

Joint Assessment of Interventions re their ‘out of fragility ‘and relevance: Notary Reform
15 March 2016, 14:00-15:30

WORKING TEAM 2

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Rapporteur to the plenary: *Designated by working group*

Case Example Notary reform

In some countries in the Western Balkans, the backlog of cases in judiciary is so high, that access to justice is delayed for years and perceived as “not worth to try” by many citizens. Consequently citizens cannot rely on the rule of law. With the notary system established and internationally recognized as of good standards, citizens can pay for and immediately access all legal services in the competence of notaries. Therefore, as SDC was the major funder for the development of a new and well working notary system, SDC may have made a relevant contribution to “out of fragility” through extra-judicial certification of legality and truth, comparable to former court judgments. The contribution may be direct for the citizens approaching notaries to resolve their cases and indirect by reducing backlogs in courts potentially facilitating access to justice for other cases that cannot be treated by notaries.

Aim of working group

- The team has analysed fragility in the context of the case example;
- The team has developed supportive and “critical” arguments on the relevance of the case example for its contribution to “out of fragility”.
- The team reflected on how the “out of fragility” dimension could potentially be further developed;

IMPORTANT: This team work is NOT about judging the quality of the project that inspired the case example, but to enrich SDC’s perspective on the link between governance reforms and contributions to “out of fragility”.

SETP 1: Short input of 5 minutes by resource person Saranda Cana

STEP 2: What are the main worries of citizens regarding access to justice and the rule of law?

Discuss the following questions:

- How do citizens in the Western Balkans perceive access to justice and the rule of law? Please list the three biggest concerns of citizens in the Western Balkans related to access to the justice, e.g. perceptions of reliability, predictability, affordability;
- What are citizens’ strategies to cope with the lack of access to justice and rule of law?
- How do the lack of access to justice and the rule of law influence the state-society relationship?

STEP 3: What may be the out of fragility relevance of a well functioning notary system as an alternative access to justice?

Please elaborate, taking the relevance requirements and the 'hints' below into account;

Remember: General requirements for 'out of fragility' relevance

(Amended from Peacebuilding and State building Policy of SDC)

- (1) *Improves living conditions* and development perspectives of many (in an ideal case all) citizens visibly and short to medium term.
- (2) *Reduces causes of conflict* and makes many citizens socially, economically and politically better included short to medium term.
- (3) *Increases the state- society capacity to cope with crisis* e.g. if a natural catastrophe hits or an external stress such as an inflow of migrants/refugees suddenly increases.
- (4) *Makes processes and institutions more legitimate* in the eyes of many citizens; they believe public matters are done "right" and in the interest of the majority of the people.

Possible arguments for the out of fragility dimension of the 'notary' case example could be

- The lack of access to justice makes citizens feel socially and economically vulnerable and possibly excluded from the society. Notaries deal with the legality of contracts and with the ownership, purchase and hand over of land and property. Thus, notaries deal with 'every day' concerns of citizens i.e. purchasing of a house, organizing the co-ownership of a shop or settling an inheritance. A well-functioning notary system may therefore have a direct positive impact on the living conditions of many citizens if it is affordable (relates to (1) above)?
- A functioning judiciary (and as a part of it, the notary system) establishes the 'rule of law' i.e. citizens can rely on rules and regulations in their relations with the state but also with other citizens. A functioning notary system may therefore contribute to trust building of citizens not only into the judiciary, but also into trust between the citizens. Could a functioning notary system therefore also contribute to a reduction of causes of conflict (relates to (2) and (3) above)?
- A functioning notary system may influence the public perception of the overall reform of judiciary. It may help to tackle the lack of trust in a meaningful reform of the judiciary system that is perceived as being captured by a selected elite and has – in combination with other factors – led to the disengagement of citizens from the state reforms and their right to demand accountability (relates to (4) above).

STEP 4: Prepare an 7 min input and list your open questions to the plenary

Based on steps 1 to 4, please visualize on a flip chart:

- What is the team's assumption on how a functioning notary system could make a relevant contribution to 'out of fragility'? The team is welcome to visualize the causes and effects leading to a (positive) change in fragility ("theory of change");
- Does the case example already have a good 'out of fragility' relevance? If yes: why? If not so clear: how could the case example be further developed to make a relevant contribution out of fragility? The team is welcome to think hypothetical, including ideas that may be costly, unusual or include risks;
- Please summarize questions for the fragility experts from swisspeace, ISSH or SDC that came up during the discussions.