



INFORMAL JUSTICE SYSTEMS

CHARTING A COURSE FOR HUMAN RIGHTS-BASED ENGAGEMENT



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LIST OF ABBREVIATIONS

| | | | |
|----------------|--|-------------------|--|
| ADR | Alternative Dispute Resolution | LADA | Law and Development Association (Zambia) |
| AusAID | Australian Agency for International Development | LC | Local Council |
| BLAST | Bangladesh Legal Aid and Services Trust | MHRC | Malawi Human Rights Commission |
| CBO | Community-Based Organisation | MGEP | Mainstreaming Gender Equity Programme (Nepal) |
| CCJP | Catholic Commission for Justice and Peace (Malawi) | MLAA | Madaripur Legal Aid Association (Bangladesh) |
| CEDAW | Convention on the Elimination of All Forms of Discrimination Against Women | NEB | National Equality Body |
| CIDTP | Cruel, Inhuman and Degrading Treatment or Punishment (see UNCAT) | NGO | Non-Governmental Organization |
| CRC | Convention on the Rights of the Child | NHRI | National Human Rights Institution |
| CS | Civil Society | NRM | National Resistance Movement |
| CVICT | Centre for Victims of Torture (Nepal) | NSJS | Non-State Justice Systems |
| DANIDA | Danish International Development Agency | OECD | Organisation for Economic Co-operation and Development |
| DFID | United Kingdom Department for International Development | PASI | Paralegal Advisor Service Institute (PASI) |
| ECHR | European Convention on Human Rights | PNG | Papua New Guinea |
| EPWDA | Eastern Province Woman Development Association (Zambia) | PRI | Penal Reform International |
| FGM | Female Genital Mutilation | PRSP | Poverty Reduction Strategy Papers |
| FRELIMO | The Liberation Front of Mozambique (Frente de Libertação de Moçambique) | SALRC | South African Law Reform Commission |
| GBV | Gender-Based Violence | SWAP | Sector Wide Approach |
| GJLOS | Kenya Governance Justice Law and Order Sector (reform programme) | ToR | Terms of Reference |
| GTZ | German Society for Technical Cooperation (Deutsche Gesellschaft für Technische Zusammenarbeit) | UAE | United Arab Emirates |
| HRBA | Human Rights-Based Approach | UDHR | The Universal Declaration of Human Rights |
| HRC | Human Rights Council | UK | The United Kingdom |
| HURIPeC | Human Rights and Peace Centre (Uganda) | UN | The United Nations |
| ICC | International Criminal Court | UNAIDS | Joint United Nations Programme on HIV/AIDS |
| ICCPR | International Covenant on Civil and Political Rights | UNCAT | United Nations Convention Against Torture |
| ICESCR | International Covenant on Economic, Social and Cultural Rights | UNDAF | United Nations Development Assistance Framework |
| ICHRP | International Council on Human Rights Policy | UNDP | United Nations Development Programme |
| ICTJ | International Center for Transitional Justice | UNESCO | United Nations Educational, Scientific and Cultural Organization |
| ICTR | International Criminal Tribunal for Rwanda | UN HABITAT | The United Nations Human Settlements Programme |
| ICTY | International Criminal Tribunal for the former Yugoslavia | UNICEF | United Nations Children's Fund |
| IJS | Informal Justice Systems | UNIFEM | United Nations Development Fund for Women |
| INGO | International Non-Governmental Organisation | UNODC | United Nations Office on Drugs and Crime |
| ILO | International Labour Organisation | UP | Union Parishad (Bangladesh) |
| JSC | Judicial Service Commission | UPR | Universal Periodic Review |
| JLOS | Justice Law and Order Sector | USIP | United States Institute of Peace |
| JSDP | Justice Sector Development Programme (Sierra Leone) | VAW | Violence Against Women |
| KSOL | Kathmandu School of Law (Nepal) | VMP | Village Mediation Project (Malawi) |
| | | WLUML | Women Living Under Muslim Laws |
| | | VSU | Victim Support Unit |
| | | YWCA | Young Women's Christian Association |

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SUMMARY

A. PLACING INFORMAL JUSTICE SYSTEMS IN CONTEXT

Until recently, informal justice systems (IJS) were relatively invisible in development partner-assisted justice interventions. Yet, IJS form a key part of individuals' and communities' experience of justice and the rule of law, with over 80 percent of disputes resolved through informal justice mechanisms in some countries.¹ IJS may be more accessible than formal mechanisms and may have the potential to provide quick, relatively inexpensive and culturally relevant remedies. Given this central role and increasing government and partnering donor interest in IJS, it is key to build an understanding of IJS and how best to engage with them for the strengthening of human rights, the rule of law and access to justice.

In many countries, there is a prevalence of IJS, which demands that governments and development partners take these systems more seriously, especially with regard to IJS and women's and children's rights. This does not mean that development organizations should promote IJS at the expense of a functioning unitary legal order or that they should oppose the existence of IJS. Rather, it is recognition that IJS are an empirical reality, albeit a complicated one.

At the same time, growing numbers of countries are requesting UN assistance to engage with IJS and strengthen their ability to provide justice and legal protection. The UN's approach to engagement on rule of law and access to justice is as an effort to ensure international norms and standards for all who come into contact with the formal and informal justice system, including victims, witnesses or alleged offenders. IJS are complex and deeply varied; many drawing their normative structures and legitimacy from the local communities and society in which they operate. The UN does not presume that engagement with IJS can adopt a 'one-size-fits-all' approach. Like all legal mechanisms, IJS function within changing societies and communities and can be responsive to the particular individual circumstances of a case in the application of cultural norms.

The obligation to respect, protect and fulfil human rights, including through the provision of justice and legal remedies, extends to formal and informal systems alike. Both types of justice systems can violate human rights, reinforce discrimination, and neglect principles of procedural fairness. IJS in many contexts deal with issues that have a direct bearing on the best interests of women and children, such as issues of customary marriage, custody, dissolution of marriage, inheritance and property rights. The operative questions surrounding IJS and the rights of women and children are significant. While it is especially important to note that the structures, procedures and substantive decisions of some IJS neither safeguard nor promote women's rights and children's rights, the existence of IJS does not of itself contravene international human rights principles. Indeed, IJS can provide avenues for the delivery of justice and the protection of human rights, particularly where formal justice systems lack capacity, and IJS can enjoy widespread community legitimacy and support.

The study seeks to identify how engagement with IJS can build greater respect and protection for human rights. It highlights the considerations that development partners should have when assessing whether to implement programmes involving IJS, the primary consideration being that engagement with the IJS neither directly nor inadvertently reinforces existing societal or structural discrimination – a consideration that applies to working with formal justice systems as well. The study also examines the value of IJS in offering, in certain contexts, flexible structures and processes, cost-effectiveness and outreach to grassroots communities.

¹ Wojkowska, Ewa 2006: *How Informal Justice Systems can contribute*, Oslo: United Nations Development Programme, Oslo Governance Centre.

In structure, this summary of the study, first describes IJS across the range of degrees of formality and informality and interaction with the state. It identifies the combination of factors that influence individuals' or communities' preferences and pressures to bring matters before IJS rather than before formal justice systems. These factors influencing preferences for IJS vary from geographical isolation, economic concerns, familiarity, trust and the perception that IJS better reflect local values. It then places IJS in the context of human rights, with particular attention to the rights of women and children. Finally, it frames the principles of programming engagement with IJS and suggests possible entry points for engagement with IJS, so that strategic engagement can strengthen IJS to better deliver justice and human rights.

METHODOLOGY

Commissioned by UNDP, UNICEF and UN Women, the study involved a comprehensive literature review and country-specific case studies. Qualitative and quantitative data collection was carried out in Bangladesh, Ecuador, Malawi, Niger, Papua New Guinea and Uganda. The country studies were selected in consultation with the three UN agencies and the methodology was developed through a pilot case study in Malawi. The country studies employed a uniform methodology, and all of the country studies use identical or very similar categories of analysis. Interviews were conducted with individuals and groups representing various stakeholders at the local and national levels on the basis of an interview guide developed for each of the target categories. The quantitative part of the country studies included surveys for users of informal justice and informal justice providers, following a generic questionnaire format that allowed comparison across countries.

Desk studies of 12 countries were also conducted on the basis of literature from academia, UN agencies, NGOs, governments, websites and conferences. Wherever possible, they were developed in consultation with national experts on the informal and the formal justice systems, including scholars and human rights experts. The desk studies assessed the nature and characteristics of IJS (composition, decision-making, procedures), linkages among the different justice providers (particularly with formal justice systems), legal frameworks, human rights aspects and efforts made to date in programming by governments, national and international NGOs, the UN and other development partners.

DEFINITIONS OF INFORMAL JUSTICE SYSTEMS

Any attempt to define IJS must acknowledge that no definition can be both very precise and sufficiently broad to encompass the range of systems and mechanisms that play a role in delivering rule of law and access to justice. IJS vary considerably, encompassing many mechanisms of differing degrees and forms of formality. Degrees of formality vary with respect to legal or normative framework, state recognition, appointment and interaction, control and accountability mechanisms and systems of monitoring and supervision including the maintenance

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