP advisor. ICITAP programs are implemented by a combination of federal employees and contractors.

9. Congress authorized the MCC in P.L. 108-199 (January 23, 2004). Since that time, the MCC's Board of Directors has approved the following 26 grant agreements, known as compacts: with Madagascar (calendar year 2005), Honduras (2005), Cape Verde (2005), Nicaragua (2005), Georgia (2005), Benin (2006), Vanuatu (2006), Armenia (2006), Ghana (2006), Mali (2006), El Salvador (2006), Mozambique (2007), Lesotho (2007), Morocco (2007), Mongolia (2007), Tanzania (2007), Burkina Faso (2008), Namibia (2008), Senegal (2009), Moldova (2009), Philippines (2010), Jordan (2010), Malawi (2011), Indonesia (2011), Cape Verde II (2011), and Zambia (2012).

The Open World Leadership Center typically hosts delegations for professional exchanges for emerging leaders from countries throughout the Balkans and the former Soviet Union. This entity is starting to work with professionals from other areas of the world, including the Middle East. This initiative is supported by congressional funds and supplemented by private donations. Its U.S. community-based partners often provide meals, housing, transportation, and cultural or recreational activities. One of Open World's program themes is rule of law, an effort designed to support reform initiatives in participating countries. Rule of law delegations have included judges, court administrators, law school faculty, judicial educators, legal specialists from non-governmental organizations and the private sector, legislative experts, lawyers, court press officers, and journalists. Federal and state judges from all over the United States have hosted Open World delegations in cooperation with Open World grantees, such as local rotary clubs.

3. State and Local Partners

INL established partnerships with state and local prosecutors, public defenders, and judges throughout the United States. These partnerships enable INL to utilize the knowledge and expertise of highly specialized legal and judicial professionals to advise and mentor foreign officials as part of the Department's foreign assistance programs. Many of these state and local partners have deep experience working with specific diaspora communities that are relevant to INL's work. INL's partnerships are coordinated by the Office of Knowledge Management, which will work with program officers in Washington and at the U.S. Embassy to find the right partner to address the Embassy's particular program needs.

B. INTERNATIONAL ORGANIZATIONS, DONORS, AND IMPLEMENTERS

INL officers should forge relationships with representatives of the international community who also may be engaged in justice sector assistance efforts in the country or the region. The United Nations departments and agencies, such as the Department of Peacekeeping Operations (DPKO), the United Nations Development Programme (UNDP), and the United Nations Office on Drugs and Crime (UNODC), along with the World Bank¹⁰ and other country-specific missions of international and regional organizations have mandates that include human rights, justice, and security sector reform.

Depending on the region, representatives from regional and sub-regional organizations such as the European Union (EU), Council of Europe, (COE) Organization for Security and Cooperation in Europe¹¹ (OSCE), African Union (AU), the Economic Community of West African States (ECOWAS), Association of Southeast Asian Nations (ASEAN), and missions of the Organization of American States (OAS) should be included in stakeholder development activities along with bilateral donors.

Individual donor nations may provide rule of law support to a country through their international development department, such as the Canadian International Development Agency (CIDA), the Department for International Development in the United Kingdom (DFID), and the Swedish International Development Cooperation Agency (Sida). Other countries, like the Netherlands and Finland, make available rule of law assistance through their Ministry of Foreign Affairs. Bilateral organizations and government ministries

10. The World Bank provides financial and technical assistance to developing countries around the world, including, in some cases, rule of law reform. Justice sector development and anticorruption activities are often critical to achieving the World Bank's economic and political development goals. The World Bank's rule of law initiatives are not centralized in one department. The Poverty Reduction and Economic Management Network; the World Bank Institute; Private Sector Development; Environmentally and Socially Sustainable Development; and the Legal Vice-Presidency all implement rule of law programs, sometimes collaboratively and other times independently. The World Bank's rule of law initiatives are developed in conjunction with the host country and are usually carried out through loan agreements setting forth the terms and conditions of support. The host country is responsible for meeting the terms and repaying the loan. In a small number of cases, the World Bank administers direct grants to countries for rule-of-law-related programs.

11. OSCE comprises 56 countries from Europe, Central Asia, and North America. Through its Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw, Poland, OSCE oversees rule of law projects funded by member states. The Rule of Law Unit of ODIHR focuses mostly on the criminal justice sector but also supports projects related to judicial independence, legal profession reform, and administrative law.

usually contract with organizations and individuals from their home country. Program officers should coordinate with other donors to avoid gaps and redundancies as well as to maximize the efficiency and effect of our efforts.

These and other international organizations and multilateral institutions are sources of considerable funding and expertise, and able to engage at the highest levels and create constituencies and momentum for reform.

C. OTHER IMPLEMENTERS AND ACTORS

There are numerous private sector firms, NGOs, and educational institutions that implement justice sector reform programs around the globe.

Private contracting firms provide technical, management, and advisory services for the U.S. government's international rule of law programs. Depending on the terms of the government contract, these firms may design and implement a justice reform initiative or provide subject-matter expertise for a particular project. Private firms usually compete for contract solicitations

proffered by U.S. government agencies and multilateral institutions, such as the World Bank and the United Nations Development Program. Each firm has its own procedures for pursuing these opportunities. However, it is fairly common to have a division that focuses on proposal development and another group of employees devoted to program implementation, both staffed by lawyers with international development expertise.

Nonprofit organizations and educational institutions (e.g., universities, law schools) also provide technical assistance and training for international rule of law programs. Unlike private contractors, nonprofits and universities seek out opportunities to compete for grants from the U.S. government, rather than contracts. Their work includes design and implementation of programs for lawyers, judges, and law students; analytical services for organizations working in this field; and the development of technical publications.

For both contracts and grants, a program officer needs to prepare a statement of work describing what assistance is required.

Conclusion

Promoting well-functioning criminal justice systems through justice sector assistance programs in partner countries is a complex and long-term endeavor. The development of effective and accountable justice sectors is an ongoing process that requires national ownership and leadership to succeed.

This guide identifies and describes a range of approaches and activities for assisting partner countries to undertake justice sector reform based on leading practices and guiding principles in rule of law promotion, development, and foreign assistance. Ultimately, all justice sector assistance programs must be contextualized and responsive to country conditions, needs, and priorities. Program officers at headquarters and in-country, and others engaged in this overall process always will

be circumscribed by funding constraints, political will, and other external factors. Even the most thoughtful, rigorous program design and administration will have to face those dynamics that define both the limits and possibilities of the field. Despite the challenges, goals and results can be achieved through concerted engagement.

INL is constantly developing new tools to help officers navigate this field and develop, implement, and evaluate assistance programs based on best practices and lessons learned. INL has experienced subject matter experts that can advise and assist offices/officers in program assessment, design, implementation, and evaluation. Reach out and take advantage of their expertise and that of your INL colleagues.

APPENDIX I

Legal Traditions

Introduction

There are several major legal traditions around the world including common, civil, Islamic, and customary law. Civil law tends to be the dominant legal system.¹² Many legal systems are a hybrid of legal traditions. For example, in Bangladesh, the legal system is a mixed system whereby common law traditions dictate certain aspects of law, while Islamic law is used to settle other areas of law.

Legal systems are not stagnant. As democratic governments come to the forefront or authoritarian governments adopt democratic processes, countries often re-evaluate their systems, often borrowing best practices from other jurisdictions. Therefore, program officers should gather the most recent information and materials on the legal system in place in the partner country.

CIVIL LAW

Background

Civil law is the oldest and most prevalent legal tradition in the world today. Many of its basic norms and practices emerged during the Roman Empire and the Civil Code of Emperor Justinian in the 6th century before being organized, codified, and disseminated

across Europe and beyond in the 19th and 20th centuries. This effort was largely led by France and Germany, whose civil codes and legal systems influence most of the civil law traditions around the world.

Basic Principles

In the civil law tradition, comprehensive written codes serve as the primary source of legal authority. The basic tenant of civil law is that the solution to every legal issue and dispute that might arise can be found in the generally applicable code. For example, the criminal code in a civil law country is the primary source for criminal/penal law and the criminal procedure code in a civil law country provides guidance on how to process a criminal case. In the simplest terms, if an activity is not listed as a crime in a criminal code, then the activity is legal. Moreover, legal practitioners in the civil law tradition, including judges, will initially look to codes as the primary source of law. Some civil law countries embrace prior judicial decisions as part of the legal reasoning process, but these prior decisions are not binding.

Court Organization and Jurisdiction

Typically, court organization in the civil law tradition includes first instance courts, courts of appeals, and a high

Examples of Civil Law Systems

Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Colombia, Haiti, Honduras, Kyrgyz Republic, Laos, Macedonia, Mexico, Montenegro, Moldova, Panama, Peru, Russia, Serbia, Tajikistan, Thailand, Timor-Leste, Ukraine, and Vietnam

Examples of Common Law Systems

Bangladesh, Belize, Ghana, Jamaica, Kenya, Nepal, South Africa, Uganda, and Togo

¹² The term civil law in this context refers to a particular legal tradition, not the laws and procedures that regulate relations and activities, including disputes, between private citizens such as in matters of contracts, property, marriage and divorce, and inheritance.

(supreme) court. In many instances, constitutional courts in a civil law system decide cases involving interpretations of the country's constitution. A common feature within some civil law countries is the use of specialized courts or specialized chambers to deal with constitutional, administrative, commercial, and criminal law issues.

Trial Procedures

A judge, sometimes referred to as a magistrate, has a central role in gathering evidence, examining witnesses, and determining how court proceedings are conducted. In the civil law tradition, which may be referred to as an inquisitorial system, judges guide the gathering of evidence as a rule. The majority of the trial process occurs in the investigative stage. While parties may be involved in the investigative process, they do not orchestrate the presentation of evidence, nor can they prevent evidence from being introduced into the court record. Civil law judges generally handle the questioning and cross-examination of witnesses. Parties play a limited role in this process.

In some civil law countries, other distinguishable characteristics include *lay judges* (non-judges, drawn from the community, who assist the judge in trial) and *investigative judges* (a judicial officer who leads the criminal investigation by interviewing the accused, the victim, and witnesses; preparing the case file; and passing the investigation file to the sitting judge).

Judges and Prosecutors in the Civil Law Tradition

In the civil law tradition, the judiciary and its members, i.e., judges and court personnel, are typically considered to be part of the civil service of the country. The study of law may be for a four- to five-year term for an undergraduate degree with a practicum component. Usually, an individual pursuing a career as a judge must complete specialized training, either as part of their university-level education or at a judicial training institution following graduation. Aspiring judges must also pass a professional examination before being appointed. A judicial apprenticeship can be required prior to appointment as a judge.

Like judges, prosecutors in civil law traditions are usually considered to be civil servants, i.e., government employees. They also must be graduates of a law faculty and have passed a professional examination. In some countries, they may also be trained following graduation alongside judges. The prosecution service is an independent government body in some countries; in others, prosecutors form part of the Ministry of Justice or may be part of the judiciary. Prosecutors play an active and supervisory role during the investigation and examination phases of a criminal case in the civil law tradition, but tend to be more reserved during trial proceedings, at which time the judge plays more of a dominant role.

Public Defenders and Defense Attorneys in the Civil Law Tradition

In the civil law tradition, the role of the defense attorney is quite limited. In the investigative process, the defense attorney does not have the opportunity to cross-examine the witnesses or even the victim. The defense attorney cannot be present when the investigating judge is interviewing the suspect or contact witnesses to be interviewed for trial preparation. Even more challenging, civil law countries traditionally provide public defender services with extremely limited resources, resulting in low capacity to defend the accused.

COMMON LAW

Background

Common law traces its origins from the British legal tradition and can be seen throughout the former British colonies (the United States, Canada, Australia, etc.). Typically, in a common law country, a criminal proceeding involves a judge, a prosecutor to present the evidence of the state, and a defense attorney to represent the accused.

Sources of Law: Case-Law

The common law tradition utilizes codes and the doctrine of *stare decisis*, which requires deriving principles or rules of law from precedents found in case-law.

Legal practitioners in the common law tradition look to case-law to find the principles and rules to solve legal questions and resolve disputes.

Court Organization and Jurisdiction

Court organization in the common law traditions includes trial court, courts of appeals, and a supreme court. Court systems in countries that follow the common law tradition tend to be more integrated. They favor vesting most ordinary courts with general jurisdiction. These general jurisdiction courts may address cases involving criminal as well as constitutional, civil, administrative, and commercial law. Specialized courts, such as family courts or drug courts, can be found in common law jurisdictions.

Trial Procedures

The role of the judge in common law tradition focuses more on how court proceedings are conducted rather than the gathering of evidence. In this adversarial-oriented system, the judge plays more of a secondary role in managing the process of introducing evidence and interrogating witnesses, which is led by the litigants. Juries are characteristic of trials in the common law tradition as triers of fact. Plea bargaining also is traditionally part of trial procedures in the common law tradition.

Judges and Prosecutors in the Common Law Tradition

The judiciary and its members, i.e., judges and court personnel, are typically considered to be part of the civil service of the country. In common law countries, the study of law is usually a professional degree of three years (*Juris Doctorate*) following an undergraduate degree (*Bachelor of Arts or Bachelor of Science*) for a four-year term. In some common law countries, there is no practicum component required. Usually, an individual pursuing a career as a judge following the completion of a *Juris Doctorate* completes specialized training, either as part of a university-level education (*LLM or SJD*) or at a judicial training institution. In the

United States, state judges are appointed or elected, and each state jurisdiction dictates judicial qualifications.

Like judges, prosecutors in common law traditions are usually considered to be civil servants, i.e., government employees. They also must be graduates of a law faculty and have passed a professional examination. In some countries, they may also be trained following graduation. The prosecution service is an independent government body in most countries.

In the common law tradition, judges are a powerful figure in the courtroom because a judge is vested with the power to make law as well as to interpret statutes/codes more expansively. During a trial, a judge acts as a referee between the prosecutor and defense attorney.

The prosecutor in the common law tradition is responsible for filing an indictment against the alleged perpetrator and presenting the criminal case at trial. After receiving the investigative file from the police, a prosecutor determines whether there is sufficient evidence to proceed to trial and, if so, files an indictment. If the indictment is approved, the prosecutor represents the victim and the state's case against the accused at trial. In the courtroom, the prosecutor is very active in a trial.

Public Defenders and Defense Attorneys

Defense attorneys are active in the common law system. In the investigative process, the defense attorney can interview or cross-examine witnesses and the victim. If the accused is detained, the defense attorney has a right to be present. Traditionally public defender services have sufficient resources, resulting in a better capacity to defend the accused.

CUSTOMARY JUSTICE

The term “customary justice” encompasses a broad range of governance and dispute resolution practices that vary from community to community. These cultural or social norms that guide the way

Examples of Customary Law Hybrid Systems

Customary/Civil Law: Guinea, Indonesia, Jordan, Mali, Mongolia, Mozambique, Senegal, Taiwan, and Timor-Leste

Customary/Common Law: Bangladesh, Ghana, India, Kenya, Liberia, Malawi, Malaysia, Micronesia, Nepal, Nigeria, and Papua New Guinea

traditional justice, or the informal justice system. Regardless of the term of art used, a customary system has its origins in long-standing localized social structures. In many countries, customary justice systems coexist with the formal, state justice system. In a variety of communities around the world, it is through a system of customary justice that people, particularly the urban poor and rural populations, find solutions and remedies for the day-to-day challenges and disputes that determine how they live their lives and how they interact with one another and the community at large.

There are myriad examples of how customary justice systems function and coexist with state justice systems. They range from informal gatherings of village elders to semi-formal community councils to more formalized quasi-judicial proceedings and tribunals. Some may function at the local level entirely separate and independent from state authority, while others may have linkages with the state and formal justice institutions. These types of linkages can take the form of general communication and information sharing to case coordination, referrals, appellate, and enforcement procedures.

In customary justice contexts, disputes tend to be resolved under the authority of local, clan, or other types of community leaders through a process of consultation, mediation, and reconciliation. This process commonly relies on rules and procedures that are deeply rooted in the social, cultural, and spiritual contexts and values of the community. In some countries, these customary norms are unwritten, while in others they are codified. Sometimes these norms are expressly incorporated into national constitutions and legal frameworks where they

Examples of Customary Justice Mechanisms

Afghanistan: Jirgas, Shuras

Bangladesh: Shalish

Burundi: Bashingatahe

Colombia: Juntas de Action Communal

Kyrgyzstan: Asaqal Elders Courts

Papua New Guinea: Village Courts

Philippines: Katarungang Pambarangay

South Sudan: Tribal Chiefs Courts

are recognized by the state as a legitimate and binding source of authority.

Customary justice systems tend to be used to resolve disputes involving land and property, access to public services, use of natural resources, and family issues such as divorce and inheritance issues. In addition, they are sometimes used to address criminal matters, including theft, physical assault, and other offenses against other people. Many communities overcoming situations of generalized violence, human rights abuse, or mass atrocities, also turn to customary law and justice mechanisms to deal with and remedy past injustices.

Reliance on customary justice in certain communities can be explained by limited access to the formal justice system and its institutions. In other words, those in need of dispute resolution may have no other choice but customary justice.

However, even in many communities where courts and other justice institutions with the state are present, customary justice mechanisms are used more readily than those of the state justice system. This is a result of customary justice systems espousing local norms, cultural practices, and notions of restorative as opposed to retributive justice. In this sense, customary justice is viewed as being more legitimate and relevant to aspects of daily life and promoting social harmony and reconciliation. The appeal also can be explained by familiar procedures and languages that allow the parties to the dispute to take a more active role in the

Understanding Customary Law and Justice

Authoritative studies reveal that up to 80 percent of all disputes in some societies are resolved through customary law and justice mechanisms. In South Sudan, INL commissioned a study of dispute resolution at the local level to better understand how customary law, statutory law, chiefs' courts, and state courts interact. INL undertook a similar effort to identify the linkages between formal and customary justice systems in Afghanistan. Understanding why people use customary justice can help inform decisions on how best to strengthen the formal system.

process. In addition, their low cost and short duration, relative to formal judicial proceedings, contribute to their attractiveness and use.

In the aforementioned ways, customary law and justice can enhance the quality and availability of justice at the local level. At the same time, it should not be assumed that these norms and mechanisms are always just and fair. For instance, customary law and justice can weaken the cohesiveness and predictability of the justice system as a whole where multiple and competing customary norms conflict with each other and with the laws of the state. Similarly, customary proceedings may institutionalize discrimination against women and disadvantaged populations. Lack of protections for victims and witnesses as well as due process guarantees for the accused are also a common concern. In addition, customary justice mechanisms can be subject to elite capture, abuse of power, and corruption with little accountability and checks on those who lead them.

In countries where a customary justice system exists, it is important to understand the system's basic characteristics and how it functions. This may include identifying its jurisdiction and the types of cases that it is used to

resolve; how it complies with due process and other human rights standards; what types of decisions and remedies it renders; and how judgments are enforced.

Although an INL program may not intend to interface with the customary justice system, in one way or another it can. Therefore, understanding this potential link is vital to INL programs because these systems can further or obstruct the efficacy of our programs.

ISLAMIC LAW AND HYBRID SYSTEMS WITH ISLAMIC LAW

Introduction

Islamic Law, or Sharia law, is, to varying degrees, an integral part of justice systems in Muslim countries and countries with large Muslim communities. It provides a normative standard for Muslims everywhere for how to live their lives, including the regulation of religious rituals, family matters such as marriage and inheritance, personal hygiene, commercial transactions as well as criminal punishments.

There is considerable variation in how Sharia law is recognized, interpreted, and applied by Muslim countries and communities around the world. In some countries such as the United Arab Emirates, the primary source of law is Sharia law and it governs most aspects

Examples of Hybrid Systems

Civil/Islamic Law: Algeria, Bahrain, Comoros, Indonesia, Iraq, Jordan, Libya, Morocco, Palestinian Territories, Syria, Timor-Leste, Tunisia

Common/Islamic Law: Bangladesh, The Gambia, India, Kenya, Malaysia, Nigeria, Pakistan, Singapore, Sudan

13. There are distinct schools of Islamic thought: the Sunni schools, Hanbali, Maliki, Shafi'i, Hanafi; and the Shiite school, Ja'fari. Named after the scholars that inspired them, they differ in the weight each applies to the sources from which sharia is derived: the Quran, *hadith*, Islamic scholars, and consensus of the community. The Hanbali school, known for following the most Orthodox form of Islam, is embraced in Saudi Arabia and by the Taliban. The Hanafi school, known for being the most liberal and the most focused on reason and analogy, is dominant among Sunnis in Central Asia, Egypt, Pakistan, India, China, Turkey, the Balkans, and the Caucasus. The Maliki school is dominant in North Africa and the Shafi'i school in Indonesia, Malaysia, Brunei Darussalam, and Yemen. Shia Muslims follow the Ja'fari school, most notably in Shia-dominant Iran. The distinctions have more impact on the legal systems in each country, however, than on individual Muslims, as many do not adhere to one school in their personal lives.

of life. Yet, in some other Muslim countries, which have declared themselves secular, the influence of Sharia law on their legal systems is limited to certain legal matters such as property or marriage. In Indonesia and Bangladesh, two of the largest Muslim countries, their constitutions and laws are primarily secular, but with Islamic law provisions for family law. Most of their secular laws, though, do not contradict Sharia law.

Numerous countries have hybrid systems that use Islamic law. For example, Lebanon and Indonesia have mixed jurisdiction courts based on their colonial legal systems and supplemented with Sharia law. India and the Philippines have fully separate Muslim civil laws, wholly based on Sharia law.

Basic Principles and Sources of Law

Sharia, which literally means “way” or “path” to be followed, is derived from two primary sources, the Quran and the Sunna. The Quran, believed by followers of Islam to have been revealed directly from God to the Prophet Mohammed, is viewed as a religious text as opposed to a legal text but it does provide 500 concise and detailed injunctions of a legal nature, and expresses fundamental principles such as justice and equality. Sharia law also draws upon the norms of conduct expressed in the Sunna. The Sunna comprises the practices and teachings of the Prophet Mohammed known as Hadith. Islamic legal scholars and jurists look to the Hadith in the Sunna, in the absence of clarity in the Quran, to confirm and obtain additional explanation of binding legal norms that contribute to the body of Islamic law.

The primary sources of Sharia law found in the Quran and Sunna are complemented by the writings, opinions, and decisions that make up the body of Islamic jurisprudence or *fiqh*. This jurisprudence interprets and applies Sharia law to matters not directly in the Quran and Sunna through processes of scholarly consensus, analogy, and reasoning. The five major schools of thought used in Islamic jurisprudence to derive the nature and scope of Sharia law found in the Quran

and Sunna include four classical Sunni schools (Hanafi, Maliki, Shafi’i, and Hanbali) and one Shiite school (Ja’fari).¹³

In matters related to criminal justice, Sharia law sets forth three major categories of offenses and punishment: *qisas*, *hudud*, and *tazir*. *Qisas* include offenses against the person and personal injury such as murder, manslaughter, and assault and battery. Punishments for these offenses are to be determined by the victim or the victim’s family. Categories of *hudud* crimes, which are considered offenses against God, include robbery, adultery and fornication, and rape and other sex crimes. Penalties for *hudud* crimes are set forth in the Quran and can include severe punishment such as flogging, amputation, and death. *Tazir* crimes are those acts considered offenses against the state and are punishable by community service, imprisonment, or death.

Proceedings

Sharia law judicial proceedings are significantly different than other legal traditions, particularly common law and civil law. Trials are conducted by judges who are referred to as *qadi*. The *qadi* is the main actor in the proceedings and is responsible for determining guilt or innocence. Parties to the dispute also tend to represent themselves without the participation of lawyers. Unlike common law, the verdicts do not set binding precedents under the principle of *stare decisis*, and unlike civil law, Sharia law does not utilize formally codified statutes; instead, Sharia law relies on jurists’ manuals and collections of non-binding legal opinions, as well as the Hadith, which is the report of statements or actions of Muhammad.

Rules of evidence and procedure are also distinctive in that they prioritize oral testimony. A confession, an oath, or the oral testimony of a witness, are the main evidence admissible in a *hudud* case, although there is little or no cross-examination of witnesses. Written evidence is only admissible when deemed reliable by the judge. Forensic evidence and other circumstantial evidence can be and usually is rejected in favor of eyewitness testimony.

APPENDIX II

International and Regional Standards

Justice sector reform and assistance programs focused on strengthening the effectiveness and accountability of criminal justice systems should be based on international and regional standards, and conform with the basic principles of international human rights law, international humanitarian law, international criminal law, and international refugee law as appropriate.

A variety of international instruments set forth binding norms and obligations, and articulate leading practices for the administration of justice in partner countries around the world. They begin with the *Universal Declaration of Human Rights* (UDHR) and include the following international treaties:

Universal Declaration of Human Rights, United Nations, (Dec. 10, 1948)

The UDHR is a milestone document which sets forth for the first time fundamental rights and freedoms that should be respected and protected internationally. Even though it is not a treaty, it is regarded by many to have become binding customary international law.

International Covenant on Civil and Political Rights (ICCPR), United Nations, General Assembly Resolution 2200A (Dec. 16, 1966)

The ICCPR requires states that are parties to the Covenant to respect the civil and political rights of individuals including the right to life, liberty, and security of the person, freedom of religion and association, equality before the law, and due process.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, United Nations, General Assembly Resolution 39/46 (Dec. 10, 1984)

This Convention defines torture and requires states to take effective measures against torture within their territories. It also forbids states from returning prisoners to

Fair Trial and Due Process

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him [or her], or of his [or her] 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.” *ICCPR, Article 14.1*

their home countries if there are substantial grounds to believe that they would be subjected to torture.

Convention on the Rights of the Child (CRC)

The CRC is a human rights treaty setting out the civil, political, economic, social, health, and cultural rights of children. The Convention defines a child as any human being under the age of 18, unless the age of majority is attained earlier under a state’s own domestic legislation. The Convention acknowledges that every child has certain basic rights and obliges signatory states to provide separate legal representation for a child in any judicial dispute concerning their care.

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

Under this international treaty, States Parties agree to pursue a policy of eliminating discrimination against women. For example, by establishing legal protection of the rights of women on an equal basis with men and ensuring through domestic courts and other institutions the effective protection of women from discrimination.

These and similarly binding instruments oblige states to respect due process and the right to a fair trial, along with other fundamental rights and freedoms that are essential elements in promoting the rule of law.

DECLARATORY INSTRUMENTS

Members of the international community, acting together under the auspices of the United Nations, also have agreed to a series of non-binding declaratory instruments that set forth minimum standards for administering effective, accountable, and independent justice systems. They include, *inter alia*:

Basic Principles on the Independence of the Judiciary

Endorsed by the UN General Assembly in 1985, this instrument was formulated to help states secure and promote the independence of the judiciary through national law and practice. The principles provide guidance in structural safeguards for judicial independence; basic rights of judges, including freedom of expression and association; judicial qualifications, selection, and training; conditions of service and tenure; and discipline, suspension, and removal of judges.

Bangalore Principles of Judicial Integrity

Developed in 2002 by chief justices from around the world with UN support, these principles articulate the following six core values for judicial office: independence, integrity, equality, propriety, competence, and diligence. Although these principles themselves are non-binding, they can be used by national judiciaries and judicial associations to develop detailed judicial codes of conduct along with mechanisms for their implementation and enforcement.

Basic Principles on the Role of Lawyers

Adopted in 1990 by the UN General Assembly, these principles are intended to guide states in their efforts to strengthen the independence of the legal profession, establish the proper role of lawyers in society, and ensure that all persons have access to timely, affordable, and competent legal representation. They call for special safeguards in criminal justice matters, including legal aid, while also addressing the duties and responsibilities of lawyers; qualifications and trainings; professional associations of lawyers; and professional conduct and disciplinary proceedings.

Guidelines on the Role of the Prosecutors

Also adopted in 1990 by the UN General Assembly, these guidelines describe the role of prosecutors in the administration of justice and in the smooth functioning of the criminal justice system. The guidelines also affirm the responsibility of prosecutors to protect human rights, including the right to a fair trial and due process, and to carry out their duties to protect the public interest in an impartial and fair manner. Notably, the guidelines separate prosecutorial services from judicial functions, while also calling for cooperation between prosecutors and the courts, police, the legal profession, and other justice institutions.

Basic Principles and Guidelines on the Right to a Remedy and Reparation

This instrument, adopted by the UN General Assembly in 2005, affirms the obligations of states to effectively investigate rights violations and then prosecute and punish those responsible. In addition, these principles recognize the rights of victims to equal access to justice and a judicial remedy, adequate and timely reparations such as restitution and compensation for harm suffered, and information about legal, medical, psychological, social, and other services to which victims are entitled under the law.

REGIONAL STANDARDS

Many countries belong to regional and sub-regional organizations that have adopted binding and declaratory instruments similar to those at the international level for the protection of fundamental rights and freedoms, and for the administration of justice and delivery of justice services. Regional standards often model approaches to governance, justice, and security that are more nuanced and reflective of accepted practice and values in a geographic area. They include the following:

Africa and Middle East

African Union member states have adopted a variety of standards for the protection of fundamental rights and freedoms beginning with the *African Charter on Human and Peoples' Rights*. Specific standards for the independence of judges, lawyers, and prosecutors are set forth in the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*. In addition, sub-regional organizations such as the Economic Community of West African States (ECOWAS), International Conference of the Great Lakes Region (ICGLR), and Southern African Development Community (SADC) have promulgated binding and declaratory instruments aimed at strengthening good governance, justice, and security in the region.

Asia and Pacific

Minimum standards for strengthening judicial independence in countries of the Asia and Pacific regions are described in the *Beijing Statement of Principles of Independence of the Judiciary*, which were developed by LAWASIA and endorsed by chief justices from 25 countries. However, regional standards for justice system reform in Asia and the Pacific regions are still evolving and largely limited to expressions of support for regional economic development along with efforts to promote peace and security, including cooperation in combating crime and terrorism in the region. These statements can be found in the Charter of the Association of Southeast Nations (ASEAN) and similar documents adopted by the Asia-Pacific Economic Cooperation (APEC) forum, and the Shanghai Cooperation Organization (SCO).

Europe and Eurasia

In addition to the jurisprudence of the European Court of Human Rights, which enforces compliance with the *European Convention on Human Rights*, standards for justice sector reform in Europe and Eurasia can be found in formal recommendations of the Council of Europe's Committee of Ministers. These include recommendations on judicial and prosecutorial reform, the legal profession, and protection of witnesses. Other standards are expressed in legally binding norms and political commitments promulgated by the European

Using International and Regional Standards

INL justice sector assistance programs do not seek to transplant the American legal and judicial system in partner countries. Rather, INL programs and related activities are informed by and use international and regional standards to promote and support justice reform. These binding and non-binding instruments can be used to frame legislative and policy debates, and engage with national authorities and other stakeholders on the appropriate characteristics, roles, and activities of justice sector institutions and actors.

Union (EU) and the Organization for Security and Cooperation in Europe (OSCE).

Latin America and the Caribbean

Standards for promoting respect for human rights, justice, and security in the western hemisphere can be found in the *American Declaration of the Rights and Duties of Man and the Inter-American Democratic Charter* as well as declarations of the General Assembly of the Organization of American States (OAS) and organs of the Caribbean Community (CARICOM). In addition, the jurisprudence of the Inter-American Commission and Court of Human Rights contains guidance on ensuring respect for basic rights, including the right to a fair trial.

OTHER INSTRUMENTS

The international and regional standards expressed in these instruments and documents set forth above provide the impetus for justice sector reform and rule of law promotion in countries around the world regardless of their level of development and legal traditions. In addition, there are other principles and guidelines that can be used to inform and guide the design of comprehensive justice sector assistance programs along with more targeted assistance activities and quick impact projects to improve the delivery of justice services. They should not, however, be used as a template or copied verbatim for purposes of drafting laws, rules of procedure, codes of conduct, or other instruments.

Basic Principles for Treatment of Prisoners, United Nations, General Assembly Resolution 45/111, (Dec. 14, 1990)

This document sets forth 12 guiding principles for the humane and non-discriminatory treatment of prisoners.

Basic Principles on the Use of Force and Firearms by Law Enforcement, United Nations, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27 – Sept. 7, 1990)

These principles establish both general and specific provisions on when and how law enforcement officials can use force and call for the national governments to prosecute abusive use of force by law enforcement as a criminal offense.

Body of Principles for the Protection of all Persons Under any Form of Detention or Imprisonment, United Nations, General Assembly Resolution 43/173 (Dec. 9, 1988)

These principles require the humane treatment of prisoners and detainees as required under the International Covenant on Civil or Political Rights.

Code of Conduct for Law Enforcement Officials, United Nations, General Assembly Resolution 34/169 (Dec. 17, 1979)

This code provides that law enforcement officials shall conduct themselves in an ethical manner that respects human dignity and the human rights of all persons.

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, United Nations, General Assembly Resolution 40/34 (Nov. 29, 1985)

This declaration calls upon states to take the necessary measures to reduce victimization and implement various social and economic programs to provide redress to victims of crime.

Guidelines on the Role of Prosecutors, United Nations, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27 – Sept. 7, 1990)

These guidelines assist in the promotion of the effectiveness, impartiality, and fairness of prosecutors in criminal proceedings.

Standard Minimum Rules for the Treatment of Prisoners, United Nations, First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, Switzerland, (1955)

These minimum rules provide guidance on principles that are generally accepted as being good practice in the treatment of different categories of prisoners.

The Universal Charter of the Judge, Central Council of the International Association of Judges, Taipei, Taiwan (November 17, 1999)

This Charter was drafted by an international delegation of judges and outlines minimum standards that should govern the judiciary.

ABA Model Code of Judicial Conduct, American Bar Association (Feb. 12, 2007)

The Model Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates in the United States. It aims to maintain the integrity, independence, and impartiality of the judiciary in the administration of justice.

APPENDIX III

Key Justice Sector Terms

Access to Justice. The ability of all individuals, citizens and non-citizens alike, to resolve disputes and obtain a fair and effective remedy for grievances through formal and informal justice institutions and processes, including legal aid, on the basis of non-discrimination, equal application of the law, and other basic human rights standards.

Administrative Detention. The deprivation of liberty under the power of the executive branch of government and administrative norms rather than the criminal justice system.

Appeal. A petition to a higher court requesting it reverse the final judgment or other legal ruling of a lower court on the grounds that it was based upon an erroneous application of law. There are usually two stages of appellate review: an appeal from a trial court to an intermediate appellate court and thereafter to the highest appellate court in the jurisdiction. The party initiating an appeal is known as the appellant and must file a notice of appeal, along with supporting documentation, to commence appellate review. No new evidence is admitted on appeal.

Arraignment. An initial hearing before a court that has jurisdiction in a criminal case in which the identity of the accused is established, and the accused is informed of the charges and his or her rights in the matter. The accused is required to enter a plea in response to the charges.

Acquittal. A verdict that a criminal defendant is not guilty or the finding of a judge that the evidence is insufficient to support a conviction.

Arrest. The restraint or detention of an individual, typically by the police or another government agency, acting under legal authority for an actual criminal offense. Arrests may be made under the authority of a warrant issued by a judge or other judicial body or without a warrant when there are reasonable grounds to believe a person has committed a criminal offense.

Bail. The release, prior to trial, of a person accused of a crime, under specified conditions designed to assure that person's appearance in court when required. It can also refer to the amount of bond money posted as a financial condition of pretrial release.

Bar and Judicial Associations. Self-governing associations of lawyers or judges that represent the interests of their members, establish professional standards, promote their continuing education and training, and engage in activities that strengthen their professional independence and competence. Membership in professional associations may be mandatory or voluntary, depending on the jurisdiction. Professional associations may also include those dedicated to particular legal professionals such as associations of women judges or associations of trial lawyers.

Bench Trial. A trial without a jury, in which the judge serves as the fact-finder.

Constitutional Court. The main role and duty of a constitutional court is interpreting and deciding whether or not national laws and normative acts conform to the constitution. Not all countries have constitutional courts. In some countries, the Supreme Court is the highest judicial authority responsible for constitutional supervision. A constitutional court, where it exists, tends to be a specialized court outside the judiciary and only has jurisdiction over cases directly related to the constitution.

Court Administrator. An official of the judicial system who performs administrative and clerical duties essential to the efficient and effective operation of a court. These duties may include organizing and managing the court governance and operational structures, case flow management systems and practices, court automation, financial and budgetary matters, and human resources.

Court of Cassation. A high appellate court that exists in some judicial systems, particularly in those countries that follow the civil law tradition. The aim of cassation is to preserve legal uniformity, steer the development of law, and safeguard legal protection. Cassation is a check on the quality of contested judgments given by courts of appeal with regard to both the application of law and the legal reasoning supporting it. Courts of cassation are roughly equivalent to supreme courts in many countries in that they have the power to reverse or quash judgments of inferior courts.

Court President. The Court President, also known as the Chief Justice or Chief Judge, is considered the highest ranking judge on a court. Roles and responsibilities of court presidents vary and can include chairing proceedings, hearing complex cases, and facilitating deliberations among judges. Court Presidents also may be responsible for managing administrative matters of the court, including case management and assignment. Depending on the court and the jurisdiction, the Court President may be elected by other judges or appointed by an executive authority.

Court Reporter. A person who makes a word-for-word record of what is said in court, generally by using a typewriter, computer, stenotype, or an audio recording machine.

Criminal Code. A statutory instrument, more typical to civil law as opposed to common law countries, that sets forth substantive norms that regulate conduct that is considered criminal in a particular country. This includes definitions and general principles of criminal law, specific criminal offenses and their elements, and the range of penalties that may be imposed upon individuals found to have committed a criminal offense. Sometimes referred to as a Penal Code.

Criminal Procedure Code. A statutory instrument used in both common and civil law countries that compiles the body of accepted rules and procedures governing how a criminal offense will be investigated and adjudicated. Criminal procedure codes define the rights and obligations of each participant in the proceedings, including those of prosecutor, and can affirm basic aspects of criminal investigations and prosecutions, such as the presumption of innocence and burdens of proof.

Criminal Justice System. The laws, procedures, institutions, authorities and actors to investigate, prosecute, and punish those who offend and commit acts against the rules of society and the state. The three main pillars of a modern justice system include police, the judiciary, and corrections.

Defense Counsel. Any licensed or otherwise recognized professional lawyer that is educated and trained to represent the interest of a defendant, detainee, or prisoner in a criminal proceeding. In some legal systems, defense counsel are referred to as Advocate.

Detention. Any form of imprisonment, deprivation of liberty, placement of a person in a public custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative, or other public authority.

Discovery. Procedures used to obtain disclosure of evidence before trial.

Docket. A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Dossier (Case File). The collection of documents and evidence obtained during an investigation that are organized and presented by a prosecutor or investigating judge to the court.

Due Process/Right to a Fair Trial. A requirement that the state must respect the procedural and substantive rights that are owed to a person during all phases of a judicial proceeding to ensure fundamental fairness. Due process in criminal proceedings, which is closely associated with the right to a fair trial recognized by international law, includes being notified of charges in a timely manner, presumption of innocence, adequate time and means for preparation of a defense, and a timely trial.

Equality of Arms. A principle element in the right to a fair trial that requires each party involved in a dispute to be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage. The defense and prosecution should have procedural equality in access to the court and also in the knowledge and examination of evidence, including witnesses.

Human Rights. The fundamental rights and freedoms that belong to all human beings, regardless of skin color, nationality, political convictions or religious persuasion, social standing, gender, sexual orientation, or age. International human rights law is set forth in a series of international treaties as well as the Universal Declaration of Human Rights.

High Judicial (and Prosecutorial) Council. These autonomous judicial institutions, which can be found in legal systems around the world, are designed to maintain an appropriate balance between judicial independence and accountability. High Judicial Councils are generally established by constitutional or statutory provisions as an independent judicial body with authority for the selection, appointment, and advancement of judges. In some instances, high judicial councils are responsible for facilitating effective court administration, management, and budgeting. Similar institutions have been established to oversee professional standards of conduct and other matters related to prosecutors.

Indictment. A formal, written document that is submitted to a court alleging that a specific person has committed a criminal offense.

International criminal law. A body of laws, norms, and rules governing international crimes and their repression, as well as rules addressing conflict and cooperation among national criminal-law systems.

International Conventions. Binding treaties and other agreements such as protocols, covenants, and pacts that establish norms, rules, and procedures expressly recognized by consenting states. Bilateral conventions and treaties are those made between two sovereign states. Multilateral conventions and treaties are concluded among three or more countries. These types of binding instruments are sometimes referred to as “hard law.”

Investigative Judge. In a civil law system, the investigative judge (or magistrate) carries out investigations into cases once formal charges have been made by the prosecutor, and he or she decides whether the case should proceed to trial. Investigative judges typically play an active role in the collection of evidence and examination of witnesses, unlike judges in common law or adversarial justice systems in which lawyers and prosecutors perform these functions.

Judgment. A decision made by a court in respect to the matters before it. Judgments may be interim (interlocutory) and decide particular issues prior to the actual trial of the case. A judgment is considered final for purposes of appeal when it ends the action in the court in which it was brought and nothing more is to be decided. *In personam* decisions are binding and impose a liability on a party to a dispute. *In rem* decisions address issues of rights and other matters and are generally considered to be binding on everyone.

Legal Aid. Mechanisms and services such as information counseling, legal advice, and representation in dispute resolution and judicial proceedings provided by defense counsel, non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academia.

Legal Frameworks. The body of laws and legally binding instruments that apply in a particular country, give structure to the relationship between the state and the population, and define the parameters for legal conduct. In criminal justice contexts, legal frameworks include criminal and criminal procedures codes, laws on detention, laws on the jurisdiction and organization of the judiciary, along with other laws, and legally binding instruments that guarantee fundamental rights and freedoms of members of society.

Magistrate. In a civil law system, the magistrate (or investigative judge) carries out investigations into cases once formal charges have been made by the prosecutor, and he or she decides whether the case should proceed to trial. Magistrates typically play an active role in the collection of evidence and examination of witnesses, unlike judges in common law or adversarial justice systems in which lawyers and prosecutors perform these functions. In some countries, magistrate also refers to a prosecutor as well as a judge (the positions are interchangeable).

Ministry of Justice. The executive branch agency responsible with organizing and administering the justice system. In some countries, specific duties may include overseeing prosecutorial services and prison systems in addition to the courts.

National Human Rights Institution (NHRI). State bodies such as independent commissions, ombudsman, and advisory groups established pursuant to a constitutional and/or legislative mandate to promote the protection of civil, political, economic, social, and cultural rights in a particular country. Core functions can include handling complaints, increasing awareness and understanding of human rights, monitoring respect for human rights by public authorities and private actors, and making recommendations on administrative and statutory law reforms.

Parole. A method of completing a prison sentence in the community rather than in confinement in a corrections facility. Parole can be granted to a prisoner by an administrative board or correctional agencies whose principal functions are pre-release investigations, parole plan preparation, and supervision of persons granted parole and other forms of conditional-release.

Plea Bargain/Agreement. The agreement following negotiation between the prosecutor and defendant and his or her lawyers, which often results in the defendant entering a guilty plea in return for a reduction of the charges by the prosecutor or a recommendation to the court for a more lenient sentence.

Pre-trial Detention. The holding of an individual in a criminal case by a state actor upon an order by a judicial authority while he or she awaits judicial proceedings and trial. Detainees are held in jails or similar temporary detention facilities, as opposed to prisons, which house those convicted of crimes. Pre-trial detention some-times is referred to as “remand detention.”

Probation. The conditional freedom granted by a court or judicial officer to an offender provided the person meets certain conditions of behavior, such as coun-seling, treatment, community service, or restitution.

Prosecutor. Prosecutors perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions, and the exercise of other functions as representatives of the public interest. Prosecutorial services can be headed by a prosecutor or attorney general, who advises the government in legal matters and represents the state’s authorities in the courts. In some countries, prosecutors also handle non-criminal cases as well for the state.

Remedy. Measures and activities available for the enforcement, protection, or recovery of rights or for obtaining redress for their infringement. Victims of rights violations should enjoy equal access to an effective judicial remedy, as well as administrative mechanisms and proceedings conducted in accordance with domestic law.

Reparations. Those remedial measures and activities such as compensation, restitution, guarantees of non-repetition, and access to services made to a group of people who have been wronged or injured acknowledge and address widespread or systematic human rights violations, in cases where the state caused the violations or did not seriously try to prevent them. The right to reparation is a well-established principle of international law.

Restorative Justice. Any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime, participate together actively to resolve matters arising from the crime, generally with the help of a facilitator.

Retributive Justice. A form of justice, which asserts that a legitimate moral response to crime is proportionate punishment of the offender, irrespective of whether this will achieve positive social consequences.

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

Sentence. The judgment of a court stating the punishment imposed on a person who has pleaded guilty or a person convicted of a crime by a court. Courts tend to have discretionary powers when imposing punishments which can include imprisonment, confiscation of property, and fines.

Stare Decisis. A Latin phrase meaning “to stand by that which is decided.” When a court makes a decision, it establishes a legal precedent that is used by subsequent courts in their deliberations. In so doing, they are applying the legal doctrine of *stare decisis*, which is one of the most important doctrines in the common law legal tradition. Case law is made by judges when they apply previous court decisions to current cases, basing their opinions on the judicial interpretation of previous laws, and leading to a common understanding of how a law should be interpreted. Judges of lower courts observe this principle by respecting the precedents set by higher courts.

Supreme Court. Supreme Courts are found in most countries where they tend to function as the highest court sitting at the apex of court system. Also known as High Courts or Supreme Courts of Justice, these courts can interpret and apply the law, decide cases involving the constitutional validity of laws, and hear appeals from lower courts. Their judgments tend to be binding and not subject to appeal. Supreme courts play an important role in unifying a country’s laws. They also can play a leading role in judicial and legal reform efforts.

Transitional Justice. The full range of judicial and non-judicial processes and mechanisms associated with a society’s attempt to come to terms with the legacies of large-scale past human abuses and mass atrocities for purposes of ensuring justice, accountability, and reconciliation. These measures and processes include criminal prosecutions, truth commissions, reparations, and various kinds of reforms to strengthen the capacity of justice and security system institutions.

Trial Practice. The specialized knowledge and skills required for the practice of law and effective advocacy on behalf of clients in both civil and criminal litigation, including basic procedures and processes in discovery, submitting evidence, preparation and examination of witnesses, drafting motions, and delivering oral arguments.

APPENDIX IV

Resources

Access to Justice – Practice Note, United Nations Development Program (UNDP) (2004)

This note is intended to provide guidance on how to provide equal access to justice to vulnerable populations.

Legal and Judicial Reform: Strategic Directions, World Bank (2003)

This manual provides guidance on how to coordinate and implement legal and judicial reform that is sustainable, promotes social change, and fosters economic growth.

When Legal Worlds Overlap Human Rights, State and Non-State Law, International Council on Human Rights Policy (2009)

This report introduces the characteristics of plural legal orders and provides tools to evaluate the benefits of a plural legal order in access to justice and identify human rights risks that are associated with the plural legal order in question.

World Development Report - Criminal Justice: Security and Justice Thematic Paper, World Bank (2010)

This paper examines the criminal justice sector through the prism of the World Development Report (WDR) framework that is based on stresses, capabilities, and expectations.

Gender and Security Sector Reform: Examples from the Ground, Geneva Center for the Democratic Control of Armed Forces (DCAF) (2011)

This manual contains several in-depth case country specific case studies analyzing the inclusion of gendered activities in security sector reform.

Rule of Law Handbook: A Practitioner's Guide for Judge Advocates, The Judge Advocates General's Legal Center and School, Center for Military and Operations, U.S. Army (2010)

The JAG handbook is primarily intended to offer guidance to military personnel involved in rule of law missions; however, it contains a comprehensive description of the key players and challenges in the field which can be useful for a broader audience.

Criminal Justice System Assessment Toolkit, United Nations Office on Drugs and Crime (UNODC) (2006)

This thematic toolkit provides criminal justice assessors with practical guidance on key issues to be examined and the relevant applicable international standards in criminal justice system assessments.

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