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HUMAN RIGHTS-BASED APPROACH TO JUSTICE SECTOR SUPPORT



Painting in the streets of Tegucigalpa, Honduras (2017) – advocating for the right to life and combating domestic violence.

A human rights-based approach highlights the obligation on States to provide equal access to justice for all.¹ Human rights-based justice is required by a range of international human rights law treaties and other instruments.² This means that the actors, processes and outcomes of the sector³ and system must respect human rights. Justice systems are central (in providing necessary remedies) to ensuring that human rights are respected, protected and fulfilled in all other sectors.⁴ The justice system has been described as “the engine for a human rights-based society”.⁵

1 On human rights and HRBA more generally see, SDC Guidance on Human Rights in Development and Cooperation (2019)

2 These encompass all stages of the criminal and civil justice process, and range from treaties e.g. Art 14 ICCPR details the core human rights requirements of “fair” trial, to other instruments e.g. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

3 There is no single or legal definition of the justice ‘sector’ or justice ‘system’. The ‘sector’ is wider than, but includes, the justice ‘system’ (police/courts/corrections institutions). The sector also includes informal forms of justice, training institutions, NGOs delivering legal aid etc. The ‘judicial’ system is a sub-set of the ‘Justice’ system. Domestic justice systems also should complement and be reinforced by international justice which addresses accountability for genocide, war crimes, and crimes against humanity.

4 See, for example, [Access to justice for the right to housing](#) Report of the Special Rapporteur on the Right to Adequate Housing, March 2019

5 International human rights network, IHRN, August 2018.

Human rights-based programming to justice sector support means empowering rights-holders to seek and secure remedies to vindicate their rights and enhancing the capacity of formal and non-formal duty-bearers to respect, protect and fulfill human rights. In other words, both the ‘supply’ and ‘demand’ sides of justice should be pursued together and the “two-way communication” between them encouraged and maintained. Thus, our support to state and non-state justice sector institutions shall be complemented by interventions that enhance the ability of poor and other disadvantaged rights-holders to access these institutions.⁶

Applying HRBA principles to justice sector support means:

- **Starting from the International human rights framework:** Ensure that our support to the justice sector is expressly based on the relevant human rights law standards, (international, regional & domestic). Thereby, we advocate for human rights-based justice.
- **Gender, Equality / Non-discrimination and vulnerability:** Analyze the gender aspects of the sector,⁷ the systems and their institutional functioning. Who is discriminated against, vulnerable to exclusion from, or being impeded in seeking, justice? i.e. who is left behind or at risk of being so?⁸ Identify the contextual and other factors so as to choose the optimum entry points and partners to ensure inclusive, gender sensitive justice sector support.
- **Participation and Empowerment:** Analyze the extent to which justice systems empower rights-holders and ensure their ‘active, free and meaningful participation’ in their functioning. Ensure that our interventions are designed and planned so as to contribute to greater empowerment and participation by rights-holders. Do our interventions in other sectors/themes (e.g. education, health, decentralization etc) complement our justice sector interventions?

6 SDC Concept Paper, [Rule of Law, Justice Sector Reforms and Development Cooperation](#) (2008),

7 See also, UN Women, IDLO, World Bank & Task Force on Justice Report, [Justice for Women and Girls](#) (2019)

8 See, more generally, SDC Fact Sheet on HRBA and LNOB (2019)

- **Transparency, Accountability and Rule of Law:** Analyze the extent to which justice systems comply with the core principles of the Rule of Law, including transparency, predictability of decision-making, accountability etc. Are the systems themselves accountable and do they promote accountability more generally?

SDC project on Justice for Children in Bosnia:

The child justice system in Bosnia and Herzegovina has undertaken a process of reform to which SDC has contributed significantly. The legal framework on juvenile justice is now compliant with international human rights standards. To support the successful implementation, SDC contributes to building the human capacity of justice and child protection professionals as well as to ensuring that adequate financial means are provided by the Government to implement this framework throughout the country. Enhancing human rights awareness among children and their families is a priority too.

Supporting justice reform requires considering several (interconnected) factors:

Context The context (social, political, conflict-related) may mean some rights-holders have access to formal or informal justice systems, while others do not. Conflict or post-conflict context may mean transitional justice is a particular priority as a means of securing sustainable, human rights-based peace and guarantee of non-recurrence

Trust Is the trust in justice institutions properly informed and appropriate? People may distrust a system that properly reflects human right standards, while there may be misplaced trust in a system that fails to meet human rights standards. Informal justice may be trusted because it is traditional, familiar, and yet may deny human rights to some. Thus, in some contexts, an element of justice sector interventions is to contribute to trust-building between justice sector duty-bearers and rights holders. In some cases it can take many years to re-build trust in justice institutions if the perception by the public is very negative. Mistrust (justified or not justified) can be a reason for people to not access justice.

Accessibility To what extent do the systems address barriers (literacy, geography, disability, gender, poverty or other vulnerabilities...), that may preclude some from seeking/accessing justice?

Affordability Does cost preclude some from seeking/accessing justice, whether legitimate (eg court fees) or illegitimate (e.g. corruption)? Does civil and criminal legal aid provision meet the standards required by international human rights law?⁹

9 Legal aid should be “accessible, effective, sustainable & credible” and while it may involve delivery by NGOs etc, it remains the primary obligation of the State.

Adaptability Do justice systems meet needs/features of particular groups e.g. victims, juveniles, rural dwellers, with flexibility for evolving situations eg displacement, languages of migrants etc.?

Predictability Are decisions of justice institutions (to prosecute, sentencing, etc) transparent, predictable harmonized and effectively enforced – a core element of the Rule of Law?

Potential for human rights-based reform International human rights law standards do not prescribe a specific type of justice system, either formal or formal. A key factor in deciding when and how to support a particular system or institution is its potential to reform to justice that is human rights-based¹⁰.

Human rights and informal justice¹¹

Engaging with informal justice systems and processes involves recognizing that formal state institutions are not the only source of justice and adjudication and that adversarial, litigation-based models are among many forms of dispute resolution. A variety of contextual and historical reasons may mean informal justice systems are more familiar, relevant, and accessible to many of the population. Informal justice may complement formal systems by alleviating the burden on state institutions¹² and can also be geographically, financially and socially more accessible than state-led systems¹³. Informal justice may also be particularly effective in post-conflict contexts as part of transitional justice, where the scale of justice needs may be particularly demanding. However, informal justice can also be rooted in cultural, social norms that are discriminatory and otherwise problematic in human rights terms.

The majority of SDC partner countries have multiple justice processes and systems, ‘formal’ and ‘informal’, as well as so-called hybrid systems. From an HRBA perspective, it is important to emphasize that the duty bearers’ responsibility to respect, protect and fulfill human rights applies to all justice systems.¹⁴ SDC justice engagement should take account of the potential of various systems to meet human right standards, rather than their formality, informality. Creative engagement can include working with the gate-keepers of customary norms, such as local chiefs or religious leaders, as well as vulnerable groups to cultivate necessary social change, for instance on women’s access to land, or protection from practices such as early and forced marriage.

10 SDC Justice Sector Guidance Note, 2017, p.8.

11 There are many diverse meanings of ‘informal’ justice- ranging from some funded by or part of the state, others are in direct opposition to state institutions. The actual status may have significance for decisions to support them or not, but more important is their legitimacy including, potential for reform so as to deliver the desired end result - justice.

12 [World Development Report, 2017: Governance and the Law](#), p.84-85.

13 SDC, Justice Sector Guidance Note, p.6, 2017

14 [Informal Justice Systems: Charting a Course for Human Rights-Based Engagement](#) (2012) commissioned by UNDP, UNICEF and UN Women is the first comprehensive assessment of informal justice and human rights.

Regarding informal justice systems' implications for women, a new High-level group report highlights that: "As in formal law, customary legal systems have diverse implications for women's justice. Some are matrilineal where women have a traditional role in decision-making; others are patrilineal and marginalize women; others still have adapted to changing gender roles"¹⁵.

Thus, each justice sector intervention requires careful analysis of existing justice norms, processes and systems, the power relations and interest structures they serve and the applicable human rights standards (universal, regional and national). From that starting point, SDC staff can identify entry points that may yield sustainable reforms that are human rights-based.¹⁶

Justice for Women and girls

Women and girls face specific justice problems. Intimate partner violence, discrimination at work, discriminatory family laws, unequal access to property, gaps in legal identity and exclusion from decision-making¹⁷ are some of the most pressing justice issues for women and girls. Concrete examples for addressing these include: enabling legal identity for women, strengthening women's land rights, enable women's and girl's groups to campaign for reforms; contributing to eradicating patriarchal biases in family law, contributing to national legislative reforms regarding violence against women¹⁸. For detailed recommendations on advancing justice for women see the following link: [Executive Summary High Level Group Report Justice for Women \(2019\)](#)

SDC Program "Live without violence":

In Bolivia, SDC supports the implementation of a new national law to combat violence against women. The program facilitates local and national level duty-bearers and rights-holders in working together on a comprehensive approach to prevent and respond to violence against women, including addressing attitudes among men and the effectiveness of the judiciary. Support is provided through 'anti-violence networks' and reception centres for abused women which pool efforts of municipal representatives, civil society and local media groups. The program includes capacity building and awareness raising on VAW among public servants (police officers, magistrates, health workers).

¹⁵ High Level Group Report on Justice for Women (2019), p.8

¹⁶ SDC Justice Sector Guidance Note, 2017, P.8

¹⁷ High Level Group Report on Justice for Women, Common Justice Problems for Women, (2019)

¹⁸ High Level Group Report on Justice for Women, Common Justice Problems for Women, (2019); Executive Summary, P.13.