

Justice Reform and Rule of Law: Present & Future Perspectives

ISSAT Advisory Note

November 2023

Introduction

ISSAT's Advisory Notes aim to frame current commitments and interests by ISSAT's International Partners Group Members (IPGMs) in a document which also guides ISSAT in its support to IPGMs in a specific thematic area. ISSAT develops Advisory Notes in key thematic areas associated with SSG/R. It bases its analysis on its Members' policy or strategic documents, commitments and current programming priorities.

Since the onset of the COVID 19 pandemic, several studies have delved into the social, economic and security impacts across the globe. The World Justice Project's Rule of Law Index Report for 2022 observed that the rule of law declined for the 5th year in a row across 8 measurable factors in 61% of countries. The decline was not as steep as experienced in 2021 and this may be due to an increase in the number of citizens protesting against the autocratization of their states as noted by the V-Dem Institute. While this tempering of the steep decline experienced in 2021 is positive news, V-Dem also reports that, *"For the first time since 2001, democracies are no longer in the majority. Down from 55% (98 states) at its peak in 2010 to 48% of the countries in the world as of 2019, the world is now left with 87 electoral and liberal democracies, which are home to 46% of the world's population."*

"The most important data point to focus attention and resources around is that the countries that experienced a decline had pre-existing weaknesses in rule of law before the pandemic hit and two thirds continued to decline in 2022."

-WJP, 2022

The twin decline in democratic states and of rule of law is cause for concern. On the surface it may appear that the pandemic is the reason, however, when considering the period of years covered by the data, it is starkly clear that while the pandemic may have accelerated these declines, the root causes far preceded its global arrival.

As of 2020, Africa is home to the world's youngest population with 60% of its citizens under 25 years old with a median age of 19.7. With the fastest growing demographic, African youth are also facing an employment crisis and economic insecurity. A study notes, *"In Egypt, Ghana, Morocco, Nigeria and South Africa at least 75.0% of the youth think that their governments do not care about their needs. About 60.0% of Africans, and especially the youth, think that their governments are doing a very or a fairly bad job of addressing the youth's needs."* African youth are not alone in their distrust or frustration with their governments, only 33.1% of citizens aged 15-29 in Latin America and the Caribbean reported trusting their governments. Justice, security and the lack of citizen confidence in government institutions and politicians, particularly amongst youth, are tightly linked to economic insecurity. The rising frustration toward government is even more understandable when we consider data points before the pandemic which clearly illustrate a level of discontent that was further exacerbated, rather than being caused, by the pandemic.

In mid-June 2023, Niger became the latest government in a corridor now stretching across the Sahel region of Africa to be felled by a military coup¹. Justifications for the coups in Burkina Faso (which at the time of this note, is now led by the world's youngest head of state, Capt. Ibrahim Traoré, who was just 34 when he seized power), Mali, Guinea point to corruption, the continued threat of Islamic jihadists and widespread public anger at ineffective governments unable to address citizen needs. What can be inferred from this is that justice, security and the lack of citizen confidence in government institutions and politicians are tightly linked to economic insecurity. Perhaps not surprising but important to note, is the correlation between a country's income and the strength of its rule of law system.² This is closely related to OECD's note in "Building a Business Case for Access to Justice" which notes the linkages between economic development and justice¹⁴.

As noted above, while Rule of Law weakened in 2021³, it did rebound in 2022. This is also the case for several markers used to evaluate the state of Rule of Law globally. There was a rise in the use of states of emergency legislation in 2020 as the pandemic commenced, however, many countries rescinded or allowed emergency measures to lapse in the years following. The rise of authoritarian governments and levels of citizen frustration

¹ [Coups in Africa Run Coast to Coast After Niger Turmoil - The New York Times \(nytimes.com\)](https://www.nytimes.com/2023/06/15/africa/niger-coup.html)

² [WJPInsights2022.pdf \(worldjusticeproject.org\)](https://www.worldjusticeproject.org/insights/2022/07/wjp-insights-2022-rule-of-law-by-income/) Please see Figure 4, Rule of Law by Income.

³ "In 2021, overall rule of law scores weakened in 74% of countries and, on average, fell by 1%. This year, the rule of law declined in 61% of countries and average scores dropped by 0.5%" [WJPInsights2022.pdf \(worldjusticeproject.org\)](https://www.worldjusticeproject.org/insights/2022/07/wjp-insights-2022-rule-of-law-by-income/)

across the globe have also led to increased citizen participation and engagement with political systems. The accessibility offered by social media platforms have created new spaces for younger and marginalized voices to gather support and community around their priorities and needs. Perhaps the most important data point to focus attention and resources around is that the countries that experienced a decline had pre-existing weaknesses in rule of law before the pandemic hit and two thirds continued to decline in 2022⁴.

The uncertainties, tensions and anger brought to the global stage because of the pandemic was not a surprise for the people who have been experiencing economic insecurity, discrimination and violence for generations. But the pandemic did bring to light, for many development partners, justice stakeholders and governments was how interrelated these needs are. A siloed problem-solving approach to justice challenges, insecurity, or government services is untenable. When looking to the digital transformation, there are economic opportunities for the private sector, but also a heightened risk of leaving those already behind, further behind. Political and economic realities have a direct and immediate impact on the quality-of-life citizens enjoy. It is important for development partners to understand the dynamics at play when designing interventions.

As the development paradigm shifts towards a “people centered” approach, programming will need to adapt in how problems are framed. Challenges in accessing justice are likely to have multiple causes including access (proximity, transport), awareness (of rights, accessing services), engaging with state authorities (comfort levels, presence) and cost (court fees, time). The causes or barriers to justice are then seen in context – sufficient income to afford services, access roads/availability of public transportation, accountability of government, etc. Addressing justice issues may then need to include improving core governance functions, reform of the civil service, human resource and public financial management. Addressing the multi-faceted nature of citizen needs requires a whole of government approach and more responsive, integrated programming.

Practitioners in security and justice continue to study and report on the linkages between gender, climate change and security⁵, for example. If the goal is to **strengthen rule of law institutions, democratic governance and reform the security sector**, integrated programming that also addresses **economic insecurity**, the impact of **climate change, cross border cooperation, women’s empowerment**, should be understood to be essential components of sustainable and effective programming.

Building Forward Better: A Justice Sector Primer

Traditional justice interventions bifurcate and categorize justice to better organize thinking, in the hope of developing and implementing more effective interventions. The first instance of categorization is delineating the justice sector: who are the actors or agents, what are the institutions involved, who are the stakeholders outside the institutions? The justice sector therefore included primarily governance institutions and citizens or recipients of public services. This dichotomy is often referred to as the duty bearers/supply side of justice (government and its institutions) and the rights holders/supply side of justice (citizens, populations within a sovereign space) there is a third category of institutions that provide monitoring, advocacy and accountability functions to ensure government is responsive and behaves responsibly towards the population it is meant to serve.

Rights Holders/Demand

SDG 16/SDG 16.3 Access to Justice

- Customary and Informal Justice
- Paralegal Structures

As resources are always limited, whether financial or technical, the international development community focuses on addressing gaps, challenges and violations in the criminal justice chain as opposed to investing in strengthening civil justice. There is a perception or belief that the consequences to an individual in the criminal justice system is greater than those experiencing civil justice challenges. This is a difficult qualitative measurement and one that is

⁴ [WJPIInsights2022.pdf \(worldjusticeproject.org\)](#)

⁵ [WomenSpeak2022_EN_FINAL.pdf \(dcf.ch\)](#)

largely unnecessary. If we consider the death penalty as the ultimate grave consequence facing a defendant in a criminal justice system, as of 2022, 112 countries have abolished the death penalty.¹¹ Paradoxically, as the number of countries that have abolished the death penalty have steadily increased over the past 3 decades, the number of executions from 2021 to 2022 increased by 51%.¹² Lesser crimes still inflict serious consequences on those convicted and detained. The detention of a family member can mean the loss of much needed income, there is stigma associated with detention that can impede employment and community reintegration. Often minor crimes result in detention when community service or parole would be the most appropriate and proportionate measure. Alternatives to detention, vocational training and rehabilitation programs remain underfunded but very much needed.

It is estimated that more than 5 billion people do not have meaningful access to justice.¹³ Civil justice, while experienced with greater frequency by the vast global population does not carry with it the same impetus to improve as criminal justice. Civil matters relate to private businesses, land and property issues, family matters (marriage, divorce, child custody, inheritance etc) and administrative issues. The everyday nature of civil justice somehow seems to undermine the central importance it plays in the lives of every citizen, particularly for women, the impoverished and marginalized. Matters relating to divorce, child custody, inheritance, title to land have a direct and immediate impact on issues related to domestic violence and SGBV, poverty, and conflict prevention. The cost of accessing civil courts or Customary and Informal Justice (“CIJ”) mechanisms can prolong conflict and distress. Matters related to civil justice are no less impactful on citizens than criminal justice and they are intertwined with the lived existence of each and every individual globally.

In the past few years, a consortium of justice institutions like UNDP, IDLO, DCAF, ODI, UNWomen, etc. have proposed placing CIJ as an imperative for achieving SDG 16.3. Increasing access to justice through customary, traditional or informal mechanisms to address the Global Justice Gap and civil justice needs.

While some development organizations have attempted to expand justice services through the establishment of legal aid mechanisms or paralegals, these efforts have been largely unsustainable or not properly adapted for the target community. Today the conversation on customary and informal justice is more nuanced and complex and, in many countries, informal structures are not entirely “informal.” They either have explicit or implicit links to the formal sector where actors in both arenas use and engage with each other. When there is legislation or constitutional clauses that acknowledge and validate informal or traditional practices it is often with the caveat that informal mechanisms will work on civil cases, primarily dealing with family issues. While this is not always respected, it is an effective means for people to resolve their problems in a manner that is affordable, accessible and adapted to their values or beliefs. In some countries that have incorporated CIJ actors and mechanisms into the “formal” sector, those unhappy with a CIJ outcome may be able to appeal or seek recourse to formal structures or courts.

International engagement with CIJ mechanisms or actors should be context specific and led by local stakeholders. While international partners certainly acknowledge CIJ there is hesitation to engage because of the risk, in some contexts, for violations to human rights and women’s rights. Depending on your status (woman, child, elderly, disabled, ethnic minority, poor, etc.), you may not be treated fairly or have your rights protected when using a CIJ mechanism, even if it is the only one available to you. Depending on your status you may not have recourse to appeal a decision by an informal structure due to accessibility, affordability, availability, discrimination, community stigma, etc.

Implications for International Partners

Funding and advocacy requests related to CIJ mechanisms in X country or Y region are also likely to increase particularly after the 2nd SDG Summit in September 2023 and the Working Group on CIJ and SDG 16.3 publishes its report on using CIJ to close the Justice Gap. Development partners will advocate for shifting resources towards civil justice needs and achieving SDG 16.3. It is important to ensure that activities or engagements are led by the intended beneficiaries and tailored to the specific community – not just the country. The dynamics between local actors and government (national and sub-national) should be one of the factors to consider before engaging. Inputs from women, children, youth, marginalized groups, the poor, the disabled etc. should be central to the design of any such interventions as they may face difficult challenges when engaging with informal structures. Advocating for a recourse or appeals mechanism between the CIJ mechanism and the formal courts would be advisable. Enshrining the link and jurisdictions of the informal and formal justice sectors may be likewise advisable depending on the context and current constitutional and legislative frameworks.

Between Supply & Demand

- Accountability and Oversight: NHRIs/Ombuds Institutions
- Civil Society, Women and Youth Groups

NHRIs, in addition to amplifying the needs and demands of the population may also have a role to play in the oversight of CIJ mechanisms and the justice sector as a whole. As institutions independent from the government, they function to hold government accountable to its human rights obligations and responsive to citizen demands. Many NHRIs have strong links to UN agencies, particularly the OHCHR, and in the submission of the Universal Periodic Review.

The independence of NHRIs and Ombuds institutions is critical to their ability to do their work and in how they are viewed by the public they serve. The Paris Principles⁶ articulate the key pillars every NHRI must embody in order to receive accreditation: Independence in law (constitutional or legislative), independence in leadership (transparent selection of members), adequate powers (setting priorities, initiative) and resources (adequate for needs, control over its budget), cooperative national and international frameworks. In addition to the institutional and operational capacities, the NHRI/Ombuds institution should also be perceived to be impartial.

Civil Society Organizations, Women's Groups and Youth Groups have long been party to justice and security sector programming. Often asked to consult on interventions or programs or to validate findings and strategies, most donors require their participation when projects are designed. Some may be part of Project Boards that govern development projects. Though they are often consulted, their perspectives or initiatives are frequently subsumed under government or donor priorities. A distinction should be understood between consulting and incorporating. Justice interventions at the design stage would benefit from giving more weight to the viewpoints of CSOs when balancing priorities. This is particularly important when looking to interventions (community policing, for example) that endeavor to improve social cohesion, prevent or de-escalate conflict and increase public trust. In some contexts it will be important to ensure that support to NGO or CSO partners is not contributing to "elite capture" and those without access or influence are still meaningfully part of program design, implementation and evaluation.

Supporting NHRIs and Ombuds institutions in justice programming are normally not prioritized. In transitional justice contexts, such as The Gambia, support to NHRIs are part of reconciliation processes and evidence of the government's commitment to redress and accountability. The establishment and operationalization of an NHRI that is able to conduct monitoring missions, support a hotline for complaints and issue reports on performance and accountability are important components for progressing reconciliation and fostering social trust. Operationally, the role of NHRIs in transitional settings, as a mechanism for oversight when there has been a breakdown in social cohesion or outbreak of violence is important. The checks on the set up and leadership of the NHRI should be part of the program design process as should the inherently political nature of an NHRI and its work, relationship to other institutions and the public.

Implications for International Partners

When engaging in reforms work, development partners should first note whether the NHRI/Ombuds has the proper legal framework and then look into operations: 1) note whether the NHRI or Ombudsman's office has an independent budget from other government institutions; 2) submits its own budget to Parliament or the appropriate body; 3) consider the amount requested and the amount disbursed and 4) consider if the funding is sufficient in terms of staff salaries (at all levels) and resources (hardware, software, vehicles, generators, fuel, office space, etc.) needed to carry out its initiatives and work. The leadership of the NHRI is also important to consider because the perception of independence or collusion can damage trust between citizens and the NHRI or Ombuds institution.

Duty Bearers/Supply

- Capacity Building
 - Institutions
 - Personnel

Arguably the majority of funding and technical resources, particularly from UN agencies which depend on the invitation from the government to legally work in the country, are provided to duty bearers. Material support from

⁶ [Paris Principles - GANHRI](#)

office equipment (laptops, printers) to infrastructure (buildings, office space) to transport (vehicles), to consumables (fuel) and even government staff salaries can, and have, been provided to governments across the globe. In addition to material support, programs often include soft support in terms of capacity building of personnel (skills development, substantive knowledge, study trips) and institutions (reforms, strategic plans).

Capacity building of institutions, depending on the organization, often include strategic plans for a specific organization, review and revision of Human Resources policies, support to budgeting or planning units, monitoring and data units, etc. Such support is normally a blend of hardware and training. Overlap between international partners and redundant interventions are a well-known issue that most partners attempt to mitigate through various coordination mechanisms, meetings or joint programming.

The IGAD-UNDP joint project in South Sudan utilized a co-location civil service mentorship program in partnership with Ethiopia, Uganda and Kenya. Each country provided and paid for a civil servant to co-locate with their counterpart in the South Sudan civil service to facilitate skills transfer. Such arrangements may be more expensive; however, they may also create more opportunities for South-South cooperation and increase the likelihood of institutional change. In addition, it is not clear that one off trainings have long term impact on changing personnel or institutional behavior.

The intention of providing support to duty bearers was to increase and improve justice services to citizens. Logically, if institutions were able to provide better services, more citizens would be happier and have confidence in their government. A functioning justice system that was seen as fair, fast, accessible, affordable and adaptable would prevent the escalation of conflict and provide predictable remedies and redress.

Arguably, there has been limited long term success utilizing current models for capacity building interventions at the institutional and personnel levels. When attempting to transform the culture or behavior of an institution, this requires short-, medium- and long-term strategies that are comprehensive and adaptable. In contexts that are in crisis, post crisis or in transition, political leadership has an enormous impact on reforms processes and making institutions resilient against political and executive change. Even if political economy analysis or conflict sensitivity analysis are completed, often justice programming is designed and implemented as if it existed outside the political sphere. As such, when there are elections, social movements, changes in leadership within an institution, the gains made can be lost and the project, in a sense, has to start from scratch with the new leadership.

Implications for International Partners

Clear mapping of government resources against in an Annual Work Plan for the sector with budget groups led by key institutions should be in place with donor resources clearly marked in the shared budget to mitigate against redundancy, track donor support and government use of funds and ensure funds are allocated to National Development Plan (“NDP”) priorities for the sector. If government budget sector working groups are not in place, this should be prioritized. Establishing, operationalizing, and prioritizing asset management units within institutions should be a standard part of any material support to the sector. Before assets are handed over, government institutions should budget for maintenance and updating of assets as part of their regular operational budgets.

Framing Rule of Law and Justice Interventions

Rule of Law is inherently Political

The Rule of Law is used as a key characteristic and indicator of “good” governance. While there are many ways to define what is “good” governance, most international organizations agree that qualities of a good government include one that is responsive, accountable, efficient and fair amongst others. While the principles, pillars, characteristics or indicators may differ in number or are categorized another way, there is a shared system of values that governments, international organizations, civil society and citizens seek in government. While Rule of Law and justice are inherently political, the overriding imperative for governance, rule of law, justice and security programming remains ensuring that justice systems, justice and security institutions and actors are not politicized.

The drafting, passage and enforcement of laws is inherently political because elected officials put in place publicly accessible rules and laws that regulate the relationship between the state and the population. This is a power dynamic that is regulated through political processes like elections. Justice institutions like the Judiciary, Ministry of Justice, Police, Prisons, Alternative Dispute Resolution Secretariats, Ombuds Institutions, National Human Rights Institutions and Legal Aid agencies are all part of the mechanism that interprets and enforces the laws drafted and enacted by elected officials. Ideally, civil servants should remain apolitical in the carrying out of their duties but often time their leaders are politically appointed. The Judiciary itself, and one important mark of a strong rule of law and justice sector, should be and should be perceived to be a separate, independent and empowered arm of the government able to fulfill its part in checking and balancing executive and parliamentary powers.

Over the past several decades, articulating the political nature of engaging with a country's justice system may have been briefly referred to in a project document, assessment or evaluation. However, incorporating and articulating the political dimension offers considerable benefits: First, it provides a state of play on an ongoing basis in contexts that can be unpredictable, fragile or conflict prone. Instilling a practice of monitoring how the justice system, its institutions and personnel are responding to stresses or shocks increases a program's ability to adapt and respond. The clearest example of this is reflecting the potential impact of upcoming elections or rainy/dry seasons not only on the justice sector but on how these events may impact citizen priorities and stress government capacities.

Political Economy Analysis ("PEA") do not have to be cumbersome or overly complex and should focus on a specific sector or problem. Understanding the resilience of justice institutions to political, social and economic shocks or crises is at the core of building state capacities that consistently deliver quality services to the public. Further, a PEA or a Conflict Sensitivity Assessment can identify peripheral actors, conflict drivers and champions that can then be incorporated and reflected in the project design providing greater nuance to risk frameworks and mitigation strategies. Moreover, as best practices have long noted, the development of programs should be done jointly with national counterparts, ideally in line with National Development Plans and citizen priorities.

This leads to another benefit of openly¹⁵ incorporating the political lens into the design and implementation of program or portfolio design. It elevates the discussions amongst national and international stakeholders on identifying challenges and how such challenges can be resolved through collective efforts. Another reason why it is important to start program design in this way is that the project outputs and outcomes are agreed upon collaboratively rather than being provided by the implementing partner and presented to national counterparts which is more often than not the beginning of most project documents¹⁶.

There is a tension between donors who recognize and prioritize reforms, protection of human rights, compliance with international laws and standards and governments that are not interested in prioritizing citizen rights, needs or demands. The question becomes how do donors and development partners create a genuine incentive for governments to be responsive to citizen needs and protection of rights regardless of political upheavals or shifting power dynamics? Fragile or conflict/post conflict settings where SSR and justice reforms are most needed are in a highly charged political environments and as such, there needs to be deeper thinking around the role of partners politically advocating for reforms with government counterparts and project implementation.

Accepting the political nature of rule of law and justice also pushes back against outcomes or objectives that are trying to solve essentially political problems (Civil Service Reform, "right sizing") with technical solutions (National Security Policies, senior international advisors). A PEA helps frame the key issues or challenges that a justice sector is facing and incorporates the political lens in order to provide interventions, strengthen mitigation strategies against risks and address root causes that are within the purview of a justice program. The constraints, it should be noted, are not only the social, political and economic context, potential risks and opportunities but also the time and funding available for implementation. One example is that justice programs often target institutional behavior change. However, behavior change takes time and often the ambitions of justice programming exceeds the time and resources available.

Finding Balance: People Centered and State Centered Approaches

The second part of better framing justice interventions is to balance approaches (people centered, state centered). Centering an individual's experience with the justice chain is re-affirming the purpose and objective of most justice programming. It is true that the development of outcomes and key activities can pivot towards building state capacities to the detriment of citizen priorities. The general sense amongst practitioners may be that strengthening state capacities are the first step toward achieving citizen priorities. This assumes that citizen priorities are directly linked to improved service delivery. Improving service delivery, however, may mean different things to different

citizens and where they sit on social, political and economic ladders. There may be a focus on improving technical skills and processes when what is needed is a change in behavior on the personal or first contact level (moving from an authoritative to service/consensus-oriented approach).

Using citizen priorities to navigate how state capacities are built is one way to balance people centered and state centered approaches. Justice reforms are founded on the idea that the state needs to improve its relationship with its citizens. There is an imperative, particularly in post conflict, transitioning or fragile contexts to prevent further citizen frustration and ensure that institutions are able to provide the quality services citizen's demand. Increased confidence or trust does not follow from only understanding citizen demands and priorities – partners must tailor interventions to build the necessary strengths at the institutional and personnel level so that they can effectively respond to citizen demand. Failing to do so may have the opposite effect – increasing citizen frustration and demoralizing civil servants.

Both data collection at the state institution level and public perception surveys are important tools in framing more effective justice programs. Data collected by justice institutions are an important balance to perception surveys. Taken together, they provide insight on how perceptions are aligning with current realities and can also be used to encourage citizen engagement in the reforms process. One important caveat to the collection of data, whether at the state institution level, through public perception surveys, targeted Focus Group Discussions or Key Informant Interviews is the potential for data fatigue on the part of participants. Repeated surveys or questionnaires may create expectations that programs or governments are not able to meet. This can lead to frustration and disengagement.

A Whole of Government & Integrated Programming Approach

A whole of government and integrated approach is needed in order to effectively address weak or unstable rule of law and justice systems. This means developing programming that incorporates interventions that strengthen core governance functions, empowers women and marginalized groups in CSOs, government, political dialogues and as development partners. Poverty reduction, engaging youth, and creating platforms that reduce tensions and increase social cohesion are also important elements to include.

There are a few initiatives that encourage joint programming in the justice sector, the Global Focal Point and the Peacebuilding Fund are two examples.¹⁷ However, it is not enough to address justice needs in isolation. Problems related to accessing justice are often related to the capacity of institutions (national legal aid agencies, bar associations) the limitations on their personnel (skills training, professional work environment, resources to accomplish work) and the overall civil service (payment scales, recruitment, retention). At the same time, citizens are faced with challenges related to physical accessibility (access roads, transportation), social barriers (stigma, religious/cultural/gender norms), financial barriers (cost of services, poverty) and awareness (understanding of rights and how to access services).

Taking these factors into consideration, international support of legal aid clinics for example, are unlikely to be sustainable past the life of the project unless the underlying factor related to civil service reform, increasing and extending core governance functions, and improving income generating opportunities are likewise addressed. It is not about a people centered approach to justice or to security, it is a people centered approach to development. Justice programming plays one part in supporting the overarching goal to improve the quality of life, particularly for those who have been left behind and continue to be left behind.

What this means for the international community is turning toward a general people centered approach. It means to challenge the categorization or siloing of human experience and understand security and justice programming as contributing part of a solution instead of its entirety. Meaningful partnerships with organizations that seek to improve core governance functions, address poverty, mitigate against climate change – they may all be relevant to a specific security or justice problem in a particular context. It entails building new relationships at the country and global levels and towards multi-disciplinary programming which may be challenging initially.

A common refrain in development is to have programs that are locally/nationally owned and locally/nationally driven. Sustainability of interventions and exit strategies are critical components of all development interventions. Fostering ownership at the local and national level is noted in the framing of justice programs, through the PEA and co-development of project document, outcomes, and key activities. A second way to foster greater engagement is to encourage national, provincial or local government to contribute some percentage of the project's overall budget.¹⁸ Even an initial nominal amount can change the dynamics of engagement. When the government has put its own funds into a multiyear project, it can motivate stakeholders to solve problems more quickly, improve coordination

across institutions and stakeholders, foster pride in project achievements and show citizens an increased level of responsiveness to their priorities and needs.

Emerging Trends and Impact on Justice Reforms and the Rule of Law

“Green” Justice

The evidence supporting the significance of environmental impact and access to resources on justice and security challenges has been steadily growing for decades. The role of justice reform in the protection of the environment and natural resources, as well as addressing the equitable distribution and use of natural resources has been reflected in the growing number of environmental protections enshrined in new Constitutions and legislation (specifically in Latin America).

For countries that rely on tourism, protecting the environment is critical for the private sector, small and irregular markets, and the overall health of citizens. There has also been a growing exchange in the development field on protecting the environment for future generations and that generations not yet born have vested rights today in enjoying a clean and healthy environment. The protection of natural resources is also intertwined with the equitable distribution of such resources, economic growth, livelihoods, and the extension of core governance functions. It is linked to a people centered approach to justice and security as well as addressing the core principles of good governance.

Critical to combatting climate change is the implementation of Constitutional and legislative protections. While the LAC region has led on landmark Constitutional, legislative and court orders protecting the environment, overall, enforcement has been weak, and in some instances, dangerous for climate and Human Rights activists.

Implications for International Partners

There is little doubt that the impact of natural disasters (droughts, floods, hurricanes) and access to natural resources such as clean water, land and fresh air have direct impacts on irregular migration, gender-based violence, poverty and stability (country level and regional). If the nexus between climate or green justice is not yet on the agenda for donors, this is the moment to consider the Latin America and Caribbean region⁷. There are great lessons to be learned from the LAC region – the importance of human rights and climate defenders, alliance building, the impact of citizen and indigenous voice, and groundbreaking Constitutional and regional legislation. LAC is the only region that has been proactively addressing climate change, use and distribution of natural resources, rights of future generations to natural resources and protections for the environment in their constitutions and legislation - this is largely absent from the national development plans and legal frameworks in Africa, MENA and Asia. There are lessons to be learned and a role for donors to play in terms of political pressure and advocacy particularly if they are concerned with poverty reduction, conflict prevention and sustainable development.

Enacting laws and Constitutional clauses will only go as far as their implementation and enforcement allow. What the LAC region offers the rest of the world is part of a phased roadmap. The first part is clearly illustrated by the LAC region's willingness to pass the legal frameworks needed protect the environment and natural resources. This is done to protect not only the generations living today but gives weight to the growing movement towards protecting the rights of future generations.

The second part is implementation, enforcement, and accountability mechanisms to make the legislation meaningful. This requires political and financial investment – the importance of the donor community's advocacy of these measures and their enforcement cannot be underestimated. Legislation for enforcement bodies may be needed in some countries, in addition to capacity building of the institutions and their personnel. Oversight bodies will likewise need assistance to fulfill their mandates effectively.

In parallel to the second part is the third component, which relates to accountability. Here CSOs, NHRIs and Ombuds Institutions alongside human rights and climate defenders will function to keep the political and enforcement actors in check. They will also function to advocate for revisions to current regulations and legislation as needed.

⁷[UNTC](#)

The research already conducted and ongoing, endeavors to bridge the gap between global policy thinking and on the ground realities. This type of feedback loop is often envisioned but rarely actioned by most development actors. The reality of bringing on the ground challenges, that are multi-dimensional and complex, to feed into global policy and then demonstrate whether specific policies are effective, is invaluable to donors, development actors and partner countries alike.

The Private Sector & Business and Human Rights

Increasing the role and engagement of the private sector has become more important as citizen trust in government falters but trust and confidence in business and employers has risen. If one of the root causes for weakening rule of law institutions, instability and lack of confidence in government are linked to economic frustration then the private sector is a natural ally. Building on the trust (in some contexts, limited trust) enjoyed by businesses and noting again the correlation between a country's income and strength of its rule of law system, there are opportunities for the public and private sectors to grow.

There is considerable work on the connection between enforcing human rights and businesses. Increasingly, large companies like Pepsi are seeking human rights expertise to evaluate their supply chains, labor conditions and environmental impact. There is clearly a long road ahead and accountability mechanisms needed, however, with the increase in social activism, particularly on social media platforms, businesses may be increasingly motivated to meet Human Rights and environmental protection standards. This does not imply that individual choices (consumer demand) should replace systemic change (global regulations and enforcement), however, social activism can highlight, motivate and hasten behavioral change on the part of companies, multinational and local alike.

Just as access to natural resources is a potential trigger for conflict, equitable access to services (justice, health, housing) are also triggers for conflict. Incorporating the private sector into supporting the resolution of triggers (youth unemployment, gender discrimination, poverty) is a largely untapped resource. The development of apps to assist or monitor law enforcement, contributing to prison reforms through infrastructure support or advocacy are effective ways to bring in more resources, build public confidence and reduce conflict stressors.

Implications for International Partners

With the rise of social media, the private sector has an interest in improving its reputation in terms of human rights, protecting the environment and improving labor standards. This is not altruism. It is the result of how social media and a growing progressive and activist community has impacted corporate profits. In countries like South Sudan⁸, some members of the private sector provided free services for the public good. There is an opportunity for IPG members to advocate with the private sector, whether at the global, regional or country level, to support government functions such as emergency call numbers, women and youth training programs and employment, internalizing gender markers, environmental protection initiatives, etc.

Development actors should encourage implementing partners ("IPs" to seek partnerships with local companies in place of internationals. At the least, international consultants should be paired with national consultants to 1) grow the country's own private sector; 2) create an exchange of learning between the national and international experts; and 3) ensure capture of knowledge and skills transfer for troubleshooting in the future and mitigating future costs. This ensures that if follow up is needed, that there is a cost saving mechanism built into local capacities. It also creates an economic and learning opportunity for local businesses to grow their industry and possibly expand to the regional level – reinforcing South-South cooperation⁹.

For practitioners, this is a new partnership that can supplement ongoing programs. During the COVID pandemic, businesses contributed to the purchase and distribution of PPE in some countries, in others they supported the purchase of goods for hospitals, prisons and other government agencies. Not only did this support the fight against the pandemic – which was damaging to their businesses – but it also raised their profile and fostered goodwill with their customer base. Seeking out the software companies that can support the digital transformation, local furniture

⁸ In South Sudan the telecom companies agreed to provide an emergency call number for free. This has been extended from Juba into Wau.

⁹ The UNDP Gambia provides a good example of this due to its use of a local software company to design case management systems for the police and prisons and then a mobile app for police. Any issues with the software was more easily attended to because the capacities were already in country. The work of the local company was highlighted by the government and UNDP which created more opportunities for the company and its employees.

stores to provide beds for prisons, tradesmen to offer free apprenticeships to youth are all potential way to extend project activities, support the local economy and foster pride within a community.

The Digital Transformation

The digitization of rule of law and core governance functions has a multiplier positive effect¹⁰. The COVID pandemic, for many countries across the globe, accelerated the digital transformation in the justice sector. There are several issues that have emerged and continue to emerge from the rapid adoption of e-justice services. E-justice services, like virtual courts or mobile apps for police, allowed governments to continue the administration of justice – both in civil and criminal courts while respecting health and safety guidelines to mitigate the spread and impact of the virus. There was a new impetus pushing justice institutions to create, upgrade and train personnel on digital case management systems, mobile apps, virtual courts, etc. During the pandemic, some initiatives that started as pilots were expanded encouraging institutions to adopt and implement technology to address citizen demands.

The pandemic halted the recruitment of international consultants and companies as well as disrupted the supply chain making the purchase of goods from abroad close to impossible and prohibitively expensive. This forced development partners to find local solutions and local products to support the digital transformation encouraging investment in local software companies and vendors. An immediate positive outcome was that it supported livelihoods, nascent companies and local expertise during a difficult and stressful period. It created and strengthened relations between the private sector and public institutions that had not previously worked together. This links back to the previous section and the benefits of fostering greater engagement from the private sector.

Often government counterparts sought international consultants and companies to “upgrade” their systems. However, once the international consultant or company left, any troubleshooting or follow up was difficult past the contract period. If the government was using an international organization like the UN, procurement processes required a public solicitation – the first company hired may not win the new contract and so a new company would have pick up on a system it did not initiate. Using local talent made it far easier and cheaper for government to continue the relationship and partner for future upgrades or trouble shooting. While this may seem like a small point, the digital transformation using local talent and resources can contribute to growing the private sector which can, in turn, produce more jobs. More jobs often means reducing economic pressures and supporting the larger goal of poverty reduction.

Studying the impact of the digital transformation and whether it is or has contributed to the achievement of the SDGs, impacted Leave No One Behind and the medium to long-term effect on public confidence in government would be informative. Evaluations and assessments can provide insights on why some digital initiatives were “sticky” and others were not and what effect using local verse international resources had on outcomes. There is also an opportunity to widen the lens on justice and security interventions and see their inherent links to poverty reduction, social cohesion and conflict prevention.

There were not only beneficial outcomes. There was, and continues to be, a well-documented spike in the use of surveillance equipment by increasingly authoritarian regimes pushing the boundary between public health and emergency measures and freedom to assemble, human rights and free speech. Leaving No One Behind became increasingly urgent as with the digital transformation, those already left behind were now being left further behind.

Implications for International Partners

For IPG members, the first lesson learned from the pandemic is that there are local expertise, products and resources that should be made the default option for their IPs and this extends beyond the digital transformation. Justice needs, like security, education and health needs do not exist in a vacuum or silo. Implementing justice reforms that contribute to poverty reduction, social cohesion and even fostering a sense of national pride are important to long-term success¹¹. Development partners should also consider why previous digital initiatives did not

¹⁰ Digitization is one example, however, even requesting IPs to recruit a local consultant alongside an international will develop the expertise of both and benefit the local consultancy market. There is potential for elite capture and addressing this should be part of all program design.

¹¹ The Sawaysa Project (Joint UNICEF-UNDP-UNWomen) is evidence of how fostering a sense of national pride can encourage institutions to adopt new technologies and approaches making them more sustainable and effective.

stick. A slower, more methodical transition from a paper to digital system may not be as exciting but does allow for civil servants, from different generations, to not only adjust to the changes but contribute to the system's evolution¹².

In the same vein, investing in core governance functions, like accessible and affordable electricity and internet access should be part of any digital transformation effort to ensure that citizens in rural and peri-urban areas and the poor share in the benefits. This means looking critically at how access to mobile data, electricity and the internet are impacting those with limited access or resources. While there may be a segment of the population that has increased access to justice services through digitalization, it means that there is also a second valley forming comprised of potentially the most vulnerable, impoverished or marginalized.

Finally, IPG members can advocate for better controls and accountability for the misuse of digital technology and data. While the impact of regulating companies like Google and Facebook continue to unfold, the protection of privacy, and human rights should be at the cornerstone of any digital or technological support to government counterparts. If support includes security sector actors like the police or military, it may be advisable to conduct a Human Rights Due Diligence Policy analysis.

Cross Border and Regional Cooperation

Justice and security challenges spilling across borders continues, however, the presence and influence of non-state armed actors has increased over the past several years. Many of the reasons are linked to poverty and stagnant economic growth. There is an opportunity to build stronger regional networks and partnerships both in the public and private sectors. Strengthening South-South cooperation has been a key goal for the past decade, however, by incorporating the private sector and academia, this can be accelerated and spread beyond the public sphere.

Integrated programming such as the Sahel Stabilization Facility will be informative for future interventions. The landscape of development has irrevocably changed and the cross-border impact of crisis in the Sahel, the Ukraine and Afghanistan are just the most recent examples of this new reality. Development partners, donors and recipient countries should look to increase regional cooperation, prioritize diplomacy and soft skills in staff and partners and come out of siloed or country only focused thinking. In failing to consider neighboring countries, potential risks are missed as are opportunities for meaningful change.

Implications for International Partners

For both donors, development partners and national counterparts this means zooming out of the country specific focus and seeing the target issue within a regional context and identify potential regional or neighboring partners to bring on board. Partnerships are not only meant to be other government entities but also academia, private sector actors and NGOs. While interventions will continue at the country level, more analysis and understanding of regional dynamics and how they can effect or be incorporated into programming may generate more effective interventions.

Conclusion - Is Justice important?

Justice programming plays one part in supporting the overarching goal to improve quality of life, particularly for those who have been left behind and continue to be left behind.

Justice is not an end in itself. Neither is it in a state of crisis or emergency caused by a pandemic. Partners who make this assertion, that we are in some kind of newly discovered emergency, should consider more closely the data and studies illustrating the growing frustration, particularly of youth, in the years preceding the pandemic. The encroachment on women's rights has been gaining momentum well before COVID and it continues its march to the present. New ideas or solutions are not easily available because change is difficult and requires new mechanisms, funding streams and behavior change on the part of donors and partners – not only recipient countries. Lessons learned are rarely reflected in “innovative” initiatives and are promptly forgotten. The circle of donors, international organizations, academics and practitioners is largely unchanged. Interventions that advertise “tailored” or “bespoke” are rarely so in practice. If we are in an emergency, then why does everything look and feel the same?

Justice, encapsulated in SDG 16, is one strand that makes up a stronger thread. The SDGs are important for the same reason that effective justice or security programming is important. They are important because collectively

¹² This was another key highlight from Sawaysa, the Mazan system was introduced in one key unit and then modifications were made and decided in partnership with government users and software development partners.

they endeavor to create more opportunities for joy. It is a lofty aspirational goal and one that justice endeavors to contribute to, not achieve on its own. This is why a whole of government approach, regional cooperative frameworks, integrated multi-disciplinary programming, private-public partnerships are important to development programming. It is also why, if there is an emergency and the landscape has changed, then so must we.

Recommendations

Political Problems & Technical Solutions

- Political Economy Analysis (PEA) and Conflict Sensitivity Assessments (CSA): Both are helpful tools in any context and are best used in tandem with public perception surveys, FGDs or KIIs. They can help categorize information, map the influence of key and peripheral actors, identify underlying or root causes that stress or destabilize systems/institutions, and identify political and socio-economic dynamics. All of this contributes to a more nuanced programming and policy interventions.
- Technical Solutions: While technical solutions can assist in resolving some aspects of accessing justice or increasing institutional capacities, they cannot fully address systemic challenges that require consensus-building processes inherent to the political sphere. Justice programming often seeks to strengthen the capacity of institutions to deliver services with the assumption that improved service delivery will increase public confidence and trust. However, a lack of public confidence related to corruption may have as its root cause the need for civil service reform. Likewise, security sector reform may have a “right sizing” of institutions approach which becomes more political charged as elections approach.
- Time and Investment: Justice programming often seeks to change the culture or behavior of an institution. This level of change requires more time than is often given to programs. A 3-5 year program that endeavors to achieve long lasting change to an institution’s culture or behavior is setting an unrealistic expectation. Phased programming that is designed to be flexible in approach (not outcomes), co-designed with national counterparts, with an engaged project board, investment from the host country and a functioning budget sector working group requires a greater investment in terms of time and resources but is likely to produce more sustainable results.
- Public Perception Surveys: Ideally before initiating the project design, a public perception survey (if one has not already been commissioned recently) can be conducted to understand citizen perceptions of the justice sector and their priorities for reform. The surveys should take into account perspectives from men, women, children, youth, marginalized groups, etc.
- Data Collection: Donor requests for the collection, collation and analysis of data has increased significantly over the past two decades. Whether through digitalized case management systems, rates of reported crime, case disposal rates, etc. embedded in Monitoring and Evaluation frameworks of most programming, there is still little evidence that the data and reports generated at the program level are feeding into policy development and new programming approaches. The burden on nascent or small organization to fulfill M&E requirements should be considered during the program design stage.

Integration

- Joint Assessment Teams: An assessment for a country emerging from fraught elections or a natural disaster may be visited by a security/justice/governance team that includes experts on gender, security and human rights. When relevant, and based upon a PEA or Conflict Sensitivity Assessment, a joint team is one that is considered thematically diverse: livelihoods, justice and core governance functions for example or health, disaster relief and private sector development.
- Integrated Programming: A primarily justice-oriented program does not need to cover every sector. However, if after a country assessment is completed, and a perception survey provides insight on citizen priorities, programming that includes or is implemented in parallel with livelihoods, core governance functions, rural development, maternal health etc., will support efforts to increase citizen confidence and trust in government then standalone justice or security programming. This may also help reduce the level of competition between organizations for resources for their sector.

Budgetary Contributions and Sustainability

- National Contributions: Even a nominal percentage by the host government to a project's overall budget can increase ownership, encourage active participation, accelerate problem solving, and foster pride within the state institutions while showing citizens their government's commitment and responsiveness to meeting public priorities.
- Budget Sector Working Groups: Sector based working groups that are chaired by the line ministry and co-chaired by the UN or donor counterpart support annual and bi-annual review of national funds allocated to different institutions within the sector. Annual Work Plans with baselines, targets, and indicators along with agreed upon key activities to achieve outcomes at the sector level are critical for sustainability. It is in these budget working groups that donors can work with government counterparts and implementing partners to ensure the smooth handover of key functions and activities in a coordinated and transparent manner. Engagement and agreement from the Ministry of Finance to include costs identified through the budget sector planning processes contributes to the likelihood that donor funded interventions will become part of the government's regular/operational budget for that institution.

Additional Resources

- Anna Lührmann, Seraphine F. Maerz, Sandra Grahn, Nazifa Alizada, Lisa Gastaldi, Sebastian Hellmeier, Garry Hindle and Staffan I. Lindberg. 2020. Autocratization Surges – Resistance Grows. Democracy Report 2020. Varieties of Democracy Institute (V-Dem); <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2020>; <https://mo.ibrahim.foundation/iiag/downloads>;
- International IDEA, Taking stock of Global Democratic Trends Before and During the COVID-19 pandemic. GSoD in Focus Special Brief (9 December 2020), <https://www.idea.int/publications/catalogue/global-democratic-trends-before-and-during-covid19?lang=en>;
- Camilla Roca and Ines Schilttes, Africa’s Youth: Action Needed to Support the Continent’s Greatest Asset, Mo Ibrahim Foundation; Edelman Trust Barometer (2022), Women an dTrust Report, https://www.edelman.com/sites/g/files/aatuss191/files/2019-05/2019_Edelman_Trust_Barometer_Women_and_Trust_Report.pdf.
- World Justice Project Rule of Law Index [WJP Rule of Law Index | Insights \(worldjusticeproject.org\)](#); [WJPInsights2022.pdf \(worldjusticeproject.org\)](#); [WJPInsights2022.pdf \(worldjusticeproject.org\)](#)
- [Government at a Glance: Latin America and the Caribbean 2020 | OECD iLibrary \(oecd-ilibrary.org\)](#)
- [international-youth-day-research-brief.pdf \(ibrahim.foundation\)](#)
- [Taking Stock of Regional Democratic Trends in Latin America and the Caribbean Before and During the COVID-19 Pandemic \(idea.int\)](#)
- [UN experts hail landmark environmental treaty in Latin America and the Caribbean | OHCHR](#)
- [Gender, Climate Change and Security | DCAF – Geneva Centre for Security Sector Governance](#)
- [Edelman Trust Barometer 2022, PowerPoint Presentation \(edelman.com\)](#)
- [Pathfinders for Justice | Justice Action Coalition \(sdg16.plus\)](#)
- [guidingprinciplesbusinesshr_en.pdf \(ohchr.org\)](#)
- [PepsiCo drops palm oil supplier known for human rights abuses | Food Dive](#), please also note the connection to environmental impact of businesses.
- [Institute for Human Rights and Business \(ihrb.org\)](#)
- [Information Brief | Regional Stabilization Strategy for the Liptako-Gourma Region | United Nations Development Programme \(undp.org\)](#)
- [WomenSpeak2022_EN_FINAL.pdf \(dcaf.ch\)](#)