DCAF

Geneva Centre
for Security Sector
Governance

Justice Delivery in Hybrid Environments

ISSAT Advisory Note

July 2021

Non-State Justice Mechanisms in Theory

Non-state justice system is an umbrella term incorporating a multitude of heterogeneous actors and processes aimed at resolving conflict -primarily- in parallel to the formalized state system. These may exist with state approval and could- to varying degrees- be adopted into the formal system.

Non-state justice providers, together with state justice providers, make up the justice system. Many terms are used interchangeably for **'non-state justice'** actors and mechanisms. These include **'informal'**, **'grass-roots'**, **'community justice'**, **'indigenous'** and **'popular justice'**.

Informal justice is often defined by its key attributes. It is described as "unofficial, dissociated from state power, non-coercive, dependent on rhetoric rather than force, non-bureaucratic, decentralized, relatively undifferentiated, and non-professional; its substantive and procedural rules are imprecise, unwritten, flexible, ad hoc, and particularistic".[1]

International actors should exercise caution in misleadingly generalizing traditional justice systems as a cohesive and homogenous entity. The informality of these systems should also not be equated to systems that are simplistic or lacking in authority.

How Many Systems are the Non-State Justice System?

The justice system includes a multitude of actors and mechanisms, some of which include:

- **Customary legal mechanisms** refer to the "system of customs, norms and practices that are repeated by members of a particular group" for a sufficient extent of time that they consider them to be binding and common practice.[2] Whilst customs and customary practices could be a valid source of law preceding State law, it is the existence of sanctions which distinguishes customary law from a mere custom.[3]

- **Traditional legal mechanisms have existed**, although not without change since pre-colonial times and are generally found in rural areas".[4] These systems can be often referred to as customary, informal, community-based, grassroots, indigenous or local.[5]

- **Religious legal mechanisms**. This category is classified as 'informal' when not regulated by the State (tribal elders applying sharia law in *Yemen* and *Somalia*). It can be considered formal where it is largely the source of state recognized law (Saudi Arabia) or in pluralistic legal systems, e.g. *Afghanistan, Egypt, Iran, Iraq, Indonesia, Maldives, Malaysia, Mauritania, Nigeria, Pakistan, Qatar, Sudan, UAE, and Yemen*, where it is usually formally recognised in the constitution.

- **Alternative Dispute Resolution (ADR) mechanisms** are means of settling disputes outside the courtroom through processes, including through neutral evaluation, negotiation, conciliation, mediation, and arbitration. While a customary justice provider may adopt an ADR decision-making method, this is not

---

[1] Policy and Issue Brief: Engagement with Customary and Informal Justice Systems, IDLO, 2019, p. 8.

[2] Customary Justice: From Program Design to Impact Evaluation, Erica Harper, IDLO, 2011, p. 17.

[3] The Dynamics and Genius of Nigeria's Indigenous Legal Order, Remigius N. Nwabueze, Indigenous Law Journal, Vol. 1, 2002, p. 158.

[4] Access to Justice in Sub-Saharan Africa: The Role of Traditional and Informal Justice Systems, Penal Reform International, London, 2000, p. vi.

[5] Post-Conflict Traditional Justice: A Critical Overview, Allen & Macdonald, JSRP Paper 3, London, p.2.

---

always the case. Some ADR processes are state recognized and can be incorporated into the state formal system at its lower levels. ADR processes include:

- o **Negotiation**: Discussion to resolve a dispute between party/ies with/without representatives. It is important to remember that negotiation is probably the most popular from of 'justice' enabler used by most disputants.

- o **Community mediation schemes**: Many donors support this form of dispute resolution to resolve local conflict. One example is the Asia Foundation in *Nepal* who has been engaged in developing context specific forms of mediation there for over 20 years.

- o **Other mediation schemes**: These will be designed to resolve specific issues, e.g. land, environment, employment or workers' rights, or resource sharing. These might be designed and run independently of the state by NGOs, community and industry groups or by companies, or might include the state as a party.

- o **Peace committees**: These are established to try and resolve conflict in contexts of fragility, e.g. in *South Africa, Northern Island and Nepal*. Local Peace Committees were established under National Peace Plans to address grievances and build peace from the bottom up.

- **Truth Telling Initiatives**. Whilst transitional justice mechanisms remain to a large degree formal in nature to allow for national scale dialogue and processing of past crimes, some truth telling processes or non-judicial commissions could exist on the local level and perform the role of informal community-level healing from conflict or violence. Examples include the community fora in the hilltops in Burundi in the early 2010's, as well as some practices of "restorative justice", which treats past grievances and involves elements such as storytelling, apology, which are deeply vested in community engagement. They usually consist of a toolkit of instruments available to address justice issues in times of transition, after conflict, because the formal system may have been implicated in abuses or will become overburdened if required to absorb all claims. It has been adopted by the formal criminal justice system, typically to address low level crimes. It is important to note here that whilst most informal mechanisms are restorative in nature, traditional justice can be retributive too, including harsh corporal punishment ranging from caning to death penalties.

Restorative justice

Low level crime: Restorative justice is used in *New Zealand* where police have collaborated with Iwi (local tribes) to run pre-charge panels which bring together the offender, victim, their family (whanua) and the community to address low level grievances, hold offenders accountable, but also help them to address the underlying issues which lead them to commit the crime and help them get their life on a more positive path.

High level of crime: In the *Kingdom of Tonga* the 2006 pro-democracy riots in Nuku'alofa implicated most of the population. It was recognized that the formal justice system would become overburdened if all citizens implicated were charged. Instead a specially designed restorative justice programme was designed to improve social tensions and address impunity.

Non-state Justice Actors

- **Civil Society Organizations (CSOs) and Non-Governmental Organizations (NGOs)** play many different roles in the justice sector, from advocacy, to legal aid, to watchdog and oversight.

- **Community Paralegals**: Many paralegal programmes are run by CSOs. Their primary role is to work directly with the communities they serve. Paralegal schemes are not dispute resolution mechanisms. They can only provide legal advice and can be state or non-state funded. They legally empower citizens, making them aware of their rights and how to access the justice system. They can ensure better justice results for disputants and improve community harmony by resolving disputes through ADR. Their engagement can reduce incarceration rates and combat elite capture of justice mechanisms. Community paralegals can be connected to lawyers and the possibility to litigation or high-level advocacy if frontline methods fail. Community paralegal programs are diverse. Some take a holistic approach, addressing a range of justice needs; others focus on addressing a specific issue, like violence against women or protection of customary land rights. Some paralegals serve a very local jurisdiction, such a village, or a neighborhood, as volunteers; others are paid staff who cover a much larger area, such as a chiefdom, or a district.[6]

> **The U.K.'s Department for International Development (DFID)** has promoted paralegal schemes since the early 2000s. A recent example of a joint GIZ, DFID and Spanish programme is in *Bangladesh* where paralegal services have been rolled out into 35 districts and reaching 60% of the prison population. In *Timor Leste*, through a DFID programme, paralegals have been found to use their knowledge of non-state and state justice institutions in domestic violence cases, to devise 'practical hybrids' drawing upon social norms and practices from both institutions to fulfil their clients' needs.

- **The claim to provide of justice made by militias and organised crime**. Where the state is absent, weak or overrun, militia or organised crime may take on some of the roles of the state, including that of a justice (and often also security) provider. Donors should make sure to map the existence of these forms of justice providers as they will impact assistance into the sector.

Provision of Justice by Primeiro Comando de Capital in Sao Paulo, Brazil

Lack of credibility in the police, difficulties to reach police stations, lack of knowledge concerning the justice system, lack of resources to pay for a lawyer, lack of state attorneys to guarantee for deprived people's rights, huge length of proceedings, makes access to the criminal justice system an issue for Brazilian population, mainly people living in deprived communities. In Shanty towns in São Paulo, the Primeiro Comando de Capital provides provide safety, security and access to criminal justice by for example, finding the responsible for local crimes such as robbery, rape or homicide and punishing them with penalties such as gun shot or castration. Meanwhile, they expect respect and compliance from the members of those communities, restricting their freedom under constant life threats and human rights violations (for more information).

---

[6] For more information, refer to the work of Namati on paralegals, here.

Characteristics of Non-State Justice Providers

Although there are exceptions, non-state justice processes tend to share the following characteristics:

- **Non-state origin and authority**: They will have materialised through socio-cultural or faith communities, rituals, traditions, indigenous governance systems or local community groups. They mainly derive their authority and legitimacy from the community and are usually not an integral part of the government nor funded by it.

- **Neutral third party and consensual decision making**: In many cases, a neutral third party/ies, not part of the judiciary, will mediate or adjudicate the conflict. They will employ a method of dispute resolution which aims to meet the underlying needs of the disputants through consensual dialogue.

- **Decentralised access**: The non-state justice system is usually geographical and culturally closer to disputants, typically operating in a rural village where no state courts exist.

- **Low cost**: The non-state system can often be accessed freely. Sometimes disputants will pay them directly in cash or in-kind, but usually incur far less in costs then if they were to access the formal justice system.

The Mechanics of Hybrid Legal Systems

Often the state and non-state systems interact across several points of a continuum of justice services delivery. In some countries, customary dispute resolution is proscribed, while in others, customary law is recognized through formal state legislation and integrated into the state court hierarchy. In between these two extremes, some states grant limited jurisdiction to specific groups, insofar as it does not abrogate constitutional or other statutory provisions. The relationship between the formal and informal system can be typically characterized in the following scenarios:

- There is a **normalised** relationship between the two systems.

- There are **clear points of interaction** between the systems.

- They are **two distinct systems** with different institutions, bodies and characteristics.

Non-State Justice Mechanisms can be Formally Recognized by the State

This is clear point of interaction between the formal and informal system when the formal justice system incorporates 'informal justice mechanisms' into its umbrella as 'state-informal', 'quasi-formal' or 'hybrid organs' of state justice. Examples include court-appointed mediation, restorative justice, and certain tribunals.

State and Non-State Can Interact Through Nexus Points

Where they are not part of the formal system nexus points will exist where grievance holders can move between systems. Grievance holders can also use both systems concurrently. They may start pursuing their grievance in one system and move over to the other; or they might seek justice through both systems concurrently.

State and Non-State are Two Distinct Systems

The interaction between state and non-state actors can be harmonious or discordant. A harmonious division between the systems can be found when the state system addresses serious disputes, such as criminal matters which threaten public order, while the non-state system addresses less serious, everyday disputes. In the latter case, regulation could preclude the state system from addressing them, easing thus the state system's case load.

A well-functioning state system should have protections and enforcement capacity to address serious crime in places where public order is at risk. Conversely, the non-state system tends to provide quick and creative resolution of low-level disputes and -with the right human rights protection measures- it upholds community cohesion and the social fabric.

Why Should Donors Engage with Non-State Justice Actors?

Engaging with non-state actors offers many advantages to international actors seeking to improve access to justice, including increasing the responsiveness and legitimacy of justice services.

On a global scale, non-state justice systems are more resorted to than formal or state justice systems. *Liberia* shows that rural citizens took only 4% of criminal cases and 3% of civil cases to the formal court (2008 figures). More recently, the *World Justice Project* found that an average of 6% of cases reach a state court and only 8% of disputants receive legal advice (2019 figures). Similarly, 80% of the *Malians*, surveyed by Afrobarometer in 2017, trust religious and traditional leaders for their justice needs. **Simply put, non-State actors fill a void and respond to a need where state institutions are absent are therefore are too important to ignore**. If plurality is excluded from programming, a large part of society simply will not be included in efforts to improve access to justice and security.

Numerous studies have shown that when neither state nor non-state mechanisms are functioning, human rights abuses and serious conflict are more likely to occur. Lessons from Burkina Faso, Liberia, Brazil, Mali and other contexts have shown us that when community members lack access to justice, they tend to take things into their own hands, fueling practices that undermine peace and stability. In *Liberia*, for instance prohibiting customary courts from handling serious crime in the absence of both sufficient capacity and a shared sense of what constitutes justice led to a justice vacuum nurturing impunity and mob justice, and ultimately undermining the legitimacy of a fledgling democratic state. Similarly, a study of state and non-state dispute resolution systems amongst poor segments of rural *Colombia*, estimated that the incidence of communities taking matters into their own hands through vigilantism, "mob justice" or lynching is more than five times greater in communities where non-state mechanisms are no longer functioning effectively and state presence remains limited. In other circumstances, breakdown of local frameworks can lead to different types of lawlessness. For example, the criminalization of customary responses to witchcraft in *South Africa*, combined with the fact that state courts refuse to recognize the existence of witchcraft, has arguably led to a form of vigilante justice based on the belief that the State sides with witches.

Non-state mechanisms constitute a source of resilience against conflict. In the Sahel, Alternative Dispute Mechanisms are important for conflict mitigation and conflict prevention, as they are the first point of contact to solve disputes. In *Niger*, traditional leaders' involvement in decision-making structures and conflict resolution to overcome disputes on the local level has been highly effective.[7] Similarly, in *Burkina Faso*, traditional and religious mechanisms act as shock absorbers and tend to de-escalate conflict through existing local processes. It is therefore important to safeguard non-state actors from spoiler factors such as politicisation and reforms that are not anchored in the community's needs for justice.

'Legal pluralism', when more than one legal system is operative, is a fact of many contexts and non-state and state systems can work in complementary ways. Non-state justice systems often form one part of medley of legal systems functioning in one context, known as a 'hybrid legal system' or a 'hybrid justice system'. The reality of this hybridity and the fact that in many places no one system can provide justice on its own are unavoidable facts. Therefore, the goal for international actors seeking to improve access to justice is to engage with the various justice mechanisms in a way that capitalizes on the strengths of each.

---

[7] World Bank, 2016. Niger Risk and Resilience Assessment.

The Opportunities

Supporting non-state justice providers offers a number of opportunities for strengthening access to justice and addressing a number of blockages to access to fair and responsive justice:

- **Physical and economic inaccessibility of the formal system**: State courts can be geographically distant, and costly to access. Non-state justice actors most often function at a more local level, making them more accessible.

- **Lack of human and material capacity within state institutions**: Institutions may be weak and unable to offer quality justice in a timely manner, or not may not function at all, particularly in post-conflict situations or in the aftermath of natural disaster. In contrast, the speed, accessibility, and cost effectiveness make the informal justice institution a natural partner for disputants based in rural settings and isolated from the state system.

- **State inefficiency**: State institutions may be corrupt, bureaucratic, inefficient, and slow in processing cases to the extent that they are not viable options for those who cannot afford to stop working for extended periods. Non-state justice actors can provide faster outcomes.

- **State bias or partiality**: State institutions may be perceived as serving the interests of rich and the powerful rather than as being impartial and independent.

- **Lack of awareness or understanding**: Most of the perception surveys completed in the past ten years have concluded a poor understanding by community members of available state instruments and processes.

- **Disconnect from values**: National legal systems may be based on value systems that are not accepted by certain groups, which can undermine the legitimacy of their outcomes. Traditional justice actors may reflect more closely the values and mores of certain groups.

- **Community tensions**: Informal justice systems are an extension and a byproduct of social fabric and dynamics, ensuring youth (in particular) sense of being part of a community. They contribute to building cohesion, community resilience and a sense of access to justice.

The Challenges

Donors continue to engage very cautiously with non-state justice actors due to concerns around human rights, risks of undermining state institutions in particular in contexts where non-state justice mechanisms are not recognized or accepted by the national government. These concerns are summarized below:

- **Complexity**: Non-state justice mechanisms and their interaction with the State is a complex matter to fully understand. They tend to fit into plural legal environments with many different actors and sets of values, procedures and practices. This can hinder international actors to engage effectively and do no harm. It takes time and resources for international entities to understand non-state justice actors within their context properly and identify entry-points for programming.

- **Red lines on power relations**: Non-state justice systems can reinforce existing socio-cultural power relations that may be fuelling social prejudice and vicious cycles of vulnerability in the form of discrimination on the basis of gender, race, age, property, disability and other markers of identity. Working with the non-state justice system, requires an intimate understanding of socio-cultural dynamics, power relations and discriminatory attitudes and traditions, ensuring that donors engage carefully and do generate harmful dynamics to the social or cultural fabric.

- **Lack of oversight or higher-level accountability**: The disconnect between non-state justice process and oversight is a challenge for donors. Non-state justice mechanisms generate decisions that are most often unwritten and, as a result, non-state justice actors are usually disconnected to varying degrees from oversight mechanisms. In many contexts, victims do not have the necessary entry-points to seek appeal and compensation or to overturn judgement.

- **Lack of trust**: International actors generally share concerns about the nature and level of punitive or compensation measures, as well as the obscurity of guiding principles, laws and procedures. These mores are often deeply rooted in local traditions and unwritten. In certain contexts, supporting non-state actors can undermine state functions and the trust relationship built between the state and the donor community.

Non-State Justice in Policies and the SSG/R Dilemma

References to non-state justice providers in international actors' policies tend to be mostly descriptive of their attributes and importance. For instance, the **United Nations** recognises the multiplicity of traditional actors that operate alongside state institutions and highlights that these systems can play "an important part in the delivery of justice services".[8] Meanwhile, the **African Union** has drawn on lessons from past experiences, including African traditional justice systems, in the development of its Transitional justice policy.[9] The Policy stresses the important contribution of traditional justice providers in achieving transitional justice.

The **UK Department for International Development (DFID)** recognises that "informal or non-state institutions are particularly influential in people's lives in developing countries. Traditional authorities resolve disputes [and] are the custodian of common resources".[10] Furthermore, the **United States Agency for International Development (USAID)** acknowledges that "the community-based nature of many non-state justice institutions makes them more physically and often more financially accessible to local populations" and that "programs in this area can help build on the strengths of non-state systems to improve access to justice".[11]

The **European Union**, highlights its shift from an "institutional support" approach to a "service delivery" approach in order to ensure the needs of various stakeholder groups are taken into account and that these various groups play a role in addressing obstacles to effective justice delivery.[12] Similarly, the **Swedish International Development Cooperation Agency (SIDA)** recognises that focus on state institutions has yielded few tangible results since "state justice sector institutions are of limited relevance for people living in poverty" and recommends alternative methods that do not "automatically place the formal legal system at the core of their activities, but give attention to a broader range of state and non-state institutions and dispute resolution mechanisms".[13]

As the **Swiss Agency for Development and Cooperation (SDC)** explicitly emphasizes, function matters more than form. In many situations state structures may indeed lack the ability to manage conflicts and social problems without resorting to violence and to defuse tensions should the situation escalate. In contrast, informal systems are more accessible and have greater legitimacy than the formal security and justice system, as they are seen to be rooted in communities and are more reflective of their normative values. Looking beyond the State, and working "with the institutions you have, and not the ones you wish you had" is thus a key element of 'stabilizing' security sectors in fragile states in order to pave the way for more comprehensive SSR-program . Engagement with justice systems should be informed through their potential to reform, rather than their formality, informality, or current non-compliance with human rights norms.[14]

However, none of these policies provide a description of how to involve these actors. ISSAT's programme reviews and evaluations have shown a similar lack of detailed analysis. Whilst donors have funded and

---

[8] [Delivering Justice: Programme of Action to Strengthen the Rule of Law at the National and International Levels](#), Report of the Secretary-General, UN 2012, p. 7.

[9] [African Union Transitional Justice Policy](#), AU Press Release, 2019.

[10] Policy approach to Rule of law, DFID 2013, p.5 in Siân Herbert, [Policy Approaches and Lessons from Working with Non-State Actors in Security and Justice](#), GSDRC, University of Birmingham, 2015, p.5.

[11] [Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework](#), USAID, 2008, p. 39.

[12] European Commission, 2012, p.31 in Siân Herbert, [Policy Approaches and Lessons from Working with Non-State Actors in Security and Justice](#), GSDRC, University of Birmingham, 2015, p.5.

[13] [Equal Access to Justice, a Mapping of Experiences](#), Henrik Alffram, SIDA, 2011, p. 11.

[14] [Engaging with the Justice Sector](#), SDC Justice Sector Guidance Note, 2018.

supported programming tackling non-state legal mechanisms across many countries[15], it is very rare to find programming Theories of Change which elaborate on existing Alternative Dispute Resolution Measures, including how they work and the expected impact of engaging with them. This suggests a recognition by the donor community that non-state justice mechanisms are important but a lack of understanding of how they operate.[16] Furthermore, the SSR-model despite its people-centered outlook, remains state-centric in its main objectives. The traditional SSR-model links effectiveness and legitimacy of State services delivery to uniform and equal distribution of services to the community, falling short of looking at the State-community relationship and the community's needs that are not recognized by the State. Only part of legitimacy flows from state power. As USAID's Guidance Note on Non-State Justice points out, "the recognition and accommodation of social, historical, religious, and cultural trends and realities are important to, and part of, the rule of law. Overshadowing the importance of local values and cultural relevance would fail to root the international assistance in the local culture, establishing only institutional shells and creating relationships of accountability only between local government and the donor community rather than between the government and its citizens.[17]

Non-State Justice Mechanisms in Donor Programming

The operating model of SSG/R programming needs to better operationalise the human security and justice principle. The below section will examine donor programming which has engaged with non-state justice mechanisms and how it has been able to overcome challenges, extracting learning and providing guidance for the international community. Examples are drawn from international programming in *Afghanistan, Bangladesh, Malawi, Mali, Mozambique, Sierra Leone, Uganda, Rwanda and Indonesia* to illustrate these five types of activity.[18]

Training and Capacity Building

Training of Traditional Justice Leaders

In *Rwanda*, after the Genocide, multiple donors supported the gacaca process. Whilst, the extent to which the gacaca process was based on 'tradition' is debated, it is considered to be a system whereby traditional justice actors complemented the formal justice system in order to cope with the huge number of detainees. The Netherlands, the European Commission and Belgium funded education for and trained the gacaca judges. In addition, the Netherlands funded activities to sensitize local authorities and the population in general to the gacaca system.

Indonesia has a hybrid justice system that varies considerably across the territory and between rural and urban levels. Overall, there has been a trend towards some degree of incorporation with formal and informal justice systems working quite independently. In this context, the World Bank runs the Women's Legal Empowerment Program (WLE). This program is carried out in partnership with a local NGO and works at the village level and with formal justice sector to improve the legal awareness of women, living in villages, extending legal and justice services for them. This programme also includes a component strengthening the capacity the formal justice sectors' capacity to understand and provide education on women's rights.[19]

---

[15] Afghanistan, Bangladesh, Burma, Colombia, the Democratic Republic of Congo, Indonesia, Mali, Malawi, Mozambique, Nigeria, Somalia, Sierra Leone, Rwanda, Uganda and others.

[16] The Current State of Peacebuilding Programming and Evidence, International Initiative for Impact Evaluation, 2015.

[17] For more information on this, the Guidance Note is available here.

[18] Policy and Issue Brief: Engagement with Customary and Informal Justice Systems, IDLO, 2019, pp 12-26.

[19] Reducing Injustice? A Grounded Approach to Strengthening Hybrid Justice Systems: Lessons from Indonesia, Samuel Clark and Matthew Stephens, p. 30.

In *Afghanistan*, The United States carried out training and capacity building with local councils (shuras and jirgas) between 2008 and 2011 at the district and provincial levels.[20] This project contributed to the predictability of dispute resolution mechanisms. Few Afghans have much trust in the State court system and perceive the local mechanisms as much more legitimate.

Fostering Collaboration and Greater Consistency amongst Non-State Justice Actors

In *Malawi*, the Catholic Commission for Justice and Peace carried out the Malawi Primary Justice Programme, which trained headmen and chiefs in all districts of Malawi, implemented at local level through local governments and NGOs. It also raised awareness of legal rights among men, women and children.[21] The Catholic Commission for Justice and Peace also established a register for case documentation.[22]

In *Bangladesh*, the local NGO Mardaripur developed a multi-tiered structure of mediation committees for villages. This adapted customary mediation, while eliminating some of the negative practices of the traditional so-called *shalish*. Each village in the geography of implementation formed an 8-10-person Mediation Committee, with representation reflecting the gender and ethnic composition of the community. The Mediation Committee was set up to meet twice a month, with oversight provided by a trainer.[23]

In 2005 in *Sierra Leone* after the civil conflict, the U.K.'s DFID launched the Paramount Chiefs Restoration Programme, with the establishment of a Council of Paramount Chiefs. These positions existed before the war, and would address many disputes and take community decisions, but many incumbents were killed during the conflict.[24]

In four districts of Northern *Mali*, Gao, Mopti, Segou, and Timbuktu, IDLO works with Malians to identify institutional reform needs. IDLO supports the *Cadre de Concertation*, which is made up of state justice actors, traditional authorities and civil society representatives to identify ways in which justice can be made more accessible for the end user.[25]

In *Yemen*, between 2008 and 2011, the United States supported the coordination of local state officials, tribesmen and community representatives within the Justice and Security Dialogue Programme, which promoted dialogue, including the development of security plans, improving prosecution practices of criminals, as well as increased military checkpoints.[26] The project engaged security forces, local police and law enforcement, justice actors, Popular Committees and citizens which all came together to collectively respond to growing threats by high presence of transnational terrorist groups, criminal narcotics networks and large reconstruction and development needs.

Facilitating Cultural Practices as Part of a Wider Healing and Reconciliation

In *Uganda*, during the conflict between the Lord Resistance Army (LRA) and the Uganda state, the LRA abducted tens of thousands of children for recruitment as soldiers. UNICEF gave logistical support to ceremonies welcoming back children returning from LRA control, specifically in the form of providing centers for sheltering the children. These ceremonies were related to traditional ceremonies that welcome community members back after absence or a journey. For the children, cleansing and healing were objectives of the ceremonies.[27]

---

[20] [Informal Justice and the International Community in Afghanistan](#), Coburn, Noah, United States Institute of Peace, 2013.

[21] [Informal Justice Systems: Charting a Course for Human Rights-Based Engagement](#), UN Women, UNDP, and UNICEF, 2013, p. 19.

[22] International Actors and Traditional Justice in Sub-Saharan Africa: Policies and Interventions in Transitional Justice and Justice Sector Aid, Eva Brems, Giselle Corradi, and Martien Schotsmans, Intersentia, Cambridge, 2015, p.170.

[23] Pioneers' Perspectives, Harper, p. 10.

[24] International Actors and Traditional Justice in Sub-Saharan Africa, Brems, Corradi, and Schotsmans, p.45.

[25] [IDLO Launches Program to Strengthen Criminal Justice Chain in Northern Mali](#), IDLO, 2017.

[26] [Dispute Resolution and Justice Provision in Yemen's Transition](#), Erica Gaston and Nadwa al-Dawsari, 2014.

[27] Ibid, p. 80.

Supporting Higher Education Institutions

Literature references a practice of offering advanced degree studies in customary law to foster the development of attorneys who are able to understand and support state and non-state dispute resolution. However, no evidence of programming was accessible to this study.

Public Education, Awareness and Empowering Justice Users

Legal and Civic Educational Programs for the Community

In *Malawi*, DFID supported to the Catholic Commission for Justice and Peace and helped to increase the number of female members in village tribunals. The Catholic Commission also organizes educational programmes for members of the unofficial village tribunals. This training was given to chiefs, village chiefs on human rights, gender issues and good governance. The training also sought to delineate more clearly the respective roles of the unofficial traditional legal system and the formal legal system.[28]

In the same Malawi context, a public awareness campaign was supported by the EU and DFID on human and women's rights via electronic media broadcasts, community theatre, and print publications.

Strengthening State and Non-State Mechanisms' Relationship

Recognition of Non-State Justice Actors and their Practices

In *Mozambique*, the Land Law of 1997 gave recognition to customary land rights, granting them full equivalence to state issued land rights. Building on this, In the 2000s, the Food and Agriculture Organisation (FAO) supported the national Legal and Judicial Training Centre to develop policy, awareness raising and capacity building for the formal judiciary for oversight and legal empowerment of communities.[29]

Bringing Traditional Courts to Complement the State Justice System

The process of using *Rwanda*'s *gacaca* system to complement the formal justice system is one example where informal justice systems support state justice systems under pressure. Another example comes from Liberia, where Peace Committees established in 2009 provided community-based peacebuilding and reconciliation services to promote peaceful coexistence in society and carry out alternative dispute resolutions in issues related to land, family, sexual and gender-based violence. The United Nations Mission in Liberia shaped these committees to include women and youth mediators.[30]

In 2008, in Helmand, *Afghanistan*, the UK-led Provincial Reconstruction Team (PRT), worked to establish a justice system along the lines of 'one system, two sectors'. This placed the state justice sector and the community justice sector within one justice system and provided ways for the community to engage with the Afghan State. This was implemented through two programmes in Helmand: The Afghan Social Outreach Programme (ASOP) and the Prisoner Review Shuras. The programmes were founded on the **principle of negotiation between the different legal systems** represented by *Pashtunwali* and *Sharia*.

Creating Non-State Justice Units within State Institutions

In *Somalia*, state justice can be distant, slow and inaccessible for many, who rely on the traditional Xeer dispute resolution system. From 2013, IDLO supported the establishment of the Traditional Dispute Resolution Unit in the Somali Federal Ministry of Justice.[31]

[28] International Actors and Traditional Justice in Sub-Saharan Africa, Brems, Corradi, and Schotsmans, p. 169.

[29] Ibid, p. 184.

[30] Local Rules?! The Practices of Conflict Resolution by the United Nations in Liberia, Matthias Neef, KAITPC, 2017.

[31] Elders' Represent Foundation for Stability in Somalia, IDLO, 2016.

Policy Development and Legislative Reforms

Constitutional or Legal Harmonization

In 2007 *Sierra Leone*, the United Nations Development Fund for Women (UNIFEM) supported the adoption of the Gender and Child Act. This legislation brought in a new framework for the inclusion of several aspects of customary law. It aimed at acknowledging, recognizing, or integrating customary practices and standards into statutory law administered by state courts. Within this framework several acts delineated the role of traditional practices. The Registration of Customary Marriages and Divorce Act allows the registration of customary marriages and divorces as a basis for proof of marital status. On the other hand, it also forbade marriage below the age of 18, requiring the consent of both parties for marriage to take place. Other legislative acts also pushed back against customary practices, including the principle of gender equality for inheritance issues. After the adoption of the new legal framework, other international actors supported the Ministry of Social Welfare, Gender and Children's Affairs to implement it through a three-year roll-out plan.[32]

Supporting Paralegal Capacity

DFID has worked, since 2000, in many countries to support paralegal outreach programmes. In *Malawi* through its Justice for Vulnerable Groups programme, it has provided support to community and district mechanisms that aim to prevent violence against women and children and to strengthen the traditional and formal justice systems. This is to enable them to be more accountable and responsive to women, children and detainees.

Ratification of International Human Rights Instruments and Standards Domestication

In *Liberia*, the Carter Centre has worked since 2006 to improve the normative legal framework for provision of traditional justice with the aim of making it compliant with international human rights norms.[33] It has done this in partnership with the Ministry of Justice in a programme seeking to strengthen both the state and non-state justice system. One example of an output was the creation of Community Legal Advisers to advise poor and vulnerable people of their rights, how to access traditional or state justice mechanisms, and to influence tribal elders to make decision in compliance with human rights norms.

Documentation of Process and Outcomes

In the case of post-genocide *Rwanda*, Belgium, the Netherlands, the United Kingdom, the European Commission, USAID and Switzerland supported a process of documentation and analysis of the gacaca process by Avocats Sans Frontières and Penal Reform International, the Rwandan National Human Rights Commission, and local NGOs. The project was called *Projet d'Appui de la Société Civile au Processus Gacaca*.[34] In the same context, UNDP financed a documentation process that centralized archives and dossiers and carried out a historical study on the origins and evolution of the *gacaca* process.

Which Target Groups Have Benefitted from Donor Support to Non-State Justice?

Marginalized Groups

This target group includes indigenous people and remote populations, such as in the Federally Administered Tribal Areas of Pakistan, where remote populations are under the jurisdiction of the Pukhtun *jirgas*. The *jirgas* have the constitutional right, supported by other legislation to punish crimes on the basis of their own traditions and beliefs. Between 2008-2011, USIP's supported jirgas with capacity building at the district and provincial levels.

Women

Makamba is an area of Burundi where land disputes were exacerbated by the return of refugees, some of which are addressed through traditional justice mechanisms. From 2015, the International Development Law Organization (IDLO) work in this area sought to improve access to justice for women and marginalized groups through a couple of approaches. One is to apply alternative dispute mechanism, which is monitored and

---

[32] International Actors and Traditional Justice in Sub-Saharan Africa, Brems, Corradi, and Schotsmans.

[33] More information available here.

[34] International Actors and Traditional Justice in Sub-Saharan Africa, Brems, Corradi, and Schotsmans, p. 65.

documented. The other is a research programme that looks for ways to safeguard women's customary rights to land.[35]

Elders

In Kyrgyzstan, the jurisdiction of courts of elders was established by law in 1993, setting up the *Aksakal* courts, members of which are elected. In the Chui region of Kyrgyzstan, IDLO worked with the *Aksakal* courts to clarify their legal jurisdiction, improving their knowledge of the formal legal framework and to strengthen their knowledge of the formal legal framework and collaboration with formal courts, compliance at community level with legal and human rights standards.[36]

Finding the Entry Points

The starting point is the adoption of "people-centered approach" to justice. This approach should prioritize neither the formal nor informal system but should recognizes that grievance holders (when empowered) are best placed to choose what justice pathway is best for their grievance. Assessments are key to determine the needs of the grievance holders, their needs, and preferences on to access justice.

The ISSAT Justice Assessment Approach

ISSAT's Community-Based Justice Needs Assessment is a reliable way to start. ISSAT's process of a community-based assessment follows the stages laid out in the diagram below. It is focused on the justice needs of the community, and the gaps in provision. In contrast to an institutional-centric assessment, which asks, 'How well is the justice sector fulfilling its stated mission?', the community-based assessments asks, 'What justice needs should the justice sector be (re-)aligned towards?'

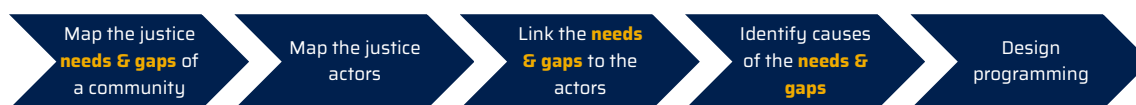| Map the justice **needs & gaps** of a community | Map the justice actors | Link the **needs & gaps** to the actors | Identify causes of the **needs & gaps** | Design programming |

Figure 1. The five stages of assessing a community's justice needs

1. The driving question of the first stage is: 'What are the key needs and challenges faced by people related to timely and effective access to justice and security?' This question can be done through a range of data gathering tools, including surveys, key informant interviews and focus group discussions. Assessors can talk to community members and their representatives, including community leaders, CSOs, religious institutions and others. Secondary data, such as the reports of INGOs, can also be useful. The resulting account of the justice needs, and gaps then becomes the compass that guides the rest of the assessment.

2. In the second stage, the focus is on the justice sector, which comprises both state and non-state actors. It may also comprise international actors such as UN agencies and INGOs, if they are involved with the justice sector. The guiding question of this stage is: Who is in the justice sector and how do they relate to the community? Similar data collection methods can be used to gather data, and engagement with the state and non-state justice sector is relevant.

3. In third stage, assessors would trace back the justice needs and gaps to the justice sector, asking 'Who is responsible for these needs and what are the origins of the gaps in justice provision?' This process should link state and non-state actors, as well as international actors if they are present.

---

[35] [Overcoming Land Disputes and Strengthening Women's Customary Rights](#), IDLO, 2016.

[36] [IDLO building the Capacity of Traditional Elders Courts in Kyrgyzstan](#), IDLO 2017.

4. The final stage is analytical, and assessors seek to understand the causes of why justice gaps occur. The question here is 'Why are these gaps appearing?' This process results in a gap analysis covering non-state and state actors and provides the necessary understanding for where engagement entry points.

For more information, you can access the full methodology [here.](#)[37]

Do No Harm Analysis and Human Rights Compliance

Whilst assessments provide entry points for programming, they do not always provide insight into socio-cultural power relations and the groups who could potentially suffer from discrimination whilst seeking justice, pre-empting any potential harm by the donor's programme. Should an international organization engage with a traditional justice system if it is not fully human rights compliant, for instance in terms of discrimination against women and children? To think constructively about this dilemma, UNDP, UN Women and UNICEF[38] suggest asking:

- Is the system and its actor open to adaptation towards greater compliance with human rights standards?

- Would the engagement directly or indirectly promote structural discrimination or other human rights violations or challenge them? I.e. Does it do no harm?

- Are there alternatives, including strengthening the national justice system, developing community policing, improving access to first instance and small claims courts?

- Why do people not choose the formal system in the first place, and are there ways of tackling these barriers more directly than working with a traditional justice system?

It is important to remember that non-state justice mechanisms are a heterogeneous grouping of different processes that vary from one context to another and there can be no template for access to justice programming with specified entry points. Instead, donors should take a principled approach and learn from examples of what has worked previously.

---

[37] Resource on the ISSAT Community of Practice (restricted access).

[38] [Informal Justice Systems, Charting a Course for Human Rights Based Engagement](#), UN Women, UNDP, and UNICEF, p. 16.